PREM 19/265

PART 6

Confidential Filing

Industrial Relations legislation.
The Employment Bill.

INDUSTRIAL POLICY

Part 1: May 1979
Part 6: July 1980

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
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28.11.80							
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PART 6 ends:-

28.11.80

PART 7 begins:-

1.12.80

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. Employment Bill, published by HMSO, 2 May 1980
2. Employment Bill, as amended in Committee, published by HMSO, 13 June 1980
3. Draft Codes of Practice on picketing and closed shop agreements and arrangements under Employment Act 1980
   Published on behalf of Department of Employment, Nov. 1980

Signed A Wayland Date 13 May 2010

PREM Records Team

Ind Pol

PRIME MINISTER

Green Paper on Trade Union Immunities

This note by John Hoskyns on the draft Green Paper has many important points in it. Do you wish me to:

(a) Pass them on to Mr. Prior and the rest of E Committee with your general endorsement (though I would say that they represent your preliminary views so as to avoid the impression that you are immediately moving into a confrontational position with Mr. Prior)?

Or

(b) Pass the comments on to Sir Keith and the Chancellor so that they can raise them when the Green Paper comes to E Committee?

Or

(c) Tell John Hoskyns to circulate them to E Committee under his own name?

I am sure other Ministers will ask that the Green Paper be taken in E. If they don't, we can do so on your behalf.

I think John should decide which we most prefer. Then draft a minute to send to D of E himself. He could circulate his paper with them before E.

28 November 1980

CONFIDENTIAL

28 November 1980

Policy Unit

PRIME MINISTER

GREEN PAPER ON TRADE UNION IMMUNITIES

1. I attach our views on the draft Green Paper circulated by Jim Prior a week ago. He has asked for comments by Friday, 5 December. We believe that Keith and Geoffrey are likely to raise a number of points and to press for an E Committee discussion before the paper is finalised. Cabinet Office have provisionally suggested that it could be discussed at E on 15 December.

2. You may therefore wish to await their comments before deciding whether it is necessary for you to intervene personally. If so, we could send a copy of our comments to Keith or Geoffrey - or both - if you wish. Alternatively we could, with your explicit approval, circulate to E members if you judge that it would be helpful after seeing Keith and Geoffrey's comments. For the time being I have not copied this note to anyone.

3. If you do decide to raise some issues with Jim Prior now, some of our comments are subsidiary ones. The main points we think you should take up are:

(1) Timing.

(2) Our four general points on tone and content. (We could make specific points to officials.)

(3) The treatment of the vicarious responsibility problem. It is not necessarily an obstacle.

(4) The omission of secret ballots for union elections.

(5) The treatment of strikes in essential services.

4. The sooner these important points are raised, the better.

JOHN HOSKYNS

CONFIDENTIAL

28 November 1980
Policy Unit

COMMENTS ON DRAFT GREEN PAPER ON TRADE UNION IMMUNITIES

1. OBJECTIVES: THE CASE FOR TRADE UNION REFORMS

1.1 We have already acted to prevent the worst abuses of secondary picketing and the closed shop, and to offer help with secret ballots - though the effectiveness of the 1980 Act has yet to be tested. But these reforms will do very little to alter the imbalance of bargaining power in industry which plays a central role in fuelling inflation under weak Governments or unemployment under strong ones; in retarding the pace of change; and preserving outdated attitudes and practices. If our economy is ever to change gear, the role of the unions must change.

1.2 Ideally, colleagues would have a shared view of the further changes that are essential and the Green Paper would be designed to help us get there. We cannot settle differences of view among the colleagues on these issues now. It is too late. Some favour no further moves; others further step-by-step changes; others a more comprehensive reform. Much depends upon the political climate which will in turn be determined by events, as well as the responses to this Green Paper. A new trade union role will depend on much more than a few changes in legislation. But we are sure that some further changes are an essential precondition. A glance at the two-page annex describing the German system shows just how far adrift we are compared to the systems that go with industrial success. Of course, this is not the only reason for Germany's success, but can anyone seriously deny that the difference between our two industrial relations systems is partly responsible for the difference between our fortunes?

2. GOVERNMENT MUST LEAD THE WAY

2.1 Management and workers will have to reform practices and attitudes, not Government. But the unions can't reform themselves, imprisoned as they are by their own spurious philosophy, rusty rule books and innate conservatism. Managers can bring about changes - like Edwardes using ballots at BL - but usually only when the situation is desperate or the company is new and small. For the rest, we believe four main changes are needed:

(a) A shift in the balance of bargaining power towards management.

(b) An incentive for unions to stick to agreements once made.

(c) Greater democracy within unions, limiting the power of militant minorities.

(d) Pressure on unions to perform a positive role.

2.2 Government alone cannot do this. But the present state of affairs is the result of a legal framework giving special privileges to the trade unions, insulating them from pressures to adapt and to act responsibly. Only Government, through legislation, can reduce these privileges and start the process of reform.

2.3 This legal framework is Parliament's responsibility. The unions are bound to want to preserve the status quo. Very few managers have ever really thought long and hard about the full effects of the legal framework (though managers who have operated overseas are all too conscious of it). Most managers have encountered one or other abuse and may feel strongly about it, but they have not had the perspective of looking at the whole system. So for most readers, the Green Paper itself will be their first and only opportunity to consider the system as a whole and the reforms which are possible. Its tone and content are therefore crucial. While we cannot yet judge precisely which reforms are necessary or feasible, we should be able to agree that the objective of the Green Paper is to open the door to further reforms. Tone and content should reflect this objective (see Sections 4 and 5 below).

3. TIMING

3.1 If we fail to reform the trade unions, the minimum level of unemployment consistent with low inflation will always be much higher than it need be. We shall be back in the same box that all previous Governments have faced. Public spending will remian hard to control (because of pay pressures). The pace of industrial improvement will continue to be slow; new investment will go elsewhere. We need further reform - whether in stages or comprehensively - urgently, and certainly before the next up-turn.

3.2 The opportunity to move further will partly depend on events. (The steel strike made a huge difference to the climate.) We

need to be ready to respond if the tide of opinion is right and coincides in 1981 with comparative trade union weakness due to recession.

3.3 If Jim Prior invites comments by end-June 1981, how quickly could he put proposals to colleagues? Would there be time to prepare legislation for the 1981/2 session? If not, what would be wrong with a consultation period of four months?

4. TONE AND CONTENT: GENERAL POINTS

4.1 Of course a consultative paper needs to avoid prejudging the issues on which comment is invited. Large parts of the present draft present the issues fairly and do not, in our view, require amendment. But we have four main criticisms:

4.1.1 The opening paragraphs do not set the scene properly. They do not describe an economy which has performed very badly by comparison with other industrial countries. They need to convey more strongly our need to find a system that works better if we are to regain some of the lost ground. Productivity is not mentioned. A reference to West German living standards compared with our own, and the West German system that we compete with, is needed. Ideally, the whole propaganda debate should be conducted by contrasting the German system - and its results, under both parties - with ours. The objective is an industrial system that works better, for everyone's benefit (workers, managers, the unemployed, sick, pensioners, etc).

4.1.2 There are several places where the draft is too studiously neutral. It is commendably clear on the Government's views of the closed shop and of the value of legally enforceable agreements. But elsewhere, it appears indifferent between the arguments for change versus the argument that change would be resisted and would therefore be too difficult.

4.1.3 It makes heavy weather of the deep attachment that trade unions have to the status quo. By repeating this on several occasions, it gives an added respectability to this factor. Of course we need to take it into account, but we do not need to make the Opposition's case for them. In particular, references to a system

having been in operation for 70 years seem to imply that it should continue. The whole point is that the system has worked badly for 70 years, and is now hopelessly out of date by world standards.

4.1.4 Chapter 3 considers each of a number of possible reforms separately. It needs a summary to draw together the inter-relations between these reforms. Individually, they may not appear worthwhile and they seem very hard to enforce. But it would be possible to build a mutually-supporting framework if we moved on several fronts at once. For example, it might only be possible to withdraw all immunities for secondary action (discussed in Chapter 3, Section B) if, at the same time, trade union funds were exposed (discussed in Section A). Likewise, legally-enforceable agreements (Section D) only make sense if trade union funds are exposed.

5. COMMENTS ON EACH CHAPTER

5.1 Chapter 1: Introduction

5.1.1 Opening paragraphs - see comments at 4.1.1 above.

5.1.2 We should not refer at paragraph 8 to "essential protection" against trade union funds being drained away. There are circumstances in which it would be right for their funds to be drained away where they were inflicting large-scale damage. To call it "essential" is to prejudge the central issue in the Green Paper.

5.1.3 The emphasis on the responsibility of management in paragraph 16 is welcome. But it could stress more the need to communicate better, as well as the need for more employee involvement. Since the paper is really all about improving the relations between managers and managed, we think that the issue of how to improve employee involvement should be explicitly raised, and comments invited. This would broaden the scope of the paper a little, but it would serve to demonstrate that the Government was not only interested in restricting trade unions, but also concerned to put pressure on managers. We want "best practice" on both sides. (A recent discussion in MISC 14 showed little enthusiasm for any legislative action in this field. But this should not prevent us raising the subject in the Green Paper in order to give it better balance.)

2 Chapter 2: History and Development of Immunities

5.2.1 This seems a very fair and useful account of the development of trade union law. We have only two comments.

5.2.2 It draws insufficient attention to the way in which the law has put increasing responsibilities on employers, while the general trend has been for union power to grow stronger under a regime of immunity. Employers have now accumulated a large range of obligations towards their employees, eg restrictions on the circumstances in which they can be dismissed, redundancy provisions, safety requirements. So the law has entered the field. The whole picture is not a voluntary one.

5.2.3 There should be some cross-reference in this chapter (at least in the final paragraph) to the annexes on the alternative systems in other countries.

5.3 Chapter 3: Possible Changes

We have only commented on sections which we think require changes, ie Sections A, E, G and H.

5.4 Section A: Trade Union Immunities

5.4.1 We think that exposure of trade union funds is the key to making these organisations behave more responsibly - it is therefore crucial to the bargaining imbalance. At present a strike costs a company a great deal of money; it can cost a union nothing. Our decisions on deeming did not alter this much. The result is not just the strikes, but the way in which companies time and again give in to pay demands, restrictive practices and thus low productivity, rather than face a strike when the odds are so stacked against them. This point, that it is the strike threat that does the damage (just as it is the nuclear deterrent that keeps the peace) is overlooked again and again.

5.4.2 Paragraph 17 makes very heavy weather of the problem of vicarious responsibility. It should be possible to give a fairly clear definition of the "best endeavours" that a union is required to exert. The last line of paragraph 14 suggests one obvious route:

that the union should, if necessary, withdraw credentials from those organising unofficial action if it wants to demonstrate that it is not responsible and thereby protect its funds. But this is not reflected in the discussion that follows.

5.4.3 Paragraphs 28 and 29 imply that companies would not use the law. We doubt this. It would only be necessary for a few firms to do so. Once the principle was established, trade unions would probably adapt their behaviour accordingly. The threat would be there. It is true that the first case would be very difficult. But the prize for success would be a fundamental change in the climate thereafter.

5.4.4 The three questions at the end of Section A do not strike the right note: if trade union funds were exposed, the organisations would adapt. It might be that responsibility and the control of funds would eventually become more decentralised. That does not necessarily matter. The aim is to get a better system, not to preserve existing institutions.

5.5 Section E: Secret Ballots

5.5.1 The glaring omission from the present draft is the subject of secret ballots for union elections. This change made a very big difference to the behaviour of American unions. In 1959, a law was passed requiring all union representatives to be elected by secret ballot at least every three years at local level, four years at regional level, and five years at national level. The reform of the AUEW has had a big effect here. The case for democracy is overwhelming and would receive very widespread support. It is hard to imagine how union leaders could decently oppose it - though no doubt some would do so, on the grounds that it was an internal matter. In the public debate about whether Moss Evans should be elected to his key position for life, who would win?

5.5.2 Section E should address the problem of how to enforce new rules about secret ballots on unions. One approach would be to make certain basic constitutional provisions a prerequisite for immunities. These could include elections by secret ballot and perhaps rules - like those of the NUM - on secret ballots for strike decisions. There could be other methods of enforcement.

6 Section G: Picketing

We think there is a real risk that our new provisions may prove unenforceable. So we must be very careful not to preclude further changes. The police would not have to demand names and addresses "at the request of the employer", as paragraph 10 suggests. A standard requirement that a picket must supply his name and address in advance (as suggested by Len Neal) would preserve the neutrality of the police.

5.7 Section H: Protecting the Community

We agree with the conclusion (paragraph 32) that voluntary no-strike agreements are probably the only answer in essential services. But if we are to put pressure on unions to agree to these, should we admit that nothing else is really possible? Should we admit (see paragraphs 21 and 31) that remove of immunities would be "inappropriate"? It might not be ideal, but threatening this change might be the only way of getting agreement. This Section makes the mistake of putting all our cards on the table in a game we cannot afford to lose, where Government has responsibilities to the community.

5.8 Chapter 5: Conclusion

5.8.1 We think the reference at paragraph 2 to defining the limit in a way "appropriate to industrial history" gives the wrong emphasis. The real need is to improve the system - or redesign it - so as to match the tasks; not to reflect the history. Our recent economic history is already bad enough. We have to learn to compete much more effectively with other countries. That is the background against which the new limits need to be defined.

5.8.2 The reference to "commanding general acceptance" in paragraph 3 contains the unfortunate implication that the trade unions must agree - which they will never do. The same argument therefore applies as with the Employment Bill. Any change, however modest, will produce a huge rumpus from the unions. So let's at least make the change worthwhile.

OTHER OMISSIONS

6.1 Political Levy

This is not discussed at all. It may be quite right not to raise it here, but should we not have a strategy for changing this, in order to help depoliticise the unions? It may be a task for the second five years, but it's got to be done one day. (It might need to be a campaign organised by the press.)

6.2 Section 17 of the 1974 Act

The CPS study group argues that this is a practical hindrance to civil court proceedings and should be removed. It is not discussed.

7. CONCLUSION

7.1 Our overriding concern is that public debate - and thus the Green Paper - should start from a proper understanding of the economic impact of trade unionism in Britain, and thus of what is really at stake. We have found - in talking to many businessmen, civil servants, politicians - that the economic effects of trade unionism are simply not understood. This is because so many of these sensible and responsible people have little understanding of economics outside their own direct experience and little time to read and think about it.

7.2 Any social system must adapt to changing circumstances if it is to survive in one piece. The main effect of trade unionism, though not by design, is to prevent this vital adaptation from taking place fast enough. We are now so far behind our Western competitors, and so boxed in by immediate economic constraints, that there is almost no possibility of economic recovery unless we are able to get all of the "key success factors" more or less right. One of those key success factors is the system of industrial relations law and practice. "Getting it right" must mean moving fairly rapidly towards a model (like the West German one) which has proved itself in practice.

3 In our experience, those people who regard short-tern industrial peace as the main objective do so because they simply do not understand this economic dimension. They cannot see beyond the coming year, or "getting through the winter without trouble". This is not a criticism of them, but of ourselves, as a Government, for not first ensuring that we all understand what is at stake and then making sure that everyone else does. The idea that we can somehow stabilise the economy and then build a prosperous future without first disturbing the trade union status quo is an illusion. The choice is between disturbing that status quo (accepting, and trying to minimise, the inevitable risks attached to that course) and settling, as Wilson and Callaghan did, for a slow surrender, for which the voters will not in the end thank us, when they see where we have led them.

Cabinet / Cabinet Committee Document

The following document, which was enclosed on this file, has 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.

Reference: MISC 14 (80) 26

Date: 24 November 1980

Signed A Wayland Date 13 May 2010

PREM Records Team

COVERING CONFIDENTIAL

17 6

PRIME MINISTER

GREEN PAPER ON TRADE UNION IMMUNITIES

Returned on receipt of E(80) 148 - revised version

I have prepared the attached Green Paper on Trade Union Immunities to provide the basis for an informed and wide-ranging debate of the whole subject. That this is what industry wants was confirmed at last week's CBI Conference, where the resolution endorsing the reforms in the Employment Act but recommending that "decisions should not be taken on additional changes in employment law before there has been time for a proper and considered judgement on the need and scope for further reform" was carried by a considerable majority. That is why I have offered a consultative period until 30 June which the CBI have already told me informally they consider very tight.

So that we may meet our undertaking to produce the Green Paper by the end of the year, I shall wish to publish it in the third week in December. This means that any changes that colleagues may wish to suggest should reach me by Friday 5 December.

I am sending copies of this minute and of the text of the Green Paper to the members of E, the Home Secretary, the Lord Chancellor, the Attorney General, the Lord Advocate, the Secretary of State for Social Services and Sir Robert Armstrong.

JP

17 November 1980

CONFIDENTIAL

Caxton House Tothill Street London SW1H 9NA
Telephone Direct Line 01-213 6400
Switchboard 01-213 3000
GTN 213

Rt Hon Sir Geoffrey Howe QC MP
Chancellor of the Exchequer
HM Treasury
Great George Street
LONDON SW1

17 November 1980

Dear Geoffrey

I enclose a copy of the minute I have today sent to the Prime Minister together with the proposed text of the Green Paper.

I owe you an explanation of why I have not followed the suggestion in your letter of 10 November that officials should consider the content of the Green Paper before it is circulated to Ministers.

The reason you gave for your suggestion was the importance and political sensitivity of the Green Paper. But it was just because of its political sensitivity and importance that I have thought it right that colleagues should have the earliest possible view of it and that any comments that you or others may have should be sent to me.

I am copying this letter to the recipients of yours.

Yours

lnd
PJC

10 DOWNING STREET

John Hoskyns

David Wolfson

I wish you would look at the PM over the weekend. Do you wish to comment?

18/4

cc Mr Lankester

PRIME MINISTER

You asked about the law on strikes by the police and armed services

MJS
12/4

BRIEFING FOR THE PRIME MINISTER

CRIMINAL RESTRICTIONS ON TAKING INDUSTRIAL ACTION

1. The categories of workers subject to criminal prosecution if they take industrial action are as follows:-

(a) The Armed Forces

Strike action would amount to desertion or mutiny. Any member of the armed forces who engages in disruptive activity to redress a grievance is subject to internal military sanctions and can be charged under the disciplinary provisions of the Army Act 1955, the Air Force Act 1955 or theNaval Discipline Act 1957 as appropriate. Further, a person encouraging such activity, for example, a strike organiser, would probably commit an offence under the Incitement to Disaffection Act 1934.

(b) The Police

Industrial action by a policeman would be a breach of disciplinary regulations. Also, it isan offence under the Police Act 1964 to incite the police to disaffection or induce a breach of discipline and an organiser of industrial action would commit this offence.

(c) Merchant Seamen

Under the Merchant Shipping Act 1970 it is an offence for a seaman to take or organise industrial action unless the ship is in a safe berth in the United Kingdom in which case he may terminate his contract of employment by giving 48 hours notice to the ship's master.

(d) Postmen

Postmen and other Post Office employees commit an offence under the Post Office Act 1953 (or Telegraph Act 1963) if they take industrial action in breach of their contracts of employment which delays postal packets (or messages). However, it seems probable that no such offence is commited if they strike by lawfully terminating their contracts.

2. The Conspiracy and Protection of Property Act 1875 makes certain industrial action a criminal offence by reference to its effect. Section 5 provides that any person is guilty of an offence who wilfully and maliciously breaks a contract of service or hiring, knowing or having reasonable cause to believe that the probable consequence of his doing so (either alone or in combination with others) will be to (1) endanger human life, (2) cause serious bodily injury or (3) expose valuable property to destruction or serious injury.

It should be noticed that no offence is committed under the section if a person strikes by lawfully terminating his contract of employment. In 1968 the Donovan Commission reported that so far as it was aware there had not yet been a prosecution for an offence under the section.

12 November 1980

Solicitor's Office
Department of Employment

2
PRIME MINISTER

CONFIDENTIAL

PEPC (80) 6

MS
12/11

MOTIONS FOR APPROVAL

Draft Codes of Practice

(Picketing and Closed Shop)

It is hoped that Members may find the following notes useful for the debates on Thursday, 13th November 1980

Contents

Conservative Research Department,
32 Smith Square,
London S.W.1

CB/ALL
11th November 1980

DRAFT CODES OF PRACTICE (Picketing and the Closed Shop)

A. GENERAL COMMENTS

1) Introduction

- The first and most important need in the post Employment Act period is for people in industry and commerce to set about the job of working within the new legal framework to bring about genuine improvements in industrial relations in their firms.

- In some areas, Government can encourage this essentially voluntary process by guidance in Codes of Practice.

- The Secretary of State took powers in the Employment Act to prepare and publish Codes of Practice containing such guidance as he thinks fit for promoting the improvement of industrial relations; he has now used those powers to publish draft Codes of Practice on Picketing and on Closed Shop Agreements and Arrangements.

2) Consultations

- The draft Codes have been the subject of extensive consultation since they were first published on 5 August. Over 70 organisation and individuals commented.

- The vast majority of those who commented welcomed the Codes. Only the TUC argued that they were unhelpful.

- The drafts laid before Parliament for approval have been substantially revised as a result of the consultations. In particular a clearer distinction has been drawn between those sections which explain the law and those which give guidance on good practice.

3) Status of the Codes

- The Codes are produced under the powers given to the Secretary of State in the Employment Act. Those powers are identical to the powers given to ACAS to produce Codes under the Employment Protection Act 1975, (s. 6).

- The Codes do not extend the law. Their guidance may be neglected, or accepted; but they must be taken into account. In other words, courts or tribunals may not be indifferent to their existance. The 1975 Act required that independent tribunals and the Central Arbitration Committee shall take into account in any proceedings to which they appear to be relevent any Codes that may have been issued under that Act. The Employment Act applies an identical provision additionally to courts.

4) Purpose of the Codes

- The Employment Act has made important changes in the law on both picketing and the closed shop. But there is a limit to the extent to which the law can be used to regulate individual behaviour and attitudes.

- The Codes supplement the Act's provisions

a) by explaining the law as clearly and simply as possible so that no-one should be in any doubt about their rights and legal obligations; and

b) by setting down practical and sensible guidance on matters of industrial relations which it would not have appropriate to deal with in the Act.

- The advantage of Codes as compared with legislation is that they can convey advice and guidance whose influence in part stems from the fact that they have been approved for by Parliament issued by the Secretary of State. The guidance is not rigid. It is for those concerned in industry to apply it in the light of their own circumstances.

- The Codes do not seek to set impossibly high standards. In parts they are similar to the guidance put out by the TUC. The aim is to give realistic and practical guidelines and to set standards of tolerance and flexibility which are fully in line with the normal practice of responsible trade unions and enlightened employers.

5) Success must not be judged overnight

- The codes should not be expected to bring about immediately dramatic changes. Attitudes in industrial relations are not readily changed, whether by advice or statute.
- The importance of the Codes will probably be in changing opinion and practice in industry over a period of years.

Breach of the Highway Code is evidence "tending to establish liability in any proceedings", by virtue of the Road Traffic Act. No such provision applies to these Codes. Yet the influence of the Highway Code has been gradual, not instantaneous.

- In the same way the Codes on picketing and the closed shop will not bring an immediate end to all the abuses which have cause such concern in recent years. But over time they will help to influence and change attitudes in industry to the benefit of everyone.

B. POINTS OF CRITICISM

1. "The Status of the Codes is confusing and unclear"

The status of the Codes derives from section 3 of the Employment Act 1980, which has, of course, been subject to full Parliamentary scrutiny.

First, the section empowers the Secretary of State to issue Codes of Practice "containing such practical guidance as he thinks fit for the purpose of promoting the improvement of industrial relations". So there is no ambiguity about what the Codes contain: it is guidance for the purpose of improving industrial relations.

Second, section 3 requires that the Codes are laid before both House of Parliament for approval. So when this approval has been obtained the Codes' status will be that they are issued by the Secretary of State with the authority of each House of Parliament.

Third, subsection (8) of section 3 sets out clearly what is to be the status of the Codes before the Courts and tribunals:

- they are admissible in evidence;

- they can be taken into account by the courts or tribunals, where they think they are relevant to the proceedings before them. It is up t the courts to decide whether they are relevant, in the same way as they decide the relevance of any evidence which is brought before them;

- but perhaps most important, no part of the Code of itself makes a person liable to legal proceedings: this means that a person does not simply by reason of ignoring the Codes become liable for any proceedings.

2. "The Codes are a form of unconstitutional legislation"

The Codes have been produced under a power given to the Secretary of State by Parliament.

They are not legislation, not do they have the force of legislation. They contain practical guidance for the purpose of improving industrial relations, which, like any other evidence, may be taken into account in legal proceedings.

But, as section 3 of the Employment Act makes quite clear, Codes produced under that section do not have the force of law. As section 3 says "a failure on the part of any person to observe any provision of a Code of Practice issued under this section shall not of itself render him liable to any proceedings". Once this fact - that the Codes do not extend the law in any way - has been understood, it is difficult to support the argument that these Codes are some kind of backdoor legislation.

3. "Codes of this kind are entirely novel"

No, they are not. There is nothing novel about the nature or status of the proposed Codes of Practice on Picketing and the Closed Shop. Almost identical powers were contained in section 4 of the Industrial Relations Act 1971 and in section 6 of the last Government's Employment Protection Act 1975. And in each case Codes of Practice for the improvement of industrial relations - with the same status as the Codes produced under the 1980 Act - were issued. In the case of the 1980 Act, Courts as well as tribunals and the CAC have to take them into account in cases to which they appear to be relevant.

The Code of Industrial Relations Practice issued in 1972 by the Secretary of State for Employment and the later Codes drawn up by ACAS on "Time Off for trade union duties", "Disclosure of Information" and "Disciplinary Procedures" are still in operation and they have worked satisfactorily. Their legal status has never been called in question. The Codes on Picketing and the Closed Shop are exactly the same in nature and status and they will work in exactly the same way. We are not setting any sort of precedent. On the contrary we are following precedent.

4. "The Codes mix up law and guidance"

The revised Codes (see especially para 4 of each Code) make it quite clear which sections of the Code describe the law and which contain guidance on good practice. But it is not accepted that law and guidance should be contained in separate documents. An understanding of the law is just as important to good industrial relations as guidance on good practice.

There is nothing new about putting law and guidance in Codes of Practice There is the same mixture of law and good practice in the Highway Code and the ACAS Codes. The Highway Code fo example is littered with "Do this" and "Do that" and "you should do this" and "should do that" - sometimes it is used to explain a specific statutory provision, sometimes simply to give guidance. It all depends on the context.

5. "It is undesirable that Codes should be used to give guidance to the courts and tribunals"

The guidance in the Codes is intended for anyone who in the normal course of his or her daily business may come into contact with the close shop or picketing. This will be primarily managers, trade unionists, and individual employees.

The Codes are not intended as guidance to the police or to the courts. The police discretion to enforce the criminal law is not affected in any way by the provisions of the Code on picketing, as it expressly states. As for the courts, they may take the Codes into account in legal proceedings, where they are relevant, like any other evidence; but the Codes do not extend the law or guide the courts on how to administer it. They give guidance as to what will promote the improvement of industrial relations.

6. "It is undesirable to produce Codes on controversial subjects"

The Government does not accept that Codes of Practice must be confined to uncontroversial subjects. It is because the subjects of picketing and the closed shop are controversial that there is a need for clear and simple guidance on the law and on good practice.

There is nothing new about producing Codes on controversial subjects. The ACAS Codes on Time Off for Trade Union Duties and on Disclosure of Information for Collective Bargaining dealt with controversial subjects. The Code of Practice on Industrial Relations published in 1972 was opposed by the TUC, and yet parts of it are still in force today, even through the Industrial Relations Act 1971 under which the Code was produced was repealed by the Labour Government in 1974.

C. THE PICKETING CODE

1. "The limit of 6 is inflexible and will lead to conflict and disorder on the picket line"

The figure of 6 is intended to be guidance to pickets and their organisers on the numbers to which pickets should normally be limited at any one entrance to a workplace, in the interests of peaceful picketing and preventing the worsening of industrial relations.

But as the Code makes clear, this is not an inflexible or invariable limit. For example, the Code points out that very often fewer than 6 will be appropriate in the interests of good industrial relations.

2. "If the police already have powers to limit numbers, why put a specific figure in the Code?"

The police are concerned with keeping the peace. The Code is concerned with the number to which pickets should normally be limited if industrial relations are not to be worsened. Moreover, pickets and picket oranisers may in any event find that the police are not present.

As the Code makes quite clear - see particularly para 28 of the revised Code which has been strengthened to emphasise the point - the police discretion to limit numbers where they fear disorder is entirely unaffected by the Code's provisions. It is for the police to decide in each individual circumstance whether a particular number of pickets is likely to lead to disorder.

3. "The figure of 6 can be taken into account by courts. Isn't it therefore in effect a legal limit?"

