Industrial Relations Legislation

The Employment Bill

PART 7

INDUSTRIAL POLICY

Part 1: May 1979

Part 7: December 198

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
2.12.80							
8.12.80							
10.12.80							
16.12.80							
22.12.80							
31.12.80							
13.1.81							
15.1.81							
19.2.81							
24.3.81							
28.5.81							
12.6.81							
15.6.81							

PREM 19/491

PART 7 ends:-

S/S Trade ~~Chancellor~~ to S/S Employment 21.9.81

PART 8 begins:-

Ch of Exch to S/S Employment 16.10.81

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
E (80) 148	12.12.80
E (80) 44th Meeting, Minute 3	16.12.80
L (81) 49	19.2.81

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

Signed GHWayland Date 3 May 2011

PREM Records Team

Published Papers

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

1. Institute of Directors: Trade Union Law and the Pursuit of Prosperity – the next step
A Response to the Green Paper on Trade Union Immunities.
Published June 1981

2. CBI's Programme for industrial relations law reform: Response to Government Green Paper
Published 21 June 1981

Signed CWayland Date 3 May 2011

PREM Records Team

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

cc Mr Wolfson
Mr Walters
Mr Duguid.

Prime Minister (through MCS)

Mr Biffen seeks to ensure that his shipping interests are covered in Mr Tebbit's legislative proposals. MAP 6/x.

CONFIDENTIAL

From the Secretary of State

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

2 October 1981

Dear Norman,

FURTHER EMPLOYMENT LEGISLATION

Your minute of 23 September to the Prime Minister said that you envisaged putting proposals for employment legislation to E Committee in October. Since I shall be abroad for much of that month, it might be useful to write to you in case I am unavailable for E.

I want in particular to re-emphasise the importance of our trading and shipping interests of the points made in my letter of 4 August to Jim Prior. A summary of them is attached. A basic flaw in the law as it stands is its failure to define a trade dispute as excluding all circumstances where there is no dispute between an employer and his present employees, or his past employees in connection with their loss of employment. It is difficult to reconcile this with our manifesto commitment to protect the innocent. As you know, the adverse consequences of this have been shown in the shipping industry, with the detriment to the national interest set out in previous correspondence. This was why we decided last year in E Committee, when discussing what became the Employment Act 1980, to deal with industrial action in the merchant shipping industry in a later Bill.

Clearly this is the Bill in which we should tackle this problem, since there will be no better opportunity. You will doubtless have this in mind. But while provisions limited to the merchant shipping industry would meet the mandate of E, you and colleagues may feel

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From the Secretary of State

that in equity the arguments apply with equal force to shore-based places of employment as well. Should you feel that the best way to implement our commitment to legislate on the merchant shipping problems is by a general amendment to the definition of trade dispute, this would seem a highly satisfactory solution in accordance with our manifesto philosophy.

However, it occurs to me that although this approach would deal with the severest abuses permitted by the present law concerning secondary action (namely secondary action dragging what we might call the "one hundred per cent happy firm" into a dispute against their wish), this is only the extreme case of a wider problem. Less extreme cases involve secondary action against what one might call the "ninety-nine per cent happy firm"; ie secondary action on behalf of a small minority of strikers which can impose the wishes of the striking minority on that of a majority who would prefer to continue working. As such cases would not be helped by amending the definition of trade dispute, I would also join those who have been wondering whether S 17 of the 1980 Act should be looked at again. My specific interest in this question stems from my responsibility for movement of trade, where the industries concerned, including shipping, are, I think, especially vulnerable to secondary action not wanted by their own workers.

I hope you will also be considering early legislation to deal effectively with union-labour-only contract clauses, another problem I have written previously about to Jim Prior because of the difficulties of dealing with the issue solely through the competition legislation. The solution may well require action on trade union immunities more generally, and here too I would support whatever changes are needed.

From the Secretary of State

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I am sending copies of this letter to the Prime Minister, the Lord Chancellor, the Law Officers, E Committee colleagues and Sir Robert Armstrong.

Yours

John Biffen

JOHN BIFFEN

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ANNEX

CONSEQUENCES OF THE NAWALA JUDGEMENT FOR UK TRADE AND SHIPPING

If secondary industrial action is lawful against ships where there is no dispute between employers and crew, the following consequences arise:

a. continuing attempts to prevent low cost shipping operators using foreign crews from using our ports - if only high cost shipping can use UK ports the cost of our imports and exports is increased with consequences for our competitiveness and cost of living;

b. imitative action at home - attempts have been made to black vessels owned by a company controlled by the NEB because of the use of foreign crews, in circumstances where the use of higher cost crews would put the company out of business;

c. imitative or retaliatory action abroad - Panama has threatened the use of access to the Canal in retaliation;

d. the undermining of our negotiating position in international organisations, UNCTAD and elsewhere, in which we defend the freedom of the seas, the freedom of registration and free access to ports and competition for cargo; and

e. damage to the ship repair industry due to a fear of blacking, among especially Far East shipowners.

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PRIME MINISTER

FURTHER EMPLOYMENT LEGISLATION

I thought I should let you know the timetable I envisage for employment legislation in this coming session.

I plan to have my proposals for legislation ready for E Committee when it meets again in the second half of October. My intention would then be to issue a consultative document at the beginning of the new session. I would aim to keep the consultative period as short as possible with a view to introducing a Bill immediately after the Christmas recess.

I am sending copies of this minute to the Lord Chancellor, the Lord President of the Council, the Chancellor of the Duchy of Lancaster, members of E Committee, the Chief Whip, and Sir Robert Armstrong.

NT

N T
23 September 1981

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SUBJECT

cc Master

file VB

bc A. Duguid.
Sir R. Armstrong
Mr. Hoskyns
Mr. Wolfson.

