CABINET

AIRCRAFT AND SHIPBUILDING INDUSTRIES BILL

Memorandum by the Lord President of the Council

1. Following the discussion in Cabinet on 17 February (CM(77) 6th Conclusions, Minute 1, Conclusion 2) a group of Ministers has met under my chairmanship to consider the implications of the ruling by the House of Lords Examiners that the Aircraft and Shipbuilding Industries Bill is hybrid in respect of the ship repairing companies scheduled for nationalisation (a copy of the ruling is at Annex A).

2. The Standing Orders Committee of the House of Lords meets on 23 February to decide whether to dispense with the Standing Orders on prior advertisement of introduction of a private Bill etc which would normally apply to a hybrid Bill. If the Committee should decide that these Standing Orders should not be dispensed with the House of Lords would be unable to proceed to a Second Reading of the Bill and it could immediately be submitted for Royal Assent under the Parliament Acts. If, as is more likely, the Committee decide that this Standing Order about prior notice should be dispensed with the Bill will go to Second Reading and if passed would in the normal way go to a Select Committee where objectors to its passage could present their case. There is little prospect of getting the Lords to pass a Motion dispensing with the Select Committee procedure without some Government concessions and an attempt to do so could result in a humiliating defeat. The effective choice for the Government is between:

a. Allowing the Bill to proceed through the Select Committee procedure and passing it under the Parliament Acts when it emerges, which probably means at the end of the Session.

b. Seeking a deal under which the Government would agree to drop from the Bill the ship repairing companies (but not the ship repairing interests of the shipbuilding companies) in return for a clear commitment from the Opposition in both Houses that they would allow the remainder of the Bill to proceed immediately to Royal Assent without further delay or amendment.
Course b. would, if all goes smoothly and the Lords speed up their usual procedures, probably result in Royal Assent by Easter or soon after, saving about six months compared with course a.

3. The main factors affecting this choice are:

a. **Industrial consequences of delay.** The Secretary of State for Industry's assessment is at Annex B. The main risks of delay arise in the aircraft industry where the absence of a single body able to speak with authority on behalf of both the British Aircraft Corporation and Hawker Siddeley could prejudice the conclusion of collaborative arrangements with overseas companies particularly Boeing. However, there is no certainty that negotiations on the collaborative projects will come to a head in the next six months. Delay would cause some long-term damage to the shipbuilding industry but the policy decisions which Cabinet took on 17 February (CM(77) 6th Conclusions, Minute 3) and the establishment of the new holding company for the Government shareholdings in the industry should avoid serious and immediate damage. Delay could precipitate the closure of some ship repairers; but so could their exclusion from the Bill.

b. **Implications of the Hybridity Ruling.** The Examiners have gone well beyond their task of saying whether the Standing Orders applicable to private Bills should apply to the Aircraft and Shipbuilding Industries Bill. Certain aspects of their ruling - notably their view that to define which companies are to be nationalised by reference to their total turnover, including turnover outside ship repairing, in itself causes hybridity - could have serious implications for future legislation (particularly nationalisation Bills). The Examiners' ruling is on the record; but if we decide to seek a deal it should be possible to present our decision as recognising that the Examiners' ruling is decisive in this case without necessarily accepting the arguments on which that ruling is based.

c. **Parliament Act.** Annex C describes the position under the Parliament Acts. The main question is whether, if we decide to proceed under those Acts, we could, should we have lost our Commons majority before the end of the Session, submit the Bill for Royal Assent without further votes in the Commons. There is no requirement under the Parliament Acts for the Commons to consider any amendments which the House of Lords now make to the Bill and it could be submitted for Royal Assent at the end of the Session without such consideration. It is possible for the Commons to direct that the Parliament Acts should not be invoked but there is no obligation on the Government to provide time for such a Motion and the officials of the House of Commons have advised informally that such a Motion would not be in order on a Supply day. However the
possibility of further votes in the Commons cannot be entirely excluded; and it could be politically embarrassing to submit the Bill for Royal Assent without the Commons having voted on any Lords' amendments. (It would always be open to the Opposition to table a Motion of censure; but defeat of the Government on that would have implications going beyond the Aircraft and Shipbuilding Industries Bill).

d. Political factors. Many members of the Parliamentary Labour Party and of the Labour Party in the country are likely to react strongly against a decision to drop the ship repairing companies from the Bill. They would see it as a surrender to the House of Lords and to Bailey's campaign. The Confederation of Shipbuilding and Engineering Unions have told the Prime Minister that they would reluctantly acquiesce in the dropping of the ship repairing companies if the Government decided that was necessary to secure a speedy passage for the rest of the Bill. To continue under the Parliament Act and then lose the Bill at the end of the Session would of course be a still more damaging political defeat.

CONCLUSIONS

4. The majority of the Group very reluctantly took the view that the industrial consequences of delay and the political risks of proceeding under the Parliament Acts made it necessary to try and do a deal with the Opposition on the lines suggested in paragraph 2b. There was no certainty that the Opposition would be ready for such a deal - the decision would be taken by the Shadow Cabinet as a whole. An important minority of the Group, however, had reservations about this course.