No. The Code is not intended as guidance to the courts. Like other provisions of the Code the limit of 6 is guidance which in the Secretary of State's view will promote improvements in industrial relations. Such guidance is admissible in evidence in legal proceedings and will be taken into account in such proceedings where the courts think it is relevant.

It is evidence of no more than this: that the Secretary of State with Parliamentary approval believes that if numbers on the picket are usually limited to 6, at any one point of entry, that will be in the interests of good industrial relations. It is up to the courts to decide whether that is relevant in any case they are considering. They can in a given instance accept it or reject it; but if they think it relevant to an issue they must take it into account.

4. "The figure of 6 should be a legal limit"

That would have been far too inflexible. It would mean that whatever the circumstances of picketing - whether, for example, it was taking place at a large or small entrance with a heavy or light inflow of workers or vehicles, and whether or not it was peaceful - the police would be required to enforce the limit. This would be likely to increase the risk of conflict on the picket line between police and pickets, and put greater burden of enforcement on the police.

The Chief Police Officers have made it clear in their evidence to the Select Committee that they are totally opposed to a legal limit on numbers. They believe that the present position which gives them discretion to deal flexibly with picketing according to individual circumstances is satisfactory.

5. "The Police are opposed to putting a specific figure of 6 in the Code."

The Police Federation have made it clear that they support and welcome the draft Code on Picketing including the limit of 6.

As for the Association of Chief Police Officers, they told the Select Committee that the figure of 6 was a useful illustration of the kind of number to which pickets should normally be restricted in the interests of good industrial relations. They were anxious, however, that the mention of a figure should not be construed as limiting police discretion. The Government has amended the draft Code to make it clear that the police discretion is unaffected.

6. "How does a picket leader decide whether 6 is the right number of pickets for a particular picket line?"

He should consider what is the minimum number necessary, for the only purposes for which picketing is helpful. If the police are present, the picket organiser should consult them and limit the number of pickets as they direct. It may well be a figure lower than 6. We believe that is the maximum needed for the purposes of peaceful persuasion in almost all cases: a larger number causes resentment and fear, and can exacerbate the dispute and its effects. Obviously if the picket organiser is having to decide for himself whether, say, 3 or 4 pickets are sufficient he will need to take account of such factors as the width of the entrance, whether or not it is used by lorries or only by pedestrians, how many people are passing through it at particular times.

7. "The recent scenes of mass picketing at Brixton and in South Wales show how ineffective the Code is likely to be".

The Codes have not been issued yet. As the draft code explains, mass picketing which seeks by sheer weight of numbers to stop others going into work or delivering or collecting goods goes well beyond peaceful persuasion and may under existing law

constitute obstruction if not intimidation. The sucess of the Codes in clarifying attitudes and influencing behaviour will only be seen over a period of time.

8. "The advice that disciplinary action should not be taken against a member of a union on the grounds that he has crossed a picket line (Para. 36) will undermine trade union authority over its members".

The Government took careful not of the criticisms of this section which came from the TUC and from many employers and employer organisations including the CBI. It has therefore amended the relevant paragraphs of both Codes to say that disciplinary action should not be taken against a member on the grounds that he has crossed a picket line which it had not authorised or which was not at the member's place of work.

This should help to meet the criticisms which were made of the original draft. But it should help those who wish to cross an unofficial picket line or one which is not mounted at their own place of work.

D. THE CLOSED SHOP CODE

1. "The Code should explain what will constitute a genuine objection to trade union membership under the Act".

An academic or legalistic definition of conscience or deeply held personal conviction would be inappropriate in the Code. It is for the tribunals to interpret these terms and apply them in the light of the facts of each case. The phrase "conscience and other deeply held personal convictions" is, in the words of the Lord Chancellor, "plain English". To attempt to embroider the concept with more words would cause confusion and needless controversy.

2. "Will the Code be amended in the light of the European Court Of Human Rights' eventual decision in the British Rail "closed shop" case?"

The Report of the European Commission of Human Rights found that the previous Government's legislation had breached the Convention. It also said that "Article 11 neither prohibits nor allows the system of 'closed shop' in general".

The Government remains confident that the Employment Act, which amongst other reforms specifically remedies the deficiency in the previous Administration's legislation which led to these complaints brings our law into compliance with the Convention. The Government have said that they intend to meet their obligations.

3. Will the provisions of the Code concerning periodic reviews lead to the disruption of existing, well run union membership agreements and hence worsen industrial relations?"

The Code sets out good practice on periodic reviews of existing

closed shops. It is clearly reasonable that existing agreements should be subject to review every few years, and thus the Code provides guidance on this. That guidance is flexible and so leaves the exact nature and timing of the review to the discretion of employers and unions. If a closed shop agreement is well run, its review should present few problems.

4. "Both industry and rank and file trade unionists oppose the Code's proposals on review".

A large number of organisations have commented on this section of the Code. Some have suggested that more precise and rigid provisions should be imposed, either by statute or by specifying in the Code exactly how often closed shop agreements should be reviewed. The Institute of Directors and the National Federation of Self Employed and Small Businessmen were among those who suggested this. Others, a much larger number, including the CBI, the EEF, the IPM, and a number of major companies - were concerned that the guidance in the Code on this subject was too inflexible. But the need for some guidance in this area was widely recognised. The Division of opinion on what the nature of the guidance should be was reflected in the comments of the CBI, which suggested a number of amendments to the relevant section of the Code to make it more generally acceptable. Most of these have been accepted and paragraph 43 of the revised Code has been amended accordingly.

The Government does not accept that the Code on the Closed Shop should include no guidance at all on the need to review existing closed shop agreements. The purpose of these Codes is to give guidance on good industrial relations practice. It is normal good practice in well run companies for management and unions from time to time to review agreements, particularly when there has been some development which has made those agreements out of date or if there is evidence that they are not working properly. It is good practice to ensure that all agreements continue to reflect the wishes of those employees whom they affect.

Closed shop agreements are no different in this respect from other agreements. It is essential they be reviewed periodically to take account of changing circumstances. Since they may affect the jobs and livelihoods of individual employees, it is particularly important that they should continue only if they have the support of a majority of the employees they cover.

5. "The question of review of existing closed shops be dealt with through legislation rather than through a Code of Practice".

As was extensively discussed during the passage of the Employement Act though Parliament , the Government believe that to try and deal with the subject of review through legislation would be inflexible and inappropriate. In its comments on the draft Code, industry has shown concern that they should have some discretion on review. That discretion would inevitably be curtailed by legislation.

6. "The Code should state a definite period of years for review rather than say "every few years" "

To state a set number years would be too inflexible and whatever the figure stated, it would inevitably prove inappropriate for some particular cases - thus undermining the Code's value as a source of practical guidance.

7. "Is section D - particularly para 54 on industrial action - intended to apply only in a closed shop or is it an attempt to control the internal affairs of unions in general?"

Section D is intended as general guidance. The Government regard it as advice that any union would do well to heed - much of it is drawn from the TUC's own guidance.

Of course, section D has particular relevance in a closed shop, where a tribunal could take it into account in determining whether a union has behaved reasonably in excluding or expelling a member in a case arising under section 4 of the Employment Act. Exclusion or expulsion in a closed shop is a matter that can permanently affect somebody's livelihood; it is both necessary and useful for the Code to provide some guidance on good practice.

8. "Para 54(a) is saying that a union may not take disciplinary action against an individual for refusal to take part in industrial action, because that action has not been affirmed in a secret ballot. Isn't this an attempt to deal in the Code with a major issue which you declined to settle in the course of legislation?"

No, it is not. The Government are not saying that a union must not take industrial action without first holding a secret ballot. The Code is advising as a matter of practical guidance that, where there is a closed shop, the union should not discipline members whose refusal to take part in industrial action was on the ground that there had been no proper, democratic ballot. The Government believe this to be eminently reasonable. An individual in a closed shop may object strongly that he has been given no chance to vote on industrial action which he disagrees with and then find that if he does not take part in the action he could be expelled from the union and lose his job. The Code is designed to help individuals in such circumstances.

9. "In the section on press freedom, isn't the Code giving extra rights to a limited group that are denied to others?"

No. The Code cannot give specifc rights but it does provide useful guidance to the industry based on what was agreed between the concerned parties during the talks on a possible Press Charter held under the Chairmanship of Lord Pearce in 1976-77. This guidance has been welcomed by the industry, it can be taken into account by tribunals where relevant, and the Government believe it will be of genuine assistance in securing the freedom of the press.

CONFIDENTIAL

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

10 November 1980

The Rt. Hon. James Prior MP
Secretary of State for Employment

Dear Jim

GREEN PAPER ON THE REFORM OF TRADE UNION IMMUNITIES

I understand from my Private Secretary that you are not proposing any formal inter-departmental consideration of the Green Paper by officials.

You know of my continuing interest in the subject (despite my best endeavour to restrain my enthusiasm!) Keith Joseph, John Nott and Patrick Jenkin have also recorded their respective concerns. I think therefore that it would be helpful if officials could at least have an opportunity to comment on the draft before it is circulated at Ministerial level. I am sure that you will consider this a reasonable request in view of the great importance and political sensitivity of the contents of the Green Paper.

I am sending copies of this letter to the Prime Minister, members of E Committee and Sir Robert Armstrong.

Yours

GEOFFREY HOWE

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Rt Hon John Nott MP
Secretary of State
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1 Victoria Street
LONDON SW1

10 November 1980

You wrote to me on 20 October about the question of special legislation to meet the Nawala type situation - ie where industrial action is taken against the owner of a ship whose current (ie flag of convenience) crew have no dispute with their employer.

I am surprised that you should raise this issue at this juncture. The Nawala, according to my information, is currently visiting the UK under a new name and is not being blacked. I am not aware of any further instances of successful blacking of ships in such circumstances since the Nawala dispute. In my view it would be most imprudent for the Government at this time to announce a firm intention to introduce legislation which would deprive British seamen of any means of taking lawful industrial action if their employer had replaced them with a foreign crew. Such an announcement, when the jobs of some British seamen are being threatened by their employer's plans to turn their ships over to flags of convenience crews, would invite an immediate stepping up of industrial action. I do not think that these are the circumstances in which we could conceivably carry public opinion with us. And I do not imagine that the shipping companies would welcome an announcement which of itself gave them no practical assistance but which increased their immediate industrial troubles.

I do not read the decision at E on 24 March as committing us to such an annoucement in the Green Paper. We are a long way from knowing how this particular problem might best be tackled in legislation. (The Employment Act has, of course, already made unlawful indiscriminate secondary action such as an all out seaman's strike in sympathy with a dispute involving only specific ships or a specific shipping company). I am therefore proposing that the options should be canvassed in the Green Paper in the same way as the options for other, more general changes in the law.

I am copying this letter to the recipients of yours.

PRIME MINISTER

CODES OF PRACTICE

I attach the revised Codes of Practice on Picketing and the Closed Shop in the form in which they have today been laid before both Houses of Parliament. I have made a few further drafting changes to take account of comments by Keith Joseph and Michael Havers on the version I circulated on 22 October and also to meet some of the criticisms in the report of the Select Committee on Employment published on 4 November.

The Codes are due to be considered by the Joint Committee on Statutory Instruments on 11 November and, subject to their approval by the Joint Committee, to be debated in both Houses on 13 November.

I am copying this minute to the members of E Committee, the Lord Chancellor, the Home Secretary, the Attorney General, the Lord Advocate, the Chancellor of the Duchy of Lancaster, the Lord President, the Chief Whips and Sir Robert Armstrong.

J P
5 November 1980

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The Rt Hon Sir Keith Joseph Bt MP
Secretary of State
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5 November 1980

CODES OF PRACTICE

Thank you for your letter of 29 October. I have made a number of further changes to the Codes in the light of your letter and Michael Havers minute of 28 October to the Prime Minister. I have also modified the draft to meet some of the criticisms of the Select Committee on Employment whose report was published yesterday.

I have not accepted the (apparently unanimous recommendation of the Select Committee that the guidance on periodic review of existing closed shops should be omitted from the Closed Shop Code and, (except for the omission of the redundant word "regularly" in the first line of para 43) this part of the Code is unchanged from the version I circulated on 22 October. Given the weight of opinion on this whole issue I did not think it right to specify the interval between periodic reviews. It is clear that, as it stands, these paragraphs already go further than most employers wish, a fact which is reflected in the Select Committee's recommendation.

Similarly I did not feel able to reintroduce the sentence which appeared at the end of paragraph 25 of the consultative draft. These words were widely criticised by employers on the grounds that they could be used as evidence of the "biassed" nature of the Code whilst not contributing anything of practical value. However, I have included a reference in paragraph 34(f) to the need for ballots on new closed shop agreements to be secret and to the greater confidence that will result if they are conducted independently (although I do not think that it would be practicable or necessary for them to be conducted independently in every case).

The CBI list of the circumstances which should trigger a review of an existing closed shop (which I have incorporated in paragraph 43) does not include a specific mention of changes in the composition of the workforce due to technological change because this factor is covered by 43(i) ("evidence that the support of the employees for the closed shop has declined"). The EEF were strongly opposed to a reference to

change in the composition of the workforce on the grounds that it would "make unions more suspicious of, and more resistant to, necessary industrial and technological change".

Finally, I agree with you that the question of disciplining union members for crossing a picket line is a very difficult one. We have to balance the risk of appearing to undermine trade union internal authority (which in other contexts we are anxious to promote) against the risk of condoning the expulsion of someone in a closed shop from his union because he has decided to cross the picket line. I think that the wording in the version of the Code I circulated on 22 October is the best we can achieve. It does not allow a union member to be disciplined for crossing a picket line other than at his own place of work or even at his own place of work if the picket line is authorised by a union other than his own. It therefore meets the problems of the lorry driver confronted by a picket when delivering or collecting goods. Only if he crosses a picket line authorised by his own union at his own place of work does the Code suggest that his union should be able to discipline him, and, of course, in those circumstances he will normally be disciplined for refusing to take part in a strike rather than on the incidental grounds that, in order to do so, he crossed a picket line.

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

Ind Pol.

DEPARTMENT OF HEALTH & SOCIAL SECURITY

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Telephone 01-407 5522

From the Secretary of State for Social Services

The Rt Hon James Prior MP
Secretary of State for Employment
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Tothill Street
LONDON
SW1

12 4..

5 November 1980

Dear Jim.

TRADE UNION POLICY: GREEN PAPER On file PTC

You copied to me your letter of 14 October to Keith Joseph about Geoffrey Howe's ideas on union immunities, set out in his letter to you of 17 September which I have now also seen.

I am, of course, entirely behind the idea of a Green Paper to launch a wide-ranging and constructive debate on union powers and immunities. Some of Geoffrey's suggestions concern me closely because of my responsibility for the NHS, with its fairly unique range of industrial problems, and I hope I may be able to make a useful contribution to the preparation of the Green Paper.

I am sending copies of this letter to the other recipients of the earlier correspondence.

Yours ever

Patrick

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PRIME MINISTER

PRIME MINISTER

A copy of the Report is attached. It is not very helpful - see paras 7-8 and 22 in particular.

MS 4/11

EMPLOYMENT ACT - CODES OF PRACTICE

BBC World at One carried a long item following the Employment Select Committee's Report this morning. The Chairman, John Golding, who described the Codes as a jumble of law, interpretation and advice, said that the majority of the Committee thought that it was constitutionally wrong to be putting such controversial matters into Codes of this sort.

Parliament should not be presented with what is politically and industrially controversial on a take it or leave it basis. "In my view", he said, "there should be a clause by clause, line by line, examination."

He criticised on behalf of the majority the suggestion that closed shops should be periodically reviewed, and thought the suggested number of 6 in the picketing code was ambiguous.

Jonathan Aitken on behalf of the minority (did not say how many) pointed out that good industrial relations cannot be written into the law. He welcomed the Codes as sensible guidelines and drew a parallel with the role of the Highway Code.

In a Press Association report, Mr. John Gorst said that he would be voting against the Codes.

Bernard Ingham

4 November 1980

HOUSE OF COMMONS

Second Report from the

EMPLOYMENT
COMMITTEE

Session 1979 - 80

THE LEGAL IMMUNITIES OF TRÀDE UNIONS AND OTHER RELATED MATTERS - DRAFT CODES OF PRACTICE ON PICKETING AND THE CLOSED SHOP.

Ordered by The House of Commons to be printed 3 November 1980

822

The Employment Committee is appointed under SO No 86A to examine the expenditure, administration and policy of the Department of Employment and associated public bodies, and similar matters within the responsibilities of the Secretary of State for Northern Ireland.

The Committee consists of a maximum of nine Members, of whom the quorum is three. Unless the House otherwise orders, all Members nominated to the Committee continue to be members of it for the remainder of the Parliament.

The committee has power:

(a) to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report from time to time;

(b) to appoint persons with technical knowledge either to supply information which is not readily available or to elucidate matters of complexity within the Committee's order of reference.

The following were nominated as Members of the Committee on 26 November 1979.

Mr Jonathan Aitken
Mr Andrew Bowden
Mr Jim Craigen
Mr John Golding
Mr John Gorst
Mr Ray Powell
Mr Giles Radice
Mr John Townend
Mr Keith Wickenden

Mr John Golding was elected Chairman on 29 November 1979.

SECOND REPORT

The Employment Committee have agreed to the following Report:

THE LEGAL IMMUNITIES OF TRADE UNIONS AND OTHER RELATED MATTERS - DRAFT CODES OF PRACTICE ON PICKETING AND THE CLOSED SHOP.

1. As part of our examination of the question of the legal immunities of Trade Unions we have been considering the draft codes of practice on picketing and the closed shop issued by the Secretary of State for Employment.

2. Section 3 of the Employment Act 1980 empowered the Secretary of State to issue codes of practice containing such practical guidance as he thinks fit for the purpose of promoting the improvement of industrial relations. The Act received Royal Assent on 1st August and the Secretary of State issued two draft codes, one on picketing and the other on the closed shop, on 5th August. He invited observations by 10th October and said that the drafts might then be amended following any representations before they were laid before both Houses of Parliament for approval.

3. As the Select Committee with special concern for questions of employment, we considered it important that we should study the draft codes with care and make any recommendations at a stage when they could still influence the final form of the draft codes to be laid before Parliament. Once the Secretary of State has laid his draft codes they can no longer be amended: they have either to be approved or rejected as a whole.

4. Before coming to any conclusions on the draft codes we considered it necessary to take evidence from certain interested parties. First, on 13th August, we took oral evidence from the Secretary of State, having already taken preliminary evidence from him about his proposed consultation procedure on 9th July, before the issue of the draft codes. We then had a series of meetings on 13th October with representatives of ACAS, the TUC and the CBI. On 21st October, following an invitation to all the minority parties in the House to give evidence on the draft codes, we heard evidence from the Right Honourable Enoch Powell on behalf of the Ulster Unionist Party. No other party with no members on the Committee accepted the invitation to appear before us but the Liberal party submitted written evidence. On 29th October we took oral evidence from representatives of the Commissioner of Police for the Metropolis, the Association of Chief Police Officers, and the Institute of Directors. On 3rd November we had a final meeting with the Secretary of State.

5. In the light of these discussions and our study of the draft codes, we wish to draw to the attention of the House a number of issues arising from the codes. But first we must comment on the consultation procedure adopted by the Secretary of State and at the end we set out our observations on the more general question of parliamentary consideration of this type of legislation.

6. The consultation period chosen by the Secretary of State ran from 5th August to 10th October. The House rose for the summer adjournment on 8th August and returned on 27th October. This meant that practically the whole of the consultation period fell during the adjournment and the main summer holiday period for outside organisations. This was bound to present difficulties for all concerned, and in particular for organisations which had to consult a widespread membership. In the event the CBI and the TUC were not in a position to present considered views to us until the end of the consultation period, and we could not take evidence from them until 13 October. We were therefore obliged to ask the Secretary of State not to lay his final draft Codes before the House until we had further time to consider our recommendations. We still needed to take evidence from the minority parties, the police and the Institute of Directors and this took us until 29th October. This left only a very few days during which we could take final evidence from the Secretary of State and report to the House before the date on which he planned to publish the draft Codes in final form.

7. We consider that the consultation procedure adopted by the Secretary of State on the draft Codes has been unsatisfactory. The Secretary of State published the draft Codes three days before the House rose for the summer adjournment and called for comments no later than a date seventeen days bef ore the House was due to resume. This shows scant regard for the views of Parliament and goes far to deny the Committee, and the House, a proper opportunity to make representations pn the Codes at a stage when they could still influence their final form. We consider that on a matter of this importance the Secretary of State should have carried out his consultations at a time when the House was sitting and could give proper consideration to questions arising.

8. There is a general issue here which could arise in other areas of Parliamentary work and affect other Select Committees. We recommend that where Ministers can foresee the need to introduce important measures requiring careful consideration by the House and its committees, they should arrange their timetable in such a way that that consideration can be given.

Limiting numbers of pickets

9. In paragraph 28 of the draft Code of Practice on Picketing it is argued that the main cause of violence on the picket line is excessive numbers, which create situations in which "things get out of control" and those concerned run the risk of prosecution. Paragraph 29 states that this is particularly the case whenever people, by sheer weight of numbers, stop others going into work or delivering or collecting goods. The Code contends that in such cases what is intended is not peaceful persuasion but obstruction or even intimidation. It is not really picketing, but mass demonstration, "which may well result in a breach of the peace".

10. The Code therefore lays down in paragraph 30, that "the number of pickets at an entrance to a workplace should .... be limited to what is reasonably needed to permit the peaceful persuasion of those entering and leaving the premises who are prepared to listen". It goes further and, while confirming that the law does not impose a specific limit, suggests an actual number: "as a general rule, it will be rare for such a number to exceed six, and frequently a smaller number will be sufficient".

11. Some members of the Committee believe that there should be no limit on the numbers of pickets laid down in statute or in the Code, but that the matter should be left to the discretion of the police. Others take a contrary view. They feel that the guidance as to numbers of pickets in the Code is a reasonable and helpful indication of good industrial relations practices, which would assist both the unions and the authorities.

The Closed Shop

12. We have one major recommendation about the draft Code of Practice on the Closed Shop, which is set out below in paragraphs 16 to 20 but we draw attention to a number of comments that have been made in representations to us about this draft Code.

13. Paragraph 34 refers to the minimum level of support for a new closed shop laid down by the Employment Act, i.e. 80% of those entitled to vote, but goes on to say that employers might well feel that a higher figure should be required. This can be objected to on the grounds that when the statute lays down a minimum, the Code should not say that the figure should really have been higher. This could worsen the relations between the employer and his employees. It has also been pointed out to us in evidence that the 80% principle applies only for purposes of limiting the employer's liability for unfair dismissal and that there is no general legal requirement for the holding of ballots.

14. Paragraph 53 says that a union should not take (or threaten) disciplinary action against a member for refusal to take part in industrial action in certain circumstances. An example is where action has not been approved by secret ballot: this raises a major issue which is not in the Act. It should have been settled by proper debate in the course of legislation on the Employment Bill.

15. The section on journalists (paragraphs 54 to 59) has been criticised as importing into the law on the closed shop special provisions, amounting to a privileged position, for a particular class of workers, (e.g. paragraph 58 says that editors should be free to decide whether or not to join a trade union). Such provisions, it was suggested, should not be given by a code, but should be subjected to the same detailed parliamentary scrutiny as would proposals for incorporation in a statute. On the other hand it has been argued that many questions of industrial relations are better dealt with in the broader terms of a code of practice rather than legalistically, and the section on the press has been supported as a useful indication about sensible practice in the industrial relations world of a newspaper office.

16. Section C(e) of the draft Code of Practice on the Closed Shop deals with the review of closed shop agreements. It says that all closed shop agreements, new or existing, should be subject to periodic review; that reviews should take place regularly every few years, and more frequently if changes of the following types occur:

(i) changes in the law affecting closed shops, like those of the Employment Act 1980;

(ii) changes in the parties to a closed shop agreement; for example where the business of the original employer is taken over by another;

(iii) a significant change in the nature of the work performed by those covered in the agreement with consequential changes in the occupational structure;

(iv) changes in the composition of the workforce, for example where skills required are altered by substantial technological change;

(v) a substantial turnover of the labour force since the agreement or arrangement was entered into.

The draft Code also says that where following a review the employer and union favour continuing the agreement, they should ensure that it has continued support among current employees and that where there has been no previous or recent secret ballot one should be held to test opinion.

17. The TUC have expressed total opposition to these proposals. They consider that they would cause disruption in places where there have been good industrial relations for many years and that they would invite "free riders" in any establishment to challenge the authority of the union and indeed the management and create chaos where there is an organised and proper working relationship at the moment.

18. The CBI have also expressed serious reservations about the proposals. While they felt that reviews were desirable in principle, the proposals in the Code were too precise in suggesting periodic reviews in certain circumstances: to review an existing closed shop which is working satisfactorily might well cause more harm than good. The CBI therefore put forward modified proposals, viz:

"Review procedures, including the circumstances when reviews should take place, should be written into all closed shop agreements. Reviews are particularly necessary in the following circumstances -

a. where there is evidence that the support of the employees for the closed shop has declined;

b. where there has been a change in the parties to the agreement;

c. where there is evidence that the agreement, or parts of it, are not working satisfactorily;

d. when there is a change in the law."

19. The TUC however have also opposed the CBI's modified proposals. They consider that they do not fit the circumstances of industry and that in any case men who have subscribed to their unions to pay for the negotiations of their wages and conditions are not likely to change their minds about an established closed shop because there is a period set down for review.

20. This disagreement highlights the practical problems that arise in formulating quasi legal Codes, and in view of the opposition of both the CBI and the TUC to this proposal for regular reviews, a majority of members of the Committee believe that it should be deleted. We recommend that it should be omitted and given further consideration.

Consideration by the House

21. Some members of the Committee believe that the guidance contained in the Codes could be helpful to the courts, the unions, the employers and the police, and that to endow this guidance with the rigidity of statute law would deprive it of much of its value. They agree with the Secretary of State's "step by step" approach to industrial relations and hold the view that it is sensible not to introduce legislation at this stage, but to review the working of the Codes over a period.

22. Nevertheless, throughout our examination of these Codes our attention was drawn to the fact that many people, both inside and outside Parliament, consider the use of controversial Codes of this kind as constitutionally undesirable. This view is shared by a majority of this Committee. The Codes do not have the force of statute law, nor should they, because they have not been subjected to the same line-by-line parliamentary scrutiny as is applied to statutes and cannot be amended by either House. However because the enabling Act requires courts, industrial tribunals, and the Central Arbitration Committee to take these Codes into account in determining questions before them, the Codes do have what the Institute of Directors called a 'quasi legal status'. The Rt. Hon. Enoch Powell referred to them as 'a species of unconstitutional legislation' (memo para.2). Moreover, in their present form they contain a mixture of statements of the law, interpretations of the law, and practical advice which may or may not have a basis in law. This state of affairs was severely criticised by several witnesses including the Liberals and a majority of the Committee agree with this criticism, and recommend that if the Codes of Practice are issued they should distinguish clearly between statements of the law, and guidance which goes beyond the terms of the statutes.

23. There are no doubt precedents for such Codes, the best known being the Highway Code. When that Code was last revised in 1977 a Green Paper was first published setting out Government proposals for the revised Code, and there was then widespread consultation with interested organisations and members of the public, leading to an amended draft which was debated in both Houses, before the final draft was published and received parliamentary approval. This represented a more / acceptable procedure for consultation and contrasts sharply with the procedure for consultation on the present Codes.

24. Moreover these Codes deal with matters which are more politically controversial than the Highway Code. In the field of industrial relations ACAS have already issued a number of Codes on disciplinary procedure, on time off for trade union duties and activities, and on the disclosure of information, all of which were backed by general consent (Q.334-5). The new Codes, however, are the subject not only of party controversy but also of a fundamental difference of opinion between employers and trades union organisations, who represent the main parties to any future legal proceedings. It was because of this difference that the council of ACAS, on which both the CBI and the TUC are represented, decided to play no part in the formulation of the draft Codes (Q.325-7).

25. These Codes are so complicated and controversial that the normal statutory instrument procedure, under which the House would be called on to approve them, without amendment, after one and a half hours' debate late at night is quite inappropriate. We therefore recommend that there should be a full debate on the draft Codes before they are submitted for approval, so that the issues which we have mentioned in this report and others such as the question of "deeply-held personal conviction" under section 7 of the Employment Act, can be thoroughly discussed.

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

From the Secretary of State

1. MR LANKESTER to see
2. PRIME MINISTER

The text of the INQ Answer is attached

MJS

PA MJS

The Rt Hon James Prior MP
Secretary of State for Employment
Caxton House
Tothill Street
London SW1H 9NA

3 November 1980

Dear Jim.