10 DOWNING STREET

From the Principal Private Secretary

2 September 1981

R 9/9

Trade Union Immunities

As you know, the Prime Minister held a preliminary discussion with your Secretary of State at 1000 today about further legislation in the light of the responses to the Green Paper on Trade Union Immunities. The Chancellor of the Duchy of Lancaster and the Chief Whip, Mr. Hoskyns and Mr. Duguid were also present.

The Prime Minister said that the summary of responses circulated by your office on 27 August showed the complexity of the subject. It was possible to claim some support for almost anything. The Government needed to identify what had most support and would be most effective in shifting the balance of bargaining power.

The Secretary of State for Employment said that the two measures which had the strongest Parliamentary support were further restrictions on the closed shop and the ending of union labour only agreements. His advice would be against making changes beyond these. The unions were in quite a good posture at the moment. They were not united. Further changes would provide them with a rallying point. No measures would have a real impact on bargaining power during this session. If more was attempted, the unions would ensure it did not work. Further measures should be proposed in the next Manifesto for action early in the next Parliament. This Sword of Damocles would encourage self-regulation by the unions, while giving time for the 1980 Act to settle down and to be further tested in the courts. It was working well so far, in a period of unprecedented industrial peace.

The Secretary of State had talked to the principal organisers of the backbench Early Day motion - Gerry Neale, John Loveridge and Angus Maude - who had also asked for periodic reviews of existing closed shops. He recalled that after much debate it had been decided not to include this measure in the 1980 Act, despite strong backbench pressure during the report stage, because parts of industry had regarded it as disruptive. There would still be objections but the case was stronger now. Legislation could provide for revalidation by ballot of existing closed shops within one year of the passing of the Act. Thereafter anyone dismissed from a closed shop where a ballot had not taken place would be able to seek compensation or reinstatement. There could also be provision for

/ periodic reviews

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periodic reviews every three, four or five years. An alternative approach favoured by some would be to provide a right for a fixed percentage - perhaps 10% or 15% - of the workforce to trigger a review of a closed shop agreement. This would be regarded as more disruptive by industry.

The Secretary of State also proposed a new scale of swingeing damages. Where reinstatement was not sought, there could be a basic award of between £2,000 and £3,900 plus a compensatory award without an upper limit. Where reinstatement was sought in addition to the basic award, there could be a special compensatory award of 2½ times annual salary within limits of £12,000 to £20,000. Where an order of reinstatement was not complied with this element would rise to three times salary, subject to a maximum of £25,000.

The Prime Minister felt these scales were much too modest. In a breach of contract case a court might well award damages of at least 5-7 years' salary. She believed that redundancy payments for miners could be as high as £40,000. Where individuals had no alternative jobs to go to, the sums proposed seemed much too low. The Prime Minister also mentioned the merchant shipping case raised by the Secretary of State for Trade in correspondence. The Secretary of State for Employment did not think the problems raised by the Nawala case were acute. He thought they should be dealt with in merchant shipping legislation. To try and deal with them in industrial relations legislation would open up a very wide debate on questions of the definition of a trade dispute and the extent of immunities, arousing the opposition of the entire trade union movement. The Prime Minister pointed out that the main opportunity to use merchant shipping legislation had passed.

The Prime Minister said that many who had responded to the Green Paper seemed to want changes in the definition of a trade dispute, as well as alignment of S.14 Immunities with S.13 and enforceable procedure agreements. The Secretary of State said that he favoured the latter change in the longer term. But as an early change it was mainly supported by those - like the IoD - without responsibility for following it up. In fact almost no existing procedure agreements stood up to legal examination. Such a change would encourage trade unions to withdraw from procedure agreements with consequent damage to industrial relations.

The Chancellor of the Duchy said that the next bill should be seen as one stage in a larger programme of trade union reform. It should go as far as possible without precipitating a conflagration. There was conflict between what was logically desirable and what was practicable. Perhaps the Government should set out its intentions without necessarily acting on all of them now.

The Prime Minister thought this approach contained two disadvantages: it would give the unions advance notice so that they could mobilise opposition and it would emphasise the difference between the Government's beliefs about what was necessary and the action it had taken. She thought there was a strong case for taking at least one bold step, while avoiding very widespread change. The Chancellor of the Duchy said he favoured boldness. The mixed response to the Green Paper would provide a basis for explaining

/ that many

that many desirable changes could not be made yet. Mr. Hoskyns thought there was a difference between employers expressing uncertainty about timing and Government doing so. Government had to be able to justify a decision not to act where the need was clear.

The Chief Whip thought it was very important that the Government's stance at the next election should be one of real achievement. It would be very damaging if others could argue that two legislative bites had changed very little. Some union opposition was necessary to offset the criticism from those who felt the Government had not gone far enough.

The Secretary of State said that history showed that the unions could defeat legislation if they wanted to. Even where their funds were affected, the Con-mech case showed they could resist paying. If opposition was raised to the point where progress was ended then the electoral stance would be worse. As matters stood the Government could point to changes which had stuck.

The Prime Minister said that no-one was suggesting a very wide-ranging, comprehensive change. But there must be enough progress to defeat critics. Lord Denning's judgement in the Hadmor case had been very critical of part of the 1980 Act. She asked whether the case was going to the House of Lords. The Secretary of State was not sure, but did not think the case was directly relevant. The important thing was to hold the opinion of moderates like Sir John Boyd, Frank Chapple, etc. and maintain the present period of industrial peace. In his view, moderate opinion could not be held if S.14 Immunities were affected at all. The Prime Minister pointed out that Frank Chapple regarded compulsory ballots for elections as a reform of overriding importance. If this was done it might help secure his tacit support for other measures.

