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CABINET

CONCLUSIONS of a Meeting of the Cabinet
held at 10 Downing Street on
THURSDAY 26 FEBRUARY 1987
at 10.00 am

P R E S E N T

The Rt Hon Margaret Thatcher MP
Prime Minister

The Rt Hon Viscount Whitelaw
Lord President of the Council

The Rt Hon Lord Hailsham of St Marylebone
Lord Chancellor

The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign and
Commonwealth Affairs

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer

The Rt Hon Douglas Hurd MP
Secretary of State for the Home Department

The Rt Hon Peter Walker MP
Secretary of State for Energy

The Rt Hon George Younger MP
Secretary of State for Defence

The Rt Hon Nicholas Edwards MP
Secretary of State for Wales

The Rt Hon John Biffen MP
Lord Privy Seal

The Rt Hon Norman Fowler MP
Secretary of State for Social Services

The Rt Hon Tom King MP
Secretary of State for Northern Ireland

The Rt Hon Michael Jopling MP
Minister of Agriculture, Fisheries and Food

The Rt Hon Nicholas Ridley MP
Secretary of State for the Environment

The Rt Hon Lord Young of Graffham
Secretary of State for Employment

The Rt Hon Kenneth Baker MP
Secretary of State for Education and Science

The Rt Hon Kenneth Clarke QC MP
Paymaster General

The Rt Hon John MacGregor MP
Chief Secretary, Treasury

The Rt Hon Malcolm Rifkind QC MP
Secretary of State for Scotland

The Rt Hon Paul Channon MP
Secretary of State for Trade and Industry

The Rt Hon John Moore MP
Secretary of State for Transport

THE FOLLOWING WERE ALSO PRESENT

The Rt Hon Sir Patrick Mayhew QC MP
Solicitor General

The Rt Hon John Wakeham MP
Parliamentary Secretary, Treasury

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SECRETARIAT

Sir Robert Armstrong
Mr D F Williamson (Items 4 and 5)
Mr C L G Mallaby (Items 4 and 5)
Mr A J Langdon (Items 1-3)
Mr M J Eland (Items 1-3)

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PARLIAMENTARY
AFFAIRS

1. The Cabinet were informed of the business to be taken in the House of Commons in the following week.

Abolition of
Domestic
Rates etc
(Scotland)
Bill

THE SECRETARY OF STATE FOR SCOTLAND said that the Ministerial Steering Committee on Economic Strategy, Sub-Committee on Local Government Finance (E(LF)) had that week agreed that the Abolition of Domestic Rates etc (Scotland) Bill should be amended so that the move from domestic rates to the community charge in Scotland took place in one step in 1989, rather than over a transitional period of three years as the Bill presently provided. This change, which would be effected during the Bill's report stage in the House of Commons the following week, had been requested by the Scottish local authorities and, by avoiding the need to run two systems in parallel, would lead to considerable savings in cost and administration.

THE LORD PRESIDENT OF THE COUNCIL said that, while E(LF) had been persuaded that their decision was in the best interests of securing the abolition of domestic rates in Scotland, they realised that it created problems for the abolition of domestic rates in England, where the transitional period currently proposed and the range of potential community charges were greater than in Scotland. The Secretary of State for the Environment was considering ways to reduce these problems, which were disproportionately concentrated in London and which were partly attributable to the Inner London Education Authority.

Teachers'
Pay and
Conditions
Bill

Previous
Reference:
CC(87) 6.1

THE SECRETARY OF STATE FOR EDUCATION AND SCIENCE said that, assuming that all went well with the House of Commons consideration of House of Lords amendments that afternoon, the Teachers' Pay and Conditions Bill would receive Royal Assent on Monday 2 March. He would issue briefing to accompany this event to all Members of Parliament explaining the action he then intended to take, which would be as outlined to Cabinet at its meeting the previous week. Since that meeting he had met with the various teachers' unions. It was clear that they felt very strongly on the issue of negotiating rights and (as he had warned colleagues) it seemed likely that there would be industrial action of some kind during March. It was too early to say what support this would have amongst ordinary teachers; the mood in the schools now was very different to that of 18 months previously.

The Cabinet -

Took note.