As you know, Stanley Clinton Davis has tabled a PNQ for this afternoon on the one day NUS strike. As it is important to keep the temperature as low as possible on this occasion, I thought it sensible for Norman Tebbit to reply to the PNQ rather than myself. As you are aware, the NUS action has a number of interesting features, namely:-

This point was raised by Tony Marlow. Mr Tebbit declined to be drawn

1 it may be the first incident involving secondary action since the Royal Assent of your Employment Act. In this case the NUS has taken action against British ship-owners, ie the ferry operators, etc, who are not in any way party to the dispute with Cunard which is about Cunard's intention to transfer two cruise liners to the Bahamian flag;

2 the NUS have a closed shop agreement with the bulk of the British shipping industry which gives them an effective monopoly over the employment of seafarers in British flag vessels, except for the smaller coastal ships. The only way in which this closed shop can be avoided is by transferring British owned ships to a flag of convenience, thus enabling them to employ without NUS agreement foreign crews at wages and manning levels much inferior to British conditions.

The wage negotiations for the new pay round are due to commence tomorrow between the General Council of British Shipping and the NUS. The GCBS is going for a single figure settlement but given the delicacy of these negotiations it has urged other British ship-owners not to seek injunctions against the NUS on this occasion. If, however, the NUS seek to escalate this particular dispute with further secondary action then, of course, the position may change. Cunard themselves may invoke Section 17 of the Employment Act in respect of their cargo vessels.

The other interesting feature of this dispute is that it raises again HMG's attitude towards flags of convenience. Our view has always been that if we were to prevent British owned ships being transferred from the British flag to flags of convenience we could be seriously damaging British interests by preventing the possibility of operating competitively in certain trades. For instance, in the current dispute Cunard reasonably say that they can no longer afford to man cruise liners with highly paid NUS crews while competing against ships with lower paid foreign crews - particularly as these cruise liners are not much different from London hotels which are, of course, heavy employers of low paid foreign nationals.

I thought it right to circulate this note around colleagues as the dispute does embrace a number of interesting wider issues. Obviously we will have to keep closely in touch with developments should the position worsen.

I am sending copies to members of the E Committee and to the Cabinet Office.

Yours ever
John.

JOHN NOTT

2

PRIME MINISTER

A PNQ today: it went off quietly enough.

MS
3/11

PRIVATE NOTICE QUESTION: 3 NOVEMBER 1980

Mr Stanley Clinton Davis:

To ask the Secretary of State for Trade if he will make a statement on the 24-hour strike at British ports which is currently taking place which has been called by the National Union of Seamen.

This industrial action was taken by the NUS in response to Cunard's wish to operate two passenger ships under the Bahamas flag although crewed by British Officers. This decision is a matter for Cunard, but I understand it is the Company's view that it is not possible to operate these ships profitably under the British flag and that the alternative to operating under the Bahamas flag, would be to sell the ships. That, according to Cunard, would threaten to make the future operations of the QE2 uneconomic too.

I regret the reasons which have led to Cunard's decision. They underline the need for all our industries to have internationally competitive labour costs.

I also regret that the NUS action has involved companies with whom they are not in dispute and who have no influence in its solution. This has caused considerable inconvenience to the travelling public and has done little to help those companies to remain competitive and to continue to employ British seafarers.

JU

cc Mr Duguid

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

Secretary of State for Industry

29 October 1980

r 12/11

The Rt Hon James Prior MP
Secretary of State for Employment
Caxton House
Tothill Street
London SW1

Dear Jim.

CODES OF PRACTICE ON THE CLOSED SHOP AND PICKETING

Thank you for sending me a copy of your minute of 22 October to the Prime Minister.

Closed Shop Code

2 I endorse your view that we should not water down the Code's advice on the periodic review of existing closed shops. Indeed, I still believe that the Code should specify a normal maximum period of years (say three) between such reviews, as proposed by a few of the recipients of your consultation document. Employees subject to existing closed shops should have an opportunity to express their views regularly on this limitation of their human rights; we should not leave the period entirely at the discretion of their employer.

3 I have the following more detailed comments on the draft Code:

Paragraph 25

I notice that you have deleted the following sentence which appeared in the previous draft:

> 'It /the Closed Shop/ might, for example, impede the flexible use of manpower or limit the field of choice in recruiting new staff'.

I appreciate that you do not wish to add fuel unnecessarily to union allegations that the Code is biased against them. But the warning in the deleted sentence is a fair one, and a consideration which employers should certainly bear in mind before agreeing to a closed shop. I hope therefore that the sentence can be reinstated.

/paragraph 34F ...

Paragraph 34F

I would prefer the following stronger form of words in the final sentence:

> 'The ballot should be secret and independently conducted".

Paragraph 43

This CBI list of circumstances which should trigger off a review of an existing closed shop does not take into account sufficiently the possible need to make subsequent changes in the composition of the workforce e.g because of technological change. Because of its importance this should be explicitly mentioned as it was in the published draft Code.

Paragraph 54

I am not entirely convinced by the CBI's plea that the Code be more sympathetic to union discipline of members who cross an official picket line at their own place of work. It is up to the unions to attempt to convince their members of the case for taking industrial action or not crossing a picket line. If individual members then disobey union advice or instructions there may, in the absence of a closed shop, be a case for discipline; that is after all what union solidarity is all about. But where a closed shop exists, the threat of discipline can be compulsive and can even amount to taking away a man's job. The Code should not encourage this form of coercion. This is surely one of the most objectionable aspects of a closed shop and can effectively put the majority in the hands of the militants.

Code on Picketing

I have no comments on this Code. I agree that the limit of six pickets should remain.

Minor Amendments

I am content with your making minor drafting amendments to the Codes in the light of any last minute suggestions from the Select Committee on Employment.

Press Freedom

I have no objection to the repeal of the Press Charter provisions.

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

Yours ever,

Keith.

CONFIDENTIAL

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

ATTORNEY GENERAL

01-405 7641 Extn 3201

THE PRIME MINISTER

CODES OF PRACTICE ON THE CLOSED SHOP AND PICKETING

I refer to Jim Prior's minute of 22 October.

I was particularly interested in the changes made to the draft Codes in order to draw the proper distinction between obligations binding in law and those which are matters of good practice (see paragraph 4 of both Codes). I welcome these changes and consider that the revised texts do satisfactorily answer the criticisms which have been made. However, I would invite Jim Prior to consider whether paragraph 29 of the Code of Practice on Picketing is in the right place. It is not clear in the revised text what the precise "status" or effect of this paragraph is. I consider this to be an example of how the distinction between explanation of the law and guidance on good practice can become blurred - in fact this paragraph contains precepts of good practice which the Code is urging those who organise picketing to adopt. Much the same point can be made about paragraph 13 of the same Code although I appreciate it is difficult to see where else this could fit.

I was also interested to read the changes in paragraph 32 of the draft Picketing Code concerning the limit on numbers of pickets which likewise I welcome as reflecting the legal position.

I am copying this minute to the members of E Committee, the Lord Chancellor, the Home Secretary, the Lord Advocate,

/the

CONFIDENTIAL

ATTORNEY GENERAL

01-405 7641 Extn

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

the Chancellor of the Duchy of Lancaster, the Lord President, the Chief Whips and Sir Robert Armstrong.

M.H.

28 October 1980

CONFIDENTIAL


28 OCT 1930

QUEEN ANNE'S GATE LONDON SW1H 9AT

28 October 1980

Dear Jim

CODES OF PRACTICE ON THE CLOSED SHOP AND PICKETING

Thank you for copying to me your minute of 22nd October to the Prime Minister covering revised texts of these Codes.

My officials have passed to yours copies of the comments made by the police organisations on the earlier draft of the Code on Picketing. On the whole they have given it a general welcome. As your summary indicates, the most significant comment by the Association of Chief Police Officers expressed unease at the reference to six pickets. Chief officers are not just concerned at anything which might fetter their discretion to decide the appropriate number of pickets in each case; they are anxious that the figure might assume a degree of significance without regard for the circumstances of the particular dispute.

Nevertheless, while they would have preferred not to see six or any other specific number in the Code, I do not think chief officers will vigorously oppose it. I am sure they fully recognise the Government's commitment to limiting excessive numbers on picket lines. And they will welcome the extent to which the amendments you are proposing to make to this section of the Code help to emphasise the unfettered nature of police discretion.

For my part I am content with the revised drafts you have circulated.

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

Yours

Willie

The Rt. Hon. James Prior, M.P.

Ind Pol.

FROM THE LEADER OF THE HOUSE
HOUSE OF LORDS

27 October 1980

Dear Jim,

CODE OF PRACTICE ON PICKETING AND THE CLOSED SHOP

I have seen a copy of your letter of 22 October to Norman St John Stevas about the debates in both Houses on the two codes of practice.

I understand your anxiety that the codes should now be debated before the end of the session. So far as the House of Lords is concerned, we will do all that we can to ensure such a debate, probably, as you mention, on Thursday, 13 November, immediately before Prorogation. There is one potential difficulty. As I pointed out during our earlier correspondence in August, under Standing Order No 68 the codes must be cleared by the Joint Committee on Statutory Instruments (JCSI) before they can be debated in the Lords. If they are only made available to Parliament on 4 November, this will leave only one meeting of the JCSI before Prorogation. There must be a risk here. Is there any possibility of your laying the Codes before the end of this current week or even on Monday, 3 November. This would provide the safety margin of allowing the JCSI two meetings to consider the Codes.

I am sending copies of this letter to the Prime Minister and to the other recipients of your letter.

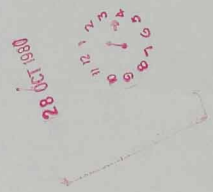
Yours ever

Christopher

SOAMES

The Rt Hon James Prior MP
Secretary of State for Employment

Industrial Rel.
May 1971
Industrial Relations



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cc: D/T
MAFF
LPO
D/Ind
HMT
FCO
CO
Ch. Sec. HMT
D/En.
HO
LCO
Att. Gen.
Ld. Adv.
CDL
Ch. Whip
bcc:
Mr. Hoskyns
Mr. Ingham

10 DOWNING STREET

From the Private Secretary

27 October 1980

Dear Richard,

Codes of Practice on the Closed Shop and Picketing

The Prime Minister has read your Secretary of State's minute of 22 October in which he asked for comments on the revised texts of the Codes on the closed shop and picketing. She has noted that he proposes to publish these texts and make them available to both Houses on 4 November. For her part, she has no comments to offer on the text, nor does she have any objection to Mr. Prior's proposal to announce that he intends to repeal the press charter provisions with effect from the date the Codes are brought into operation.

I am copying this letter to the Private Secretaries to the members of E Committee, the Lord Chancellor, the Home Secretary, the Attorney General, the Lord Advocate, the Chancellor of the Duchy of Lancaster, the Lord President, the Chief Whips and Sir Robert Armstrong.

Yours ever,

Tim Lankester.

Richard Dykes Esq
Department of Employment.

CONFIDENTIAL

MR HOSKYNS

The Prime Minister read your note of 24 October on the draft closed shop and picketing codes. As I have already told Andrew, I asked the Prime Minister if she wished me to pass these comments through to Jim Prior's office; but she replied that she did not want to "take Jim on" on too many fronts this week. I have spoken to the Treasury and told them that the Prime Minister will not be commenting, but that they should by all means make use of your comments.

T. P. LANKESTER

27 October 1980

24 October 1980

PRIME MINISTER

CLOSED SHOP AND PICKETING CODES

I attach a note of our comments on the Codes.

I have not copied these to Jim Prior at this stage, but am copying this minute and the note to Geoffrey Howe.

JH

JOHN HOSKYNS

24 October 1980

COMMENTS ON CLOSED SHOP CODE

Paragraph 49 - Admission to Union Membership

Why should we enshrine in the Code the principle in 49(b) that unions can reasonably exclude potential members on the grounds that more members would pose "a serious threat of undermining negotiated terms and conditions of employment"? Of course unions often prefer to limit their numbers, in order to keep their members' price high. But why should we sanctify these efforts to prevent the labour market from working? (We understand that Equity, the National Union of Seamen and the TUC are all anxious that this should feature in the Code - despite their opposition to the Code!)

Paragraphs 54-55 - Union Disciplinary Action Against Members

The original draft Code said that unions should not discipline members for crossing picket lines. Mr Prior's note explains that a number of organisations - including the CBI - have argued that unions should not be discouraged from taking disciplinary action against members to cross official picket lines at their place of work. He proposes to adopt the CBI view. We think this goes too far. Either of the following lines would be more reasonable:

(a) As a matter of principle, the Code should enshrine the right of individuals, once they have heard what a peaceful picket has to say, to make their own free choice about whether to cross a picket line or not. The knowledge - or the threat - that an individual will be disciplined by his union for crossing the line is a form of coercion that the Government finds unacceptable. (Mr Prior has, rightly in our view, taken a similar position of principle on the need for regular review of closed shops - despite the CBI's views.)

or (b) We could concede the principle, recognising that by joining a union an individual accepts certain restrictions on his freedom. If we do this there should be two safeguards:

(i) The right of unions to discipline members in these circumstances should be conditional on the official action having been decided upon by a properly conducted secret ballot at plant level. Paragraph 54 appears to provide this safeguard. But situations could arise where the views at one plant were submerged in a wider ballot. For example, a majority of the BSC-dominated ISTC could decide, by ballot, on an industry-wide steel strike. Enough local militants could be found to mount a picket at a private sector company. The pickets could then threaten the workers with official disciplinary action if they crossed the line - even if a majority of them wanted to. The same problem could arise within multi-plant companies where a single company-wide ballot was taken.

(ii) A further safeguard would be to say that any disciplinary action taken in respect of crossing picket lines - even official ones - should fall short of expulsion.

Our own preference would be to stick to the principle in (a) above.

PICKETING CODE

This same matter arises in paragraph 37 of the Picketing Code. The first sentence states the correct principle. The second makes the dubious exception of the official picket line. The third implies that expulsion for crossing an official picket line would be reasonable.

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

Chancellor of the Duchy of Lancaster

23 October 1980

Dear James.

CODES OF PRACTICE ON PICKETING AND THE CLOSED SHOP

Thank you for your letter of 22 October about the possibility of a debate on the two codes of practice during the spillover.

I understand that it will not be possible to get the codes submitted to the Joint Committee until Tuesday 11 November and on that basis Thursday 13 November seems the most appropriate day for a debate. The possibility of a debate, however, must to some extent be contingent upon the Joint Committee being satisfied and if for any reason they wish to receive further information on issues which you were unable to cover during the debate, we would have to reconsider whether the debate could in fact, take place during the spillover.

I do not think we can allow any further evidence-taking session to delay Prorogation unduly, and whilst that is probably an unlikely eventuality, I think it is nevertheless right to sound a note of caution.

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

Yours ever,
Norman.

The Rt Hon James Prior MP
Secretary of State
Department of Employment
Caxton House
Tothill St
SW1

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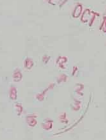
27 OCT 1980

M.R.

FILE

Ind Pol RH

MR HOSKYNS

cc:- Mr Vereker

TRADE UNION IMMUNITIES

I sat next to Pat Lowry of British Leyland at the Motor Show dinner last week and we discussed trade union immunities. Lowry said that he thought the Government had been misguided in focussing so much on the problem of secondary action: although this had been the big issue of the "Winter of Discontent", in fact it was in his experience a pretty ~~non~~ un-important ingredient in most industrial action. He felt that the real issues were ~~a~~ unforcible contracts and the ability to go for union funds. Without these, he did not think there would ever be a real change in the bargaining balance of power.

He also said that he saw a change in behaviour, but not in attitudes at present. This is an interesting distinction. He meant, I think, that people are responding to the worsening economic picture by modifying their bargaining behaviour; but as soon as unemployment begins to come down again, they will go back to their old ways. That is my fear too; we will have gone through a great deal of misery, and for what purpose? The Minfords of this world would of course say, provided we stick to the monetary strategy, attitudes will change. The reality is a bit more complicated; most trade unions have never heard of the MTFS and the figures contained in it. And to change attitudes, and not just behaviour, we need more Government action (a second Employment Bill?) and a much more intensive offer to get people to understand the "economic arithmetic".

23 October, 1980

MPW

CS

CONFIDENTIAL

2 pps
2

PRIME MINISTER

Comments from John Horsley (and the codes themselves) attached.
MS
24/10

PRIME MINISTER

CODES OF PRACTICE ON THE CLOSED SHOP AND PICKETING

I have now completed my consideration of the comments I have received on the draft Codes. The attached note summarises the main comments and indicates how I intend to deal with them. I also attach the revised texts of the Codes as I propose to put them to Parliament for approval (changes since the published drafts are side-lined).

My intention now is to have the revised texts published and made available to both Houses on 4 November. Provided the Codes are approved by the Joint Committee on Statutory Instruments on 11 November, I understand that the Chief Whips can make available a full day in each House for the Codes to be debated and approved before Parliament is prorogued, probably 13 November. This timetable should make it possible for me to keep to my original timetable and to bring the Codes into operation in mid-December.

In order to meet the very tight timetable for printing I must ask for any comments on the revised texts to reach me by 28 October.

The Select Committee on Employment, which has been planning a lengthy programme of evidence-taking stretching into November, have finally agreed to see me on 29 October and say they will make every effort to let me have their views "by the end of the month". I do not expect that the Committee will be able to produce an agreed report, but in case they should put forward any detailed comments at the last moment I would be grateful for agreement to my making any minor adjustments I might then consider desirable.

Press Freedom

In the Employment Act I took powers to repeal the provisions for a Press Charter in the Trade Union and Labour Relations Act 1976 but deferred bringing this into operation at the request of certain employer organisations who wished first to see how the question of the freedom

of the press was dealt with in the Code of Practice on the Closed Shop. The proposed passage in the draft Code (now paragraphs 56-61) has been generally favourably received by employers, though strongly attacked by the NUJ. None of the comments received has suggested the retention of the Press Charter provisions, or indeed mentioned the Press Charter at all. Accordingly I propose to announce to the House in introducing the Codes that I intend to repeal the Press Charter provisions with effect from the date the Codes are brought into operation.

I am copying this minute to the members of E Committee, the Lord Chancellor, the Home Secretary, the Attorney General, the Lord Advocate, the Chancellor of the Duchy of Lancaster, the Lord President, the Chief Whips and Sir Robert Armstrong.

JP
22 OCTOBER 1980

ANNEX

CODES OF PRACTICE ON THE CLOSED SHOP AND PICKETING

OUTCOME OF CONSULTATIONS

More than 60 employers, employers organisations, trade unions and individuals submitted written comments on the draft Codes. The following are the main comments received.

GENERAL

2 The TUC (and affiliated unions), certain employer organisations (eg the British Institute of Management and the Institute of Personnel Managers) and a number of employers (eg Ford) maintain that the draft codes are biased and hostile towards the trade union activities with which they deal. However it would be wrong to disguise the Government's strong disapproval of the closed shop and unacceptable behaviour on the picket line. The imputation of bias is probably inescapable in any positive or worthwhile pronouncement on such controversial matters. Acccordingly no change of substance is proposed to meet this criticism, although some drafting amendments have been made to meet detailed points.

3 Another comment common to both draft Codes from both employers and unions is that the distinction between the explanation of the law and guidance on good practice is insufficiently clear. Accordingly paragraph 4 of the introductory section of each Code has been redrafted to state precisely which sections describe the application of the law and which provide guidance on good practice. It is important of course not to equate "guidance on good practice" with mere exhortation; courts can take any relevant provisions of a code into account.

CODE ON THE CLOSED SHOP

Periodic Review (paragraphs 42-46)

4 A significant number of organisations (eg CBI, Ford, Courtaulds, ICI, IPM, Electricity Council, General Council of British Shipping, Post Office, Engineering Employers Federation and TUC) want the Code's advice on the periodic review of closed shops watered down. The principal aim is to avoid reference to review "every few years", but objections have also been raised to the list of circumstances in which a review is advised more frequently than this (now paragraph 43). For example, it has been strongly urged that advising that a closed shop agreement should be reviewed if there is a change in the nature of the work or in the composition of the workforce "will make unions more suspicious of, and more resistent to, necessary industrial and technological change." The CBI has proposed a revision of the list now in paragraph 43 which would omit this advice

but which would recommend a review where there is evidence that the support of employees for the closed shop has declined.

5 The reference to a review every few years must be retained. To remove it would significantly reduce the onus on employers and unions to conduct reviews, whilst to toughen it to indicate a specific period of years between reviews - as some organisations advocate (eg the National Federation of Building Trade Employers, National Federation of the Self Employed and Small Businessmen, and Federation of Civil Engineering Contractors) - would be inflexible and inappropriate.

6 However, the CBI's proposed list of circumstances in which reviews should take place, somewhat strengthened, has been substituted for the original list in the revised draft. The CBI's list is simpler and effectively covers all the significant changes of circumstance which should trigger a review.

Union Disciplinary Action (paragraph 54)

7 A number of employers and employers' organisations (ie CBI, EEF, Ford as well as BIM and IPM) have said that the Code's advice that a union member should not be disciplined for simply crossing a picket line is "unreasonably stringent" or "unrealistic" or "could be an overharsh impediment to the proper functioning of a union". The CBI say:-

> "Clearly it is wrong for trade unionists not party to the dispute, eg suppliers' drivers or office workers, to be disciplined because they have crossed picket lines. Similarly, it would be inappropriate to take disciplinary action where the dispute is unofficial. But where there is an official dispute the code should not be seen as undermining properly constituted trade union authority."

8 The original provision was too sweeping. Accordingly it has been amended to bring it into line with the CBI recommendation.

CODE ON PICKETING

9 Most of those (other than trade unions) who commented on the draft Picketing Code expressed general approval. The most serious criticism was of new paragraph 37 which refers to the Closed Shop Code's guidance on union disciplinary action for crossing a picket line. This has been considered above (paragraphs 7 and 8). The other two main comments are as follows.

Guidance to employers

10 The BIM and IPM have suggested that the Code would be more "balanced" if it

also contained guidance to employers. While at first sight attractive, this suggestion has to be rejected on the following grounds:

- presentational: employers are not "responsible" for picketing: they are normally its victims: why then should the Code put any obligations on them?

- legal: the inclusion of guidance to employers might be misconstrued as placing obligations on them, and, if they failed to observe them, might make it more difficult to obtain injunctions against unlawful pickets (eg pickets might claim in defence that the employer had not consulted them or had failed to give them information which would have enabled them to avoid acting unlawfully).

- practical: the items suggested by the IPM indicate the difficulty of drawing up any sensible guidance for employers; some would provoke derison (eg the provision of cups of tea).

The limit of 6 pickets

11 The Association of Chief Police Officers (who are due to give evidence to the Select Committee on 29 October) are afraid that the limit of 6 pickets (now paragraph 32) will be misunderstood as a limitation on police discretion to limit numbers to whatever figure they believe necessary to preserve the peace. They have suggested that the Code should not suggest any figure at all. This is unacceptable. However, the text of the draft Code has been amended to make it clear that the police discretion is unaffected and that it is the responsibility of pickets and their organisers to ensure that the number of pickets does not exceed the figure necessary for peaceful persuasion. The Police Federation have given the draft Code their support.

DRAFT CODE OF PRACTICE ON THE CLOSED SHOP

CONTENTS

DRAFT CODE ON THE CLOSED SHOP

A INTRODUCTION

1 The purpose of the Code is to provide practical guidance on questions which arise out of the formulation and operation of closed shop agreements* - that is collective agreements that have the effect of requiring employees to be, or remain, members of one or more unions.

2 The Code applies to all employment and to all closed shops whether these are written agreements or informal arrangements which have grown up between employer and union. It applies to closed shops already in existence as well as those which might be proposed for the future.

3 Changes in existing practices and written agreements required to meet the standards set by the Code should be adopted in the light of the Code's general approach - and that of the 1980 Employment Act, which it complements. This is that any agreement or practice on union membership should protect basic individual rights; should enjoy the overwhelming support of those affected; and should be flexibly and tolerantly applied.

4 Section B of the Code outlines the provisions of the law on the closed shop as it now stands, although it is of course for the courts and industrial tribunals to interpret and apply the law in particular cases; Sections C, D and E provide practical guidance concerning the operation of closed shops and related matters.

5 The Code itself imposes no legal obligations and failure to observe it does not by itself render anyone liable to proceedings. But Section 3(8) of the Employment Act provides that any provisions of the Code are to be admissible in evidence and taken into account in proceedings before any court or industrial tribunal or the Central Arbitration Committee where they consider them relevant.

---

* Closed shop agreements in the Code are union membership agreements as defined by Section 30 of the Trade Union and Labour Relations Act 1974 as amended in 1976. That definition covers both agreements and arrangements requiring employees to become or remain union members. [See Annex for the full definition and how it is to be applied for the purpose of Section 7 of the Employment Act 1980]

LEGAL RIGHTS OF INDIVIDUALS

6 The statutory rights of individuals in relation to the closed shop are now contained in the Employment Act 1980.

Unfair dismissal or action short of dismissal

7 It is unfair in the circumstances listed below to dismiss an employee for not complying with a requirement to be or become a member of a union. An employee so dismissed has a right of complaint against the employer to an industrial tribunal.*

8 Similarly in these circumstances an employee has a right of complaint to an industrial tribunal if, in a closed shop, action short of dismissal is taken against him by his employer in order to compel him to be or become a union member.

9 The circumstances in which these rights apply are where:

(a) the employee genuinely objects on grounds of conscience or other deeply held personal conviction to being a member of any trade union whatsoever, or of a particular trade union;

(b) the employee belonged to the class of employee covered by the closed shop agreement before it took effect, and has not been a member/of a union specified in the agreement since; or

(c) the closed shop agreement came into effect for the first time on or after 15 August 1980 and has not been approved by a secret ballot of all employees affected showing that at least 80% of those entitled to vote supported the agreement.**

10 A complaint of unfair dismissal, or action short of dismissal, may be made to an industrial tribunal within a period of three months+ after the action

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* The normal service qualification necessary to make a complaint of unfair dismissal - one year's service - does not apply in the circumstances described in paragraph 9.

** and Where a union membership agreement takes effect on or after 15 August/is subsequently approved by the necessary majority in a secret ballot, an individual may resign his membership of a union, an individual who resigns his membership of a union and whose registration has effect by the day of the ballot will be protected as in paragraph 9(b) above.

+ A tribunal may consent to examine a complaint presented outside this period if it considers that it was not reasonably practicable for it to be presented within the period.

complained of. If the dismissed employee's complaint is upheld the tribunal may award compensation. Alternatively or in addition it may make an order requiring the employer to reinstate or re-engage the individual. In a case of action short of dismissal the tribunal may make a declaration that the complaint is well-founded and may award compensation.

Joinder

11 An employer who faces a complaint of unfair dismissal or action short of dismissal, and who claims that his action resulted from pressure put on him by a union or other person calling or threatening to take industrial action because of the complainant's non-membership of the appropriate union, may require the union or other person who he alleges exerted that pressure to be joined, ie brought into the proceedings, as a party to the proceedings. If the tribunal finds the employer's claim well-founded it may make an order requiring that union or other person to pay the employer any contribution which it considers to be just and equitable up to the full amount of any compensation it has awarded.

12 Similar provisions apply where an employer who faces an unfair dismissal complaint claims that he has dismissed the employee concerned because of a requirement in a contract with another employer that employees doing certain work should be members of a union. If the employer has asked the employer who is the other party to the contract to waive that requirement in respect of the employee concerned but the other party has refused and the tribunal finds the employer's claim well-founded, it may make an order requiring the other party to indemnify the employer for the compensation awarded. If the other party claims that he refused to waive the requirement of union membership in this case because of pressure exerted on him by a union or other person calling or threatening to take industrial action, he may require the person he claims exercised the pressure also to be joined as a party.

Unreasonable exclusion or expulsion from a union

13 The Employment Act 1980 provides individuals with new statutory rights in relation to their unions. Any person who is employed or is seeking employment in a job where it is the practice, in accordance with a closed shop agreement, to require membership of a specified trade union or one of a number of unions, has the right not to have an application for membership of the union unreasonably refused and the right not to be unreasonably expelled from that union.

14 An individual may present a complaint to an industrial tribunal against a trade union that he has been unreasonably excluded or expelled from that union, within the period of six months* of the refusal or expulsion. Where the tribunal finds the complaint well-founded it will make a declaration that his exclusion or expulsion was unreasonable.

15 Where such a declaration has been made by the tribunal, or by the Employment Appeal Tribunal on appeal, the person who made the complaint may make an application for compensation from the union concerned for any loss he has suffered. Such an application may not be made before the end of the period of four weeks following the date of declaration or afterthe end of the period of six months following the date of the declaration.

16 If, following the tribunal's declaration, the complainant has been admitted or re-admitted to the union by the time he applies for compensation, the application shall be to the industrial tribunal which may award compensation to be paid by the union up to a statutory maximum.