The Prime Minister thought that exposing union funds in strictly limited circumstances could help reduce the chance that individuals would end up in prison when the 1980 Act came under more intense pressure. Although it might not be possible or essential to avoid the risk of martyrdom altogether, Mr. Hoskyns thought exposure of union funds would at least reduce the risk that legal action could lead to imprisonment of local trade union organisers. While electoral popularity was not the main criterion, he thought it important that any further change should be readily explained to the electorate and awkward for the Opposition to pledge themselves to changing.

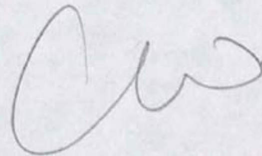
The Prime Minister believed that the promise of further reform of trade unions had been and remained important to the electorate. She remained concerned that the proposed compensation awards from the closed shop were insufficient. She was also concerned that the 1980 Act had not restricted picketing to the employee's premises and to cases where he was in dispute with his employer. It was still possible for employees to engage lawfully in blacking incoming goods or mail where there was no dispute on the premises. At present it was possible for this type of blacking to be enforced or encouraged by pickets drawn from those who worked on the premises. An employer might not act to prevent this. (The Secretary of State considered that action like this would amount to a dispute with the employer.)

/ The Secretary

The Secretary of State said he would have to put his views to E Committee later in the month after the TUC Conference. Others would be free to criticise his approach. He would give further consideration to the proposed levels of compensation for dismissals from closed shops. His strong advice would be against providing the spark for united opposition by attempting too much. He felt the 1980 Act had achieved far more than had yet been recognised. Further action on the worst abuses of the closed shop and union labour only agreements would consolidate the position. Most of the Parliamentary Party would support this.

In conclusion, the Prime Minister urged the Secretary of State to take account of colleagues' opinions in preparing his paper for E. It was very important to assure the public, including many trade union members, that something tangible was being done to alter permanently the balance of bargaining power and to offer real protection to innocent parties. At present the belief that the Government had done very little was far too widespread. The field should not be left open to others to put proposals which would secure electoral support. Many people had not forgiven the previous Conservative Government for surrendering the right to strike to essential public services. When the inhibitions on trade unions brought about by economic circumstances were lifted, the 1980 Act might prove less effective in restraining secondary action.

I am copying this letter to Davie Heyhoe (Chancellor of the Duchy of Lancaster's Office) and Murdo Maclean (Chief Whip's Office).



Richard Dykes, Esq.,
Department of Employment.

E.R.

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PRIME MINISTER

Industrial Relations Legislation

Mr Prior minuted you on 30 June (Flag A) setting out his initial thinking about proposals to bring to E later this month. You agreed that he should do so, but asked for a preliminary meeting, including the Chancellor of the Duchy and the Chief Whip. John Hoskyns will also be present.

John Biffen (Flag B) and the Chancellor (Flag C) have commented on Mr. Prior's initial thinking. Mr. Prior's office have also summarised the responses to the immunities Green Paper (Flag D). You will also want to look at the note from John Hoskyns below this minute, together with the copy of the suggestions the Policy Unit put up early last month.

MAP

1 September 1981

1 September 1981

Policy Unit

PRIME MINISTER

TRADE UNION LEGISLATION: THE NEXT STEP

As I understand it, the meeting tomorrow (Wednesday, 2 September) will be for familiarisation and general discussion of the Department of Employment's summary of Green Paper responses.

Before the recess, you saw our own paper (of 3 August) suggesting how we might proceed with a legislative package.

I enclose a fresh copy of this paper as you may like to look at it before tomorrow's meeting. If you are agreeable, I would like to circulate it to E colleagues on the evening of Thursday, 17 September as input to the discussion at E on 21 September. Agree?

JOHN HOSKYNS

3 August 1981

TRADE UNION REFORM: THE NEXT STEP

1. PURPOSES

1.1 The purposes of further measures are both economic and political. The economic case is that unions' excessive bargaining power:

(a) is a powerful obstacle to change which inhibits adaptability and productivity; and

(b) imposes a rigidity on wages which causes unemployment and sustains inflation.

1.2 Strikes themselves are not the main measure of the damage: at every negotiation, the knowledge - on both sides of the table - that striking would be easy and cheap for the unions but expensive for employers colours the bargain that is struck or even attempted. Temporarily, trade union bargaining power (outside monopolies) is constrained by high unemployment - with visible benefits to productivity, but no-one wants to rely on that for long.

1.3 Our unique legal framework has contributed to this imbalance of bargaining power. This is not the sole cause and changing it will not achieve miracles. But further legal change is necessary, requested by industry, and, unlike so many of our economic needs, within the power of Government to deliver.

1.4 When considering the economic impact of reform measures, it is useful to keep in mind the distinction between those that help to restore the balance in the private sector and those which might help in public sector near-monopolies (which are less susceptible to legal change). There is only a partial overlap.

1.5 The political purposes are to improve our stance at the next Election by:

(a) manoeuvring the Opposition into promising to repeal further popular reforms which should, by the Election, be already on the Statute Book.

(b) demonstrating that some of the more difficult but necessary reforms <u>can</u> be made to stick, and so heading off the charge that the Manifesto contains unworkable, confrontational policies;

(c) heading off a more radical approach by the SDP; there is already some evidence of their moving to the right on the unions and the social market economy;

(d) enabling us to explain and defend our economic measures coherently - putting much of the blame for unemployment on unions - and pointing to <u>action taken</u> (not just promises) to avoid a repetition of stagnation and high unemployment.

