599 MT

PART 9

Confidential filing

Industrial Relations legislation

The Employment Bill

INDUSTRIAL POLICY

PART 1: May 1979

PART 9: March 1982

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~24.3.82~~		19.11.82					
~~7.4.82~~		~~26.11.82~~					
~~8.4.82~~		~~29.11.82~~					
~~20.4.82~~		~~1.12.82~~					
~~13.5.82~~		~~6.12.82~~					
~~10.6.82~~		~~7.12.82~~					
~~18.6.82~~		~~20.12.82~~					
~~28.6.82~~		~~14.1.83~~					
~~1.7.82~~		~~20.1.83~~					
~~6.7.82~~		~~19.1.83~~					
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~~12.10.82~~							
~~13.10.82~~							
~~14.10.82~~							

PREM 19/1061

PART 9 ends:-

JV to Mes 20/1/83

PART 10 begins:-

JV to FH 3/3/83

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
CC(82)36th Conclusions, Minute 1	01.07.82
CC(82) 40th Conclusions, Minute 1	29.07.82
E(82) 64	07.10.82
E(82) 21st Conclusions, Minute 1	14.10.82
L(83) 15	14.01.83
L(83) 2nd Meeting, Minute 1	19.01.83

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed AWayland Date 9 April 2013

PREM Records Team

Published Papers

The following published paper(s) enclosed on this file have been removed and destroyed. Copies may be found elsewhere in The National Archives.

1. House of Commons Hansard, 20 April 1982, columns 126-173

2. Cmnd. 8778: Green Paper: Democracy in Trade Unions HMSO, January 1983 [ISBN 0 10 187780]

Signed C M Wayland Date 9 April 2013

PREM Records Team

Ind Pol

CONFIDENTIAL

PA Ind Pol

MR SCHOLAR

cc Mr Mount
Mr Ingham

LEGALLY-ENFORCEABLE AGREEMENTS

As you know, we got in a bit of a tangle during Questions briefing today over no-strike provisions and legally-enforceable agreements. The position is not straightforward, and I have encouraged my opposite number in the Department of Employment to suggest to their Private Office that they ought to send us a proper note about it, not least because (as I need hardly say) the Prime Minister was right and their Private Office was wrong about the position of public utility workers. Meanwhile, I set out below my understanding of the position.

No-Strike Provisions

Under the 1875 Protection of Property Act, there was a general provision making it unlawful to strike if a danger to health would result; and a specific provision under which it was assumed that strikes in the water, gas and electricity industries would cause such danger. It was therefore, at least in theory, unlawful to strike in those industries until that specific provision was repealed by Mr Heath in his 1971 Act.

Since then, the general provision of the 1875 Act has remained in force. But it has hardly ever been used, because there is an easy way round it - which is for the unions simply to give due notice that their members are terminating their employment. Indeed, that is exactly what the water workers did last Monday.

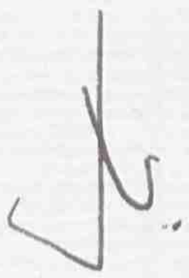
Of course, what the Prime Minister actually said in the House in response to Mr Taylor's Question about no-strike agreements was right: that they tend to be expensive.

Legally-Enforceable Agreements

There is a different issue as to when agreements concluded between employers and unions are legally enforceable. Mr Heath's 1971 Act presumed that all collective agreements were intended by the parties to be legally binding unless they included a specific provision to the contrary. But virtually every collective agreement subsequently concluded, including those in the public utilities, did have such a

proviso. So the 1971 Act did not have the effect of making it unlawful for workers in the public utilities to strike. That Act has, of course, now been repealed by the 1975 Act anyway.

Should we look again at making these agreements legally enforceable? In the light of our experience recently with the water industry, there may be some public demand for that. But consultations on the 1981 Green Paper showed that in general employers saw little or no advantage in having legally-binding agreements, which could prove to be two-edged swords anyway.



JOHN VEREKER
20 January 1983

ks

Prime Minister (2)

MES 17/1

SECRETARY OF STATE FOR EMPLOYMENT

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

Tim Flesher Esq
Private Secretary
10 Downing Street
LONDON
SW1

13 January 1983

Dear Tim

... I enclose copies of a summary of the Green Paper "Democracy in Trade Unions" and an Employee Bulletin issue by the Ford Motor Company at Halewood to its workforce which my Secretary of State promised to send the Prime Minister when he met her earlier today.

Yours Sincerely

Felicity Everiss

MS F EVERISS
Private Secretary

GREEN PAPER "DEMOCRACY IN TRADE UNIONS":
SUMMARY

The Green Paper is in five chapters.

CHAPTER 1 sets out the background to the consultations. There has been little progress on democracy in trade unions since the Donovan Commission criticised the low level of membership participation in many unions back in 1968. The TUC has boycotted the Government's funding scheme for secret postal ballots set up under the Employment Act 1980. There is increasing public concern, - not least because of their potential for damaging the economy, - that union leaders are often unrepresentative of their members. Consultation will show whether the case for statutory reform is confirmed and ensure that any changes proposed will work in practice.

CHAPTER 2 is concerned with secret ballots for trade union elections. It puts forward four minimum standards of democracy which unions' election arrangements should attain. These are that:

- voting invariably takes place in conditions of secrecy;
- all members eligible to vote have the opportunity to do so under a system which provides the best opportunity of a reasonable turn-out;
- all votes are counted fairly; and
- those who take decisions at the highest levels are properly representative of, and accountable to, the membership as a whole.

The lack of public confidence about whether many unions meet these standards is based on very low turn-outs in elections; the obscurity of many union rules, which leave room for abuse; and allegations of malpractice, which some see as "the visible signs of a more disquieting state of affairs".

The case for legislation requiring the use of secret ballots by trade unions in specific circumstances (eg to establish a political fund) is long-established. However, any legislation on elections must take into account the wide variety and complexity of existing union structures and electoral arrangements (which are described in paragraphs 18 to 30). There are several key questions relevant to legislation on which views are sought.

(i) Methods of voting. Although the use of postal ballots overcomes many of the problems associated with voting by ballot box or by show of hands, its introduction would cause practical difficulties for many unions, and the accuracy of the count could not be guaranteed unless an independent scrutineer supervised all arrangements. What can reasonably be required without placing an undue burden on unions?

(ii) Indirect elections. Should members be entitled to vote directly for a candidate or is it acceptable for them to vote for a representative who then exercises a block vote?

(iii) Appointment of full-time officers. Practices differ widely between unions. For example, in some unions full-time officers are elected by the membership (for a limited or unlimited period); in others they are recruited from outside by the governing body as permanent employees of the union on the basis of their expertise. The role and powers of full-time officers also vary. In what circumstances could election and re-election reasonably be required?

(iv) Other electoral arrangements. Would it be practicable or desirable to attempt to introduce detailed requirements about such matters as eligibility to vote, qualifications of candidates, the use of "block voting" etc?

(v) Scope. Should legislation cover all union elections or concentrate on achieving progress at the top - that is elections to the union's governing body, which provides the union leadership?

Possible approaches to legislation are considered. No particular approach is proposed. The aim is to stimulate an informed discussion in the light of which detailed proposals for workable legislation can be put forward. Four possible approaches are outlined:

(a) a system of detailed and uniform regulation imposed on all trade unions;

(b) a system requiring unions to seek approval of their rules from a public authority;

(c) the establishment of general democratic principles for all elections, with a statutory right of complaint for union members alleging that their union's arrangements fell short of these;

(d) a statutory remedy for union members if elections to the governing body fall short of certan minimum standards.

Enforcement of any statutory requirements is discussed, including the existing remedy of contempt which would already be available if a trade union persistently refused to comply with a Court order, following a proven breach of union rules. The Court has discretion to impose a range of penalties for civil contempt on a refusal to comply with its order. The Court may impose a fine if the contempt is sufficiently serious. Otherwise the Court can issue injunctions and further orders aimed at remedying breaches of the original order. Views are also sought on possible alternative sanctions - for example, freezing the assets of a trade union, removal of "executive status" from named officials, and loss of immunities.

Comments are sought on an alternative approach to legislation. This is based on the argument that unions should be able to persist with arrangements which are contrary to any statutory requirements if these are shown in a secret ballot to have the support of a majority of the membership.

CHAPTER 3 is concerned with ballots before strikes. The argument of principle for holding pre-strike ballots is simple and unanswerable. However, discussion is needed on the practical effects of making such ballots compulsory by law. Proposals for mandatory strike ballots in this country are not new, and other countries have legislation requiring strike ballots in certain circumstances. However, no country has legislated to require universal, automatic ballots before any strike. To do so might encourage unofficial strikes and a proliferation of "go slows" and other industrial action short of a strike which can be just as damaging to the economy.

There are three possible approaches to legislation, each posing difficult questions of principle and practice on which views are sought:

(i) Strike ballots imposed by the State in defined circumstances. The Green Paper looks at their use in the USA and, more briefly, in the UK. Would these serve to harden attitudes and prolong disputes? Or would they influence trade unions to ensure that they had the backing of their members before embarking on a strike?

(ii) Ballots triggered by a proportion of union members. These would have the advantage of being seen to reflect members' wishes. But they raise a number of practical questions, such as: Which members would be eligible for the trigger? How would the wording of the question on the ballot paper be decided? How would the timing of the ballot be decided? What would be an appropriate sanction if a union refused to hold a ballot?

(iii) Ballots triggered by the employers concerned. These would present similar difficulties of definition. Moreover they would appear to have no advantages over ballots carried out by the employers themselves and covering both union and non-union employees. Should funds be available for employers when a union has refused to ballot its members?

CHAPTER 4 is concerned with the political activities of trade unions. It outlines the present legal position, which is determined by the Trade Union Act 1913 and is based on two main principles:

(a) that trade unions should, if they so choose, be able to pursue their members' interests through political organisations and to give financial support to such organisations;

(b) that no trade union member should be obliged to support financially any political organisation if he does not want to, and that he should not suffer so far as his union membership is concerned by refraining from giving such support.

Whilst these principles remain valid, the working of certain of the 1913 Act's provisions now needs re-examination and views are sought:

(i) Ballots to approve political objects. Is it still acceptable for such ballots to be a once-for-all requirement, or should regular confirmatory ballots be required? Should the test continue to be a simple majority of those voting, or an alternative such as an overall majority of the membership?

(ii) Contracting-out. There are strong arguments of principle against contracting-out. It is objectionable that an individual should have to take positive steps to avoid contributing to a political party which he opposes. Moreover the evidence suggests that in practice it is more difficult for members to contract-out in some trade unions than in others. This points to the need for a change to contracting-in. At the very least unions should be required to do more to make their members aware of their rights.

(iii) Contributing to the political fund and the election of trade union officers. Should the 1913 Act be clarified so that membership of the political party supported by the union is not made either directly or indirectly a condition for election or for holding union office?

(iv) Political objects. Is the definition in the 1913 Act too narrow for present day needs? What more can be done to enable union members to find out about contributions made by their unions to external bodies?

(v) Administration of the political fund and annual returns of accounts. Are measures needed to enable union members and the public to satisfy themselves that a union's general fund is not being used to subsidise political activities for which a political fund has been established?

(vi) The check-off and the political levy. Are new safeguards needed to ensure that employers do not deduct the political levy from the pay of individual union members without their knowledge or against their wishes?

CHAPTER 5 summarises the main areas where legislation might be considered and invites industry and others to submit their views to the Department of Employment by 8 April 1983.

THE FUTURE OF HALEWOOD

Voluntary jobs cut is vital in the battle to survive

HALEWOOD Body and Assembly Plants today began a fight for survival with the announcement by Operations Manager Ted Rayment of a programme to reduce the number of employees by 1,300 through voluntary redundancy and early retirement.

At a meeting with the Joint Works Committees, he highlighted what he described as the stark facts of Halewood's current lack of viability — and emphasised the immediate need to make the plants more competitive.

He told the employee representatives: "The situation we face is not a battle between the Halewood management on one side and the Trade Unions on the other.

"But we've all known that sooner or later we would have to face up to the facts — and later might be too late for all of us.

"Now is the time for the supreme test of whether we can work together for our joint survival."

Mr. Rayment said today:

At a special meeting of the Halewood Body and Assembly Joint Works Committees just before Christmas, we announced our intention to give you a presentation early in the New Year on the prospects for the Operations.

We specifically said that we would tell you whether there would be a voluntary redundancy programme in 1983 since, at that time, we were still carrying out studies on labour costs and efficiency levels.

Current performance

What I would like to do is to look briefly at the Operations' past performance, its current performance and what requires to be done to ensure its continuing viability — under the usual three headings of volume, quality and cost.

Starting with volume, we produced 167,868 vehicles in 1982. This was an improvement over 1981 and over 1980 which, of course, was affected by the run-out of the old Escort and the launch period of the new Escort.

It was, however, considerably below the volume achievements of 1979.

The significant thing, however, is that every year our output has been considerably below our capacity and we have only achieved about two-thirds of what we should build.

The reasons for this we have often discussed — and can discuss again — but this falldown, for whatever reason, seriously undermines our competitive position on costs, as I will explain later.

Before moving on to the next points about volume, I would like to explain what we mean by the term "Average Daily Capacity," since this will feature a number of times in what I have to say. As you know, we work uneven shift lengths between days and nights and also only work an eight-hour shift on Fridays.

On Monday to Thursday we work a total of 17½ straight time hours. That is 8¼ on dayshift and 9¼ on nightshift.

If we had run at our capacity output of 65.1 vehicles an hour for the 17½ hours, we would have produced 1,139 vehicles on any day, Monday to Thursday.

Over the four days we were therefore capable of producing 4,556 vehicles.

On the eight-hour dayshift on Friday, at 65.1 vehicles per hour, we could have made 521 vehicles, giving a total for Monday to Friday, inclusive, of 5,077 vehicles.

If we divide this figure by five we get the average daily capacity figure of 1,015 vehicles.

The important fact is that our average daily build did not exceed 880 in any month, due mainly to disputes, quality or technical problems. In most months it was less than 850 and on average throughout the year production was 721 a day.

So, whilst we had our good days when we made 1,100 on a few occasions, and we had a good run after shutdown when we regularly made over a thousand, our average production was still well short of our capacity due to our inconsistencies.

As I said at the JWC before Christmas, the business is now so competitive that we are measured against our ability to produce the number of vehicles for which we have the capacity.

And we don't get too much credit with senior company management for having the odd days of capacity achievement.

Our competitors on the continent produce their capacity volumes day in, day out, and that is what gains them their reputation.

That is what we have got to equal to survive. And that means, in turn, not just an improvement in our ability to control disputes, but the elimination of disputes as well as better maintenance of equipment and control of component quality, both from within the company and from outside suppliers.

As you can see, I am not trying to pin the blame for our falldown on any one section of the workforce. We have all contributed to this situation but we must all equally contribute to overcoming it if any of us are to have jobs at Halewood in the future.

Quality achievements

Moving on now to our in-plant quality performance, there has been a steady improvement in the quality of vehicles produced through 1981 and continuing through 1982. And while the rate of improvement is now slower than we would like, nevertheless, there is an encouraging trend.

However the Saarlouis performance, while static during 1982, is still a considerable way ahead of us. And it is their level that we must strive to achieve during 1983.

In summary, the message on quality is that we have made good progress since the launch of the Escort in improving the quality of our vehicles and have overcome the major quality concerns. But in the latter half of last year, however, our quality performance on all of the indicators remained virtually static.

This is because we are not addressing the minor niggling quality concerns on a consistent basis. The faults that count against us do not need any more major engineering changes — they just require that extra attention from all concerned in building the vehicles. And if we could do that we could easily close the quality gap on Saarlouis.

Before anyone tells me that the reason for Saarlouis' better volume and quality performance is all to do with investment in facilities, let me tell you that in the period 1976-82 $387 million has been spent at Halewood, compared to $277 million at Saarlouis.

Turn to Page Two

Ted Rayment

The way ahead

IN making today's announcement, Operations Manager Ted Rayment said he fully realised the effect it would have on Merseyside.

"The last thing we wanted was to add to the area's already serious unemployment situation," he said.

"But this programme is absolutely essential if we are to keep in business at all. If we were to continue the way we have been going we would eventually have to lose a great many more employees.

"We really do believe that the steps we are taking now will go some way to ensuring a future for Halewood."

Voluntary redundancy

Examples of payments based on Grade 'C'

Age	Service	Approx. Sum
25	5 years	£2,900
35	10 years	£4,300
45	20 years	£6,300

Early retirement

Examples of payments based on Grade 'C'

Age	Pensionable Service	Approx. Total Lump Sum
55	20 years	£7,000
60	20 years	£7,500

Lump sum figure assumes 25 per cent commutation of pension plus redundancy agreement payment.

Continued from Page One

We have had more investment than Saarlouis in every category of expenditure except one — capacity expansion.

There is no mystery about the reason for this. Saarlouis, as I said earlier, build to their capacity level.

We clearly have not — and do not — exhibit this capability and, therefore, we have no claim to further investment geared to extending our production capacity when we cannot even build what we are supposed to right now.

Let's now have a look at what our manning levels mean for our labour costs. If our average daily production last year of 721 vehicles was made by Saarlouis, at their level of efficiency they would use 4,500 less people.

Even if we had produced our capacity output of an average of 1,015 vehicles a day, as I explained earlier, Saarlouis would still have used 3,300 people less.

Since we are now capable of an effective 68 vehicles an hour throughout the system, our average daily capacity has increased to 1,060. At this level of production, they would use 3,000 people less.

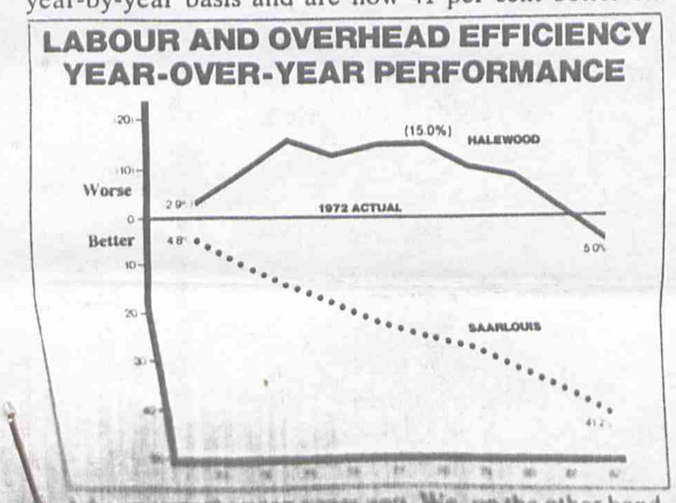
In a nutshell, this is the size of the difference in labour efficiency at the current time.

This means that it is naturally costing more to produce an Escort at Halewood than Saarlouis. So the main question facing us all at Halewood is what can be done to remove this cost penalty that we incur before it leads to our downfall.

The first thing we must do is to maintain the no-hiring policy that we have operated since 1979. This saves us around 300 people a year and is helping to make a steady improvement in our costs. But at the same time Saarlouis are making similar improvements — so the cost gap is not closing.

One way of dramatically illustrating the cost problem is to look at both operations' performance in the last ten years since 1972.

Bearing in mind that Saarlouis started with a better cost situation, they have progressively improved on a year-by-year basis and are now 41 per cent better on



labour costs than ten years ago. We, on the other hand, got progressively worse from 1972 to 1978 when our costs had deteriorated by 15 per cent.

From that time, with restraint on hiring, we have made progressive efficiency improvements — but it took us until early 1982 to cross the 1972 start line again, reaching just a 5 per cent improvement on 10 years ago by the end of 1982.

The most important fact is that our efforts so far are not closing the gap between ourselves and Saarlouis.

To overcome our cost disadvantage as a vehicle supplier, we now have to make a major leap forward and close the gap. This means we have to look at measures over and above the no-hiring policy.

I have said several times that we have an absolute need to produce our capacity. But would this in itself close the gap between us and Saarlouis? The answer is no. It would make a major impact and halve the gap. But that is not enough. We need to eliminate it to survive.

So, in addition to continuing the no-hiring policy, and achieving capacity output on a consistent basis, we need to significantly reduce our overall manning levels. And we propose to introduce a Voluntary Redundancy and Special Early Retirement Programme.

As I said, at 1983 capacity levels we employ 3,000 people more than Saarlouis would do under the same circumstances.

But we recognise that such a reduction in the workforce is neither feasible nor realistic in the short term.

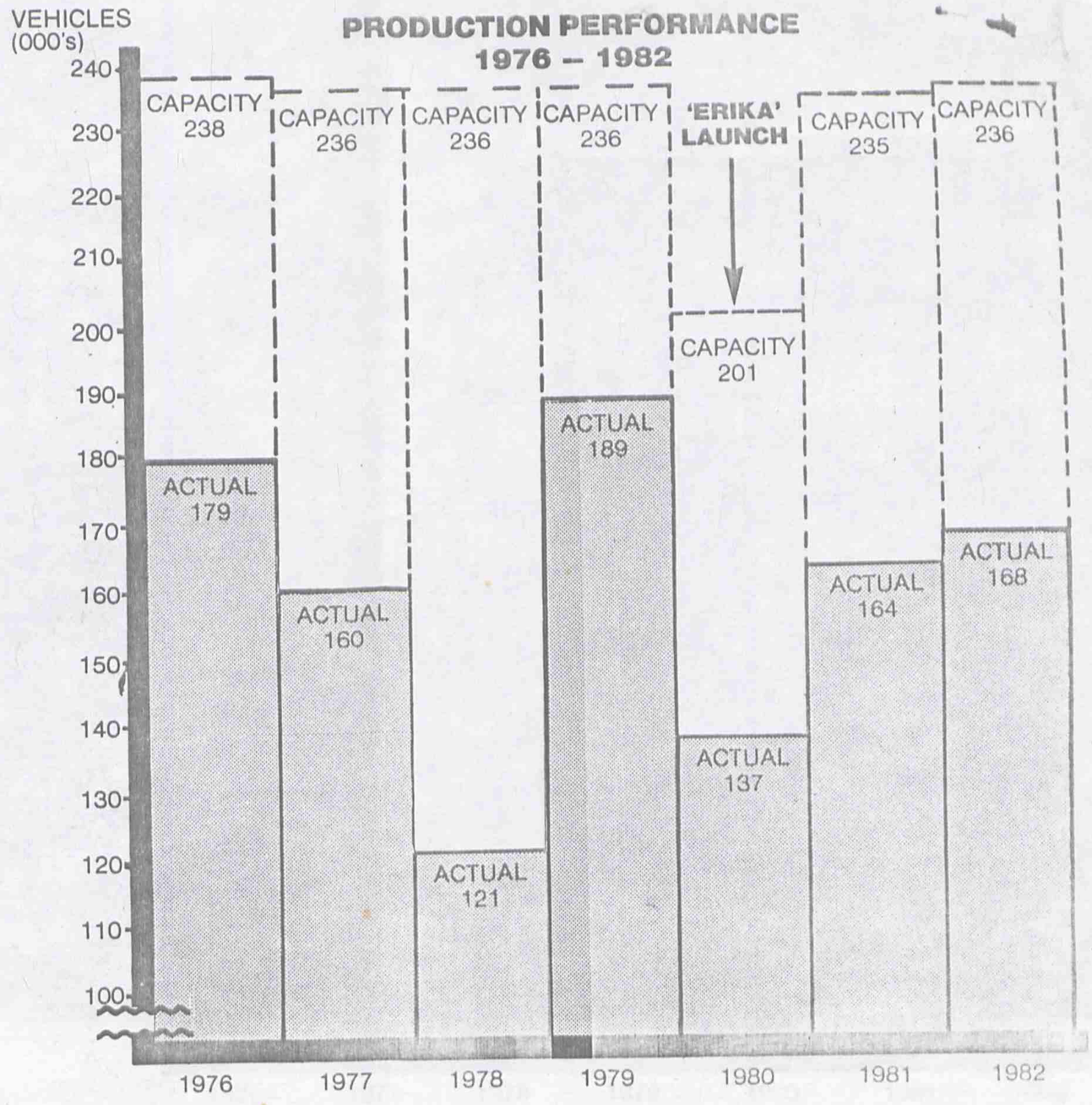
So what we propose is a reduction of 1,300 employees in this initial part of the programme.

Reduction opportunities come almost equally from direct and indirect activities and affect all areas of the Operations — and we do, of course, plan to have detailed discussion on a department-by-department basis as the programme gets under way.

Some of you may be asking yourselves how secure is our future even when we achieve this reduction of 1,300 employees, since I've just told you that the gap between ourselves and Saarlouis at our capacity output is 3,000 people at the current time?

Well, obviously, there can be no absolute guarantees in the uncertain economic environment in which we

Every year, our output figure has been well below our target



operate. But achievement of this programme will significantly close the gap on Saarlouis.

I did say that this was a gap "at the current time." Let me explain a little more what this means. It could widen if, in addition to the programme outlined, we do not continue to make efficiency improvements at the same rate that we have been doing — that is keeping up with Saarlouis.

On the other hand, if we can demonstrate our ability to consistently produce capacity day-in, day-out, then we will be able to seek additional capacity investment as do Saarlouis.

Additional capacity would give us an opportunity to maximise job security.

The opportunities are there to ask for the Ghia content and also to become the supplier for some of the export markets — providing we are competitive in terms of quality, cost and reliability as a supplier.

You will see on the chart below the list of territories supplied by Saarlouis compared to those by Halewood — and how the picture has changed over the years.

We sincerely believe that this programme gives us the basis for future viability, providing we seize the opportunities.

Many questions must be immediately springing to your minds, so let me try to anticipate one or two of them at this stage.

Yes, we do envisage the whole programme being voluntary because we recognise that the job market in the region is far from healthy.

We will be accepting volunteers from all departments of all ages — while obviously not stripping ourselves of some specific skills which we need to retain. Only in this way will we achieve the large-scale reduction which we believe is necessary.

On Page One you can see examples of lump sum payments that people in various age and service groups can expect.

The payments, as at other company locations where such programmes have been and are being operated, are based on the Blue Book terms with an additional 13 weeks' pay.

Employees over 55 with 10 or more years' service are, of course, eligible to apply for special early retirement terms which give them a lump sum like the voluntary redundancy people, based on the Blue Book terms, plus the ability to further increase this lump sum by commuting some of their pension.

As I said, this programme will be open to volunteers from all areas across the Operation. This may mean that there will have to be some re-balancing of labour at the end of the programme. But I think this is something we should address if it happens, rather than have long debates on it at this stage.

I have given you the basic facts of what we need to do to develop a viable future for this Operation which must be the objective of us all.

Significant changes

We now intend to notify the Department of Employment — as we are required to by law — that we have announced a redundancy programme.

We then have a period of 90 days in which we can discuss with your representatives how we will make the reductions on a department by department basis and plan any rebalancing transfers of labour at the end of the programme in April.

There is no point in disguising the fact that we will need to make significant changes to the way we do our business.

What we are talking about now is changing to ensure our survival and that means changing the way of thinking and doing things that has produced the current situation.

I would earnestly ask you to understand that the situation we face is not a battle between the management at Halewood on the one side and the Trade Unions on the other.

Today I have given you the stark business facts which face us all. Unfortunately they won't go away — so there is no point in ignoring them.

Sooner or later we have got to grasp the nettle and face up to them. Later might be too late for all of us.

The situation we face will be the supreme test of whether we can work together for our joint survival.

Together, we must meet the challenge. And we must win!

EXPORT MARKETS FOR ESCORT SALOON MODELS

	HALEWOOD				SAARLOUIS			
MARKET	73	75	77	82	73	75	77	82
IRELAND	X	X	X	X				X
NETHERLANDS	X	X	X		X	X	X	X
ITALY		X	X	X	X			
FINLAND	X	X	X		X	X	X	X
DENMARK	X	X	X					X
EXPORTS (ROW)	X	X	X					X
AUSTRIA	X				X	X	X	X
BELGIUM		X			X	X	X	X
FRANCE			X		X	X	X	X
SWEDEN	X		X			X	X	X
NORWAY			X					X
FEDERAL (CAN + U.S.)							X	
SWITZERLAND					X	X	X	X
SPAIN								X
PORTUGAL								X
TOTALS	7	7	9	2	7	7	8	13

HOW TO APPLY

● *An announcement will be made shortly concerning the date from which applications for Voluntary Redundancy and Special Early Retirement will be considered.*

Applications must first be made through foremen, who will then arrange appointments for employees to meet Personnel Officers and discuss the terms.

Effect on Salaried Staff

● *Clearly, a reduced hourly headcount will be reflected proportionately in the number of hourly supervisory positions required. Similar facilities — in terms of Voluntary Redundancy and Special Early Retirement — will be provided, on a voluntary basis, to employees in this category.*

FCS/82/218

29/12.

SECRETARY OF STATE FOR TRADE

Draft Fifth Company Law Directive

1. Thank you for copying to me your letter of 14 December to Norman Tebbit. I have also seen his reply of 21 December, and note the Prime Minister's comment.

2. I gather that the Commission did not discuss the Fifth Directive on 21 December, and will not now look at the draft until mid-January.

3. I agree that since the Fifth Directive and the so-called 'Vredeling' directive both raise the question of compulsory employee involvement, we need to ensure a concerted policy on the two draft Directives in discussions in Brussels. Given this important Community dimension, it would be helpful if our officials could keep in touch over the preparation of the paper for 'E' Committee which Norman Tebbit mentioned.

4. Copies of this letter go to other members of E, the Lord Chancellor, the Attorney-General, the Secretaries of State for Scotland and Wales, and to Sir Robert Armstrong.

(FRANCIS PYM)

Foreign and Commonwealth Office
29 December, 1982

Ind Rel : Employee Involvement in Profit Sharing
etc,
Sept '79

CONFIDENTIAL

NBPM Ind Pol Mins 23/12

JH 572

DEPARTMENT OF INDUSTRY
ASHDOWN HOUSE
123 VICTORIA STREET
LONDON SW1E 6RB
TELEPHONE DIRECT LINE 01-212
SWITCHBOARD 01-212 7676

3301

Secretary of State for Industry

23 December 1982

The Rt Hon Lord Cockfield
Secretary of State for Trade
Department of Trade
1 Victoria Street
London SW1

Dear Arthur,

I have seen a copy of your letter of 14 December to Norman Tebbit about the draft Fifth Company Law Directive. I have also now seen the letter from No 10 giving the Prime Minister's views.

2 I am relieved that the draft is likely to take several years in the Community machinery. Obviously we should do nothing to speed its progress.

3 I agree with your proposals on the next steps. Employers should now be given the opportunity to make clear their views on the present draft, particularly on the principle and detail of the controversial provisions relating to employee involvement. We should consult a wide range of employer organisations.

4 The consultations on the employee involvement provisions must be handled carefully so that the Government does not give the impression of having weakened its opposition to the principle of compulsion in this area.

5 . I should be grateful if my Department could be involved in the consideration of arrangements for consultation, including the drafting of any consultation document.

6 I am sending copies of this letter to the recipients of yours.

Yours ever

Patrick

SP

CONFIDENTIAL

Ind Pol

N.B.P.A.

A.J.C. 4/12

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

The Rt Hon The Lord Cockfield
Secretary of State for Trade
1 Victoria Street
LONDON SW1

21 December 1982

D Arthur

EMPLOYEE INVOLVEMENT

Thank you for your letter of 14 December with its resume of the current position in regard to the draft Fifth Company Law Directive.

I agree generally with your approach to the questions which need to be settled, in particular your ideas on presentation and the handling of the Fifth Directive in Brussels. Our main aim is, as the Prime Minister has confirmed, to oppose the draft Directive as vigorously as possible.

I would however like to reserve judgement for the time being on the method of consultation in this country on the Commission's proposals. We shall certainly need to give industry the opportunity to submit their comments. What form the consultations should take and how they should be handled will depend on the situation at the time. The so-called Vredeling Directive, as you know, has just been considered by the European Parliament, and, according to latest reports, we can expect the Commission to issue revised proposals within the next 3 months. There may be advantage in combining consultation on the draft Fifth Directive and the Vredeling proposals if the timing is right, since they overlap to some extent. The timing of the general election may also be relevant.

As you know, we are due to report back to E Committee on the general subject of employee involvement (E(82)21st on 14 October 1982) at some stage. I expect to be seeing the CBI early in the New Year to discuss this whole issue. Thereafter I propose to consult you about a paper for E, and at that stage we should be better placed to decide how consultations here and negotiations in Brussels should be handled.

I am copying this letter to the recipients of yours.

J Nott

CONFIDENTIAL

IND. POL: Policy towards employee involvement
Sept 1979.

JO

CONFIDENTIAL

Industrial Policy — C.C.J.V. — Ind Pol

Prime Minister (2)

For your meeting on ~~Wed~~ Thursday.

MLS 20/12

PRIME MINISTER

EMPLOYMENT PROTECTION LEGISLATION

At your meeting on 14 October it was agreed that the Secretary of State for Industry and I should consider together three specific suggestions made by the CPRS for changes in the employment protection legislation. For this purpose, I have prepared a note, a copy of which is attached. The note ranges wider and considers several other possibilities, including two put forward by the Chancellor to MISC 14.

We are to discuss this and other matters at your meeting on 23 December. In the meantime it may be helpful for me to report the result of our joint examination of the issues to date.

Patrick Jenkin and I are both agreed that the priority categories for any further relief from the employment protection legislation should be very small employers (5 or under) who might be totally exempted and new employers (with 20 or under employees) who might be exempted for the first five years of trading. For his part, Patrick Jenkin would go a little further, believing that the threshold for the latter category should be raised to 50 or something near it, as should the threshold for the existing two year exemption for small employers generally (which is now also 20). In my view, however, this would represent too great an erosion of protection for employees and would go too far in creating a second class of employee with inferior rights.

Our examination of possible further changes in the legislation has led me to consider seriously the whole question of the

unfair dismissal jurisdiction. In my view, far more important than the extension of exemptions from the legislation in favour of smaller firms is the improvement of the industrial tribunal system, either by way of practical piecemeal reforms or by a radical recasting of the system. Patrick Jenkin agrees with me in this, and I have already set in hand a study of both possibilities.

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

NT

NT

20 December 1982

Manpower: Employment
Reserves
PTE

EMPLOYEE PROTECTION LEGISLATION

1 Below I consider three suggestions made by the CPRS, two put forward by the Chancellor of the Exchequer to MISC 14 (MISC 14(82)1st) and certain other possibilities.

CPRS Proposals

2 The first is that employees should be able to waive their rights to protection against unfair dismissal in return for an offer of employment with a new small firm or a firm employing 50 or fewer employees. For this purpose "new small firms" might be taken to be firms with 20 or less employees during the first five years of trading. There is a similar proposal in relation to the right to redundancy payments.

(a) Unfair Dismissal Protection

3 The present position is that a protection against unfair dismissal is not established until an employee has been continuously employed for 2 years by any employer with 20 or less employees. The qualifying period is one year with larger employers.

4 The inhibiting effect of the unfair dismissal provisions on the employers contemplating setting up in business for the first time is likely to be greater than that for established employers. This is because of the new employer's lack of experience and ignorance of the provisions - quite apart from all his other preoccupations in setting up a business. On the other hand, it might be expected that, once established, firms with up to 50 employees should be able to cope more easily with the legislation, although there may be a case for extending the qualifying period of service for employees in all firms of 50 or less (see below). However, to give firms with 50 employees or less what amounts to a permanent exemption from the unfair

dismissal provisions might well inhibit recruitment of additional employees above that ceiling; and on grounds of equity it would be hard to justify creating a permanent class of employee with inferior rights even though they could well be employed by well-established and successful companies.