5. Cabinet are asked to decide whether to authorise an exploration of the possibilities of a deal with the Opposition under which the ship repairing companies would be deleted from the Aircraft and Shipbuilding Industries Bill in return for clear commitments from the Opposition in both Houses to allow the remainder of the Bill to pass quickly. If Cabinet decide in favour of such explorations the tactics of the approach to the Opposition will need to be carefully considered by the managers of Government business in both Houses in consultation with the Secretary of State for Industry.

M F

Privy Council Office

22 February 1977
We have based our inquiry on the well-known statement by Mr. Speaker Hylton-Foster on the Bill for the London Government Act 1963:

"I think that a hybrid Bill can be defined as a Public Bill which affects a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class."

This definition, taken at its face value, indicates what might have been thought to be obvious, that the doctrine of hybridity is an expression of the will of each House of Parliament that an individual singled out by a Public Bill for adverse treatment should be allowed to plead his case to a Select Committee on a petition against the Bill or against those provisions of the Bill that will affect him. The doctrine was designed to give the minority some defence against the legislature; and that in modern times means defence against the Crown. Unless it is that, it is nothing.

Yet this defence has been eroded by two Speakers' Rulings, the first given before, and the second given after, Mr. Speaker Hylton-Foster's Ruling. Before discussing these Rulings, it is right to call attention to the difficulty of applying the Hylton-Foster definition to any particular Bill. Every person or body is a member of a category or class of persons or bodies and every category or class of persons or bodies is a member of a wider category or class of persons or bodies. Therefore, the answer to the question whether a Bill is hybrid on the Hylton-Foster definition depends on where you draw your category or class. The two Rulings we have referred to are that of Mr. Speaker Clifton-Brown on the Bill for the Iron
and Steel Act 1949 and that of Mr. Speaker King on the Bill for the Iron and Steel Act 1967. The effect of both of them is that the category or class that is relevant is the one selected by the Promoters of the Bill. In other words, the defences of the subject against selective ill-treatment can be turned by drawing a category or class that comprises him and his fellow victims and nobody else.

We therefore conceive ourselves effectively prohibited by the Rulings of Mr. Speaker Clifton-Brown and Mr. Speaker King from finding that the Aircraft and Shipbuilding Industries Bill is inherently hybrid, that is to say that we cannot in the light of those Rulings find that the class of companies whose securities are to be taken into public ownership is described with such particularity that it is itself a selection from a wider class of companies. We are prohibited, not because we as Officers of the House of Lords are formally bound by decisions of the Speakers of the House of Commons, but because it would be, to say the least, inconvenient if the two Houses developed different doctrines of hybridity.

It is still open to us to find that this Bill is hybrid according as we answer the arid questions whether all the companies named in Part I of the Second Schedule to the Bill are within the category or class set out in Part II of that Schedule and whether any company within that category or class is not named in Part I. If Part I and Part II of the Second Schedule are not congruent, the Bill is hybrid. This is because

(a) if a company is named in Part I but is outside the category or class defined in Part II, it is singled out from its own category or class; and

(b) if a company within the category or class defined in Part II is nevertheless not named in Part I, the companies named in Part I are within a category or class not all of whose members are subjected to nationalization.
We deal later with the Government's suggestion that a category or class other than that described in Part II is appropriate to the list in Part I.

It is widely supposed that the Bill is to nationalize the aircraft manufacturing industry and the shipbuilding industry. This is far from the truth. The long title of the Bill refers to "certain companies" engaged in those industries, and, so far as the shiprepairing industry is concerned, and that is the industry that our examination has been almost exclusively concerned with, the Bill is notably selective. Out of the ninety or so shiprepairing companies, the Bill would bring into public ownership twelve companies named in the Second Schedule as shiprepairing companies, and about six more shiprepairing companies which are on the list in that Schedule of shipbuilding companies and presumably fulfil the criteria appropriate to such companies. If, therefore, we were free to apply Mr. Speaker Hylton-Foster's ruling to the shiprepairing nationalization proposed by the Bill, but without taking Mr. Speaker King's Ruling into account, we should be forced to find it hybrid, whether we were to treat the "category or class" as comprising the "companies engaged in shipbuilding and allied industries" mentioned in the long title or as comprising those engaged in the shiprepairing industry. It was only by devising a class as tight as that described in paragraphs 1 and 3 of Part II of the Second Schedule to the Bill that the Government could hope to avoid hybridity. How tight that class is can be seen by a study of those paragraphs and of the definitions of "group of companies" and "subsidiary" in Clause 56(1).