2. <u>THE NEED FOR A PLAN</u>

2.1 The role of trade unions in our economy is too central for us to be put off by the complexity or risks involved in selecting the next measures of reform. Those measures which stand to achieve most also contain the highest risks. Whatever action we take, there will be some critics who say we've done too much; others too little. From both the economic and political points of view, we want to achieve the maximum possible impact on the bargaining balance <u>without</u> appearing at Election time to have tried to implement essentially unworkable proposals. We need measures to help us demonstrate that we are on the road to putting the economy into some sort of order, with real benefits flowing in a second term. We have to convince industry and the media, as well as our natural supporters, that we have begun to lay the foundations of a healthy economy.

2.2 Different measures have different characteristics, for example:

(a) Those which are readily comprehensible and politically saleable - "you know it makes sense" - but which have limited real impact on the bargaining balance.

(b) Those with significant impact on the balance in the private sector.

(c) Those which curtail the monopoly bargaining power in the public sector.

(d) Those which stand a much greater chance of working if they had a fresh mandate - and would help to attract such a mandate.

2.3 It is unlikely that any measure will bring significant, visible economic benefits during the present Parliament. The political benefits come first.

3. MEASURES AVAILABLE

3.1 Closed shop

Some measures are more concerned with issues of individual liberty than making the economy work. They include the changes which Jim Prior has already suggested in his minute of 30 June, viz: increased safeguards and compensation for dismissal from closed shops; revalidation of closed shops; removing union labour only requirements in contracts. These are widely supported and should not be very difficult to enforce. They are certainly measures which the Opposition will regret being committed to repeal. The judgment on what should be done on the closed shop will obviously be influenced by the European Court decision expected very shortly.

New sentence to effect that Strasbourg does not alter our view. We support J.P.'s position on closed shop.

3.2 Making trade unions liable to civil action

Aligning the Section 14 immunity should provide a much more effective means of enforcing the changes in the 1980 Act and any future changes. Legal remedies would still be quite rare and usually confined to injunctions. But the possibility of damages would influence behaviour. Once established, many Green Paper respondents, including CBI, agree that it should restrict the scope for martyrdom by individuals. It would establish the principle that unions are not above the law, but responsible for the costs of their own actions - just like companies or individuals. This is a simple and saleable proposition which received very widespread support, although some (including the CBI) have suggested that there should be upper limits to the damages that can be awarded against trade unions. They and others have suggested that unions should be presumed responsible for the action of their members and officials unless they can satisfy a court that they have used their best endeavours to prevent industrial action. This should lead to greater discipline within unions, though of course this will take time to establish.

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3.3 Restricting immunity to primary action only;
Making Procedure Agreements enforceable;
Narrowing the definition of a trade dispute

Several bodies (including CBI) have put forward a neat package which would attempt to make procedure agreements enforceable and remove immunity for all secondary action - doing both by redefining a legitimate trade dispute. Only industrial action against one's employer within procedure would retain immunity. This is a highly attractive package, but it is open to question whether it would work without better means of enforcement (ie the change in trade unions' liability discussed at 3.2 above). Nearly all those who have proposed this redefinition have also proposed that trade union funds should be liable. Without this change, the scope for martyrdom would be increased. But to make both these changes at once would amount to a comprehensive package which might run into such initial opposition that its best chance of success would be on the basis of a mandate - by Election or referendum - to establish clear moral authority for the change.

3.4 Secret ballots

3.4.1 Nearly all respondents want to encourage secret ballots, but they are divided on whether they should be compulsory. The economic impact of this change might be limited, but should be favourable: it is less easy for union negotiators to call a strike quickly or unreasonably when they know that they must first cross the hurdle of a secret ballot. The deterrent effect will be greater if this change is combined with further measures to increase the cost of striking to individual union members, eg by raising the "deeming" level (which in any case should have been at least indexed).

3.4.2 If the requirement were extended to elections for union representatives at all levels, there should be considerable long-term benefit. (In USA, a legal requirement for regular elections by secret ballot for union officers at national, regional and local level, is said to have led to much more responsible union behaviour.) The political benefits of moves to enforce secret ballots are not in doubt. Most voters are repelled by strike decisions taken on a show of hands. It is very hard for unions and the Opposition to argue against the basic democratic procedure of the secret ballot.

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3.4.3 Although unions object strongly to interference in their own procedures, we believe the most straightforward way of making this reform is to declare that in future whatever Section 13 and 14 immunities are available, these are <u>only</u> available to trade unions - and their officers and members - which have adopted secret ballots for both elections and strike decisions as part of their own rules. In addition, it would be necessary for the strike decision to have actually been taken by secret ballot to qualify for immunity.

3.4.4 Most respondents have <u>not</u> advocated trying to affect union elections concentrating on strike decisions. Even on strike decisions, many have argued against <u>compulsory</u> secret ballots. But making all immunity <u>conditional</u> on a secret ballot is not compulsion: it merely defines minimum procedures necessary to obtain a privilege. Strikers who did not comply would take the chance that others (their employers, other workers, aggrieved third parties) might seek a civil remedy.

3.4.5 A halfway house suggested by many companies (which received wide-spread back-bench support last year) is to legislate to provide for the right of a group of workers affected by a proposed strike to petition for a ballot. Again, the sanction could be loss of all immunities.

3.4.6 Another measure proposed by some is that immunity for <u>secondary action</u> should be conditional on a secret ballot having taken place. We think this is objectionable in principle: if we conclude that secondary action is unfair, then it must always be unfair; the right to injure third parties should not simply depend on a vote.

3.5 <u>Restraining public sector bargaining power</u>

3.5.1 In our view, the root problems in the public sector are connected with their monopoly or near-monopoly status. Our first priority should be to introduce an element of competition wherever possible. Legal changes in the status of trade unions can only have a limited impact. The Green Paper discussed a variety of proposals for "protecting the community". In the end, most of these fall down on the problem of enforcement. Few respondents have suggested that strikes should be made unlawful in essential services, though that could come one day, once we have established the means to enforcement. Some (including EEF) favour a power to order a cooling-off period.