5 Accepting that there is a case for further relieving new small firms from the legislation, I do however believe that it would be a political mistake to provide, given present levels of unemployment, that an applicant for a job should be given the choice of waiving a general statutory protection as the price of obtaining it. They would be put in the position of having to accept that they could be unfairly dismissed. It would be much more defensible and better presentationally in my view to relieve all new employers with 20 or less employees from the provisions during the first five years of trading.

(b) Redundancy Payments

6 There is little evidence that redundancy payments, unlike the unfair dismissal provisions, are a particular burden for small firms; generally employers find the scheme helpful and are reimbursed by a 41% contribution to the cost of payments from the Fund. The qualifying period for entitlement (2 years) and the comparatively small sums involved in the early years of entitlement make it unlikely that the possibility of redundancy so far ahead inhibits recruitment to new jobs to a significant extent.

7 As in the case of the removal of protection against unfair dismissal, it would be difficult to justify the creation of a permanent class of employee with inferior rights. There could also be a disincentive to firms approaching the ceiling of 50 employees to take on further employees and thus lose the exemption. There would also be formidable and costly administrative problems in identifying firms to be exempted and their employees for the purpose of reducing their

contributions to the Redundancy Fund. The case of the firm with just over 50 employees which might make enough employees redundant to then rid itself of more would cause further anomalies.

(c) Maternity Provision

8 The CPRS finally suggested that the exemption from the obligation to reinstate employees after maternity leave should be extended to larger firms. The current exemption applies to firms employing 5 employees, or less, and the ceiling might be raised to firms employing 20 or less, as was proposed in the consultative document preceding the Employment Act 1980. Recent evidence shows, however, that in practice the maternity provisions present few problems for small firms. A 1980 survey found that only 6% of firms who had women of childbearing age in their employment and less than 50 employees had experienced any problems over the maternity provisions since their introduction. Raising the present ceiling of 5 employees or less (which corresponds with that in the Sex Discrimination Act 1975) would be unlikely to make much impact and would again arouse the passions of the feminist lobby.

The Chancellor's Proposals

9 These were that the qualifying period for unfair dismissal complaints might be extended in one of two ways - by extending the period from 2 to 5 years in the case of firms employing 20 or less; or by extending the period from one to two years to firms with 50 employees or less. Both of these proposals set a ceiling which might be sufficiently attractive to firms approaching it not to recruit more employees, thus inhibiting the creation of new jobs. The first would go much further in creating two classes of employee. There is for that reason and also on empirical grounds more justification for the proposal to extend the 2 year qualifying period to firms of 50 or fewer: research shows that only 14% of single plant firms with 25 to 49 employees have a manager spending a major part of his time on personnel matters.

Additional Proposal

10 The cost in management time of defending an unfair dismissal complaint and the financial cost of conciliated settlements or tribunal awards are proportionately much higher for very small businesses. They are therefore more likely to act as a serious disincentive to these firms in recruiting extra staff. Similarly, this can lead to the retention of unsuitable employees to a greater extent than in larger firms. Moreover unfair dismissal legislation is often doubtfully appropriate to very small employers, whose relations with their employees are more personal. There is therefore a good case for restoring the total exemption from the unfair dismissal provisions for very small firms which was originally contained in the Industrial Relations Act 1971, and repealed by the Employment Protection Act 1975. This exemption applied to firms with three employees or less; but a more realistic ceiling might be set at 5 employees - as with the maternity provisions (see para 8).

Conclusion

11 The proposals outlined above are for the most part variants on a theme. It is not possible to measure the likely employment effects of any of them, except that I am reasonably confident that relief from the redundancy payments and the maternity provisions would not have much of an impact. Of the remaining proposals concerning the unfair dismissal legislation, I would be more disposed to favour those which offer relief to new and very small firms (paras 5 and 10), because in both cases it is in the establishment of a new business that the employment protection legislation presents most problems and the potential for job creation is greatest.

12 The proposal regarding very small firms (para 10) could certainly be effected by order, but the proposal regarding new firms (para 5) would require primary legislation.

CONFIDENTIAL

10 DOWNING STREET

From the Private Secretary

15 December, 1982.

Draft Fifth Company Law Directive

The Prime Minister has seen Lord Cockfield's letter of 14 December about this matter.

Mrs. Thatcher has minuted:-

"We must oppose this draft directive vigorously."

I am sending copies of this letter to the Private Secretaries to the other Members of E Committee, and also to the Private Secretaries to the Lord Chancellor, the Attorney General, the Secretaries of State for Scotland and Wales, and Sir Robert Armstrong.

A. J. COLES

John Whitlock, Esq.,
Department of Trade.

CONFIDENTIAL

CONFIDENTIAL

(2)

DEPARTMENT OF TRADE 1 VICTORIA STREET LONDON SW1H 0ET Telephone 01-215 7877

Prime Minister

To note.

A.J.C. 14/12

Copy: Bernard Ingham.

From the Secretary of State

Rt Hon Norman Tebbit MP
Secretary of State for Employment
Caxton House
Tothill Street
London
SW1N 9NA

We must move this draft directive vigorously.

14 December 1982

Dear Secretary of State,

My officials have been warned by the Permanent Representative's Office in Brussels that the European Commission may adopt its revised version of the draft Fifth Company Law Directive on 15 or 21 December. If the Commission fails to reach a decision then the issue will be held over at least until 12 January.

As you will recall the European Parliament gave its Opinion on this draft Directive in May, after 10 years of consideration. The Parliament recommended that in addition to the Commission's original proposal that the work force should be represented on the supervisory boards of public companies employing more than 500 workers other ways of providing for worker participation should be permitted, by representation on the boards of companies with only a single-tier structure, without the introduction of supervisory and management boards on the German model, through the creation of works councils, or as a result of a collective agreement. Furthermore the scope of the application of the Directive should be restricted to public companies employing 1000 workers, but extended to include employment in subsidiary companies.

In addition to the controversial issue of compulsory worker participation the Directive also deals with a wide range of questions affecting the structure and administration of public companies, such as the prohibition of non-voting shares, the creation of compulsory reserves, the liabilities of directors and auditors. These aspects of the draft Directive, which did not attract much of the Parliament's attention, are likely on the whole to be unwelcome to industrial and professional opinion here.

CONFIDENTIAL

From the Secretary of State

In September the Commission informed the Parliament that the Directive was being redrafted to take account of the Parliament's proposals.

I gather that the Commission can be expected to announce its decision almost immediately after it has been taken, although copies of the revised draft may not be published forthwith. The revised draft will probably become available first in French, with versions in the other languages some weeks later.

The Commission will send its new draft formally to the President of the Council of Ministers after which it would be considered by the Committee of Permanent Representatives (COREPER) in the New Year, under the forthcoming German Presidency. COREPER is likely to refer the new draft to a working group of officials from the Commission and from the relevant Government Departments of the Member States for detailed study. This process could easily take 4 or 5 years.

We now need to consider:

(a) the way in which the Press Offices of the Departments of Employment and of Trade, and of the Northern Ireland Office, should deal with inquiries provoked by the Commission's announcement, given the hostility to the compulsory worker participation proposals already evinced by the Institute of Directors and the CBI, etc. and the hostility to other parts of the draft directive

(b) the instructions to be given to the UK Representative for the discussion at COREPER; and

(c) the way in which the Departments of Employment and Trade should consult industry and the professions about the details of the Commission's proposals.

On (a) above, I suggest that your Press Office should explain that the Government supports the development of worker participation but is opposed to compulsion and indeed to many of the specific proposals. My Press Office would deal with any questions about the more traditional company law aspects on the lines that the Commission's proposals were being examined and that a consultative document was being produced. The same approach could no doubt be adopted in Belfast.

From the Secretary of State

While it would no doubt be sensible to leave the details of the instructions to COREPER to be evolved by officials through the standard inter-departmental machinery I suggest that these instructions should be based on the following approach:

(a) the UK Representative would call attention to the Government's belief in the voluntary approach to employee participation and explain that any agreement to negotiations in a working group did not involve any modification of this view;

(b) he would also explain that the Directive dealt with a wide range of complex company law issues on which the UK would need to consult industry and the professions; UK opinion was likely to be highly critical; and

(c) if there were a majority in favour of establishing a working group the UK Representative could go along with it.

As to (c) above, I suggest that following consultation with other departments the Department of Trade and Employment should publish a consultative document recalling the Government's general approach to employee participation and examining the Commission's proposals in detail. This approach is preferable to the use of a White or Green Paper: it is not sensible to give undue prominence to the Commision's revised proposals as they are to be the subject of many years of negotiation. What matters is what emerges from the working group.

I am sending copies of this letter to the other members of the E Committee as well as to the Lord Chancellor, the Attorney General and the Secretaries of State for Scotland and Wales; and to Sir Robert Armstrong.

Yours sincerely
John Whitmore

for LORD COCKFIELD
[approved by the Secretary of State and signed in his absence]

CONFIDENTIAL

c. (DEmp) DEng
CO DEnv
CPRS MAFF
MOD NIO
LPS DES
DI HMT
DTde FCO
DTrans HO
CS-HMT
CDL

IND POL

10 DOWNING STREET

From the Private Secretary

7 December 1982

b.c. Ingham
Vereker

GREEN PAPER ON TRADE UNION DEMOCRACY

The Prime Minister was grateful for your Secretary of State's further minute, dated 3 December, about the draft Green Paper.

She now agrees to publication of the Green Paper as revised and is content with the timing which your Secretary of State suggests.

I am sending a copy of this letter to the Private Secretaries to Members of E and to Richard Hatfield (Cabinet Office) and Gerry Spence (CPRS).

M. C. SCHOLAR

Barnaby Shaw, Esq.,
Department of Employment.

CONFIDENTIAL

6 December 1982

PA.

MR SCHOLAR

GREEN PAPER ON TRADE UNION DEMOCRACY

Mr Tebbit's response meets both the spirit and the letter of the Prime Minister's comments on his draft - with one exception. He persists (in the redraft of paragraph 67) in exaggerating the importance of the trade union's power over the timing of a ballot. However, he has inserted in the previous paragraph the reference which we asked for - to the experience of recent strike ballots as showing that the membership is not always swayed to vote as their leaders tell them. In the light of these and other changes, the section as a whole is now more balanced, and I think we might rest content with it.

FM

FERDINAND MOUNT

CONFIDENTIAL

Prime Minister (1)

Agree to the revised Green Paper (Ferdie Mount so recommends?) and publication after in the week of 10 January?

Yes MCS 6/12

SECRETARY OF STATE FOR EMPLOYMENT

PRIME MINISTER

GREEN PAPER ON TRADE UNION DEMOCRACY

1. I have considered carefully all the comments that have come to me on the draft I circulated on 18 November.

2. As for strike ballots, I accept your view that some of the difficulties were over-emphasised although I do believe it important to distinguish between ballots imposed by law and the evident need ... for ballots to be much more widely adopted. I attach drafting changes I have adopted for the key paragraphs which also meet points made by the Chancellor and the Secretary of State for Energy.

3. As for the section on union elections, I do not think we should at this stage display a preference for a particular legislative option as the Chancellor has suggested. I see considerable advantage in keeping all our options open and stimulating a debate without becoming attached to any one course of action. But with this in mind I am deleting the last sentence of paragraph 48(c).

4. The Chancellor also suggested that the Green Paper should discuss the issue of union members who might be prevented from standing for election for some discriminatory reason. I accept ... this point and attach new paragraphs (99-102) which focus on requirements for candidates to be members of a particular political party. I have also accepted his suggestion that paragraph 10 would better follow paragraphs 11 and 12.

5. I do however propose to retain paragraph 54. The proposal is not an alternative to statutory regulation but rather a possible option which might be contemplated as part of a statutory scheme. I see its inclusion in the Green Paper as making it much more difficult for trade unions to see to condemn outright our broad approach. I have however put it in more tentative form.

CONFIDENTIAL

6. As you suggested, I am also shortening and modifying the concluding section.

7. I have now concluded that it would be better to publish the Green Paper in the week beginning 10 January, rather than before Christmas. In the main this is because I am issuing next week, in consultative form as I must, a revised version of the Code of Practice on the Closed Shop which needs to be amended both to reflect the changes in the law following the Employment Act 1980 and the experience of the operation of closed shop agreements since the Code was first approved in 1980. I want to ensure that this has full publicity as a further step in strengthening the protection of the individual against the closed shop. Secondly, I judge it desirable to publish the Green Paper before the Conservative Trade Unionists Conference on 15 January even though the House might not have reassembled.

8. I am copying this minute to recipients of my minute of 18 November and to the Chief Whip.

NT

N T

3 December 1982

IND POL: IND REL LEG PT 9.

AMENDMENTS TO THE TEXT

Para 54; fifth and sixth sentences

"..... whether such arrangements could not then be accepted as a valid alternative to the specified legislative requirements. Thus it might be provided in the legislation that if a majority of the total membership of a trade union had on a vote in a secret ballot expressed support for the union's rules for elections, and periodically confirmed that support, the specific statutory requirements would not apply."

Para 62; second sentence

"It was exercised only once: in the British Rail dispute in 1972 when a official work-to-rule and overtime ban had already seriously disrupted services. On an 85% turnout ...."

Para 62; fifth sentence onwards

"It is argued that this experience indicates that ballots imposed externally in the course of a dispute generally become a test of solidarity and of support for the trade union leadership and policies and that the result of mandatory ballots, so far from bringing disputes to an end, may be to prolong them. On the other hand, it could also be argued that the prospect of a mandatory ballot may influence trade union leaders to be more careful to ensure that they have the backing of their members before embarking on a strike. On either view, the experience of mandatory ballots contrasts noticeably with the experience of some recent non-mandatory ballots conducted by trade unions and employers which have resulted in the decisive repudiation of strike calls and the acceptance of management pay offers, sometimes in defiance of the advice of trade union leaders".

Para 64; add at end

"Those trade unions which already hold strike ballots on the whole manage to resolve these questions, but under a system of mandatory ballots detailed legislative provisions would be needed to prevent possible abuse and to reduce the likelihood of litigation."

Para 66

"Thirdly, how would the wording of the question be put and the timing of the

ballot be decided? It is often argued that if either or both were left entirely to those who wanted the strike to take place, the purpose of the legislation might be frustrated; for example, there might be a risk that the question would be slanted or linked with extraneous issues. The experience of recent strike ballots does not suggest that the membership is invariably swayed by the wording of the question or by its linkage with extraneous issues to vote in accordance with the wishes of the leadership. None the less, any legislation would have to clarify the ground rules for mandatory strike ballots including the rules for formulating the question to be put. Should those who trigger the ballot ....."

Para 67

"The argument for enabling an <u>employer</u> to "trigger" a ballot by the union (that is, to require one as a condition of immunity) is that strike ballots can be - and often are - an important tactical weapon. If the responsibility for conducting the ballot lay with the trade unions they could take steps to ensure that ballots were held in the circumstances and on the issues most likely to strengthen the hand of their leaders. There might be a danger that negotiations would become increasingly directed to setting the stage for the eventual ballots rather than finding agreement. On the other hand, where union leadership is weak, "triggered" ballots might be used by militants to force the hand of more responsible leaders and to put at risk the functioning of established collective bargaining procedures. If the initiative for the holding of ballots lay with employers these risks would be reduced."

New paras 99-102

<u>Contributing to the Political Fund and the Election of Trade Union Officers</u>

99 One of the basic principles which underlies the 1913 Act is that a trade union member should not suffer as far as his union membership is concerned by refraining from giving support to a political organisation if he does not wish to do so. However it may be thought that the rules about the election of trade union officers in some unions with political funds run counter to this principle. All but three unions with political funds are affiliated to a political party and the election of delgates to represent the union in that party's affairs is usually confined to contributors to the political fund. However the rules of the National Union of Railwaymen specifically require that its main office-holders are to act as the union's

delegates. Although voting in elections to those posts involves the whole membership, candidates are disqualified if they are not constituency members of the political party which the union supports. The prescribed duties of elected office-holders in some other unions may achieve the same effect without a specific restriction being stated in their rules. Because attendance as a union delegate at conferences of the organisations to which the union is affiliated is part of the job, a member wishing to stand for election to these posts knows that, if successful, he must join the political party which his union supports.

100 It has been argued that such restrictions are reasonable and in line with the objectives of the 1913 Act. Once the decision to establish a political fund has been taken, a trade union is entitled to expect that its senior officers should invariably be closely concerned with all its political activities including the management of the political fund, the sponsorship of parliamentary candidates and the formulation of political policies. On the other hand the rules of at least one union (The Association of Professional Executive Clerical and Computer Staff) in effect recognise that while its office-holders may often support the union's political objects, non-contributors to the political fund should not be excluded. It provides that its President and General Secretary are to act as union delegates but only if they are eligible to do so.

101 The Trade Union Act 1913 already provides that a union member who is exempt from the obligation to contribute to the union's political fund shall not be placed under any disability or disadvantage as compared with other members by reason of being exempt, except in relation to the control on management of the political fund. This exception could be taken to mean that the law enabled the contracted-out member to be excluded from any office which was concerned in any way with the management or control of the political fund. However a High Court ruling* has established this not be the case in offices below national level. The position is less clear-cut at national level as no relevant cases have reached the Courts. Moreover the 1913 Act is directed towards ensuring that a union member who is exempt from contributing to the political fund does not suffer discrimination by a

---

* Birch v NUR [1950] 2 All E.R. 253, 260

comparison with a member who does. If the rules of a union effectively require as a condition of office that a member must become a constituency member of the political party which the union supports, irrespective of whether he is also an affiliated member through his contribution to the political fund, then the existing protections may not apply. The restriction applies equally to all members of the union whether or not they contribute to the political fund and may be held not to involve discrimination.

102 Trade union rules which prevent or deter a member from holding office because he is opposed to his union's political objects are objectionable in principle. It may be thought that the operation of the 1913 Act should be clarified so that, apart from elections to posts concerned <u>exclusively</u> with managing the political fund and furthering the union's political activities, membership of the political party supported by the union is not made, either directly or indirectly, a condition for election or for holding union office.

Para 123 (para 122 being deleted)

"It is clear that the uncertain legal status of trade unions in their formative years has influenced their attitudes to the law. Its intervention in their affairs has since been seen by them as a threat to their ability to pursue what they conceive to be their own best interests and those of their members. But unions can wield great power over the lives of their members and the Government has a duty to see that union members have adequate protection against the abuse of this power. There must also be a proper balance between the interests of unions and the needs of the community; and organisations which claim and have special privileges must conduct their affairs in ways which attract public confidence and the confidence of their members. In the Government's view, while it is right in a democracy that trade unions should be free to conduct their own affairs and indeed to introduce reform at their own initiative, society, including individual trade unionists themselves, is entitled to see minimum standards established to ensure that union power is exercised more responsibly, more accountably and more in accordance with the views of their members.

CONFIDENTIAL

cc SV
Ind Pol

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

Prime Minister (2)

MS 1/12

The Rt Hon Norman Tebbit MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
LONDON SW1

1 December 1982

Dear Norman

DRAFT GREEN PAPER ON TRADE UNION DEMOCRACY

Thank you for sending me a copy of your letter of 18 November to the Prime Minister about the draft Green Paper on Trade Union Democracy.

I am broadly quite content with the substance and tone of the draft Green Paper. Indeed, I think it will be an invaluable tool in creating the conditions in which these thorny areas of trade union reform can be debated fully and intelligently. Of course, there will be much ritual opposition from the unions - I would expect the transport unions to be pretty vociferous - and from our political opponents. But I would expect transport industry management to welcome the opportunity which the Green Paper will offer for informed and structured discussion. I leave the timing of publication to your judgement; there are no transport inhibitions.

I am copying this letter to the recipients of yours.

Yours ever

David

DAVID HOWELL

CONFIDENTIAL

Prime Minister (2)

MLS 30/4

01-211-6402

CONFIDENTIAL

The Rt Hon Norman Tebbit MP
Secretary of State for Employment
Caxton House
Tothill Street
London SW1

30 November 1982

DRAFT GREEN PAPER ON TRADE UNION DEMOCRACY

Thank you for copying to me your minute of 18 November to the Prime Minister and the draft Green Paper.

I have also seen the Prime Minister's comments on Part III, contained in her letter of 26 November. In this context the reference in paragraph 62 to the British Rail dispute of 1972 should bring out that the ballot was called during a period of severe disruption due to a work to rule and overtime ban, not one before industrial action had started. Similarly, paragraph 66 on the tendentious wording of ballot questions should include a reference to the most recent NUM ballot which demonstrated that such wording need not frustrate the purpose of any legislation. You point to encouraging recent experience on ballots in paragraph 62, and I suggest you make a similar addition to the third sentence of paragraph 66 - eg "though some recent experience has shown that this does not necessarily affect the outcome".

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

NIGEL LAWSON

Ind Rel, IR Legislation, A-9

CONFIDENTIAL

Prime Minister (2)

MIS 30/11 cc JV

ROYAL COURTS OF JUSTICE

LONDON, WC2A 2LL

01-405 7641 Extn 3201

29 November 1982

The Rt Hon Norman Tebbit MP
Secretary of State for Employment
Caxton House
Tothill Street
LONDON S W 1

Dear Norman.

DRAFT GREEN PAPER ON TRADE UNION DEMOCRACY

I have no comments to make on the draft Green Paper you have circulated with your minute of 18 November. Legislation on secret ballots, either for the election of union officials or to authorise industrial action, will give rise to a number of difficult legal issues, not least in relation to enforcement and the role of the Courts. These issues are all excellently covered in the draft paper.

Yours ever.

Michael

CONFIDENTIAL

Ind. Pol: Ind. Relations Pt 9

Ind Pol
SE JV

CONFIDENTIAL

DEPARTMENT OF INDUSTRY
ASHDOWN HOUSE
123 VICTORIA STREET
LONDON SW1E 6RB
TELEPHONE DIRECT LINE 01-212 3301
SWITCHBOARD 01-212 7676

JU250
Secretary of State for Industry

29 November 1982

The Rt Hon Norman Tebbit MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
London SW1 9NF

Dear Norman,

DRAFT GREEN PAPER ON TRADE UNION DEMOCRACY

Thank you for sending me a copy of your minute to the Prime Minister of 18 November, and the draft Green Paper on Trade Union Democracy. I am generally content with the draft Green Paper, and I am happy to leave the timing of publication to you.

2 The discussion in the draft Green Paper of mandatory strike ballots certainly led me to think that it might well not be wise for us to legislate for such ballots. However, we will of course be able to assess the arguments carefully when the views of industry are known in response to the Green Paper.

3 I am copying this letter to the recipients of yours.

Yours ever

Patrick

Ind Pol: Ind. Relations Pt 9

HOUSE OF LORDS,
SW1A 0PW

With the
Lord Chancellor's Compliments

Prime Minister (2)

PMS 29/11

HOUSE OF LORDS,
SW1A 0PW

29 November 1982

My dear Norman.

Draft Green Paper on Trade Union Democracy

I am grateful for the opportunity to comment on the draft Green Paper on Trade Union Democracy which you circulated on 18th November.

Whilst many of the matters covered by the Green Paper are not of direct concern to my Department, I note that the paragraphs on the possible approaches to reform in relation to electoral procedures in trade unions envisage a substantial role for the courts. I would of course like to be kept fully informed of any development in your thinking on this front; not least because there is likely to be a significant increase in the pressure on my resources.

I am copying this letter to colleagues who attended the meeting of E Committee on 14th October and to Sir Robert Armstrong and Mr Sparrow.

Yrs:

The Right Honourable
Norman Tebbit MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
London SW1H 9NF

VP

DEPARTMENT OF HEALTH & SOCIAL SECURITY
Alexander Fleming House, Elephant & Castle, London SE1 6BY
Telephone 01-407 5522
From the Secretary of State for Social Services

Prime Minister (2)

MLS 29/11

The Rt Hon Norman Tebbit MP
Secretary of State
Department of Employment
Caxton House
Tothill Street
London SW1

"29 November 1982"

DRAFT GREEN PAPER ON TRADE UNION DEMOCRACY

You sent me a copy of your minute of 18 November to the Prime Minister and of the paper.

I would, I think, favour publishing in January giving us as smooth a passage as we can through the rest of the current pay round.

I have only one substantive comment to make on the draft - that it might make for a more informed consultation process if the privileges and immunities mentioned in paragraphs 1 and 3 were spelled out. Otherwise I have no comments.

Copies of this go to the Prime Minister and to other colleagues who received your minute and paper.

NORMAN FOWLER

Ind Pol, IR Legislation, DHS

SECRET

hLE

SW. 9

10 DOWNING STREET

From the Private Secretary

26 November, 1982

Dear Barnaby,

The Prime Minister has seen your Secretary of State's minute of 18 November to which was attached a draft Green Paper on Trade Union Democracy.

The Prime Minister is content with the theme and general presentation and with the treatment of the elections of trade union leaders and the political activities of trade unions. She feels, however, that the discussion of mandatory strike ballots should be more even-handed. At present, any future Secretary of State for Employment who wished to introduce strike ballots might well have the more negative passages of the Green Paper quoted against him, especially paragraphs 62 to 69. A more balanced treatment of the question would not prevent the Government from coming to the conclusion that strike ballots were too complex a subject to be dealt with in this particular Bill, but that they none the less remained on the agenda. Mrs. Thatcher feels that strike ballots are growing in popularity both with the public and with trade union members, and that it would be a mistake for the Government to give the impression that it was not wholeheartedly in favour of making them more widespread.

I attach, at Annex, some suggestions for detailed changes to the draft Green Paper.

I am sending copies of this letter and attachment to the Private Secretaries to other members of E Committee and to Sir Robert Armstrong.

Yours sincerely,

Michael Scholar

J. B. Shaw, Esq.,
Department of Employment

SECRET

ANNEX

The following detailed changes might be worthy of consideration:

Paragraph 62. The Taft-Hartley Act is dismissed somewhat abruptly and simplistically. The bottom three lines of page 20 and the top two lines of page 30 might be redrafted to read:

> "..... accepted only in 8. It is argued that this experience indicates that ballots imposed externally in the course of a dispute generally become a test of solidarity and of support for the trade union leadership and policies. On the other hand, it could also be argued that the prospect of a mandatory ballot may influence trade union leaders to be more careful to ensure that they have the backing of their members before embarking on a strike. The view that the result of mandatory ballots, so far from bringing disputes to an end, may be to prolong them, contrasts noticeably with the experience of some recent trade union and ....."

Paragraph 64. It seems rather over-emphatic to underline all the various questions of detail which have to be resolved in prescribing how a triggered ballot should operate. And we ought surely to add a sentence at the end to the effect that:

> "However, it should be noted that those trade unions which already hold strike ballots do on the whole manage to resolve these questions."

Paragraph 66. Again, we ought to refer to the experience of trade unions which already hold ballots. The first five lines of the paragraph might perhaps be redrafted on the following lines:

/"Thirdly,

"Thirdly, how would the wording of the question be put and the timing of the ballot be decided? It is often argued that if either or both were left entirely to those who wanted the strike to take place, the purpose of the legislation might be frustrated; for example, there might be a risk that the question would be slanted or linked with extraneous issues. But again, the experience of recent strike ballots does not suggest that the membership is invariably swayed by the wording of the question or by its linkage with extraneous issues to vote in accordance with the wishes of the leadership. None the less, any legislation would have to clarify the ground rules for mandatory strike ballots. Should those who trigger the ballot ....."

Paragraph 67. Again, the argument against mandatory strike ballots appears to be accepted unquestioningly and without sufficient regard for the experience of trade unions where strike ballots are already mandatory. Lines 3-7 might be redrafted thus:

"..... may be an important tactical weapon. It is said that the timing and the wording of the question can be crucial to the result. On this view, if ballots were automatic or mandatory, they might well introduce greater inflexibility into negotiations; they might tend to limit the room for manoeuvre of both employers and trade union leaders and harden attitudes. However, it has yet to be established that this is the general experience in those industries in which trade unions already do hold strike ballots. None the less, it is true that if the responsibility ....."

Paragraphs 122 and 123. These paragraphs appear to claim rather too much. It is doubtful whether these measures would "ensure that union power is exercised responsibly" or whether the

/public

public will be persuaded that "the broad areas covered are those where changes are most urgently needed", particularly if strike ballots are, in the event, to be excluded.

Should not this concluding section be shortened to concentrate on the intrinsic merits of fostering democratic practice in trade unions?

GR/P1 type
f.m.s.
MCS 26/11

10 DOWNING STREET

(1)

Prime Minister

We have not found a time to fit in a word with Ferdy Mount about comments on the draft Green Paper on Trade Union democracy. So Ferdy has put his comments in the form of a letter for me to send Mr Tebbit's office – please see draft attached.

Agree I should write thus?

MCS 25/11

SECRET

19 November 1982

Policy Unit

8

PRIME MINISTER

Can I have a word with Ferdy. I think we need to send in detailed comments

DRAFT GREEN PAPER ON TRADE UNION DEMOCRACY

Prime Minister (1)

If you agree with Ferdy's comments - and depending on colleagues' views - you will probably need a meeting of 'E' Committee. Agree?

The three measures discussed in this Green Paper add up to a presentable package. We have little quarrel with the Introduction or the discussions of union elections and of the Political Levy. The problem arises with Section III - Ballots before Strikes.

Strike Ballots

As we know, the Department of Employment is determined to do nothing on this question. The whole tone of this passage is unmistakably negative, especially in paragraphs 64-69. MLS 19/11

Any future Minister who wanted to bring in strike ballots would have this Green Paper quoted against him in extenso.

Besides, the arguments used here against strike ballots are daily refuted by experience. It is simply not true that "if ballots were automatic or mandatory, they might well introduce much greater inflexibility into negotiations. They might tend to limit the room for manoeuvre of both employers and trade union leaders and harden attitudes". (Paragraph 67)

After all, strike ballots are mandatory in a number of unions. Why aren't those unions listed in an Annex, as are the unions which elect their officials by secret ballots? Unions which have strike ballots do resolve, if not without argument, the difficulties of definition about the wording of the question and who would be entitled to vote, so heavily underlined in paragraphs 64 and 66. The reality is that no trade union which already holds strike ballots would dream of going back to a show of hands; and the rank-and-file in those unions which do not have such a right would be delighted if they did.

If we are serious about union democracy, this is the crux. And we should not load the argument against strike ballots in a way which is liable to queer the pitch for subsequent Conservative Governments.

SECRET

This section must be redrafted in a much more even-handed way. That would still not prevent us from saying that "strike ballots are too complex a subject for this particular Bill, but they nonetheless remain on the agenda".

The Green Paper Conclusions (Section V)

Paragraphs 122 and 123 repeat much of what is said in the Introduction but in a less helpful way.

I doubt very much whether "the broad areas covered are those where changes are most urgently needed", and whether the public will believe this.

Still less can we be confident that these measures would "ensure that union power is exercised responsibly" - particularly if strike ballots are, in the event, to be excluded.

Surely the correct way to present this is as another valuable specific step in our programme of trade union reform. But we should beware of claiming too much for it.

We suggest that this concluding section should be shortened to concentrate on the intrinsic merits of fostering democratic practice in trade unions.

FM

FERDINAND MOUNT

Ind. Pol

10 DOWNING STREET

JV

Having spoken to Willie about the copy of the Green Paper you asked me to get he suggested you see the attached as MCS will need your comments by 6.00 pm tonight

MWK
Duty Clerk
19/11/82

FR. I have a meeting from 2.30-4.30. do you want to have first go at this? 19/11

c/c JV

PRIME MINISTER

DRAFT GREEN PAPER ON TRADE UNION DEMOCRACY

I was invited at E Committee on 14 October (E(82)21st Meeting) to circulate a draft Green Paper on future industrial relations legislation, and to put forward proposals regarding the time of its publication.

2 I now attach a draft of the Green Paper and would welcome comments from colleagues.

3 The Green Paper deals with the three main topics agreed upon at our meeting on 14 October. These are: elections of trade union leaders, mandatory strike ballots, and the political activities of trade unions, in particular the working of the Trade Union Act 1913.

4 As I made clear at E, the Green Paper is not intended to put forward firm legislative proposals. Its purpose is to set out the material necessary to ensure an informed discussion of all the difficult issues raised before decisions are taken on legislative steps. The Green Paper does however contain a clear message that something needs to be done to make trade unions more democratic and their leaders more responsive to the views of the membership.

5 If we are to publish the Green Paper before Christmas, the best time would be during the second week of December, that is on 8 or 9 December. The alternative would be to publish when Parliament reassembles in January. I am leaving the final decision until I can see whether early December will be the most propitious time for publication. This, however, means that it is necessary

to have comments from colleagues not later than Monday 29 November to give time to finalise the text and for printing. Whether or not the Green Paper is published before Christmas, there would be sufficient time for consultations to enable the Government to announce its intentions in early summer so that, if necessary, legislation can be introduced in the 1983-84 session of Parliament.

6 May I remind colleagues of the need to treat the draft Green Paper confidentially in the meantime, and to ensure that it is not disseminated widely in Departments.

7 I am copying this to colleagues who attended the meeting of E Committee on 14 October and to Sir Robert Armstrong and Mr Sparrow.

N

N T

18 November 1982

Intl Pol:

Legislation

GREEN PAPER ON TRADE UNION DEMOCRACY

I INTRODUCTION

1. Much public concern has been voiced about the need for trade unions to become more democratic and responsive to the wishes of their members. Unions have important legal immunities and privileges not afforded to other organisations, and the public as well as their own members need to be assured that the affairs of trade unions are properly conducted. As long ago as 1968 the report of the Donovan Commission* criticised the conduct of the internal affairs of many unions. The report drew particular attention to the level of membership participation and declared that the low polls typical of union elections were an unsatisfactory feature of union life because they ran the risk of placing power in the hands of unrepresentative minorities and of weakening the authority of elected officers. Yet since then the scene has hardly changed. In the case of many unions the role and influence of the rank and file seems to be minimal and all too often it is evident that the policies which are being pursued do not reflect the views and interests of the members.

2. It is because trade unions have refused the opportunity to reform themselves voluntarily that the possibility of legislation has now to be considered. The Employment Act 1980 enables unions to claim back the costs of secret ballots on various matters from public funds, but no unions affiliated to the Trades Union Congress have availed themselves of these funds and the opportunity to extend members' rights at small cost to the unions themselves has been thrown away. It was in 1975 that the TUC made clear that they would refuse an offer from the then Secretary of State for Employment of public money for ballots. The fact that since 1975 they have each year sought funds from Government for the training of workplace representatives indicates that their refusal is due not to any issue of principle but to a lack of will to bring about the necessary reforms.

* "Royal Commission on Trade Unions and Employers' Associations (1965-1968)"; Chairman: Lord Donovan (June 1968, Cmnd 3623, HMSO).

3. Trade union power, which springs from legal immunities and privileges, can be used not just against employers but against individual members of unions. As the law has granted these privileges, it is necessary to consider whether the rights of individual members of trade unions are adequately protected and whether those who exercise power in the name of the membership are properly accountable to the members. The Government has a special duty to safeguard the interests of citizens who have been coerced into union membership as a direct result of the spread of "closed shops". Moreover, the unique legal status which trade unions enjoy and the power their leaders possess to initiate industrial action which can damage the economic and commercial interests of others make it essential for their internal affairs to be conducted in a manner which commands public confidence. That confidence is bound to be lacking if individual members are denied a fair opportunity to register their views on all matters which directly concern them.

4. This paper discusses the procedures for elections in trade unions; the procedures for ascertaining the views of union members about industrial action; and the political activities of trade unions. Consultation is necessary to ensure that the case for statutory reform is justified and that any changes suggested will work in practice.

