

CONFIDENTIAL FILING

ABOLITION OF CONTROL OVER PORT DEVELOPEMENT

INDUSTRIAL
POLICY.

MARCH 1984.

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
6.3.84							
12/3/84.							
13.3.84							
26.3.84							
29.3.84							
2.4.84							
4.4.84							
5.4.84							
26/4/84							

PREM 19/1275



DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

NBPM

NT 27/4

The Rt Hon George Younger TD MP
Secretary of State for Scotland
Scottish Office
Dover House
Whitehall
LONDON SW1A 2AU

26 April 1984

Dear George

Thank you for your letter of 5 April about the control of harbour development.

You will have seen that the Prime Minister subsequently agreed to the removal of this control and to my announcing it on 9 April, which I did.

I note what you say about the risks involved in leaving it to the market to determine whether or not to back entrepreneurial projects. But to refuse the market the opportunity to consider the risks is directly contrary to our whole philosophy. In the case of the Falmouth proposal I concluded that removal of the control mechanism was preferable to authorising the project, with the spurious appearance that would give of "Government backing". I am sure the potential backers will take a much more realistic view of what is a very expensive, risky and speculative project than they might otherwise have done, no matter how carefully qualified my authorisation might have been.

The Falmouth promoters have a long way to go, first to raise the money and secondly to bring their proposed terminal into being. Even if they are successful, it will be some two or three years before they have to be reckoned with. Such competition will be an invigorating stimulus to the existing ports to improve the cost and efficiency of the service they offer, although I am sure that Clydeport cannot be faulted on the efficiency of their service at the container base.

I am copying this letter to the Prime Minister and colleagues in E(A), and to Sir Robert Armstrong.

Nicholas Ridley
Nicholas

NICHOLAS RIDLEY

Ind. Bl. - Abstehen j. control
over best development March 8th

27 APR 1984





SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

CC 40

NBRM

HP 514

The Rt Hon Nicholas Ridley MP
Secretary of State for Transport
Department of Transport
2 Marsham Street
LONDON
SW1P 3EB

5 April 1984

Dear Nick,

CONTROL OF PORT DEVELOPMENT

Thank you for sending me a copy of your minute of 29 February to the Prime Minister about your wish to relinquish the control of port developments under Section 9 of the Harbours Act 1964. I have also seen your further minute of 23 March about planning aspects.

I think the principle of what you propose is right. But we must be clear that if the Falmouth project goes ahead, whether with or without your consent, it could only succeed by taking existing traffic away from other ports, particularly those on the south and west coasts. I fear that in those circumstances the Clyde, whose finances are already shaky, would be likely to lose its one remaining container service, that by Hapag Lloyd to North America.

I am sending copies of this letter to the Prime Minister and colleagues in E(A), and to Sir Robert Armstrong.

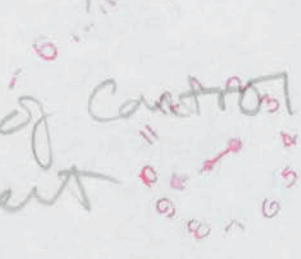
Yours sincerely,

George

Industrial Policy

March 84 ¹⁹⁸⁴

Absolution of Control over Port
Development



cc: Mr Owen

207



E(A)	HMT	DOE	MAFF
	NIO	LPS	Chief Sec
	DE	DTI (D.Trans)	
	SO	CDL	CO
			D.EMP

10 DOWNING STREET

From the Private Secretary

4 April, 1984

ABOLITION OF CONTROL OVER PORT DEVELOPMENT

The Prime Minister has seen your Secretary of State's minute of 3 April. In the light of his further explanation, she is content that the orders giving the Government power to authorise port development over £3 million should now be revoked. She is content that this should be done in the Priority Written Question from Mr. David Mudd on Monday, 9 April.

I am sending a copy of this letter to the Private Secretaries to members of E(A) and to Richard Hatfield (Cabinet Office).

(Andrew Turnbull)

Miss D. Nichols,
Department of Transport

20

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Prime Minister ⁽³⁾
Are you satisfied with the
explanation?