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3.5.2 Many companies have suggested that the best answer to public sector bargaining power is no-strike agreements. With the present imbalance in bargaining power, the cost of these would often be too high, but in any event they do not constitute a legislative change. (Once the power of the strike threat is reduced, the cost would lower.)

3.5.3 However, there is one suggestion which would have a real impact on bargaining power in the public sector, especially on heading off the growing power of the selective strike. This is the EEF's proposal for enabling firms to lay off white collar workers without pay when their normal work is disrupted by the action of others within the company. The EEF have also suggested a still more radical proposal: that companies should be free to lay off all workers during disruption of essential services. The former idea is overdue and may even gain some support from manual workers, who at present enjoy a less privileged position. Memories of the use of selective action against the taxpayer by the Civil Service are still fresh. But the second idea would be stigmatised as an interference in employment contracts which affected the status of all employees in a fundamental way. It has attractions, but would be very hard to sell.

3.6 Unfair dismissal

Section 62 of the Employment Protection (Consolidation) Act 1978 allows a striker who has been dismissed or not offered re-engagement to claim unfair dismissal if he can show discrimination in this matter. The EEF says this operates unfairly against the employer and urges an early change.

4. THE RIGHT KIND OF PACKAGE

4.1 We have looked carefully at the range of measures possible and the amount of support they have received from respondents to the Green Paper. Most of the major private sector bodies believe that further major changes in the bargaining balance are needed. But although some stress urgency (IoD), others are either equivocal (CBI) or downright cautious (EEF) on the timing of major measures. (EEF press hard, however, on lay-off pay, which was not raised in the Green Paper itself.) Their caution reflects concern that any further changes should stick.

4.2 We think it would be best to rule out either:

(a) an essentially cosmetic package of minor changes; or

(b) a comprehensive package whose workability would be very hard to establish in the lifetime of this Government.

4.3 If a middle approach is accepted - ie one that contains some cosmetics and one or more significant advances - there are still difficult judgments to be made about different levels of boldness and risk. We cannot know in advance how successful a measure will be - still less how it will look after only one or two years. In that timescale, much will depend on circumstances and the personalities and tactics of those involved.

4.4 Although we would like to see more achieved, we think it would be best to limit the next step to:

(a) A bundle of relatively minor changes to correct the worst abuses: increased safeguards and compensation for dismissal from closed shops; revalidation; removing union only requirements for contracts; plus the dismissal for strikers change discussed at 3.6 above.

plus

(b) A change to allow laying-off of white collar workers during disputes within the company or organisation.

plus

(c) one of the following:

(i) making trade union funds liable, by aligning Section 14 immunities with Section 13;

or (ii) making all Section 13 and 14 immunities conditional upon a union requiring secret ballots for strike decisions and elections, and ballots actually taking place;

or (iii) giving, say, 15% of workers affected by a dispute the right to call for a ballot first - with the loss of all Section 13 and 14 immunities where their wishes were denied.

4.5 As regards the items under (c), our preference would be for (i): acting on trade union funds now, and fighting the next Election on a defence of the changes we have made and the intention to move on secret ballots (a popular cause) later. Further moves on procedure agreements, secondary action and the definition of a trade dispute could all come later, once the means of enforcement had been established. This change in the status of trade unions is likely to be resisted at first, but by avoiding other major changes for the present, we should be able to win the argument.

4.6 Early action on secret ballots contains less risks, and could be a rather subtle way of introducing the principle that the long-standing Section 14 immunity is not inviolate. If we chose (ii) or (iii), trade union funds would only arise in circumstances where a ballot had not been held.

5. CONCLUSION

The choice of measures under (c) is the crucial element in the next step. Of course a case can be made for other priorities, but any of the changes in (c) would affect the position of union funds which many Green Paper respondents have recognised as central. We believe it is the key to a new, more responsible, less politicised role for the trade unions. With widespread support from industry, we think the time has come when the idea can be sold that unions should begin to be treated in the same way as companies and individuals (though they would still retain immunities for lawful action). Any step forward will bring the risk of resistance at first, but the alternative of an economy with an unchanged union role is in no-one's interest.

cc Wolfson
Hoskyns
Walters
Press

D

2.

Prime Minister

To see. You have a meeting on legislation after Balmoral

MAP

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

Tim Lankester Esq
Private Secretary
10 Downing Street
LONDON SW1

TL to see O/R.

27 August 1981

Dear Tim

You may recall that the period of consultation on the Green Paper on trade union immunities came to a close on 30 June. My Secretary of State has asked me to let you have a copy of the attached summary of views expressed, prepared by officials here.

I am sending copies of this letter and its attachments to the Private Secretaries of all members of E, the Secretaries of State for Scotland, Wales, Northern Ireland, Social Services and Transport, the Chancellor of the Duchy of Lancaster, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

Yours sincerely

John Anderson.

J ANDERSON
Private Secretary

SUMMARY OF RESPONSES TO THE GREEN PAPER

1 There have been about 300 written submissions on the Green Paper: 47 from employers organisations, 49 from individual companies, 54 from other organisations (eg the Industrial Society, the Institute of Personnel Management and the British Institute of Management), 28 from trade unions (mainly non TUC unions and local branches of the CTU) and 120 from individuals. The TUC's comments are not expected until after the TUC Conference in September.

2 The attached paper analyses in detail the main submissions from national organisations and companies. This note is a short summary of the main comments.

