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PRIME MINISTER

ADMINISTRATIVE AND LEGISLATIVE BURDENS ON SMALL FIRMS: ENABLING BILL

Your Private Secretary's minute of 2 July expressed your wish that further consideration should be given to the idea of an Enabling Bill to exempt very small firms from large areas of legislation.

The Proposal

2 Small firms organisations, especilly the National Federation of Self-Employed and Small Businesses (NFSE), have advocated the creation of an 'artisan' class of very small businesses. The suggested size of firm to be covered by this category ranges from a maximum of 5 to 20 employees, or alternatively is put at an annual turnover of less than £100,000. This latter definition would include at least one million individual firms. The 'artisan' class would then by means of an Enabling Bill be exempted from all statutory requirements which were found to be disproportionately

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burdensome on its members. These would include all tax compliance procedures, health and safety and fire prevention requirements, employment protection legislation, planning permission and various other aspects of central and local government regulation.

3 The legal difficulties could be very considerable. The viability of particular exemptions would depend to a large extent on the character of the legislation from which the exemption was being sought. This means that while a 'blanket' Enabling Bill might not of itself create great technical difficulties, any subsequent use of the powers it gave could do so. There is of course no scope for the UK unilaterally to exempt small firms from legislation arising out of EC Directives.

Argument

4 Although exemptions resulting from an Enabling Bill might well stimulate the formation of new firms, the chief drawback in the concept from the standpoint of stimulating enterprise as a whole is the danger of creating an environment which favours smallness per se. This would distort the market, create barriers to natural growth and

encourage firms to stay small regardless of their potential. There would also be incentives to firms to reorganise themselves in less efficient ways to come within the scope of the Bill.

5 The removal of the compliance cost burden by means of a single exemption threshold would be likely to make small firms more competitive than their efficiency warrants. Exemptions from specific legislation should only be granted to those firms which are disproportionately burdened by it, and clearly the size of firm which should be exempted will vary according to the particular compliance procedures concerned. Different exemption thresholds for different pieces of legislation would therefore be the most appropriate course. This would both avoid the disincentive effect of large amounts of legislation coming into force on crossing a single threshold, and also relate the exemption level to an analysis of the costs and benefits of specific legislation.

6 Any attempt, however, to establish a series of exemption thresholds by means of an Enabling Bill would, I feel, be likely to entail an unacceptable increase in bureaucracy. The creation and monitoring of legislation arising from an

Enabling Bill would require considerable additional civil service effort, both in a central agency and within Departments involved, sufficient to police the activities of more than a million small firms, including some 100,000 new firms a year.

Conclusions

7 It is clearly important that greater attention should be paid to the needs of small firms when formulating legislation. This must be done in a more structured way than at present where the implications of legislation on small firms are not always considered.

8 The economic and practical implications outlined above make an Enabling Bill unattractive however. In addition it must be acknowledged that the small firms sector includes some notoriously bad employers with respect to health and safety and fire prevention provisions, and no firm should be totally exempt in these areas.

9 In this light I believe the right course is for colleagues to reconsider the impact on small firms of the regulations and procedures for which they are responsible.

All new legislation, including EC legislation, should similarly be examined in the drafting stage for its implications for small firms, and exemptions made where compliance costs were found to place a disproportionate burden on firms below a certain size. We should realise however that the small firms organisations are unlikely to be impressed by a repetition of claims made by Government for a number of years, that we bear the needs of small firms in mind when formulating legislation. The organisations are not convinced that Departments can identify the compliance cost burden of legislation on small firms - the Statutory Sick Pay Scheme is a recent example.

10 I should like therefore to see Departments consulting more widely with small firms organisations on the implications of legislation on the small firms sector. And I would hope that we would be able to say publicly that we will look specifically at the impact on small firms of all new legislation. To give effect to this, I believe we should give consideration to requiring that any new legislation brought before L Committee should have a statement as to its impact on small firms incorporated into the covering memorandum. But I would not regard it as right to have such a statement made, for example, in the

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Explanatory and Financial Memorandum. The dangers of setting a precedent which others will wish to follow would be simply too great.

11 I am copying this minute to Quintin Hailsham, Leon Brittan, Nigel Lawson, Patrick Jenkin, Norman Fowler, Tom King and Grey Gowrie, and to Sir Robert Armstrong and Sir Robin Ibbs.

A-dW hamley

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19 July 1984

(Approved by the Secretary of State and signed in his absence)

Department of Trade & Industry

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