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HOME AFFAIRS

Protest
Against the
Education
Policies
of the
London
Borough of
Haringey

2. THE SECRETARY OF STATE FOR EDUCATION AND SCIENCE said that a difficult situation had arisen in the London Borough of Haringey where a baptist preacher, Mr Rushworth-Smith, was embarked upon a hunger strike in protest at the plans of the local Council to carry out a policy of promoting amongst school children a positive image of homosexuals and homosexuality. The hunger strike was now well advanced. He had just been informed that the Council had offered a meeting with Mr Rushworth-Smith, but this was unlikely to be productive of a solution. He himself was constrained from action at this stage by the fact that the Council had still not taken any action on which the Education Act 1986 or any other legal powers he possessed would bite, though they had made their intentions so to act plain. He had written to the Council putting a number of questions to them, and was now putting pressure on them to produce an early response. The media had so far shown little interest in the case, although that might change as the hunger strike progressed.

THE PRIME MINISTER, summing up a short discussion said that the Cabinet shared Mr Rushworth-Smith's antipathy to the actions of Haringey Council which they would seek to counter in all the ways that they could. It would be desirable that the pressure of public opinion should be brought to bear upon the Council. It was important, however, that any action of the Government in respect of this hunger strike did not prejudice its freedom of manoeuvre in respect of future hunger strikes for less desirable objectives. The situation would need to be monitored carefully. There was likely to be growing media and Parliamentary interest in the case.

The Cabinet -

1. Took note.

Allegations
that War
Criminals
were Resident
in the United
Kingdom

THE HOME SECRETARY said that there were likely to be considerable problems in dealing with the allegations by the Simon Wiesenthal Centre that a number of war criminals from the former Baltic republics were now living in the United Kingdom. Earlier that week he had met the all-party group that had interested itself in the matter and had informed them of the numbers (though not the names) of the alleged war criminals who were known to be still alive and living in the United Kingdom. This meeting had attracted some publicity which was likely to be repeated when he saw Rabbi Hier and some of his colleagues from the Simon Wiesenthal Centre in the following week. Even if the Government considered that convincing evidence had been produced against the individuals concerned, there was considerable difficulty in identifying what action might be taken. Extradition to the Soviet Union was at present precluded because of lack of an extradition treaty, but in any case such action would be repugnant as there would be no guarantee of a fair trial. Alternatively, if British citizenship had been obtained by fraud, it would be possible to deprive the individuals concerned of it and subsequently to deport them, although they would have an appeal

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against the destination chosen. Another option would be to accept retrospectively Israeli claims of extra-territorial jurisdiction for war crimes against Jews. There were manifest difficulties with all of these courses.

THE PRIME MINISTER, summing up a short discussion, said that the Cabinet agreed that, if there was evidence that the individuals concerned were guilty of the horrific crimes alleged, then it would be desirable that they should be brought to justice. It was, however, equally important to stand by the fundamental principle of United Kingdom law that a person deemed innocent of a crime until he was proved guilty. To date the only evidence that had been produced to support the allegations were references to books and documents not available in Britain. The subject was a highly emotive one which the progress of the current war crimes trial in Israel would only exacerbate. Nor did strong feelings run entirely one way; there were some, including members of the Jewish community, who deplored what they saw as the exploitation of terrible grief and suffering for publicity purposes. The Home Secretary should continue to monitor developments carefully, and should consult his colleagues again in the light of his meeting with Rabbi Hier the following week.

The Cabinet -

2. Invited the Home Secretary to proceed as indicated in the Prime Minister's summing up of their discussion.

3. The Cabinet considered a memorandum by the Home Secretary (C(87) 3). Their discussion and the conclusions reached are recorded separately.

4. THE FOREIGN AND COMMONWEALTH SECRETARY said that the report would appear that day in Washington of the Commission, chaired by former Senator John Tower, which had been investigating the role of the National Security Council with regard to arms sales to Iran and the diversion to the Contra rebels in Nicaragua of funds generated by such sales. The contents of the report were expected to be harmful to the Administration. The Government should be careful, in any comments on the matter, to avoid saying anything that could make the Administration's position more difficult.