17 If, following the declaration, the complainant has not been admitted or re-admitted to the union, the application shall be to the Employment Appeal Tribunal which may award compensation to be paid by the union up to a higher maximum which is also fixed by the legislation.

Common Law Rights

18 The provisions of the Act do not in any way detract from existing rights under common law. Under the common law a person may complain to the courts that action taken against him by a trade union is either contrary to its own rules or that in expelling or otherwise disciplining him the union did not act in accordance with the requirements of natural justice.

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* A tribunal may consent to examine a complaint presented outside this period if it considers that it was not reasonably practicable for it to be presented within the period.

CLOSED SHOP AGREEMENTS AND ARRANGEMENTS

(a) Before a Closed Shop is Considered

19 Before there is any question of negotiating on proposals for a closed shop, employers and trade unions should take account of the following factors.

Employers

20 Closed shop agreements, like other collective agreements, require the participation of both parties. Employers are under no obligation to agree to a closed shop.

21 Employers' associations may be able to advise on the implications of a closed shop agreement for industrial relations in the industry or locality generally. They should be consulted by their members at an early stage.

22 Employers should expect a union to show a very high level of membership before agreeing to consider the introduction of a closed shop.

23 Employers should acquaint themselves with the legislation (see Section B above). In particular they should be aware of the provisions of the legislation on closed shop ballots.

24 The employer should have special regard to the interests of particular groups of staff who as members of professional associations are subject to their own code of ethics or conduct. Because the obligations imposed by such a code may be incompatible with the full range of union activities including, for example, participation in industrial action endangering health or safety, the employees concerned might well reasonably object to joining a union whose rules do not respect such obligations.

25 The employer should also carefully consider the effects of a closed shop on his future employment policy and on industrial relations.

Unions

26 Before seeking a closed shop a union should be recognised and should already have recruited, voluntarily, a very high proportion of the employees concerned.

27 A union should be sure that its members who would be affected themselves

favour a closed shop. High union membership among those to be covered by the proposed closed shop agreement is not in itself a sufficient indication of their views on this question and indeed some employees might decide to leave their union if a closed shop was in prospect*.

28 A union should not start negotiations for a closed shop agreement which excludes other unions with a membership interest in the area concerned, before the matter has been resolved with the other unions. If affiliated to the TUC, the union should have regard to the relevant TUC guidance on this matter.

29 If proposals for a new closed shop agreement become a matter of dispute between employer and union, the issue should be dealt with where appropriate in accordance with the disputes procedure to which the firm and the union are parties. The conciliation services of the Advisory, Conciliation and Arbitration Service will be available.

(b) Scope and Content of Agreements

30 Any new closed shop agreements should be clearly drafted. The agreement should:

a indicate clearly the class of employees to be covered.** This can be done by reference, for example, to the grade or location or bargaining unit concerned. An agreement should not necessarily cover all employees at a location or in a grade. Some examples of groups which might well be excluded are professional, managerial, part-time staff, or personnel staff. All exclusions or exemptions should be clearly stated in the agreement;

b make clear that existing employees who are not members when the agreement comes into effect, and those who can show that they have genuine objections on grounds of conscience or other deeply-held personal conviction to union membership, will not be required to be union members;

c specify a reasonable period within which employees should join the union;

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* See paragraph 9(b) above on the legal rights of the individual

** See footnote** to paragraph 9(c) above

d make clear that where an individual has been excluded or expelled by his union, no other action, whether by the union or the employer, will be taken against him before any appeal or complaint regarding the exclusion or expulsion has been determined

e provide that an employee will not be dismissed if expelled from his union for refusal to take part in industrial action;

f set out clearly how complaints or disputes arising from it are to be resolved. It should provide appropriate procedures which give the individual concerned an adequate right to be heard and enable any question about non-membership of a union to be fairly tested. Such procedures can usefully provide for independent conciliation or arbitration;

g provide for periodic reviews (see paragraphs 42-46 below) and the procedure for termination.

31 The parties may agree that an alternative to union membership would be the payment to a charity by individual non-unionists of a sum equivalent to the union membership subscription. However it should be recognised that such a payment would be voluntary. The agreement between the parties cannot limit the statutory rights of the individuals concerned.

32 Where other unions have a known interest in the area to be covered by the agreement, it may specify as appropriate membership of unions other than those actually party to it. Where unions affiliated to the TUC find themselves in a dispute which has not been settled locally or within the industry, they should refer the issue to the TUC.

(c) Secret Ballots

33 Under the Employment Act 1980 (see paragraph 9(c) above) a secret ballot should be held of those to be included within the scope of any proposed new closed shop.

34 Employers and unions should seek agreement on the following aspects of the conduct of such a ballot:

(a) The proposed union membership agreement

The terms of the proposed agreement should be worked out before it is put to the test of a ballot of those to be affected by it.

(b) The definition of the electorate

The electorate should be all the members of the class of employee to be covered by the proposed closed shop including those who are not union members.

(c) Informing the electorate

Steps should be taken to ensure that each employee affected is aware of the intention to hold a ballot and of the terms of the agreement and any other relevant information a reasonable time before the date of the ballot. Suitable arrangements should be made to inform those members of the electorate who might otherwise not have access to such information due to sickness or absence from work or for other reasons.

(d) The framing of the question

The ballot form should be clear and simple. The question asked should be limited to the single issue of whether or not membership of the union(s) party to the proposed agreement, or otherwise specified in it (see paragraph 32 above), should be a requirement for employees in the class of employment it would cover. If several questions are asked on other issues raised in the ballot, this may confuse the outcome.

(e) Method of balloting

The ballot should be conducted in such a way as to ensure that, so far as reasonably practicable, all those entitled to vote have an opportunity of voting, and of doing so in secret. Either a workplace or a postal ballot may meet these requirements. In the case of a workplace ballot, arrangements should be made for those absent from work for any reason at the date(s) of the ballot to register their vote.

(f) Holding the ballot

Before the ballot can be held, decisions will be needed on such matters as the method of distributing the ballot forms and arranging for their return and counting, the time to be allowed for voting, and the persons charged with conducting the ballot. Greater confidence in the ballot will result if it is conducted and the results published, by an independent body or person.

(g) Other matters

Agreement should also be reached in advance on such matters as procedure for handling disputes about eligibility, spoilt votes and any other issues, and the safe keeping of ballot papers until an agreed destruction date.

35 The Employment Act 1980 lays down a minimum level of support for a new closed shop - that is 80% of those entitled to vote - if this is to furnish employers with a defence against possible future unfair dismissal claims or complaints of action short of dismissal. Employers may well feel that a higher figure than this should be required before they agree to such a radical change in employees' terms and conditions of employment. Employers should agree with the union on the figure appropriate in their case before the ballot and make this known to those entitled to vote.

36 Disagreements on arrangements for secret ballots should be dealt with, if necessary, by the normal disputes machinery to which the firm and the union are parties. The conciliation services of ACAS will be available.

(d) Operation of new or existing agreements

(i) Those in scope of or parties to agreements

37 Closed shop agreements should be applied flexibly and tolerantly and with due regard to the interests of the individuals as well as unions and employers.

38 Before any potential new employee is recruited he should be informed of any requirement to become a union member and any relevant arrangements which apply to the operation of the closed shop.

39 Employers and unions should not contemplate any disciplinary action before procedures for resolving disputes and grievances which arise under the agreement are exhausted.

40 Employers and unions should take no action against an employee who has been expelled or excluded from a union, until any appeal under union appeal procedures has been determined and any industrial tribunal proceedings concerning the exclusion or expulsion have been completed.

(ii) Those not in scope of or parties to agreements

41 Employers and unions who have negotiated a closed shop, and employees in scope of it, should not impose unreasonable requirements on those who are not parties or in scope of the agreement. There should be no attempt, by formal or informal means, to impose a requirement of union membership on the employees of contractors, suppliers and customers of an employer.*

(e) Review of closed shop agreements and arrangements

42 All closed shop agreements, whether new or existing, or whether covering a firm or industry should be subject to periodic review.

43 Reviews should take place regularly every few years, and more frequently if changes of the following types occur:

(i) where there is evidence that the support of the employees for the closed shop has declined;

(ii) where there has been a change in the parties to the agreement;

(iii) where there is evidence that the agreement, or parts of it, are not working satisfactorily;

(iv) when there is a change in the law affecting the closed shop, such as the Employment Act 1980.

44 If in the course of the review the parties decide that they wish to continue the agreement (or informal arrangements) they should consider what changes should be renegotiated to bring it into line with the requirements of paragraph 30 above. If, however, the agreement is thought no longer to serve the purpose for which it was intended or there is evidence of insufficient support among those covered by the agreement, the parties should agree to allow it to lapse. And either party, having given any period of notice specified in an agreement, can terminate it.

45 Where as a result of this review the employer and union favour continuing the agreement or arrangement, they should ensure that it has continued support among the current employees to whom it applies. Where no secret ballot has previously been held - or has not been held for a long time - it would be

* The Employment Act 1980 provides special provisions for joinder in unfair dismissal cases in this situation. See paragraph 12 above.

appropriate to use one to test opinion. In that event the guidance in paragraphs 33-36 above will be relevant.

46 Closed shop agreements which require people to belong to a trade union before they can be employed (the pre-entry closed shop) particularly may infringe the freedom of individuals to work. No new agreements of this type should be contemplated and where they currently exist the need for their continuation should be carefully reviewed.

UNION TREATMENT OF MEMBERS AND APPLICANTS

47 Union decisions on exclusion or expulsion from membership in closed shop situations should be taken only after all rules and procedures have been fully complied with.

Union rules and procedures

48 In handling admissions to membership, unions should adopt and apply clear and fair rules covering:

(a) who is qualified for membership;

(b) who has power to consider and decide upon applications;

(c) what reasons will justify rejecting an application;

(d) the appeals procedure open to a rejected applicant;

(e) the power to admit applicants where an appeal is upheld.

49 When determining whom they might accept into membership the factors which unions may reasonably have regard to include the following:

(a) whether the person applying for membership of a union or section of it has the appropriate qualifications for the type of work done by members of the union or section concerned;

(b) whether, because of the nature of the work concerned, for example acting, the number of applicants or potential applicants has long been and is likely to continue to be so great as to pose a serious threat of undermining negotiated terms and conditions of employment;

(c) whether the TUC's principles and procedures governing relations between unions or any findings of a TUC Dispute Committee are relevant.

50 In handling membership discipline, unions should adopt and apply clear and fair rules covering:

(a) the offences for which the union is entitled to take disciplinary action and the penalties applicable for each of these offences;

(b) the procedure for hearing and determining complaints in which offences against the rules are alleged;

(c) a right to appeal against the imposition of any penalty;

(d) the procedure for the hearing of appeals against any penalty by a higher authority comprised of persons other than those who imposed the penalty;

(e) the principle that a recommendation for expulsion should not be made effective so long as a member is genuinely pursuing his appeal.

51 Union procedures on exclusion or expulsion should comply with the rules of natural justice. These include giving the individual member fair notice of the complaint against him, a reasonable opportunity of being heard, a fair hearing, and an impartial decision.

52 Unions affiliated to the Trades Union Congress should bear in mind its guidance on these matters, and inform individuals of the appeals procedure the TUC provides for those expelled or excluded from membership of a union.

53 In general voluntary procedures are to be preferred to legal action and all parties should be prepared to use them. However, since an individual may face considerable economic loss or adverse social consequences as a result of exclusion or expulsion from a union it would be unreasonable to expect him to defer his application to a tribunal.* Unions should therefore not consider taking action likely to lead to an individual losing his job, until its own procedures have been fully used and any decision of an external body, has been received. Any decision of the Independent Review Committee of the TUC should be fully taken into account.

Industrial Action

54 Disciplinary action should not be taken by a union or threatened against a member on the grounds of refusal to take part in industrial action called for by the union -

* Complaints of unreasonable exclusion or expulsion to a tribunal are subject to a time limit of six months. [See paragraph 14 above]

(a) because industrial action would involve a breach of a statutory duty or the criminal law, would contravene the member's professional or other code of ethics, would constitute a serious risk to public safety, health or property;

(b) because the action was in breach of a procedure agreement;

(c) because the action had not been affirmed in a secret ballot;

55 Furthermore, disciplinary action should not be taken or threatened by a union against a member on the ground that he has crossed a picket line which it had not authorised or which was not at the member's place of work.

THE CLOSED SHOP AND THE FREEDOM OF THE PRESS

56 The freedom of the Press to collect and publish information and to publish comment and criticism is an essential part of our democratic society. All concerned have a duty to ensure that industrial relations are conducted so as not to infringe or jeopardise this principle.

57 Journalists, wherever employed, should enjoy the same rights as other employees to join trade unions and participate in their activities. However, the actions of unions must not be such as to conflict with the principle of Press freedom. In particular any requirement on journalists to join a union creates the possibility of such a conflict.

58 Individual journalists may genuinely feel that membership of a trade union is incompatible with their need to be free from any serious risk of interference with their freedom to report or comment. This should be respected by employers and unions.

59 A journalist should not be disciplined by a trade union for anything he has researched or written for publication in accordance with generally accepted professional standards.

60 Editors should be free to decide whether to become or remain a member of any trade union.

61 Within the agreed basic policy of the paper:

(i) Editors have final responsibility for the content of their publications. An editor should not be subjected to improper pressure - that is, any action or threat calculated to induce him or her to distort news, comment or criticism, or contrary to his or her judgement, to publish or to suppress or to modify news, comment or criticisms.

(ii) The editor should be free to decide whether or not to publish any material submitted to him from any source. He should exercise this right responsibly with due regard for the interests of the readers of the publication and the employment or opportunities of employment of professional journalists.

ANNEX - THE DEFINITION OF A UNION MEMBERSHIP AGREEMENT

Section 30 of the Trade Union and Labour Relations Act 1974 (as amended in 1976) says

> "union membership agreement" means an agreement or arrangement which -
>
> (a) is made by or on behalf of, or otherwise exists between, one or more independent trade unions and one or more employers or employers' associations; and
>
> (b) relates to employees of an identifiable class; and
>
> (c) has the effect in practice of requiring the employees for the time being of the class to which it relates (whether or not there is a condition to that effect in their contract of employment) to be or become a member of the union or one of the unions which is or are parties to the agreement or arrangement or of another specified independent trade union;
>
> and references in this definition to a trade union include references to a branch or section of a trade union; and a trade union is specified for the purposes of, or in relation to, a union membership agreement if it is specified in the agreement or is accepted by the parties to the agreement as being the equivalent of a union so specified."

Section 58 (3E) of the Employment Protection (Consolidation) Act 1978 [contained in Section 7 of the Employment Act 1980] has the effect that for the purpose of determining

> (a) whether a person has been a member of the class of employees to which the agreement relates since before it took effect*, or
>
> (b) whether or not the employee belongs to the relevant class of employees entitled to vote in a ballot on a new closed shop**,

any attempt by the parties to the agreement to define the class by reference to employees' membership of non-membership of a union, or objection to membership, shall be disregarded by tribunals.

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* See paragraph 4(b)

** See paragraph 4(c) above

DRAFT CODE OF PRACTICE ON PICKETING

CONTENTS

DRAFT CODE ON PICKETING

A INTRODUCTION

1. The Code is intended to provide practical guidance on picketing in trade disputes for those who may be contemplating, organising or taking part in a picket and for those who as employers or workers or members of the general public may be affected by it.

2. There is no legal "right to picket" as such but peaceful picketing has long been recognised as being lawful. However, the law imposes certain limits on how and where lawful picketing can be undertaken so as to ensure that there is proper protection for those who may be affected by picketing, including those who want to go to work normally.

3. It is a civil wrong, actionable in the civil courts, to persuade someone to break his contract of employment or to secure the breaking of a commercial contract. But the law exempts from this liability those acting in contemplation or furtherance of a trade dispute, including pickets provided that they are picketing only at their own place of work*. The criminal law, however, applies to pickets just as it applies to everyone else: they have no exemption from the provisions of the criminal law (eg as to obstruction and public order).

4. The Code outlines the law on picketing (although it is of course for the courts and industrial tribunals to interpret and apply the law in particular cases). Sections B and C outline the provisions of the civil and criminal law respectively and Section D describes the role of the police in enforcing the law. The Code also - in Sections E, F and G - gives guidance on good practice in the conduct of picketing.

5. The Code itself imposes no legal obligations and failure to observe it does not by itself render anyone liable to proceedings. But Section 3(8) of the Employment Act provides that any provisions of the Code are to be admissible in evidence and taken into account in proceedings before any court or industrial tribunal or the Central Arbitration Committee where they consider them relevant.

B PICKETING AND THE CIVIL LAW

6. Section 15 of the Trade Union and Labour Relations Act 1974 (as amended by

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* Subject additionally in cases of secondary action to the limitations described in paragraph 9 below.

the Employment Act 1980) provides the basic rules for lawful industrial picketing:

(i) it may only be undertaken in contemplation or furtherance of a trade dispute;

(ii) it may only be carried out by a person attending at or near his own place of work; a trade union official in addition to attending at or near his own place of work may also attend at or near the place of work of a member of his trade union whom he is accompanying on the picket line and whom he represents;

(iii) its only purpose must be peacefully obtaining or communicating information or peacefully persuading a person to work or not to work.

7. Picketing commonly involves persuading employees to break their contracts of employment by not going into work and, by disrupting the business of the employer who is being picketed, interfering with his commercial contracts with other employers. If pickets follow the rules outlined in paragraph 6 they are protected by section 13 of the Trade Union and Labour Relations Act 1974 (as amended)* from being sued in the civil courts for these civil wrongs. These rules are explained more fully in paragraphs 10 to 18 below.

8. These rules apply in the normal cases where employees picket at their own place of work in support of a dispute with their own employer. Cases may arise, however, where employees picket at their own place of work in support of a dispute between another employer and his employees, for example, where employees at one place are involved in a strike in support of a dispute elsewhere and have mounted a picket line at their own place of work in the course of that strike.

9. In such cases the picketing, in order to be protected, must further satisfy the requirements of lawful secondary action contained in section 17 of the Employment Act 1980. (These are described in detail in the Annex.) In practice this means that these pickets will have to target their picketing precisely on the supply of goods or services between their employer and the employer in dispute. If they impose or threaten an indiscriminate blockade on their employer's premises, they will be liable to be sued in the civil courts.

In contemplation or furtherance of a trade dispute

10. Picketing is lawful only if it is carried out in contemplation or furtherance of a trade dispute. A trade dispute is defined in section 29 of the Trade Union and Labour Relations Act 1974 (as amended). It covers all the

* by the Trade Union and Labour Relations (Amendment) Act 1976.

matters which normally occasion disputes between employers and workers such as terms and conditions of employment, the allocation of work, matters of discipline, trade union recognition and membership or non-membership of a trade union.

Attendance at or near his own place of work

11. It is lawful for a person to induce a breach of contract in the course of picketing only if he pickets at or near his own place of work.

12. "At or near his own place of work" is not defined in statute. As a general rule, however, except for those covered by paragraphs 14 and 15 below, lawful picketing normally involves attendance at an entrance to or exit from the factory, site or office at which the picket works. It does not enable a picket to attend lawfully at an entrance to or exit from any place of work which is not his own, even if those who work there are employed by the same employer or covered by the same collective bargaining arrangements. The law does not protect anyone who pickets without permission on or inside any part of premises which are private property. That could make the pickets concerned liable for trespass.

13. Where the premises of several employers occupy a single site or building, pickets should attend as near to the entrance or exit to the particular premises where the dispute is taking place as is consistent with the need not to trespass on private property and not to cause obstruction. Where, because of the layout of the site or building, there is no alternative but to picket an entrance or exit which is used to gain access to the premises of several employers, pickets should allow unimpeded access to the premises of employers not involved in the dispute.

14. Section 15 of the 1974 Act (as amended by the Employment Act 1980) distinguishes two specific groups of employees:

- those (eg mobile workers) who work at more than one place; and
- those for whom it is impracticable to picket at their own place of work because of its location.

It declares that it is lawful for such workers to picket those premises of their employer from which they work or from which their work is administered. In practice this will usually mean those offices of their employer from which their vehicle operates.

15. Special provisions also govern people who are not in employment and who

have lost their jobs for reasons connected with the dispute which has occasioned the picketing. This might arise, for example, where the dismissal of a group of employees had led directly to a strike, or where in the course of a dispute an employer has terminated his employees' contracts of employment because those employees refuse to work normally. In such cases section 15 declares that it is lawful for a worker to picket at his former place of work. This does not apply, however, to any workers who have subsequently found a job at another place of work. Such workers may only picket lawfully at their new place of work in the course of a dispute with their new employer or in the course of lawful secondary action.

Trade union officials

16. For the reasons described in Section F it is often helpful to the orderly organisation and conduct of picketing for a trade union official to be present on a picket line where his members are picketing. Section 15 of the 1974 Act (as amended) therefore makes it lawful for a trade union official to picket at any place of work provided that:

(i) he is accompanying members of his trade union who are picketing lawfully at or near their own place of work; and

(ii) he personally represents those members within their trade union.

If these conditions are satisfied then a trade union official has the same legal protection as other pickets who picket lawfully at or near their own place of work.

17. Under section 16 of the Employment Act 1980 an official* - whether a lay official or an employee of the union - is regarded for this purpose as representing only those members of his union whom he has been specifically appointed or elected to represent. An official cannot, therefore, claim that he represents a group of members simply because they belong to his trade union. He must represent and be responsible for them in the normal course of his trade union duties. For example, an official (such as a shop steward) who represents members at a particular place of work is entitled to be present on a picket line where those members are picketing lawfully; a branch official only where members of his branch are lawfully picketing; a regional offical only where members of his region are lawfully picketing; a national offical who represents a particular trade group or section within the union, wherever members of that trade group or section are lawfully picketing; and a national official such as a General Secretary or President who represents the whole union, wherever any members of his union are picketing lawfully.

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* as defined in Section 30 of the Trade Union and Labour Relations Act 1974 (as amended by the Employment Protection Act 1975).

18. Trade union officials, may of course, picket lawfully at their own place of work, whether or not their members are also picketing. However, to be entitled to picket at a place of work other than their own, they must satisfy the conditions laid down in section 15 of the Trade Union and Labour Relations Act 1974 (as amended) and described in paragraphs 16 and 17 above.

Lawful purposes of picketing

19. The only purposes of picketing declared lawful by section 15 are:

- peacefully obtaining and communicating information; and

- peacefully persuading a person to work or not to work.

Pickets may, therefore, seek to explain their case to those entering or leaving the picketed premises and to ask them not to enter or leave the premises where the dispute is taking place. This may be done verbally or it may involve the distribution of leaflets or the carrying of banners or placards putting the pickets' case. Pickets have, however, no powers to require other people to stop or to compel them to listen or to do what they have asked them to do. A person who decides to cross a picket line must be allowed to do so.

20. Picketing which is accompanied by, for example, violent, threatening or obstructive behaviour goes beyond peaceful persuasion and is therefore unlawful. As explained in Section C, a picket who threatens or intimidates someone, or obstructs an entrance to a workplace, or causes a breach of the peace commits a criminal offence. But in addition pickets who commit such criminal offences, may also forfeit their immunity under the civil law and may be liable to be sued for inducing or threatening to induce a breach of contract.

Seeking redress

21. An employer or an employee whose contracts are interfered with by picketing which does not comply with the rules described in paragraphs 10-20 above has a civil law remedy. He may start an action for damages against those responsible and also ask the court to make an order* stopping the unlawful picketing.

22. An order will normally be sought against the person on whose instructions or advice the picketing is taking place, but it will usually apply not only to him but to any others acting on his behalf or on his instructions. Thus an organiser of picketing cannot avoid liability by, for example, changing the members of the picket line each day. Moreover, if a person knows that such an order has been made against someone and yet aids and abets him in breaking it, he may be in contempt of court himself and liable to be punished by the court.

* An injunction in England and Wales and an interdict in Scotland.

C PICKETING AND THE CRIMINAL LAW

23. If a picket commits a criminal offence he is just as liable to be prosecuted as any other member of the public who breaks the law. The immunity provided under the civil law does not protect him in any way.

24. The criminal law protects the right of every person to go about his lawful daily business free from interference by others. No one is under any obligation to stop when a picket asks him to do so or, if he does stop, to comply with the picket's request, for example, not to go into work. Everyone has the right, if he wishes to do so, to cross a picket line in order to go into his place of work. A picket may exercise peaceful persuasion, but if he goes beyond that and tries by means other than peaceful persuasion to deter another person from exercising those rights he may commit a criminal offence.

25. Among other matters it is a criminal offence for pickets (as for others)

- to use threatening or abusive language or behaviour directed against any person, whether a worker seeking to cross a picket line, an employer, an ordinary member of the public or the police;

- to use or threaten violence to a person or to his family;

- to intimidate a person by threatening words or behaviour which cause him to fear harm or damage if he fails to comply with the pickets' demands;

- to obstruct the highway or the entrance to premises or to seek physically to bar the passage of vehicles or persons by lying down in the road, linking arms across or circling in the road, or jostling or physically restraining those entering or leaving the premises;

- to be in possession of an offensive weapon;

- intentionally or recklessly to damage property;

- to engage in violent, disorderly and unruly behaviour or to take any action which is likely to lead to a breach of the peace;

- to obstruct a police officer in the execution of his duty.

26. A picket has no right under the law to require a vehicle to stop or to be stopped. The law allows him only to ask a driver to stop by words or signals. A picket may not physically obstruct a vehicle if the driver decides to drive on or, indeed, in any other circumstances. A driver must - as on all other occasions - exercise due care and attention when approaching or driving past a picket line, and may not drive in such a manner as to give rise to a reasonably foreseeable risk of injury.

D ROLE OF THE POLICE

27. It is not the function of the police to take a view of the merits of a particular trade dispute. They have a general duty to uphold the law and keep the peace, whether on the picket line or elsewhere. The law gives the police discretion to take whatever measures may reasonably be considered necessary to ensure that picketing remains peaceful and orderly.

28. The police have no responsibility for enforcing the civil law. An employer cannot require the police to help in identifying the pickets against whom he wishes to seek an order from the civil court. Nor is it the job of the police to enforce the terms of an order. Enforcement of an order on the application of a plaintiff is a matter for the court and its officers. The police may, however, decide to assist the officers of the Court if they think there may be a breach of the peace.

29. An organiser of pickets (see paragraph 35) should always maintain close contact with the police. Advance consultation with the police is always in the best interests of all concerned. In particular, the organiser and the pickets should seek early advice from the police on where they should stand on a picket line in order to avoid obstructing the highway, and agree with them a limit on the number of pickets.

E LIMITING NUMBERS OF PICKETS

30. The main cause of violence and disorder on the picket line is excessive numbers. Wherever large numbers of people with strong feelings are involved there is a danager that the situation will get out of control, and that those concerned will run the risk of arrest and prosecution.

31. This is particularly so whenever people seek by sheer weight of numbers to stop others going into work or delivering or collecting goods. In such cases, what is intended is not peaceful persuasion, but obstruction, if not intimidation. Such a situation is often described as "mass picketing". In fact, it is not picketing in its lawful sense of an attempt at peaceful persuasion, and may well result in a breach of the peace or other criminal offences. Moreover, anyone seeking to demonstrate support for those in dispute should keep well away from any picket line so as not to create the risk of a breach of the peace or other criminal offence being committed on that picket line.

32. Pickets and their organisers should therefore ensure that the number of pickets at any entrance to a workplace is limited to what is reasonably needed to permit the peaceful persuasion of those entering and leaving the premises who are prepared to listen. As a general rule, it will be rare for the number necessary for peaceful persuasion to exceed six at any one entrance and frequently a smaller number will be sufficient. The law does not impose a specific limit on the number of people who may picket at any one workplace, but it does give the police considerable discretionary powers to limit the number of pickets in any one place where they have reasonable cause to fear disorder. It is for the police to decide, taking into account all the circumstances, whether the number of pickets in the particular case is likely to lead to a breach of the peace.

33. The police will often discuss with the picket organiser what constitutes a reasonable number of pickets in any one case. But if a picket does not leave the picket line when asked to do so by the police, he is liable to be arrested for obstruction either of the highway or of a police officer in the execution of his duty if the obstruction is such as to cause, or be likely to cause, a breach of the peace.

F ORGANISATION OF PICKETING

Functions of the picket organiser

34. An experienced person, preferably a trade union official who represents those picketing, should always be in charge of the picket line. He should have a letter of authority from his union which he can show to police officers or to people who want to cross the picket line. Even when he is not on the picket line himself he should be available to give the pickets advice if a problem arises.

35. The main functions of the organiser should be:

- to assume responsibility for organising the pickets; for example, where, subject to any direction given by the police, they should stand and how many pickets should be present at any one time;

- to ensure that pickets understand the law and the provisions of this Code and that the picketing is conducted peacefully and lawfully;

- to be responsible for distributing badges or armbands to pickets, which authorised pickets should wear so that they are clearly identified;

- to ensure that employees from other places of work do not join the picket line and that any offers of support on the picket line from outsiders are refused;

- to remain in close contact with his own union office, with the offices of other unions if they are involved in the picketing, and with the police (see paragraph 29);

- to ensure that such special arrangements as may be necessary for essential supplies or maintenance (see paragraph 39) are understood and observed by the pickets.