II SECRET BALLOTS FOR TRADE UNION ELECTIONS

5. At present few trade unionists can be confident that their unions' electoral arrangements are such that:-

- voting invariably takes place in conditions of secrecy;
- all members eligible to vote have the opportunity to do so under a system which provides the best opportunity of a reasonable turn-out;
- all votes are counted fairly; and
- those who take decisions at the highest levels are properly representative of, and accountable to, the membership as a whole.

This chapter is directed to the need for reform by the trade unions and to a consideration of how they might be induced to adapt their arrangements to satisfy these essential requirements.

6. The right to vote in secret for the candidate of one's choice is now widely accepted as one of the fundamental rights in any democratic society or organisation; and those who claim to make decisions binding on others should establish electoral arrangements which can be seen to be fair and satisfactory. If electoral arrangements are evidently defective or open to serious challenge, the legitimacy of the organisation concerned is bound to be called into question and the authority of its leaders eroded.

7. There is undoubtedly widespread concern about the electoral arrangements of trade unions. This concern, felt by many trade unionists as well as the public, stems in part from the fact that decisions which it is claimed are reached on behalf of the members and in their interests can in practice be contrary to the wishes of those concerned. Time and again trade union leaders

are seen to be out of touch with their rank and file and often appear to be neither representative of the majority of their members nor directly responsible to them.

8. Lack of confidence about whether procedures for elections in many unions meet the needs of the 1980s is based on several grounds, which are described below.

9. Low turn-out. In many trade union elections the proportion of the eligible membership who actually vote is extremely low. Some union leaders are elected with declared support from less than 4% of the membership. This is no doubt due in part to apathy on the part of many members and an unwillingness or lack of interest in becoming involved in union business. But where the turn-out is very low the credibility of those elected is diminished; and there is even a danger that those already in power may tolerate a low turn-out as a means of assuring their continuation in office. Election procedures which have the effect of discouraging members from participating can enable control over union funds and policy to be maintained in the same hands without serious challenge. It has been noticeable that when a union has tried to improve membership participation by introducing more democratic voting procedures the numbers voting have immediately and significantly increased. For example, the electoral system of the Amalgamated Union of Engineering Workers (Engineering Section) used to involve voting at branch offices. Turnout was generally in the range 6% to 11%. Since the introduction of postal balloting in 1972, turnout has increased to between 22% and 50%.

10. Malpractice. Public confidence is inevitably eroded when allegations are made of forgery, ballot rigging and other corrupt practices. Such complaints have from time to time come from union members from every part of the political spectrum. Sometimes they have given rise to well-publicised actions in the Courts. The Courts can and do provide remedies on proof of particular malpractices. But unless trade union election procedures are as far as possible proof against irregularities, there will remain the suspicion that a

few proven cases of malpractice are the visible signs of a more disquieting state of affairs.

11. Trade union rules. Set out in the rule book of a trade union is the method of appointing its governing body and sometimes also other bodies and officials. In many instances, rule books remain as "confused, self-contradictory and obscure" as when criticised by the Donovan Commission in 1968 and "generally fall far short of reaching a satisfactory standard". Union rules differ widely on election procedures, and some are quite unspecific on the subject. This opens up the possibility, for example, of a union's governing body having power under the rules to draw up its own preferred method of election procedure and then selecting one best suited to securing its own re-election.

12. The only way of removing unsatisfactory electoral practices may be the adoption of new rules; but if the governing body of the union is not genuinely representative of the membership because of an undemocratic electoral system, it may well be able to resist such reform. The more undemocratic the arrangements, the more difficult it must be for the union members to secure the rule revisions needed to introduce more democratic processes. In such circumstances outside intervention may be the only sure method of achieving the establishment of democratic arrangements.

THE CASE FOR LEGISLATION

13. Trade union members are entitled to expect that their unions are democratic institutions responsive to their wishes. And given the immunities and privileges enjoyed by trade unions and the power they can exert in disrupting or stopping the manufacture of goods and the provision of services, there is an evident wider public interest in seeking to ensure that they are truly representative. It is also evident, however, that with a few notable exceptions trade unions have made few or painfully slow attempts to reform their internal affairs and electoral practices in ways which can attract

general public confidence in them. The Government therefore believes that the time has now come for legislation to assist this process forward. Voluntary reform is still the desired aim and most desirable means. Any legislative steps which are taken must provide a full opportunity for trade unions to take the initiative, with the support and involvement of their members, in introducing more democratic arrangements. But without legislation it is clear that the impetus to reform will continue to be lacking.

14. Legislative intervention to secure secrecy in trade union ballots is already recognised and accepted by trade unions. The principle that secret ballots are the most appropriate means of ascertaining the views of members of trade unions was first established in legislation in 1913. Under the Trade Union Act of that year, a trade union seeking to pass a resolution about the adoption of political objects has to secure the approval of a majority of the union members voting in a ballot. Under Section 4 of the Act the rules have to ensure that

> "every member has an equal right, and, if reasonably possible, a fair opportunity of voting, and that the secrecy of the ballot is properly secured".

The provisions of this Act are still in force.

15. Similarly, the Trade Union (Amalgamations, etc) Act 1964, which has superseded the Trade Union (Amalgamations) Act 1917, requires inter alia that when a trade union is proposing to amalgamate or transfer its engagements -

(a) every member of the union must be entitled to vote on the resolution;

(b) every member of the union must be allowed to vote without interference or constraint and must, so far as is reasonably possible, be given a fair opportunity of voting;

(c) the method of voting must involve the marking of a voting paper by the person voting.

Some 90 ballots have been held under this Act since 1976.

16. The Employment Protection Act 1975 also stated the principle that secrecy is needed if the views of union members or other employees are to be sought formally by means of a ballot. In the procedures (now repealed) concerned with the statutory recognition of unions, the Advisory Conciliation and Arbitration Service was charged, when making arrangements for a ballot to -

> "have regard to the need for securing that every worker invited to take part in the ballot has an equal right and a fair opportunity of voting, and that the vote cast by any individual in the ballot will be kept secret".

17. There is no evidence that the existing and long established legislative requirements concerning secret ballots have caused unnecessary difficulties for trade unions. Neither have convincing arguments been advanced in the past that the use of the ballot is objectionable and that the legislative requirements should be repealed. Indeed there has been a general acceptance and willingness to adopt the procedures required.

Existing union structures and electoral arrangements

18. The Government is conscious that any legislation must take into account the wide variety and complexity of existing electoral arrangements. These reflect in part the diversity in the history, nature and size of trade unions. At the end of 1981, some 520 organisations were known to fall within the statutory definition of a trade union*. They ranged in size from under 50 members to approaching two million. Over four fifths of all union members

* Trade Union and Labour Relations Act 1974, Section 28.

were in the largest 25. Some unions have had an independent existence for less than six months. Others can trace their history back for well over a century. The union may have been formed to cover a single factory or office or to cover work in specific occupations in a particular district or a variety of occupations in a company or in a particular profession or industry. The majority of the large unions themselves cover a great diversity of occupational or industrial groups whose separate interests are reflected in their structures.

19. The question of the basis for the exercise of representative authority arises at every level of a trade union's structure. On the shop floor, the shop steward - of whom it is estimated that there are some 300,000 overall - has the role of directly representing the members' interests to the employer. He may represent no more than a handful of fellow employees or several hundred. He may have performed that role for a great many years without the employees he represents ever questioning whether he should continue to do so and consequently without the question ever being put to them in any formal way. Again, the appointment and re-appointment of a shop steward may be a matter of general agreement without anything approaching the formality of an election. It is not unknown for one member of a working group who is reluctant to accept the job of shop steward to have to be persuaded by his fellow workers to do so because of the absence of a volunteer. Where there are elections these are in most cases informal and by show of hands at the workplace.

20. The next stage in a union's structure may be the "convenor" who represents all the shop stewards in the same union at the same place of employment. Generally, he will be selected by the shop stewards from one of their number and may need to secure re-appointment at regular intervals. But again this process need not be by a formal election. The rule books of trade unions are generally silent on the way in which workplace representatives are to be appointed, and the matter is therefore determined by the working groups concerned.

21. Above the level of the convenor, union structures vary greatly. Most unions have branches which may cover all the members employed by a large employer at a particular location or members of a particular occupational group, or all members of the union in a town or other geographical area. The executive committee and officials of a branch invariably need to be appointed and re-appointed at regular intervals, and there are usually rules to be followed which may sometimes require a particular method of voting. Typically appointments are made at a specified meeting of the branch at which only those attending vote. Formal balloting is not unknown but voting on a show of hands would appear to be more usual.

22. Above branch level, there are further complexities and diversities. Larger unions usually have trade groups, industry committees or other arrangements representative of sectional interests. In the main the members are lay representatives or shop stewards, but officers of the union usually attend. There are not always formalised rules about the composition of these bodies or the way in which the representatives are to be selected. These matters are often left to be settled locally. Cutting across such arrangements, some unions also have a variety of tiers between branch level and their governing bodies which represent union members on a wider geographical basis, for example, area and divisional committees. In some cases there are detailed rules on how members are to be selected, including the way elections are to be conducted. But in many others the methods of representation may be left to be determined by branches.

23. At these intermediate levels in union structures, there are differences of practice between those unions where committee office holders are subject to election and those where they occupy the office as employees of the union. In the latter case, they may nevertheless be either elected and subject to re-election or automatically hold office as part of their job. The different arrangements which are operated in two large unions illustrate the point. In the Transport and General Workers' Union all officers except the General Secretary (for example, regional and trade group secretaries) are appointed as employees of the union. In the AUEW (Engineering Section) regional,

divisional and district secretaries are elected by postal ballot. Where there have been amalgamations different arrangements can exist in the same trade union.

24. Common to all trade unions however is a governing body and some form of national lay conference. The rules are usually clear as to the number of delegates and their constituencies for national conferences, but the method of their election is generally left to be determined within those constituencies. Constitutionally the ultimate authority in policy-making may lie with the national conference, but in practice power usually lies with the governing body whose existence is continuous throughout the year and whose responsibility it is to take day-to-day decisions.

25. In recognition of this it is at the level of the governing body that arrangements for elections are most formalised. The Trade Union Act 1871 caused trade unions to include in their rules provisions regarding the "appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers"; practical questions of administration also made necessary the establishment of a principal executive committee having the authority to take the necessary decisions on behalf of the union. It is this body which is normally regarded as providing the leadership of the union, and it is this body, whether called the national executive committee or bearing some other name, which is normally elected to discharge such functions as are established for it under the rules of the union. The periods for which members of such bodies are elected is known to vary from one year to five years.

26. In most trade unions national officers, such as the President, General Secretary or Treasurer, are entitled to attend the proceedings of the governing body and may be full voting members. At least in the larger unions national officers with voting rights are subject to election and re-election at regular intervals. On the other hand there are national officers without voting rights who have to secure election and who may or may not be subject to re-election.

27. Unelected officers, who are appointed ex-officio non-voting members of the governing body, may nevertheless achieve considerable authority and influence notwithstanding that they have no vote in the proceedings of the governing body. They may indeed appear to personify the union in communicating its policy and decisions. But they carry no formal authority except that granted by the governing body or the union's national lay conference. The formal position is that their tenure of employment is no different from that of any other employee, and in fact a number of unions advertise jobs for national officers, interview candidates and offer them a contract of employment primarily on the basis of their professional expertise.

28. It needs to be noted that the rules of a number of unions do not provide for direct elections by the members for the candidates of their choice whether for the governing body or some other intermediate tier of the union's structure. The actual systems of indirect elections vary considerably, but the general principle is that members in a particular organisational unit of the union (a branch, division, region, section and so on) elect a representative who subsequently either participates himself or helps to select those in the next tier or level, who in turn finally vote in the actual election for the union leadership. In some unions there may be as many as half a dozen levels of separate elections of representatives starting at the level of the branch and ending with elections to the governing body.

29. The representative at the lowest level may be elected by one of a variety of means and then under the rules be mandated to carry forward to the next stage the exact proportion of votes cast for each candidate at the level of the branch. Alternatively he may be mandated to cast a block vote on behalf of the whole of the branch membership for a particular candidate or he may be given discretion as to how to vote at the next stage. In union electoral systems which do not require the elected representative to be mandated, a secret ballot is often used in the election for the governing body, but this is not invariably the case. Even when not formally mandated under the rules, the representative may nevertheless be bound to vote in accordance with the decisions of his constituency.

30. Systems of voting vary both between unions and within unions. The three basic methods by which votes may be cast are - voting by show of hands; voting by ballot box at the place of work or at branch meetings; and voting by postal ballot. Examples of unions which make use of these different methods of voting in the arrangements for electing their governing bodies are given in the Annex to this chapter.

QUESTIONS RELEVANT TO LEGISLATION

31. Before possible approaches to legislation can usefully be examined, it is necessary to consider a number of central questions. These include the methods of voting; the question of indirect elections; the treatment of full-time officers; the interval between elections; the block vote and other electoral arrangements; and the scope of any legislation.

Methods of voting

32. The wide variety and differing circumstances of trade union electoral arrangements, described in paragraphs 18-30, suggest that it would be unrealistic to attempt to achieve the desired standards by requiring through legislation a single method for all types and levels of union election. To varying degrees each of the systems of voting referred to in paragraph 30 can provide grounds for concern.

33. The justification put forward for voting by show of hands involves many of the same arguments as were used by the opponents of reform of the Parliamentary electoral system in the early 1800s: that when deciding upon their representatives, people should be prepared to make their views known to other potential electors; that the privilege of voting for a representative should be accorded only to those individuals prepared to make time to attend the meeting at which the vote is taken; and that the risks of fraudulent elections are greatly reduced. Such arguments might have carried some force in the days when unions were small, secret organisations, fearful of the Combination Laws and of penetration by hostile agents. They cannot be

reasonable today. Meetings at which votes are to be cast can be arranged at times and locations which are inconvenient for many members. The actual vote may be taken at the end of a long meeting. In these ways members can be discouraged from voting. Furthermore there are clear risks of manipulation.

34. Voting by ballot box overcomes the more obvious problems associated with voting by show of hands and reduces the risks of manipulation. But much will depend upon the actual arrangements adopted and the degree of secrecy ensured. An elector may be unduly influenced when being given his ballot paper. He may be afforded insufficient privacy when recording his vote. He may even be called upon to show it before placing it in the ballot box. Furthermore the ballot may be conducted during or after a meeting arranged at a time or place inconvenient to the members thereby ensuring a low poll.

35. The return of ballot papers through the post can remove many of the problems previously described; but some remain. Ballot papers issued by union workplace representatives or union officials may be distributed wrongly and returned either by non-members or on behalf of members known not to be intending to vote. And when the ballot papers are returned to an office of the union to be counted, suspicions may arise about the accuracy of the count.

36. The assistance of an independent scrutineer to despatch the ballot papers to the homes of individual members and to count them can further ensure secrecy and the avoidance of any interference. It is recognised, however, that at the outset many trade unions would find that there were practical difficulties to be overcome. The system would require an accurate and up-to-date record of the private addresses of the membership, posing particular difficulties for unions with a high membership turnover. Some occupations involve extended absences from home. Union members may prefer not to give their home addresses to their union. Postal ballots and the maintenance of records could add considerably to union expenditure.

37. Despite these difficulties, a number of trade unions have successfully introduced postal balloting arrangements. And it may be thought that the

desirable aim should be to achieve full secret ballots in elections to the union's governing body. Although further considerations may emerge during these consultations, it is hard not to believe that what is lacking in unions who have not done so is the will to adopt more democratic and fairer voting procedures. Once an accurate record of the membership and their home addresses is available and arrangements made for its maintenance, it should eventually be possible for fully postal ballots to be held at most levels within a union. However, it may be thought that to require such an extension from the start would place an undue burden on some unions.

38. Short of full postal balloting arrangements, it would be a very considerable step forward for the vast majority of trade unions if ballot papers were distributed, for example at the workplace, and then returned by members through the post to an independent scrutineer.

Indirect Elections

39. The system of indirect elections, described above in paragraphs 28-29, is deep-rooted in some trade unions. It is argued in its favour that it reflects the basis on which different organisations came together to form the present day unions and that, given the diversity of occupational and other groups within many unions, it may be a fairer method than direct elections of ensuring a representative outcome. On the other hand it may be thought that the system is often an important cause of unrepresentative leadership and influence in the union. If members are unable to vote directly for candidates, the actual degree of support of the membership as a whole for the successful candidates cannot be determined. Direct election by the members, particularly to the governing body, is likely to secure a more democratic outcome.

40. The achievement of these desirable objectives must however be measured against the degree of possibly unnecessary change they might require in the present procedures and structures of trade unions. One view may be that

indirect elections should be permitted, provided that all members have an opportunity of voting for those who are to choose the members of the governing body. On the other hand, it may be thought that, provided there are direct elections by the membership for the governing bodies, unions should be left to follow their existing practices in regard to other bodies.

General Secretaries and other full-time officers

41. It has already been noted that national trade union officers who are employees of the union may have secured their posts either by appointment or by election (when they may sometimes be subject to re-election). They may by the nature of their appointment be a member of the union's governing body or be co-opted to it. They may or may not have a vote in its proceedings. It could be contemplated that all such officers, however appointed in the first place (whether by election or engagement), should be required after a number of years to submit themselves to a confirmatory ballot by the union membership as a whole. However, such a requirement would be inconsistent with the nature of the job where a union (as is the case with a number of smaller "white collar" unions) has found that its needs are better served by selecting a General Secretary for appointment on the basis of his expertise and experience rather than by election from within the union on the basis of popular support.

42. The problem is different where the senior full-time officer in a trade union (normally the General Secretary but sometimes the President) is elected but still does not have a vote in the governing body. Some of them achieve considerable authority and indeed appear to personify the union. Furthermore it can be argued that - unlike a General Secretary who is recruited on the basis of his expertise - an elected General Secretary has a different status within the union. Because his office is elective he has a degree of authority and influence with the members which may not normally be enjoyed by a General Secretary who has been recruited. In some unions it is the President rather than the General Secretary who achieves this pre-eminent position. On these grounds it may be thought that a General Secretary or President whose post is elective in the first instance should be required to offer himself for re-

election every five years rather than - as with a number of unions at present - enjoy his office "for life" or at least until retirement age.

43. Another approach might be to require that General Secretaries should be subject to election and re-election only in those cases where they have a vote or a casting vote on the governing body. The same principle might be applied to other persons co-opted to the governing body, for example Presidents or Treasurers. If they have a vote on that body, election by the membership might be required.

Other electoral arrangements

44. It is apparent that other electoral arrangements (eg the right to vote, constituencies, qualifications of candidates, election addresses and voting systems (for example the single transferable vote system), differ widely between trade unions, and it might be impracticable and undesirable to lay down detailed requirements on such matters. It may be that they are best left to voluntary determination by the membership, and adoption in the union's rules. Any member who alleges that his union is failing to comply with the union's rules on these (or any other matters) already has the right to take his complaint to the Courts.

45. It is questionable however whether the system of the block vote is a method of election which should remain available. Many unions use "block voting" whereby the majority vote of a branch or other body - perhaps on a very low turnout of voters - commits the full potential voting strength of that body to a candidate in the higher level (eg national) election. As stated in paragraph 39 this aspect of indirect elections can lead to an unrepresentative outcome, particularly in circumstances where there is either an exceptionally small turnout, particularly in large branches, or the election is closely contested. It might be regarded as particularly unsatisfactory where a representative is subsequently allowed discretion on how to cast the block vote. If a postal system of voting can be used and individual votes counted a block voting system cannot be necessary and may be

thought inappropriate. Whether it should have a place in other elections is less certain.

Scope

46. Should the legislation aim to cover all elections from shop stewards to governing bodies? Or, given the objective of providing an impetus for voluntary reform, should legislation be targeted, at least initially, at the most important levels of trade unions' structures? It must be doubted whether, in the case of many shop stewards for instance, a requirement for balloting arrangements would at present be practicable or would be appropriate where 'elections' consist of persuading potential candidates to accept nomination. In particular, effective means of enforcement would present major problems. It may be thought that the process of reform should start "at the top" with the governing body, and that legislation which applied to all levels of union organisation might fail to achieve real progress at any level.

POSSIBLE APPROACHES TO LEGISLATION

47. The preceding paragraphs have considered the main questions regarding the content of any legislation. The next stage is to examine possible approaches to legislation and the inter-related questions of enforcement and sanctions. It is not the Government's purpose at this stage to propose any particular legislative approach, but rather to stimulate an informed discussion in the light of which detailed proposals for legislation might then be put forward.

48. There would seem to be four possible broad approaches to be considered:-

(a) The legislation, by prescribing standard provisions, might directly require changes in trade unions' rules and electoral arrangements.

This approach would be similar to that of the Companies Acts which regulate the affairs of limited companies in some detail. A conceptual difficulty of this approach is that, whereas companies

are themselves creations of the law, trade unions are not. Their history and development are different and their structures and practices are therefore very diverse. Detailed, uniform requirements imposed on all trade unions would inevitably run counter to the structure and traditions of some unions and might not therefore meet the considered views of the members themselves on the conduct of elections in their unions. It would seem inevitable that if this approach were adopted some public authority would need to be charged with securing compliance and the Courts would be left to impose some specific sanction if this were not forthcoming. It would not seem that the sanctions provided under the Companies Acts would themselves be appropriate.

(b) <u>The legislation might require trade unions to secure approval of their election rules and arrangements</u>.

This approach would stop short of a direct requirement on all trade unions to have specific and detailed election rules and arrangements. Trade unions would be left to decide whether to seek approval from some public authority for their rules, the authority considering each application against tests - general or specific - laid down in legislation. Unions which did not seek approval for their rules and arrangements, or having done so could not secure approval, would be disadvantaged in some way. It might be thought that this approach would provide a better stimulus for voluntary reform. It would be similar to the system of registration introduced under the Industrial Relations Act 1971. An important consideration is whether trade union attitudes to such a system have changed since 1974. Securing the observance of rules once approved would be left to individual members through complaint to the Courts. But the authority might well need a power to withdraw approval for rules which were found on complaint to be deliberately or persistently ignored.

(c) The legislation might lay down the principles to be followed in the conduct of all trade union elections in the form of a statutory right for union members

The purpose of such a statutory right would be to provide all union members entitled to vote with a remedy if, in an election, they did not have, for example, a full and fair opportunity of voting in secret or the assurance that all the votes were counted fairly. This approach has the attraction of simplicity and the advantage that action to secure a prospective remedy would clearly be with trade union members themselves. On the other hand, such an approach might be considered too imprecise and too uncertain in application. Even if the statutory right were qualified by a test of reasonable practicability, a regulatory authority or the Courts would have the difficulty of deciding whether, for example, a failure to receive a ballot paper by an individual member infringed his statutory right. There would be a possibility of mischievous applications to the Courts motivated by dissatisfaction at the outcome of an election. The Courts would also have to deal with the much more important questions - such as, whether the overall arrangements for elections met the statutory tests. It might well be thought that a declaration from a Court that the statutory right had been unreasonably denied would alone be of little practical effect, and the legislation would therefore need to provide a more appropriate and enforceable remedy or sanctions and prescribe the consequences for the outcome of the election from which the complaint arose. To the extent that these more detailed provisions might be judged essential, the attractiveness of the concept of an approach founded on simple principles and a statutory right for their application enforceable at law by every individual member diminishes.

(d) The legislation might more directly establish the way in which elections should be held and provide a remedy for union members themselves if they were not.

It might be concluded that it would not be reasonable or practicable to require a model form of election arrangements at every level in a trade union's structure; and that this approach might best be considered in relation to the governing bodies of unions. It is at this level that the most important day-to-day decisions are usually taken, for example the authorisation of industrial action, the response to pay negotiations and the disposal of union resources. There might also be advantages in leaving the initiative to secure compliance with union members themselves, rather than with some regulatory body as in (a) above, so as to foster internal pressures for voluntary reform. It is envisaged that complaints in these circumstances would be made to the Courts. A subsidiary question would be whether action to pursue the remedy provided in legislation should require the support of a minimum proportion of the total membership.

ENFORCEMENT OF STATUTORY REQUIREMENTS

49. In the possible approaches to legislation outlined above the statutory requirements could ultimately be enforceable in the Courts. Any such application under the provisions would be made to the High Court (or Court of Session in Scotland). The Court could then order the breach of the statutory requirements to be remedied by, for example, a change in the union's rules or the holding of elections, according to the circumstances. If the order of the Court were not complied with, it would be for the person bringing the application to provide evidence to the Court of non-compliance. The question would then arise: what method of enforcement should be available to the Court or what sanctions should it be able to impose if trade unions were to persist in refusing to comply with an order? The choice lies between relying on the remedies already available to the Courts and introducing new procedures and sanctions.

(a) Existing remedies

50. The sanctions currently available to the Court for a significant breach of its order are those for contempt. This is the sanction which would already be available if a trade union persistently refused to comply with a Court order, following a proven breach of union rules. The Court has discretion to impose a range of penalties for civil contempt on a refusal to comply with its order. The Court may impose a fine if the contempt is sufficiently serious. Otherwise the Court can issue injunctions and further orders aimed at remedying breaches of the original order.

51. It is possible that some instances of non-compliance with a Court order - for example, to hold elections - would be unintentional or minor, while others would be deliberate. In making such an order, the Court would have discretion to allow a reasonable lapse of time before the elections would need to take place. Even after a breach of an order, the Court would need discretion to determine how significant this was and if it was inadvertent or minor, whether it could be ignored. On the other hand, if the trade union continued to refuse to comply with the Court order, there would be continuing contempt which might result in higher fines, enforceable if necessary, through sequestration of assets.

(b) Possible alternative sanctions

52. If it was thought that the existing remedies available to the Court were not sufficient or appropriate, the following alternative possibilities might be considered:-

(a) Removing from named union officials their "executive status". This could easily be circumvented in practice, since a trade union seeking to avoid compliance with such an order could arrange for the relevant executive members' responsibilities to be passed to others. On the other hand, if the removal of executive status were to be applied to a majority of the members of the governing body,

it might be thought necessary to make some provision for the taking over by an outside authority of the running of the business of the trade union in the interests of its members. This would create complications and might still not prevent evasion by the executive members' responsibilities being passed on to others.

(b) Freezing the assets of the trade union. The Court order would be directed at the union's bankers and any others holding the union's assets and would order them not to part with the assets to the order of the union. Although a severe sanction, the likelihood is that unions would find access to alternative means of funding. If, however, the Court order was eventually complied with, it could have caused considerable disruption to the union's affairs and could also have had the effect of damaging the interests of innocent members, such as retired members in receipt of pensions from union funds.

(c) Deposit of trade union funds in Court. The Court could order the trade union to deposit a sum of money in Court, as a temporary fine, pending compliance with its original order. This would be a novel procedure, since deposit of sums in Court is usually done by a party as an earnest of its belief in the merits of the case. This would amount to a partial freeze of the union's assets and might be ineffective, not least if the union was able to secure loans to replace the money concerned.

(d) Loss of trade union privileges. The Court could order that the trade union should be deprived - for a specified period or indefinitely - of some or all of its rights under existing legislation. These might include:

- removal from the Certification Officer's list and consequential loss of the right to tax relief for expenditure on provident benefits;

- loss of immunities.

53. The Government believes that it is essential to devise an effective, flexible and practicable means of enforcing the requirements of any legislation if its success is to be assured.

AN ALTERNATIVE APPROACH

54. The Government's prime aim in proposing legislation is to encourage trade unions of their own accord to reform their electoral arrangements so as to become, and be seen to become, more democratic and more truly representative of their members' interests. Much of this section has necessarily been concerned however with the complexity of existing arrangements and trade union structures. Whilst there could be no reasoned objections to the simple democratic principles inherent in the forms of legislation considered, it may be thought that union members should be allowed to decide democratically whether they prefer other arrangements for elections to their governing body. For example, established systems of indirect voting might be held better to reflect members' needs and the diversity of interests of the membership. And if other arrangements could be demonstrated to have the support of a majority of members democratically expressed, the question arises whether such arrangements should not then be accepted as a valid alternative to the legislative requirements. Thus it might be provided in the legislation that, where a vote had been held by secret ballot within a fixed period, say 7 years, and a majority of the total membership entitled to vote had expressed their support for the union's existing rules for elections, the statutory requirements would not apply. Such a provision would encourage unions to ascertain the wishes of their members at regular intervals. No one could then claim that the statutory requirements were being imposed on unions against their members' wishes. It would be a matter for consideration what percentage of the total membership should be required to vote in favour of the union's existing arrangements in order to secure exemption from the statutory requirements.

CONCLUSION

55. This chapter has identified the need for the reform of trade union election procedures to ensure that the leadership is more representative of the membership. It is clear that few trade unions have taken the initiative in bringing about democratic reform, and the Government has reluctantly come to the conclusion that some legislative intervention is necessary. The examination of possible approaches to legislation and the relevant considerations have revealed many complex problems and difficulties. Comments are invited on the questions outlined above and on any other aspects which may be thought to be relevant.

ANNEX: METHODS OF VOTING

Members vote by show of hands

Union of Shop Distributive and Allied Workers
National Union of General and Municipal Workers
Amalgamated Union of Engineering Workers - Technical Administrative and Supervisory Section
Union of Construction Allied Trades and Technicians
Post Office Engineering Union

Secret Ballot at Branch Meeting

Amalgamated Society of Boilermakers Shipwrights Blacksmiths and Structural Workers
Iron and Steel Trades Confederation
National Union of Public Employees
Banking, Insurance and Finance Union

Secret Postal Ballots

(a) Voting slips sent to member's home address

National Society of Metal Mechanics (full-time officers only)
National Union of Furniture, Timber and Allied Trades

(b) Voting slips returned to independent scrutineers

Electrical Electronic Telecommunication and Plumbing Union
National Union of Teachers

(c) Arrangements for conduct of postal ballot and count of votes at discretion of internal union returning officer

Amalgamated Union of Engineering Workers (Engineering and Construction sections)
National Union of Journalists

(d) Voting slips returned to and counted at district level

National and Local Government Officers Association

III BALLOTS BEFORE STRIKES

56. In principle the case for holding a secret ballot before a strike is called is as strong as the case for secret ballots for trade union elections. Indeed the argument is fundamentally the same in both cases: if trade unions are to serve and fairly represent the interests of their members they should ensure that any important decisions are supported by a majority of the members voting in a secret ballot. A strike can cost an employee dearly. The result may be not only loss of pay (although that can be serious enough); it may also mean the loss of his job. As the industrial power of trade unions has grown, the effects of exercising that power have become increasingly serious, not only for the strikers themselves and those at whom the strike is directly aimed, but for the community as a whole. Strikes damage economic performance, reduce living standards and destroy jobs far beyond the ambit of the parties to the dispute. In recent years it has become common for strikes to be aimed at inflicting damage on innocent third parties in the hope that the distress caused will bring about Government intervention to press the employers to yield to the unions' demands. Such strikes inflict inconvenience and hardship on the general public. Society has a right to expect that the strike weapon will be used sparingly, responsibly and democratically. It is wholly unacceptable if this power is exercised irresponsibly or by leaders who are out of touch with their members' views. The methods trade unions use to consult their members are often totally inadequate. Few things have done more to lower public regard for trade unions than the spectacle of strike decisions being taken by a show of hands at stage-managed mass meetings to which outsiders may be admitted and where dissenters may be intimidated.

57. The argument of principle for strike ballots is therefore simple and unanswerable. The rules of some trade unions already provide for them and there is evidence that union members increasingly wish and expect to be consulted by voting in secret before they are called out on strike. The need and the scope for unions to respond to this pressure from their members is clear. The Government has taken steps which enable unions to be relieved of

the cost of holding such ballots. The questions to be examined in this chapter are whether strike ballots should be made compulsory by law, how this might be achieved and what the effects of such legislation might be in practice.

58. Proposals for compulsory ballots before strikes are not new. The Donovan Commission considered the idea of compulsory ballots (paras 426-430) and rejected it. The Labour Government's 1969 White Paper "In Place of Strife" (Cmnd 3888) proposed that the Secretary of State should have a discretionary power to require a union to hold a strike ballot if there was "a serious threat to the economy or public interest". A similar provision was included in the Industrial Relations Act 1971 which was repealed in 1974. The case for compulsory strike ballots was canvassed in the Green Paper "Trade Union Immunities" (cmnd 8128) published in January 1981, and the idea was comprehensively debated in the House of Lords during the passage of the Employment Act 1982.

59. A number of other countries have made legislative provision for strike ballots in certain circumstances. For example, in the United States the Taft Hartley Act enables the President to seek an injunction to restrain a strike for an 80 day cooling off period if he judges that it will affect a whole industry or "imperil the national health and safety". Before the end of that cooling off period the National Labour Relations Board must hold a secret ballot of the employees concerned on the employer's last offer. If the employees reject the offer the injunction is lifted and the strike may go ahead. Similar powers to require ballots in specific circumstances exist in both Federal and State legislation in Australia.

60. No country however has legislated to require universal, "automatic" strike ballots, that is the holding of ballots before <u>any</u> strike, or to make pre-strike ballots a condition for <u>any</u> lawful industrial action. As the Donovan Commission pointed out "a law forbidding strike action before the holding of a secret ballot could not be enforced in the case of small-scale unofficial stoppages, which make up the overwhelming majority of the total number of strikes" (para 427). If a statutory requirement were confined to

official strikes it might serve as an encouragement to unofficial strikes. In the same way a balloting requirement limited to strikes might well encourage the use of overtime bans, "go slows", "working to rule" and other forms of industrial action short of a strike. Yet the effect of such alternative action can be extremely serious in terms of economic damage and inconvenience to the public, while the cost to those who take it is generally much lower than the total loss of pay incurred by a striker. However, it would be even more impractical to apply a balloting requirement to action short of a strike* than to unofficial strikes.

61. For these reasons the idea of making ballots a condition of any lawful strike did not attract wide support in the responses to the Government's Green Paper "Trade Union Immunities". Instead public debate has tended to concentrate on more limited proposals: for example, strike ballots imposed by the state in specific, defined circumstances; and ballots "triggered" by a proportion of union members or by the employers directly concerned.

62. A power for the Government to seek an order to impose a strike ballot existed in this country between 1971 and 1974. It was exercised only once: in the British Rail dispute of 1972 when, in an 85% turnout, the vote was overwhelmingly in favour of industrial action (129,441 votes in favour, 23,181 against and 1,567 abstentions). US experience of imposed ballots is much wider. During the 34 years the Taft Hartley Act has been in force ballots have been held covering 165 different collective bargaining units. The employer's last offer has been rejected by the workers in 157 cases and accepted only in 8. This experience seems to support the view that ballots imposed externally in the course of a dispute generally become a test of solidarity and of support for the trade union leadership and policies. The

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* For example, some forms of action short of a strike (eg an overtime ban or "working to rule") may involve no breach of contract of employment and hence a sanction of loss of immunity would not apply.

result, so far from bringing disputes to an end, may be to prolong them*. This contrasts noticeably with the experience of some recent trade union and employer-organised ballots which have resulted in the decisive repudiation of strike calls and the acceptance of management pay offers, sometimes in defiance of the advice of trade union leaders. The arguments for and against state-imposed ballots in national emergencies were set out fully in the Green Paper "Trade Union Immunities" (paras 313-318). The responses to the Green Paper did not indicate that the idea had extensive public support at that time.

63. The idea of legislating for a "triggered" ballot - that is a ballot invoked by a certain proportion of the members of a trade union - has attracted more interest. If the demand for a ballot comes from within the union, it cannot so easily be turned into a test of trade union solidarity or so easily be represented as "external interference" in trade union affairs. Such legislation would provide union members with an opportunity to challenge and test the support for a decision of the union executive to call an official strike or some other form of industrial action. The legislation would need to cover a number of detailed issues, some of which would pose difficult options.