One of the main arguments advanced by those who appeared before us in support of the proposition that the Bill is hybrid (whom we shall refer to as "the Memorialists") was that many shipowning companies fitted the description in paragraph 1(b) of Part II of the Schedule as companies that "fulfilled the criteria" in paragraph 3 of that Part as shiprepairing companies, in that they...
of being engaged on the 31st July, 1974, in the business of repairing, refitting or maintaining ships in spite of the fact that the ships were their own. The Government has all along resisted this contention. In his answer of 14th October 1976, to a question asked by Lord Colville of Culross, Lord Peart said:

"The Government are satisfied that a person who does repair or other work only for himself, such as a shipowner carrying out his own repairs or maintaining his own ships, is not 'engaged in the business of repairing, refitting or maintaining ships'. A good analogy would be a hotel company which launders its own linen; no-one would say this would make the company into a company engaged in the laundry business."

It was pointed out to us that the hotel analogy would have been better had it said "would make the company into a company engaged in the business of laundering linen."

We are thus invited to find that the Bill is hybrid because, although the shipowning companies are for the most part not within the list of shiprepairing companies contained in Part I of the Second Schedule they fulfil the conditions in Part II of that Schedule. This issue, above all, shows the unreality and artificiality of what we have been inquiring into.

We are aware that Mr. Speaker King, in ruling that the Bill for the Iron and Steel Act 1967 was not hybrid, declined to speculate on the reason why the class devised for that Bill was selected; but in the case before us there was no occasion to speculate because both Mr. Gamon, the Government Agent, and Mr. McDonald, whom he called as a witness from the Department of Industry, made it abundantly clear that from the beginning the Government was aiming, not at the shiprepairing industry, but at a carefully selected list of companies engaged in that industry. The risk of hybridity was, therefore, immediately apparent, and we are entitled to assume that Parliamentary Counsel endeavoured to draft Part II of the Second Schedule so as to enable the Government to avoid hybridity by availing itself of Mr. Speaker.
King's Ruling, that is to say, by devising a category or class into which the twelve companies could be fitted, but no others except those included in the list of shipbuilding companies. The Government was fully entitled to do this, as other Governments have in the past; but the effect of such tactics is remarkable, because the right of any of the twelve companies to plead its cause before a Select Committee depends, not on any consideration of the rights of the subject, but on the success of Parliamentary Counsel in so drafting the Schedule that Parts I and II cover exactly the same twelve companies; and indeed we had evidence that Part II was altered in the draft Bill stage of the original Bill, both on the dry-dock qualification and on the turnover qualification, to admit or exclude individual companies.

Moreover, when we turn to the question whether shipowning companies are also shiprepairing companies for the purposes of the Bill, the answer is "No" because those companies are not named in Part I of the Schedule. But that is not the question we have to answer. What we have to answer is the artificial question whether shipowning companies which repair their own ships fulfil the criteria in paragraph 3(l)(a) of Part II of the Schedule as shiprepairing companies. Mr. Gamon strongly urged us to have regard to the intention of those who framed the Bill; but this leads us nowhere. The intention of those who framed the Bill was to exclude the shipowning companies or most of them; and this, of course, the Bill will achieve not by reference to the long title or to the language of paragraph 1(b) of Part II, but by the list of companies in Part I. We find that many of the shipowning companies did repair their own ships.

Whether it follows from this that the shipowning companies which repaired their own ships were "engaged in the business" of repairing ships is an evenly balanced question. To find that they were not so engaged involves some absurdity having regard to the case of Clyde Wharf Limited, a subsidiary of Sugar Line Ltd., which by the end of March 1973 was...
repairing ships belonging to Sugar Line. On 31st March 1973, Clyde Wharf ceased to trade and transferred its shiprepairing section to Sugar Line together with the workforce, plant and machinery used in that section. Before the transfer Clyde Wharf was certainly engaged in the business of repairing ships. Can it therefore reasonably be held that immediately after transfer Sugar Line was not engaged in that business because its main business was the owning of ships? We, nevertheless, find that, in ordinary parlance, to be engaged in business connotes making, or attempting to make, a trading profit.

But the element of trading profit is more evident in the analogous case of companies such as Athel Line Ltd., Royal Mail Lines Ltd., Houlder Brothers Ltd., Manchester Liners Ltd., and Shaw Savill & Albion Ltd. which were managing ships belonging to other companies. We were told that a management contract invariably requires the manager to maintain the ship and generally requires him to repair the ship. As a rule small repairs are done by the manager's employees at sea or in port; larger repairs are carried out by shiprepairers. The five companies mentioned above are relevant, not because it was suggested that they should be in the Bill, but because, in the case of Athel, its turnover would, it was submitted to us, have required Richards (Shipbuilders) Ltd., and, in the other cases, their turnover would have required Manchester Dry Docks Ltd., to be included in the Bill as shiprepairing companies. All five companies sometimes repaired their managed ships with their own workforce and equipment. There is thus a strong argument for the proposition that a company that contracts with a shipowner to manage his ships, and, as an element of management, to maintain them and repair them as occasion demands with the manager's workforce and equipment is "engaged in the business of repairing, refitting or maintaining ships". Is the managing company then nevertheless engaged in the business of managing ships or can it be said to be engaged in the business of managing and the business of repairing or maintaining? With some difficulty, we have come to the...
It was submitted to us that the Westminster Dredging Company, though not listed in Part I of the Second Schedule, was engaged in the business of repairing, refitting or maintaining ships within the meaning of paragraph 3(1)(a) of Part II of the Schedule because it was engaged in repairing not only its own ships and ships chartered by it but also ships of other companies. On 7th June 1972, the company wrote to the general manager and engineer of the Port of Preston Authority in these terms:

"We have now leased from the Mersey Docks and Harbour Company both No.1 and No.3 Birkenhead Drydocks. You will probably know that we maintain our own vessels utilising our workshops both at Bromborough and adjacent to the drydocks.