Consultation with other trade unions

36. Where several unions are involved in a dispute, they should consult each other about the organisation of any picketing. It is important that they should agree how the picketing is to be carried out, how many pickets there should be from each union and who should have overall responsibility for organising them.

Right to cross picket lines

37. Everyone has the right to decide for himself whether he will cross a picket line. Disciplinary action should not be taken or threatened by a union against a member on the ground that he has crossed a picket line which it had not authorised or which was not at the member's place of work. Under Section 4 of the Employment Act 1980 exclusion or expulsion from a union in a closed shop simply on such grounds may be held to be unreasonable.

G ESSENTIAL SUPPLIES AND SERVICES

38. Pickets should take very great care to ensure that their activities do not cause distress, hardship or inconvenience to members of the public who are not involved in the dispute. Pickets should take particular care to ensure that the movement of essential goods and supplies, the carrying out of essential maintenance of plant and equipment and the provision of services essential to the life of the community are not impeded, still less prevented. Arrangements to ensure this should be agreed in advance between the unions and employers concerned.

39. The following list of essential supplies and services is provided as an illustration but it is not intended to be comprehensive:

- supplies for the production, packaging, marketing and/or distribution of medical and pharmaceutical products;

- supplies essential to health and welfare institutions eg hospitals, old peoples' homes;

- heating fuel for schools, residential institutions and private residential accommodation;

- other supplies for which there is a crucial need during a crisis in the interests of public health and safety (eg chlorine, lime and other agents for water purification; industrial and medical gases);

- supplies of goods and services necessary to the maintenance of plant and machinery;

- livestock;

- supplies for the production, packaging, marketing and/or distribution of food and animal feeding stuffs;

- the operation of essential services, such as police, fire, ambulance, medical and nursing services, air safety, coastguard and air sea rescue services and services provided by voluntary bodies, eg Red Cross and St John's ambulances, meals on wheels, hospital car service; and mortuaries, burial and cremation services.

SECONDARY ACTION AND PICKETING

1. This Annex amplifies the description of lawful secondary action in paragraph 9 of Section B (Picketing and the Civil Law).

2. It is lawful for employees who are in dispute with their own employer to picket peacefully at their own place of work. As the Code explains such pickets have immunity from civil actions if in the course of picketing they interfere with contracts.

3. Anyone who contemplates picketing at his own place of work in furtherance of a dispute between another employer and his workers is subject to separate and more restrictive provisions. In such cases picketing must satisfy the requirements of Section 17 of the Employment Act 1980 (as set out in paragraphs 4 and 5 below).

4. If such pickets interfere only with contracts of employment then they are protected by the statutory immunity. If, however, they also interfere with commercial contracts (by means, for example, of inducing breaches of contracts of employment), their activities will be immune from civil proceedings only if:

(a) their employer is a supplier to, or customer of, the employer in dispute under a contract to provide goods or services; and

(b) the principal purpose of the picketing is directly to prevent or disrupt the supply of goods or services during the dispute between their employer and the employer in dispute; and

(c) the picketing is likely to achieve that purpose.

5. Employees of an associated employer* of the employer in dispute and of suppliers and customers of that associated employer may also picket lawfully at their own place of work if:

(a) their principal purpose is to disrupt the supply of goods and services between the associated employer and his supplier or customer; and

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* Two employers are associated if one is a company of which the other has control or both are companies of which a third has control (Section 30(5) of the Trade Union and Labour Relations Act 1974).

(b) those goods or services are in substitution for goods or services which but for the dispute would have been supplied to or by the employer in dispute; and

(c) the secondary action is likely to achieve the purpose in (a) above.

6. In practice this means that any picketing by employees who are not in dispute with their own employer must be very specifically targetted

- in the case of customers and suppliers of the employer in dispute, on the business being carried out during the dispute between the customer or supplier and the employer in dispute; or

- in the case of the associated employer, on work which has been transferred from the employer in dispute because of the dispute.

There is no immunity for interfering with commercial contracts by indiscriminate picketing at customers and suppliers or at associated employers of the employer in dispute.

MC CONFIDENTIAL

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GTN 213

Rt Hon Norman St John Stevas MP
Chancellor of the Duchy of Lancaster
Privy Council Office
68 Whitehall Place
LONDON SW1

22 October 1980

Dear Norman

CODE OF PRACTICE ON PICKETING AND THE CLOSED SHOP

I understand that it should now be possible to find time for debates on the two Codes of Practice in both Houses on Thursday 13 November.

As you know I am very anxious to secure Parliamentary approval of the Codes so that they can be in operation as early as possible this winter. On the assumption that it will be possible to ensure debates in both Houses in the extended spill-over Session, I have pressed the Select Committee on Employment who were planning a lengthy programme of evidence-taking well into November into letting me have any views they come to by the end of the month. If, after all, it was not possible to debate the Codes in the spill-over Session I could of course have put myself in a very difficult position with the Select Committee.

I hope therefore that you can give me an assurance that the Codes can be debated on 13 November or failing that on the following Monday 17 November. I am sure that a Friday would not be acceptable to the Opposition.

I am writing in similar terms to Christopher Soames and I am sending copies of this letter to the Prime Minister and the Chief Whips.

Yours

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

From the Secretary of State

The Rt Hon James Prior MP
Secretary of State for Employment
Caxton House
Tothill Street
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20 October 1980

Dear Jim.

GREEN PAPER ON TRADE UNION IMMUNITIES

You are taking account of the points made by Keith Joseph and Geoffrey Howe for the Green Paper. I must add a further one, namely Nawala-type blacking, by which I mean blacking by an extraneous party of a ship when there has been no dispute between the owner and the crew.

We discussed this at E Committee on 24 March and agreed that it should be reserved for action in a later Bill. It seems important that the Green Paper should announce this decision (because it would obviously look odd to introduce the legislation upon which we have decided if we had omitted the point from the Green Paper in the meantime).

Of course the point could go wider than shipping. Many would argue that it is wrong in any industry to expose employees and employers who have had no dispute with one another to disabling industrial action by a third party; and you or other colleagues might think the Green Paper should canvass more general remedies. My own

Contd/...

From the Secretary of State

concern however is that the document should make clear our decision in the one area where we have firmly decided to deal with the problem, namely merchant shipping.

I therefore suggest that our officials agree the appropriate wording for the Green Paper.

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

Yours ever
John.

JOHN NOTT

Ind Bf

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The Rt Hon Sir Keith Joseph Bt MP
Secretary of State for Industry
Department of Industry
Ashdown House
123 Victoria Street
LONDON SW1

14 October 1980

Dear Keith

TRADE UNION POLICY : GREEN PAPER

Thank you for your letter of 25 September about the proposals which Geoffrey Howe has suggested be covered in the Green Paper.

I note the reservations you have about Geoffrey's suggestion that the Green Paper, in relation to union labour only clauses in commercial contracts, should discuss the option of legislation which would discriminate against local or public authorities or nationalised industries as opposed to industry in the private sector.

I will bear this in mind in drafting the Paper.

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

Yours

CLIVE

Thank you

You might like to see (Tim has already done so)

MS 1/10

Incl PS 2

ECOA Ingrid
② B. Ingham

PRIME MINISTER

Not very good news, but pressure is building up for the spillover in both Houses, and the decision will at least be helpful 30 September 1980 in facing our (very real) problems on the Local Govt Bill

MS 30/9

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Rt Hon Norman St John Stevas MP
Chancellor of the Duchy of Lancaster
Privy Council Office
68 Whitehall Place
LONDON SW1

Dear Norman

CODES OF PRACTICE ON PICKETING AND THE CLOSED SHOP

Since my private secretary wrote to yours on 1 September about the timing of the Parliamentary debates on the Codes of Practice, I have had a further letter from the Chairman of the Select Committee on Employment asking me to postpone publication of the Codes until after 21 October so that the Committee will have time to take and consider evidence from the TUC and CBI. The Committee have also asked me to appear before them again on 21 October.

As you know, I have so far resisted any extension of the consultative period on the grounds that I want the Codes to be in operation as early as possible. However, as the letters of 26 August from your and Christopher Soames' private secretaries made clear, there can be no guarantee that there will be time for both Houses to debate the Codes in the spill-over session. If the Codes were not after all debated until the second half of November, my refusal to extend the consultative period would be bound to appear unreasonable. John Golding's latest letter says that if I do not agree to extend the consultative period as they ask the Committee will report to the House that it has been denied the chance "to make representations on the Codes at a stage when they could still influence their final form". This is, of course, an issue on which the Committee could command a great deal of back bench support on our own side of the House.

I have therefore reluctantly come to the view that I must agree to delay publication of the final version of the Codes until after 21 October as the Committee have asked. I hope that publication need not be delayed long but it will mean missing the meeting of the JCSI on 28 October and therefore any chance of debating the Codes in the spill-over session, with the consequent delays in the rest of the timetable that I outlined in my letter of 18 August. This is a course which I regret very much but I do not see that I have any alternative in the circumstances. I am therefore writing to John Golding to this effect.

DEPARTMENT OF INDUSTRY
ASHDOWN HOUSE
123 Victoria Street
London SW1E 6RB

Telephone Direct Line:01-212 3301
Switchboard:01-212 7676

Duty Clerk.

As requested.

With the Compliments of the

Private Secretary to the
Secretary of State for
Industry

Michael Kenny.

14/10/80.

CS 248

In the light of this development, I must now ask for time to be made available for debates in both Houses as early as possible in the new session after the debate on the Queen's Speech. I hope that you and Christopher will be able to meet me on this. As soon as the Codes have been approved I shall bring them into effect at the earliest practicable date.

I am sending copies of this letter to the Prime Minister, the Lord President of the Council and the other recipients of our previous correspondence.

DEPARTMENT OF INDUSTRY
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Secretary of State for Industry

25 September 1980

The Rt Hon James Prior MP
Secretary of State for Employment
Department of Employment
Caxton House
London SW1

copies to
PS/Other Ministers
Secretary
Mr Manzie
Mr Croft
Mr Leeming ICB
Mr Solomon PT
Mr Cochlin ICB
(on file)

Dear Jim.

TRADE UNION POLICY: GREEN PAPER

I welcome Geoffrey Howe's contribution, in his letter to you of 17 September, to the list of proposals which might be covered by the Green Paper.

I particularly welcome the proposal, which I independently made to you in my letter of 28 May, that the Paper should discuss the practice of union labour only clauses in commercial contracts and the question of whether or not to outlaw them. However, I would ask that none of the options for legislation put forward in the Paper discriminate against nationalised industries as opposed to industry in the private sector. Naturally we can make clear to the Chairmen of the nationalised industries the Government's views on this practice, as indeed I have already done. But since the management of those industries - including the conduct of labour relations - is the responsibility of their boards, any orders to them on this subject should be through legislation applying to industry generally.

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

Yours,

Keith

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Rt Hon Sir Geoffrey Howe QC MP
Chancellor of the Exchequer
Treasury
Great George Street
LONDON SW1P 3AG

21 September 1980

Dear Geoffrey

17.9.80 Thank you for letting me have your thoughts on the matters which might be included in the Green Paper on the Review of Trade Union Immunities.

Keith Joseph, as you know, has already written to me about this and I note that there is a broad measure of agreement between your thinking and his. As I said in my reply to him, it is my intention that the Green Paper which, as we have agreed, is to deal with trade union immunities in relation to industrial action should be wide-ranging, should address itself to the major issues and should cover the legislation of relevant foreign countries. I am grateful to you for letting me have the list of proposals for inclusion in the Green Paper and I shall consider these most carefully.

I am copying this letter to the recipients of your letter of 17 September.

Yours
Jim

CC AD

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

17 September 1980

Rt. Hon. James Prior MP
Secretary of State for Employment

Dear Jim

I have been giving some thought to the issues which might be covered in the Green Paper on Immunities due to be published in November.

Like Keith Joseph, I think it is important that the paper should be widely drawn, and should address itself to issues of principle. Good industrial relations are vital to our economic success and we need to ensure that our legislation contributes to the creation of a rational and balanced framework for such relations. At present UK law confers privileges upon trade unions which are not enjoyed in comparable countries. People need to be made aware of this bias, so that they can understand the weakness in the argument of those who say that the law should be kept out of industrial relations. It is the law which at present buttresses the privileged position of the trade unions. I fully endorse Keith's suggestion that the Green Paper should contain a statement of the provisions and operation of similar legislation in other countries.

Legislation in this area is necessarily complex and the purpose of particular proposals is not readily comprehended by public opinion. This makes it all the more important to ensure that the Green Paper discusses general issues, such as the closed shop, and not just legal minutiae. As you know, our election manifesto promised the introduction of no-strike agreements for a few essential services. I would like to see this possibility discussed in the Paper. A statutory ban on striking, such as applies to the Police Force, might be one approach. It can be argued that the relative industrial peace in public sector industries in recent years has in many cases been bought by acceding to the demands of employees. If we are to take a tighter line on pay, it may be that some provisions restricting strikes in essential services will be necessary.

/I enclose a

.....

I enclose a list of proposals which might be included in the Green Paper. These cover immunities for trade unions, further limitations on individual immunities, ballots, union labour only clauses in commercial contracts, collective agreements, closed shops, the constitution of trade unions, the definition of a trade dispute and immunities for essential services.

Immunities will of course be at the heart of the Paper. It is too early to judge the effectiveness of Section 17 of the Employment Act. But the very fact that we are publishing a Green Paper indicates that we do not regard the issue as closed. I am worried about the equity of continuing to give individuals immunity where they picket a first supplier or customer of an employer in dispute. Why should such firms be penalised? Their involvement will in many cases be largely fortuitous.

I hope you will agree that we should not miss this opportunity of stimulating wider debate on issues which, as Keith has pointed out, still worry many people deeply.

I am copying this letter to Sir Robert Armstrong and to the members of E Committee.

GEOFFREY HOWE

GREEN PAPER ON IMMUNITIES: PROPOSALS FOR INCLUSION

1. Immunities for Trade Unions[1]

a. Repeal of Section 14 of the Trade Union and Labour Relations Act, 1974.

b. Amend S14 so as to restrict trade union immunity either to the same degree as individual immunity is restricted by the Employment Act, or to cases where prescribed disputes procedures have been complied with.

c. Amend S14 so that any special legal protection applied only to certain prescribed trade union activities.

d. Unions should be made liable for the actions of their officials and members - when acting, appearing or purporting to act on behalf of the union. This liability could be subject to a defence of "best endeavours" to prevent or stop the action.

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[1] If a decision is taken to limit the immunities of trade unions in some way, it would be useful to consider setting a maximum level of damages that might be claimed from a particular union. This could perhaps be linked either to the size of the union, or to the values of its assets. This could help to reduce claims that we were trying to bankrupt the unions

3. Individual Immunities

a. Amend the law to make it unlawful to take industrial action against a third party unconnected with the dispute who has not contributed material support to it.

b. Repeal sub-sections (3)-(6) of Clause 17 of the Employment Act along the lines suggested by Lord Spens (House of Lords OR, 7 July, Cols 1067-1069); or repeal S.13(1) of TULRA, 1974.

3. Ballots[2]

a. Where a specified percentage of the workforce request it, a ballot should be held before a strike is called.

b. Compulsory strike ballots should be introduced[3].

c. Under certain circumstances, the Secretary of State for Employment could have the right to order a ballot on strike action.

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[2] For all the three options above, immunities would only be available once the statutory procedures had been complied with.

[3] The outcome of the only Strike Ballot arranged under the 1971 Act was not at all favourable for the Government. When the railworkers were balloted in 1972, they voted overwhelmingly in favour of further industrial action in support of their pay claim and the unions were able to make much mileage out of the fact that the Government was interfering in industrial relations.

4. Union Labour Only Clauses in Commercial Contracts

a. Make it unlawful for any local or public authority or nationalised industry who invites a tender to insist that the contractor's employees are union members[4].

b. To make it unlawful for anyone who invites a tender to insist that the contractor's employees are union members.

c. Remove S13 immunities from any individuals who interfere with a contract or its placing on the grounds that an individual involved may or may not be a member of a specified union.

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[4] If some further action is to be taken to get rid of this objectionable practice, it might be better, given the prevalence of the closed shop, to adopt a gradual approach to the problem dealing first with the public sector.

5. Collective Agreements

a. Where a collective agreement does not contain a provision which explicitly states that it is intended not to be legally enforceable, the agreement shall be presumed to have been intended by the parties to it to be a legally enforceable contract.

6. Closed Shops

a. There should be a statutory requirement to hold a ballot at periodic intervals among existing employees to check whether a closed shop arrangement is still approved of.

b. There should be a statutory requirement permitting X% of those affected by a closed shop to call for a ballot for the purpose in (a) above, though with a restriction on the minimum time between each such ballot.

c. Before a union seeks a closed shop agreement with management, the union should already have as members a specified percentage of the workforce concerned.

d. The Employment Act requires that an individual may claim for unfair dismissal if he refuses to join a union where the membership agreement took effect after 15 August and the agreement was not approved by 80% of those covered by it. 90% of workers should be asked to approve a new closed shop arrangement.

e. Closed Shops should be made void, ie not legally enforceable.

7. Trade Union Constitution

a. S28(1) of TULRA contains the formula that a trade union is: "an organisation whose principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers' associations". The principal purpose of a trade union should in law be the regulation of relations between workers and employers.

b. S28(1) of TULRA should be amended so that temporary combinations are not unions in law.

c. S6 of TULRA 1974 was repealed by the TULRA (Amendment) Act 1976. It contains important requirements designed to ensure that union rules are fair and democratic and should be restored.

8. Meaning of Trade Dispute

a. S29 of TULRA includes in its definition of trade dispute a dispute between workers and workers. This should be deleted from the definition and the only kind of industrial dispute recognised as lawful should be one between employees and employers - or bodies authorised to represent them.

9. IMMUNITIES FOR ESSENTIAL SERVICES

Essential activities[5] could be defined and measures taken to limit or prevent strikes by employees. Possibilities include:

a. The restriction or elimination of immunities for strike action.

b. A statutory ban on striking as exists currently for the police force. Under the 1964 Police Act those who are convicted of inducing or attempting to induce police officers to strike can be fined, imprisoned or both. The Police Discipline Regulations 1977 enable action to be taken against a police officer who strikes. Penalties range from demotion to dismissal.

c. On a non-statutory basis, employers should be empowered to use contracts of employment to reduce immunities or limit the right to strike. This could be enforced by sanctions similar to those used against striking police officers.

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[5] In 1971, restrictions on striking in the gas, water and electricity industries were repealed. Consideration could be given to the restoration of some strike limitations in these industries.

A wider definition of essential activities might be built up using a number of criteria. A sectoral approach might be adopted covering such vital areas as health and energy. Particular activities such as tax collection or banking could be considered. Lastly, certain classes of situation in which fundamental national, commercial or individual interests could be severely harmed by strike action would need to be taken into account.

cc Mr Lankester
to note X.
AD
9/9.

9 September 1980

J H Galbraith Esq
Department of Employment
Caxton House
Tothill Street
LONDON SW1

We spoke briefly last week about the likely time-table and coverage of the Green Paper on Trade Union Immunities. While you explained that he had not yet had an opportunity to consider progress on this, you thought it possible that your Secretary of State might be writing to colleagues around late October.

I don't know whether you envisage any preliminary discussion of the draft with other Departments. The purpose of this letter is simply to register my interest if there are to be any inter-departmental meetings at official level. If you receive further submissions on the subject - like the one from the CBI in July - I should be very grateful if you could send me a copy.

ANDREW DUGUID

CONFIDENTIAL

2

PRIME MINISTER

There has been a long correspondence on this aspect of the Parliamentary timetable MP

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J R Wattley Esq
Private Secretary
Civil Service Department
Whitehall
LONDON SW1A 2AZ

1 September 1980

Dear Jim,

CODES OF PRACTICE ON PICKETING AND THE CLOSED SHOP

Mr Prior has seen the letters of 26 August giving the replies of the Chancellor of the Duchy and of the Lord President to his request for a firm assurance that the necessary debates on the Codes would be fitted into the spillover session.

He fully understands the difficulties that they have in giving a guarantee at this time. They in turn will understand that, for the reasons given in his letter of 18 August, this could leave him in an awkward position vis a vis the Select Committee. However, Mr Golding has now substituted for his telephone request for an extension of the consultative period a formal letter stating that the Committee will not be able to provide views by 10 October but will seek to complete their consideration as soon as possible thereafter. They have also asked to see the Secretary of State again in the week beginning 13 or 20 October. In the light of this the Secretary of State has decided to stick to his preferred timetable, to tell the Committee that any further views from them will need to be expressed in the week beginning 13 October if they are to be in time to be taken into account before the final Codes are submitted to Parliament, and that he is prepared to appear before them on 15 October.

The Secretary of State has asked me to say that, in taking this position, he is placing great reliance on the assurances that the Chancellor of the Duchy and the Lord President will both do all that they can to ensure that the debates take place in the spillover; and he is grateful for those assurances. He is himself now working to an extremely tight timetable aimed at getting the Codes, in the form in which they are approved after consultation, to the JCSI on Tuesday 21 October, a full week before their meeting. It is possible of course, that attempts will be made in the JCSI to delay the process and he trusts that advance approaches will be made to friendly members to impress on them the need to deal with the Codes in time for them to be debated in the spillover.

CONFIDENTIAL

I am sending copies of this letter to the Private Secretaries to the Prime Minister and to the other Ministers who received the earlier correspondence. I am enclosing for the information of the Chancellor of the Duchy and the Lord President a copy of the Secretary of State's correspondence with Mr Golding.

Yours sincerely

ANDREW HARDMAN
Private Secretary

Civil Service Department,
Whitehall,
London, SW1A 2AZ

With the Compliments

of the

Private Secretary

to the

Lord President of the Council

CONFIDENTIAL

Ind PD

Civil Service Department
Whitehall London SW1A 2AZ
01-273 4400

MS

From the Private Secretary

26 August 1980

Copies also to the Private Secretaries to recipients of the Secretary of State for Employment's letter of 18 August.

Richard Dykes Esq
Private Secretary to the Secretary of State for Employment
Caxton House
Tothill Street
LONDON SW1H 9NA

Dear Richard,

CODES OF PRACTICE ON PICKETING AND THE CLOSED SHOP

I have seen your Secretary of State's letter to the Chancellor of the Duchy of Lancaster of 18 August seeking assurances from the Chancellor of the Duchy and from the Lord President that there will be time for debates on the Codes of Practice on Picketing and the Closed Shop during the spillover in both Houses. I have spoken to the Lord President and to Michael Pownall who is the Private Secretary dealing with matters relating to Lord Soames' responsibilities as Leader of the House of Lords. As they are both now on holiday I have been asked to reply from this office.

As the Lord President said in his letter on the 8 August to your Secretary of State the Codes cannot be considered in the House of Lords until they have been passed through the Joint Committee on Statutory Instruments (JCSI) which cannot meet until the 28 October when the House of Commons returns. In addition it cannot be guaranteed that the Codes will be passed by the Committee in one Sitting which would mean that they would not be ready to be taken in the Lords until after the next meeting of the JCSI on the 4 November. For this reason it is not possible for the Lord President to give your Secretary of State the assurance he is seeking. However the Lord President will do all he can to see that the Codes are dealt with in the spillover so long as they receive the necessary clearance from the JCSI.

I am copying this to Michael Pownall in the House of Lords.

Yours sincerely

J R Wattley.

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J R WATTLEY
APS/Lord President

PRIVY COUNCIL OFFICE
WHITEHALL LONDON SW1A 2AT

Chancellor of the Duchy of Lancaster

26 August 1980

VMS

Dear Richard

CODES OF PRACTICE ON PICKETING AND THE CLOSED SHOP

Your Secretary of State wrote to the Chancellor of the Duchy on 18 August asking, in view of the Employment Select Committee's request for an extension of the consultative period for the Codes of Practice, for a firm assurance that time will be found for a debate in the Commons during the spillover.

The Chancellor is on holiday at the moment, but saw the letter immediately before his departure and asked me to say that he is fully conscious of the need to have the debate during the spillover if at all possible, particularly in the light of this development with the Select Committee. He will therefore do all he can to ensure that the time is found.

You will appreciate however that it is not possible for him to give an absolute guarantee at this stage. Either unforeseen extraneous circumstances, or more foreseeably the reactions of the JCSI, could yet make it impossible to fit the debate into the very limited time available. The position will become clearer in October when the consultative period is nearing its close and the usual channels are in business again. Until then, I am afraid that the most you should say to the Select Committee is that it is the intention to hold the debate during the spillover, stopping short of giving an unqualified assurance.

In the meantime, you will no doubt be considering giving the JCSI as much advance notice as possible of the job ahead of them.

I am copying this to the Private Secretaries to the recipients of your Secretary of State's letter.

Yours sincerely

Patricia Laidlaw

MISS P LAIDLAW
Private Secretary

Richard Dykes Esq
Private Secretary to the
Secretary of State for Employment
Department of Employment
Caxton House

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Rt Hon Norman St John Stevas MP
Chancellor of the Duchy of Lancaster
Privy Council Office
68 Whitehall Place
LONDON SW1

18 August 1980

Dear Norman

CODES OF PRACTICE ON PICKETING AND THE CLOSED SHOP

Thank you for your letter of 7 August about finding time in the spillover session for a debate on the draft Codes of Practice. I have also received Christopher Soames' letter of 8 August about the difficulty of arranging debates in the Lords.

Since then, following my appearance before the Select Committee on Employment on 13 August, the Chairman has asked me if the consultative period could be extended for the Committee alone until Parliament reassembles. This reflects complaints by members of the Committee that, because the consultative period coincides with the Recess, the Committee will not be able to consider the draft codes fully and prepare their own report in time. If I were to agree to John Golding's request it would, of course, be impossible to get the Codes to the JCSI on 28 October and to have them debated in the spillover session.

My primary concern has always been to ensure that the Codes are in operation as early as possible. 10 October was fixed as the closing date for consultations because it was the latest date which would make it possible for the Codes to be debated in the spillover session and brought into operation around the end of November.

I have considered the implications of delaying the debates on the Codes until the new session. Given the problems of printing and distribution it seems quite likely that the Codes could not be brought into operation until the end of December or early January. I am therefore strongly minded to refuse the request from the Select Committee on the ground that any extension of the consultative period beyond 10 October would cause an unacceptable delay in bring the Codes into operation.

I should, however, be on extremely weak ground if, having refused the Committee's request, it were not after all possible for the Codes to be debated in the spillover session. I do not therefore think that it would be right for me to turn them down unless you and Christopher can assure me that there will be time for debates on the Codes during the spillover. In the light of recent press and Committee reactions

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and likely Parliamentary attitudes to the Codes, it now seems to me that we must allow a full day's debate on the Codes, at least in the Commons, rather than a couple of hours on each of the two Codes. Can you and Christopher now guarantee to find this time in the spillover session?

If not, I shall have to agree to extend the consultative period, but of course for everyone and not just for the select Committee. The Codes would then have to be debated in the new session and in all probability would not be in operation until the turn of the year.

I have a very strong preference for sticking to our original timetable and turning down the Select Committee. Since this depends on having the Codes debated in the spillover, I hope very much that you and Christopher will be able to give me the assurance I am seeking. I expect Mr Golding will be pressing me for an answer shortly and I should be most greateful therefore if you could let me have your reactions within the next few days.

I am sending copies of this letter to the Prime Minister, the Lord President of the Council and the other recipients of our previous correspondence.

Ind Rel

FROM THE LEADER OF THE HOUSE
HOUSE OF LORDS

V
MS

8 August 1980

Dear Jim,

I have seen a copy of your letter of 31 July to Norman St John Stevas about the draft Codes to be laid under the Employment Act.

As you will know, the Lords will be exceedingly busy for the spillover period, particularly during the last few days in October and the first week in November. We cannot, however, take the Codes any earlier than this because, before they can be approved on the floor of the House, they must pass through the Joint Committee on Statutory Instruments which cannot meet until 28 October when the House of Commons returns. If for some reason the Codes failed to get through the Committee at one sitting on 28 October, they would not be ready to be taken until after the next meeting on 4 November. This could take us into the last two or three days of the session when business is bound to be congested.

Whilst I accept that the Codes must be brought into operation as soon as possible, I must in the circumstances ask you whether there is any possibility of delaying their approval until the new session. If this is not possible, I advise you to lay them, at least before the Lords, as soon after 10 October as you can. It would also be desirable to ensure that they are in a form likely to be acceptable to the Joint Committee. We would of course do all we can to find appropriate time in the few days available, but it is certainly possible that if they are to be debated in the Lords during this session, we may have to do so before the Commons.