64. In the first place, it would be necessary to prescribe precisely how a triggered ballot should operate. What would be the proportion of the membership required to trigger the ballot and - more problematically - how would those entitled to vote be determined for these purposes? Would it be the total membership of the union (many of whom might not bother to vote if they had no interest in the dispute in question)? Or would it be only those who were actually being asked to strike (with the risk that in the case of a selective strike the voters could be hand picked); or all members of the union directly interested in the outcome of the dispute (which might raise difficulties of adjudication); or all union members employed at the establishment concerned in the dispute (regardless of whether or not they were directly interested in the outcome)?

* However, where the imposition of a ballot is coupled with an order to return to work pending the result of the ballot, such orders have almost always been obeyed, eg in the 1972 British Rail dispute and in all but one of the cases where injunctions have been granted under the Taft Hartley Act.

65. Secondly, the legislation would need to lay down the sanctions for refusal to hold a ballot. Should it be loss of immunity, or should union members be given a statutory right to call for a ballot with penalties imposed by the Courts for any failure.

66. Thirdly, how would the wording of the question to be put and the timing of the ballot be decided? If either or both were left entirely to those who wanted the strike to take place the purpose of the legislation might be frustrated. For example there would be a risk that the question might be slanted or linked with extraneous issues. Should those who trigger the ballot be able to specify the question and the timing? Should it be possible to "trigger" more than one ballot in a long running dispute? What would be the position if the trade union had voluntarily held a ballot but members of the union alleged that it had not been secret or that there had not been a full and fair opportunity to vote? Does the importance of these issues point to the need for some external supervisory agency as a check on abuse and manipulation? If so, should this agency be responsible for ensuring the secrecy of the ballot (rather than leaving this to the ordinary courts acting on complaint from a member)? Would there be a risk that a ballot supervised by a statutory agency would be seen by trade unionists as "state imposed" (with the disadvantages already noted in paragraph 62)?

67. The argument for enabling an employer to "trigger" a ballot by the union (that is, to require one as a condition of immunity) is that strike ballots can be - and often are - an important tactical weapon. Timing and the wording of the question can be crucial to the result. If ballots were automatic or mandatory they might well introduce much greater inflexibility into negotiations. They might tend to limit the room for manoeuvre of both employers and trade union leaders and harden attitudes. If the responsibility for conducting the ballot lay with the trade unions they could take steps to ensure that ballots were held in the circumstances and on the issues most likely to strengthen the hand of their leaders. There might be a danger that negotiations would become increasingly directed to setting the stage for the

eventual ballot rather than finding agreement. On the other hand, where union leadership is weak, "triggered" ballots might be used by militants to force the hand of more responsible leaders and to put at risk the functioning of established collective bargaining procedures. If the initiative for the holding of ballots lay with employers these risks would be reduced.

68. Legislation to provide for "employer triggered" ballots would, however, raise many questions of the kind set out in paragraphs 63-66 above. The simplest approach would be to allow any employer whose employees were actually on strike to call for a ballot of his own employees. But should the ballot then be confined to the strikers among his employees, or should it be extended to all his employees or to all of his employees with a direct interest in the outcome of the disputes? Whom should the ballot cover if the strike had not yet started but the employer had been given notice that it would be called in the near future or if a strike were simply threatened? Would the union decide the questions to be asked? How would the problems of supervision be solved? Even when these matters had been decided, how would such ballots help firms who were the victims - intended or unintended - of secondary action such as blacking, but none of whose own employees were taking or intending to take industrial action?

69. It may be the case that a strike ballot carried out by a trade union but "triggered" by an employer would have no practical advantages over a ballot carried out by the employer himself. The latter would also have the advantage of ensuring that the voice of non-union employees was heard. Some employers already have experience of holding their own ballots. One further possibility would be for the Government to make available funds for employers to hold strike ballots in circumstances where unions have refused to ballot their members.

70. The Government would welcome views on this analysis of compulsory strike ballots and on the possibilities for encouraging the use of such ballots by both trade unions and employers.

IV THE POLITICAL ACTIVITIES OF TRADE UNIONS

71 Since the 1860s, if not earlier, trade unions have used their funds to pursue political purposes. Since Disraeli extended the franchise in 1867, trade unions have put up candidates for Parliament. As early as 1873, a trade union had established a Parliamentary Candidate's Fund. In 1894 the Royal Commission on Labour noted that one of the nine purposes on which trade unions expended their funds was Parliamentary representation.

72 In 1909, however, in the case of The Amalgamated Society of Railway Servants v Osborne*, the House of Lords determined that the statutory definition of a trade union then to be found in the Trade Union Acts of 1871 and 1876 did not cover political objects and that their pursuit by trade unions was therefore unlawful.

73 This decision of the House of Lords was set aside by the Trade Union Act 1913 which, as subsequently amended, still effectively determines the conditions on which trade unions can engage in political activities. The Act may be said to be based upon two main principles which, in the Government's view, still remain valid today:-

(a) that trade unions should, if they so choose, be able to pursue their members' interests through political organisations and to give financial support to such organisations;

(b) that no trade union member should be obliged to support financially any political organisation if he does not want to, and that he should not suffer so far as his union membership is concerned by refraining from giving such support.

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* (1910) A.C.87

74 While these two principles have stood the test of time, a great deal has changed in the 69 years since 1913. In particular trade unions have become larger, richer and more powerful. With the progressive extension of closed shops, many unions have been able to enforce membership as a condition of getting and keeping a job. Often the very growth in size of unions has meant that their individual members have become remote from the taking of policy decisions. And, as already noted in previous sections, unions - both large and small - have been very slow to develop effective and democratic internal procedures which would ensure that the proclaimed views of their leaders reflect their members' wishes and interests. One of the most important elements in the 1913 Act - the system of "contracting-out" of contributions to the political funds of trade unions - has had an uncertain and controversial history. It was replaced by a system of "contracting-in" for 19 years between 1927 and 1946. Since then its fairness in terms of the second of the principles set out above has been increasingly questioned. Accordingly, the Government believes that, while the principles of the 1913 Act are still valid, the working of certain of its provisions now needs to be re-examined.

The Present Legal Position

75 Under the law originally enacted in the Trade Union Act 1913 and now contained in the Trade Union and Labour Relations Act 1974, a trade union may pursue any lawful objects at all including political objects. But the law lays down conditions which unions must fulfil if they spend money on the political objects specified in the 1913 Act, notably representation in Parliament and local government, the holding of meetings and the distribution of literature to achieve these aims.

76 First, in order to be able to finance these political objects either directly or indirectly, a trade union is required by Section 3 of the 1913 Act to secure that a resolution proposing the furtherance of these objects is approved in a ballot by a majority of members voting; and, if such a resolution is approved, to incorporate in its rule book certain detailed rules which have been approved by an independent statutory authority (previously the Registrar of Friendly Societies, now the Certification Officer).

77 One of these rules must provide for any payments in furtherance of the political objects specified in the Act to be made out of a separate political fund; and another rule must provide for the exemption from any obligation to contribute to that fund of any member who gives notice in accordance with the Act that he objects to contributing. Section 5 of the Act confers upon any member so objecting the right to claim exemption by giving notice to that effect in the form set out in the schedule to the Act or in a form to the like effect. The notice set out in the schedule to the Act reads: "I hereby give notice that I object to contribute to the Political Fund of the ..... Union, and am in consequence exempt, in the manner provided by the Trade Union Act, 1913, from contributing to that fund". Exemption must take effect not later than the following January 1.

78 This procedure, which is known as "contracting-out", lasted for 14 years until the Trade Disputes and Trade Union Act 1927 substituted a procedure of "contracting-in". In other words no member of a trade union was to contribute to the political fund unless he had given notice in writing of his intention to do so. This remained the position for 19 years. In 1946 the Trade Disputes and Trade Union Act restored the procedure of "contracting-out" which, so far as Great Britain is concerned, has remained the law since.*

79 Section 3(1)(b) of the 1913 Act requires that a member who has contracted-out should not be excluded from any benefits of the union or placed in any respect either directly or indirectly at a disadvantage as compared with other members of the union by reason of his being exempted (except in relation to the control and management of the political fund); and that contribution to the political fund should not be made a condition for admisssion to the union.

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*In Northern Ireland "contracting-in" has continued as the Trade Disputes and Trade Union Act 1946 was not applied to the province.

80 Under Section 3(2) of the 1913 Act, as amended, any member who is aggrieved by an alleged breach of any of the political fund rules made in pursuance of the Act may complain to the Certification Officer. The Certification Officer, after giving the complainant and a representative of the union an opportunity of being heard, may, if he considers that such a breach has been committed, make an order for remedying the breach. There is a right of appeal on a point of law to the Employment Appeal Tribunal.

81 Once rules have been adopted by a trade union for the purpose of Section 3 of the 1913 Act they have the same status as other rules of the trade union and therefore can be revoked under the union's constitutional procedure for rule changes. Any amendment of the political fund rules requires the approval of the Certification Officer.

Unions with Political Funds

82 Section 11 of the Trade Union and Labour Relations Act 1974 requires that unions should submit an annual return containing their accounts to the Certification Officer. All unions with political funds* are required to show on their return how many of their members contribute to the political fund, and an analysis of the most recent returns indicates that 63 trade unions currently maintain a political fund. Although the proportion of unions maintaining a political fund is small, it includes many of the largest unions. The 63 trade unions have a total membership of 8.7 million, of whom 7.2

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* The 1913 Act as amended applies equally to employers' associations because the statutory definition of a trade union in 1913 included employers' associations. At present there are two employers' associations with political funds, namely the National Farmers Union and the National Union of Small Shopkeepers of Great Britain and Northern Ireland. This paper does not consider separately the position of employers' associations but it is assumed that any changes which may be made to the provisions of the 1913 Act should apply equally to both employers associations and trade unions.

million contribute to the political funds. This represents 82 per cent of the total membership of those unions. Contributions ranged from 5p to £2.08 per annum. The total income of political funds maintained by trade unions in 1980 was £5m and expenditure was £4m. The total amount in these funds at the end of 1980 was £5.3m.

Ballots to Approve Political Objects

83 As noted above, the first requirement on a trade union wishing to support financially the political objects specified in the Act is to hold a ballot of its members to approve the furtherance by the union of these objects. An affirmative vote by a majority of those voting is required.

84 This is a once-for-all requirement. Most unions which have political funds today set them up shortly after the 1913 Act was passed. Some trade unions had to hold a number of ballots before a majority was secured: one trade union balloted its members on four occasions before it finally succeeded in 1944. Some trade unions have subsequently held ballots as a required part of the process of amalgamation with another union without a political fund. For example, in a recent amalgamation involving a union which had no political fund, it was necessary to ballot the members of both unions; and the ballot succeeded by only 1,172 out of a total poll of over 50,000.

85 It is not self-evident that a majority of the present members of a union in which a ballot was held many years ago would wish their union still to pursue political objects or to continue previous political affiliations. If amalgamation with another union without a political fund has not taken place, it is possible that no ballot of the membership has been conducted since the original decision was taken to set up a political fund up to 70 years ago. And even where such amalgamation has taken place since the original decision, none of the present members of a union need have had opportunity to vote on the issue of political affiliation.

86 Trade unions are of course free at any time to initiate ballots to confirm the continued support of the membership for their political objects, but few if any in recent years have done so. Given the number of years which have elapsed since most unions consulted the views of their members on this issue, there is a strong case for a legal requirement that unions should in the interests of their members hold ballots to confirm the support of their members for the continuation of their political objects and funds. To be effective, ballots would need to be held at not less than specified intervals, and it is for consideration what an appropriate and practical maximum interval might be.

87 It might also be open to question whether the test of membership support in either an initial or a confirmatory ballot should be a simple majority of those voting or an alternative such as an overall majority of the total membership.

Contracting-Out

88 Under the present law a member of a trade union with a political fund who does not wish to contribute to the political fund has to apply to his union to be exempted. However, an analysis of the available information on those unions which have political funds gives rise to serious doubts whether the statutory requirements for contracting-out work satisfactorily in practice in all trade unions.

89 While, as stated above, 82% overall of the members of trade unions with a political fund contributed to those funds, the figures for individual unions show a pronounced disparity which has never been fully explained. In over one third of the unions with political funds the proportion of members contributing to the political fund in 1981 exceeded 90 per cent, and in the following 14 unions the proportion was over 95 percent:-

North Wales Area of the National Union of Mineworkers (100%)
Scottish Carpet Trade and Factory Workers Union (100%)*
Durham Area of the National Association of Colliery Overmen, Deputies and Shotfirers (99.9%)*
Scotland Area of the National Association of Colliery Overmen, Deputies and Shotfirers (99.8%)
Yorkshire Area of the National Association of Colliery Overmen, Deputies and Shotfirers (99.5%)
Northumberland Area of the National Association of Colliery Overmen, Deputies and Shotfirers (99.0)
Rossendale Union of Boot, Shoe and Slipper Operatives (98.7%)
Transport and General Workers Union (98.4%)
Power-loom Carpet Weavers and Textile Workers Union (98.2%)
National Union of Public Employees (97.7%)
National Association of Colliery Overmen, Deputies and Shotfirers (97.4%)
Ceramic and Allied Trades Union (96.9%)
National Union of Railwaymen (96.7%)
National Union of Co-operative Employees (96.1%)

For the following 11 unions the proportion was less than 40 per cent:-

Durham Area of the National Union of Mineworkers (37.2%)
Northumberland Area of the National Union of Mineworkers (36.2%)
National League of the Blind and Disabled (31.3%)
Society of Graphical and Allied Trades 1975 (30.1%)**
Association of Scientific, Technicial and Managerial Staffs (29.9%)*
Association of Cinematograph Television and Allied Technicians (8.7%)*
National Union of Insurance Workers (Liverpool Victoria Section) (6.6%)*
Society of Shuttlemakers (4.6%)
National Union of Scalemakers (1.4%)
Amalgamated Association of Beamers Twisters and Drawers (nil)≠
Cloth Pressers' Society (nil)≠

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* figures relate to 1980
** figures relate to 1980 and predate the merger with National Society of Operative Printers Graphical and Media Personnel
≠ no evidence of affiliation to a particular political party

90 Two features of these figures raise doubts about the effectiveness of the present arrangements. First, the very high proportions in some trade unions contradict the evidence of psephological studies which indicate a considerable variation in the voting behaviour of trade unionists. For example, 100% of the members of the North Wales NUM and of the Scottish Carpet Trade and Factory Workers' Union, and 99.9% of the members of National Association of Colliery Overmen, Deputies and Shotfirers in some Areas contributed to the political fund. At most only 1.6% of the members of the TGWU are contracted-out, which means that 1,668,713 of the 1,695,818 members in 1981 paid contributions in active support of one British political party.

91 Secondly, it does not seem possible to explain the wide disparities between the high contracting-out and low contracting-out trade unions. One difficulty is that those members who do not pay the political levy because they have 'contracted-out' cannot be distinguished with any certainty from those who are exempt from the levy because they were originally members of a union without a political fund, which merged with their present union under the 'transfer of engagements' provisions, and were exempted under the merger arrangements. Another complication is the existence of members working in Northern Ireland or outside the UK, and members who are retired, apprentices, in the services or who are the widows of former members. However, even where some allowance can be made for these factors the figures suggest that the proportion of contracted-out members does not follow any discernible occupational or other pattern. There are for instance wide variations - between 36% and 100% - in the proportions of members paying the levy in Areas of the NUM with their own political funds. A further explanation might be that the larger the amount involved the more likely members would be to opt out. But there is no correlation between the amount of the levy and the proportion of members who pay it. In fact many of those unions with the highest levies (such as some Areas of NACODS) are amongst those with the highest proportion contributing to the political levy.

92 It is difficult to escape the conclusion that a significant cause of the disparities must be differences in trade union practices which make it either

more or less likely that individual members contract-out. Inertia on the part of the members may of course be an important reason why contacting-out is not more widespread, but it does not explain the disparities between unions: there is no evident reason why inertia should be greater in some unions than in others. The most likely explanation must be that for one reason or another contracting-out is more difficult for the individual member in some unions than it is in others. There is evidence that many trade unions do not take adequate steps to ensure that their members know that they can contract out or how they can do so. Independent research* indicates that rank and file union members are often not aware that they are in fact paying a political levy and have no knowledge of the procedure for contracting-out.

93 Under Section 5 of the 1913 Act, when a union first adopts political objects, a notice in a form approved by the Certification Officer has to be given to all members telling them of their right to contract-out and the procedures to follow. This can provide valuable protection for existing members of the union at the time that political objects are adopted because it ensures they are in no doubt of their rights. However, once a union has adopted political objects, the law provides no similar protection for subsequent new members. One of the model political fund rules provided by the Certification Officer (and before him the Registrar of Friendly Societies) requires that all members should receive a copy of the union's political fund rules. But how far in practice such rules are complied with is not known. The usual method by which trade unions seek to meet this obligation is by stating in their rules that new members are to be issued with a copy of their union's rule book. Unlike the protection provided under the 1913 Act this does not specifically direct the new member's attention to his right to contract-out, but relies on his reading through an often complicated and long rule book. Moreover it is now common practice for unions to compound normal subscriptions and contributions to the political levy so as to produce a

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* J H Goldthorpe et al., The Affluent Worker: Industrial Attitudes and Behaviour (Chapter 5); M Moran, The Union of Post Office Workers (Chapter 7)

single contribution rate. Although this fact is shown in the rule book, a member may well not discover that his membership contribution includes an optional political levy. There is evidence* that the 'compounding' of normal contributions and the political levy reduces the likelihood of members being aware that they are contributing to the political fund. It also makes it more difficult for members to know when the political element of their contribution is being increased.

94 The evidence set out in the above paragraphs suggests strongly that the system of "contracting-out" as it now operates is not fully in accord with one of the basic principles of the 1913 Act, that is that no trade union member should be obliged to support financially any political organisation if he does not wish to do so (see paragraph 73 above). Indeed it can be argued that, even if the system of 'contracting-out' were working properly, such a requirement is objectionable in principle as well as in practice. It is objectionable in principle that anyone should have to indicate his dissent from the political alignment of his union to avoid contributing to political activities or to a political party to which he is opposed. And it is objectionable in practice that anyone should have to reveal his dissent to those from whom, given the realities of the shop-floor and trade union power, he may have good reason to keep his political sympathies private. Finally it is wrong in principle that a decision to contribute to a political fund should result from inertia or apathy rather than from a deliberate and positive choice.

95 It might be argued that once a trade union has decided by a majority vote to have a political fund, it is logical for the minority who oppose this course to be expected to contract-out (as they have had to do since 1946) rather than for the majority to have to contract-in (as they had to do between

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* For example, when the TGWU adopted a 'compound' contribution in 1957 the proportion of members contributing to the political fund rose from 84% to 97% despite a doubling of the political levy. (A. Flanders, Trade Unions)

1927 and 1946). Obviously this argument carries no conviction if the decision was taken long before the vast majority of current members joined the union and has not been put to the test of a recent ballot; and if the practical arrangements for enabling members to contract-out are of doubtful efficiency. Indeed, there must be doubts whether any decision, even by a majority, should impose a requirement on the minority to contribute to a political party and to be enumerated as members of that political party unless and until they have taken positive steps to dissociate themselves.

96 If trade unions were truly voluntary associations it might be argued that those who join them should be prepared to accept all the existing rules, practices and objects of their union. On the other hand, employees might well want to join a union for the benefits and protections it might afford, and yet be wholly opposed to the union's political objects. Moreover in many circumstances unions cannot claim to be regarded as voluntary organisations since the livelihood of members is dependent on their holding a union card. Where union membership is not voluntary, there is a particularly clear case for those who do not wish to support a political party to be relieved of the burden of taking steps to avoid conscription into that party as well as into the union itself.

97 If contracting-out were to be retained, it would be essential, at the very least, to require trade unions to do more to ensure that their members are aware of their ability to contract-out. For instance unions might be required to supply each applicant for membership with a copy of the contracting-out form as part of the application for membership, so that the two decisions (to join the union and if so whether to contribute to the political fund) were taken at the same time. They might also be prevented from compounding the normal subscription and the political levy by a requirement that the rate of subscription shown in the body of their rules and on application forms should exclude the political levy. Trade unions might also be required to inform members of any increase in the political levy and at the same time to remind them of their right to contract-out.

98 In short, arguments both of principle and of practice suggest the need for change in the operation of the 1913 Act. This would best be done simply by substituting contracting-in for contracting-out, which would be consistent with the principle that those who wish to make a political contribution should be required to take a positive decision to do so.

'Political Objects'

99 The definition of 'political objects' in Section 3(3) of the Trade Union Act 1913* is important for two reasons:

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* Section 3(3) is as follows:

"The political objects to which this section applies are the expenditure of money -

(a) on the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connexion with his candidature or election; or

(b) on the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or

(c) on the maintenance of any person who is a member of Parliament or who holds a public office; or

(d) in connection with the registration of electors or the selection of a candidate for Parliament or any public office; or

(e) on the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings is the furtherance of statutory objects within the meaning of this Act.

The expression "public office" in this section means the office of member of any county, county borough, district, or parish council, or board of guardians, or of any public body who have power to raise money, either directly or indirectly, by means of a rate."

The statutory objects mentioned in (e) above refer broadly to the regulation of relations between employers and employees.

(a) it specifies the political objects in respect of which payments must be made from its political fund by a trade union following an affirmative ballot of the membership on the establishment of a political fund and the approval of its rules by the Certification Officer. Conversely, those trade unions which have not carried out the processes necessary for the establishment of a political fund would be acting unlawfully if they made payments in furtherance of these objects either directly or in conjunction with any other organisation;

(b) political objects which fall outside the definition are unregulated by statute and may therefore be financially supported by trade unions, without restriction, from their general funds.

100 Successive rulings by the Registrar and the Certification Officer have confirmed that the present definition of political objects refers to "party political" objects. It principally covers expenditure in relation to representation in Parliament and local government, and also expenditure on the holding of "party political" meetings and distribution of literature. As well as making clear in any revision of the 1913 Act that the definition of "political objects" is intended to cover expenditure in support for a political party, it would appear that Section 3(3) would benefit from being brought up to date in a number of respects. Whether this should be by means of a total recasting of the subsection or by detailed amendment to the present wording would be a matter for consideration. Examples of where particular amendments are required include the following -

(a) it does not at present cover appropriate expenditure in relation to candidature for election to the European Parliament. Since no mention is made of such elections in the sub-section, trade unions (whether or not they have balloted their membership) can now without breaking the law meet any expenditure in relation to these elections from their general funds - unless they themselves have taken the initiative by altering their rules in a way which specifies that such expenses may be met only from their political fund;

(b) the definition pre-dates the use of radio, television, films and video for political purposes and needs clearly to cover expenditure on such publicity;

(c) it appears to be too restrictive in respect of the items it already covers. There seems no logical reason for example why the sub-section should cover the costs of the distribution of literature but not the cost of its printing or preparation (see paragraph 112).

Expenditure falling outside Section 3(3)

101 Trade unions, whether or not they have a political fund, may make payments without restriction from their general fund to many organisations which, because they do not put up candidates for Parliament, are outside the scope of Section 3(3). These range from organisations such as the Labour Research Department or the Fabian Society, which may be closely linked to but nevertheless separate from a political party, through to organisations which are patently apolitical, such as the Salvation Army. In between there are many organisations whose purposes may be concerned with political issues to a greater or lesser degree. Trade union support for such organisations gives rise to two questions:

(a) Should the definition of "political objects" be widened to cover contributions to some of these organisations, and if so which?

(b) Since some union members may object strongly to contributing through their union membership to bodies which have explicit or implicit political or other objectives, are the present arrangements for informing them of such contributions adequate?

102 The present distinction between a trade union's party - political objects and its other objects provides a feasible line of demarcation (though difficulties in interpretation can and do arise). A wider definition of "political" might well raise further serious problems of interpretation and so

introduce a greater degree of uncertainty into the law. A definition which for example embraced organisations whose objectives included promoting changes in the law would go too wide - it would cover for example animal protection bodies. There would also be the problem of deciding where precisely to draw the revised line.

103 The difficulty of finding any satisfactory alternative to Section 3(3) as it is now applied underlines the importance of ensuring that union members are informed that their unions are making payments to external bodies. At present members may learn about them by references in the union's magazine, the proceedings of annual conferences or other official records, but there is no certainty that they can do so. Since without that knowledge there is no basis from which members may come to question such support, there would appear to be a strong case for requiring that all grants, affiliation fees and donations paid by unions to such bodies, whether made out of the general or political funds, should be itemised in the annual return made by trade unions to the Certification Officer. In this way knowledge of such payments would be potentially available to the membership and members would be better able to question and challenge such contributions if they wished.

104 The annual return already seeks information about expenditure from a union's general fund to "Federations and other bodies - Affiliation fees, grants etc, (to be specified)", but there is no consistency in the approach adopted by different unions. Many unions at present merely specify the total amount paid in grants and the total amount paid in affiliations, while others specify individually only grants to bodies such as the TUC. A few unions attach to their annual return a comprehensive list of payments to outside bodies specifying which come from the political fund and which from the general fund.

105 To require the listing of all such payments might be regarded as excessive. For example many union branches might well respond to local appeals for contributions and make no more than token payments. It might therefore be appropriate to require only the listing of payments over a

certain amount (for example £100) - a practice already followed by some unions in their annual returns.

106 On the basis that any member should be able to know about all such payments, a further measure would be to ensure by law that all members of a trade union had access to that union's detailed books of account. This was the position before the Trade Union and Labour Relations Act 1974, and the rule-books of the great majority of trade unions still reflect it. It may be thought that reinstatement of such a requirement would provide a useful added safeguard for the individual member particularly if provision was made for recourse to the Certification Officer in cases of difficulty.

Management of the Political Fund and Annual Returns of Accounts

107 As has been explained, Section 3 of the Trade Union Act 1913 provides that any payments in the furtherance of political objects must be made out of a 'separate fund'. Section 10 of the Trade Union and Labour Relations Act 1974 requires that a trade union must cause proper accounting records to be kept with respect to its transactions, assets and liabilities. These must be such as are necessary to give a true and fair view of the state of the affairs of the organisation and explain its transactions. A revenue account, balance sheet and such other accounts as the Certification Officer may prescribe must under Schedule 2 of the 1974 Act be contained within the annual return. A copy of the auditors' report on those accounts must also be included.

108 The annual return contains a section relating to the political fund account. It requires a statement of the fund's income and expenditure, and a statement of the balance of the fund. The statement of income has separate headings for "members contributions and levies", "investment income", and "other income (to be specified)". The statement of expenditure has subheadings for "expenditure under section 3(3) of the Trade Union Act 1913 (to be specified)" and "administrative expenses in connection with political objects (to be specified)". While it might be expected that, in a matter such as the keeping of accounts of political funds and the completion of the annual

return, there would be a certain similarity of approach between unions, this is by no means the case in practice. An examination of the latest returns submitted by unions shows considerable variations in the amounts of detail given and in the general standards of completion.

109 One of the purposes of the annual return is to allow particularly members of a union but also the general public, both of whom have the right to inspect the returns, to examine union finances. It may be thought desirable that those concerned should better be able to satisfy themselves that none of the members' contributions to the general fund is being used to subsidise those political activities for which a political fund has been established. Doubts have been expressed whether the return in its present form in fact enables a member to identify and challenge such payments; moreover there has recently been a growing concern that, given the standards of completion, the return does not always make it possible to establish whether the maintenance of the political fund imposes an unseen charge on the general funds to which all members have contributed.

110 This problem is well illustrated in the treatment of the administrative costs of the political funds and the payment of expenses associated with the union's political activities. A few of the unions with political funds do appear to ensure that all such expenditure is taken into account and is not paid for out of the general fund. For example, the National Union of Public Employees (which is one of the few unions to make specific provision on these subjects in its rules) deducts the cost of general 'administrative costs and other approved charged expenses' from its political fund income. In 1982 this cost was shown as almost £380,000 - or the equivalent to 42% of the fund's income for that year. On the other hand there are unions which appear to make no charge at all on the political fund for administration or for expenses associated with the annual political conferences to which they send delegates. Some even have just one 'income' entry (members contributions) and one 'expenditure' entry (the political affiliation fee). In between these two extremes there is a wide variety of practices. Most unions show an entry for the expenses of delegates to annual political conferences, and many show items

such as printing and bank charges. But in the vast majority of returns the information is insufficient to enable a member to judge whether the direct costs associated with maintaining a separate fund have been properly treated.

111 Indeed in such circumstances it is easy to understand the strong belief on the part of some members that a significant amount of indirect expenditure may have been omitted from the question on the annual return concerned with "administrative expenses in connection with political objects". This type of expenditure, it is alleged, occurs where union manpower or equipment is partly used on political purposes. In addition, the physical process of collecting the levy and maintaining the fund must involve some, perhaps considerable, costs. Complaints in this regard are presently under consideration by the Certification Officer.

112 It is clearly unsatisfactory that there should be such marked differences of practice between unions in their accounting arrangements and returns about administrative costs in connection with political objects. It is also unsatisfactory that in some cases expenditure which has to be incurred wholly or in part in pursuance of political objects should in practice be paid out of the general fund. One approach to this problem as suggested in para 100(c) would be to change the definition of "political objects" in Section 3(3) to include for example not only expenditure in relation to the distribution of political literature but also costs incurred on its preparations or printing. However, the examples given in the previous paragraph indicate the problems that would arise in trying to specify detailed rules to secure complete conformity in all circumstances. As was noted in paragraph 80 above, an individual member who is aggrieved by any alleged breach of the political fund rules already has a right of complaint to the Certification Officer; and constant vigilance by the membership is an essential part of ensuring that a union's general fund is not used to subsidise its political activities. Auditors of trade union accounts might well be able to do more to make sure that the necessary information is open to inspection in the union accounts attached to the annual return. The views of the accountancy bodies are accordingly sought on these problems.

113 Another area of concern is the investment income of political funds. The annual returns for most unions with political funds show some investment income, and the amounts involved can be large. In at least one union income to the political fund from investments considerably exceeds that from the political levy. In most cases it is not possible to identify from the annual return the specific source of this income. In some cases it may be bank deposit interest which has accrued on the balance of the fund over the year. But in others it is clear that something more is involved. There is, of course, no reason why a political fund's capital should not be invested, but there is a strong case for requiring a union to show separately on its annual return which of its investments have been purchased from the political fund and which have been purchased from the general fund. Unless this is done, a union member can not satisfy himself that earnings from investments purchased from the general fund are not passed to the political fund.

114 It has also been suggested that a union's political fund should not be allowed to run at a deficit. At present there are a few funds with negative balances, and one which has carried a substantial deficit for some years. It would be unreasonably restrictive to seek to prevent a political fund from going into deficit from time to time. But it is a legitimate matter of concern that where there is a deficit the accounts should make it quite clear that the cost of funding that deficit is charged to the political fund and not either directly or indirectly to the general fund.

115 Finally, there is reason to doubt whether in some cases the statistics on the number of members paying into the political fund are always reliable. This is a cause for concern because if unions use the figure for the number of members paying the levy as the starting point for calculations to determine how much income from 'compounded' subscriptions should be transferred from the general fund to the political fund then any overstatement of the figure for members paying the political levy would, of course, result in a drain of funds from the general to the political fund. It therefore seems essential, particularly should the system of contracting-out be retained, that trade unions should be able to supply accurate figures showing how many members are

paying the political levy, and which of those who are not doing so are exempt by virtue of having contracted-out and which are exempt for other reasons.

The check-off and the political levy

116 The "check-off" is the voluntary system whereby a union and an employer agree that the employer collects employees' union subscriptions directly from their wages on behalf of the union. It has been estimated that some 50%-70% of union members have their subscriptions collected in this way (as opposed to some 20% in 1966). There is no express statutory authority for check-off agreements; however the agreement of the employee to a deduction from his wages is always required unless it is already provided for in the contract of employment. In the case of manual workers deduction without prior written authorisation would be in breach of the Truck Acts.

117 Employers are required under the Employment Protection (Consolidation) Act 1978 to give employees details of fixed deductions from pay such as trade union dues. An employer may choose to provide either:

(a) a pay statement which specifies the amounts and purposes of each fixed deduction separately; or

(b) a pay statement which specifies the aggregate of all fixed deductions without explanation - in which case the employer must provide a written standing statement about deductions at least every 12 months.

There is however no statutory obligation to list separately the political fund element of trade union dues.

118 Particular points of concern arise on the use of the check-off to collect contributions to a trade union's political funds:

(a) use of the check-off can mean that the union member is unaware that he is making a regular political contribution because it is not

distinguished from his union subscription. He also has no automatic means of knowing when that element is increased;

(b) employers are often unwilling to vary the deduction from wages for those who have chosen to contract-out, claiming that the administrative costs and inconvenience are too great. This means that the member then has to rely on the union providing an appropriate refund of contribution. The Certification Officer found in a recent case that to comply with the 1913 Act the union was required to make this refund in advance. This, however, was modified by a judgment of the Employment Appeal Tribunal in April 1980 which ruled that, if it was established that payment in advance was impossible, a repayment made as soon as reasonably possible after the date when the amount of political contribution had been paid would not be in breach;

(c) because the check-off operates automatically it deprives the individual member of his opportunity to decide each time the political fund contribution becomes due whether to refuse to pay it. The 'silent contractor-out' - the member who did not pay the political levy but never completed a contracting-out form - was well known in some unions before the spread of check-off; and a comparison of the expected income based on membership and current political levy rates with the actual income of political funds suggests that there are still areas where this practice is fairly widespread.

119 These concerns would to some extent be ameliorated by a change to a system of contracting-in. However, such a change could involve transitional problems and care would be needed to devise a system for the change-over which did not result in individual members continuing to pay the political levy without their knowledge and against their wishes.

120 Accordingly the following possibilities are worth consideration:

(i) to make unlawful collection of political contributions through the check-off. Unions would then have to make their own arrangements for collection;

(ii) to make use of the check-off unlawful in respect of political contributions of members who were either contracted-out or, as the case may be, had chosen not to contract-in. Some employers may point to the extra administrative costs; but many different deductions for individuals are already made, for example for occupational pension contributions, season-ticket loans and other regular payments;

(iii) to require employers to show political contributions as a separate item on pay statements so that union members are reminded regularly of this commitment. Subordinate legislation under Section 10 of the Employment Protection (Consolidation) Act 1978 Act would be needed.

121 The Government would welcome views on the points raised in this chapter, and on the suggestions for improving the present arrangements for regulating the political activities of trade unions.

V CONCLUSION

122. The Government is aware that the suggestions put forward in this paper for further consideration do not cover all the concerns which have been expressed in recent years about the organisation of trade unions and their failure to ensure that they are fully representative of their members and responsive to their wishes and interests. Nevertheless it believes that the broad areas covered are those where changes are most urgently needed and where the case for legislation should now be considered.

123. The uncertain legal status of trade unions in their formative years has influenced their attitudes to the law. Its intervention in their affairs has since been seen by them as a threat to their ability to pursue what they conceive to be their own best interests and those of their members. But unions can wield great power over the lives of their members and the Government has a duty to see that union members have adequate protection against the abuse of this power. There must also be a proper balance between the interests of unions and the needs of the community; and organisations which claim and have special privileges must conduct their affairs in ways which attract public confidence and the confidence of their members. In the Government's view, while it is right in a democracy that trade unions should be free to conduct their own affairs and indeed to introduce reform at their own initiative, society, including individual trade unionists themselves, is entitled to see minimum standards established to ensure that union power is exercised responsibly, accountably and in accordance with the views of the membership.