For many years we have virtually monopolised No.1 drydock for own own vessels and this utilisation, together with third party vessels using No.3 dock, leaves us with about 70% spare capacity.

Since 1st May 1972 we have been hiring the dock to shiprepairers who also carry out their own repairs, but we would also like to make maximum use of our workshop facilities. It is for this reason we are writing to ask if you would allow us to quote for drydocking and repairs on your vessels which drydock regularly in the Port of Liverpool.

We would like to think that, apart from our large stocks of materials and parts (peculiar to dredgers), we have also accumulated a great deal of specialised knowledge, and hope therefore we may be of some assistance."

The Company was from June 1972 until about May 1975, and certainly at the end of July 1974, repairing ships that were not owned or chartered or managed by the company including ships belonging to the Preston Port Authority. There is some dispute between the Memorialists and the Government about the number of ships repaired for outsiders during this period.
We find that there were seven or eight. This repair work was a small portion of the company's total business, which consists of dredging and land reclamation. The turnover of the company in the financial year ended 31st December 1974, was £21 million, whereas the turnover of the company so far as it related to repair work undertaken for outside companies was from May 1972 to December 1975 inclusive not more than £47,305.

It was submitted to us that the London Graving Dock Company Ltd., though included in Part I of the Second Schedule to the Bill, did not fulfil the criteria of paragraph 3 of Part II of that Schedule. That company in the year in which 31st July 1974 fell was acting purely as a holding company, one of whose subsidiaries was London Graving Dock Ship Repairs Ltd. Though the parent company has for most of the time been the one selected by the Government for nationalization, there was a time in the spring of 1975 when both the Government and the directors of the companies were in serious doubt whether to select the parent or its subsidiary. It was the view of the directors that neither the parent nor its subsidiary in isolation appeared to fulfil the criteria specified in paragraph 3 of Part II of the Second Schedule; but the Government had no doubt that taken together the two companies and the companies in the same group engaged in shiprepairing fulfilled those criteria. After prolonged negotiations between the Government and the directors, it was decided by the Government with the approval of the directors to list the parent company in Part I; but the involvement of the parent company in the business of repairing, refitting or maintaining ships was tenuous and depended on a contract with Trinity House which was entirely subcontracted to London Graving Dock Ship Repairs Ltd. A note by Mr. Walker of the Department of Industry of a meeting on 10th April 1975 between the Department and the directors suggests that there may have been other long-term contracts; but we have no evidence about their content.
The parent company's turnover for the relevant financial year, which is that ended 31st March 1973, was over £5 million, being the consolidated turnover of the company and its subsidiaries. At the end of the March 1973 the company ceased to carry out shiprepairing, but retained its fixed assets. Though it employed some 200 persons some of whom were engaged in shiprepairing, its turnover for the year ended 31st March 1975, the year in which 31st July 1974, fell, was nil. All the practical work including administration work on the parent company's contracts was performed by London Graving Dock Repairs.

We deal next with J.B. Howie Ltd. and Western Shiprepairers Ltd. Both these companies were on 31st July 1974 engaged in the business of repairing, refitting or maintaining ships. Both companies were entitled to an interest in possession in, or a licence to occupy, a dry-dock or a graving dock within the meaning of the Second Schedule, Part II, paragraph 3(1)(b). The Department of Industry was informed by letter dated 30th September 1976, from Messrs. Ashurst, Morris, Crisp & Co., solicitors to the Laird Group, that in the "relevant financial year" i.e. that ended 31st December 1972, Howie did not trade and Western had a turnover of £1,735,243, so that neither qualified for the £3.4 million turnover which by paragraph 3(1)(c) is made a condition for takeover. Cammell Laird (Shiprepairers) Company Ltd. was, however, a member of the same group; and that company in the same relevant financial year had a turnover of more than £5 million. That company was on 31st July 1974 a member of the Laird Group to which Howie and Western belonged and accordingly its turnover could be reckoned with the turnovers of Howie and Western if, but only if, on 31st December 1972 it was "engaged in the business of repairing, refitting or maintaining ships" as required by subparagraphs (1)(a) and (2)(b) of paragraph 3. Messrs. Ashurst, Morris, Crisp & Co. have informed the Department of Industry that on 31st July 1974, Cammell Laird (Shiprepairers) Ltd. had a contract with the Venezuelan navy for the refitting of two destroyers and a contract with the
Peruvian Government for the refitting of two other destroyers. These two contracts were entered into before 1972. Cammell Laird (Shiprepairers) Ltd. had sold their assets to the Laird Group in 1972 and the work on the Venezuelan and Peruvian contracts had been sub-contracted to Cammell Laird (Shipbuilders) Ltd. and Western Shiprepairers Ltd. Cammell Laird (Shiprepairers) had no employees, it had no interest in possession in a dry-dock or graving dock and had no other fixed assets. There is some evidence that the directors of Cammell Laird (Shiprepairers) Ltd. continued to supervise the Venezuelan and Peruvian contracts. We find that on 31st July 1974 Cammell Laird (Shiprepairers) Ltd. was a member of the same group of companies as J.B. Howie Ltd. and Western Shiprepairers Ltd. and that on 31st December 1972 the end of the relevant financial year, it was still marginally engaged in repairing, refitting or maintaining ships, and that, therefore, its turnover may be aggregated with those of J.B. Howie Ltd. and Western Shiprepairers Ltd.

