

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

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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/ <sup>creaming off the best traffic and creating</sup> 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 transhipment 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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*BF* *with* *D/Top refs*  
*AT*  
*12/13*

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

12 March 1984

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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.

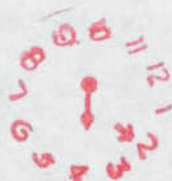
I am copying this to the other recipients of your minute.

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IND PO: Port Development

March 84



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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