CC NO

PRIME MINISTER

AT 3/4

ABOLITION OF CONTROL OVER PORT DEVELOPMENT

Yes ms

I have seen your Private Secretary's letter of 2 April to mine, and also the Chief Secretary's minute to you of 29 March and the Chancellor of the Duchy of Lancaster's minute of 2 April.

I am grateful for your agreement in principle that the Government should revoke the relevant Orders. I recognise of course your concern about the effect of the announcement on industrial relations during the coal dispute. But in my view the chance of it triggering off a dock strike seems very remote indeed. The alternative course of action might be slightly more likely to do so, as I shall show.

There are two reasons for not delaying the announcement until the present industrial troubles are over.

First, policy on this issue has to be reflected in the prospectus for the forthcoming offer for sale of the Government's remaining shareholding in Associated British Ports Holdings. I have just written separately to you and colleagues about my proposal to announce this offer for sale on 10 April. If I cannot announce the abolition of our control over port development before then, I am likely to have to delay the offer for sale until some time after. Secondly, further delay would put me in an increasingly embarrassing position over the proposed new port development at Falmouth, on which an application for my approval under

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the Harbours Act has been before me for some time now. I cannot leave the Falmouth case unresolved. To reject it would fly in the face of our policy by denying the opportunity for the market to assess the commercial risks. My only option would be to approve the project, and by doing that I would present dockers with a slightly clearer focal point for industrial action than if I simply removed the control.

The Chief Secretary raised two points. I should indeed be ready if necessary to restrict a local authority's capital allocation for transport in order to deter it from embarking on an unjustified substantial port investment. In fact we have done just this in the past. Local authorities would of course face political pressures against transferring significant resources to port development from a capital allocation intended for some other purpose, and so far none of them has made such transfers.

My officials will give Customs all the help they can to establish criteria against which the withdrawal of existing Customs facilities and requests for the provision of additional or new facilities can be considered. I do not expect the abolition of the Harbours Act control to make the deployment of reducing Customs manpower any more difficult than it is anyway. It would be ridiculous to use these powers to delay or reject port developments simply because of problems of Customs manpower.

Arthur Cockfield mentions the risk of our having to pay an extortionate amount of compensation if, with the Harbours Act powers gone, we wish to prevent a statutory harbour authority from carrying out some port development on its existing operational land on the grounds that in planning



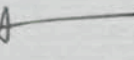
terms it is an undesirable development. Such a possibility has never arisen in the past twenty years. Frankly, I do not think it is a risk we need worry about.

I hope very much that you will now be able to agree that I can announce the abolition of this control. For the reasons I have explained above, it is a matter of some urgency. I should be grateful for clearance by Thursday, which would permit me to finalise the ABPH prospectus and to make a low key announcement of the control abolition on Monday, 9 April. Conveniently, I have outstanding a Priority Written Question from David Mudd, directly on this issue, which I can answer on that day.

I am sending copies of this minute to other members of E(A) and to Sir Robert Armstrong.

NICHOLAS RIDLEY

3 April 1984

pp. HCSD 
(Approved by the Secretary
of State but signed in
his absence)

-3 APR 1984



[Handwritten signature]

11 12 1
2 3 4
5 6 7 8
9 10

I hope very much that you will be able to return this
I am glad to announce the abolition of the control. For the reasons
I have explained above, it is a matter of some urgency. I
should be grateful for clearance by the State, which would
enable me to finalize the arrangements for the transfer of
the management of the control staff for on Monday, 12 April.
Consequently, I have undertaken a further review of the
from this week, directly on this issue, which I can discuss
on that day.

I am sending copies of this letter to other members of
the staff for their attention.



Chancellor of the Duchy of Lancaster

SECRETARY OF STATE FOR TRANSPORT

ABOLITION OF CONTROL OVER PORT DEVELOPMENT

It seems to me that the crucial issue is whether we land ourselves in the position where if undesirable development is stopped we then have to pay an extortionate amount of compensation - a problem which arose over Queen Anne's Mansions. It may have been a misuse of Section 9 to use it - or contemplate using it - for this purpose. But I suspect we will be much inclined to kick ourselves if we knowingly get into a position where we are faced with the alternative of allowing undesirable development to go ahead or pay heavy compensation.