We now turn to the case of Humber St. Andrews Engineering Company Ltd. That company was on 31st July 1972 repairing the Esquimaux and the Emerald in a dry-dock at Hull owned and operated by British United Trawlers (Hull) Ltd. and managed by Hellyer Brothers Ltd.; and the Emerald was owned by Hellyer. The three companies, British United Trawlers (Hull) Ltd., Hellyer and Humber St. Andrews were members of the same group. Humber St. Andrews had a turnover in the relevant financial year exceeding £3.4 million and was agreed to be engaged on 31st July 1974 in the business of repairing ships. In an answer given in the House of Lords on 14th October 1976, Lord Peart said that neither Hellyer Brothers, who booked the dry-dock, nor Humber St. Andrews, who was doing the repairs, was entitled to a licence to occupy the dry-dock. What does the phrase "entitled to a licence to occupy a dry-dock" mean? It must be something less than "an interest in possession in a dry-dock" which is the other dry-dock qualification imposed by paragraph 3(1)(b) of Part II of the Second Schedule to the Bill.
We would expect it, on the other hand, to be something more than the occupation of a dry-dock in pursuance of a booking by the owner, charterer or manager of a ship occupying the dry-dock. No evidence has been given to us of any intermediate "licence" between an interest in possession and occupation under a booking from the dock-owner. We find that Hellyer Brothers Ltd. occupied the dry-dock on 31st July 1974.

We are thus presented with the question whether the Bill is hybrid -

first, because of the omission of Westminster Dredging Company notwithstanding that on 31st July 1974 it was engaged in the business of repairing ships, albeit in a small way;

second, because of the inclusion of the London Graving Dock Company, notwithstanding that its shiprepairing business on 31st July 1974 was minimal;

third, because of the inclusion of J.B. Howie and Western Shiprepairers notwithstanding that on 31st July 1974 the shiprepairing business of Cammell Laird Shiprepairers by virtue of whose turnover those two companies are included, was minimal;

fourth, because of the exclusion of Humber St. Andrews Engineering Company on the ground that their work in a dry-dock on 31st July 1974 did not amount to an entitlement to a licence to occupy it.

It has been urged on us on behalf of the Government that we should not concern ourselves with such trivialities and we agree with the Government that they are indeed trivialities. We go further and say that they have little bearing on the underlying question whether any of the companies selected by the Bill for nationalization, and especially the twelve shiprepairing companies, should be allowed to present their case to a Select Committee of the House.
It is at this point that the fundamental issue of this examination presents itself. We share the view expressed on behalf of the Government that it is grotesque that the constitutional right of a subject to plead his cause before a Select Committee of the House of Lords or the House of Commons should depend on the answers to the kind of questions we have just mentioned. Mr. Gamon, perhaps anticipating that the shiprepairing activities of Westminster Dredging Company might compel us to find that that company was engaged in the business of repairing ships within the meaning of Part II of the Schedule, though not listed in Part I of the Schedule, suggested that we should look beyond the class described in paragraphs 1 and 3 of Part II of the Schedule to an unexpressed class, described by him as the "genuine class" of companies which are to be nationalized as shiprepairing companies. He contended that the Government sought to bring into public ownership a genuine class of eighteen or so major shiprepairing companies and that Westminster Dredging Company, for instance, could not in ordinary parlance be described as a shiprepairing company at all. It was almost exclusively engaged in dredging and land-reclamation. But one must assume that those who framed the Bill shrank from a bare naming of the shiprepairing companies that the Government wanted to take, with or without some such description of them as "the major shiprepairing companies", because to do so would be to make a naked selection and so hybridise the Bill. So they employed the device adopted in the two Iron and Steel nationalization Bills and blessed by the Rulings of Mr. Speaker Clifton-Brown and Mr. Speaker King. That device, as we have said, was for the Promoters to draw a class that would comprise the selected companies and no others. That is the way the Government has chosen to play it. The fact that the class has been so drawn as to include a company that the Government did not intend to include does not justify us in ignoring the stated class; and relying on the unexpressed "genuine" class. To do so would amount to finding not only that clause 19(2) and the Second Schedule were ineffective but to substituting something for them that would itself hybridise the Bill.
We find that the Bill is hybrid in respect of the omission of the Westminster Dredging Company. We find that the Bill is not hybrid with respect to the inclusion of the London Graving Dock Company, J.B. Howie, Western Shiprepairers and Humber St. Andrews.

