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CABINET

PENALTIES ON CARRIERS

Memorandum by the Secretary of State for the Home Department

This memorandum invites the Cabinet to agree that urgent legislation should be introduced to impose penalties on carriers who bring to this country people without visas who need them. It takes account of the discussion in Cabinet on 19 February and the Ministerial meeting chaired by the Lord President on 24 February.

THE NEED FOR LEGISLATION

2. The threat to our immigration control from bogus refugees remains. It threatens completely to negate the considerable benefits which we have secured by the imposition of visas on certain countries. In December and January alone over 300 Tamils arrived here seeking asylum. Our action in response to the latest influx of 64 Tamils, together with my speech on 20 February announcing that we were considering retrospective penalties on carriers, seems to have brought a lull. We are continuing our effort in the courts to establish that we are entitled to send these 64 home, but there is at present no sure foothold in this legal morass. I am clear that whatever the outcome in the courts we need to act to deter airlines from encouraging or conniving at this traffic. At the moment we are wide open.

THE SCOPE OF LEGISLATION

3. I attach a paper summarising my thinking on the scope of the legislation. It reflects the views at the Lord President's meeting, in particular the advice of the Solicitor General.

4. The Bill would provide power to impose a fixed penalty on carriers who bring people to the United Kingdom without a valid passport or other identity document and, where one is required, without a valid visa. The liability would not be retrospective, but would take effect at Royal Assent. This follows the Solicitor-General's clear advice that retrospection would lead to overthrow before the European Court of Human Rights. The penalty would be enforceable by civil action in the same sort of way as detention and removal costs are already recovered from carriers. We should not be obliged to impose the penalty in all cases - that would

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be a matter for my discretion - but the liability would arise on the person's arrival in the United Kingdom and would not be affected by any subsequent decision to grant the passenger entry.

It would be necessary for the carriers to satisfy themselves that the document was valid and not a forgery. I accept the view of the business managers that the Bill should allow the carrier to argue, as he can in some limited circumstances under the Immigration Act at present, that the forgery was not "reasonably apparent", but the onus would be on him to establish this. I recognise that this means that a decision to impose a penalty will be open to review in the Courts if the carrier refuses to pay.

INTERNATIONAL IMPLICATIONS

6. We should not be acting alone by introducing this legislation. There are similar provisions in other countries, including the USA, Canada and West Germany. From what we know of their experience, the provisions work for them and seem to act as an effective deterrent on carrying companies. In practice, it is comparatively rare that a penalty has to be imposed.

7. Since the legislation would not be retrospective, I do not consider that it would fall foul of the European Convention on Human Rights. It would, however, be necessary to enter a departure from the 1944 Chicago Convention on International Civil Aviation.

8. In the meantime, I believe we should continue to put pressure on airlines to carry out fuller checks on documents. I have also written to the Belgian Presidency asking them to bring to a conclusion in the next few weeks the work which officials have been undertaking on asylum abuse.

TIMING

9. I do not believe we should wait for another crisis. To do so would reflect badly on our handling of the immigration control and would undermine our firm and successful stance on visas. It is difficult to give an accurate forecast on the length of the Bill: I expect it to be about two or three clauses, but it will clearly be controversial. I do not propose, however, that it should be pushed through as an emergency measure.

10. Without retrospection we will be vulnerable to fresh influxes as soon as our intentions are announced, or if we let the trail now go cold. We do not want to wait long before the Bill is enacted. I propose that the Bill should be drafted as a matter of urgency; that if Cabinet agrees to the scheme I should announce our decision in a Parliamentary statement in the afternoon of 26 February; and that the Bill should be introduced as soon as possible after that. I would hope that it could be given a quick passage through both Houses.

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CONCLUSION

I propose, therefore, that:

1. Legislation should be urgently prepared on the lines set out in the Annex.
2. I should announce the Government's intention in a Parliamentary statement on 26 February.
3. The Bill should be introduced as soon as possible and arrangements made to give it a quick passage through both Houses.

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Home Office

25 February 1987

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PENALTIES ON CARRIERS: OUTLINE OF LEGISLATION

1. The Bill would provide power to impose a fixed penalty on carriers who brought to the United Kingdom people who did not have valid documentation. The penalty would be enforceable through civil action.

2. The liability to pay the penalty would arise where a person requiring leave to enter the United Kingdom arrived at the immigration control without:

a) a valid passport with photograph or some other document satisfactorily establishing identity and nationality or citizenship; and

b) a valid visa where one is required under the Immigration Rules.

This would apply whether or not the person was subsequently given leave to enter on exceptional grounds. But if a person accepted by the Immigration Officer as qualifying for entry without leave, for example as a British citizen, had been carried without documents, no penalty would arise.

3. The Bill would therefore cover all those who need a visa to enter the United Kingdom, namely foreign nationals and Commonwealth Citizens specified in the Appendix to the Rules, stateless persons, other holders of non-national documents, and certain holders of refugee travel documents.

4. The provisions should apply equally to arrival in the United Kingdom by ship or aircraft.

5. The obligation to pay penalties should rest with the owner or agents of the ship or aircraft.

6. The penalty would be a fixed sum of £1,000 per person, but it would be capable of being varied by order. It would be imposed by or on behalf of the Secretary of State.

7. It should be specified in the legislation that the penalty would arise unless the carrier could show that the passenger had produced to the carrier documents which appeared to comply with the requirements of the legislation, unless the falsity of those documents was reasonably apparent.

8. The legislation would provide for extension to the Channel Islands and the Isle of Man.