Is it possible to close the loophole some other way?

I am copying this minute to the recipients of yours of 23 March to the Prime Minister.

A.C.

A C

2 April 1984

CONFIDENTIAL

file

B7



bc Nick Owen

Ch. Sec. HMT	LPS
MAFF	DOE
EMP	WO
CDL	SO
DTI	ENERGY
	NIO
	HMT
	CO

10 DOWNING STREET

From the Private Secretary

2 April 1984

Abolition of Control over Port Development

The Prime Minister has seen your Secretary of State's minute of 23 March, your letter to me of 29 March and the Chief Secretary's minute of 29 March. She has noted that divesting Government of the requirement to authorise port development over £3m does not weaken the planning controls as they relate to ports. In the light of this, she agrees in principle that the Government should revoke the relevant Order.

B7

She is however concerned about the impact announcement of this might have on industrial relations in the ports, and would not want to go ahead at present if there is any risk of a dock strike. She wonders whether it would be possible to delay the announcement until present industrial relations difficulties have been resolved.

I am copying this letter to the Private Secretaries to members of E(A) and to Richard Hatfield (Cabinet Office).

(Andrew Turnbull)

Miss Dinah Nichols,
Department of Transport

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B7

D/Tsp
now
propose
a holding
reply
tomorrow

As David Mudd has now tabled a Question on this for answer on Friday 30 March, it would be helpful to have a reply today, or by first thing tomorrow.

I am copying this to the Private Secretaries to the members of E(A), and to Sir Robert Armstrong.

Yours,

Dinah

MISS D A NICHOLS
Private Secretary

TRIND POB: Post Development
March 84

COMPTON

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FROM: CHIEF SECRETARY

DATE: 29 March 1984

PRIME MINISTER

ABOLITION OF CONTROL OVER PORT DEVELOPMENT

I was interested to see the Secretary of State for Transport's minute to you of 23 March, which responded to your query on his earlier minute. I have also seen copies of letters from the Chancellor of the Duchy of Lancaster and the Secretary of State for Employment.

I welcome in principle the liberalisation that abolition of section 9 controls involves. The decline of some existing ports may be hastened, but that should not be allowed to stand in the way of innovative investment. It would help us to resist calls to give subsidies, and bring home to management and unions the commercial test on which survival as a port and possible further investment must depend.

Because local authorities can normally use their capital allocations as they wish, whatever their intended purpose, they could in theory switch some to uneconomic port development. In practice that is unlikely to happen, but I take it the Secretary of State for Transport will be ready, if necessary, to apply a squeeze by cutting the transport part of allocations.

In a manpower context I am concerned about the possible needs of Customs. It would be very difficult for them to decline to provide additional staff for port developments which are no longer the subject of controls. I hope that officials can make

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progress in discussions that have begun on the terms of provision. But offsetting savings in existing ports will take time, and may not be fully adequate.

I am copying this minute to members of E(A) and Sir Robert Armstrong.



PETER REES

CONFIDENTIAL

27 JUN 1984



COLOMBIOL

ABOLITION OF CONTROL OVER PORT DEVELOPMENT

The Secretary of State for Transport wrote to you on 29 February - Flag A - proposing that the Government should revoke the Order under which it is required to authorise any port development over £3 million. Mr. Ridley felt that this was inconsistent with general Government policy, and tended to confer an aura of positive Government backing for any project given approval. The case in question is Falmouth.

You and other colleagues wished to be sure that in revoking this power a void would not be created in which port developments were not subject to planning control. In his minute of 23 March - Flag B - Mr. Ridley confirms that existing planning controls will not be altered.

A further question, raised in paragraph 8 of the paper attached to Flag A, is the hint that if Falmouth is permitted to go ahead, there could be attempts to organise a dock strike. I asked the Department of Transport to consider this which they have done in the letter of 29 March - Flag C. They now believe this possibility is remote.

The remaining reservation comes from the Treasury who are concerned about the implications for Customs manpower if new ports are created - Flag D. I do not find this a telling argument; we would not want to turn down an industrial development because we were worried about the extent of fire cover.