It will be seen that the minor shiprepairing business of Westminster Dredging Company, a company outside Schedule II, is balanced by the minor shiprepairing businesses of London Graving Dock Company and Cammell Laird (Shiprepairers) which have brought London Graving Dock and J.B. Howie and Western Shiprepairers within Schedule II.

There is another matter which raises the question of hybridity. In the Bill for the Iron and Steel Act 1967 the Ruling of Mr. Speaker King, to which we have already referred, was to the effect that the description contained in that Bill of the companies selected for public ownership formed an adequate class if the description was germane to the subject matter of the Bill. It is not clear whether by this he meant germane to the Iron and Steel Industry or germane to the companies selected out of that industry for nationalization. We think he meant the first. It was submitted to us that the condition in paragraph 3(1)(c) of Part II of the Second Schedule to the Bill is not germane to the shiprepairing industry. Paragraph 3(1)(c) deals with turnover and requires that the aggregate turnover of the company concerned and of its associated shiprepairing companies must have exceeded £3.4 million in order to qualify for nationalisation; but the turnover is not confined to turnover in the shiprepairing business and, in one company at least, the Humber Graving Dock and Engineering Company, some 40% of the turnover required by the Bill was turnover in respect of business that was not the business of shiprepairing. In other words the Government has decided, in the case of this company, to bring it into public ownership by reason of its size, but not solely by reason of its size as shiprepairers.
We find that the Bill is hybrid in that the condition of turnover is not germane to the subject matter of the Bill so far as it relates to the shiprepairing companies.

It is also our duty to decide whether the Bill is or is not hybrid in respect of the aircraft manufacturing industry and in respect of the shipbuilding, marine diesel engine and training industries. We have received virtually no evidence about these; but we accept Mr. Gamon's assurance that, as far as he knows, there is no incongruity between Parts I and II of the First Schedule and Parts I and II of the Second Schedule so far as they relate to the shipbuilding, marine engine and training industries. We accordingly find that the Bill is not hybrid on account of any such discrepancy.

Having pronounced our finding, we would add this. We are conscious of the fact that important sections of industry are waiting for Parliament to decide whether, and to what extent, nationalization of certain companies is to proceed. We are also conscious of the fact that, since this Bill is introduced with the certificate from the Speaker pursuant to section 2(4) of the Parliament Act 1911, the House of Lords will be unable in all probability to give effect to any Petitions against the Bill. Nevertheless, we have to do our best to decide whether the Memorialists and other parties affected by the Bill should be given an opportunity to plead their case before a Select Committee of the House.

We have not investigated to any great extent the origins of the rules of both Houses regarding hybridity. We are, however, convinced that they were designed by both Houses to ensure that the subject should have a right to plead his cause before them if he could show that their legislation would put him to greater disadvantage than it would put his fellows. Parliament has, in other words, been careful to protect the individual from the majority, from the power of the state, or, if you prefer it, from the power of the Government.
As we have indicated above the Ruling of Mr. Speaker King and his predecessor, Mr. Speaker Clifton-Brown, have, we think, almost completely lost sight of the fundamental purposes of the hybridity rule. Governments are naturally very reluctant to submit major decisions of policy to the judgement of Select Committees, whether they be Committees of the House of Commons or Committees of the House of Lords. They, therefore, take great pains to have their Bills drafted so as to avoid hybridity.

We have already expressed our opinion that whether a Bill is or is not hybrid has degenerated into a question whether the Parliamentary Counsel who draft Bills for the Government have been successful in drawing a class into which the undertakings intended for nationalization can be fitted and which excludes the undertakings that the Government does not wish to nationalize; and it is curious that the answer to the question whether a constitutional right of such importance as the right of a subject to plead his cause before Committees of either House might depend on the opinion of Officers of the House about the meaning of such phrases as "engaged in the business of repairing, refitting or maintaining ships" and "entitled to a license to occupy a dry-dock or graving dock".

The draftsman of this Bill was assigned an impossible task. It was difficult enough for him to make Part II of his Second Schedule cover all the companies in Part I; but when it came to ensuring that no other company fulfilled the conditions in Part II, he had to rely on such information as the Government could glean from sources that were not always sympathetic. Had he had the knowledge available to us, he would in all probability have succeeded. As it was, that knowledge was denied him, and the attempt failed.
THE INDUSTRIAL AND ECONOMIC IMPLICATIONS OF DELAY TO THE AIRCRAFT AND SHIPBUILDING INDUSTRIES BILL

Memorandum by the Secretary of State for Industry

INTRODUCTION

This note examines the industrial and economic implications of delay to the Aircraft and Shipbuilding Industries Bill. It is written on what it must take to be the most likely assumption i.e. that the Bill would not become an Act until November and that vesting day would be in February 1978.