124. The Government has already offered talks with the trade union movement to consider whether it can help in the achievement of the necessary reforms. However no response has been forthcoming. Accordingly this Green Paper examines three areas in which legislation might be considered:

(a) secret ballots for elections in trade unions;

(b) mandatory secret ballots before strikes when triggered by a proportion of the union's membership; and

(c) measures to bring up-to-date the Trade Union Act 1913 and in particular to replace contracting-out by contracting-in.

125. None of the possibilities considered is straightforward or simple to put into effect. Each involves difficult judgements over the best method of achieving the desired objectives. The Government has no pre-conceived ideas of the best approach in each case, and is well aware that, before any decisions are taken, there is a need for very careful consideration of all the issues involved.

126. The Government would therefore welcome the views of industry and others concerned. These should be provided by [ ] and should be sent to the Department of Employment, Caxton House, Tothill Street, London SW1H 9NF.

File

MR WALTERS

Employment Protection: Asymmetry in the Employment Contract

I asked the Prime Minister whether I should write to Mr. Tebbit's office about their letter to me of 25 October, saying that she was not convinced on the points in the last three sentences of Mr. Shaw's letter, and asking Mr. Tebbit to reconsider the possibility of legislation which specifically relates to reductions in money wages, as suggested in your minute.

The Prime Minister responded in the following terms:-

"Surely the fault lies in the initial contract. Does there have to be a minimum wage? Except where wages councils are concerned?"

MCS

2 November 1982

SECRET

Prime Minister (1)

Shall I write to Mr Tebbit's office saying that you are not convinced on X at flag A and asking him to reconsider Y? MCS 28/10

MR. SCHOLAR

Surely the fault lies in the initial contract. Do we have to be a minimum wage? ...

EMPLOYMENT PROTECTION

Asymetry in the Employment Contract

The letter from the Department of Employment of 25 October seems to accept as immutable the very one-sided nature of the employment contract. In effect, after the statutory one (or two) years of employment, the employee has the right to receive the money wage, as a minimum, whatever happens to prices, profitability etc.

The employer cannot fire the employee except at the risk of proceedings for unfair dismissal. However, the employee always has the right to leave his employer at any time. Such an abrupt departure by an employee may involve the employer in great costs, such as when an employee fails to turn up to complete a contract. But the employer has no redress whatsoever. There is no redress for unfair quitting, only for unfair dismissal.

The advent of falling inflation will greatly increase the existing asymetry of the labour contract. With inflation falling to below 5%, the need for actual reductions in wages will be very much more widespread. The inhibition to such reductions, already large enough, will destroy yet more jobs and create more unemployment.

Redundancy and Economic Illiteracy (or Priceless Economics)

The third paragraph of the Secretary of State's letter refers to the redundancy compensation being due "where employees are dismissed because their jobs are disappearing". This is another example of priceless economics. Jobs do not disappear. Jobs are destroyed by high wages. This is yet again a manifestation of the law being economically illiterate.

In the same paragraph, the Employment Department suggests that it would "not be right for employers to sign an undertaking that 'jobs have disappeared' if the jobs still exist". Whatever is meant by all this, again a fine example of priceless economics, surely the fact that "it would not be right" does not mean that it would not be done. Since the condition is a meaningless undertaking, it seems to me one could enter into it quite properly. And if firms can survive and prosper only by such methods, it seems to me to be no bad thing. It keeps open profitable employment and reduces the dole queues. Just what we want.

SECRET

Legislation and the Way Ahead

In the last paragraph, I accept that legislation would be required to enable employers to reduce money wages without recourse to the unfair dismissal procedure, but I cannot see how it would necessarily require legislation of a fundamental kind to give employers "the unilateral right to override a fundamental term of their employees contracts". Surely it would be possible to pass legislation which specifically relates to reductions in money wages? Furthermore, there are good arguments for doing so, since the real wage implications of fixed money wages have changed considerably as inflation has fallen.

28 October 1982

ALAN WALTERS

Ind Pol

BF

6

TO DOWNING STREET

From the Private Secretary

26 October 1982

SECRET AND PERSONAL

I attach a copy of the paper we discussed last night.

The top copy of the paper is sitting in my tray, and will remain there until I hear from you. I should be grateful for a response by the end of the week if possible.

I should also be grateful if you would ensure that only those authorised by your Secretary of State see this paper.

M. C. SCHOLAR

MK.

Barnaby Shaw, Esq.,
Department of Employment.

SP

SECRET

SC AW

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Caxton House Tothill Street London SW1H 9NXF

Telephone Direct Line 01-213 6400

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Michael Scholar Esq
10 Downing Street
LONDON SW1

25 October 1982

Dear Michael

You wrote on 30 September saying that the Prime Minister would be grateful for my Secretary of State's views on the feasibility of protecting employers from the claims of employees whose money wages are reduced. I understand that Mr Tebbit had a word with the Prime Minister about this on 11 October, and I am writing to record his views on the matter.

It has been clearly established in the Courts that a unilateral reduction of money wages contractually due to an employee amounts to a repudiation of the contract by the employer. If the employee accepts the repudiation and leaves his job this is treated as dismissal and can lead to a claim that it was unfair. It is of course possible for the employer to agree with his employees a variation of the terms of the contract by reducing his wages. In any event, if an employer is unable to reach an agreement with his employees, it may not in the present circumstances of high unemployment always be the case that employees will treat this as a repudiatory breach and leave their jobs.

The Secretary of State does not see the redundancy legislation as a route for cutting money wages. Redundancy compensation under the Employment Protection (Consolidation) Act 1978 is due only where employees are dismissed because their jobs are disappearing. Employers sign an undertaking that this is the case when they claim rebates from the Redundancy Fund. It would not be right for them to sign such an undertaking when the job still exists and when it is their intention to take the same workers back as soon as possible - albeit on lower wages. I should point out in passing that employees made redundant receive 100% of the statutory payment from their employer who can recover 41% from the Redundancy Fund. The Fund itself is financed, not from general taxation, but exclusively from employers' and employees' national insurance contributions.

Your letter concludes by asking whether the necessary change would require legislation, and how this would be brought about. Legislation would certainly be required to enable employers to reduce money wages without giving rise.to claims from employees that they had been unfairly dismissed. However, Mr Tebbit believes that any such legislation would be open to major objections. It would amount to giving employers power unilaterally to override a fundamental term of their employees' contracts of employment in circumstances which it would be very difficult to define. The best solution he considers is to encourage employers in such a situation to explain to their employees the need for a cut in their wages and the consequences of failure to accept it in order to bring about an agreement.

Yours sincerely

J B SHAW
Principal Private Secretary

Ind Bl : Emp Bdl Pt 9.

Prime Minister (1)

21 October 1982

POLICY UNIT

PRIME MINISTER

Content for Ferdie to send this to the CPS?

MCS 22/10

TRADE UNION REFORM

I think there is a danger of complacency and timidity creeping into our approach to the reform of trade union law. Both the paper from Norman and the discussion last week were extremely defensive and limited.

It is important that we recognise that on almost every aspect of trade union reform, our progress so far needs consolidating in the next Parliament What we have done so far is to soften up the ground; we have not ploughed it and cultivated it. The more powerful trade unions are still quite capable of returning to their old bad habits at the first signs of labour shortage. In fact, this is implicitly accepted in the argument that "we must allow the new provisions time to bed down" - before we go onto the next, equally vital stage.

But unless we clear our minds now about what we want to do next, there is not going to be a significant next stage, at least not in 1983-85. And if we miss the early years of the next Parliament, experience suggests that the momentum is likely to be irrecoverable.

Alfred and I have asked Len Neal's group at the Centre for Policy Studies to gird their loins again. They were a great help last time. Could you please give their efforts your blessing?

The attached paper is intended to set them going. I apologise for its terrible length. But the arguments for resting on the status quo do need pulling apart.

- Please see that the paper is kept strictly confidential -

JM

I agree - and should be very pleased for Len Neal's group to be set up again. I must mention to Norman Tebbit before the paper goes out. MT

FERDINAND MOUNT

20 October 1982

TRADE UNION REFORM

In 3½ years, we have enacted two major pieces of trade union reform. A third is approaching the Green Paper stage. This is a considerable legislative effort. The first signs are that this step-by-step approach may have begun to improve the behaviour of trade unions in such things as picketing and blacking - although it is hard to disentangle the effects of our reforms from the effects of the recession.

But we should not forget that the last Labour Government took barely 2 years to demolish the far more elaborate architecture of the Industrial Relations Act - and, into the bargain, to provide fresh legal privileges for trade unions and to burden employers with a host of extra costs and duties.

We must not lose steam. We must not even contemplate complacency. Three tasks present themselves:

1. We must constantly re-examine the steps already taken to see how they are working out in practice and establish whether they are adequate or whether they need to be strengthened in changed circumstances.

2. We must constantly re-examine the possibilities for further action. What was "politically impossible" yesterday may be quite practicable and hence urgent today. We must not tamely accept arguments for the status quo which have been undermined by time and experience.

3. We must constantly evaluate and keep in mind the legal and social position of trade unions which we wish to see in the long run - the Trade Unions 2000 question. Without this sort of clear conception, we shall simply be hopping from perch to perch with no real destination.

In most cases, the arguments against continued change have not been properly examined. And we ought to test them with a view to extending the boundaries of the possible in the next Parliament.

The Employment Act, 1980, opened up possibilities to various interested parties - possibilities of legal action to workers sacked because of closed shops; possibilities of free ballots to trade unions wishing to hold elections, and so on. It enforced practically nothing. In each case, therefore, the question is whether we wish to move from facilitating better practices to enforcing them. The 1982 Bill is a solid advance in this direction, but it is only a starting point, not a terminus.

Picketing

The code of practice is couched in admirable terms. But why should we not make it fully enforceable at law by creating the appropriate torts and offences? To do so would not affect the discretion of the police as to whether or not to prosecute (one frequent objection). Nobody seriously argues that more than six pickets are needed at any one access point for the purposes of "peaceful persuasion".

There was and is much to be said for a "settling down" period. But that settling-down period only reinforces the public feeling that we never want to see mass picketing back again. In the next Parliament, we could surely consolidate into law the new tradition of armbanded, six-only pickets.

It should never be forgotten what a peculiar legal privilege the right to picket is. It should accordingly be carefully defined and limited in law.

Secondary Action

The distinction drawn by the 1980 Act between a first customer/supplier and other customer/supplier is unfair and illogical. There is indeed no good reason why the law should provide immunity for any secondary or "sympathetic" action. And we promised in our Manifesto to "ensure that the protection of the law is available to those not concerned in the dispute but who at present can suffer severely from secondary action (picketing, blacking and blockading)". We must meet this commitment in full.

Section 17 of the 1980 Act has now been successfully construed in the courts and union funds are now at risk. There may be a case for waiting until the next Parliament to establish a tradition of judgments against blacking etc. But we should not delay beyond that before outlawing blacking altogether.

Union Democracy

The trade unions' refusal to take up government subsidies for the holding of secret ballots shows the limitations of the enabling, permissive approach. As in so many other questions, there are no painless options for Government. If we are serious about strengthening and spreading democratic practices inside trade unions, there is no alternative to grappling with the complexities of trade union structures and rulebooks.

And once government intervenes in such questions as elections to the Executive Committee, rule changes and transfers and amalgamations, can government abstain from the great and crucial question for the individual member, particularly in a closed shop: viz whether to go on strike? This, after all, involves two of the most central questions in a man's practical life - the ability to support his family and his contract with his employer. In comparison, measures to ensure (by substituting contracting in for contracting out) that he does not unwittingly or involuntarily contribute to a political party which he does not support are surely of minor importance.

The machinery for triggering strike ballots is not hard to envisage: so many union members, representing a given proportion of the membership affected, would have the right to call for a strike. If that call were disregarded by the trade union hierarchy, then the industrial action would lose its immunity.

The doubts about such a trigger-mechanism relate not to morality but to practical outcome. "Troublemakers", it is said, would be able to demand strike ballots in situations in which cooler official heads would otherwise have been able to resolve the dispute without a strike; sometimes the ballot would produce the wrong result.

That, it cannot be said too strongly, is the occupational hazard of democracy. Surely the bad outcomes would be far outweighed by the favourable shifts of pressures upon union executives, both in regard to the calling of a strike and in the negotiations with the employer before and during a strike. Instead of the union executives being, in most cases, able to show a solid front and so present themselves as men who cannot budge once a strike has started without "new money on the table", they would be jumpy, listening for the click of the

trigger. And because of the risk of such a humiliation, they would be more reluctant to call a strike without overwhelming evidence of support from the rank and file.

The argument against strike ballots is in essence a hangover of the attitude infusing the Industrial Relations Act, namely, that a Conservative Government ought to want strong (ie autocratic) trade union leadership, able to impose its will on the rank and file and so make deals stick.

This attitude is still common in big business and the management of nationalised industries. It seems rather out of touch with modern conditions.

The best managements and unions surely aim for long-term deals which are then put out to a ballot of the workforce. It's the ballot which makes the deal stick, not the union officials.

Enforceable Agreements

Many people outside the trade union hierarchy are convinced that it would be valuable if agreements between employers and trade unions were enforceable at law. Another suggestion is that immunity for industrial action should be linked to the observance of procedure agreements.

The objection universally advanced to these propositions is that "employers do not want them". Even after the 1971 Act, which presumed all collective agreements to be intended by the parties to be legally binding unless they included a specific proviso to the contrary, virtually every collective agreement did include such a proviso.

Why don't most employers want agreements to be made enforceable, one way or another? We are told it is:

(a) because in real life most procedure agreements would not "bear the weight" of legal interpretation; and

(b) because the unions would withdraw from existing agreements and refuse to enter into fresh agreements if agreements were enforceable.

Reason (a) and reason (b) are somewhat conflicting. If the agreements would not bear that weight, then trade unions have no reason to be frightened of them. If, on the other hand, they would bear that weight, then trade unions can be frightened of them only because they wish to keep the freedom to break them. In which case, what real value do these agreements have in the first place?

It is absurd to claim that written agreements drawn up between experienced, paid managers and officials could not bear the weight, when the courts every day have to pass judgment on far less professional agreements - often verbal, implicit and incoherent - between individuals in matters of family and property. The fact that there might be scope for endless quibbling - as there is even in agreements between gigantic multinational corporations - would not prevent a substantial breach of agreement from being, in most cases, as easy to recognise as an elephant. And of course, as soon as agreements do become enforceable, the sensible employer/trade union would take good care not to leave himself open to accusations of breach of contract.

It is more likely that most employers are simply frightened of the unknown. To move from a world of imprecision, loose ends and boltholes to one in which you have to say what you mean and mean what you say, is to experience the wrench of adulthood.

We ought surely to educate employers and trade unions in the advantages of adult responsibility, and to encourage them to get their agreements into enforceable shape.

Closed Shop

Both the Prior Act and the Tebbit Bill include a number of proposals to improve the rights of individuals who have been injured by the closed shop: the right not to be unreasonably refused membership of the relevant union; the right not to be expelled; the conscience clause; the right to sue the trade union as well as the employer for unfair dismissal for non-membership; the 80% requirement for new closed shops; the increased compensation, and so on.

These provisions are all valuable. But they do depend on the individual having the courage and tenacity to take advantage of them.

Even new closed shops could creep into existence without a ballot if the employer is pliable and the dissenters in the workforce do not dare to resist effectively.

But it is in existing closed shops that the density of trade union membership combines with historical tradition to create trade union muscle.

Will our reforms so far have any effect on muscle accumulated over years? Anything which civilises the closed shop must help to weaken it. For the closed shop's strength resides, first and last, in the threat of violence against its own members: physical violence; verbal violence either through the language of "scab" and "blackleg" or through the silence of being sent to Coventry; financial violence through the denial of livelihood. The protection of the individual does bring the outside force of the Government into an otherwise closed world, even if only at the margins.

But so long as we leave the core of the closed shop itself outside the law, we are perpetuating the legend of its invincible, raw, ugly power. Even in protecting its victims, we are testifying to its potency.

Any attempt to abolish the closed shop altogether would only reinforce the legend, if it proved unsuccessful, as would be all too likely.

There might be a better case for further reducing the lawless strength of the closed shop by extending the civilising process.

Suppose we made the 5-yearly ballot and the 80/85% requirement <u>mandatory</u> by a method something like the following:

Every employer would be required to notify the Department of Employment of any closed shop within his company. The relevant trade union would then be required to state whether or not it agreed that it did indeed maintain a closed shop in the workplace. For reasons of internal morale, it would have to state the truth. The closed shop in question would then be required to hold a ballot within 5 years on whether or not the arrangement should be continued.

Although most closed shops would no doubt continue, they would become dependent on renewal by democratic process, because any trade union which failed to secure the 80/85% would have suffered a humiliating blow which would make it very difficult to use non-legal forms of coercion against individuals who wished to disobey or to leave the union and yet retain their jobs.

A proposal of this type would be different from the provisions of the 1971 Act relating to the agency shop, for here we would not be registering the closed shop or endowing it with especial privileges. We would simply be ensuring that the imposition of 100% membership reflected the wishes of the members.

Selective Dismissal and Lay-Off

Strikes by selected and relatively small groups of workers with disproportionate disruptive powers have been growing, especially in the public sector. Two types of power have been put forward to counter this: the power to dismiss without right of appeal or compensation the selected group of workers who are causing the trouble; and the power to lay off without pay the greater body of workers for whom there is no work as a consequence of the action.

The first is the more direct and equitable route. When the Tebbit Bill becomes law, employers should have little difficulty in taking it.

The second raises the objection of whether the Government should not encourage employers to break their contracts.

But it is unreasonable to insist that employers should have to wait until they are made bankrupt before they can temporarily vary the terms of contracts which they can no longer fulfil without damaging the company's prospects of survival.

Legislation on these lines is certainly worth further exploring. No doubt qualifications could be built in if desired; it might be reasonable to expect the employer to show that he was unable to dismiss and replace the strikers and/or that he was suffering serious financial damage.

Trade Unions 2000

The points made above certainly do not exhaust the possible areas of reform. They do, however, suggest that we have only begun to bring the trade unions within the ambit of ordinary civilised behaviour.

In our step-by-step approach, it is important to realise that some of our early actions may only have been "steps-towards-steps" and that, to have any permanent effect on trade union behaviour, they must be reinforced and strengthened.

But we can do that only if we also have a clear perception of where the steps are designed to lead us.

What do we want to see in the year 2000?

1. A trade union movement whose internal procedures are democratic. This is not a question of "legitimising" the trade unions. It is a basic requirement, which flows from the fact that to lock 11 million people - millions of them Conservatives and Social Democrats - into a politicised mafia is wrong.

2. A trade union movement which regularly uses the law, not just as a source of immunities, but, like individuals and other organisations, as the set of rules by which we live. We must move towards the enforceability of contracts in the late 1980s.

3. A trade union movement much reduced in size. So long as over 50% of the workforce is unionised, British industry and commerce can never hope to respond to change with anything like the speed needed to regain competitiveness.

We must neglect no opportunity to erode trade union membership wherever this corresponds to the wishes of the workforce. We must see to it that our new legal structure effectively discourages trade union domination of new industries.

4. A trade union movement whose exclusive relationship with the Labour Party is reduced out of all recognition. Again, it is absurd and unjust that millions of Conservatives, Liberals and Social Democrats should be supporting the Labour Party directly or indirectly. This relationship fossilises the Labour Party and stultifies the whole political dialogue.

If contracting-in is changed to contracting-out, it will no doubt revive the general argument about the financing of political parties. But if the incomes of political parties continue to decline at their present rate relative to the national income, the argument will revive itself, whatever we do.

We might hope that trade unions which had changed along these lines would have changed in other ways too; for example, they might develop an interest in the profitability of the companies in which their members work; such trade unions might then fruitfully take part in management.

And once agreements became enforceable as a matter of course, it would become much easier to make no-strike agreements stick in essential public services. At present, involving the criminal law to forbid such strikes would be more likely to intensify gangsterism and violence than to deter it.

But these are more distant prospects. The minimum surely is that we should be aiming for trade unions which are more democratic, more law-abiding, smaller and less political.

We shall not succeed in moving towards this destination unless we are prepared to contemplate not only the options on which Norman Tebbit is now beginning consultations -

(a) enforcing secret ballots within the unions for the election of union leaders;

(b) enforcing secret ballots on strikes;

(c) changing contracting-in to contracting-out of the political levy;

- but also other steps to consolidate our progress to date, such as

(d) enforcing in law the code of practice on picketing;

(e) withdrawing immunity for all secondary action;

(f) linking immunity to the observance of procedure agreements;

(g) making it mandatory for every closed shop to hold a ballot every five years;

(h) granting employers the right to lay off workers made idle by industrial action.

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Sir. file Ind Pol
cc As below
+ John Vereker

10 DOWNING STREET

From the Private Secretary

21 October, 1982

Employment Bill

The Prime Minister was grateful for your Secretary of State's minute of 20 October about the Employment Bill.

The Prime Minister endorses the approach that your Secretary of State is following.

I am sending copies of this to the Private Secretaries to the Chancellor of the Exchequer, the Lord President of the Council, the Lord Privy Seal, the Paymaster General and the Chief Whip.

M. C. SCHOLAR

J. B. Shaw, Esq.,
Department of Employment

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Prime Minister (1)

Endorse this approach?

MLS 20/10

PRIME MINISTER

EMPLOYMENT BILL

The Employment Bill is due to complete its passage through Parliament on Monday 25 October. I shall no doubt be pressed to make clear my intentions on commencement and other related matters either in that debate or at the time of Royal Assent later in the week. The purpose of this minute is to let you know what I propose.

I intend to bring most of the Bill's provisions into effect as swiftly as the practicalities of printing and distribution will allow. I therefore intend to announce that the date of commencement for virtually all the Bill will be Wednesday 1 December. I think it is important to announce a firm, early date for general commencement in order to prevent the Opposition claiming that we are at all hesitant about putting the legislation into effect and also to avoid arguments about the precise timing of the implementation of particular provisions.

Apart from Section 2 which provides compensation for people dismissed in closed shops between 1974 and 1980 and which comes into operation with Royal Assent, the only significant exception to general commencement on 1 December will be the balloting requirement for existing closed shops. As you know, I have told Parliament that I will announce at the time of Royal Assent whether the interval before this provision takes effect should be one or two years. It is clear that most industrial opinion favours a two year interval and there has been particularly strong pressure in this direction from the shipping employers as well as the CBI and the EEF. On balance I believe political considerations and the timing of our future legislative plans point to the same conclusion. However, I want to make it clear that this interval is not a breathing space but a time when management should be taking positive steps to hold ballots and test opinion. Accordingly I propose to make it clear that while my present

intention is that the balloting requirement should not come into effect until 2 years after Royal Assent I shall reconsider the whole matter in 12 months time. If by that time there is evidence that existing closed shop agreements are still being applied intolerantly or inflexibly and if, in particular, there is evidence that the freely expressed views of employees are being ignored, I shall not hesitate to bring the balloting requirement into effect earlier.

Finally, I propose to seek Parliamentary approval (which will require Affirmative Resolution) for a major revision of the Code of Practice on the Closed Shop. The revised Code would take full account of the changes in the law which will result from the current Bill. More importantly, however, I have in mind the need to strengthen the guidance to industrial tribunals on what constitutes unreasonable expulsion from a trade union so that it covers the disciplining of union members who refuse to take unlawful industrial action as well as those who refuse to strike in the absence of a ballot. The NHS dispute has afforded plenty of evidence of the intimidatory measures unions employ towards their own members in such cases and I believe that the changes to the Code I have in mind would significantly improve the protection of the law in this area. Under the provisions of the 1980 Act, the first step has to be the publication of a revised Code for consultation. I propose to publish this in the course of November with a view to laying the revised Code in Parliament in late February.

I am sending copies of this minute to the Chancellor of the Exchequer, the Lord President of the Council, the Lord Privy Seal, the Paymaster General and the Chief Whip.

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20 October 1982

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P.0869

PRIME MINISTER

Industrial Relations Legislation
(E(82)64)

BACKGROUND

The Government has already successfully promoted two measures of trade union reform: the Employment Act 1980; and the Employment Bill now before Parliament, expected to receive Royal Assent shortly. The main provisions of these measures are summarised in Annex A to E(82)64.

Flag A

2. The Secretary of State for Employment proposes there should now be public consultation with a view to possible further reforms: mandatory secret ballots for election of trade union leaders; replacing contracting out of the political levy by contracting in; and amending the definition of 'political objects' for the purposes of the Trade Union Act 1913. He also suggests that the possibility of mandatory strike ballots should be canvassed, but in the expectation that it will not be pursued. A number of other possibilities, which the Secretary of State suggests should not be put forward for public discussion, are outlined in Annex B to his memorandum.

Flag B

3. The Minister of State for Employment (Mr Alison) announced the Government's intention of launching public consultations on the main items in his speech to the Conservative Party Conference on 5 October.

4. The Secretary of State for Employment gives no indication of the timing of any legislation that might follow the consultations, but says that the possibility of legislation in the present Parliament is not ruled out.

MAIN ISSUES

5. Following Mr Alison's speech the Government is effectively committed now to issuing a consultative document on three items - mandatory secret

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ballots for trade union leaders, mandatory strike ballots and the political levy. The Secretary of State for Employment says that he will circulate the text of such a document in due course. The main issues for the Committee are as follows:

i. Are there any points about the three items which the Secretary of State should take into account in preparing his consultative document?

ii. Should any further subjects be put forward for consultation?

iii. What might be the timing of further measures of trade union reform?

Ballots for trade union leaders

6. Although the proposal for mandatory ballots for trade union leaders is being put out for consultation, the Government has already made it clear that it is convinced of the need for action in this area. The consultation will therefore presumably be about "how" rather than "whether". There are however some practical difficulties: the trade unions are unlikely to cooperate, and it may be difficult to devise legislation which will take account of the differing needs of individual trade unions. The Secretary of State therefore suggests that the approach will need to be flexible. He does not however comment on the problem of enforcement which he saw as a difficulty last year (E(81)103: Annex 2, paragraph 8). Will trade unions which do not cooperate lose their immunity and thus become liable to be sued for what the public might regard as normal and traditional trade union activity? Or is there some way of avoiding major conflict between the trade union movement and the law? Without going into the details of the consultative document, the Committee may wish to hear more about the proposals on enforcement which will be put out for comment.

Strike ballots

7. The Secretary of State makes it clear that he does not favour mandatory strike ballots on the grounds that they may in some circumstances be counter productive and sees consultation on this issue mainly as a way of handling pressure from some of the Government's supporters in Parliament.

If the Committee agrees, the passage in the consultative document will be shaped accordingly. The Committee may also wish to express a view on whether the consultation should cover the idea, mentioned in the last sentence of paragraph 7 of E(82)64, of state-subsidised ballots by employers. One disadvantage of such a proposal is that it might make it more difficult for employers to use their own discretion over whether and when to hold a ballot.

Contracting-out

8. When the issue of the political levy came up last year the Committee felt that it was highly sensitive. Although it was discussed briefly it was not mentioned in the Secretary of State's paper (E(81)103) or referred to in the minutes (E(81)30th Meeting). In view of Mr Alison's speech, these difficulties are presumably now thought to be less serious. The Secretary of State concedes however that there is a risk of opening up the general issue of the financing of political parties. The Committee may therefore be interested to know broadly how the Secretary of State envisages handling the matter in the consultative document.

Rejected possibilities

9. The arguments relating to possibilities which the Secretary of State for Employment does not commend are clearly set out in Annex B to his memorandum. It seems likely that most of the Committee will agree that these ideas should not be pursued, at least for the time being. On the proposals relating to lay-off, you and a few other senior Ministers are aware that legislation has been drafted on a contingency basis for speedy introduction if circumstances arise of the kind referred to in paragraph 11 of Annex 2, and there would seem to be no advantage in putting such proposals out for consultation. The Secretary of State makes it clear in paragraph 14 of his paper that the omission of proposals from the consultative document is not intended to foreclose on any options which the Government might wish to put to the electorate. You will no doubt wish to stress that the possibility of pursuing more radical approaches to trade union reform in the next Parliament should remain open.

Timing and presentation

10. There is no place in the programme for the 1982-83 Session for legislation on industrial relations. In any event it seems unlikely that, assuming a reasonable period for consultation and adequate time for drafting, a Bill could be ready for introduction until well into the next Session. As you know the present plan is to complete the 1982-83 legislative programme before the summer recess. There would remain the possibility of introduction early in the 1983-84 Session of this Parliament should there be one, or in the first session of a new Parliament. The Secretary of State indicates that he would like to keep the Government's intentions about the timing of legislation deliberately vague and seeks the Committee's endorsement of this approach.

HANDLING

11. You will wish to ask the Secretary of State for Employment to introduce his memorandum. The Chancellor of the Exchequer and the Secretaries of State for Industry and for Northern Ireland may wish to comment on the broad strategy which underlies the proposals and on their handling. The Lord Chancellor, the Attorney General or the Lord Advocate (all of whom have been invited for this item) may have particular comments on legal aspects. The Lord President may wish to say something about the timing of legislation, and the Government's stance on that.

CONCLUSIONS

12. You will wish the Committee to reach conclusions on the following:

i. whether, as already indicated publicly, the Secretary of State for Employment should put out a consultative document in the autumn covering:

a. mandatory secret ballots for trade union leaders;

b. mandatory strike ballots;

c. the operation of the 1913 Act and particularly the political levy and political objects provisions;

ii. whether the treatment of these matters should be on the lines indicated in E(82)64, subject to any points referred to in discussion;

iii. whether, without ruling out options for later consideration, the consultative document should be confined to these proposals;

iv. whether the timing of further industrial relations legislation should be kept open, as envisaged by the Secretary of State for Employment.

You will wish to invite the Secretary of State for Employment to clear the draft of the consultative document with the Committee (preferably in correspondence).

Emp., Ind.

PLG

P L GREGSON

12 October 1982

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Ind. Pol.

PA

MR SCHOLAR

cc Mr Mount

Industrial Relations Legislation

I mentioned to you that we were having a meeting with the Department of Employment to go through Mr Tebbit's paper for E, and that I would let you know whether our earlier brief (my note of 4 October) needed to amended.

Mr Tebbit's E paper is unchanged from the earlier draft - so much for the Department of Employment's sensitivity about circulating it! - and, following our discussion yesterday, we stand by our earlier advice. In particular, we are satisfied that it would be right at least to air in the green paper the possibility of lifting immunity for any secondary action, ie not just that which is likely to disrupt a contract between the employer and a first customer.

However, we understood one point from the Department of Employment which is not entirely clear from the E paper, and which you may wish to have in mind in case you discuss all this with the Prime Minister. That is that Mr Tebbit conceives this next step very much in terms of focusing on 'democracy in the trade unions', to the extent that that may well be the title of the green paper. In such a context, the concentration on trade union elections and contracting out becomes more logical, whereas in the wider context of employment legislation generally it may not seem to be taking much of a further step.

12 October 1982

CONFIDENTIAL

SP CONFIDENTIAL

G10

Prime Minister (2)

Mr Tebbit is taking action designed to minimise the delay - say, down to 4 weeks or so (necessary to allow printing and distribution to the Courts).

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Michael Scholar Esq
Private Secretary
10 Downing Street
LONDON SW1

11 October 1982

MLS 13/10

Dear Michael

EMPLOYMENT BILL COMMENCEMENT

My Secretary of State discussed with the Prime Minister today the commencement of the Employment Bill, amongst other things. He referred to a new convention about the normal delay between Royal Assent and the commencement of fresh legislation. In response to pressure from the legal profession, Ministers have recently agreed that from the next session onwards the normal delay should be two months after Royal Assent. This Convention is particularly aimed at provisions which will directly affect the public, legal practitioners or pending court proceedings. There is however scope for a less than two month interval where the provisions of an act require early commencement.

Yours sincerely

J B SHAW
Principal Private Secretary

particularly with a number of industrial disputes looming. The Prime Minister said that she fully agreed, and Mr Tebbit should make every effort to be in a position to introduce the order bringing the Act into force soon after Royal Assent.

Ind Rel

ii) There was a discussion of Mr Tebbit's proposals on industrial relations legislation. The Prime Minister asked about restrictions to prevent all secondary picketing: Mr Tebbit said that he wanted first to see some cases go through in which union funds were put at risk, to get the present legislation established. It would then be possible to build on this, and this was also the best way of approaching the issue of making union contracts enforceable. The Prime Minister remarked that legislation would need to be introduced in the next Parliament to make union contracts enforceable and asked about political strikes. Mr Tebbit said that these were already excluded from the formula of protected disputes in the present legislation.

Extract from the record of the PM's Meeting with S/S Emp on 11/10/82

iii) Mr Tebbit said that he had a problem about the date of the order bringing the current Bill into force, since he was being told that it took eight weeks to publish the Bill following Royal Assent and he was unhappy about leaving such a long interval,

INDUSTRIAL POLICY

Prime Minister (2)

SECRET 5

MR SCHOLAR

Mr Tebbit's draft paper has been seen here only by the Policy Unit.

INDUSTRIAL RELATIONS LEGISLATION

We have seen a copy of the draft paper on further industrial relations legislation, sent to the Prime Minister by Mr Tebbit's Private Secretary on 29 September: I understand that the Prime Minister may be discussing it with Mr Tebbit, and she may find it helpful to have the following comments. MES 14/10

The Prime Minister will want to establish with Mr Tebbit a clear timetable for a Green Paper, consultations and the introduction of a new Bill. On the understanding that it is not necessarily the intention to enact a third Employment Bill during this Parliament, it may be best to work on the assumption of the publication of a Green Paper early in 1983, to be followed by a few months of consultations.

As to the content of any further legislation, we agree with Mr Tebbit's main proposals: legislation to require secret ballots for the election of trade union leaders, and amendment of the 1913 Act to provide for contracting out of the political levy.

We also accept that it would be a mistake to legislate at this stage for compulsory strike ballots, which were notably unsuccessful under the 1971 Industrial Relations Act. We note that neither does Mr Tebbit propose to include a lay-off provision, as suggested by the EEF: we are content with that on the understanding that the congingency legislation which the Department of Employment has in draft remains available should appropriate circumstances arise.

We have two suggestions for further measures which have not been proposed by Mr Tebbit:

i) Although we accept that we cannot yet take the major step of lifting of trade union immunities, so as to make unions liable for the consequences of industrial action, we do think that the liability for secondary action should be unrestricted.

At present, immunity for secondary action has been lifted only when it interferes with commercial contracts, but the NHS dispute has shown that ~~considerable damage~~ can be caused without breach of contract.

ii) We think the opportunity should be taken to repeal that part of the Employment Protection Act 1975 which, due to the case history which has built up around it (notably on Section 22), prevents an employer offering lower nominal wages. As inflation comes down to low single figures, an increasing number of employers may wish to offer wage reductions, as became common practice in the 1930s. You have already written to Mr Tebbit's office about that.

4 October 1982

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MR. SCHOLAR

Employment Bill: Employee Involvement

In her letter of 1 October, Mr. Tebbit's Private Secretary reports that Lord Rochester has agreed to raise the threshold of application from 200 to 250. We are content with this.

4 October 1982

SP

CONFIDENTIAL

Prime Minister (2)

SE JV

SECRETARY OF STATE FOR EMPLOYMENT

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MCS 1/10

Michael Scholar Esq
10 Downing Street
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1 October 1982

Dear Michael

EMPLOYMENT BILL : EMPLOYEE INVOLVEMENT

Thank you for your letter of ~~30~~ September recording the Prime Minister's views on the threshold for companies required to report under Lord Rochester's amendment to the Employment Bill.