I am copying this letter to the Prime Minister and to the other recipients of yours.

Yours ever
Christopher

SOAMES

The Rt Hon James Prior MP
Secretary of State for Employment

PMG NOTE 62/80

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PRIME MINISTER

MJ

8/8

DRAFT CODES ON PICKETING AND THE CLOSED SHOP

The Employment Act 1980

The Employment Act tackles abuses of the closed shop and picketing which have caused great public concern:

- it limits lawful picketing to a person's own place of work;

- it provides much greater protection to individual employees working in a closed shop who are dismissed because they do not want to join a trade union.

The Act has, therefore, set a more reasonable and balanced framework of legal rights and obligations. Within that framework it is the job of management and trade unions to develop the voluntary procedures and accepted standards of behaviour for the conduct of relations at work, on which the improvement of our industrial relations depends. The Codes will encourage and help them to do this by explaining the law and giving guidance on good practice.

What the Codes do

- They underline and reinforce the increased protection which the Employment Act has provided to individual employees and employers against abuses of the closed shop and picketing. They do this by:

- explaining the law as it affects the closed shop and picketing so everyone will know where they stand;

- setting out commonsense and practical guidelines for all those involved in and affected by picketing; and by the operation or proposal of a closed shop.

They are not "backdoor legislation". They may be taken into account and are admissible in evidence in proceedings before a court or tribunal. But failure to observe the provisions of a Code will not by itself make a person liable to legal proceedings.

Some main points from the Codes

The Code on Picketing says that:

- under the law everyone has a right to cross a picket line if he wishes to do so free from interference from others;

- a trade union member who decides to cross a picket line should not be subject to any disciplinary action by his union;

- the police have discretion to limit numbers where they fear a breach of the peace may occur, but it will rarely be necessary for the number of pickets at any one entrance to a workplace to exceed six and frequently fewer will be sufficient;

- an experienced person preferably a trade union official should always be in charge of a picket line to ensure that the picketing is properly organised and conducted peacefully;

- pickets should avoid causing suffering to people not involved in the dispute and should ensure that essential goods and supplies are not stopped.

The Code on the Closed Shop says that:

- closed shops should be applied flexibly and tolerantly with proper regard to the wishes of those who do not want to join a trade union;

- new closed shops should be approved by at least 80% of those affected voting in a secret ballot. The Code advises how such ballots should be conducted;

- all closed shops new or existing should be subject to periodic review;

- a trade union member should not be subject to disciplinary action by his trade union if he refuses to take part in industrial action because it would break the criminal law, seriously risk public safety or health, break a procedure agreement or because it had not been affirmed in a secret ballot.

TUC Guides

In drafting the Codes, the Government has drawn on relevant guidance produced by the TUC during the "winter of discontent".

It has always acknowledged that the TUC Guides were a good starting point. But they need strengthening and updating to reflect the provisions of the Employment Act.

Conclusion

- The Codes are published in draft for consultation at this stage. The Government hopes that everyone who is interested in improving industrial relations, not least managers and shop stewards will read them and suggest improvements.

- The Codes cannot by themselves ensure improvements in industrial relations. But taken with the changes to the law brought about by the Employment Act they can help to bring an end to the abuses of picketing and the closed shop which have been so apparent in recent years.

- Changes will not happen overnight. But everyone stands to gain - trade unions and their members most of all - from the observance of standards of tolerance and flexibility in the conduct of industrial relations.

Paymaster General's Office
Privy Council Office
68 Whitehall
SW1

7 August 1980

with compliments

CHANCELLOR OF THE DUCHY OF LANCASTER
68 Whitehall London SW1A 2AS
Telephone 01-233-7113

PRIVY COUNCIL OFFICE
WHITEHALL LONDON SW1A 2AT

Chancellor of the Duchy of Lancaster

7 August 1980

NBPM
MS
8/8

Dear James.

Thank you for your letter of 31 July about the timetable for the two Codes on picketing and the closed shop. I shall do my best to find four hours for a debate in the spillover period, but we shall not have much more than a fortnight between the end of the Recess and Prorogation, and we are likely to be faced with a number of conflicting claims on the available time. The main problem is that the earliest they could be considered by the JCSI is 28 October and we do not therefore have a great deal of flexibility. Perhaps we could leave it on the basis that we will provisionally reserve a space for your two Codes, but that you will contact me again before you lay them so that we can make a final decision in the light of any developments in the meantime?

I am copying this letter to the recipients of yours.

Yours ever,

The Rt Hon James Prior MP
Secretary of State for Employment
Department of Employment
Caxton House

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Ian Ellison Esq
Private Secretary
Department of Industry
Ashdown House
123 Victoria Street
London SW1

5 August 1980

Dear Ian.

CODES OF PRACTICE ON PICKETING AND THE CLOSED SHOP

Mr Prior was grateful for your Secretary of State's letter of 17 July and for his helpful comments on the two drafts and their covering papers. He was able to make a number of improvements to the drafts as a result of these and other comments from colleagues.

Some of the questions raised were similar to those of the Chancellor of the Exchequer and I have copied to you my letter to his Private Secretary. There were three further points arising from Sir Keith's letter on which Mr Prior wishes to comment.

First, in paragraph 6 of the letter there appears to be a misunderstanding of the new ballot clause in the Bill. This deals with union ballots. We do not envisage that ballots for closed shop agreements will be conducted by the union(s) concerned and such ballots should involve all employees in scope of the agreement, not just union members.

Secondly, in paragraph 8, we did not intend the word "considerable" to be given the emphasis which your letter thought it implied. Accordingly, the sentence has been amended to avoid such an inference but the word itself has been retained.

Thirdly, Mr Prior sympathises with your Secretary of State's suggestion of a "child's guide" to the law on picketing suitable for everyday use, but there would be dangers in this. The "child's guide" would lack the authority of the Code and might even detract from it. Any guidance we issue on this subject is likely to be challenged by the trade unions (or some of them) and it is absolutely essential that there should be no confusion about what is and what is not the Code of Practice. Nonetheless Mr Prior has not ruled out the possibility of making available a simpler and more "popular" explanation of the law on picketing and he will be giving consideration to this before the autumn.

I am copying this reply to the recipients of your Secretary of State's letter.

Yours ever
Richard Dykes

RICHARD DYKES
Principal Private Secretary

SW

CONFIDENTIAL

Caxton House Tothill Street London SW1H 9NA
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Switchboard 01-213 3000

David Edmonds Esq
Private Secretary
Department of the Environment
Marsham Street
LONDON SW1

5 August 1980

Dear David.

CODE OF PRACTICE ON PICKETING AND THE CLOSED SHOP

Mr Prior was grateful to your Secretary of State for his letter of 18 July. He is glad that Mr Heseltine found the guidance on procedures in the Code on the closed shop sensible and that he was content with the Code on picketing.

Mr Heseltine was concerned that the Code on the closed shop did not make the relevant statutory framework clear enough. We have made a number of minor changes to this section in the light of other comments from colleagues and have also added an annex which deals comprehensively with the definition of closed shops - a matter which is covered by the 1974 and 1976 Trade Union and Labour Relations Act - and how this is to be applied for the special purposes of the Employment Act. Mr Prior hopes this will resolve the problem Mr Heseltine foresaw.

You will note that this section retains its particular reference to the rights of individuals. We think it is correct to give prominence to the rights of individuals in this area because this has been the major concern of our reforms here. Of course these rights carry with them obligations for the other parties concerned, employers and unions, but we believe this is well understood.

I am copying this reply to the recipients of your Secretary of State's letter.

Yours ever

Richard Dykes

RICHARD DYKES
Principal Private
Secretary

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SECRETARY OF STATE FOR EMPLOYMENT

Caxton House Tothill Street London SW1H 9NA

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

Rt Hon William Whitelaw MP
Home Secretary
Home Office
50 Queen Anne's Gate
LONDON SW1 H9AT

T 576 5 August 1980

Dear Willie

CODE OF PRACTICE ON PICKETING

Thank you for your letter of 30 July. I am grateful to you for seeking the views of the police organisations on the draft Code of Practice on Picketing. You will see from the attached consultative draft (which I am publishing on 5 August) that I have accepted your suggested amendments.

I hope very much that these changes will avoid any risk of the police organisations voicing criticisms of the draft Code which can be exploited by those in the trade union movement who are opposed in principle to a statutory code of practice on this subject. I must add that I am rather surprised that the police should now express unhappiness at the proposal for a specific limit of 6 pickets, after the Police Federation's earlier pressure for legislation on mass picketing.

The attached draft also takes account of the suggestions by Cabinet Office about which your private secretary wrote on 18 July.

As you will see from my private Secretary's letter of today to Keith Joseph's private secretary, I am concerned that a "childs guide" on the law on picketing might detract from the authority of the Code and even be confused with it. I am afraid that I have the same reservations about the police suggestion of a simpler, shorter document for local use if it is envisaged that this might be given anything wider than an internal police circulation.

The draft Code already provides a crisp and clear explanation of the law and I am not sure what purpose a simplified version would serve. Nevertheless I would be happy for our officials to explore this idea later in the year when the Codes themselves have been approved and published.

I am copying this to recipients of your letter.

Yours Jim

Caxton House Tothill Street London SW1H 9NA

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

A J Wiggins Esq
Private Secretary
Treasury Chambers
Great George Street
LONDON SW1

5 August 1980

Dear John.

CODES OF PRACTICE ON PICKETING AND THE CLOSED SHOP

The Secretary of State was grateful to the Chancellor of the Exchequer for his helpful comments on the two draft codes and their covering papers. These and comments from other colleagues have enabled him to make a number of improvements to the drafts. This letter answers some of the other questions that the Chancellor raised.

It is not possible in these codes, any more than in earlier industrial relations codes, to draw a hard and fast line between passages which describe what needs to be done to comply with the law and passages which constitute good practice. What we have done in each case is to describe in layman's language the legal requirements under headings which make this clear ("Legal Rights of Individuals" in the case of the code on the closed shop and "Picketing and the Civil Law" and Picketing and the Criminal Law" in the case of the code on picketing). The following sections of each code provide practical guidance as required by the statute. Though none of this is directly enforceable, any of it may be a "relevant provision to be taken into account in proceedings before any court or industrial tribunal or the Central Arbitration Committee", although the likelihood of this will vary between one provision and another. No hard and sharp division between them can be made.

Turning now to the Chancellor's particular questions and comments

i) Para 12

This of course is a statement of the law and cannot in itself go beyond what is stated in Clause 4. However Section D of the Code, Union Treatment of Members and Applicants, covers circumstances in which exclusion or expulsion from a trade union might be found to be "unreasonable".

ii) Para 16

This paragraph and paragraph 15 have been amended to make clear that readmission by a union, consequential upon a tribunal declaring that an individual has been unreasonably excluded or expelled, will trigger different procedures and levels of compensation. Under the Act neither the tribunal nor the EAT can order a union to re-admit but, by analogy with unfair dismissal provisions, a union which fails to take someone back when the tribunal has found the exclusion to be unreasonable, may have to pay an extra sum by way of compensation.

iii) Para 29(d)

The inconsistency between this and para 53 is more apparent than real. One deals with advice to employers, the other to unions. Both passages envisage that there are circumstances in which a trade union member may be expelled from his union for refusing to take part in industrial action. Para 23 (d) makes the additional point that it is good practice for employers to secure,as well,agreement that any such person should not be dismissed from employment.

v) Para 33 (e) and (f)

The phrase quoted is drawn from the statute itself and the code could not impose a more restrictive condition. We believe that what the code says is a sufficient nudge in the direction of employing an independent body, particularly since what is involved here is a ballot arranged jointly by management and unions, not by a union alone.

vi) Para 42

The Secretary of State wishes to await the views of industry before deciding whether or not to have a maximum interval between ballots. The views so far received from industrialists are divided on the question of reviews generally. The reviews are likely to be initiated by employers and this paragraph indicates the circumstances in which such reviews should be carried out.

viii) Para 52(b)

This paragraph is not about the formation of new closed shops but is drafted in recognition of existing traditional arrangements like those in the acting profession, which were of course recognised in the Industrial Relations Act 1971.

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ix) Para 59

The Secretary of State considers that a provision on access to the Press is essential. It featured prominently in the Press Charter discussions under Lord Pearce and agreement was almost reached on it. The present text was supported by the majority of those taking part in the discussion. Its absence would be adversely criticised.

I am copying this letter to the recipients of the Chancellor's.

Yours ever

Richard Dykes

RICHARD DYKES
Private Secretary

Department of Employment **PRESS NOTICE**

Caxton House Tothill Street London SW1H 9NA
Telephone : Direct Line 01-213 7439 (24 hour answering service)
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NOT FOR PUBLICATION, BROADCAST OR USE ON CLUB TAPES BEFORE 14.30 HOURS ON TUESDAY, AUGUST 5, 1980.

August 5, 1980

DRAFT CODES PUBLISHED ON PICKETING AND CLOSED SHOP

The Secretary of State for Employment, Mr James Prior, has today published draft Codes of Practice on the Closed Shop and Picketing for consultation under the powers provided by Section 3 of the Employment Act 1980.

The period for consultation will extend until October 10, 1980. Mr Prior intends to seek Parliamentary approval for the Codes of Practice, revised as necessary in the light of the consultations, as soon as Parliament reassembles in the autumn.

Commenting today Mr Prior said:

"I believe these Codes will make an important contribution to good industrial relations in this country. They will reinforce and underline the increased protection which the Employment Act has provided to individual employees and employers against abuses of the closed shop and picketing.

"Through the Act Parliament has performed the very important task of setting a more reasonable framework of legal rights and obligations for the conduct of human relations within industry. It now lies with managements and unions to develop within that framework the voluntary procedures and accepted standards of behaviour at the workplace on which the improvement in our industrial relations ultimately depends.

"These Codes are intended to help management and unions develop those procedures. They explain the law and set out commonsense and practical guidelines for the conduct of industrial relations.

"The Code on the closed shop explains the relevant provisions of the Employment Act and gives guidance on good practice to employers and unions who operate

closed shop agreements. It emphasises that existing closed shops should be operated tolerantly and flexibly with proper regard to the views of those who do not want to join a trade union and provision for periodic review, and that new closed shops should only be set up if there is overwhelming support for them amongst those who would be affected. It also sets out the matters which industrial tribunals will be expected to take into account in deciding cases of unreasonable exclusion or expulsion from a trade union.

"The Code on picketing explains the law - both civil and criminal - as it affects pickets themselves and those who are affected by picketing. It also gives guidance on the conduct and organisation of pickets, with a view to ensuring that picketing remains peaceful and orderly at all times and is not carried out in excessive numbers. It makes it clear that everyone in this country has a right to cross a picket line if that is what he wishes to do, free from any interference by others.

"If these guidelines are followed by everyone concerned, we should see the end of the abuses of the closed shop and picketing which have caused so much public concern in recent years. That will not happen overnight. But everyone stands to gain - trade unions and their members most of all - from the observance of standards of tolerance and flexibility in the conduct of industrial relations.

"These Codes are at this stage published for consultation. I hope everyone who is interested in improving industrial relations in this country, not least line managers and shop stewards, on whom the main responsibility for industrial relations rests, will read them and let us know of any suggestions for improvement."

DRAFT CODE OF PRACTICE ON PICKETING

Requirements of the Employment Act 1980

1 Section 3 of the Employment Act 1980 gives the Secretary of State power to issue Codes of Practice containing such practical guidance as he thinks fit for the purpose of promoting the improvement of industrial relations. On 17 December last year the Secretary of State in introducing the Employment Bill told the House of Commons that, in the absence of comprehensive and effective voluntary guidance, the Government intended to produce a Code on picketing. The TUC have since made clear that they are unwilling to participate in the production of voluntary guidance which takes account of the requirements of the Employment Act 1980. The Secretary of State has accordingly decided to exercise his powers under the Act.

2 The Act requires the Secretary of State, when he proposes to issue a Code, to prepare and publish a draft following consultation with ACAS. Such consultation has taken place and the attached draft Code is being issued pursuant to the statutory requirements of Section 3(2) of the Act. The Secretary of State will be pleased to receive representations on the draft which, under the terms of Section 3(3), he is required to consider. The draft may then be modified by him following any such representations before he lays it before both Houses of Parliament for approval.

Purpose of the Code

3 Since 1906 the law has declared the purpose of picketing to be "peacefully obtaining or communicating information or peacefully persuading any person to work or abstain from working". Under the Employment Act 1980 the law protects someone who pickets peacefully at his own place of work in furtherance of a trade dispute with his own employer from civil proceedings for any interference with contracts which may result.

4 However the law affords protection for those who want to go to work normally. Provided a person remains within the law, he has the right to go about his daily business free from interference by others. That applies just as much to workers involved in a dispute as to anyone else. Every person is free as an individual to decide in a dispute whether or not to go to his work and to come and go as he wishes between his home and place of work. This means that a person has the full

protection of the law in crossing a picket line if that is what he wishes to do.

5 It is in the interests of everyone concerned - the pickets themselves, other workers, employers and the general public - that picketing is carried out peacefully and lawfully. It is essential that the rights and responsibilities of all those who may be involved in picketing or affected by it are clearly understood. Failure to understand the law or to follow simple rules of good practice has led to problems of conflict and disorder on the picket line which could have been avoided. The purpose of this Code is to give guidance on both the civil and criminal law as it affects picketing and on the proper conduct and organisation of pickets.

Closing Date for Representations

6 Views on the contents of the draft Code should be submitted as soon as possible but in any event not later than 10 October 1980 to the Department of Employment, Caxton House, Tothill Street, London.

DRAFT CODE OF PRACTICE ON PICKETING

CONTENTS

DRAFT CODE ON PICKETING

A INTRODUCTION

1 The Code is intended to provide practical guidance on picketing in trade disputes for those who may be contemplating, organising or taking part in a picket and for those who as employers or other workers or members of the general public may be affected by it.

2 There is no legal "right to picket" as such but peaceful picketing has long been recognised as being lawful. However, the law imposes certain limits on how and where lawful picketing can be undertaken so as to ensure that there is proper protection for those who may be affected by picketing, particularly those who want to go to work normally.

3 It is a civil wrong, actionable in the civil courts, to try to persuade someone to break his contract of employment or to try to secure the breaking of a commercial contract. But the law exempts from this liability those acting in contemplation or furtherance of a trade dispute, including pickets provided that they are picketing only at their own place of work*. The criminal law, however, applies to pickets just as it applies to everyone else: they have no exemption from the provisions of the criminal law (eg as to obstruction).

4 The Code explains the law on picketing and sets out rules of good practice which will help to avoid the conflict and disorder to which picketing has sometimes given rise.

5 The Code itself imposes no legal obligations and failure to observe it does not by itself render anyone liable to proceedings. But Section 3(8) of the Employment Act requires any relevant provisions of the Code to be taken into account in proceedings before any court or industrial tribunal or the Central Arbitration Committee.

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* Subject additionally in cases of secondary action to the limitations described in paragraph 9 below.

B PICKETING AND THE CIVIL LAW

6 Section 15 of the Trade Union and Labour Relations Act 1974 (as amended by the Employment Act 1980) provides the basic rules for lawful industrial picketing:

(i) it must be undertaken in contemplation or furtherance of a trade dispute;

(ii) it must be carried out by a person attending at or near his own place of work; or in the case of a trade union official additionally at or near the place of work of a member of his trade union whom he is accompanying on the picket line and whom he represents;

(iii) its only purpose must be peacefully obtaining or communicating information or peacefully persuading a person to work or not to work.

7 Picketing commonly involves persuading employees to break their contracts of employment by not going into work and, by disrupting the business of the employer who is being picketed, interfering with his commercial contracts with other employers. If pickets follow the rules outlined in paragraph 6 they are protected by section 13 of the Trade Union and Labour Relations Act 1974 (as amended)* from being sued in the civil courts for these civil wrongs. These rules are explained more fully in paragraphs 10 to 18 below.

8 These provisions apply in the normal cases where employees picket at their own place of work in support of a dispute with their own employer. Cases may arise, however, where employees picket at their own place of work in support of a dispute between another employer and his employees, for example, where employees at one place are involved in a strike in support of a dispute elsewhere and have mounted a picket line at their own place of work in the course of that strike.

9 In such cases the picketing, in order to be protected, must further satisfy the requirements of lawful secondary action contained in section 17 of the Employment Act 1980. (These are explained in detail in Annex A.) In practice this means that these pickets will have to target their picketing precisely on the supply of goods or services between their employer and the employer in dispute. If they try to impose an indiscriminate blockade on their employer's premises, they will be liable to be sued in the civil courts.

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* by the Trade Union and Labour Relations (Amendment) Act 1976.

In contemplation or furtherance of a trade dispute

10 Picketing is lawful only if it is carried out in contemplation or furtherance of a trade dispute. A trade dispute is defined in section 29 of the Trade Union and Labour Relations Act 1974 (as amended). It covers all the matters which normally occasion disputes between employers and workers such as terms and conditions of employment, the allocation of work, matters of discipline and membership or non-membership of a trade union.

Attendance at or near his own place of work

11 It is lawful for a person to induce a breach of contract in the course of picketing only if he pickets at or near his own place of work.

12 Except for those covered by paragraphs 13 and 14 below, "at or near his own place of work" means the entrance or entrances to (or any exit from) the factory, site or offices at which the picket works. There is no protection for pickets who try to picket on or inside any part of the premises which are the property of the employer. That would constitute trespass.

13 Section 15 of the 1974 Act (as amended by the Employment Act 1980) distinguishes two specific groups of employees:

- those (eg mobile workers) who work at more than one place; and

- those for whom it is impractical to picket at their own place of work because of its location.

It declares that it is lawful for such workers to picket those premises of their employer from which they work or from which their work is administered. In practice this will usually mean those offices of their employer from which they receive their instructions or pay packet or the depot or garage from which their vehicle operates.

14 Special provisions also govern people who are not in employment and who have lost their jobs for reasons connected with the dispute which has occasioned the picketing. This might arise, for example, where the dismissal of a group of employees had led directly to a strike, or where in the course of a dispute an employer has terminated his employees' contracts of employment because they refuse to work normally. In such cases section 15 declares that it is lawful for a

worker to picket at his former place of work. This does not apply, however, if workers have subsequently found a job at another place of work. Such workers may only picket lawfully at their new place of work in the course of a dispute with their new employer or in the course of lawful secondary action.

Trade union officials

15 It is often helpful to the orderly organisation and conduct of picketing for a trade union official to be present on a picket line where his members are picketing. Section 15 of the 1974 Act (as amended) therefore makes it lawful for a trade union official to picket at any place of work provided that:

(i) he is accompanying members of his trade union who are picketing lawfully at or near their own place of work; and

(ii) he personally represents those members within their trade union.

If these conditions are satisfied then a trade union official has the same legal protection as other pickets who picket lawfully at or near their own place of work.

16 An official* is regarded as representing only those members of his union whom he has been specifically appointed or elected to represent. An official cannot, therefore, claim that he represents a group of members simply because they belong to his trade union. He must represent and be responsible for them in the normal course of his trade union duties. This means, for example, that an official (such as a shop steward) who represents members at a particular factory or factories is entitled to be present on a picket line of members of his union only at that factory or those factories; a branch official (whether a lay official or an employee of the union) only where members of his branch are lawfully picketing; and a national official (again, whether a lay official or an employee of the union) wherever members of his union are lawfully picketing.

17 Trade union officials, may of course, picket lawfully at their own place of work, whether or not their members are also picketing. However, to be entitled to picket at a place of work other than their own, they must satisfy the conditions in paragraph 16.

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* as defined in Section 30 of TULRA 1974 (as amended by the Employment Protection Act 1975).

Lawful purpose of picketing

18 The only purposes of picketing declared lawful by section 15 are:

- peacefully obtaining and communicating information; and
- peacefully persuading a person to work or not to work.

Picketing which is accompanied by, for example, violent, threatening or obstructive behaviour is unlawful. Pickets may seek to explain their case as persuasively as possible, but they have no powers to require other people to stop or to compel them to listen or to do what they have asked them to do. If, even before a picket has put his case, a person decides to cross the picket line he must be allowed to do so. A picket who threatens or intimidates someone or obstructs an entrance to the workplace commits a criminal offence. Not only is he liable for criminal prosecution (see paragraph 23 below), but he may also be liable to be sued for inducing or attempting to induce a breach of contract.

Seeking redress

19 An employer or an employee whose interests are harmed by picketing which does not comply with the rules described in paragraphs 10-18 above has a civil law remedy. He may start an action for damages against those responsible and also ask the court to make an order* stopping the unlawful picketing.

20 An order will normally be sought against the person on whose instructions or advice the picketing is taking place, but it will usually apply not only to him but to any others acting on his behalf or on his instructions. If a person knows that such an order has been made against someone and yet aids and abets him in breaking it, he may be in contempt of court himself and liable to be punished by the court. Thus an order can apply to people beyond those named in it, and an organiser of picketing cannot avoid liability by, for example, changing the members of the picket line each day.

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* An injunction in England and Wales and an interdict in Scotland.

C PICKETING AND THE CRIMINAL LAW

21 If a picket commits a criminal offence he is just as liable to be prosecuted as any other member of the public who breaks the law. The immunity provided under the civil law does not protect him in any way.

22 The criminal law protects the right of every person to go about his lawful daily business free from interference by others. No one is under any obligation to stop when a picket asks him to do so or, if he does stop, to comply with the picket's request, for example, not to go into work. Everyone has the right, if he wishes to do so, to cross a picket line in order to go into his place of work. A picket may exercise peaceful persuasion, but if he goes beyond that and tries by means other than peaceful persuasion to deter another person from exercising those rights he may commit a criminal offence.

23 Among other matters it is a criminal offence for pickets (as for others)

- to use threatening or abusive language or behaviour directed against any person, whether a worker seeking to cross a picket line, an employer, an ordinary member of the public or the police;

- to use or threaten violence to a person or to his family;

- to intimidate a person by threatening words or behaviour which cause him to fear harm or damage if he fails to comply with the pickets' demands;

- to obstruct the highway or the entrance to premises or to seek physically to bar the passage of vehicles or persons by lying down in the road, linking arms across or circling in the road, or jostling or physcially restraining those entering or leaving the premises;

- to be in possession of an offensive weapon;

- intentionally or recklessly to damage property;

- to engage in violent, disorderly and unruly behaviour or to take any action which is likely to lead to a breach of the peace;

- to obstruct a police officer in the execution of his duty.

24 A picket has no right to require a vehicle to stop or to be stopped. His right is limited to asking a driver to stop by words or signals. A picket may not physically obstruct a vehicle, if the driver decides to drive on or, indeed, in any other circumstances. A driver must exercise due care and attention when approaching or driving past a picket line, and may not drive in such a manner as to give rise to a reasonably foreseeable risk of injury.

D ROLE OF THE POLICE

25 It is not the function of the police to take a view of the merits of a particular trade dispute. They have a general duty to uphold the law and keep the peace, whether on the picket line or elsewhere. The law gives the police discretion to take whatever measures may reasonably be considered necessary to ensure that picketing remains peaceful and orderly.

26 The police have no responsibility for enforcing the civil law. An employer cannot require the police to help in identifying the unlawful pickets against whom he wishes to seek an order from the civil court. Nor is it the job of the police to enforce the terms of an order. Enforcement of an order on the application of a plaintiff is a matter for the court and its officers. The police may, however, be called on by the court to assist its officers by preventing a breach of the peace.

27 An organiser of pickets should always maintain close contact with the police. Prior consultation with the police is always in the best interests of all concerned. In particular, the organiser and the pickets should seek early advice from the police on where they should stand on a picket line in order to avoid obstructing the highway, and agree with them a limit on the number of pickets.

E LIMITING NUMBERS OF PICKETS

28 The main cause of violence and disorder on the picket line is excessive numbers. In any situation where large numbers of people with strong feelings are involved there is a danger that things can get out of control, and that those concerned will run the risk of arrest and prosecution.

29 This is particularly so whenever people seek by sheer weight of numbers to stop others going into work or delivering or collecting goods. In such cases, what is intended is not peaceful persuasion, but obstruction, if not intimidation. Such a situation is often described as "mass picketing". In fact, it is not picketing in its lawful sense of an attempt at peaceful persuasion, but mass demonstration, which may well result in a breach of the peace.

30 The number of pickets at an entrance to a workplace should, therefore, be limited to what is reasonably needed to permit the peaceful persuasion of those entering and leaving the premises who are prepared to listen. As a general rule, it will be rare for such a number to exceed six, and frequently a smaller number will be sufficient. While the law does not impose a specific limit on the number of people who may picket at any one workplace, it does give the police considerable discretionary powers to limit the number of pickets in any one place where they have reasonable cause to fear disorder. It is for the police to decide, taking into account all the circumstances, whether the number of pickets in the particular case is likely to lead to a breach of the peace.