The latest Department of Transport letter asks for an early decision in order to allow them to answer a PQ from Mr. David Mudd who is asking the Secretary of State for Transport "if he is now persuaded that there is any case for the continuation of the procedure of Section 9 of the Harbours Act 1964". The Department have given a holding reply today, but nevertheless need an early decision in order to give a substantive reply next week.

/ In the light

In the light of the satisfactory explanation on planning control, do you agree, subject to:-

(i) Department of Transport being fully satisfied that there is no significant risk of early industrial action on the ports;

I doubt if this is possible,

(ii) the views of colleagues?

I agree the decision - but we do not

AT

want to risk any further strikes at present until the bad position is solved. If it is possible not

to delay?

30 March 1984

✓ CC NO

B/F with Treasury response of
4/4. unless earlier AT 28/3



DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

Andrew Turnbull Esq
Private Secretary
10 Downing Street
LONDON SW1

26 March 1984

Dear Andrew,

I am sorry that the note by officials was accidentally omitted from my Secretary of State's minute to the Prime Minister of 23 March about abolition of Government control over port development.

with AT

/ I enclose a copy, which I am also circulating to the Private Secretaries to the members of E(A) Committee and to Sir Robert Armstrong.

Yours,

Denah

MISS D A NICHOLS
Private Secretary

ECNO

B BF 30/3 B



PRIME MINISTER

ABOLITION OF GOVERNMENT CONTROL OVER PORT DEVELOPMENT

I am grateful for the comments in your Private Secretary's letter of 6 March and for those of the Chancellor of the Duchy of Lancaster, about the implications for the planning system of my proposal to abolish the "section 9 control" of harbour development. I think I can reassure you and colleagues on this point, which Neil Macfarlane has agreed with David Mitchell presents no difficulty.

Section 9 of the Harbours Act 1964 is essentially a quantity control over investment in national terms. It obliges me to approve or veto any proposed additions to the country's port capacity which cost more than £3 million. It has never been used as an instrument of local or environmental planning. Nor is it well suited to that role; for example, it makes no provision for objections to be lodged or for any public inquiry. The way in which the planning system applies to port development is explained in the enclosed note by officials of my Department and the Department of the Environment. No part of these existing planning controls will be altered. I am satisfied that they are adequate to deal with the occasional environmentally sensitive port development.

Turning to the Secretary of State for Employment's letter of 12 March, of course the abolition of section 9 will not silence the voices of protectionism. But it will stimulate investors to be hard-headed and realistic in assessing proposals for new development. While the control remains,



my consent inevitably conveys the impression of Government backing. This in turn implies a measure of protection against competition from other schemes which might otherwise lower costs. That is not a healthy position if we are to encourage genuine competition and greater efficiency.

Creating the conditions for freer competition may indeed lead to hard decisions on the allocation of Customs staff. That is something for prospective port developers to resolve with Customs & Excise. But I find it hard to believe that we should allow this factor to determine trading patterns and inhibit commercially desirable developments which port users and the financial market are prepared to back.

I am copying this to the recipients of my earlier minute.

NICHOLAS RIDLEY

23 March 1984

Ind Pot Marnes
Post Devt



26 MAR 1984

PLANNING ASPECTS OF HARBOUR DEVELOPMENT

NOTE BY DEPARTMENT OF TRANSPORT

1. This note relates to the planning system in England and Wales; the position is substantially similar in Scotland, though subject to separate legislation.

GENERAL

2. Harbour development requires planning permission under the Town and Country Planning Act 1971, but such development is often "permitted development" by virtue of the town and Country Planning General Development Order 1977. The GDO effectively grants planning permission directly without the necessity of a specific permission from the planning authority. There are administrative arrangements for consultation between harbour and planning authorities which appear to work well.

PERMITTED DEVELOPMENTS

3. The GDO authorises permitted development for:-

(a) Class XII - any development specifically authorised by an enactment.

(b) Class XVIII - any development by a statutory harbour authority, or its lessees, of the authority's operational land for harbour purposes.

4. These permissions are available only to harbour authorities who are statutory undertakers, ie most port authorities but not operators like the London Wharfingers, who need to seek specific planning permission in the usual way for their developments. This would also apply, for example, to the Company which proposes to develop a new container port at the Isle of Grain, where no specific harbour works powers are needed.