SHIPBUILDING AND SHIP REPAIRING

2 For warship building a deferment of public ownership will not have any substantial industrial or economic implications but it will put back our thinking about the scope for a modest expansion of our export business in small warships.

3 A delay to the Bill will have an adverse effect on the shiprepairing industry in putting back much needed investment which of course is most unlikely to be forthcoming under private ownership if shiprepairing is excluded from the Bill. It could also lead to one or more early closures by shiprepairing companies who have been buying orders at a loss and are not willing to carry on, but their problem would of course have to be faced in the event of nationalisation.

4 The most serious problem lies with the merchant shipbuilders where the public corporation is needed to:

   i make, and put into effect, plans for a merchant shipbuilding industry that will be able to stand on its own feet; it is difficult to get effective long-term planning and unrealistic to expect any significant new investment by the individual companies while the public ownership issue remains unsettled;
   
   ii channel the funds available from the Selective Intervention Fund to the yards where they can be used most effectively: until we have access to company records after nationalisation we lack the information and power to do this.
CONFIDENTIAL

5 Apart from these industrial considerations, until the Corporation is formed the Government itself will bear the main brunt of difficult decisions on the allocation of aid and hence alleged responsibility for redundancies although, of course, we could not escape political pressure to intervene in such decisions even after nationalisation. In addition, until the Corporation is formed, the shipyard workers redundancy scheme is in suspense though we have still to find an opportunity of discussing this with the trade unions.

6 However, unless we run into difficulties with the EEC Commission, the availability of the new Intervention Fund provides a means of avoiding the threatened collapse of the merchant shipbuilders and the creation of National Shipbuilders and Repairers Limited provides a useful instrument for action for securing orders for the industry.

7 In summary, delay to the Bill could have long term costs, and involve serious political and administrative difficulties for the Government in administering the Intervention Fund, but with the new policy initiative referred to above the delay would not cause irreparable damage. On the basis of current policies we can get by, though perhaps only just. And it is of course mistaken to imagine that nationalisation itself will not carry with it considerable political and administrative problems.

AIRCRAFT

8 The aircraft industry is running down, mainly because of falling volume of work on civil aircraft. It is almost inevitable that employment will drop by over 10% (5,000) over the next year or so. The scale of run down thereafter will depend significantly on decisions yet to be taken.

9 There is only one civil aircraft whose launch might quickly affect these prospects - the HS146 which as at present formulated is a doubtful proposition. Whether it will prove a worthwhile proposition on which to expend the funds of the public corporation remains to be seen: it will certainly not go ahead under private ownership unless the Government meets all the main cost.

10 The only other immediate significant possibility is the chance that we might secure a major overseas sale of the BAC111 to Romania, Japan or India. The prospect of securing one of these contracts is not significantly affected by the nationalisation issue.

11 In the slightly longer term, the main potential prospect apart from the HS146 lies in overseas collaboration. Negotiations are currently taking place which require series of actions commencing soon and ending in long-term commitments, or otherwise, perhaps within the next 12 months. These need a strong single UK enterprise to negotiate with the overseas companies and this is needed soon. Follow up action with Boeing, the strongest possibility, is due in March and could be prejudiced. Any loss of such overseas projects would be serious. Meanwhile pressure is mounting from the unions for positive Government action on new civil projects to safeguard long-term employment.
12 Against this, there is no certainty that the negotiations on the collaborative projects will in fact come to a head in the next 6 months or so and there could be advantage if some of the inescapable run down in manpower took place before nationalisation. Moreover if the negotiations did come to a head it might be possible to persuade the two main companies to adopt a more united front. This might conceivably be done through the Organising Committee for British Aerospace if that can be kept in being; its Chairman takes the view which may, or may not, prove correct, that continued uncertainty will cause it to drift apart.

CONCLUSIONS

13 For all the industries affected a prolongation of uncertainty is itself damaging and involves risks to employment.

14 For shipbuilding, delay to nationalisation will cause some long-term damage to the industry. But the policy initiatives now decided on will avert serious immediate damage. Delay will make the Selective Intervention Fund less effective and increase the period for which aid is needed, though assistance will still be needed after nationalisation through British Shipbuilders. It will lead to some political embarrassment to the Government in administering the Intervention Fund. But the Intervention Fund problem is not decisive unless we come to grief in the EEC.

15 For ship repairers delay is likely to precipitate closures, but so would a decision to exclude them from the Bill.

16 For aircraft there is a risk that delay will prejudice important business opportunities of major long term importance.