In discussion, it was noted that the continuing preoccupation with arms sales to Iran and diversions of funds to Nicaragua could well damage the strength of government in the United States for the remainder of the

PENALTIES ON
CARRIERS OF
ENTRANTS
LACKING
VALID
DOCUMENTS

FOREIGN
AFFAIRS

United
States

Previous
Reference:
CC(87) 1.3

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Presidency of Mr Reagan. There was a lack of co-ordination of domestic policies. As regards foreign affairs, the new National Security Adviser, Mr Frank Calucci, was proving as effective a co-ordinator as could be expected in the circumstances. There was nevertheless a risk that the remainder of Mr Reagan's Presidency would be an inactive period in foreign policy. It was possible that a rapid reaction by the Administration to the Tower Commission's report, including the replacement of Mr Don Regan as White House Chief of Staff, would satisfy the Congress, which was conscious of the President's continuing popularity in the country. But more reports by congressional committees on the arms sales affair were in preparation.

Nuclear
Weapons Test
by the Soviet
Union

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THE FOREIGN AND COMMONWEALTH SECRETARY said that the Soviet Union had that day carried out an underground nuclear weapons test, the first test since the Soviet Union had declared a unilateral moratorium on testing in August 1985. The Government should point out in public that the moratorium had been in place for a period when the Soviet Union had evidently not needed to carry out tests and that this test must have been in preparation for some months.

United States
Strategic
Defence
Initiative

Previous
Reference:
CC(87) 5.4

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THE FOREIGN AND COMMONWEALTH SECRETARY said that the Prime Minister and he had met on the previous day Mr Paul Nitze and Mr Richard Perle, who had visited London as representatives of the United States Administration for consultations about the Administration's policy regarding the Strategic Defence Initiative (SDI). Mr Nitze and Mr Perle had said that further studies concerning SDI had been started in Washington and there would be consultations with the Congress as well as with the allies of the United States. The Prime Minister had made clear to them that the Government supported the SDI research programme and that it was a matter of common sense that research should be taken to the point of establishing feasibility. Mr Nitze and Mr Perle had described the decisions on SDI which the Administration needed to consider. There was no question of a decision on early deployment of SDI; and the United States recognised that deployment would be a matter for negotiation with the Soviet Union, as had been agreed by the Prime Minister and the United States President at Camp David in 1984. The issue which the Administration had not decided was whether to change the ground rules for the SDI research and testing programme and to start to plan future tests on the basis of a broader interpretation of what was allowed under the Anti Ballistic Missile Treaty. The Prime Minister had told Mr Nitze and Mr Perle that this question should depend on whether it was clearly demonstrated that a change was necessary in order to establish feasibility, that a change would affect the prospects for arms control and that the United States should therefore put forward suggestions designed to preserve the prospects of achieving arms control agreements.

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Middle East

Previous
Reference:
CC(86) 31.1

THE FOREIGN AND COMMONWEALTH SECRETARY said that the Foreign Ministers of the member countries of the European Community (EC) had issued a statement on 23 February which gave a modest nudge to the peace process in the Arab/Israel dispute. They had said that their countries were prepared to welcome an international conference on the Middle East, but had not sought to suggest the participants or terms of reference for a conference. The moderate Arabs would welcome this statement, which would also be helpful to the Foreign Minister of Israel, Mr Shimon Peres. The EC countries would need to proceed carefully in further steps.

In discussion, it was pointed out that the idea of a conference had been put forward by Jordan. Because of the way the Belgian Presidency had handled the announcement, press comment on the statement by the EC countries had suggested mistakenly that it had been a reaction to Soviet views.

Lebanon

Previous
Reference:
CC(87) 6.3

THE FOREIGN AND COMMONWEALTH SECRETARY said that the move of Syrian forces into West Beirut on 22 February had taken place at the request of various groups in the area, although not of the President of Lebanon, Mr Amin Gemayel, who had expressed his condemnation for the record. It was not clear whether the Syrian forces would succeed in reducing the chaos in the area; nor whether their intervention would increase or reduce the dangers facing the Western hostages held there. The United States and Israel had reacted with restraint to the Syrian move. The United Kingdom should do the same.