31 The police will often discuss with the picket line organiser what constitutes a reasonable number of pickets in any one case. But it should be clear that if a picket does not leave the picket line when asked to do so by the police, he is liable to be arrested for obstruction either of the highway or of a police officer in the execution of his duty if the obstruction is such as to cause, or be likely to cause, a breach of the peace.

F ORGANISATION OF PICKETING

Functions of the picket organiser

32 An experienced person, preferably a trade union official who represents those picketing, should always be in charge of the picket line. He should have a letter of authority from his union which he can show to police officers or to people who want to cross the picket line. Even when he is not on the picket line himself he should be available to give the pickets advice if a problem arises.

33 The main functions of the organiser should be:

- to assume responsibility for organising the pickets; for example, where they should stand and how many pickets should be present at any one time;

- to ensure that pickets understand the law and that the picketing is conducted peacefully and lawfully;

- to be responsible for distributing badges or armbands to pickets, so that authorised pickets are clearly identified;

- to ensure that employees from other places of work do not join the picket line and that any offers of support on the picket line from outsiders are refused;

- to remain in close contact with his own union office, with the offices of other unions if they are involved in the picketing, and with the police (see paragraph 27);

- to ensure that such special arrangements as may be necessary for essential supplies or maintenance (see paragraph 37) are understood and observed by the pickets.

Consultation with other trade unions

34 Where several unions are involved in a dispute, they should consult each other about the organisation of any picketing. It is important that they should agree how the picketing is to be carried out, how many pickets there should be from each union and who should have overall responsibility for organising them.

Right of trade unionists to cross picket lines

35 Pickets must respect the right of any individual, including a trade union member, to decide for himself whether he will cross a picket line. A trade union member who decides to cross a picket line should not be subject to any sanctions or disciplinary action by his union. Under Section 4 of the Employment Act 1980 exclusion or expulsion from a union simply on the grounds of crossing a picket line may be held to be unreasonable (see paragraph 53(d) of the Code of Practice on the Closed Shop).

ESSENTIAL SUPPLIES AND SERVICES

36 Pickets should take very great care to ensure that their activities do not cause distress, hardship or inconvenience to members of the public who are not involved in the dispute. Pickets should take particular care to ensure that the movement of essential goods and supplies, the carrying out of essential maintenance of plant and equipment and the provision of services essential to the life of the community are not impeded, still less prevented. Arrangements to ensure this should be agreed in advance between the unions and employers concerned.

37 The following list of essential supplies and services is provided as an illustration but it is not intended to be comprehensive:

- supplies for the production, packaging, marketing and/or distribution of medical and pharmaceutical products;

- supplies essential to health and welfare institutions eg hospitals, old peoples' homes;

- heating fuel for schools, residential institutions and private residential accommodation;

- other supplies for which there is a crucial need during a crisis in the interests of public health and safety (eg chlorine, lime and other agents for water purification; industrial and medical gases);

- supplies of goods and services necessary to the maintenance of plant and machinery;

- livestock;

- supplies for the production, packaging, marketing and/or distribution of food and animal feeding stuffs;

- the operation of essential services, such as police, fire, ambulance, air safety, coastguard and air sea rescue services and services provided by voluntary bodies, eg Red Cross and St. John's ambulances, meals on wheels, hospital car service.

SECONDARY ACTION AND PICKETING

1 It is lawful for employees who are in dispute with their own employer to picket peacefully at their own place of work. As the Code explains such pickets have immunity from civil actions if in the course of picketing they interfere with contracts.

2 Anyone who contemplates picketing at his own place of work in furtherance of a dispute between another employer and his workers is subject to separate and more restrictive provisions. In such cases picketing must satisfy the requirements of Section 17 of the Employment Act 1980 (as set out in paragraphs 3 and 4 below).

3 If such pickets interfere only with contracts of employment then they are protected by the statutory immunity. If, however, they also interfere with commercial contracts, their activities will be immune from civil proceedings only if:

(a) their employer is a supplier or customer providing goods or services under contract to the employer in dispute:

(b) the principal purpose of the picketing is directly to prevent or disrupt the supply of goods or services during the dispute between their employer and the employer in dispute; and

(c) the picketing is likely to achieve that purpose.

4 Employees of an associated employer* of the employer in dispute and of suppliers and customers of that associated employer may also picket lawfully at their own place of work if:

(a) their principal purpose is to disrupt the supply of goods and services between the associated employer and his supplier or customer: and

(b) those goods or services are in substitution for goods or services which but for the dispute would have been supplied to or by the employer in dispute; and

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* Two employers are associated if one is a company of which the other has control or both are companies of which a third has control (Section 30(5) of the Trade Union and Labour Relations Act 1974).

(c) the secondary action is likely to achieve the purpose in (a) above.

5 In practice this means that any picketing by employees who are not in dispute with their own employer must be very specifically targetted

- in the case of customers and suppliers of the employer in dispute, on the business being carried out during the dispute between the customer or supplier and the employer in dispute; or

- in the case of the associated employer, on work which has been transferred from the employer in dispute because of the dispute.

There is no immunity for interfering with commercial contracts by indiscriminate picketing at customers and suppliers or at associated employers of the employer in dispute.

DRAFT CODE OF PRACTICE ON THE CLOSED SHOP

Requirements of the Employment Act 1980

1. Section 3 of the Employment Act 1980 gives the Secretary of State power to issue Codes of Practice containing such practical guidance as he thinks fit for the purpose of promoting the improvement of industrial relations. On 17 December last year the Secretary of State, in introducing the Employment Bill, told the House of Commons that the Government intended to produce a Code on the closed shop.

2. The Act requires the Secretary of State, where he proposes to issue a Code, to prepare and publish a draft following consultation with ACAS. Such consultation has taken place and the attached draft Code is being issued pursuant to the statutory requirements of Section 3(2) of the Act. The Secretary of State will be pleased to receive representations on the draft which, under the terms of Section 3(3), he is required to consider. The draft may then be modified by him following any such representations before he lays it before both Houses of Parliament for approval.

Purpose of the Code and Government Policy

3. A closed shop is an agreement or arrangement under which employees are required to join a union as a condition of getting or holding a job. The purpose of this Code is to give practical guidance to those concerned in industry with their operation in the light of the relevant provisions of the Employment Act.

4. The publication of this Code does not mean that the Government support the closed shop. The Government remain opposed to the principle underlying it. That people should be required to join a union as a condition of getting or holding a job runs contrary to the traditions of personal liberty in this country. It is one thing for a union to maximise its membership by voluntary means. What is objectionable is to enforce membership by means of a closed shop. Closed shops damage the image of trade unionism itself.

5. The Government believe that these views are increasingly shared by employers and by many trade unionists. Nevertheless, closed shops are a fact of our industrial life and there are employers and trade unions who believe that such agreements can help create stability in industrial relations. At present upwards of 5 million workers are covered by closed shop agreements and it is essential that legislation on the closed shop should be drawn so as to be effective in practice and not liable to be circumvented.

6. The Employment Act has accordingly been framed to provide safeguards for individuals and remedies against abuses of the closed shop. This Code explains the relevant provisions and gives advice on good practice by employers and trade unions with a view to ensuring that where closed shops already exist they are operated flexibly and tolerantly, and that where any new closed shops might be established they will be set up only if there is overwhelming support for them amongst those who would be affected.

Closing Date for Representations

7. Views on the contents of the draft Code should be submitted as soon as possible but in any event not later than 10 October 1980 to the Department of Employment, Caxton House, Tothill Street, London.

DRAFT CODE OF PRACTICE ON THE CLOSED SHOP

CONTENTS

A INTRODUCTION

1 The purpose of the Code is to provide practical guidance on questions which arise out of the formulation and operation of closed shop agreements* - that is collective agreements that have the effect of requiring employees, as a condition of employment, to be members of one or more unions.

2 The Code applies to all employment and to all closed shops whether these are written agreements or informal arrangements which have grown up between employer and union. It applies to closed shops already in existence as well as those which might be proposed for the future.

3 Changes in existing practices and written agreements required to meet the standards set by the Code should be adopted in the light of the Code's general approach - and that of the 1980 Employment Act, which it complements. This is that any agreement or practice on union membership should protect basic individual rights; should enjoy the overwhelming support of those affected; and should be flexibly and tolerantly applied.

4 The Code itself imposes no legal obligations and failure to observe it does not by itself render anyone liable to proceedings. But Section 3(8) of the Employment Act requires any relevant provisions of the Code to be taken into account in proceedings before any court or industrial tribunal or the Central Arbitration Committee.

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* Closed shop agreements in the Code are union membership agreements as defined by Section 30 of the Trade Union and Labour Relations Act 1974 as amended in 1976. That definition covers both agreements and arrangements requiring employees to become or remain union members. [See Annex for the full definition and how it is to be applied for the purpose of Section 7 of the Employment Act 1980]

B LEGAL RIGHTS OF INDIVIDUALS

5 The statutory rights of individuals in relation to the closed shop are now contained in the Employment Act 1980.

Unfair dismissal or action short of dismissal

6 It is unfair in the circumstances listed below to dismiss an employee for not complying with a requirement to be or become a member of a union. An employee so dismissed has a right of complaint against the employer to an industrial tribunal.*

7 Similarly in these circumstances an employee has a right of complaint to an industrial tribunal if, in a closed shop, action short of dismissal is taken against him by his employer in order to compel him to be or become a union member.

8 The circumstances in which these rights apply are where:

(a) the employee genuinely objects on grounds of conscience or other deeply held personal conviction to being a member of any trade union whatsoever, or of a particular trade union;

(b) the employee belonged to the class of employee covered by the closed shop agreement before it took effect, and has not been a union member since;

(c) the closed shop agreement came into effect for the first time after the relevant provisions of the Act came into force, and has not been approved by a secret ballot of all employees affected showing that at least 80% of those entitled to vote supported the agreement.**

9 A complaint of unfair dismissal, or action short of dismissal, may be made to an industrial tribunal within a period of three months+ after the action

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* The normal service qualification necessary to make a complaint of unfair dismissal - one year's service - does not apply in the circumstances described in paragraph 8.

** Where a union membership agreement takes effect after the relevant provisions of the Act come into force and is subsequently approved by the necessary majority in a secret ballot, an individual may resign his membership of a union at any time up to the date of the ballot and be protected as in paragraph 8(b) above.

+ A tribunal may consent to examine a complaint presented outside this period if it considers that it was not reasonably practicable for it to be presented within the period.

complained of. If the dismissed employee's complaint is upheld the tribunal may award compensation. Alternatively or in addition it may make an order requiring the employer to reinstate or re-engage the indiviudal. In a case of action short of dismissal the tribunal may make a declaration that the complaint is well-founded and may award compensation.

Joinder

10 An employer who faces a complaint of unfair dismissal or action short of dismissal, and who claims that his action resulted from pressure put on him by a union or other person calling or threatening to take industrial action because of the complainant's non-membership of the appropriate union, may require the person who he alleges exerted that pressure to be joined as a party to the proceedings. If the tribunal finds the employer's claim well-founded it may make an order requiring that person to pay the employer any contribution which it considers to be just and equitable up to the full amount of any compensation it has awarded.

11 Similar provisions apply where an employer who faces an unfair dismissal complaint claims that he has taken the action against the employee concerned because of a requirement in a contract that employees doing certain work should be members of a union. If the employer has asked the contractor to waive that requirement in respect of the employee concerned but the contractor has refused and the tribunal finds the employer's claim well-founded, it may make an order requiring the contractor to indemnify the employer for the compensation awarded. If the contractor claims that he refused to waive the requirement of union membership in this case because of pressure exerted on him by a union or other person calling or threatening to take industrial action, he may require the person he claims exercised the pressure to be joined as a party.

Unreasonable exclusion or expulsion from a union

12 The Employment Act 1980 provides individuals with new statutory rights in relation to their unions. Any person who is employed or is seeking employment in a job where it is the practice, in accordance with the closed shop agreement, to require membership of a specified trade union or unions, has the right not to have an application for membership of the union unreasonably refused and the right not to be unreasonably expelled from that union.

13 An individual may present a complaint to an industrial tribunal against a trade union that he has been unreasonably excluded or expelled from that union,

within the period of six months* of the refusal or expulsion. Where the tribunal finds the complaint well-founded it will make a declaration that his exclusion or expulsion was unreasonable.

14 Where such a declaration has been made by the tribunal, or by the Employment Appeal Tribunal on appeal, the person who made the complaint may make an application for compensation for any loss he has suffered. Such an application may not be made before the end of the period of four weeks following the date of declaration or after the end of the period of six months following the date of the declaration.

15 If, following the tribunal's declaration, the complainant has been admitted or re-admitted to the union by the time he applies for compensation, the application shall be to the industrial tribunal which may award compensation to be paid by the union up to a statutory maximum.

16 If, following the declaration, the complainant has not been admitted or re-admitted to the union, the application shall be to the Employment Appeal Tribunal which may award compensation to be paid by the union up to a higher maximum which is also fixed by the legislation.

Common Law Rights

17 The provisions of the Act do not in any way detract from existing rights under common law. Under the common law a person may complain to the courts that action taken against him by a trade union is either contrary to its own rules or that in expelling or otherwise disciplining him the union did not act in accordance with the requirements of natural justice.

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* A tribunal may consent to examine a complaint presented outside this period if it considers that it was not reasonably practicable for it to be presented within the period.

C CLOSED SHOP AGREEMENTS AND ARRANGEMENTS

(a) Before a Closed Shop is Considered

18 Before there is any question of negotiating on proposals for a closed shop, employers and trade unions should take account of the following factors.

Employers

19 Closed shop agreements, like other collective agreements, require the willing participation of both parties. Employers are under no obligation to agree to a closed shop.

20 Employers' associations may be able to appreciate the implications of a closed shop agreement for industrial relations in the industry or locality generally. They should be consulted at an early stage.

21 Employers should expect a union to show a very high level of membership before even entertaining the possibility of agreeing to a closed shop.

22 Employers should acquaint themselves with the legislation (see Section B above). In particular they should be aware that there will need to be a secret ballot of those who would come within the scope of a proposed closed shop.

23 The employer should have special regard to the interests of particular groups of staff who as members of professional associations are subject to their own code of ethics or conduct. Because the obligations imposed by such a code may be incompatible with the full range of union activities including, for example, participation in industrial action endangering health or safety, the employees concerned might well reasonably object to joining a union.

24 The employer should also carefully consider the effects of a closed shop on his future employment policy or industrial relations. It might, for example, impede the flexible use of manpower or limit the field of choice in recruiting new staff.

Unions

25 Before seeking a closed shop a union should already have recruited, voluntarily, a very high proportion of the employees concerned.

26 A union should be sure that its members who would be affected themselves

favour a closed shop. High union membership among those to be covered by the proposed closed shop agreement is not in itself a sufficient indication of their views on this question. Some members may wish to leave the union before the agreement takes effect in order to preserve their future freedom of choice to belong or not to belong to a union.

27 A union should not start negotiations for a closed shop agreement which excludes other unions with a membership interest in the area concerned, before the matter has been resolved with the other unions. If affiliated to the TUC, the union should have regard to the relevant TUC guidance on this matter.

28 If proposals for a new closed shop agreement become a matter of dispute between employer and union, the issue should be dealt with in accordance with the disputes procedure of the firm or industry concerned. The conciliation services of the Advisory, Conciliation and Arbitration Service will be available.

(b) Scope and Content of Agreements

29 Any new closed shop agreements should be clearly drafted. The agreement should therefore:

a indicate clearly the class of employees to be covered. This can be done by reference, for example, to the grade or location or bargaining unit concerned. An agreement should not necessarily cover all employees at a location or in a grade. Some examples of groups which might well be excluded are professional, managerial, part-time staff, or personnel staff. All exclusions or exemptions should be clearly stated in the agreement;

b make clear that existing employees, and those who can show that they have genuine objections on grounds of conscience or other deeply-held personal conviction to union membership, will not be required to be union members;

c make clear that where an individual has been excluded or expelled by his union, no other action, whether by the union or the employer, will be taken against him before any appeal or complaint regarding the exclusion or expulsion has been determined;

d provide that an employee will not be dismissed if expelled from his union for refusal to take part in industrial action;

e set out clearly how complaints or disputes arising from it are to be resolved.

as copies of the proposed agreement, should be made available for a reasonable time before the date of the ballot. Suitable arrangements should be made to inform those who might otherwise not have access to such information due to sickness or absence from work or for other reasons.

(d) The framing of the question

The ballot form should be clear and simple. The question asked should be limited to the single issue of whether or not membership of the union(s) party to the proposed agreement, or otherwise specified in it (see paragraph 31 above), should be a requirement for employees in the class of employment it would cover. If several questions are asked on other issues raised in the ballot, this may confuse the outcome.

(e) Method of balloting

The ballot should be conducted in such a way as to ensure that, so far as reasonably practicable, all those entitled to vote have an opportunity of voting, and of doing so in secret. Either a workplace or a postal ballot may meet these requirements. In the case of a workplace ballot, arrangements should be made for those absent from work for any reason at the date(s) of the ballot to register their vote.

(f) Conduct of the ballot

Before the ballot can be held, decisions will be needed on such matters as the method of distributing the ballot forms and arranging for their return and counting, the time to be allowed for voting, and the persons charged with conducting the ballot. There will clearly be greater confidence in the ballot if it is conducted by an independent body or persons who are also made responsible for publishing the results.

(g) Other matters

Agreement should also be reached in advance on such matters as procedure for handling disputes about eligibility, spoilt votes and any other issues, and the safe keeping of ballot papers until an agreed destruction date.

34 The Employment Act 1980 lays down a minimum level of support for a new closed shop - that is 80% of those entitled to vote - if this is to furnish employers with

It should provide appropriate procedures which give the individual concerned an adequate right to be heard and enable any question about non-membership of a union to be fairly tested. Such procedures can usefully provide for independent arbitration of an individual's objection to union membership;

f provide for periodic reviews (see paragraphs 41-45 below).

30 If the parties agree that an alternative to union membership would be the payment to a charity by individual non-unionists of a sum equivalent to the union membership subscription, the agreement should clearly recognise that such a payment would be voluntary. The agreement between the parties cannot limit the statutory right of the individuals concerned.

31 Where other unions have a known interest in the area to be covered by the agreement, it may provide for membership of unions other than those actually party to it. Where unions affiliated to the TUC find themselves in a dispute which has not been settled locally, they should refer the issue to the TUC.

(c) Secret Ballots

32 Under the Employment Act 1980 (see paragraph 8(c) above) a secret ballot should be held of those to be included within the scope of any proposed new closed shop.

33 Employers and unions will need to reach agreement on the following aspects of the management of such a ballot:

(a) The proposed union membership agreement

The terms of the proposed agreement should be worked out before it is put to the test of a ballot of those to be affected by it.

(b) The definition of the electorate

The electorate should be all members of the class of employee to be covered by the proposed closed shop including those, like existing non-union employees, who will retain a personal right not to join the union, whatever the outcome of the ballot.

(c) Informing the electorate

Notice of the intention to hold a ballot and any relevant information, such

a defence against possible future unfair dismissal claims or complaints of action short of dismissal. Employers may well feel that a higher figure than this should be required before they agree to such a radical change in employees' terms and conditions of employment. Employers should agree with the union on the figure appropriate in their case before the ballot and make this known to those entitled to vote.

35 Disagreements on arrangements for secret ballots should be dealt with, if necessary, by the normal disputes machinery for the firm or industry concerned. The conciliation services of ACAS will be available.

(d) Operation of new or existing agreements

36 Closed shop agreements should be applied flexibly and tolerantly.

37 Before any potential new employee is recruited he should be told of any requirement to become a union member and any relevant arrangements which apply to the operation of the closed shop.

38 Employers and unions who have negotiated a closed shop, and employees in scope of it, should not impose unreasonable requirements on those who are not parties or in scope of the agreement. A requirement of union membership should not be imposed on the employees of contractors, suppliers and customers of an employer.*

39 Employers and unions should not contemplate any disciplinary action before procedures for resolving disputes and grievances which arise under the agreement are exhausted.

40 Employers and unions should take no action against an employee who has been expelled or excluded from a union, until any appeal under union appeal procedures, including those provided by the TUC, has been determined and any industrial tribunal proceedings on the case have been completed.

(e) Review of closed shop agreements and arrangements

41 All closed shop agreements, new or existing, should be subject to periodic review.

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* The Employment Act 1980 provides special provisions for joinder in unfair dismissal cases in this situation. See paragraph 11 above.

42 Reviews should take place regularly every few years, and more frequently if changes of the following types occur:-

(i) changes in the law affecting closed shops, like those of the Employment Act 1980;

(ii) changes in the parties to a closed shop agreement; for example where the business of the original employer is taken over by another;

(iii) a significant change in the nature of the work performed by those covered in the agreement with consequential changes in the occupational structure;

(iv) changes in the composition of the workforce, for example where skills required are altered by substantial technological change;

(v) a substantial turnover of the labour force since the agreement or arrangement was entered into.

43 If in the course of the review the parties decide that they wish to continue the agreement (or informal arrangements) they should consider what changes need to be renegotiated to bring it into line with the requirements of paragraph 29 above. If, however, the agreement is thought no longer to serve the purpose for which it was intended or there is evidence of insufficient support among those covered by the agreement, the parties should agree to allow it to lapse. And either party, having given any period of notice specified in an agreement, can terminate it.

44 Where as a result of this review the employer and union favour continuing the agreement or arrangement, they should ensure that it has continued support among the current employees to whom it applies. Where no secret ballot has previously been held - or has not been held for a long time - it would be appropriate to use one to test opinion. In that event the guidance in paragraphs 32-35 above will be relevant.

45 Closed shop agreements which require people to belong to a trade union before they can be employed (the pre-entry closed shop) particularly may infringe the right to work. No new agreements of this type should be contemplated and where they currently exist the need for their continuation should be carefully reviewed.

D UNION TREATMENT OF MEMBERS AND APPLICANTS

46 Union decisions on exclusion or expulsion from membership in closed shop situations should be taken only after all rules and procedures have been fully complied with.

Union rules and procedures

47 In handling admissions unions should adopt and apply clear and fair rules covering:

(a) who is qualified for membership;

(b) who has power to consider and decide upon applications;

(c) what reasons will justify rejecting an application;

(d) the appeals procedure open to a rejected applicant;

(e) the power to admit applicants where an appeal is upheld.

48 Unions should also adopt and apply clear and fair rules covering:

(a) the offences for which the union is entitled to take disciplinary action and the penalties applicable for each of these offences;

(b) the procedure for hearing and determining complaints in which offences against the rules are alleged;

(c) a right to appeal against the imposition of any penalty;

(d) the procedure for the hearing of appeals against any penalty by a higher authority comprised of persons other than those who imposed the penalty;

(e) the right of an expelled member to remain a member so long as he is genuinely pursuing his appeal against the original decisions.

49 Union procedures on exclusion or expulsion should comply with the rules of natural justice which include giving the individual member fair notice of the complaint against him, a fair opportunity of being heard, a fair hearing, and an honest decision.

50 Unions affiliated to the Trades Union Congress should bear in mind its

guidance on these matters, and inform individuals of the appeals procedure the TUC provides for those expelled or excluded from membership of a union.

51 In general voluntary procedures are to be preferred to legal action and all parties should be prepared to use them. However, since an individual may face considerable economic loss or adverse social consequences as a result of exclusion or expulsion from a union it would be unreasonable to expect him to defer his application to a tribunal.* Unions should therefore not consider taking action likely to lead to an individual losing his job, until its own procedures have been fully used and any decision of an external body, such as the Independent Review Committee of the TUC, has been received.

52 When determining whom they might accept into membership the factors which unions may reasonably have regard to include the following:

(a) whether the person applying for membership of a union or section of it has the appropriate qualifications for the type of work done by members of the union or section concerned;

(b) whether, because of the nature of the work concerned, for example acting, the number of applicants or potential applicants is so great as to pose a serious threat of undermining negotiated terms and conditions of employment;

(c) whether the TUC's principles and procedures governing relations between unions or any findings of a TUC Dispute Committee are relevant.

Industrial Action

53 Disciplinary action - or the threat of it - should not be taken by a union against a member for refusal to take part in industrial action undertaken by the union -

(a) because the action would involve a breach of a statutory duty or the criminal law, would contravene the member's professional or other code of ethics, would constitute a serious risk to public safety, health or property, or would be contrary to the union's own rules;

(b) because the action was in breach of a procedure agreement;

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* Complaints of unreasonable exclusion or expulsion to a tribunal are subject to a time limit of six months. [See paragraph 13 above.]

(c) because the action had not been affirmed in a secret ballot:

(d) by simply crossing a picket line.

E THE CLOSED SHOP AND THE FREEDOM OF THE PRESS

54 The freedom of the Press to collect and publish information and to publish comment and criticism is an essential part of our democratic society. All concerned have a duty to ensure that industrial relations are conducted so as not to infringe or jeopardise this principle.

55 Journalists, wherever employed, should enjoy the same rights as other employees to join trade unions and participate in their activities. However, the actions of unions must not be such as to conflict with the principles of Press freedom. In particular any requirement on journalists to join a union creates the possibility of such a conflict.

56 Individual journalists may genuinely feel that membership of a trade union is incompatible with their need to be free from any serious risk of interference with their freedom to report or comment. This should be respected by employers and unions.

57 A journalist should not be disciplined by a trade union for anything he has researched or written for publication in accordance with professional standards.

58 Editors have final responsibility for the content of their publications. An editor should not be subjected to improper pressure - that is, any action or threat calculated to induce him or her to distort news, comment or criticism, or contrary to his or her judgement, to publish or to suppress or to modify news, comment or criticisms. Editors should be free to decide whether or not to join a trade union.

59 The editor should be free to decide whether or not to publish any material submitted to him for publication. He shall exercise this right responsibly with due regard for the interests of the readers of the publication, the employment or opportunities of employment of professional journalists, and the agreed policy of the publication.

ANNEX - THE DEFINITION OF A UNION MEMBERSHIP AGREEMENT

Section 30 of the Trade Union and Labour Relations Act 1974 (as amended in 1976) says

"union membership agreement" means an agreement or arrangement which -

(a) is made by or on behalf of, or otherwise exists between, one or more independent trade unions and one or more employers or employers' associations; and

(b) relates to employees of an identifiable class; and

(c) has the effect in practice of requiring the employees for the time being of the class to which it relates (whether or not there is a condition to that effect in their contract of employment) to be or become a member of the union or one of the unions which is or are parties to the agreement or arrangement or of another specified independent trade union;

and references in this definition to a trade union include references to a branch or section of a trade union; and a trade union is specified for the purposes of, or in relation to, a union membership agreement if it is specified in the agreement or is accepted by the parties to the agreement as being the equivalent of a union so specified."

Section 57 (3E) of the Employment Protection (Consolidation) Act 1978 [contained in Section 7 of the Employment Act 1980] has the effect that for the purpose of determining

(a) whether a person has been a member of the class of employees to which the agreement relates since before it took effect*, or

(b) whether or not the employee belongs to the relevant class of employees entitled to vote in a ballot on a new closed shop**,

any attempt by the parties to the agreement to define the class by reference to employees' membership or non-membership of a union, or objection to membership, shall be disregarded by tribunals.

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* See paragraph 8(b)

** See paragraph 8 (c) above

CONFIDENTIAL

PRIME MINISTER

CODES OF PRACTICE ON PICKETING AND THE CLOSED SHOP

Following your Private Secretary's letter to mine of 14 July I have made some small amendments to the draft Codes and covering papers in the light of a number of helpful comments from colleagues (to whom I am writing separately) and I attach a copy of the drafts in the form in which I am publishing them tomorrow for consultation. The period of consultation will last until 10 October.

I am copying this minute to members of E Committee, the Lord Chancellor, the Home Secretary, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

JP
4 AUGUST 1980

CONFIDENTIAL

Caxton House Tothill Street London SW1H 9NA

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

The Rt Hon Sir Keith Joseph Bt MP
Secretary of State
Department of Industry
Ashdown House
123 Victoria Street
London SW1

4 August 1980

4/8

Dear Keith

GREEN PAPER ON THE REVIEW OF TRADE UNION IMMUNITIES

Thank you for your letter of 30 July.

I do have in mind that the Green Paper should set the question of union immunities in a wide perspective, including relevant foreign law and experience. I think this is necessary if it is to serve its purpose of promoting a really informed public debate.

But it is, as you recognise, a paper that is to deal with union immunities in relation to industrial action. That is what we decided and that is the way I am approaching it. It is helpful to have your suggestions at this stage and I shall fully consider them.

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

Yours ever

Jim

SW

Ind Pol

Caxton House Tothill Street London SW1H 9NA

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

The Rt Hon Norman St John Stevas MP
Chancellor of the Duchy of Lancaster
Privy Council Office
68 Whitehall Place
LONDON SW1

31 July 1980

Dear Norman

Now that the Employment Bill has completed its stages in both Houses - and I am most grateful for your and Christopher Soames' help over this - I thought I should let you know my plans for the draft Codes on Picketing and the Closed Shop.