EGV

18 FEBRUARY 1977
1. Section 2 of the Parliament Act 1911 (as amended by the 1949 Act) applies where a public Bill is passed by the House of Commons in each of two successive Sessions, is sent to the House of Lords at least a month before the end of both these Sessions, and is rejected by the Lords in each of these Sessions. On its rejection by the Lords on the second occasion then, unless the Commons direct to the contrary, the Bill is presented for Royal Assent and becomes law in the form desired by the Commons. A Bill is deemed to be rejected by the Lords if it is not passed by them either without amendment or only with such amendments as may be agreed to by both Houses. Before the Bill is presented for the Royal Assent, the Speaker must certify under Section 2(2) that the provisions of the Section have been duly complied with.

2. The Bill sent to the Lords in the second Session counts as the same as the Bill sent up in the preceding Session if it is identical, or contains only amendments certified by the Speaker under Section 2(4) to be required because of the lapse of time or to be the same as amendments made by the Lords in the preceding Session. (There is also a procedure for the Commons to suggest amendments to the Lords, not relevant to this case.)

3. The Aircraft and Shipbuilding Industries Bill was rejected by the Lords last Session within the meaning of the Parliament Acts (in that they insisted upon amendments excluding ship-repairing which the Commons did not accept). It has been sent back to the Lords this Session in a form which fulfils the conditions as to form laid down in the Acts; the Speaker has so certified, having rejected representations made to him in the House that the Bill did not comply with them.

4. The fact that the Bill has now been declared hybrid is not thought to effect the application of the Parliament Acts. A hybrid Bill is a public Bill to which Standing Orders relating to private business are applicable; it is still a public Bill within the meaning of the Parliament Acts. A suggestion to the contrary was made in the course of the proceedings before the Examiners on the Aircraft and Shipbuilding Industries Bill, but is considered to be invalid. The Aircraft and Shipbuilding Industries Bill could be presented for the Royal Assent under the Parliament Acts at the end of the present Session regardless of whether the Lords had completed their consideration of it. The Examiners say in the last paragraph but three of their report: "Since this Bill is introduced with the certificate from
the Speaker pursuant to Section 2(4) of the Parliament Act, 1911, the House of Lords will be unable in all probability to give effect to any petitions against the Bill.

5. The rejection by the Lords of the Aircraft and Shipbuilding Industries Bill this Session, within the meaning of the Parliament Acts, could occur in one of several ways. The Lords might simply reject the Bill on Second or Third Reading, but this is not expected. Second, the Lords could fail to complete consideration of the Bill by the end of the Session; as noted above, the Bill could then be submitted for Royal Assent. Third, the Lords could amend the Bill in ways not agreed to by the Commons. If the two Houses had not resolved any differences of opinion over such amendments by the end of the Session, the Bill could be submitted for Royal Assent. Fourth, the Commons might accept some Lords amendments but not others; and again, if the Lords did not give way, the Bill could be submitted for Royal Assent with the amendments accepted by the Commons. If, however, the Lords amended the Bill and all their amendments were agreed to by the Commons, the Bill would be submitted for Royal Assent in the normal way and no question of invoking the Parliament Acts would arise. Equally, if the Lords amended the Bill, the Commons rejected some or all of these amendments, and the Lords then accepted the will of the Commons, the Bill would go forward for Royal Assent in the normal way.

6. The Parliament Acts are so drafted that, if the Lords amend a Bill sent up from the Commons in the second successive Session, the Commons may have an opportunity to consider whether to accept the Lords amendment(s). The Acts also contemplate that, before a Bill is submitted for the Royal Assent in accordance with their provisions, the Commons have the power to "direct otherwise", ie to decide not to invoke the Parliament Acts after all. But it does not appear to be essential that the Commons should consider any Lords amendments, or should consider whether to "direct otherwise". If, by the end of the second Session, the Lords have failed to pass the Bill in the form in which it was sent up by the Commons, the Bill can then be submitted for Royal Assent regardless of whether the Commons have given the Bill any further consideration since the completion of the Lords proceedings. If such a situation were to arise in the case of the Aircraft and Shipbuilding Industries Bill, the Opposition might put down a Motion inviting the Commons to direct that the Bill be not submitted for Royal Assent. The Government would not have to provide time for such Motion, and it seems doubtful whether it could be taken on a Supply Day. If, however, the Opposition were by any means able to secure a debate on such a Motion, the Government would have to secure the rejection of the Motion or the Bill would fall
7. To sum up, the Parliament Acts provide a means of ensuring that the Aircraft and Shipbuilding Industries Bill can be submitted for Royal Assent by the end of this Session, either in its present form or with any amendments agreed to by the Commons, regardless of any action taken by the Lords. This position is not affected by hybridity; but the use of the Parliament Acts might possibly require a further successful vote in the Commons at the end of the Session. If, as part of some bargain, amendments to the Bill were to be made by the Lords and agreed to by the Commons, and there was no dispute between the two Houses, the question of invoking the Parliament Acts would not arise, and the Bill would be submitted for Royal Assent in the usual way.