A. Timing and content of legislation

3 A majority of submissions favour some changes in the law before the next General Election. A substantial proportion of these are individuals who are concerned about the closed shop in the light of the Sandwell and Walsall cases.

4 Among the major organisations which favour changes in the law there is a wide spectrum of views on what should be done and how quickly. Some (particularly the representatives of small and independent businesses, but including major companies like British Leyland and Times Newspapers) want immediate changes in all or most of the areas discussed in the Green Paper. Others (including a number of major employers and employer organisations) favour only limited changes in the law now with the possibility of further changes in the future. These include the CBI which makes a number of proposals for changes in the longer term, but give priority to changes in the law on the closed shop and the definition of a trade dispute. A number of other organisations favour substantial change but are prepared to leave the timing of its introduction to the Government. The Institute of Directors, for example, proposes a similar list of changes to the CBI, records that there are differing views within the Institute on timing and recognises that ultimately the timing

of change is a "matter of political judgement".* The EEF stands apart from most of the other organisations which have commented. It is opposed to further legislation in most of the areas favoured by the CBI and Institute of Directors and proposes its own list of changes in areas not discussed in the Green Paper.

5 There is also a substantial group which opposes further major legislation at present and wants to leave more time to assess the impact of the Employment Act and for consensus on the need for change to develop. It includes many of the major companies which have commented (Ford, Shell, Unilever, Courtaulds, British Railways) and a number of employers' associations and other organisations (the Chemical Industries Association, the National Association of Health Authorities, the Industrial Society and the Institute of Personnel Management).

B. Voluntary initiatives

6 The vast majority of submissions recognise the importance of voluntary initiatives by management. Many emphasise that such voluntary efforts are equally, if not more important, in bringing about improvement in industrial relations than legislation. A large number of submissions, including those from the major employer associations, note particularly the importance of employer initiatives to improve communications with employees and encourage employee involvement. A few (but including the CBI) would like to see the setting up of a national forum representing employers, unions and government to discuss industrial relations and pay issues.

* The Director General of the Institute of Directors has since written, along with 6 organisations representing small employers, to say that he would like to see immediate action under C and G below.

C. Immunity for trade union funds

7 Most submissions identify the immunity for trade union funds as a major issue.

8 A majority of those commenting on this subject favour restricting the immunity for trade unions, although some feel that such a major step could only be achieved in the longer term. Several different ways of restricting the immunity are proposed. The largest number (including the Association of County Councils, the National Federation of Building Trade Employers, the Association of British Chambers of Commerce, Esso, and British Leyland) favour bringing the Section 14 immunity for trade unions into line with the Section 13 immunity for individuals. A smaller number (including the CBI (but in the longer term)) favour removing trade union immunity from breaches of procedure agreements. (See also para 17 below).

9 More than a third of those who comment are opposed to any change in the immunity for trade unions, mainly on the grounds that it would unite trade union opposition against the government and disrupt industrial relations. They include major employers like Ford, Reed International, GKN, Unilever, Shell, the Electricity Council and British Rail and employer organisations like the Federation of London Clearing Bank Employers and the Chemical Industries Association.

D. Secondary Action

10 The comments on secondary action divide about equally into those (including the majority of major companies) who are opposed to change or want to see the Employment Act's restrictions tested first and those who favour further restrictions.

11 Of those who want further restrictions about half (including the representatives of small businesses, Esso, RHM, Times, British Leyland, Trafalgar House) would remove immunity from all secondary action. A smaller number (including the CBI but only in the longer term) would make the immunity dependent on the holding of a secret ballot.

E. Picketing

12 The vast majority of respondents are either satisfied with the measures in the Employment Act or want to see the provisions tested before anything further is considered. Several submissions (including the CBI but in the longer term) favour injunctions against the act of picketing. But a substantial number are opposed to any change which will endanger police neutrality in enforcing the law.

F. Definition of trade disputes

13 Almost all those who comment on this subject (not all do) are in favour of change. The most popular amendments (in decreasing order of popularity) are:-

(i) return to the 1971 formula that disputes must "relate wholly or mainly to" one of the issues listed in the definition;

(ii) exclude disputes between workers and workers;

(iii) exclude disputes between employees and an employer other than their own;

(iv) exclude action relating to "matters overseas".

G. Legally enforceable collective agreements

14 The submissions show a considerable divergence of view on this question. Just over half favour some kind of legal enforceability; just under half are opposed.

15 Those who oppose any form of legally enforceable agreements often express their oppositionin strong terms. They include several major companies (Turner and Newall, Ford, Chloride, GKN, Unilever, Shell, British Rail, Post Office, Westminster Press) and a number of major employers associations (the EEF, the General Council of British Shipping, the Road Haulage Association and the Association of County Councils).

16 Those in favour divide into two almost equal groups. The first group would like to make all substantive collective agreements legally enforceable. It includes the Unquoted Companies Group, the National Chamber of Trade, the Association of British Chambers of Commerce, the Association of Independent Businesses, AIMS, the National Federation of Self Employed and Small Businesses, Esso, Times and British Leyland. Several, however, recognise that this can only be achieved in the longer term and with provision (as in 1971) for the parties to an agreement to opt out, if they wish.

17 The second group favour making procedure agreements legally enforceable or removing immunity from breaches of procedure agreements. It includes many of the major employer organisations including the CBI (but as a longer term measure), the British Institute of Management, and a number of major employers, like Trafalgar House, Scottish and Newcastle Breweries, BP and BAT Industries. Many of those who favour making procedure agreements enforceable are opposed to legally enforceable substantive agreements.

H. Secret ballots

18 There is some support for compulsory ballots before strikes or before secondary action (see para 11 above) or for trade union elections. But the majority is against making secret ballots compulsory at present. The CBI would like to see the availability of public funds for secret ballots under the Employment Act extended to cover voting on the acceptability of a wage offer.