5. The proposal to develop a container port at Falmouth, referred to in the Secretary of State's minute of 29 February to the Prime Minister, was specifically authorised by the Falmouth Container Terminal Act 1971. It therefore has "permitted development" status under Class XII of the GDO, though the local planning authority still have control over detailed aspects.

MEANS OF ASSESSING ENVIRONMENTAL ASPECTS

A. Development of new ports and major expansion of existing ports

6. In practice the developer has to seek statutory powers or specific planning permission. These procedures provide full opportunity for consideration of environmental issues. In the case of a local or Private Bill any Secretary of State may report against the proposal; other objectors can petition. If works powers are sought in an Order under the Harbours Act 1964, the decision is in the hands of the Secretary of State for Transport who will arrange an inquiry if there are objections; Parliament has the final say if the Order goes to SPP. A planning application will be considered in the light of relevant environmental issues; major developments may be called-in for decision if the Secretary of State for the Environment so determines. Appeals by statutory port undertakers against refusal of permission and called-in planning applications are determined jointly by the Secretaries of State for Environment and Transport.

B Incremental development of existing ports

7. Statutory port undertakers are free to develop their existing undertakings under the GDO "permitted development" powers - but both the local planning authority and the Secretary of State for the Environment have power to direct that the GDO shall not apply in particular cases. (This power does

not however apply to developments expressly authorised by Parliament since 1948.) The effect of any such direction is to require planning permission to be sought. If the local planning authority then refuses permission, or grants it subject to conditions, it is liable for compensation.

Structure plan procedures also enable a periodic overall view to be taken.



Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213...6400.....

Switchboard 01-213 3000

The Rt Hon Nicholas Ridley MP
 Secretary of State
 Department of Transport
 2 Marsham Street
 London
 SW1

12 March 1984

Nicholas Ridley

ABOLITION OF CONTROL OVER PORT DEVELOPMENT

Thank you for sending me a copy of your minute of 29 February to the Prime Minister.

I accept the strength of the arguments against second guessing the commercial judgement of potential port investors. Unfortunately the problem will not go away with the abolition of section 9. The unions will continue to oppose adding more facilities in an industry where there is already considerable over-capacity and in this they will have the support of many existing employers. Moreover Government will have to take a view in deciding whether Customs Officers can be allocated to cover each and every new development.

These are points you may care to bear in mind when reconsidering the issue as suggested by the Prime Minister.

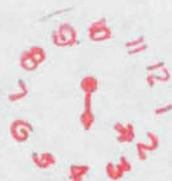
I am copying this to the other recipients of your minute.

kan

also
BF *mta* *P/Top refs*
AT
12/3

IND PO: Port Development

March 84



11 2 MAR 1984





10 DOWNING STREET

cc	HMT	LPSO	FILE
	NIO	DTI	da
	D/N	CDL	
	SO	D/M	
	WO	MAFF	
	DOE	CSO	
	CO	Mr. Owen	

From the Private Secretary

6 March 1984

Dear Dinah,

Abolition of Control Over Port Development

The Prime Minister has seen your Secretary of State's minute of 29 February. She is concerned that abolition of control by the Government over another port development costing more than £3 million will create a void in the system of planning controls. She shares the concern expressed by the Chancellor of the Duchy of Lancaster. While it might be right for the Government to withdraw from adjudicating on the economic merits of different port developments it should not abdicate its normal responsibilities for planning. It may be that there are other controls which cover this point. The Prime Minister would be grateful if your Secretary of State could provide a further note on this.

Bf

I am copying this letter to Private Secretaries to members of E(A) and to Richard Hatfield (Cabinet Office).

Yours sincerely
Andrew Turnbull

Andrew Turnbull

Miss Dinah Nichols,
Department of Transport.

da

010 ec NO



CABINET OFFICE,
WHITEHALL, LONDON SW1A 2AS

Chancellor of the Duchy of Lancaster

5 March 1984

Dear Nicholas,

ABOLITION OF CONTROL OVER PORT DEVELOPMENT

with AT?

Thank you for sending me a copy of your minute of 29 February to the Prime Minister.