Afghanistan

Previous
Reference:
CC(87) 1.3

THE FOREIGN AND COMMONWEALTH SECRETARY said that talks about Afghanistan under United Nations auspices had resumed in Geneva on the previous day. The member countries of the EC had made clear to the Soviet Union on 23 February the need for a speedy timetable for the irrevocable withdrawal of Soviet forces. The Government was also giving support to Pakistan, which was taking a courageous position, in the face of the major problems caused by the large number of Afghan refugees on its territory.

Nigeria

Previous
Reference:
CC(87) 6.3

THE FOREIGN AND COMMONWEALTH SECRETARY said that the problems concerning the new British visa office in Lagos remained, and the issuing of visas in Lagos was meanwhile very restricted.

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International
Debt

THE CHANCELLOR OF THE EXCHEQUER said that Brazil's decision to suspend interest payments on its debts to commercial banks had been discussed at the meeting of Finance Ministers and Governors of central banks of major Western countries in Paris the previous weekend. The economic position of Brazil had deteriorated and the strength of the government of the President, Mr Jose Sarney, was uncertain. The meeting in Paris had seen the Brazilian move primarily as a negotiating ploy, designed to secure better terms in negotiations on their debts than had previously been on offer. Negotiations between Mexico and the commercial banks about that country's debts were well advanced. The most important other country facing acute debt problems was Argentina; but Ecuador and Chile were also in difficulty, as were some smaller countries. It was hoped that agreements could be reached quickly with Mexico and the smaller countries, leaving Brazil and Argentina as serious problems to be dealt with. The international debt problem, which had started in autumn 1982, had become worse because many of the countries concerned were once again in greater economic difficulties and a number of the creditor banks were losing patience, but it had improved in that many of the banks, including the British ones, had strengthened their balance sheets and become less vulnerable to defaults by debtor countries. In sum, the problem posed by Brazil's action might not be as bad as it seemed, although any agreement reached with Brazil was likely to be weaker than agreement reached in the past with other debtor countries.

Finance
Ministers'
Meeting
in Paris

Previous
Reference:
CC(87) 6.3

THE CHANCELLOR OF THE EXCHEQUER said that the meetings of Finance Ministers of developed Western countries in Paris the previous weekend had been well prepared. The purpose had been to promote a greater degree of stability in the foreign exchange markets. The United States had undertaken to bring down its budget deficit and to stop "talking down" the dollar. The Federal Republic of Germany had agreed to make further tax cuts, beyond those to which they were already committed. Japan had promised further measures to expand domestic demand and had since cut interest rates. There had been agreement to foster stability of exchange rates around current levels. Detailed agreement had also been reached on the circumstances when concerted intervention in the foreign exchange markets would be undertaken. So far the markets had reacted well to the outcome of the meetings, but given the surrounding uncertainties, particularly in the United States, it was unpredictable how long this effect might last.

It had been intended initially that an informal meeting of the "Group of Five" Finance Ministers - those of the United States, the United Kingdom, France, the Federal Republic of Germany and Japan - should take place on 21 February, followed by a meeting of the "Group of Seven" - also including the Finance Ministers of Canada and Italy - on the following day. The informal meeting of the Group of Five had duly taken place, but the Italian Prime Minister, Signor Bettino Craxi, had decided at the last minute to withdraw his Finance Minister and the Governor of the Central Bank of Italy from the meeting of the Group of Seven because of the fact that it had been preceded by a meeting of the Group of Five

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from which Italy was excluded. Signor Craxi faced an early general election and appeared to be trying to enhance his prospects by playing up the international importance of Italy. Signor Craxi had tried at the Seven Power Summit meeting in Tokyo the previous year to have the Group of Five replaced by the Group of Seven. As a compromise, the Group of Five had been maintained but the Group of Seven had also been set up. The United Kingdom's interest was that the Group of Five, which was an efficient body, should continue in existence. Signor Craxi's threat to cancel the Seven Power Summit in Italy later in 1987 need not be taken seriously. But it was likely that he would continue to try by other means to secure the abolition of the Group of Five.

The Cabinet -

Took note.

COMMUNITY
AFFAIRS

Ex-novo
Review of
Community
Financing

Previous
Reference:
CC(87) 5.5

5. THE FOREIGN AND COMMONWEALTH SECRETARY said that at the informal meeting of Community Foreign Ministers on 22 February there had been a first discussion of the Commission's report on the ex-novo review of Community financing. This had confirmed the existing positions of the member states.