Mr David Waddington, together with officials from this Department and the Department of Trade, has now seen Lord Rochester. Apart from a couple of minor drafting changes to paragraph (b) and (d) of sub-clause (3) which Mr Tebbit believes can be accepted without difficulty, Lord Rochester was generally content with our proposals. In particular, he agreed to raise the threshold of application from 200 to 250; Mr Tebbit believed that to have pressed for a further increase might have endangered the whole Bill.

It was agreed that Lord Rochester should see a copy of the amendments as they would be tabled and we propose that, subject to any unexpected difficulty, this should take place early next week. Parliamentary Counsel has now drafted amendments to the clause, and these are set out in the annex to this letter. The changes agreed with Lord Rochester are described in a footnote.

I should add that, since my letter of ~~20~~ September, we are now advised that an existing order-making power can properly be used for altering the threshold above which companies are required to report. Accordingly, the proposal for a separate affirmative resolution procedure was not put to Lord Rochester.

I am copying this letter to the private secretaries of all Members of the Cabinet, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

Yours sincerely
Marie Fahey

MISS M C FAHEY
Private Secretary

/ (REVISED)

EMPLOYMENT BILL

AMENDMENT

TO BE MOVED ON THIRD READING

BY THE EARL FERRERS

2

OCT 1982

CLAUSE 1

Leave out Clause 1 and insert the following new Clause -

("Employee ~~participation~~ involvement.

(1) Section 16 of the Companies Act 1967 (additional matters of general nature to be dealt with in directors' report) is amended as follows.

(2) In subsection (1), the following paragraph is added at the end -

"(h) in the case of relevant companies, contain a statement describing the action that has been taken during the financial year to introduce, maintain or develop arrangements aimed at -

(i) providing employees systematically with information on matters of concern to them as employees,

(ii) consulting employees or their representatives on a regular basis so that the views of employees can be taken into account in making decisions which are likely to affect their interests,

(iii) encouraging the involvement of employees in the company's performance through an employees' share scheme or by some other means,

(iv) achieving a common awareness on the part of all employees of the financial and economic factors affecting the performance of the company."

1/10

(3) After subsection (1) there is inserted the following subsection -

"(1A) For the purposes of subsection (1)(h) above, a company is a "relevant company" if the average number of persons employed by it in each week during the financial year exceeds 250; and for the purposes of this subsection the number of persons employed shall be the quotient derived by dividing by the number of weeks in the financial year the number derived by ascertaining, in relation to each of those weeks, the number of persons who, under contracts of service, were employed in the week (whether throughout it or not) by the company and adding up the numbers ascertained."

(4) After subsection (7) there is inserted the following subsection -

"(8) In subsection (1)(h) above "employee" does not include a person employed to work wholly or mainly outside the United Kingdom; and for the purposes of subsection (1A) above no regard shall be had to such a person.")

Footnote - changes agreed with Lord Rochester

- In (3)(b) "in making decisions" substituted for "before decisions are made" and a reference to "wherever practicable" omitted.

- In (3)(d) "all" substituted for "managers and other". The words "performance of their" inserted.

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10 DOWNING STREET

From the Private Secretary

30 September 1982

Dear Marie,

Employment Bill: Employee Involvement

Thank you for your letter of 20 September to Tim Flesher about the terms of the amendments on employee involvement in the Employment Bill.

The Prime Minister remains concerned at the proposal that the threshold for companies required to report should be one of no more than 200 employees. She hopes that your Secretary of State will attempt to gain Lord Rochester's agreement to a threshold above 200. But she is ready to agree that, if it is not possible to go higher, the threshold should be 250. She is content with the other proposals set out in your letter.

I am sending copies of this letter to the Private Secretaries to Members of the Cabinet, to Jim Nursaw (Attorney General's Office) and to Richard Hatfield (Cabinet Office).

Yours sincerely,

Michael Scholar

Miss Marie Fahey,
Department of Employment.

CONFIDENTIAL

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10 DOWNING STREET

From the Private Secretary

30 September 1982

Dear Barnaby,

The Prime Minister understands that the 1975 Employment Protection Act creates the presumption that a cut in money wages is equivalent to a new contract of employment, and that if it is refused by the employee these are prima facie grounds for an action for unfair dismissal.

The Prime Minister believes that, in view of the rapidly falling rate of inflation, it is increasingly important that firms should not be wholly inhibited from cutting money wages. Mrs. Thatcher has in mind wage reductions which have occurred in the United States (for example in Pan American Airways and in the Chrysler Corporation) and in Germany during the current recession.

She understands that the Redundancy Payments Act 1965 offers an indirect route for reducing money wages - under which an employee when declared redundant receives half the compensation costs from his employer and half from the state, and can, after a suitable interval, be re-employed at a lower rate. Clearly the disadvantage with this option is that the state has to be the main paymaster.

The Prime Minister would be grateful for your Secretary of State's views on this issue. Would the necessary change require legislation, and how would this be brought about?

Yours sincerely,

Michael Scholar

Barnaby Shaw, Esq.,
Department of Employment.

SECRET

da

SP COVERING CONFIDENTIAL Mod Pol 4

cc TC

(1)

Prime Minister

Relevant to Cabinet tomorrow.

MJS 29/9

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Michael Scholar Esq
Private Secretary
10 Downing Street
LONDON SW1

29 September 1982

Dear Michael

... I am enclosing a copy of the draft paper on further industrial relations legislation which my Secretary of State will be submitting to E Committee immediately after the Party Conference.

Mr Tebbit thought the Prime Minister might be interested in having an early sight of this before Thursday's discussion of the legislative programme.

Yours sincerely
Marie Fahey

MISS M C FAHEY
Private Secretary

C O N F I D E N T I A L

INDUSTRIAL RELATIONS LEGISLATION

Memorandum by the Secretary of State for Employment

I invite the Committee to take stock of what we have achieved and to consider what should be our strategy and tactics in the lead-up to the next General Election, not ruling out legislation in 1983/84. Our decision should pave the way for what might appear in the Manifesto for the next General Election and for further legislation in the next Parliament. I believe our first priority now should be to focus the spotlight of public opinion on the trade unions as largely unreformed institutions in our society and to undermine the power of unrepresentative leaders.

What We Have Done

2 We have followed a step-by-step approach, providing practical remedies for acknowledged abuses of industrial power and, by so doing, redressing the balance of power in favour of employers. We have attracted and retained overwhelming public support, including that of most members of trade unions. We have been careful not to get too far ahead of employer opinion. We have been at pains always to consult widely and to give the trade unions themselves every opportunity to participate in those consultations. We have consistently held to the view that the civil law, rather than the criminal law, should be the vehicle for industrial relations reform. Recent events have underlined the wisdom of that view.

3 When the Employment Bill becomes law it will, together with the Employment Act 1980, give more effective protection to individuals threatened by closed shops. We will have provided better protection against coercive union recruitment tactics and attempts to require contractors to employ only union members or to recognise unions. The 1980 Act already provides remedies against secondary picketing and greater protection than before against secondary action such as blacking and sympathetic strikes. The present Bill will have made it more likely that unions will have to pay compensation for individuals dismissed in closed shops, and it will have opened up union funds to the possibility of awards of compensation for individuals dismissed in closed shops and to claims for damages in cases of unlawful industrial action. The definition of trade dispute is being narrowed and the inhibitions on the dismissal of strikers eased. (A fuller account is at Annex A).

4 In parallel, the amount of supplementary benefit which could be paid to strikers has been reduced and strikers are now denied income tax repayments whilst strikes continue.

5 These are not inconsiderable achievements. They need to take root and hold. We cannot be sure that we will not be faced by determined challenges to the law both in an attempt to demonstrate opposition to any industrial relations legislation and to foster a wider conflict and such challenges will have to be faced. But with public opinion still with us, the success of our measures so far leaves open the way for further steps to redress the balance of power. I review below the full range of options and make recommendations.

The Future

6 Trade union elections. With the Prime Minister's agreement, I have recently announced the Government's intention to hold early and extensive consultations on whether there should now be legislation to require trade unions to use secret ballots in the election of their leaders. There is no question that the present situation leaves much to be desired; union leaders are often out of touch with the views of their members and the voice of more moderate members often goes unheard as critical issues loom. But we should not underestimate the difficulties and risks in legislating, and it is necessary to remember that a fundamental problem is the sheer apathy of many union members so far as the management of their union and its affairs are concerned. The unions will oppose legislation as an "unwarranted interference in their internal affairs". It will be proclaimed as a first step of State regulation. Every effort will be made by them to evade or frustrate the legislation. A total boycott by TUC-affiliated unions is a probability. Any legislation must therefore be designed to operate in this climate. At the same time it must not be too draconian in character or its effectiveness may well be diminished. The rules of trade unions governing elections vary greatly because they are often designed to meet the particular needs and balance of interests in the individual union. We should not retain public support for our legislation if its effect were to impose inflexible requirements which did not allow the differing needs of trade unions, and indeed their members, to be met. I shall shortly be putting forward to colleagues my proposals for consultation.

7 Strike ballots. An emphasis on the need for greater democracy in trade unions might suggest that we should also legislate on mandatory secret ballots before industrial action. Supporters in both Houses have proposed new clauses to this effect. I believe however that such legislation would be a mistake. As we discovered in 1972, Government or State-imposed ballots (and they would be Government imposed even where they were triggered by a proportion of the membership or were necessary to secure immunity for industrial action) are likely to be turned into a vote of confidence in the union either in support of a pay claim or in its opposition to the Government. Equally important, the holding of ballots may impede rather than assist the resolution of disputes. There was very little support for mandatory strike ballots from industry in the consultations on the 1981 Green Paper. In my view ballots are better left as a method to be employed, whether on the initiative of trade unions or of managements, rather than as a statutory requirement, and there have been a number of encouraging recent examples of employers balloting their own employees. This of course does not mean that we should not at every opportunity continue to draw attention to the failure of trade unions to consult their membership on important issues and to press them to make greater use of secret ballots, the cost of which the Government is prepared to meet. It may be that we should consider extending state subsidy of ballots to those organised by employers,especially if trade unions continue to boycott public funds for ballots.

8 Contracting-out. I believe that the time is also ripe to review the operation of the Trade Union Act 1913 and in particular to consult about ending the anomalous and increasingly unsatisfactory arrangements for contracting out of the political levy. Only 61 trade unions maintain a political fund and all but 5 of those are known to be affiliated to the Labour Party. Although the proportion of unions maintaining a political fund is small, many of those who do are the larger unions. In 1980 about 8 million union members contributed to political funds. This represents just over 80% of members of unions with political funds (ranging from 99% in the TGWU to 30% in SOGAT). These figures are absured when set against the actual voting patterns of trade union members at general elections.

9 We could also take the opportunity afforded by our consultative document to review other aspects of the operation of the 1913 Act. Certainly the definition of "political objects" needs to be brought up-to-date to cover elections to the European Parliament and there have also been complaints that under the Act a union remains free to use its general fund for other forms of political activity such as supporting "quasi-political" organisations against the wishes of some of its members. These objections too should be examined.

10 I recognise that a judgment needs to be made on the timing even of consultations on proposals of this nature because of the risk of opening up the whole question of the financing of political parties. But at the same time it must be recognised that "contracting out" cannot be justified and is the cause of considerable resentment among our most valuable supporters.

The Next Step

11 A consultative document on the issues outlined above with a view to early legislation would maintain the momentum of our policy of industrial relations reform, represent a substantial, but not excessive, further step in our step-by-step approach and keep public attention focussed where we want it, on the trade unions and their anti-democratic and bureaucratic failings.

12 To complete the picture - to enable us to have a broad discussion of our objectives and tactics - I review in Annex B the full range of other possible measures which have been proposed by particular groups of our supporters. I give the reasons why I am opposed to including them in this next round of consultations.

Conclusions

13 Accordingly I recommend that

(i) we should continue the step-by-step approach which has stood us in good stead up to now. This means that we should concentrate on practical measures to remedy acknowledged abuses, thus ensuring wide public support for our measures and not getting too far ahead of employer opinion;

(ii) we should, as before, consult widely and carefully before legislating;

(iii) as our next step, we should focus on the issue of the need for trade union reform and during the autumn issue a consultative document. This should examine:-

(a) the question of legislation to require secret ballots for the election of trade union leaders

(b) the question of mandatory strike ballots (though more briefly as it has already been considered in the Green Paper on Trade Union Immunities and attracted little support)

(c) the operation of the 1913 Act, particularly

(i) the case for substituting contracting-in to the political levy for contracting-out

(ii) the amendment of the "political objects" provision.

14 This would not foreclose on any options which we might want to put to the electorate, nor rule out the possibility of introducing legislation on (ii) (a) and/or (c) in this Parliament.

ANNEX A

THE EMPLOYMENT ACT 1980 AND THE EMPLOYMENT BILL 1982

The Employment Act 1980 received Royal Assent on 1 August 1980. Under its main provisions

(a) the Secretary of State was given powers to set up a scheme to provide payments towards expenses incurred by independent trade unions when conducting secret ballots for certain purposes. This scheme covers ballots for the calling or ending of industrial action; elections to the Executive Committee; rule changes; transfers and amalgamations; and, by a recent order, wage offers. The Act also require employers of more than 20 workers to provide facilities for secret ballots if requested to do so by a trade union.

(b) the Secretary of State was also given powers to issue codes of practice on industrial relations matters which, although not themselves legally binding, may be taken into account by courts, industrial tribunals or the Central Arbitration Committee. (To date codes have been issued on picketing and the closed shop).

(c) important protections were given to those working in closed shops. First, any person employed in or seeking employment in a job where a closed shop operates was given the right not to be unreasonably refused membership of the relevant union and the right not to be unreasonably expelled from it. Secondly, it made dismissal of an employee for non-membership of a union unfair in cases where the person had genuine grounds of conscience or other deeply held personal conviction or where the employee had been with the company as a non-union member since before the closed shop came into force. It also made unfair any dismissals for non-membership of a union in any new closed shop which has not been approved by at least 80% of the workforce in a secret ballot. Finally, it gave employers the right to 'join' a trade union in proceedings for unfair dismissal for non-membership of a union if he claimed that the union exerted pressure on him to dismiss the employee concerned.

(d) secondary picketing (ie picketing other than at the employee's own place of work) was excluded from a new definition of 'peaceful picketing' to replace the definition in the 1974 Act.

(e) important restrictions were placed on other secondary action (ie action such as 'blacking' taken by workers not in dispute with their employer). Indiscriminate secondary action was outlawed by the removal of immunity for secondary action which interferes with commercial contracts unless the action is specifically targeted on the employer in dispute.

(f) industrial action to compel workers to join a particular trade union was made unlawful (a provision which is being repealed in the 1982 Bill because it is rendered unnecessary by the wider prohibition of 'union labour only' requirements)...

The 1982 Employment Bill was introduced to Parliament in January 1982 following extensive consultations on the Green Paper on Trade Union Immunities published in 1981. It is expected to become law in the Autumn. Its main provisions

(a) enable the Secretary of State to pay compensation to victims of the closed shop who were dismissed under the last Government's legislation and who would have been protected as existing non-union members or conscientious objectors had the closed shop provisions of the Employment Act 1980 been in force at the time of their dismissal.

(b) make it unfair to dismiss an employee for not being a union member in a closed shop where the closed shop had not in the five years preceding the dismissal been supported in a ballot by 80% of the employees covered or 85% of those voting.

(c) substantially increase the compensation available for those unfairly dismissed for non-membership of a trade union or because of trade union membership or activities. There is a new special award - which applies to closed shop dismissals made unfair in the 1980 Act and the 1982 Bill - set at a minimum level at £10,000, or £15,000 where a reinstatement order has been made but not observed.

(d) extend the provisions on 'joinder' by enabling an employee who claims to have been unfairly dismissed for not being a member of a trade union to make a trade union party to unfair dismissal proceedings where he claims that the union put pressure on the employer to dismiss the non-union employee.

(e) amend the law relating to the dismissal of those taking part in a strike or other industrial action to provide that an employer has not discriminated against an employee (and therefore an industrial tribunal has no jurisdiction to determine an unfair dismissal complaint) if he has given equal treatment (as regards dismissal and offers of re-engagement within three months of their dismissals) to those taking part in the action at the same establishment as the dismissed employee at the date of his dismissal.

(f) make unlawful any discrimination against non-union firms in the awarding or making of contracts; and remove legal immunities from those who put pressure on an employer to discriminate in this way and from those who organise industrial action against companies or their workers on the ground that they are non-union firms.

(g) bring the legal immunities from civil actions for trade unions into line with those for individual officials. This will enable trade unions to be sued for an injunction or damages up to a specified limit where they are responsible for unlawful industrial action.

(h) restrict the definition of a lawful trade dispute (on which the immunities from civil actions rest) to disputes between workers and their own employer which are wholly or mainly related to the subjects of a trade dispute listed in section 29 of the Trade Union and Labour Relations Act 1974.

ANNEX B

OTHER POSSIBLE MEASURES OF INDUSTRIAL RELATIONS REFORM

1. Below, as foreshadowed in para 13 of the main paper, I review the other issues on which it has been suggested that we should legislate and explain why I am opposed to including any of them in this particular round of consultations.

Immunities

2. It is sometimes argued that the immunity for those (including unions) who induce others to break their contracts of employment - now in Section 13(1) of the 1974 Act and originating from the Dilke amendment in 1906 - should be revoked. A strong case in principle can be made. However, the effect would be that unions and officials would always be liable to damages unless, in calling for industrial action, they had given notice of their intention not shorter than the full period of notice in the contracts of employment of all the individual employees concerned. And, in logic, if individual contracts were not to be broken, they would need to be terminated. By the giving of notice, individuals would forfeit all rights to a redundancy payment or claims for unfair dismissal and to the benefits (eg the accrual of pension entitlement) which continued employment would have provided. Their relationship with their employer would have been severed. The possibility of it being re-established would essentially depend on whether the employer eventually needed to offer re-employment to continue in business or could recruit an alternative labour force. I do not believe that industrial or public opinion is anywhere near ready for such a step or that we could maintain the support of trade unionists for our industrial relations policies if we adopted it. We would be portrayed as denying "the right to strike".

Incorporation of trade unions

3. This has been advocated by the Centre for Policy Studies, but it is difficult to see how this could bring any material advantage. At present, although not corporate bodies, trade unions, because of Section 2 of the 1974 Act, have most of the attributes of such bodies, being able generally to sue and be sued in their own names. When the Employment Bill becomes law their funds will be at risk if they act unlawfully. Furthermore, incorporation would require

definition of the conditions for incorporation and this would take us back to the problems encountered under the 1971 Act. The problem of vicarious responsibilty has in any case been dealt with in the Employment Bill. I am sure we should not contemplate any early change to the rules we are establishing.

Legally Enforceable Agreements

4 Greater certainty that unions and their members would observe agreements would be a valuable advance and there is at present nothing in law to prevent employers and unions agreeing that their agreements are legally enforceable. They do not however choose to do so. Even after the 1971 Act, which presumed all collective agreements to be intended by the parties to be legally binding unless they included a specific provision to the contrary, virtually every collective agreement included such a proviso. Certainly so far as substantive agreements on terms and conditions are concerned, the consultations on the 1981 Green Paper showed that employers still saw little or no advantage in having legally binding agreements. Indeed, many of the ways in which employers needed to react to the downturn in economic activity could have been blocked if unions and their members had been able to enforce the observance of previous agreements through the courts.

5 As for procedure agreements, amendments have been put down to the present Bill to link immunity to their observance (whilst not making such agreements legally enforceable as such). This proposal was first put forward last year by a CBI working party. While subsequently the CBI, realising the extent of the problems involved, came to see that this proposal was, if anything, for the long term, certain other employer organisations have lent their support to it.

6 At the same time I see nothing to suggest that employers generally want this change, which would of course be far more dramatic than that taken in 1971, nor do I find any evidence that they are seeking to adapt their procedure ageements in preparation for it. Since the CBI working party there has been no move by employers in this direction and virtually no improvement of existing procedures. Indeed, a good many employers have consistently and strongly opposed the proposal as they do not believe that existing procedure agreements could bear the weight of legal interpretation and they would not wish them to do so. Moreover, the

effectiveness of such a provision could be frustrated by the unions in withdrawing from all existing procedure agreements and concerted action of this sort could be expected. To prevent this it would be necessary to legislate for enforced conciliation by ACAS in the absence of a procedure agreement or for a model procedure agreement to be imposed on all employers. Both these courses have strong disadvantages and I am still to be convinced that we would get the necessary support from employers.

7 Furthermore, I am strongly of the view that it would be better to allow the exposure of union funds to settle into the law before making such a change since to have any useful effect strikes in breach of procedure agreements should put trade union funds at risk. In short we should not consider a measure of this kind until there is clearer evidence of employer support and the Employment Bill 1982 has bedded down.

Secondary action

8 The 1980 Act considerably narrowed the scope of the immunity for secondary action which interferes with commercial contracts. In effect it allowed such action to be lawful only if its purpose and likely effect were to disrupt a current contract between the employer in dispute and a first customer or supplier. There is no good reason why the law should provide immunity for <u>any</u> secondary/ sympathetic action (the latter term is singularly inappropriate as no sympathy is shown to the innocent victims of the action). In our Manifesto we undertook to "ensure that the protection of the law is available to those not concerned in the dispute but who at present can suffer severely from secondary action (picketing, blacking and blockading)". We have not yet met this commitment fully.

9 However, Section 17 of the 1980 Act has now been construed successfully by both the House of Lords and the Court of Appeal and it is in the area of secondary action that we may expect some early legal actions involving union funds. I believe that it is much more important to ensure that the opening up of union funds for damages works and becomes accepted than to contemplate early action to narrow further or remove altogether the restricted immunity for secondary action established by the 1980 Act.

Lay-Off

10. There are two proposals to be considered, originally emanating from the Engineering Employers Federation, either or both of which could be adopted:-

(i) a measure to assist employers in combatting selective action. An employer whose course of business was disrupted by the industrial action of some of his employees could be enabled to lay-off without pay others of his employees whose work was affected.

(ii) a measure to alleviate the economic losses for employers caused by major disputes. Where industrial action in a major dispute is causing widespread disruption, the Secretary of State could be empowered by Order to enable employers whose business is affected to lay-off some or all of their employees.

11. While the purpose of these proposals can be presented as being no more than to extend to white collar workers and staff the provisions regarding lay-off in the event of industrial action which in most guaranteed pay agreements apply to blue collar workers, I believe that we should think very carefully before we go down this road. There are arguably objections of principle to Government intervention to enable one party - the employer - to set aside the terms of an agreement which has been freely made. (The argument that legislation is required because some employers, eg in Fleet Street, are too weak to negotiate the necessary changes in their agreements with unions reflected in the contracts of their employees merely casts doubts on whether, if the requested legislation was enacted, such employers would be able to avail themselves of it). I do not rule out that circumstances may require us to introduce such legislation, particularly if selective strike action threatens to develop widely as a deliberate tactic of unions, or in the event of a major dispute with widespread consequences for other employment, but we should certainly not rush into it. For this reason, I advise strongly against consulting on any proposals at this stage. Additionally, such intentions would be viewed by white-collar employees (largely our supporters) in particular as a direct attack on what are now their lawful and agreed interests.

CONFIDENTIAL

Prime Minister ①

Shall I ask Mr Tebbit for a note on what should be done?

MLS 29/7

PRIME MINISTER

Yes please MT

WAGES, FALLING INFLATION AND EMPLOYMENT PROTECTION

Since the rate of inflation is now falling rapidly, it is becoming increasingly important that firms and Government Agencies are not inhibited from cutting money wages. Reductions in wages have already occurred extensively in the United States (eg Pan Am, Chrysler) and in Germany during the current slump.

In the United Kingdom, however, we are hamstrung by the Employment Protection legislation. Section 22 of the 1975 Act (together with case law and common law) creates the presumption that a proposed wage cut is equivalent to an offer of a new contract of employment. If it is refused by the employee, these are prima facie grounds for an action for unfair dismissal, with redress such as re-instatement on the old terms with financial compensation. A direct cut in money wages, therefore, is thus only for the brave.

There is, however, an indirect way to reduce wages - through the Redundancy Payments Act 1965. Under this Act an employee, when declared redundant, receives half the compensation costs from the employer and half from the state. But after a suitable interval the employee can be re-employed at a lower wage. However, for the employee and employer willingly to negotiate this option, each must see some advantage - the state is the main paymaster. Clearly this sort of wage cutting is largely phoney and is not to be encouraged.

The best way to proceed is to remove the 1975 impediments to wage reductions. This will require legislation. You may think it is worthwhile reminding the Secretary of State for Employment of these inhibitions and the need to incorporate steps for their removal in the legislative programme.

28 September 1982

ALAN WALTERS

CONFIDENTIAL

Prime Minister (2)

MLS 23/9.

FROM THE PRIVATE SECRETARY TO THE LEADER OF THE HOUSE
AND THE CHIEF WHIP

22nd September, 1982.

Dear Marie,

EMPLOYMENT BILL: EMPLOYEE INVOLVEMENT

PM's Box

In the Lord Privy Seal's absence on an official visit abroad this week, I have shown your letter to Tim Flesher of 20th September to the Chief Whip (Lords).

The Chief Whip is in broad agreement with your Secretary of State's proposals. In particular, he agrees that the necessary amendments should if at all possible be made in the Lords at Third Reading, which is now firmly scheduled for the 13th October. He would be willing to discuss the proposed amendments with the Lords Authorities once they have been agreed by Ministers. His instinctive reaction is that a new Clause to the Bill as an amendment to the Companies Acts would be procedurally in order. The same applies to an increase in the threshold for companies from 200 employees to 250. He agrees however, that, even if a more substantial increase was held to be within the rules for Third Reading, it is doubtful whether the House would agree to such an increase if Lord Rochester argued strongly against it.

Should the Lords Authorities advise against the tabling of any of the key amendments at Third Reading, there remains the option of tabling amendments in lieu in the Commons. But given the constraints of the timetable in the Commons, to which your Secretary of State refers, the Chief Whip agrees that this course could involve a degree of risk in the last week of the session.

I am copying this letter to Tim Flesher and to the other recipients of your letter of the 20th September.

Yours sincerely
Michael Pownall

(M.POWNALL)

Miss M.C.Fahey.

22 SEP 1982

23 SEP 1982

Ind Pol
Legislation

21 September 1982

MR SCHOLAR

I have seen a copy of the letter of 20 September from Mr Tebbit's private secretary to Tim Flesher, about Lord Rochester's amendment to the Employment Bill.

The main point at issue is the threshold figure for companies required to report to their employees. At present, the amendment sets this at 200; Mr Tebbit would like the threshold raised to 250. The Prime Minister has said that she would consider a figure of 500 employees to be preferable, and more acceptable to the CBI. Any further amendment will have to take into account the wishes of Lord Rochester, whom Mr Tebbit is to consult next week. Although it is my understanding that no formal written assurances have been given to Lord Rochester, it is clear that matters will become complicated if any change is not acceptable to him. Mr Tebbit should, however, seek to persuade him to agree to a significant raising of the threshold.

I suggest, therefore, that you write to Miss Fahey expressing the Prime Minister's view that a much higher figure is desirable.

On the other points we have little to add: the proposed drafting amendments to sub-section (3) do seem to improve its requirements in a way that is less likely to result in companies' performance being impeded and trade union influence enhanced.

pp FM

FERDINAND MOUNT

(Dictated by Mr Mount
and signed in his absence)

CONFIDENTIAL

CC JV

SECRETARY OF STATE FOR EMPLOYMENT

Caxton House Tothill Street London SW1H 9NA

Telephone Direct Line 01-213 6400
Switchboard 01-213 3000

Prime Minister (1)

You earlier commented that a threshold of 500 would be more acceptable to us - 200 to CBI etc. Shall I suggest that Mr Tebbit attempts to gain Lord Rotherwick's agreement to 500; but that, failing agreement, you could accept 250? Otherwise agree to these proposals?

MLS 21/9

Tim Flesher Esq
10 Downing Street
LONDON SW1

Dear Tim

EMPLOYMENT BILL: EMPLOYEE INVOLVEMENT

20 SEP 1982

At Cabinet on 29 July (CC(82)40th), my Secretary of State was asked to consider urgently how the Liberal/SDP amendment on employee involvement should be put into a satisfactory form in time for Third Reading in the House of Lords after the summer adjournment. He was also asked to arrange for consultation with industry on the amendment and to report the outcome with recommendations.

Some 100 organisations were invited for their views, and 75 have responded. There has been a mixed reaction to the amendment. A number of organisations are in favour of such a measure, but have called for some amendment of the provisions as drafted. The majority of employers, however, including the CBI and the Institute of Directors, are unenthusiastic, but recognising the Government's acceptance of the provision in principle they also have suggested drafting improvements to make it more workable in practice. A few respondents expressed strong opposition to the provision in the belief that there is no place for legislation of any kind in the field of employee involvement.

Decisions must now be taken on what amendments should be tabled to the provision, which now stands as Clause 1 in the Employment Bill. In considering any amendments, we are limited by the rules of procedure for inclusion of amendments at Lords Third Reading. Although Third Reading is provisionally scheduled for 13 October, Commons consideration of Lords amendments is not expected until some time during the last week in the session. If the Bill had then to be returned from the Commons to the Lords, there could be a serious risk of its loss. Clearly we cannot run that risk and Ministers here believe that it is out of the question to contemplate any amendments which might be ruled out of order. It will also be necessary to consult Lord

Rochester about any amendments that are put down - in line with the assurances that he has been given.

First, we need to settle the nature of the amendment to the new clause. Having discussed this question with the Secretary of State for Trade, and with the benefit of the Attorney's advice, my Secretary of State has concluded that the best approach is to express the requirements of the new clause as an amendment to the Companies Acts by means of an insertion in Section 16-21 of the Companies Act 1967. We understand that in common with other requirements relating to directors' reports, a regulation-making power to amend the provision would then be available under Section 454 of the Companies Act 1948. There is also the advantage that this method would enable the new clause to be included in a Companies Act consolidation measure.

Secondly, we need to consider whether the threshold for companies required to report should be increased above 200 employees, as specified in the present provision. There is in our view much to be said for increasing this number to 250 to bring it into line with the comparable Companies (Directors Report) (Employment of Disabled Persons) Regulations 1980 which entail a similar reporting requirement. This view is supported by a number of organisations who have been consulted, including the CBI. Furthermore, we doubt whether Lord Rochester and his friends would agree to a more substantial increase in the threshold. Provided the House of Lords' procedural rules permit, Mr Tebbit also proposes to include a provision enabling the threshold to be altered by affirmative resolution procedure.

Finally, we need to decide what drafting amendments should be made to the substantive parts of the provision in Sub-Section 1(3). The main changes which we recommend should be introduced, and which reflect a number of comments received in our consultations, ... are set out in the Annex enclosed with this letter, together with the text of Clause 1.

Subject to any views which the Prime Minister and other ministers may have, Mr Tebbit proposes to discuss these amendments with Lord Rochester early next week with a view to their being drafted and put down for Third Reading. We should therefore be grateful to receive any comments on our proposals by the end of this week, that is Friday 24 September.

I am copying this letter to the private secretaries of all members of Cabinet, the Attorney General and Sir Robert Armstrong.

Yours sincerely
Marie Fahey

MISS M C FAHEY
Private Secretary

PROPOSED AMENDMENTS TO CLAUSE 1(3) OF THE EMPLOYMENT BILL (EMPLOYEE PARTICIPATION)

It is desirable to enable companies which have existing arrangements for employee involvement to be able to report on those as well as any new developments introduced during the year in question. This could be achieved by inserting "maintain" after "to introduce" in the opening sentence.

Sub para (2) The phrase "through their managers or supervisors" is thought to be too restrictive and might be omitted.

Sub para (b) There is some concern that the wording of this sub-paragraph, in particular the requirement that employees' views should be taken into account "before decisions are made", is too rigorous. Accordingly the words "wherever practicable" could be inserted after the words "so that".

Sub para (c) The reference to employee share ownership schemes is thought to be too limiting. It could be amended by substituting "through employees share ownership schemes or by other means" for the last 8 words of the sub-paragraph.

Sub para (d) The CBI point out that there is a risk that this provision could be used by trade unions as a further means of applying pressure on employers to discuss or negotiate the allocation of resources. The sub-paragraph should therefore be reworded on the lines of "achieving a common awareness on the part of managers and other employees of the financial and economic factors affecting the company".

Employee Participation

(1) In this section -

references to "the Act" of any particular year are to the Companies Act of that year;

"directors' report" means a report by the directors of a company which by section 157(1) of the Act of 1948 is required to be attached to a balance sheet of the company prepared under section 1 of the Act of 1976 (or under that section taken with section 150 of the Act of 1948); and

"employment" means employment other than employment to work wholly or mainly outside the United Kingdom; and "employed" and "employee" shall be construed accordingly.

(2) This section applies to every directors' report of a company which relates to a financial year beginning on or after 1st January 1983 where the average number of persons employed by the company in each week during the financial year exceeded 200; and for the purposes of this subsection that number shall be the quotient derived by dividing by the number of weeks in the financial year the number derived by ascertaining, in relation to each of those weeks, the number of persons who, under contracts of service, were employed in the week (whether throughout it or not) by the company and adding up the numbers ascertained.

(3) In every directors' report of a company there shall be contained a statement describing the action that has been taken during the financial year to introduce or develop arrangements aimed at -

(a) providing employees systematically through their managers or supervisors with information on matters of concern to them as employees;

(b) consulting employees or their representatives on a regular basis so that the views of employees can be taken into account before decisions are made which are likely to affect their interests;

(c) encouraging the involvement of employees in the company's performance through means such as employees share ownership schemes;

(d) achieving a common awareness on the part of managers and employees of the problems involved in allocating resources for such purposes as pay, and investment.

10 DOWNING STREET

From the Private Secretary

2 August 1982

The Prime Minister has seen Lord Cockfield's letter to your Secretary of State of 30 July about Lord Rochester's amendment to the Employment Bill.

On the details of Lord Rochester's amendment, the Prime Minister has commented that a "threshold" of 500 employees, rather than 200, would be more acceptable to the CBI and other representatives of industry, and that she sees this as a strong argument for increasing the threshold to at least 500.

I am copying this letter to John Rhodes (Department of Trade), Peter Jenkins (HM Treasury), Muir Russell (Scottish Office), Michael Pownall (Chief Whip's Office, House of Lords), Jim Nursaw (Law Officers' Department) and Christine Duncan (Lord Advocate's Department).

W. F. S. RICKETT

Barnaby Shaw, Esq.,
Department of Employment.

DEPARTMENT OF TRADE 1 VICTORIA STREET LONDON SW1H 0ET Telephone 01-215 7877

From the Secretary of State

Prime Minister (2)

MES 30/7

The Rt Hon Norman Tebbit MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
London
SW1H 9NF

30 July 1982

Dear Norman,

I am writing following the decision at Cabinet on 29 July to accept in principle Lord Rochester's amendment to the Employment Bill providing for a statement in Directors' Reports about company policies on employee involvement.

I assume that you will be consulting the CBI and the Institute of Directors, and indeed anyone else you may think appropriate (for example, accountants). I doubt whether they will welcome the move but we do need to reduce opposition as far as we can.

I imagine that the statement on Monday announcing our decision to accept Lord Rochester's amendment will avoid any commitment to the details of his proposals. There is the further point about the method of implementation, for example between a clause in your Bill standing on its own, a clause in your Bill amending the Companies Acts or indeed an Order under the Companies Acts. Difficult questionsof both vires and policy arise and my Solicitor is in touch with your Solicitor on the question of vires with a view to consulting the Law Officers.

From the Secretary of State

As to the details of Lord Rochester's amendment, we will have to consider carefully whether the range of matters to be disclosed is sensible and also whether the threshold of 200 employees should be increased, for example to 250 to bring into line with other comparable provisions, or even to 500.