I. Closed shop

19 A substantial majority of submissions favour further changes in the law on the closed shop. Some of these (particularly the representatives of small businesses, the Freedom Association and AIMS of Industry) want the closed shop outlawed altogether but most recognise that it would be impracticable to go this far at present.

20 The greatest support is for stiffening the existing remedies against unfair dismissal to increase compensation and encourage reinstatement. There is also considerable support for compulsory periodic review ballots. The CBI argue that higher compensation for unfair dismissal and compulsory periodic review should be priorities for legislation.

21 Fewer submissions comment on the "related practices". Of those which do the majority favour outlawing union labour only clauses in contracts. There is also some support for extending section 18 of the Employment Act to make unlawful all industrial action which seeks to compel union membership. Both these items are in the CBI's priority list.

J. Protecting the community

22 There is widespread anxiety about the effects of strikes in essential services but no agreement on what can be done to combat them. Several submissions (CBI, BP, British Leyland, Electricity Council) suggest further study rather than immediate action.

23 There is some support for voluntary no strike agreements (the EEF, British Institute of Management, Institute of Directors, Association of County Councils), but little conviction that attempts to encourage them will be successful.

24 A substantial minority would outlaw strikes in essential services (AIMS, the

Freedom Association, the National Federation of Self Employed and Small Businesses, Turner and Newall, Trafalgar House, Westminster Press). But there is also substantial opposition to such a proposition, partly on the grounds that it would be unenforceable and partly because the price of buying out the right to strike (eg comparability) would be too high. The opponents of outlawing strikes in essential services include the Association of British Chambers of Commerce, the EEF, the Unquoted Companies Group, the Federation of Civil Engineering Contractors, British Rail, the Electricity Council and Ford.

K. Positive rights

25 There is little enthusiasm for a system of positive rights. The majority of organisations dismiss it as an irrelevance or delaying device. Some organisations, including the CBI, are prepared to see further examination by a Committee of Inquiry, but not at the price of delaying further legislation.

Department of Employment

August 1981.

CONFIDENTIAL

Responses to the Green Paper on Trade Union Immunities

This document analyses the comments from major organisations, employers and unions: Comments from individuals and most branch organisations are not covered.

The numbers of bodies included are as follows:

Employers Organisations:	39
Other Organisations:	25
Employers:	29
Trades Unions:	15
Total	108

The general attitude of respondents to the timing and content of legislation is summarised in the first section of the attached.

The subsequent sections summarise the responses to the specific issues raised in the Green Paper, but do not distinguish between those who want to see immediate change in the law and those who favour change only in the long term. Therefore no views as to timing should be inferred from these sections.

Those who are opposed to <u>all</u> further legislation are not entered in every section, unless they express their opposition to legislation in that specific area. In most cases, therefore, the number opposed to a particular change is understated.

In each section the comments have been grouped under a number of headings which reflect the main options available in each of the areas discussed by the Green Paper. Where a comment has been made which is additional to, or amplifies, the main point covered in the heading this has been summarised in brackets after the organisation's name. Such summaries are of necessity greatly compressed.

Every effort has been made to summarise the comments accurately. Inevitably, however, some of the categories overlap and there are sometimes difficulties at the margin in deciding in which category a particular respondent should appear. Nor is it possible in this kind of summary to reflect every nuance and detail in what are often complex and sophisticated responses.

Copies of any particular reply can be made available on request.

EO = Employers' Organisation
E = Employer
T = Trade union
O = Other organisations

GENERAL APPROACH TO LEGISLATION

i) <u>No change in any area/Allow Employment Act opportunity to work first</u>

EO	Cooperative Employers Association
EO	Provincial Wholesale Newspaper Distributors Association
EO	British Furniture Manufacturers (proceed only with caution)
EO	Chemical Industries Association (very minor changes only)
EO	National Association of Health Authorities in England and Wales
EO	Tobacco Industry Employers' Association
EO	British Fibreboard Packaging Employers Association
O	Society of Chief Personnel Officers in Local Government
O	Industrial Society
O	Institute of Personnel Management (very minor changes only)
E	Courtaulds
E	GLC*
E	Electricity Council
E	Securicor
E	Shell UK (no changes before mid-1982)
E	Post Office
T	APEX (No society has ever been made better merely by passing laws)
T	Engineers' and Managers' Association
T	Federation of Professional Officers Associations

* The GLC submission was sent before the change to Labour control

T	Educational Institute of Scotland
T	National Union of Seamen

ii) <u>In favour of change but need consensus before further measures are introduced</u>

EO	Federation of London Clearing Bank Employers
EO	National Association of Master Bakers, Confectioners and Caterers
EO	British Ports Association and National Association of Port Employers
EO	Road Haulage Association (it is imperative to hold extensive consultations with unions and employers prior to legislation)
O	ACAS (changes are bound to be disruptive if they do not command a wide measure of agreement)
E	Allied Breweries Ltd
.	Ford Motor Company (Ltd)
E	Chloride
E	Ready Mixed Concrete
E	Unilever (a step by step approach must have the tacit support of moderate union leaders)
E	British Railways Board
E	BP (essential that there should be a general measure of public support for change)
T	Managerial and Professional Staff Liaison Group

iii) <u>Some changes in law wanted but defer major changes</u>

EO	British Multiple Retailers Association
EO	British Printing Industries Federation (but no change until after next election)
EO	CBI