Agriculture

THE MINISTER OF AGRICULTURE, FISHERIES AND FOOD said that the Agriculture Council on 23-24 February had discussed the measures to implement the agreement reached in December to cut milk quotas. An attempt by the Commission to change the agreement in a way which would have involved an even bigger cut in milk quotas in the United Kingdom had been defeated.

The Cabinet -

Took note.

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26 February 1987

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LIMITED CIRCULATION ANNEX

CC(87) 7th Conclusions, Minute 3

Thursday 26 February 1987 at 10.00 am

PENALTIES ON
CARRIERS OF
ENTRANTS
LACKING VALID
DOCUMENTS

The Cabinet considered a memorandum by the Home Secretary (C(87) 3) containing proposals for legislation to enable financial penalties to be imposed on airlines and shipping carriers who brought to the United Kingdom people who lacked the necessary valid documentation. They also had before them a minute of 25 February from the Solicitor General to the Prime Minister.

THE HOME SECRETARY said that at the previous week's Cabinet he had reported that a serious threat to immigration control was posed by Tamils from Sri Lanka finding their way to Britain without proper documentation and claiming political asylum on specious grounds. As he had predicted at that meeting, the current legal proceedings involving 58 such Tamils were proving to be complex and long drawn out. Earlier that week the Divisional Court had given these Tamils leave to apply for judicial review of his decision that they should be removed. The judicial review proceedings, over which the Lord Chief Justice would preside, were anticipated to start sometime the following week. Whichever way the decision went, the losing side would doubtless take the case to appeal. He was determined to fight the case vigorously, and the Tamils were being kept in detention while the case was pending. The costs of their detention would be recoverable from the airline only if they were eventually sent back again within a certain period.

Since it might be some time before these legal proceedings were finally resolved, and their outcome could not be confidently predicted, he had no choice but to ask Cabinet to confirm their provisional decision at the last meeting that urgent legislation should be introduced to enable financial penalties to be imposed on carriers who brought people to Britain without the necessary valid documentation. The fact was that there were very large numbers of people around the world who would prefer to live in the United Kingdom than in their own countries and who might not hesitate to travel here with bogus documents and attempt to establish a toe-hold with more or less specious claims for political asylum, if that opportunity was left open for them. Maintenance of immigration control required constant vigilance to block off devices for evading the controls as they appeared. The establishment the previous year of a visa regime in respect of the countries of the Indian sub-continent had largely dealt with the problem of people from those

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countries entering the United Kingdom under the guise of short-term visitors. The abuse of political asylum status bid fair to furnish a comparable loophole, unless urgent action was taken to deal with the matter. His proposal for taking power to impose financial penalties on carriers was in line with action by other countries, notably Germany, Canada and the United States, and it should not expose the United Kingdom to charges of stepping out of line with international opinion. His statement the previous week that the Government had such legislation under urgent consideration, and that it might have to be retrospective, had been reinforced by the Prime Minister in answering questions earlier that week. These statements were holding the position but it was an essentially vulnerable one, and provision for sanctions to be imposed on carriers should be taken as soon as possible. The proposals in his memorandum for a fixed penalty enforceable in the civil courts took account of suggestions by the Solicitor General at a meeting chaired by the Lord President of the Council earlier that week. The penalty should initially be £1,000 per person, but be amendable by order. He sought Cabinet's approval to his announcing that afternoon that the legislation would be introduced and enacted as soon as possible.