I am sending copies of this letter to the other members of the Cabinet, to the Attorney General and to the Lord Advocate.

Yours, Arthur

LORD COCKFIELD

COMMITTEE OFFICE

HOUSE OF COMMONS, SW1A 0AA

With the Compliments of

the Clerks to the

Employment Committee

2nd Pol.

CONFIDENTIAL

To be published as HC 400

HOUSE OF COMMONS

Sixth Report from the

EMPLOYMENT COMMITTEE

Session 1981-82

THE WORKING OF THE HEALTH AND SAFETY COMMISSION AND EXECUTIVE : ACHIEVEMENTS SINCE THE ROBENS REPORT

NOT FOR PUBLICATION, BROADCAST OR USE ON CLUB TAPES BEFORE 1500 HOURS ON 15 JULY 1982
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Ordered by The House of Commons to be printed 14 July 1982

SIXTH REPORT

The Employment Committee have agreed to the following Report:

THE WORKING OF THE HEALTH AND SAFETY COMMISSION AND EXECUTIVE:

ACHIEVEMENTS SINCE THE ROBENS REPORT

1. It is ten years since the report of the Committee of Inquiry on Safety and Health at Work (the Robens Report) was presented to Parliament. The Committee's findings were based on detailed study and wide consultations with interested parties over a period of two years. The Committee criticised the traditional approach of detailed statutory regulations on health and safety matters as outdated, over-complex and inadequate. They recommended more effective self-regulation by employers and work people jointly. To this end they proposed a single comprehensive framework of legislation and much greater use of agreed voluntary standards and codes of practice to promote better conditions. With a broader, more flexible framework of this nature, the statutory inspection services could be used more constructively in advising and assisting employers and work people, while at the same time they could concentrate more effectively on serious problems where tighter control might be needed.

2. As well as legislation the Committee considered that administration should be unified. The administrative arrangements at that time were greatly fragmented, being divided between five government departments, seven separate inspectorates, and extensive participation by local authorities. The Committee's recommendation was that these arrangements should be replaced by a single centre of initiative in the form of a national Authority for Safety and Health at Work.

3. After its publication, the Robens Report was carefully considered, first by the Government of the day, and subsequently by the new Government which came into office following the general election of February 1974. A Bill was introduced, which became the Health and Safety at Work etc. Act 1974. This measure was based on the Robens Report and incorporated many of its recommendations, but in certain respects went beyond them, especially in matters of enforcement. The central feature of the Act, as explained by the Secretary of State when introducing the Bill, was the establishment of the Health and Safety Commission.

4. The Commission is responsible for taking appropriate steps to secure the health, safety and welfare of people at work; to protect the public generally against risks to health and safety arising out of the work situation; to give general direction to the Health and Safety Executive and guidance to local authorities on the enforcement provisions of the Health and Safety at Work etc. Act; to assist and encourage people with duties under the Act; to make suitable arrangements for research and the provision of information; to make proposals to the Secretary of State for regulations; and to approve codes of practice.

5. The order of reference of the Employment Committee covers the examination of the expenditure, administration and policy, not only of the Department of Employment, but also of associated public bodies. These include the Health and Safety Commission, and the Committee decided that as this year sees the tenth anniversary of the Robens Report which led to the establishment of the Commission, they should hold an inquiry into the achievements of the Commission since its creation.

6. Written submissions were sought from the Commission and various other organisations interested in health and safety, and oral evidence was taken from a number of witnesses. To all who gave of their time and experience in providing evidence the Committee wish to express their thanks.

7. The CBI in their evidence drew attention to a number of problems which they considered had arisen in the operation of the Act, eg the load of work for industry, overlaps between legislation and the responsibilities of Departments, inconsistencies in the operations of inspectorates, particularly in the local authority field, and uncertainty over the status and role of codes of practice and guidance notes. But their general conclusion was that the Commission have succeeded in making the Act work well. In particular they thought the Commission had achieved effective consensus and an increased commitment from both sides of industry to an extensive programme of legislation.

8. The TUC view is that despite constraints, particularly shortage of manpower resources, the reform of occupational health and safety in the UK which flowed from the Robens Report has been successful. They consider that the Health and Safety Commission have proved a major success in exercising a leading role in the health and safety field, consulting those affected by proposals for new health and safety legislation and securing consensus about new proposals.

9. The Committee welcome the consensus between employers and unions which has developed since the passing of the Health and Safety at Work etc. Act and the establishment of the Commission. As the Robens Report pointed out, the primary responsibility for doing something about occupational accidents and disease must be with those who create the risks and those who work with them. For real progress it is clearly essential that there should be co-operation between management, who have the primary responsibility for health and safety at work, and employees, and a common commitment to the promotion of health and safety.

10. While recognising that the Commission have achieved consensus on new legislation, the Committee were concerned that this might have been at the expense of reasonable expedition, or progress in controversial areas. The Commisssion in their written evidence provided a list of regulations made and codes of practice approved since 1974, and explained their approach to this area of their work. Their policy has been to deal with particular areas of hazard, in a considered order of priority, in packages of regulations, codes, guidance notes, and enforcement arrangements, all applied to the objective of controlling the specific hazard. A number of factors made it difficult to undertake a quicker review, eg the need to deploy scarce resources on newly recognised hazards, and on negotiation and implementation of EEC Directives. The main factor was the need for consultations, which can be time-consuming. The full participation of all concerned with the hazard is essential however if proposals are to be realistic and to gain acceptance. In the light of this explanation, and recognition of the extent of the new regulations and codes which have been issued, the Committee accept that the time spent on preparing and issuing them has not been unreasonable, given the detail covered and the consultations required.

11. The regulations and codes of practice listed by the Commission are concerned primarily with health and safety at work. In this field the activities of the Commission, not only in issuing regulations and approving codes of practice, but also in dealing with other steps to secure the health and safety of people in the workplace have had a marked influence in raising standards.

12. But the responsibilities of the Commission extend beyond the health and safety of people at work to the protection of the general public against risks to health and safety arising out of the work situation, and include the need to make suitable arrangements for research and the provision of information. The Committee questioned the Commission on how they maintain contact with the wider public which the Act seeks to protect and how they ascertain public opinion in sensitive areas of health and safety.

13. In their written evidence on this point the Commission said that they had evolved consultative procedures with representative organisations and scientific, technical and professional experts, particularly through the advisory committee structure and technical working parties. Individual experts and research organisations are consulted. Widespread publicity is given when consultative documents are issued and any person or organisation can offer comments on them, but preferably through representative organisations. This approach was developed in oral evidence by the Chairman of the Commission, but the Committee consider that the Commission's techniques of communication and persuasion lack professionalism, flair and vigour, with the result that laymen find it difficult to know what they are doing.

14. More generally the Act imposes a duty on the Commission to arrange for research to be carried out, for results to be published, and for information and advice to be provided to government departments, employers, employees and all concerned with the health and safety matters covered by the Act

15. The Committee consider that the Commission have a responsibility to ensure that informed discussion and debate about health and safety questions take place. At present however the Commission appear to keep an unjustifiably low profile, which leads to a lack of public awareness of potential hazards. The Committee have examined the information provided about the division of staff resources between the sections of the Directorate of Information and Advisory Services, and consider that the proportion devoted to the press office is inadequate, bearing in mind what is allocated to publications and the items.

16. The Commission should adopt a higher profile. A greater understanding could arouse more pressure for improvements, and this in turn could for example attract more resources from Government and employers to deal with health and safety problems. The Committee therefore consider that the Commission should not only re-assess their own attitude towards publicity, but also review the activities of their publicity and press department with the aim of strengthening their impact on discussions of all aspects of health and safety affecting the workplace or the general public.

17 In strengthening their publicity activities the Commission should not however go outside their proper responsibilities. The Chemical Industries Association in written evidence said that the chemical industry felt that in view of the public reaction to certain over-publicised local incidents the Commission should make some positive moves to allay undue public concern about such situations. They suggested that the Commission should consider a joint campaign with trade associations to tackle this problem, and developed the case for this in oral evidence. The Committee consider that this suggestion is ill-founded. It is for the chemical industry itself to defend its own position. The Commission are an independent body and should not prejudice their independence by taking part in any campaign to defend particular interests.

18. Another industry which has attracted concern over health and safety is the nuclear power industry. The Committee received a submission and took oral evidence from Dr. T. M. Sugden, chairman of the Advisory Committee on the Safety of Nuclear Installations. The Advisory Committee concern themselves with broad issues, not detailed questions. They do not seek to cover the whole field of nuclear safety but concentrate on selected major technical issues. They work through study groups, of which there are currently three, on the Pressurised Water Reactor, Operator/Plant Interface, and Fuel Processing. They are an independent body, whose function is to give impartial advice to the Health and Safety Commission, and the Secretaries of State for Energy and Scotland, on matters of nuclear safety. The Committee did not attempt to probe into the substance of the Advisory Committee's work, but noted that the Advisory Committee do claim to be independent.

19 This issue of independence arises also in the matter of the conveyance of radioactive materials. The Secretary of State for Transport has Ministerial responsibility for rail safety, and the Committee asked the then Secretary of State for Employment in May 1981 whether the Secretary of State for Transport's responsibilities for British Rail could prejudice his position in cases where there might be a clash between the commercial interests of the railways and safety considerations in carrying traffic of this kind. The reply, contained in a memorandum from the present Secretary of State in April 1982, defended the existing arrangements, but the Committee remain concerned about the question. They would see advantage in transferring the Ministerial responsibility for safety in the conveyance of radioactive materials to the Secretary of State for Employment, to ensure that safety considerations were seen to be taken into account quite independently of commercial considerations.

20. The EEC have been considering the possibility of harmonising the practices in different Member States on the conveyance of dangerous substances. In 1981 the Health and Safety Commission had to amend their earlier regulations on packaging and labelling in the light of a directive from the EEC. The regulations about the conveyance of dangerous substances in tankers and tank containers in that year were also influenced by the EEC directive.

21. It is clearly important that common rules should apply to the transport of hazardous loads between EEC countries. The Committee therefore welcome the moves towards harmonisation in the EEC in this matter - and in other areas of health and safety - but consider it essential that UK representatives in EEC discussions should ensure that harmonisation is not achieved at the expense of lower standards of safety.

22. Within the United Kingdom the Commission draw a distinction between their work in the two fields of accidents and of occupational diseases. Although accidents are coming under control, the problems of occupational diseases are much more difficult to deal with. They consider that this should be a priority in the health and safety field, and they see a need for more professional people, such as toxicologists and epidemiologists. Not enough appears to be known about the hazards of occupational diseases however, and the Committee consider that more research and publicity is necessary, so that the Commission's efforts in this field should be directed to the best advantage.

23. Another area that interested the Committee was Section 6 of the Act, which imposes general duties on manufacturers, designers, importers and suppliers of articles and substances for use at work to ensure that such articles or substances are safe and without risk to health. The Committee were concerned that little appeared to have been done by the Commission to enforce or implement this Section: very few prosecutions had been carried out. In replying to this concern the chairman of the Commission said that the Commission were now paying particular attention to this Section and more cases were being taken to court. The Committee welcome the increased attention the Commission are paying to this matter, and will be interested to learn at a later date what results they have achieved.

24. In this inquiry the Committee have been primarily concerned with the work of the Health and Safety Commission and they have not examined the work of the Executive. Some witnesses, however, eg Sir Bernard Braine, MP, have expressed criticism of the performance of the Executive, and the Committee propose to give further considerations to this at a later date. They will then review the enforcement of the Act and

regulations on health and safety, including such questions as the work of the inspectorates and the adequacy of penalties imposed by the Courts. Meanwhile they note that the evidence provided lends support to their strictures about the Commission's weakness in communications with the general public.

SECRET

SUBJECT.

10 DOWNING STREET

From the Private Secretary

6 July, 1982

Dear Barnaby,

Employment Bill

The Prime Minister had a brief discussion with your Secretary of State this afternoon about the possibility of taking up amendments proposed in the House of Lords designed to make a secret ballot mandatory ~~before strike action could be taken by~~ trade unions.

Your Secretary of State said that it would be neither practical nor desirable to alter the Bill at this stage, as was being proposed. There were major policy questions to be settled; and it would be unprecedented to introduce a clause of this kind without some prior warning and consultation with those most closely concerned. After discussion, the Prime Minister agreed that no change on these lines should be made to the present Bill. She asked your Secretary of State to push ahead with the preparation of a clause on these lines for use in a future Bill; it would be for consideration whether this would be in the 1982/3 or the 1983/4 Session.

I am sending a copy of this letter to Peter Jenkins (H.M. Treasury), David Heyhoe (Lord President's Office) and David Wright (Cabinet Office).

Yours sincerely,

Michael Scholar

J. B. Shaw, Esq.,
Department of Employment

SECRET

File

JD

cc: PLEmp

10 DOWNING STREET

THE PRIME MINISTER

28 June 1982

Dear Mr Murray,

Thank you for your letter of 10 June.

I am sorry that the TUC feel it necessary to continue their campaign against the Employment Bill. Every opinion poll has shown that the Bill is welcomed by the vast majority of people in the country and indeed by most trade union members. There is certainly no evidence for your view that many employers are opposed to the Bill. The proposals in the Bill reflect the outcome of more than a year's extensive consultations.

You say that the TUC have not misunderstood the Bill's provision. But it is apparent from your letter that your criticisms are indeed based on a misunderstanding of the Bill's intentions and effects.

You say that the Bill will deny to workers rights which have been theirs for decades. In fact it extends the rights of workers, for example against unfair dismissal on the grounds that they do or do not belong to a trade union. The Bill does not affect the ability of trade unions to organise, to seek recognition from employers, to bargain collectively or to organise industrial action by their members in pursuit of improvements in their pay and conditions or in defence of their jobs.

/ You

088

You claim that the right of public servants to take action to defend their jobs will be brought into doubt. I do not know what evidence you have for such a statement. If after the Bill becomes law public service workers were to have a dispute with their employer about pay, conditions, jobs etc. - indeed all the normal subjects of a trade dispute - it would be a lawful trade dispute, as it would always have been.

I find it extraordinary that you should suggest that the Bill will make it illegal for trade unionists to support workers in countries such as Poland and South Africa. As I am sure you must know, such industrial action, undertaken for purposes which have nothing to do with a trade dispute, has always been unlawful, even under the legislation of 1974.

As to your claim that the Bill will "undermine long standing union membership agreements", it will only do so if such an agreement has lost the confidence of the employees covered by it. The Bill does not outlaw closed shop agreements. It simply provides that in future there should be periodic ballots to test the support for them among the employees concerned. I trust that the TUC do not believe that it is right for agreements - however long standing - to continue if those they directly affect are opposed to them and wish to be rid of them.

You say the TUC "find it astonishing" that the Bill encourages "a small number of individuals who are dissatisfied with the collective bargaining arrangements in their workplaces .... to refuse to accept their proper responsibilities". If by "proper responsibilities" you mean compulsory trade union membership I must point out that the European Court of Human Rights have found the last Government's closed shop legislation to be in breach of the European Convention of Human Rights. The TUC must surely be aware of the profound public concern at some recent closed shop dismissals - notably in Sandwell and Walsall - in violation of the statutory rights of the employees concerned. These were people who had

/ entered

entered their employment before a closed shop came into existence and did not believe they would benefit from trade union membership or representation. The Bill seeks to increase the protection for such people and for those who object to trade union membership on grounds of conscience. You claim to find this protection "astonishing". I am sorry that you seem to have forgotten the advice the TUC gave to its affiliated unions in 1979 that "they should bear firmly in mind that the closed shop need not be a rigid arrangement: agreements should provide for conscientious objectors and can provide for certain categories of workers to be excluded from the closed shop provisions".

The provisions in the Bill concerning dismissal of strikers are designed not "to encourage selective dismissals" but primarily to correct the anomaly whereby an employer was compelled to sack employees who had returned to work as well as those still on strike if he was to avoid complaints of unfair dismissal.

Finally, I must remind you that the Secretary of State for Employment invited the TUC to discuss the Bill's provisions with him last December and again in February this year. I am sorry that the TUC has not taken up either of these invitations, which, of course, remain open. If you had done so the misunderstandings which are plain from your letter and on which you seem to base your opposition to the Bill need never have arisen.

Yours sincerely

Norman Tebbit

The Right Honourable Lionel Murray, O.B.E.

SP

Ind Pol

SECRETARY OF STATE FOR EMPLOYMENT

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

Our Ref: PO 6328/1982

Michael Scholar Esq
Private Secretary
10 Downing Street
LONDON SW1

18 JUN 1982

Dear Michael

... As requested in your note of 10 June I attach a draft for the Prime Minister in response to a letter from Len Murray of the TUC.

The draft has been cleared at Ministerial level.

Yours
Marie Fahey

MISS M C FAHEY
Private Secretary

Pl type for PM

MLS. 21/6

The Rt Hon Lionel Murray OBE
General Secretary
Trades Union Congress
Congress House
Great Russell Street
LONDON WC1B 3LS

Thank you for your letter of 10 June.

I am sorry that the TUC feel it necessary to continue their campaign against the Employment Bill. Every opinion poll has shown that the Bill is welcomed by the vast majority of people in the country and indeed by most trade union members. There is certainly no evidence for your view that many employers are opposed to the Bill. The proposals in the Bill reflect the outcome of more than a year's extensive consultations.

You say that the TUC have not misunderstood the Bill's provision. But it is apparent from your letter that your criticisms are indeed based on a misunderstanding of the Bill's intentions and effects.

You say that the Bill will deny to workers rights which have been theirs for decades. In fact it extends the rights of workers, for example against unfair dismissal on the grounds that they do or do not belong to a trade union. The Bill does not affect the ability of trade unions to organise, to seek recognition from employers, to bargain collectively or to organise industrial action by their members in pursuit of improvements in their pay and conditions or in defence of their jobs.

You claim that the right of public servants to take action to defend their jobs will be brought into doubt. I do not know what evidence you have for such a statement. If after the Bill becomes law public service workers were to have a dispute with their employer about pay, conditions, jobs etc - indeed all the normal subjects of a trade dispute - it would be a lawful trade dispute, as it would always have been.

I find it extraordinary that you should suggest that the Bill will make it illegal for trade unionists to support workers in countries such as Poland and South Africa. As I am sure you must know, such industrial action, undertaken for purposes which have nothing to do with a trade dispute, has always been unlawful, even under the legislation of 1974.

As to your claim that the Bill will "undermine long standing union membership agreements", it will only do so if such an agreement has lost the confidence of the employees covered by it. The Bill does not outlaw closed shop agreements. It simply provides that in future there should be periodic ballots to test the support for them among the employees concerned. I trust that the TUC do not believe that it is right for agreements - however long standing - to continue if those they directly affect are opposed to them and wish to be rid of them.

You say the TUC "find it astonishing" that the Bill encourages "a small number of individuals who are dissatisfied with the collective bargaining arrangements in their workplaces .... to

refuse to accept their proper responsibilities". If by "proper responsibilities" you mean compulsory trade union membership I must point out that the European Court of Human Rights have found the last Government's closed shop legislation to be in breach of the European Convention of Human Rights. The TUC must surely be aware of the profound public concern at some recent closed shop dismissals - notably in Sandwell and Walsall - in violation of the statutory rights of the employees concerned. These were people who had entered their employment before a closed shop came into existence and did not believe they would benefit from trade union membership or representation. The Bill seeks to increase the protection for such people and for those who object to trade union membership on grounds of conscience. You claim to find this protection "astonishing". I am sorry that you seem to have forgotten the advice the TUC gave to its affiliated unions in 1979 that "they should bear firmly in mind that the closed shop need not be a rigid arrangement: agreements should provide for conscientious objectors and can provide for certain categories of workers to be excluded from the closed shop provisions".

The provisions in the Bill concerning dismissal of strikers are designed not "to encourage selective dismissals" but primarily to correct the anomaly whereby an employer was compelled to sack employees who had returned to work as well as those still on strike if he was to avoid complaints of unfair dismissal.

Finally, I must remind you that the Secretary of State for Employment invited the TUC to discuss the Bill's provisions with him last December and again in February this year.

I am sorry that the TUC has not taken up either of these invitations, which, of course, remain open. If you had done so the misunderstandings which are plain from your letter and on which you seem to base your opposition to the Bill need never have arisen.

Prime Minister (2)

We will let you have a draft reply as soon as possible.

MLS 16/6

TRADES UNION CONGRESS

CONGRESS HOUSE · GREAT RUSSELL STREET · LONDON WC1B 3LS
Telephone 01-636 4030 *Telegrams* TRADUNIC LONDON WC1

Rt Hon Mrs Margaret Thatcher MP
Prime Minister
10 Downing Street
LONDON SW1

YOUR REFERENCE

OUR REFERENCE
LM/BPB/MJS/VG
DEPARTMENT
Press and Information

June ~~10~~, 1982

Dear Prime Minister

Employment Bill 1982

It is the view not only of the TUC, but also of many employers and others closely involved in industrial relations, such as personnel managers, that the Employment Bill 1982 which your Government is currently pressing through Parliament will cause serious damage to relations between workers and their employers and harm to British industry.

This measure will deny to workers the exercise of rights which have been theirs for decades. It will bring uncertainty where clarity is needed - for instance the right of public servants to take industrial action to defend their jobs will be brought seriously into doubt. It will make it illegal for British trade unionists to take action in support of fellow trade unionists in other countries - such as Poland or South Africa - in their struggle for freedom and dignity. It will undermine long-standing union membership arrangements which have been agreed between workers and management and have done much to stabilise industrial relations and prevent the proliferation of trade unions in particular companies.

The TUC General Council find it astonishing that the Government should set out to encourage a small number of individuals who are dissatisfied with the collective bargaining arrangements in their workplaces - from which they themselves benefit - to refuse to accept their proper responsibilities. To encourage selective dismissals during strikes not only denies to workers the right to support each other in difficulties: it will inevitably exacerbate disputes at the very time when all sensible people would wish to concentrate on finding a solution to the initial problems.

../2...

The TUC has corresponded with your Employment Secretary, Mr Tebbit, on these issues, and has sought to make clear to him the difficulties which will be created by this legislation. We have offered to discuss with him in a serious manner any problems which he believes exist now. He claims that we misunderstand his intentions. Far from it: it is Mr Tebbit who misunderstands, or is carelessly disregarding, the effects which this legislation could have.

Today the TUC has, through leaflets and advertisements, been warning the public of the dangers of the Bill. Your Government has it within its power to withdraw the Employment Bill. I urge you to do so before it is too late, and to concentrate instead on the real employment issue - the vital task of reducing the number of people who are out of work.

Yours sincerely

Lionel Murray

General Secretary

10 DOWNING STREET

From the Private Secretary

10 June 1982

I enclose a letter the Prime Minister has received from Mr. Len Murray. We have acknowledged the letter.

I should be grateful if you would let me have a draft reply for the Prime Minister's signature by Monday 21 June.

I am sending a copy of this letter to Jill Rutter (HM Treasury).

M. C. SCHOLAR

Barnaby Shaw Esq
Department of Employment

MFJ

10 June 1982

I am writing on the Prime Minister's behalf to thank you for your letter of 10 June about the Employment Bill 1982. I will place this before the Prime Minister immediately upon her return from Bonn.

A reply will be sent to you as soon as possible.

MS

The Right Honourable Lionel Murray, OBE.

Privy Council Office,
Whitehall,
London, SW1A 2AT

With the Compliments

of the

Lord President of the Council

SECRET

Prime Minister (2)

MS 18/5

PRIVY COUNCIL OFFICE

WHITEHALL, LONDON SW1A 2AT

12 May 1982

Dear Norman,

Thank you for your letter of 13 May in which you sought drafting authority for wider legislation in the event of industrial action which was not confined to the civil service alone.

I agree that Parliamentary Counsel may be employed on this work. As with the two existing Bills, it is clearly very important that the fact that work is in hand, let alone the detail of the proposals, should be known to as few people as possible. The industrial and Parliamentary implications of any leak could be grave and I am sure this will be borne in mind by those concerned.

You asked that the new draft Bill should be ready before the Summer Adjournment. This is, of course, the time of year when Parliamentary Counsel is beginning to be heavily occupied with the preparation of Bills for next Session. I would not want any contingency drafting to get in the way of our aim of having all, or nearly all, the main programme bills available for introduction at the beginning of the Session. I should be grateful, therefore, to receive an early warning if First Parliamentary Counsel believes that his staff are likely to encounter difficulty in accommodating this addition to their workload.

I am copying this letter to the recipients of yours, and (together with a copy of your letter) to First Parliamentary Counsel and Sir Robert Armstrong.

JOHN BIFFEN

The Rt Hon Norman Tebbit MP
Secretary of State for Employment
Caxton House
Tothill Street
London SW1H 9NA

SECRET

MB

SECRET

010

SECRETARY OF STATE FOR EMPLOYMENT

Caxton House Tothill Street London SW1H 9NA

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

GTN 213

KJV

Prime Minister (4)

MCS 13/5

2

Rt Hon W John Biffen MP
Lord President of the Council
Privy Council Office
68 Whitehall
LONDON SW

13 May 1982

Dear John,

LEGISLATION ON LAY OFF

Towards the end of 1980 E Committee authorised officials to pursue the question of drawing up on a contingency basis two Bills to permit the laying off without pay of employees who were without work because of the industrial action of others in the same employment (E(80)35th meeting, Item 1). Subsequently two Bills were drafted by Parliamentary Counsel, one covering both the public and private sector, and the other confined to the civil and public services.

At a Ministerial meeting which the Prime Minister held on 2 March concerning the Civil Service, I was invited to review the case for wider legislation on lay-off in the event of industrial action which was not confined to the Civil Service alone. In subsequent correspondence with the Prime Minister, she has agreed that it would be useful to be ready to introduce legislation in the event of a national emergency caused by industrial action in key areas of the economy having widespread and damaging effects. The objective of such legislation would be to relieve employers of their obligations towards their employees and reduce their costs so long as these effects persisted. The Prime Minister has asked for work to be put in hand to draft such legislation on a contingency basis.

I should be grateful if you would authorise Parliamentary Counsel to draft a Bill for this purpose which could be available before the summer recess.

I am sending copies of this letter to the Prime Minister, Geoffrey Howe and Michael Havers.

Yours
Norman

MB

CONFIDENTIAL

SECRETARY OF STATE FOR EMPLOYMENT

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GTN 213

Michael Scholar Esq
Private Secretary to
The Prime Minister
10 Downing Street
LONDON SW1

20 April 1982

Dear Michael

You wrote to Barnaby Shaw on 5 April recording the Prime Minister's acceptance of my Secretary of State's conclusions about selective dismissal but passing on her suggestion that the proposed three-month re-engagement period might, with advantage, be reduced to a one-month period. The Chancellor also wrote to Mr Tebbit on 8 April welcoming his proposals but pointing out possible implications for the Civil Service in the detailed drafting of the new version of Clause 7.

The main concern of employers about re-engagement is that they might accidentally re-engage former employees dismissed for being on strike long after the strike was over and so open the way to claims of unfair dismissal from other dismissed strikers. On the other hand a right of selective re-engagement after too short a period would be tantamount to the option of selective dismissal and re-engagement which Ministers considered but decided not to adopt. Some strikes do of course last for more than three months, but these are very much the exception.

Another consideration is that employees may be dismissed with notice, particularly when action short of a strike is taken. The statutory period of notice can be from one week up to twelve weeks, and any period short of three months from the date on which the employer gives notice of termination of the contract of employment could result in a right to selective re-engagement before the dismissal had actually taken effect.

Mr Tebbit believes the balance of advantage lies in retaining the three month period and he has now put down an amendment to Clause 7 of the Bill on these terms.

cc JV Ind Pol

(2)

Prime Minister

X is, of course, the reason why we proposed this change. But what is done is done.

MLS 20/4

He recognises the Chancellor's concern about the position when different Government Departments are located in the same building. Where groups are clearly employed by different employers, the fact of shared buildings should not create difficulties. However it would of course always be necessary on the facts of each situation to judge how best to use the considerable extra discretion which would be given by these amendments. And in practice it seems likely that the industrial relations considerations would often weigh as heavily as the legal position for employers who might wish to discriminate in selecting employees for dismissal in shared buildings.

I am copying this letter to the private secretaries to the Chancellor of the Exchequer and the Attorney General.

Yours sincerely

Marie Fahey

MISS M C FAHEY
Principal Private Secretary

CONFIDENTIAL

MR. SCHOLAR

cc: Mr. Hoskyns

EMPLOYMENT BILL: CLAUSE 7

Mr. Tebbit's Private Secretary, in her letter of 20 April, indicates that Mr. Tebbit has rejected our suggestion that we reduce to one month the period in which selective re-engagement could be subject to injunction. He has done so on the grounds that this would be "tantamount to the option of selective dismissal", and that is of course precisely why we suggested it. However, since Mr. Tebbit has now put down his amendment in the terms he originally proposed, there seems little point in arguing further, unless you wish to protest mildly at our not being given an opportunity to agree.

20 April 1982

CONFIDENTIAL

Please file
C.S. 15/4

10 DOWNING STREET

OK. L.

MR. WHITMORE

cc. Mr. Scholar

The Secretary of State for Employment would like to come and see the Prime Minister next week to discuss Sir Richard O'Brien and secret ballots for election of union officials. He asked for ten minutes. I have given him a quarter of an hour at 1015 before Liaison Committee on Wednesday, 21 April.

C.S.

14 April, 1982

CONFIDENTIAL

Fred Per
cc SV
(2)
Prime Minister
MLS 8/4

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

8 April 1982

The Rt. Hon. Norman Tebbit, MP.,
Secretary of State for Employment

Dear Norman

Thank you for copying to me your minutes to the Prime Minister on lay-offs and dismissals in a strike.

On lay-offs, I favour the preparation of contingency legislation which would give powers to lay-off employees without pay during an emergency.

I also welcome your proposals for strengthening the provisions on dismissals in a strike. These seem a useful addition to the Bill; they will help tilt the balance in industrial relations more in favour of employers by giving employers more powers to tackle the selective strike. However, we need to be sure of the implications for the Civil Service of drafting the legislation in terms of an "establishment". Different departments are often located in the same building, and it would be quite possible for their staff to be affected simultaneously by selective action, for example in the case of computer specialists or local office benefit staff. It could create legal difficulties if one department were to dismiss but not another. We will need to be sure that we can provide ourselves with suitable powers on this point if the proposed amendment is to be of real value in dealing with selective strike action in the Civil Service.

I am sending a copy of this letter to the Prime Minister.

Yours

GEOFFREY HOWE

SECRET

DSG

bc John Kerker

Ind. Pol.

10 DOWNING STREET

From the Private Secretary

7 April 1982

Dear Barnaby,

LAY OFF

The Prime Minister was grateful for your Secretary of State's minute of 31 March.

She accepts your Secretary of State's arguments against introducing a general right of lay off. She agrees, too, that it would be useful to be ready to introduce legislation in the event of a national emergency; such legislation should be framed to cover not only such an emergency, but also similar future emergencies. The Prime Minister's understanding is that such legislation would permit employers to lay off their employees without pay when industrial action was being taken by employees of the same, an associated, or an unconnected employer, whether in the same or in a different industry, the test being whether the individual's normal work is affected to any extent by the industrial action. The Prime Minister would be grateful if work could be put in hand to draft such legislation on a contingency basis.

I am sending copies of this letter to John Kerr (HM Treasury), and to Jim Nursaw (Attorney-General's Office).

Yours sincerely,

Michael Scholar

Barnaby Shaw, Esq.,
Department of Employment.

SECRET

CONFIDENTIAL

Prime Minister (1)

X is with you. Agree Mr Tebbit's proposals, subject to the comment below?

Yes

cc Mr Hoskyns
Mr Walters

MR SCHOLAR

MLS 2/4

Employment Bill: Clause 7

X

I have discussed Mr. Tebbit's minute of 31 March with John Hoskyns and Alan Walters, and with the Department of Employment.

In response to our proposals, conveyed in your letter of 26 February, Mr. Tebbit is offering two significant new measures:-

i) The ability of employers to dismiss those on strike in one of his establishments but not in others. Particularly for big employers, we think this will make a significant difference to the power of selective strike action, even though it does not go as far as our own proposal that anyone dismissed during a strike has no claim to unfair dismissal.

ii) The ability of employers selectively to re-engage former employees after three months. We think Mr. Tebbit might be pressed on the three months, which is rather a long time for an employer to go without key staff: one month would be much better. But selective re-engagement is certainly another important step in the right direction.

Subject to that one comment, therefore, we recommend that the Prime Minister accept Mr. Tebbit's proposals.

J.

1 April 1982

Yes

CONFIDENTIAL

Prime Minister (1)

Agree these conclusions?

MLS 2/4

SECRET

MR SCHOLAR

cc Mr Hoskyns
Mr Walters

Lay-off

In his note of 31 March, Mr. Tebbit argues forcefully against the introduction of a general right of lay-off, whether in the new Employment Bill or elsewhere. His note raises three issues:-

i) The general lay-off right. We have argued before that this is less important than selective dismissal provisions, and that there is force in the argument that a general lay-off right would interfere with freedom of contract. We accept Mr. Tebbit's arguments against it.

ii) Contingency legislation in the event of a national emergency. We agree that drafting such legislation on a contingent basis would be useful.

iii) Contingency legislation for lay-off in the event of selective action. This was drafted last summmer, and a summary of the Bill is in the annex to the papers attached to Mr. Tebbit's note. This is a complex area, and the Prime Minister will no doubt wish to have the comments of the Chancellor, to whom Mr. Tebbit has copied these papers. But she will recall that when she discussed the report of MISC 65 on lessons from the Civil Service dispute, she and the Chancellor asked Mr. Tebbit whether the legislation that had been prepared provided for lay-off when industrial action was being taken in an entirely different industry. Clauses 1.1 and 1.2 of the proposed legislation make it clear that that would not be the case: a employee may only be laid-off if his normal work is not available due to industrial action being taken by other employees of his "employer or of an associated employer". The rest of the draft seems to my inexperienced eye satisfactory.

1 April 1982

SECRET

CONFIDENTIAL

cc IV

Prime Minister (2)

Excellent news.

MLS 1/4

PRIME MINISTER

DISMISSAL IN A STRIKE

pt 8

Michael Scholar wrote to Barnaby Shaw on 26 February about the possibility of adopting an alternative approach to the problem of lay-off which would give employers a freer hand to dismiss employees on strike.

I have now given some further thought to this and have concluded that there is scope for building on Clause 7 in the present Bill which, as you know, seeks to correct an anomaly in the present law relating to dismissals in a strike. I agree that we should give employers more freedom to dismiss employees taking industrial action, especially where employers have a number of establishments and are faced by selective industrial action.

I therefore propose that the notice provision in Clause 7 should be removed and that an employer should be able to dismiss employees who at the date of dismissal were taking part in a strike or other industrial action at a particular establishment without being exposed to the risk of unfair dismissal proceedings, even though industrial action is being taken on the same issue at another of his establishments. In this way, the employer would be able to overcome the practical problem of ensuring that all employees, possibly at many different establishments, are treated alike. It would also provide the employer with a substantial tactical advantage in being able to deal selectively with industrial action if any one establishment could be closed or run down without permanent disadvantage or if the workforce there could be more readily replaced than elsewhere.

Furthermore I propose to correct another anomaly in the existing legislation to which Lord Weinstock and others have drawn my attention.

The amendment which I have in mind would enable employers after a period of 3 months safely to re-engage former employees who had been dismissed for being on strike. Under the present law there is no time limit after which an employer can re-engage (inadvertently or otherwise) such a former employee without the risk of unfair dismissal complaints.