I agree with your view that the pattern and viability of developments of this kind are best left to the market to determine. But are we right to abandon all planning control? Hitherto ports have tended to be in largely industrial or old urban areas. But potentially Falmouth is a very different matter and there could be not only local protest but protests from rural and environmental lobbies. The fact that Section 9 has not hitherto been used may simply reflect the fact that existing development has not been in sensitive areas. Could not some power be retained, for instance by amending the General Development Order, to avoid the risk of a sensible economic measure being discredited by environmental objections?

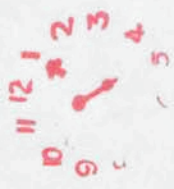
I am copying this minute to the other recipients of yours.

[Handwritten signature]
Arthur

COCKFIELD

The Rt Hon Nicholas Ridley MP
Secretary of State for Transport
Department of Transport
2 Marsham Street
London SW1

5 MAR 1984



010
PRIME MINISTER

I think we
have a
before

must
discussion
decision
me

A A
Prime Minister
Agree X? You should
consider the political aspects
raised in paras 7-8 of the
attached paper.

ABOLITION OF CONTROL OVER PORT DEVELOPMENT

AT

2/3

X | Under s.9 of the Harbours Act 1964 any port development costing more than £3 million must be authorised by me. I believe the time has come to dispense with this requirement, which was introduced in very different circumstances, in the interests of encouraging greater competition in the ports industry and to strengthen our policy that the pattern of new development should be determined by commercial requirements and be financed as far as possible from private sector sources. I therefore propose to announce by oral statement my intention to repeal section 9 and as an immediate interim step to revoke the Order made under it which renders it effective, so that I can remove the control straight away.

The abolition of this control will thus make it unnecessary for me to decide whether to allow or refuse the controversial application by a private company to construct, without any assistance from Government or local authority funds (except perhaps a small amount for an associated rail freightliner terminal), a new £70 million container port at Falmouth. A previous application by the company was turned down by David Howell 18 months ago on the ground that they had not been able to demonstrate the viability of the project. They are still unable to cite firm enough evidence of its viability. If I refuse the project again, I cannot demonstrate that it will not succeed. On the other hand, if I allow it to go ahead, this would be liable to be represented by the promoters, and taken by investors and perhaps by prospective users, as evidence of positive Government backing for it. It would be much better to leave it to investors and users to make their own independent assessment.



There are other large port developments in the offing which are likely to present me with very similar problems. One of them at least could be a direct competitor for Falmouth, and it seems doubtful whether both of them could succeed. It is more consistent with our overall policy for ports and our encouragement generally of competition that I should not retain this power, albeit a negative one, to control major port capital investment.

/ I enclose a paper which explains the issue more fully. I shall be glad to know by 2 weeks hence whether you and colleagues in E(A) to whom I am sending copies of this minute, along with Sir Robert Armstrong, are content with what I propose. I would of course be guided about the timing of any announcement by colleagues; but from my point of view the sooner the better.

NICHOLAS RIDLEY

29 February 1984

ABOLITION OF GOVERNMENT CONTROL OVER MAJOR NEW PORT DEVELOPMENTS

Note by the Department of Transport

1. The Government's policy towards the ports since 1979 has been directed to steering the industry towards a more commercial framework and greater self-sufficiency in the management of its own affairs. To this end it has abolished the National Ports Council; privatised the former British Transport Docks Board; eased the control over port development under section 9 of the Harbours Act 1964, by raising the threshold for schemes requiring the Secretary of State's approval from £1m to £3m; and ceased to make loans to ports under the Harbours Act 1964 for capital investment (the ports themselves are successfully raising finance for capital investment from their own resources or the private market, other than the special cases of London and Liverpool).

The case for abolition

2. However, the continuation of Government control over major port development, under section 9 of the Harbours Act, is hard to square with an overall policy for ports of competition between them and allowing the distribution of traffic and the development of new facilities to be determined by market forces. Retention of the power implies an obligation on the Government to try and match capacity to forecast demand and to protect past investment, both in the ports and related inland infrastructure. While s.9 has acted as a useful deterrent to unwise speculative developments, it is also an obstacle to port investment which seeks to break new ground. Encouraging competition should increase efficiency in the ports, which is to the advantage of our shipping and of trade generally.