I propose to issue the draft Codes for consultation shortly after Royal Assent and the period of consultation will run until 10 October. I shall then, after obtaining the agreement of colleagues to any revisions, bring forward the draft Codes in their final form for the approval of both Houses by affirmative resolution as the Bill requires. It is necessary that a "slot" should be found in the spill-over session for these two debates, if the Codes are to be brought into operation as soon as possible for next winter's pay round. Since the issues the Codes raise are fairly controversial two hours debate for each at a minimum would seem to be required in the Commons. Christopher will know how much is required in the Lords.

I am copying this letter to the Prime Minister, the Lord President, the Chief Whips in both Houses and Sir Robert Armstrong.

Yours
Jim

CONFIDENTIAL

QUEEN ANNE'S GATE LONDON SWIH 9AT

2 July 1980

PM Briefing

To note - particularly the point at x about the suggested ceiling on the number of pickets.

Dear Jim

CODE OF PRACTICE ON PICKETING

In my letter to you of 16 July, I said that I would be consulting the police on the draft Code before it was published. I have asked my officials to let yours have the detailed comments of the police representative organisations, but this letter sets out their main points, and suggests the way we might handle them.

In general, the police welcome the Code as a firm attempt to define the rights and duties of pickets. Their two main concerns are the passages on mass picketing, and on limiting the number of pickets.

First, the police would have preferred not to see the Code refer to a specific normal maximum number of pickets. The Association of Chief Police Officers are concerned in particular that although the Code is not binding, the effect of having a specific number stated in the Code, will be to fetter their discretion. They see their legal responsibility to make a judgment about what may or may not be appropriate in particular circumstances as the key to being able to enable those who wish to work to do so, and at the same time to keep order. They fear that once a specific number is stated, it will become a focus (possibly artificially) of argument and conflict. They make the point that in some cases a limit of six may be more than would be reasonable, in others that six may be too few.

Secondly, the police have suggested that the Code ought to try to distinguish between the actions of pickets and those of demonstrators supporting them. The words 'mass picketing' have come to be used to describe both these groups, and the police argue that while the process of picketing may degenerate into a mass demonstration, that is not the same as mass picketing.

The specific reference to a limit of six is central to the firmness and clarity of the Code, but I am bound to pay a good deal of attention to the views of the police, who are responsible for enforcing the law and maintaining order on picket lines. While

/I do not believe

The Rt Hon James Prior MP

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I do not believe that the reservations they have expressed to me privately will necessarily mean that when you publish the Code, they will strenuously oppose, in public, the specific mention of six pickets at an entrance, we will want to avoid helping those who are hostile to our proposals, in particular the trade unions, making common cause with any police criticism.

I think it would be helpful, therefore, were we able to go some way to meet the concern of chief officers of police to see the limit on numbers, which the Code suggests, set more firmly in the context of their discretionary responsibility for enforcing the law. It would, therefore, help the presentation of the Government's case and indicate to chief officers of police that we had taken seriously the points they have put to me, if the Code were somewhat restructured and rewritten. I suggest we might link together in a single section the points made in paras 25 and 26, with para 33; delete the heading "mass picketing" and describe the passage as limiting numbers; and place the new section after the passage on the criminal law ending at para 24 and before the role of the police beginning at para 27. Annexed to this letter is a re-draft along the lines I propose.

The police have also made the point that they wonder whether the way in which the Code is written may not be too complex to provide for the majority of pickets the appropriate sort of practical guidance. I have some sympathy with the police here. They are very concerned to be able to deal effectively with the problem of large numbers and could be helped in their discussions with those who wish to picket if they had available a short document, written in a commonsense way.

If you agree, therefore, I will ask my officials, in consultation with the police and with your Department, to try to draw up such a child's guide on the basis of which individual chief officers might produce their own tailor-made documents for local use. Keith Joseph made a similar point in his letter of 17 July.

Finally, my Private Secretary sent with his letter of 18 July to yours some points made by the Cabinet Office. I have now considered these and agree with them. A copy is enclosed for the information of our colleagues who have not previously seen them. I am sending copies of this letter to the recipients of your minute of 2 July to the Prime Minister.

Yours

CONFIDENTIAL

LIMITING NUMBERS OF PICKETS

The main cause of violence and disorder on the picket line is excessive numbers. In any situation where large numbers of people with strong feelings are involved there is a danger that things can get out of control, and that those concerned will run the risk of arrest and prosecution.

This is particularly so whenever people seek by sheer weight of numbers to stop others going into work or delivering or collecting goods. In such cases, what is intended is not peaceful persuasion, but obstruction, if not intimidation. Such a situation is often described as "mass picketing". In fact, it is not picketing in its lawful sense of an attempt at peaceful persuasion, but mass demonstration, which may well result in a breach of the peace.

The number of pickets at the entrance to a workplace should, therefore, be limited to what is reasonably needed to permit the peaceful persuasion of those entering and leaving the premises who are prepared to listen. As a general rule, it will be rare for such a number to exceed six, and frequently a smaller number will be sufficient. While the law does not impose a specific limit on the number of people who may picket at any one workplace, it does give the police considerable discretionary powers to limit the number of pickets in any one place where they have reasonable cause to fear disorder. It is for the police to decide, taking into account all the circumstances, whether the number of pickets in the particular case is likely to lead to a breach of the peace.

The police will often discuss with the picket line organiser what constitutes a reasonable number of pickets in any one case. But it should be clear that if a picket does not leave the picket line when asked to do so by the police, he is liable to be arrested for obstruction either of the highway or of a police officer in the execution of his duty if the obstruction is such as to cause, or be likely to cause, a breach of the peace.

CODES OF PRACTICE ON PICKETING AND THE CLOSED SHOP

(i) The second sentence of paragraph 35 should be amended to read:

"Pickets should take particular care to ensure that the movement of supplies and the provision of services essential to the life of the community are not impeded, still less prevented."

(ii) In line with this, the opening sentence of paragraph 36 should be amended to read:

"The following list of essential supplies and services which are not to be impeded is provided as an illustration but is not intended to be comprehensive."

(iii) Although the list is not meant to be comprehensive, from past experience there are five important areas which should be added to it:

"Supplies essential to the operation of the emergency services, e.g. police, fire, ambulance, coastguard and air sea rescue services.

Essential services provided by voluntary bodies, e.g. Red Cross and St. John's ambulances, meals on wheels, hospital car service.

Mortuaries, burial and cremation services.

Products and processes without which essential activities cannot continue, e.g. chlorine, lime and other agents for water purification; industrial and medical gases; fertilisers; salt; metal foil; soaps, detergents and disinfectants.

Air Safety."

JH

CC AD

DEPARTMENT OF INDUSTRY
ASHDOWN HOUSE
123 VICTORIA STREET
LONDON SW1E 6RB
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Secretary of State for Industry

30 July 1980

The Rt Hon James Prior MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
London SW1N 9NA

Dear Jim.

TRADE UNION POLICY: GREEN PAPER

With the Employment Bill nearly on the statute book, and draft Codes of Practice on Picketing and the Closed Shop about which you have just written, going shortly into consultation, I expect you will soon be giving serious thought to the scope and content of the Green Paper which has been promised for later this year. No doubt, when you have drawn breath, you will be circulating your own proposals but in the meantime I thought it might be useful if I were to let you have a note of some of the issues which, after discussion with Ministerial colleagues here, I think it important we should aim to cover.

... 2 These are set out in the attached list. None of the items individually will surprise you although in one or two cases the subject matter goes beyond the narrow question of immunities to which the Green Paper was originally to be confined. But I believe that the Green Paper should address itself to a number of separate but related issues affecting the rights and obligations of trade unions which still deeply worry people and which, even if eventually not considered a matter for legislation, deserve a full public discussion on the basis of a fair and balanced consultative document. There seems to me to be advantage in including them in the consultative process for this may, depending on circumstances, enable industry and the public to judge the alternatives against direct experience of the effectiveness or otherwise of the measures included in the present Bill. The public reaction will also give the Government a guide to how much support we would have (including from trade unionists) for further steps in the step by step approach.

3 You may feel that I am overrating the power of legal change and that too many further reforms could bring the law into disrepute and disregard. I would answer that a full Green Paper would enable us to have an up-to-date feel of public attitudes which themselves have a bearing on such a risk.

/4 ...

4 Might it be a good idea if the Green Paper were to contain a statement on the provisions and operation of similar legislation in other countries? I suspect this will show the public that far from being overly restrictive we allow organised labour a good deal more freedom than is considered sensible by our main trading competitors.

5 I am sending copies of this letter and enclosure to members of E Committee and Sir Robert Armstrong.

PROPOSALS FOR INCLUSION AS DISCUSSION POINTS IN THE GREEN PAPER

IMMUNITIES

1 The manifesto included a pledge that the right to picket "should be limited to those in dispute picketing their own place of work". The Green Paper should consider the scope of restricting immunities to actions taken by employees of the firm actually in dispute.

2 The manifesto said "if the law can be used to confer privileges, it can and should also be used to establish obligations". The Green Paper should explore the scope for making trades unions liable for the actions of their members.

3 The Green Paper should consider conferring immunity on strikers only after a majority of the workforce in question had voted for strike action in an independently supervised ballot.

CLOSED SHOP ALTERNATIVES

4 Abolish the Closed Shop.

5 Replace the Closed Shop with 'Agency' shops as defined in the 1971 Act.

6 Retain the legal basis for Closed Shops but regulate their operation.

7 Control the Closed Shop by requiring:

a) a periodic confirmation vote in favour of retaining a a Closed Shop by a majority of the workforce in a secret ballot.

b) Freedom for a significant (specified) minority of the workforce affected by a Closed Shop to demand a confirmatory ballot.

AGREEMENTS

Collective agreements between trade unions and employers should be legally enforceable to the degree applicable to all other agreements under British Law.


1 AUG 1980

CONFIDENTIAL

Ind PS.

2 MARSHAM STREET
LONDON SW1P 3EB

My ref: H/PSO/15280/80

Your ref:

18 July 1980

R 14/7

CODES OF PRACTICE ON PICKETING AND THE CLOSED SHOP

Thank you for sending me a copy of your minute of 2 July to the Prime Minister, enclosing the drafts of these Codes.

I have no comments on the Code of Practice on picketing and am content for it to be issued for consultation as drafted. However, I am less happy with the Code on the closed shop. The proposed guidance on procedures seems eminently sensible but I think that anyone who was not familiar with the terms of the Employment Bill might have difficulty in piecing together the statutory framework in which the procedures are to operate. For example, there is only an oblique reference in paragraph 8 to the requirement for 80% support in a secret ballot before a new closed shop is established, and the position is not made clear until paragraph 34. I suggest that it would be easier for the reader to understand the new arrangements if Section B of the Code were expanded to cover the statutory position of employers and unions more generally, and not just in relation to the rights of the individual.

I am copying this letter to the Prime Minister and other recipients of your minute.

Yours ever

MICHAEL HESELTINE

The Rt Hon James Prior MP

CONFIDENTIAL

M. R.

Ann Wright 4

To glance — a good speech and a highly desirable theme.

MR. SANDERS

Attached is the text of a speech to be given on Monday by Mr. Prior in which he wishes to swing the current discussion of industrial relations away from law on to employee involvement. Apparently, he gave this speech a trial run with backbenchers last evening and D/Employment officials tell me it got a good reception.

I have given, in response to a request, some presentational and publicity advice about the speech. In particular, I have mentioned that at the top of Page 4 I think Mr. Prior should face up to the problem of unemployment; otherwise, in all the circumstances, he may get a guffaw.

To sharpen the point about trench warfare, I have suggested the use of the words "negative and arid trench warfare" and "positive, fruitful cooperation through employee involvement".

There is, of course, not much new in all this; what is interesting is Mr. Prior's attempt to change the presentation of discussion.

B. INGHAM

17 July, 1980

a. M. Phillips (2)

SPEECH BY

SECRETARY OF STATE

TO

TRIDENT TELEVISION

ON

MONDAY 21 JULY 1980

The Employment Bill will very soon complete its final stage in Parliament. We shall then have more balanced ground-rules for the conduct of industrial relations.

It has been very important to get that better balance and get it right. But the Act can embody no more than ground rules. The law cannot itself produce the high performance industrial society we need to achieve. That can only be done by positive and constructive action to improve industrial relations at the workplace. It is there that ultimate success is to be won. And no law and no Government can do the job which only a determined and positive approach by managements and employees can accomplish. I believe

/that the ....

that the need and opportunity has now come for us to chart a new course for industrial relations in Britain.

Everyone will have a view about what sort of future people are looking for. I believe they want to see the country assertive and confident, and true to our best traditions of enterprise and tolerance. They want a prosperous, competitive country in which we all work together to promote growth and development and a better quality of life for all.

What they don't want is for our vital energies to be burned up in futile and destructive conflict. They don't want the UK to end up as a quaint,

/de-industrialised...

de-industrialised, third-rate, inward-looking, off-shore island whose major characteristic is embittered labour conflict.

I believe therefore that the time has come for us to break out from the vicious circle of hostility and decline; to break out from the trench warfare mentality which has wrought such havoc in our industry. Our future as an industrial society depends on it.

Means

How do we set out this crucial challenge? One thing is certain: we won't do it without making the fullest use of our greatest natural resource - not oil or coal or fish - but people.

/We must ...

We must find means of enabling their energies to be released constructively at all levels in industry. This is the key to improving our industrial relations and to increasing our power to compete. It means joining many of our competitors in recognising the importance of fully involving employees in the conduct and fortunes of the business.

And by employee involvement I don't just mean communication by managers to employees whether before or after the event, or consultation from time to time. I mean a process through which all employees, including managers, can become involved in tackling the company's - and therefore their

/own - problems,

own - problems, and in which each employee can play a part in shaping his working life.

Of course, employee involvement is not a panacea - a miracle cure for all our problems. Nor can it be achieved overnight - it is much more difficult and complex than that. But I *am* convinced that wider employee involvement is both **economically desirable and socially beneficial**.

Justification

It is **economically desirable** because it generates cooperation in dealing with problems. It can help improve productivity; it can help facilitate acceptance of technical change; it can help diminish damaging conflict. It can be no accident

/that some ....

that some of our more consistently successful companies have developed extensive systems of employee involvement; or that our more successful European competitors have operated such systems for many years.

The CBI Guidelines for Action on employee involvement see the objective very clearly in terms of achieving :-

"a more competitive, more efficient British industry through improved employer/employee relationships."

For them it plainly means confident management adopting an open participative style towards decision making, thereby producing better decisions more readily accepted and more easily implemented.

/And as ....

And as Len Murray recently said for the unions:

> "If we all go on digging for prolonged trench warfare, that will be bad for managers, bad for workers, bad for investment, bad for jobs, bad for profit, bad for wages and bad for Britain".

I don't think there can be any disagreement with that.

Why is involving employees also socially beneficial? I believe that, if we are to have a society which is vigorous, vital and caring, we must encourage a sense of personal responsibility in people, whether as citizens or employees. Industry is not conducted in a vacuum. What is happening in society generally inevitably rubs off on industry, and vice-versa. If underlying aspirations are ignored, or still worse thwarted, it will produce cynicism and alienation. This would play into the hands of the destructive

/elements ...

elements in society.

All the social, political and industrial pressures are in the direction of employee involvement. Standards of education have risen. People are therefore no longer prepared to spend their working lives doing unsatisfying tasks over which they have no control.

As a recent CBI discussion document neatly put it on involvement:

> "This is no longer a choice for managers; good management of tomorrow's employees will demand it."

Nor can we ignore what is happening in Europe. In some ways we are a long way behind our Community partners in developing systems of employee

/involvement. All

involvement. All of them - save Ireland - have requirements of one sort or another for the provision of information about company plans to works councils or committees. And half of them have arrangements for employee representation on the upper board of a two tier system.

Moves are afoot within the Community to require member states to legislate for employee involvement. The Government is resisting legal compulsion, but we can't blinker ourselves to the trend towards harmonisation in Europe, both in the basis on which companies operate and in the treatment of their employees.

Problems

So I believe there are strong reasons for saying wider employee involvement is desirable and

/beneficial. What

beneficial. What then, you may say, is the fuss about? If it is so clearly good, it will happen anyway.

But this is far too complacent. You may have noted that Sir Raymond Pennock is making employee involvement a theme of his CBI Presidency. I am delighted that he is. For you may remember that he made absolutely clear last year his view that industry was failing in leadership and involvement. Action was essential. Many others in industry have echoed that view.

/I think it is fair

I think it is fair to say that there are signs that industry is now on the move but it's worth considering for a moment why more hasn't happened when there is wide agreement that more urgently needs to be done.

I think one reason is the strength of the adversary attitudes that history has built up in British industry.

In one sense there is a high degree of involvement already. There is probably more shop floor democracy in Britain than anywhere else in the world. But it has been developed primarily through collective bargaining. No-one who now wishes to extend involvement can ignore those existing arrangements. But it must be said that

the environment in which they have grown and the basis on which they work have generally tended to emphasise conflict rather than cooperation. And it is cooperative involvement in all its facets that we need to develop fast to meet the needs of the 1980s.

Involvement therefore calls for considerable adaptation by employees and unions. Until recent years the trade union movement has put most of its emphasis on collective bargaining, and some unions still do. They have been traditionally suspicious or worried about the confusion of roles which may, they feel, result particularly from forms of

/participation

participation at board level. There is a feeling that to be put into the position of appearing to take responsibility with managers for difficult decisions can lead to disaffection among their members. In some research my Department is sponsoring this feeling was pithily expressed by one shop steward -

> "If you fly with the crows you get shot down".

Managers and unions need to work very hard to overcome this kind of concern and to resolve the real problem on which it is based.

/Managements too have .....

Managements too have attitudinal barriers to overcome. Management by consent makes onerous new demands of managers. In practice, of course, management in this day and age mostly has to be by consent, but by no means all managers accept this or act if they understand its full implications. So a complete change of management style will be necessary in many cases if employees are to be successfully involved.

Then again, the introduction and operation of a system for involving employees require sustained commitment. The difficult changes of attitude,

/style and .....

style and practice must be permanent. A top level commitment has to be made to persevere. Successful employee involvement is based on trust; and patience and trust have to be proferred to be won. This is no short term, try it for a year and see policy.

/And Involvement .....

And involvement must be thought through carefully. It is disastrous for people to rush into ill-conceived schemes. A policy has to be evolved to suit the circumstances of the company. The existing mechanisms for informing and involving employees have to be reviewed. If they don't exist, they must be created. There must be arrangements for involving employees and their union representatives. Training may well be required of managers, supervisors and union representatives. Managements have to be prepared to reveal the facts about the company's situation, to discuss proposed changes and to carry the workforce with them. All aspects of involvement have to be explored. So it isn't at all a simple matter ~~for~~ of setting up a committee and sitting back.

/It isn't too

It isn't too surprising therefore that some find all this a somewhat daunting prospect.

Nevertheless, the prime responsibility is on management, however daunting the task, to make sure employees are properly involved at work and properly consulted. That is a pre-requisite of effective management and a support to a free society. And only management can take the initiatives necessary to get the process started and keep it a working reality.

Of course I sometimes hear industrial leaders say "why bother to make the effort to involve employees when they don't really want it?" This is

/really missing the point.

really missing the point. The point is that, of all our resources, the human resource is too valuable for it not to be used to the full.

But in any case it just is not true that employees and managers do not want to be involved more fully. You may have seen reports of recent research in which a sample of managers and shop stewards were interviewed. Managers were fairly evenly divided between those who rejected the whole idea; those who would accept limited form of involvement; and those who would be prepared to accept complete systems including board level participation.

/But what was really

But what was really interesting was the attitudes of the shop stewards. They overwhelmingly (91%) welcomed employee involvement and wanted it in order to deal in a practical way with day to day problems. I believe that in this practical approach to involvement, the stewards reflect the views of those they represent. It is a view that industry must recognise.

Where do we go from here?

It should be clear by now that involvement is no easy option. Successfully operated, it changes the whole atmosphere of industrial relations. It can't remove all conflict, but it maximises cooperation. But though it pays, organisations and attitudes

/tend to be slow to

tend to be slow to change. We must therefore encourage them to do so by whatever sensible means we can.

Much must depend on initiatives fitted to the particular circumstances of invididual companies. There is, therefore, only a limited role for Government. I am against legal compulsion at this stage. You simply cannot bring about the complex changes needed by imposing a single inflexible system on all companies. But in some areas we can supply incentives to action. So, for example, the current Finance Bill makes important concessions on the taxation of shares issued to employees as part of a profit-sharing scheme. A

/very important

very important element in involvement, in my view. A second example is the money provided by Government for training, both of shop stewards and of managers.

And as we proceed voluntarily, it is extremely important to see that expert advice and guidance is available. Free professional advice on employee involvement can be obtained from ACAS and, when job redesign and restructuring is involved, from my Department's Work Research Unit which is currently moving the emphasis of its work from research to application. Both the CBI and the TUC are involved in both organisations.

/There is also, I am

There is also, I am glad to say, a growing amount of informed guidance available from those in industry who already successfully practise employee involvement. The CBI has put out its own guidelines, has set up a special communications unit and is running conferences and seminars. The BIM has produced a code of practice, other organisations such as the Industrial Society and the Industrial Participation Association have issued guidance and are running conferences on the subject. I know that the Institute of Personnel Management is working on producing some down to earth detailed guidance for those who are actually introducing such systems. So there is plenty of guidance available and individual advice too.

/Conclusion

I have taken the

Conclusion

I have taken the opportunity today to put across a message which must now be kept firmly at the top of the agenda for industrial relations in the 1980s. We have just had a long, searching - and sometines heated - public debate on the role of law in industrial relations - and I am sure we have more to come. Yet there is no question in my mind that the future of our industrial relations depends more on our progress with involvement than it does on changes in the law.

The country will be looking to us to make a positive advance in this area in the next few years. I believe strongly that the voluntary approach is

/the right way. But

the right way. But there is a great responsibility on industry to show that it works. And the CBI are right to say that it is for employers to take the initiative. There is now plenty of guidance. What we now need is for employers to act and for their representative bodies to check the progress. There are the next steps and they have to be taken urgently.

It requires solid commitment not just from the top, but right through industry. As a nation we can't afford - politically, and economically - to let the chance slip. There is no doubt that this issue is now on the agenda, and it won't go away. And if British management doesn't deal with the issue it may find someone else's solution imposed on it.

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Secretary of State for Industry

17 July 1980

Rt Hon James Prior MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
London SW1

Dear Secretary of State

CODES OF PRACTICE ON PICKETING AND THE CLOSED SHOP

Thank you for sending me a copy of your minute of 2 July to the Prime Minister inviting comments on the draft Codes of Practice. I apologize for just missing your deadline.

Covering Paper for Closed Shop Code

2 It seems unnecessary to volunteer a view on the impracticality of banning the closed shop (the last sentence of paragraph 5 of the draft). There is a case once the Employment Bill is out of the way for using the Green Paper to test public reaction on a range of possible further measures on industrial relations, including further limitations on the closed shop in the medium or long term. While I appreciate that you may take some convincing on the wisdom of this, I hope that we can agree that the Code of Practice, coming as it does in the interlude between Royal Assent of the Bill and the Green Paper, could remain silent on this. I therefore propose that the last sentence of paragraph 5 is deleted, and that the next paragraph begins -

"What the Employment Act does is ....."

Code of Practice on Closed Shop

3 I welcome the strong statements in the draft, especially on contractual clauses enforcing union membership (paragraph 38) and on pre entry closed shops (paragraph 45). But such references are no substitute for thoroughly airing in the Green Paper the whole issue of possible further substantial changes in the law.

Paragraph 27

4 I note that here and elsewhere the Code recommends that unions comply with relevant TUC guidance and rules. While I appreciate the reasons for this, I wonder whether a statutory accolade in such broad terms is not a little risky in view of the TUC's hostility to

/the ...

the Employment Bill. Future TUC guidance may be at variance with the objectives of the closed shop provisions of the Bill.

Paragraph 33 (f)

5 The Code could give a stronger nudge towards unions' employing independent bodies to conduct ballots and publish results. This would be a good habit for unions to acquire although I appreciate that the Act does not require this and that there may be occasions when it is unwarranted (e.g if only a small number of employees are involved).

6 I think this part of the Code should take into account the new Clause in the Bill requiring employers to provide a place for a ballot if requested to do so.

Paragraph 42

7 It would be helpful if we recommended a minimum frequency (say, every 5 years) for the regular reviews of closed shops.

Paragraph 51

8 In line 3 the word 'considerable' could be deleted. It is unreasonable to expect an individual to defer his statutory rights in any circumstances.

Code of Practice on Picketing

9 I have no comments on this document. However, in view of the widespread popular confusion about the laws relating to picketing it might be desirable for the Government to produce in parallel to the Code a simple 'child's guide' to the law which e.g could be handed to those organising demonstrations of this kind. The Code itself - as a legal document - cannot serve this function too, although as far as it can be, the draft is clear enough. Among other things such a leaflet might counter any politically motivated 'guidance' issued by others.

10 I am sending copies of this letter to the Prime Minister and to the other recipients of yours.

Yours sincerely

I. Ellison

KEITH JOSEPH
(approved by the Secretary of State and signed in his absence)

Treasury Chambers, Parliament Street, SWIP 3AG
01-233 3000

17 July 1980

Richard Dykes Esq
Private Secretary
Department of Employment

Dear Richard,

CODES OF PRACTICE ON PICKETING AND THE CLOSED SHOP

The Chancellor was grateful for the sight of a copy of your Secretary of State's minute of 2 July to the Prime Minister enclosing the draft Codes of practice on picketing and the closed shop.

He has not been able to study the Codes as closely as he would wish: but he would like to suggest certain amendments to the Codes as well as to the draft covering papers. His comments on the covering paper on closed shops are as follows:

i) Para 4.

He suggests leaving out the sentences which read, "The Government have no quarrel with the aim of 100% membership as an objective to be achieved by trade unions voluntarily. What is objectionable is that it should be enforced by a closed shop." He does not think that this adds to the argument, and could be interpreted as meaning that we support 100% membership rather than being neutral.

ii) Para 5.

He would prefer to omit the last sentence, as this could prejudice the Government's decision on whether or not to re-consider the issue of the closed shop in the Green Paper.

iii) Para 6.

He suggests that the first two sentences could be re-worded to say, "The Employment Act has been framed to provide safeguards for individuals and remedies against abuses of the closed shop."

/As regards the covering

As regards the covering paper on picketing, he suggests that in the first sentence of para 5 the words "wherever it takes place" should be deleted.

Comments on the codes of practice

It could be argued that both Codes are misleading because no clear distinction is made between passages which provide that persons should or should not do certain things in order to comply with the law and passages which merely urge them to do or not to do certain things because your Secretary of State considers such action to be desirable(or not) in the interests of good industrial relations. The Chancellor thinks that the Codes should distinguish between exhortation and the requirements of the law.

He has a number of more specific comments and suggestions on the Code on the closed shop:

i) Para 12.

Does the document make clear enough the circumstances in which expulsion from a trade union would be "unreasonable"?

ii) Para 16.

Should there not be some mention of provision for reinstatement in the union, as well as of compensation?

iii) Para 29(d).

This appears to be slightly inconsistent with Para 53, with no reason for the distinction being given.

iv) Para 33(b).

The last sentence of this paragraph might enable classes of employees to be defined in such a way that elections could be rigged. Possibly, given what is said in paragraph 23, there is no need for this sentence.

v) Para 33(e) and (f).

These sections say only that ballots should be conducted in secret "so far as reasonably possible", and that it would be better if they were conducted by an independent body. Is this good enough?

/vi) Para 42.

vi) Para 42.

Should the document be more specific about the maximum interval between ballots? Should something be said about the circumstances in which either the employer or the employees can initiate a ballot?

vii) Para 43.

Although this probably reflects the actual situation, in practice it is not correct as a statement of law, since collective agreements can be made to be legally binding.

viii) Para 52(b).

This in effect says that the closed shop is a legitimate device to frustrate the operation of the market, and provides cover for the maintenance of indefensible working conditions etc in industries like printing and television. Does the Government really want to encourage the formation of closed shops designed to enforce an improvement in negotiated terms and conditions of employment?

ix) Para 59.

Could this be interpreted as signalling to the world the criteria on the basis of which editors can be harrassed by journalists and printers? Does it really need to be said at all?

I am sending copies of this letter to the Private Secretaries to the members of E Committee, the Lord Chancellor, the Home Secretary, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

yours sincerely

John Wiggins

A J WIGGINS

PART 5 ends:-

H. Sec to S/S Emp 16/7

PART 6 begins:-

Tsy to Emp 17/7

~~to Sec to DJS~~ (~~to H Emp Speech~~)