I would propose to introduce these changes in Committee before the Easter recess by means of backbench amendments.

I believe that these amendments will go a long way towards meeting the concerns of those employers who have been pressing for wider powers to deal with selective strike action; and in this connection I am writing to you separately about possible legislation on lay-off without pay.

I am copying this minute to Geoffrey Howe.

NT

NT
31 March 1982

SECRET

Prime Minister

MLS 2/4

PRIME MINISTER

LAY-OFF

When we met on 2 March about the Civil Service, I was invited to circulate a paper reviewing the case for legislation on lay-off without pay in the event of industrial action outside the Civil Service and explaining the detailed scope of the draft legislation which was prepared in 1981. A memorandum which summarises a detailed paper on the issues involved prepared by my officials is attached.

... The arguments against introducing a general right of lay-off except in very special circumstances seem to me to be persuasive. It would interfere with the freedom of contract between employer and employee and run completely counter to our belief that both sides should stand by the agreements into which they have freely entered. Bad managements would be encouraged to make use of the power in the event of a small-scale but serious strike instead of seeking to persuade their other employees to overcome its effects. (A striking example of the co-operation which other employees can be encouraged to offer was to be seen during the 3 day week). Use of such a power would harden attitudes and could encourage rather than deter support for the unions, particularly among white-collar workers who would be most affected by any general right of lay-off. As its benefits have not been proven and there has been little support for its adoption, I am extremely doubtful that this would be a useful way forward.

On the other hand I think there could be advantages in being ready to introduce legislation in the event of a national emergency. The situation could well arise that the handling of a national

strike would be helped by the introduction of such a Bill with public opinion ready to accept the draconian powers which would be involved. In those circumstances legislation could be framed to cover not only the current emergency but also similar future emergencies. I think this raises the question of whether such legislation should now be drafted on a contingency basis.

I am copying this minute and enclosures to the Chancellor of the Exchequer and the Attorney General.

NT

NT

31 March 1982

SECRET

MEMORANDUM BY THE SECRETARY OF STATE FOR EMPLOYMENT

1 This memorandum summarises the arguments set out more fully in the attached paper. It identifies three main possibilities for legislation under which employers could be empowered to lay-off their employees without pay as a consequence of industrial action:-

(a) A right of lay-off when industrial action was being taken by employees of the same or an associated employer, the main objective being to deter the adoption of a deliberate tactic of selective industrial action (para 7).

(b) A right of lay-off when industrial action in key areas of the economy has widespread and damaging effects, the objective being to relieve employers of their obligations and reduce their costs so long as these effects persist (para 8).

(c) In addition to both of these possibilities, a right of lay-off as a consequence of industrial action however remote which nevertheless affects the employer's business (para 9).

2 For all these possibilities the only certain test for the exercise of the power of lay-off is whether the individual's normal work was affected to any extent by the industrial action (para 14).

3 In the effective exercise of a power of lay-off employers would need to be relieved of all common law (including contractual) obligations, be able to abrogate unilaterally collective agreements and be relieved of most current statutory obligations to their employees (with the exception of maternity provisions and the need to reassume the obligations attached to redundancy if redundancy finally becomes necessary). Lay-off would need to continue just so long as the industrial action which provided the trigger for its use continued and so long as the individual's work was affected to any extent (paras 15 - 28).

4 The employee would remain bound to his contract so that if he left his employment voluntarily he would be disqualified from unemployment benefit and lose other potential benefits (para 27).

5 The detailed provisions of the Bill already drafted to effect the first of the legislative possibilities is described in detail in the paper's Annex. The paper suggests (paras 34 - 36) that an approach for the second might be to mirror the powers available under the Emergency Powers Act 1920. The third possibility would merely require an extension of the scope of the drafted Bill, but the paper argues that intense uncertainties would be bound to arise as to whether the powers

provided were lawfully exercised.

6 The competing considerations in considering legislation of this kind are set out in paras 44 - 48. Although a right of lay-off might deter selective industrial action and relieve employers of costs and obligations when their business was affected, the counter-arguments both as to principle and practical effect are powerful and varied.

7 It is concluded that -

(a) A right of lay-off, however remote the industrial action, would be so draconian in character, uncertain in exercise and potentially demanding on public expenditure that it should not be contemplated further; in all the consultations over the last year it has had no advocates from industry.

(b) A right of lay-off by an employer as a consequence of the industrial action of his own employees does not yet attract sufficient support from industry to justify its adoption; although if the deliberate tactic of selective industrial action became more widespread the case for its adoption could strengthen.

(c) There remains the possibility of providing for a power of lay-off in the event of industrial action in key sectors of the economy. The options are essentially matters of timing. If legislation is sought before any major confrontation develops then there is a risk that some unions (probably in the public sector, in energy or other key industries) will see it as drawing the battlelines in advance and would be encouraged by the belief that the consequence of widespread lay-offs would be an early advantageous settlement. There appear to be less disadvantages in being ready to introduce legislation as a matter of urgency when it is clear that a major confrontation in a key industry threatens.

SECRET

LAY-OFF WITHOUT PAY

This paper reviews the case for legislation under which employers would be enabled, at discretion, to lay-off without pay their employees when their work (or the business) was affected by the industrial action of other workers. In the exercise of such a power employers would need to be relieved of existing statutory obligations to employees laid-off as well as being able to abrogate employees' common law including contractual rights and negotiated agreements.

The Present Position

2. The lay-off of employees without pay involves an employer in a breach of contract unless either the individual contract of employment provides for it (possibly by reference to a collective agreement), or - although now more rarely - there is clear custom and practice supporting such action and no express provision against lay-off in the contract. An employee unlawfully laid-off without pay can seek damages for breach of contract in the Courts, seek in the Courts a remedy for wrongful dismissal or claim at an industrial tribunal that the action taken amounts to unfair dismissal or redundancy.

3. Generally - although not always - the position of manual and non-manual employees differs in practice. This has a historical basis. Manual workers were commonly employed by the hour or day or only paid for work done. Their contracts could in effect be instantly terminated. Over time many manual workers have secured a contractual right to a period of notice and guarantees for their pay when work cannot be provided, the latter usually in the form of guaranteed week agreements. Such guarantees are in effect a contractual term. They take many forms, but usually (but not invariably) include a provision that the guarantee of pay does not apply (or is limited) if the failure to provide work is due to industrial action elsewhere in the same undertaking or possibly the same industry if the agreement is of national application, eg in the engineering industry. Additionally, some guarantee week agreements provide for the suspension of the guarantee if work is affected by industrial action in other employments or in other circumstances beyond the employer's control. Such provisions take a wide variety of forms. The periods of notice for the suspension of guaranteed week agreements also vary, from a day or so to some weeks. But there are guarantee agreements, eg between British Rail and its unions, which have no provision for their suspension.

4. The position of non-manual workers, subject always to what the individual contract might provide, is generally that they have placed their whole-time services at the disposal of their employer for an agreed salary. The common law (including contractual) position is that they have a right to that salary so long as they attend their place of work and are ready to work to their contract. There is nothing in law to prevent an employer offering a contract which would provide for lay-off without pay in certain circumstances, either to applicants for employment or to existing employees, although in the latter case the acceptance of such a contractual change - even with compensating benefits - might well be difficult to secure in practice.

5. As for statute law, there is a right for all employees to a statutory guarantee payment for 5 days in any period of 3 months when work cannot be provided by the employer, but this does not apply when this is due to a trade dispute involving any employee of the same or an associated employer. Secondly, an employee who is laid-off without pay beyond a defined period is entitled, on notice, to claim redundancy pay but this right does not exist if the reason for lay-off was a strike or lock-out, wherever this might be taking place. Thirdly, where an employer alters a material term of the contract of employment in a manner adverse to the employee, this can constitute a dismissal (constructive or otherwise) so as to give the employee a right of complaint to an industrial tribunal if as a consequence he leaves the employment. Fourthly, after an employee has been continously employed for 4 weeks or more he is entitled to certain minimum periods of notice from his employer ranging from one week up to 12 weeks. Lastly, the statutory entitlement to maternity pay and to re-instatement following confinement is not qualified by the possible affects of industrial action.

The Objectives of Legislation to allow Lay-Off

6. There are three main possibilities for legislation and the objectives can be held to differ.

7. First, as proposed by the Engineering Employers' Federation (EEF), an employer could be empowered to lay-off employees when industrial action was being taken by other employees of the same or an associated employer. The main objective here would be to deter unions and their members from adopting the tactic of selective industrial action, whereby only key staff strike in furtherance of an objective shared by a much larger working group. A strike by computer operators with the

objective of securing salary increases for all non-manual employees provides an example. Such a tactic can allow a union to adopt damaging industrial action at relatively small cost to the union's funds and the rest of the group can passively await its outcome without hardship. If the group as a whole were at risk of being laid-off without pay their attitude to the issue in dispute and to the possibility of industrial action could be different. The closely associated objective would be, if selective industrial action of this kind were nevertheless adopted, both to ensure that a cost was borne by all the employees concerned and to relieve the employer of the cost of continuing to pay their and possibly other employees' wages whilst his business was being damaged.

8. Secondly, as again proposed by the EEF, an employer could be enabled to lay-off his employees without pay for economic reasons whenever their work (or the business) was affected by the consequences of industrial action in specified key areas of the economy, eg the public energy industries, oil distribution, transport or when a state of emergency had been declared under the Emergency Power Act 1920. The objective would be essentially protective, but the protection would be limited to the consequences of major disputes in key industries which can have severe cash-flow and other implications for employers.

9. Thirdly, these proposals could be extended and combined so that an employer was enabled to lay-off his employees without pay whenever their work (or the business) was affected by industrial action in his own or any other employment. The objective here would be simply to relieve employers of obligations to their employees whenever their business was affected by industrial action and wherever it occurred.

The Form of Possible Legislation

10. Before an assessment of these options can be attempted, it is necessary to consider more precisely what might be the test the employer would have to meet before using the power of lay-off all the options would provide and the consequences of its exercise. The tests would be largely the same in each case, the main difference between the options being the scope for their use and their different objectives. What follows reflects the considerations which led to the framing of the draft Bill prepared as a contingency measure in 1981. A clause by clause description of that Bill is in the Annex.

(a) Test for lay-off

11. A first possibility would be that advanced by the EEF, ie when the business was disrupted. But these and similar tests, eg inability to continue the business profitably or effectively, would be too uncertain of application and too open to challenge in the Courts for which evidence to determine a claim that the power had been improperly exercised would give rise to considerable difficulties.

12. Secondly, it would not be sufficient for the test to be whether the employee had no work or no useful work. The former could severely limit the exercise of the power in that there would usually be work of some kind that the employees could do, or claim they could do. The latter would provide for considerable uncertainty and a resulting prospect of ready challenge as to what was to be regarded as "useful".

13. Thirdly, (and this could only apply to the first of the three options) the test could be whether the employee has a "direct interest" in the dispute which occasioned the industrial action. A test of this kind already exists in Social Security legislation for the payment of unemployment benefit to employees laid-off. But a separate jurisdiction exists for questions arising under that legislation and the issue to be determined lies between the individual claimant and the statutory authorities who rule on the payment of unemployment benefit. The employer is not involved. Under legislation enabling lay-off employers would want to act quickly and certainly in a dispute in deciding which employees could be laid-off with the smallest possible risk of legal challenge whether at the time by means of an application for a declaration or injunction or subsequently. And in arguing for the first of the three options for legislation its proponents have made clear that employers should be relieved from obligations to all their employees when industrial action is being experienced, eg that the right of lay-off should extend to non-manual employees when industrial action is being taken by manuals, even though they are likely to be in a different negotiating group or members of a different union or none and might have no interest in the outcome of the dispute. A test of "interest" could in any case be fairly readily circumvented by the mounting of ostensible sectional claims.

14. It follows that the only certain test for the effective exercise of a power of lay-off would be to provide that employees could be laid-off, at discretion, if their work was affected to any extent by the industrial action. It is unlikely that employers would exercise so draconian a power when any necessary useful or suitable

alternative work could be provided. But any statutory obligation on the employer to seek to provide such work or take any other special steps to keep the business going (eg by changing a production run, looking to other sources for supplies) would create uncertainties for the exercise of the power and unduly open up the scope for legal challenge.

(b) Payments

15. Employers would need to be relieved of all obligations to make payments, including all remuneration, allowances, etc. Given the great variety of occupational pension arrangements, Ministers previously decided that it was not practicable to provide a statutory protection for pension entitlements or expectations. In any case this would be to add to employers' obligations when they now are able to lay-off employees lawfully. The effect could be that an employee near retirement could suffer a significant reduction in his pension if this was calculated on the basis of earnings in the last year or years of his employment.

16. As the power of lay-off would itself be discretionary, it would remain open to employers to decide to maintain some payments, eg sick pay, holiday pay, but not others, and to fulfil pension obligations to the extent they wished to do so and the rules of particular pension schemes required or allowed.

(c) Common Law Including Contractual Rights

17. It would seem necessary to ensure that individual contracts of employment were overridden only to the extent necessary to ensure that the employer could lay-off employees with out pay. Thus other contractual arrangements (including any code of discipline or other obligation to which the employee was bound) would be unaffected, although in the absence of work or pay, little of value to the employee would remain. It would follow that continuity of employment of those laid-off would be unbroken, and the period of lay-off would count towards qualifying service, eg for redundancy entitlement.

18. Where a contract of employment, possibly as an effect of incorporating a term from a collective agreement, provided for lay-off subject to certain conditions, perhaps with pay, that term in the individual's contract would be overridden if the employer chose to act under the legislation.

19. Employers who acted under the legislation would need to be protected against common law claims for reimbursement of wages, and from any other contractual claim

for which the employer might be liable by reason of the lay-off. Provision would be necessary to ensure that lay-off in the stated circumstances was not to be regarded as termination of employment, so that claims of wrongful dismissal would fail provided that the employer took no direct action to terminate the contract.

(d) Statutory Rights

20. Since lay-off would not amount to termination of employment, employers would thereby be protected against any claim for unfair, including constructive, dismissal (ie on the grounds that there had been a unilateral abrogation of the contract and the substitution of significantly less favourable terms), unless the employer had expressly terminated the contract. Similarly, employers would not be exposed to claims of redundancy because the employment would not have been terminated.

21. The present statutory right to a claim to a redundancy payment after a period of lay-off without pay would need to end when lay-off was effected under new legislation and the present protection for employers against such claims, which extends to circumstances where the lay-off is due to strike action or a lock-out in any other employment, would need to be further extended to industrial action short of a strike.

22. Entitlement to statutory guaranteed pay does not at present arise if the lay-off is due to a trade dispute involving employees of the same or an associated employer. This protection for employers is being widened in the Employment Bill to cover industrial action whether or not in furtherance of a trade dispute, but it would also be necessary to cover industrial action against other employers if the second or third option for legislation were adopted.

23. The accrual of the National Insurance Retirement Pension which is dependent on contributions on earnings for the basic flat-rate pension and, if not contracted-out, for the earnings-related additional pension could not be protected whilst wages were not paid. An employee laid-off who was qualified for the receipt of unemployment benefit could however be credited with contributions in respect of the basic pension alone.

24. Some existing statutory protections for the employee would, however, need to remain. First, if redundancy became necessary either during a period of lay-off without pay, or possibly on its termination, it would seem essential to preserve the employee's right to the period of notice during which wages have to continue to be

paid or to payment in lieu of notice. Secondly, the statutory procedures for the notification of redundancies to the Secretary of State for Employment, and the procedures for consultation with recognised trade unions, would need to continue to be followed. Thirdly, if the employer went bankrupt or into liquidation the employees laid-off would need to have the same rights (eg payments from the Redundancy Fund) as other employees still working for the employer. Lastly, Ministers agreed in considering the Bill drafted in 1981 that rights to maternity pay and reinstatement after confinement would need to be preserved.

(e) Notice and Duration

25. It is not uncommon under guaranteed week agreements, or arrangements established by custom and practice, for employers to be able to lay-off manual workers without pay at very short notice. This means that under new legislation any statutory requirement on employers to notify employees of impending lay-off would need to avoid the imposition of additional costs or restrict the ability they might now have to effect lay-off quickly. It follows that a minimum period of notice should not exceed 24 hours, but it would seem right that this should always be in writing.

26. In the exercise of a new power of lay-off employers would be able to abrogate, at discretion, any guaranteed week agreements which provided for longer periods of notice for their suspension, as well as individual contractual obligations. It is debatable whether (as provided in the Bill drafted in 1981) a duty to provide recognised trade unions with an identical period of notice in respect of their members would serve any useful purpose.

27. As has been shown an employee laid-off without pay would remain bound to his employer, but would not - as at present - be able to claim that the loss of wages gave rise to a claim for constructive or unfair dimissal or for a redundancy payment. He could leave the employment voluntarily at any time, but this could result in disqualification from the receipt of unemployment benefit and in the loss of potential benefits attached to accured years of service, eg for an eventual redundancy payment, for pension accrual.

28. It might therefore seem desirable to provide that there should be a time limitation for the exercise of a new power of lay-off without pay. The difficulty is however that a finite period of lay-off could end when the circumstances in which it had begun

remained unchanged, ie the industrial action was still continuing and its effects had worsened. An obligation on the employer to resume the payment of wages would then be self-defeating. Additionally, any time limit could provide a stimulus for unions to exploit it, eg by providing an inducement to maintain selective industrial action the longer so that employers' obligations to pay wages to other employees came to be restored. In the light of these considerations, Ministers decided that for the Bill drafted in 1981 there could be no time limit for the duration of lay-off without pay.

Other Considerations

29. The previous section of this paper considered and explained the features and effects of legislation which would be common to the three legislative possibilities identified in paragraphs 7-9. It provides for the detailing of the first of these, ie enabling employers to lay-off without pay their own employees whose work is affected by the industrial action of other employees of the same or an associated employer. This took legislative form in the Bill drafted in 1981 as a contingency measure. But other considerations arise for the possible form of legislation to effect the other two options. These are considered below.

(a) Power to Lay-Off When Industrial Action Occurred in Specified Key Areas of the Economy

30. In making this proposal the EEF consciously stopped short of advocating that employers should be able to lay-off their employees without pay whenever their work was affected by industrial action in any other employment. The EEF judged that this would be to go too far. Their concern was, in the main, directed to the consequences of major strikes in the public utilities, the effects of which could be quickly evident and beyond dispute and extend throughout the private sector.

31. A measure of their intentions was initially to propose a power of lay-off without pay only in the exceptional circumstances when a proclamation of emergency under the Emergency Powers Act 1920 was made and for this power to continue only so long as the proclamation lasted. This approach is flawed, as the EEF have come to recognise. The Act enables Her Majesty to declare that a state of emergency exists only if at least a substantial proportion of the community is likely to be deprived of "the essentials of life" because of interference in the supply and distribution of food, water, fuel or light, or with the means of locomotion. In the post-War period proclamations have been made on occasion for no other immediate reason that to relieve a public utility

from its statutory undertakings or prudently to provide for the possible need for subsequent Orders in Council empowering Ministers to regulate supplies and distribution when there was little or no immediate threat to industry generally or to useful employment.

32. In reframing their proposal, the EEF therefore came, in addition, to seek to list specifically industries supplying essential goods and services (eg gas, electricity, water) the supply of which could be critical for industry generally. If the supply was disrupted by industrial action in those industries resulting in the inability of other employers to provide work a right of lay-off without pay would be established. (It is not yet known whether this suggested approach has been further modified in the preparation of a new clause the EEF are developing for the Employment Bill).

33. This paper has already shown (paras 11-14) that the test for the exercise of an effective lay-off power would need to be simply whether the work of an employees was affected to any extent. In order therefore to reflect the EEF's recognition that it is only in exceptional circumstances that employers should have a statutory power to lay-off when industrial action was occuring in other employments, it would be necessary to contemplate a further test.

34. One possibility, mirroring the provisions of the Emergency Powers Act 1920, would be for the Government to adopt a legislative power enabling it to decide, by subordinate instrument, when employers would be free to lay-off their employees lawfully without pay. The substantive legislation might set out the considerations which the Government would have to take into account which could be related to the possibility of industrial action in specified key industries or be framed more generally. For example, the test might be that in the Secretary of State's opinion industrial action was being taken which was significantly affecting, or might significantly affect, the work of a substantial number of employers to employ them fully. So far as possible it would be desirable to avoid specifying these considerations in a manner which could involve challenge in the Courts.

35. It would not seem practicable, given difficulties of definition and the many contentious questions which could arise, to contemplate the Government being able to provide, at discretion, for the exercise of the lay-off power to certain industries, firms or geographical areas. Once exercised, all employers would therefore be empowered to lay-off their employees whose work was affected to any extent by the specified industrial action.

36. It would be necessary for the Government to be able to act quickly. This suggests that the subordinate instrument should become effective without first being subject to a parliamentary procedure but (analogous to the 1920 Act) not continue in force beyond, say, 14 days if not by then approved by both Houses by Resolution. There would need to be a procedure whereby the Government could bring the power to an end when the specified industrial action ended, possibly subject to short (eg 48 hours) notice. Special provisions might need to be contemplated in case the emergency occurred or continued into a parliamentary recess.

(b) Power of Lay-Off Irrespective of the Location of the Industrial Action

37. In principle, this approach would be to deliberately distinguish between the effects of industrial action, to a greater or lesser extent remote from the employer and employees concerned, and all other circumstances which might affect the normal work of the employees and the business, eg the loss of orders, a downturn in the market, the political situation in an export market, the effects of severe weather, a failure of the product.

38. But the main practical difficulties would be to provide for the employer a clear and certain basis on which he could be confident that he was lawfully exercising the power of lay-off and a measure of protection for employees that their employer was not purporting to exercise the power when the real reason for the lay-off was other than the effects of industrial action.

39. As has been shown, part of the test an employer would have to meet to exercise a power of lay-off lawfully would only be that the work of any of his employees was affected to any extent. As virtually all employment is dependent on the availability of goods and services and access to markets, and production and supply chains can be very complex, the difficulty for both employers and employees would be to identify the true consequences of industrial action which could be very remote and distinguish these from other factors. Some examples can illustrate the point. Should a go-slow in the docks provide exporters with a right of lay-off? Should a change in sourcing for a component made by sub-contractor as a result of industrial action well down a production process involving a number of manufacturing firms, subsequently requiring different assembly techniques or changes to production runs throughout the chain, provide a basis for lay-off? Might relative minor delays or disruptions to public transport services be held to have affected employees' work to some extent? Greater certainty would not be provided if an attempt were made to qualify the extent to which an employee's work had to be affected.

40. To give the maximum certainty for employers the power of lay-off would need to be very widely drawn, but even so employers could not be protected from challenge in the Courts that the statutory power had not been validly exercised and the difficulties for evidence and the Courts' decision would be great.

41. It might be concluded that so wide anduncertain would be the possibilities for employers to use and perhaps exploit such a power of lay-off, that there would need to be specific safeguards and a special jurisdiction for employees claiming that the power had been exercised unlawfully. No doubt the great majority of employers would always strive to keep their businesses going and maintain a flow of work for their employees when possible to do so, but this likelihood would not shade the draconian nature of the statutory power they would need to be afforded.

42. The industrial tribunal system could provide for a special jurisdiction more accessible than the Courts for appeals by employees, but the problems for evidence and judgement would be formidable. Given both that it would always be the employer who exercised the power and the serious consequences of its exercise for the employee, in equity it would seem reasonable that the obligation as to proof that the power had been lawfully exercised should rest on the employer. The employer would certainly be better situated to point to the industrial action on which he relied and demonstrate its consequences. But if employers were obliged to prove the lawfulness of their actions, the expectation must be that they would very frequently have to do so on appeals by their employees. This could add appreciably to the workload of tribunals and lay-offs would need to continue, with continuing uncertainty, until a tribunal eventually made its award which might take many weeks. An award in favour of the employee would need to be accompanied by an order for the resumption of payment of wages and compensation for all the monetary benefits lost, including pension entitlement.

43. It might be concluded that burdensome arrangements of this kind should not be contemplated further.

Assessment

44. In assessing the need for, and the balance of advantage and possible disadvantage, the three possibilities for legislation explored in this paper, their different objectives have to be remembered. The first, ie enabling employers to lay-off employees whose work is affected by the industrial action of other employees of the same employer, would be primarily directed at deterring the tactic of selective industrial action.

It would ensure that employees not themselves taking action were nevertheless, at the employer's discretion, exposed to the risk of lost wages and relieve the employer of his obligations to them. The objective of the second and third possibilities for legislation would be simply to relieve employers of costs and obligations when their business was affected.

45. There is no doubt that in some circumstances unions would not find support for the deliberate tactic of selective action when the wages of all other members of the working group might thereby be put at risk. Much less certainly, unions might be the readier to seek to dissuade other unions from taking action which could put their members' wages at risk. In logic, employers might expect to be able to be relieved of continuing wage costs whenever industrial action affects the work of their employees.

46. The counter considerations are nevertheless powerful and to some extent most extend to all three of the legislative possibilities identified.

47. Those which rest on principle are:-

(i) A statutory power of lay-off would interrfere with the freedom of contract between employer and employee. This is not merely a legal concept but a practical safeguard by which all parties to the contract have the guarantee that it cannot be changed except with their agreement. Although employee protection legislation has sometimes added to previously agreed contractual terms between an employer and employee to the advantage of the latter, these might be accounted marginal in comparison to legislation enabling employees to be deprived of their lawful right to pay in circumstances where no breach of contract has occurred and their conduct was blameless in all other respects.

(ii) The right to wages when ready to work even though the work normally done is affected by the industrial action of others is a valuable right to the individual. To deprive him of it could be accounted expropriation without compensation.

(iii) In law there is nothing to prevent an employer offering contracts of employment to new employees providing for the possibility of lay-off without pay in defined circumstances. This is in fact already done in the case of many manual workers whose employment is governed by a collective guaranteed week agreement imported into the contract and in employments where lay-off is possible by established custom and practice. Moreover, despite the real practical difficulties employers can face in persuading existing employees to accept such

a change in their existing contracts there are examples where it has proved possible to limit and suspend guarantees for wages.

(iv) Employers can be properly accounted responsible for the collective agreements they reach and for their observance until they are changed or ended. There is an evident need for a much readier observance by unions of the agreements to which they are parties. To equip employers with a power to abrogate collective agreements at discretion would run counter to this need.

(v) A power of lay-off irrespective of the location of the industrial action would need to be justified on the grounds that all employees had to recognise that they were at risk to the actions of all other employees wherever employed and the unions which might represent them. Less than half the working population are members of trade unions and in the vast majority of cases employees under threat of lay-off would have no means of seeking to influence those taking industrial action. Moreover, the validity of this approach could be challenged on the grounds that industrial action can be instituted or provoked by employers as well as employees. It could be held to run counter to the attempts employers make to identify the well-being and prospects of their own employees with the fortunes of the shared enterprise and widen the conceived divide between employers of labour and those who require employment. In some sense it could be judged politically divisive.

48. There are other more practical considerations:-

(i) The use of selective industrial action as a deliberate tactic is still relatively rare. The 1981 Civil Service dispute provides a notorious example as did an earlier strike by computer operators in the Post Office, but few remembered examples are provided by the private sector or elsewhere in the public sector. It would not be easy to argue persuasively that the incidence of this tactic was yet such that legislation of the kind proposed was essential. If it were, the CBI and other employer organisations could have been expected to give support to the EEF's proposals.

(ii) Strikers, and others taking industrial action short of a strike, can be dismissed and the ability of employers to do so without challenge will be increased on the enactment of the Employment Bill. Moreover, employers (particularly in the private sector) can be skilful in escalating industrial action when this provides a sensible means of combating selective action, eg by requiring other employees to do the affected work under threat of lay-off without pay for breach of contract if they refuse.

(iii) Unions would probably not be slow to adopt tactics other than that of selective action to avoid the threat of lay-off of other employees which might be no more costly to them but equally damaging to the employer.

(iv) A number of employer organisations and individual companies have shown themselves to be firmly opposed to legislation on lay-off, notably the Institute of Directors. They argue that it would run counter to the need employers have to win and sustain the co-operative support of their employees (or most of them) when industrial action affects the business. The existence of a threat of lay-off would be unhelpful.

(v) For the effective exercise of a power of lay-off it would be essential that a firm had the full co-operation of middle and lower management down to first-line supervision. In many cases it would only be with this co-operation that senior management could be sure that they had sustainable grounds for holding that an individual's normal work was affected by industrial action. And the practical means of effecting lay-off would rely on such co-operation. If middle and lower management were put under the general threat of lay-off (and whatever assurances the employer might be ready to offer, a statutory right of lay-off would persist), that co-operation might be the harder to achieve.

(vi) The creation of a discretionary power of lay-off without pay could provide a stimulus to union recruitment in white-collar and thus far unorganised areas of employment. The search for a collective protection would be a logical reaction.

(vii) Employees laid-off without pay would have an entitlement to unemployment (and as necessary supplementary) benefit, unless disqualified as having an "interest" in the outcome of the industrial action under Social Security legislation. The effect would be that the cost of their maintenance would be transferred to public funds. Although it is not possible to estimate the effect on public expenditure, it could be very considerable, particularly if lay-off could take place however distant the industrial action. At present levels of unemployment it is by no means possible to be sure that the administrative arrangements for the payment of unemployment and supplementary benefits could physically cope.

ANNEX

EMPLOYMENT (INTERFERENCE WITH WORK) BILL

CLAUSE 1 - Notice of Lay-Off

Clause 1 gives an employer the right in certain circumstances to lay-off employees who are unable to work normally because of industrial action.

Clause 1(1) provides that where an employee's normal work is not available, not done or not done normally and this is due to relevant industrial action, the employer may lay him off by written notice, either for a specified period or indefinitely.

Clause 1(2) provides that relevant industrial action is that taken by employees of the employer or of an associated employer.

Clause 1(3) provides that notice under subsection (1) cannot be given to an employee while he is absent from work for reasons unconnected with the relevant industrial action.

Clause 1(4) provides that the notice under subsection (1) must state the time from which the employee is laid off, which must not be earlier than 24 hours after the service of the notice.

Clause 1(5) provides that the notice under subsection (1) must include a statement, set out in the schedule, describing the effects of the lay-off on the individual's employment.

Clause 1(6) provides that where there is an independent trade union recognised in respect of any employee given notice under subsection (1), the employer shall, at the time of giving notice or as soon as reasonably practicable afterwards, give written notice to the trade union stating the numbers of employees laid off and how many were employees in respect of whom the union was recognised. Failure to comply with this requirement would not, however, affect the validity of the notice given under subsection (1).

Clause 1(7) provides that notice to the employee (subsection (1)) or to the trade union (subsection (6)) may be served by post.

CLAUSE 2 - Termination of Lay-Off

Clause 2 states the conditions under which the lay-off terminates.

Clause 2(1) provides that the lay-off shall cease at the earliest of the following times:

(a) the end of the specified period, if a period was specified in the notice;

(b) the date specified by the employer as the end of the lay-off period in any further written notice;

(c) the resumption of work by the employee with the employer's agreement; and

(d) any change in circumstances as a result of which notice under clause 1(1) could not be given to the employee if he were then at work.

Clause 2(2) provides that any further notice under subsection (1)(b) may specify a date before that notice is served.

Clause 2(3) provides that the further notice under subsection (1)(b) may be served by post.

CLAUSE 3 - Effect of Lay-Off

Clause 3 removes the employer's obligation to pay the employee during lay-off and makes other provisions concerning statutory and contractual rights.

Clause 3(1) states that the following provisions apply when an employee is laid off under Clause 1(1).

Clause 3(2) provides that, notwithstanding the terms of employment, the employer is not obliged to pay an employee who is laid off or to provide the employee with work or any facilities.

Clause 3(3) provides that the lay-off is not to be regarded as a lock-out or as constructive dismissal.

Clause 3(4) provides that a laid-off employee is not entitled to a redundancy payment under Section 81 of the 1978 Act, or to a guarantee payment, either under Section 12 of the 1978 Act, or under his contract of employment.

CLAUSE 4 - Maternity

Clause 4 safeguards an employee's maternity rights during lay-off.

Clause 4(1) sets out the consequences on the maternity provisions for a woman who is laid off:

(a) if, but for the lay-off, she would have been absent from work wholly or partly because of pregnancy or confinement, she shall be treated as so absent for the purposes of the maternity provisions of the 1978 Act; and

(b) if the notified day of return under S.47 of the 1978 Act falls within the period of lay-off, she may return to work as soon as reasonably practicable after that period; and

(c) if she has not notified a date of return but the lay-off period extends beyond the period of 29 weeks after confinement (Section 45(1) of the 1978 Act), she may return to work at any time within 28 days of the end of the lay-off.

Clause 4(2) provides that nothing in Clause 3 (which removes from the employer the obligation to pay an employee during lay-off) affects the employer's obligation to pay an employee statutory or contractual maternity payments.

CLAUSE 5 - Meaning of "Employee" and Related Expressions

Clause 5(1) states that the following interpretations of "employee" and "employer" apply in this Bill.

Clause 5(2) provides that an employee is a person who is employed under a contract of employment or, whether or not under such a contract, is in relevant Crown or health service employment.

Clause 5(3) provides that a member of a police force is not an employee.

Clause 5(4) provides that, subject to Clause 5(5), any employment under the Crown is relevant Crown employment and so the Crown is the employer.

Clause 5(5) provides that health service employment or service as a member of the Armed Forces or of any women's service administered by the Defence Council is not relevant Crown employment.

Clause 5(6) provides that health service employment is employment by any of the bodies listed in Schedule 5 to the 1978 Act.

CLAUSE 6 - Interpretation of Other Expressions

Clause 6(1) defines various expressions used in the Bill.

Clause 6(2) defines "industrial action" as including action taken otherwise than in furtherance of a trade dispute, but not including action short of a strike unless it is in breach of contract or of the terms of employment.

Clause 6(3) provides that "associated employer" shall have the same meaning as in the 1978 Act.

CLAUSE 7 - Short Title and Extent

This gives the short title of the Bill and states that it extends to Northern Ireland.

Schedule

This sets out the text of the statement to be included in the notice under Clause 1(1).

Industrial Pol.

MR. SCHOLAR

cc Mr. Hoskyns
Mr. Walters
Mr. Pattison

MAP

Amendments to the Employment Bill

We must not lose sight of the possibility of the provisions of the Employment Bill being strengthened in the current Committee stage. You and I have been present on two occasions - the latest was only this afternoon - when the Prime Minister has indicated her belief that amendments could be introduced, or amendments already proposed could be accepted; and while we were waiting for this afternoon's meeting on teachers' pay I also had a brief discussion with Mr. Tebbit about it.

As you know, the position is that promising amendments have been introduced not only by the SDP/Liberals, but also by Conservative Backbenchers. The latter are principally concerned with compulsory ballots for union officers; the former range more widely; the Prime Minister is known to favour the introduction of a lay off provision for white collar workers; and we in the Policy Unit have argued (and I think the Prime Minister has accepted) that wider provision for selective dismissal could also be made. Mr. Tebbit told me this afternoon that he thought nonetheless that the Bill as originally drafted contained the right balance, and that white collar lay off in particular ran the risk of opposition from Conservative voters in the country at large. The other measures were, he thought, good candidates for a further Employment Bill to be introduced in the autumn of 1983.

I am not clear whether Mr. Tebbit will feel obliged to consult his colleagues about the passage of his Bill. If he does not intend to do so, I think - if the Prime Minister agrees - you should ask his Private Secretary to see that he does, in view of the Prime Minister's close interest.

J. M. M. VEREKER

24 March 1982

PART 8 ends:-

MCS to Shaw, Emp, 26.2.82

PART 9 begins:-

J.V. to MCS 24.3.82