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THE SOLICITOR GENERAL said that two aspects of the Home Secretary's proposals raised legal issues of some importance. First, although this was ultimately a matter of policy, it would in his judgment be very difficult to maintain that the proposed financial penalties should be of a strict liability nature without any defence of "due diligence". This was particularly so because the present power to require carriers to reimburse the expenses incurred in accommodating persons refused entry to Britain specifically did not extend in respect of persons the falsity of whose documents was not reasonably apparent. He was sure that the Home Secretary was wise to include a comparable defence in his present proposals. Second, there was the question of the proposals' compatibility with the European Convention on Human Rights (ECHR). He believed that the ECHR organs at Strasbourg would take the view that, for the purposes of the Convention, the proposed penalty should be regarded as criminal in character, even though it might be expressed as an administrative penalty enforceable by civil law procedures in British domestic legislation. It was likely that the court procedures the Home Secretary had in mind would satisfy the guarantees required by Article 6 of the Convention but more substantial problems were raised by Article 7, which required that no-one should be held guilty of a criminal offence in respect of an act which did not constitute an offence at the time it was committed. He was of the firm opinion that the ECHR organs at Strasbourg would take the view that a carrier's act giving rise to liability for the proposed penalty was protected by this Article's prohibition of retrospectivity. He believed that the vulnerability under the ECHR of any proposal to give retrospective effect to the proposed penalties would not escape attention during the legislation's passage through Parliament. It followed that he welcomed the fact that in his memorandum the Home Secretary had dropped the earlier proposal for retrospectivity.

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In discussion the following points were made -

- a. The proposed legislation had severe implications for the management of the Government's legislative programme. The Opposition was unlikely to facilitate the Bill in any way, as the Conservative Party had assisted the passage of the Commonwealth Immigration Act 1968, and the flow of legislation to the House of Lords was therefore bound to be disrupted to some degree. The major Bill that might be at most risk was the Criminal Justice Bill, on the timetable for which a useful understanding had just been reached with the Opposition in the House of Commons. Both the present proposals and the Criminal Justice Bill raised issues of the kind that customarily led the House of Lords to play its role as a revising chamber with care. There was, therefore, a significant risk to the Government's room for manoeuvre with the legislative programme as the Summer Recess approached, and that risk should be accepted only if the threat to immigration control left absolutely no alternative to urgent legislation.
- b. Any obvious blocking by the Opposition of the Criminal Justice Bill or the present proposals would be likely to offend public opinion. On the other hand, it would not be difficult for the Government's opponents to find ways of slowing down the progress of these measures without the dilatory objectives for their actions becoming evident.
- c. If the present proposals were to be regarded by the ECHR organs as being of a criminal character, there might be advantage in taking the logic of that approach to its conclusion and legislating to establish a new criminal offence, triable on indictment, rather than a procedure enforceable in the civil courts. Such an approach would avoid any difficulties of judicial review. On the other hand, any advantages it offered might be bought at the price of yet further difficulties in Parliamentary handling.
- d. Without the agreement of the Opposition to facilitate the passage of the legislation, it would be several weeks before the Bill proposed by the Home Secretary could be taken to Royal Assent, and it was unlikely that all the points raised in the current judicial review proceedings could be taken to conclusion during that period. Introducing a Bill without retrospective effect would simply highlight the vulnerability of the position. A better course might be to introduce the legislation with a provision giving it retrospective effect to the date of its announcement, but to be prepared to drop that provision towards the end of the Bill's passage through Parliament. That course would obtain the practical benefits of a threatened retrospective power while avoiding any risks there might be from the ECHR.

THE PRIME MINISTER, summing up the discussion, said that the Cabinet agreed that the measure proposed by the Home Secretary was required on its merits: the only real question was whether it should be taken ahead

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on an urgent timetable or postponed until the following Session. Any further disruption to the legislative programme was certainly unwelcome, but the Government's duty was clear and Cabinet had concluded that the Bill should proceed as a matter of urgency. The Bill should include a "due diligence" defence as the Home Secretary proposed. It should also be introduced with a provision giving it retrospective effect to the date of its formal announcement in Parliament, though the possibility of deleting that provision later in the Bill's passage should be reviewed in the light of events. The Home Secretary should make an announcement in the following week of the Government's intention to proceed with this legislation. That announcement should be made before the judicial review proceedings concluded and, if possible, before they commenced. Every effort should be made to prepare the Bill and bring it to Legislation Committee as quickly as possible.

The Cabinet -

1. Approved the proposals in C(87) 3 for legislation to enable the imposition of financial penalties on carriers, subject to the inclusion of a provision giving retrospective effect as indicated in the Prime Minister's summing up.
2. Invited the Home Secretary to make a statement in the following week of the Government's intention to proceed with this legislation as quickly as possible.

Cabinet Office

27 February 1987

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