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CABINET

THE FUTURE OF THE CONDITIONS OF EMPLOYMENT AND
NATIONAL ARBITRATION ORDERMemorandum by the Minister of Labour and National Service

In C.F. (51) 8 the then Minister of Labour and National Service drew attention to certain practical difficulties which had arisen in the administration of the Conditions of Employment and National Arbitration Order and indicated various possible methods of dealing with them. He concluded by saying that he proposed to seek the advice of the Joint Consultative Committee of the National Joint Advisory Council on the whole matter and to report back to his colleagues as soon as possible.

2. In the subsequent discussions which my predecessor and I have had with the Joint Consultative Committee, the representatives of the Trades Union Congress (T. U. C.) made it quite clear that they were not prepared to agree to the continuance of the present Order for more than a very short time, but that they would welcome a new Order preserving some of the existing provisions so long as it did not contain any form of penal sanction directed against strikes. The attitude of the employers' representatives was that the withdrawal of the present restrictions on strikes and lockouts would, in their view, be inopportune, but that if the Government felt that these could no longer be retained they were prepared to consider proposals for a new Order on the understanding that it was to be experimental and that the position would be reviewed at any time on the request of either side. (This is the same condition upon which the agreement of the two sides of industry was obtained to the continuance of the existing Order at the end of the war.)

3. Accordingly, I put forward heads of proposals for a new Order in place of the existing one and these have now been accepted by the Committee. The main differences between the new proposals and the present Order are as follows:-

(a) The prohibition of strikes and lock-outs would be entirely removed.

(b) The scope of the Order would be confined to disputes concerning wages and conditions of employment and would exclude disputes arising from such matters as the employment of non-unionists and claims for re-instatement. Experience has shown that such matters are not susceptible of settlement by compulsory arbitration.

(c) "Compulsory arbitration" - in the sense of one party to a dispute being able to take the other party to arbitration even against their will - would be retained and a tribunal like the present National Arbitration Tribunal would continue to function as at present, though under a different name, but the right to report disputes would be limited on the one hand to employers and employers' organisations and on the other to trade unions as defined in the Trade Union Act, 1913. This would exclude trade union branches acting

without the authority of their union, groups of unorganised workers and also professional associations whose principal objects are not the regulation of the relations between workmen and masters or any of the other statutory objects referred to in Section 1(2) of the Trade Union Act, 1913. Furthermore, in the case of trades or industries with voluntary machinery for dealing with wages and conditions, a valid report could only be made by the parties habitually taking part in that machinery so that in practice unrecognised or break-away unions would be excluded. The general effect of these provisions is to strengthen existing voluntary machinery in industry.

Where there is no such voluntary machinery in operation, a valid report of a dispute may be made by the employer concerned or by an employers' organisation or a trade union having a substantial proportion of employers or workers in the trade or part of the trade concerned.

(d) Awards under the Industrial Courts Act and settlements reached through voluntary machinery would be treated as constituting a final settlement of a dispute for the purposes of the Order; in other words, a dispute which had already been the subject of an agreement or arbitration could not subsequently be dealt with under the provisions of the Order.

(e) The Minister would not be obliged to refer a dispute to the Tribunal (or might, if he had already referred it, stop the Tribunal from hearing it) if it appeared to him that either party was taking coercive action resulting in a stoppage of work or in a substantial breach of an agreement between the parties.

(f) Part III of the existing Order - which imposes upon all employers an obligation to observe recognised terms and conditions of employment (or terms and conditions not less favourable) - would be abolished, but an organisation of employers or a trade union which habitually takes part in the settlement of terms and conditions of employment in the industry or section of industry concerned would be able to report an issue as to whether a particular employer should observe recognised terms and conditions, and the Tribunal might require the employer to observe such terms and conditions (or such as it might determine to be not less favourable).

(g) In addition to the points which arise on the draft circulated herewith, it is proposed to insert an additional paragraph in the draft Order specifically excluding from its scope members of the Fire Brigades maintained in pursuance of the Fire Service Act, 1947. The terms and conditions of the members of the Fire Brigades are regulated in detail by regulations made under that Act by the Home Secretary and the Secretary of State for Scotland, and any attempt to use the arbitration tribunal set up by the Order to deal with those terms and conditions of service would create an embarrassing conflict of jurisdiction. One or two attempts have been made to refer questions affecting these services to the National Arbitration Tribunal under the present Order, and in view of this it is desirable to make a specific exclusion.

4. I have been asked by the representatives of the nationalised industries to make another change in the new Order as compared with the old Order. This concerns the establishment of a Tribunal in accordance with the First Schedule to the Order, and I have been asked to provide here that the Minister in appointing the panels from which the Tribunal is to be constituted should consult the Nationalised Boards as well as the British Employers' Confederation (B. E. C.) and the T. U. C. At first sight there is something to be said for this request. The Nationalised Boards are independently represented on the National Joint Advisory Council and its Sub-Committee, the Joint Consultative Committee, which has been advising me on the question of amending the existing Order. While, however, it is necessary to obtain