3. The Secretary of State's authorisation of a project is likely to give it a spurious aura of positive Government backing. It can thus be a distorting factor in the market's judgement of the financial risks in new developments. It may even offer developers an implied measure of protection from rival projects

and hence stimulate confidence to invest in marginal projects.

The risks of abolition

4. The abolition of the Government's control through the repeal of section 9 would risk speculative developments/ ^{creaming off the best traffic and creating} surplus capacity, possibly leading to damaging price cutting. This could push some of the financially weaker ports to the point where no viable operation could exist. The recent history of London, Bristol, and Liverpool illustrates this. The Government would find it difficult in such cases to avoid being drawn in because of the Dock Labour Scheme implications. Such consequences would however be hard facts of commercial life which would have to be faced if the industry is to be allowed to adapt to changing circumstances in a commercial way.

5. There could be a risk of local authorities which own ports undertaking large uneconomic investments out of public funds. In practice the Department's cash-limited control over their capital expenditure should take care of this; the capital allocations of local authorities proposing unacceptable large developments can be squeezed. There are less than a handful of local authority ports in which investment schemes of £3 million or more might ever be contemplated.

6. Repeal of s.9 would open up a possible gap in planning control. Almost all ports are statutory undertakings, and therefore under the General Development Order may carry out permitted development on their operational land without needing to obtain specific planning consent. Section 9 in theory provides a means of stopping proposed port developments costing more than £3 million that are unacceptable on planning grounds. If section 9 is repealed, the only recourse will be a direction (by the planning authority or the Secretary of State) under Article 4 of the GDO withdrawing the general permission. Compensation would be payable. Such an Article 4 Order cannot be made in the case of a development being carried out under specific statutory authority granted since 1948, rather than under the general permission. However, history suggests that the potential loss of

planning control resulting from the repeal of s.9 would be immaterial. No instance is known of s.9 having been used to reject a development on planning grounds, and an Article 4 direction has been considered - but not used - in only one case, where the circumstances were extremely unusual.

Political considerations

7. There will be opposition in Parliament to the abolition of the s.9 control, particularly from Members whose constituencies cover the financially weaker ports, eg London, Bristol and Mersey. The British Ports Association are known to favour keeping the control; many of their members will say the continued existence of the National Dock Labour Scheme will fetter their freedom to compete in a wholly commercial way. The General Council of British Shipping are likely to support the repeal as improving the prospects of increased port choice.

8. The Government will be accused of sidestepping a difficult decision, on a controversial current application under s.9. This is for the construction of a new £70 million container port at Falmouth. A previous application by its promoters, a private sector company, was rejected by Mr David Howell, the then Secretary of State for Transport, in September 1982, on the ground that they had not provided firm enough evidence of financial and customer support for the project, which is essentially based on a new and unproved concept of Falmouth as a pivotal port for the transshipment of containers from large main-line 'mother' ships on deep sea services to feeder services to ports in North West Europe. However successful the development might be in attracting business from continental European ports, it would also be bound to take some traffic away from existing British ports. The new application still does not demonstrate clearly the viability of the scheme. Nor can the promoters' case be refuted. To reject the project again would be to deny the private sector the chance to assess the risks and to restrict competition. To authorise it would put the Government under pressure to justify the decision, against a background of some previous speculative ventures in our ports having turned out to be expensive white elephants.

There is political opposition to, as well as support for, the Falmouth scheme. Liverpool dockers have threatened to instigate a National Dock strike if it is authorised.

Mechanics of abolishing the control

9. If the control is to go, the sooner the better. The repeal of s.9 of the Harbours Act would have to await a suitable legislative opportunity. But it would be possible to move quickly by making an Order to revoke the Control of Harbour Development Order made under s.9 which gives s.9 its teeth and without which s.9 is ineffective. Legal advice is that while it would not be acceptable just to revoke the Order, without any intention of doing anything about s.9 itself, it would be permissible to make a revocation Order in conjunction with a statement of intent to repeal s.9.

10. Since it will be desirable, if the control is to go, not to have to decide on the Falmouth case, an early announcement of the Government's decision will be called for.

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