EO	General Council of British Shipping (change only where the need is clearly identified)
EO	Association of County Councils
EO	British Paper and Board Industry Federation
EO	National Association of Warehouse Keepers
EO	Incorporated National Association of British and Irish Millers Ltd
EO	National Federation of Building Trades Employers
EO	The Newspaper Society
EO	Scottish Building Employers' Federation
EO	London Chamber of Commerce and Industry
O	The Bar Association for Commerce Finance and Industry
O	Society of Conservative Lawyers (general approach cautious: if there are to be major changes better to wait until an economic boom)
E	Esso Petroleum
E	Reed International
E	Scottish and Newcastle Breweries
E	Tube Investments
E	Turner and Newall
E	Westminster Press Ltd
T	Association of Polytechnic Teachers
T	Printing Trades Alliance

iv) Major changes in the law wanted but leave timing and phasing of introduction to Government

EO	British Institute of Management
EO	Contractors' Plant Association
EO	National Chamber of Trade
EO	Institute of Directors

E BAT Industries Ltd

E Tarmac Construction Ltd

E Trafalgar House Ltd

v) <u>Major Changes in law wanted now</u>

EO Union of Independent Companies

EO EEF (but in areas not suggested in Green Paper)

EO Food Manufacturers Federation Inc.

EO Aims of Industry

EO ABCC

EO Federation of Civil Engineering Contractors

EO Association of Independent Businesses (recommend a complete review of all existing law, followed by repeal of as much as possible)

EO National Federation of Self Employed and Small Businesses

EO Unquoted Companies Group

EO Engineering Industries Association

O Centre for Policy Studies

O British Public Warehouse Keepers Committee

O Freedom Association

O Freedom in Action (perhaps with backing of a national referendum)

O Select Committee*

E Chevron Oil (UK) Ltd (but would suggest checking support for change with a referendum)

E GKN

E Rank Hovis McDougall

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* All references to the Select Committee are to the opinion of the Conservative majority

E British Leyland (major changes needed as support for making management more effective)

E Taylor Woodrow Group

E Times Newspapers (changes are needed urgently)

vi) <u>Repeal Employment Act</u>

T NGA

A further 23 organisations whose comments have been summarised in later sections of the paper made no specific comment on the general approach to legislation. These include organisations which commented only on one single issue.

CHAPTER 1 : PROPOSALS FOR VOLUNTARY ACTION

i) National Forum

EO CBI

E Allied Breweries Ltd (an informal and continuing national debate is needed with employers and unions)

E Rank Hovis McDougall Ltd

T APEX (new tripartite machinery should be established to examine how national income can be improved and to establish guidelines on how resulting wealth can be shared between workers and investors)

ii) Employee Involvement (but not by changes in the law)

EO British Institute of Management

EO CBI

EO EEF

EO Institute of Directors

EO Unquoted Companies Group (employees' role should have been debated in Green Paper not just role of trade unions and employers)

EO British Paper and Board Industry Federation (vital for management to communicate effects of recession to employees)

EO British Fibreboard Packaging Employers' Association

E GKN

O Industrial Society

iii) Other

EO Institute of Directors (boards should review bargaining structures; unions should do more to discourage unofficial and inter-union action, and place more emphasis on secret ballots)

EO Engineering Industries Association (voluntary action is required by both sides of industry to reduce the complexity of present union organisation)

- Freedom in Action (independent industrial ombudsman or Crown commissioner should head small committee to appoint/coordinate industrial tribunals and process all applications for arbitration, compensation, strike and review ballots, also to act as court of first instance)

- Bar Association for Commerce Finance and Industry (unions, employers and Government should make a detailed study of IR law and practice in order to restate in simple terms)

- Industrial Society (unions need greater understanding of policies and procedures; management and unions need training in communications, consultation and negotiation)

- Institute of Personnel Management (various suggestions for voluntary action: Government should give positive lead by considering the coordination of industrial relations between the bargaining units for which it is responsible, and removing threat of further legislation on the TU's role. It should ask ACAS to initiate and agree guidelines on ballots, procedure agreements and employee involvement. CBI, TUC and individual employers and unions should also adopt positive approaches to cooperation and reform.)

Chapter 3

A IMMUNITY FOR TRADE UNION FUNDS

i) No change/opposed to change

EO Cooperative Employers Association

EO Chemical Industries Association (reluctant to advocate change; would cause dissension)

EO Federation of London Clearing Bank Employers (not viable politically at the moment)

EO London Chamber of Commerce and Industry

EO Road Haulage Association (would exacerbate problems)

O Industrial Society

O Institute of Personnel Management

O Society of Chief Personnel Officers in Local Government

E Ford Motor Company Ltd (would unite unions in opposition/more unofficial action)

E Reed International

E GKN (change would provoke great opposition)

E Electricity Council (could weaken unions)

E Unilever (would unite unions in opposition)

E Shell UK

E British Railways Board (would not stop unofficial action)

E GLC

T Engineers and Managers' Association

T Royal College of Nursing

T Federation of Professional Officers Associations (discipline problems)

T Managerial Professional and Staff Liaison Group

T National Union of Seamen

T The Educational Institute of Scotland

T APEX (trade unions would have to police their officials and members)

T NGA

ii) Remove all immunities

EO Unquoted Companies Group (revoke both the section 13 and 14 immunities; anyone should be able to seek redress, not just employers)

EO National Chamber of Trade (repeal S14)

O Freedom Association

O Freedom in Action

E Tarmac Construction Ltd

E Rank Hovis McDougall

E Chloride

E Taylor Woodrow Group

E Trafalgar House (unions should be as accountable as employers are)

iii) Bring S13 and S14 into line

EO 66% of British Institute of Management* (damages should be limited by a formula)

EO Association of County Councils

EO Association of Independent Businesses (TUs should be accountable as are public companies and their officers, and should not have more immunity than individuals)

EO Contractors' Plant Association

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* British Institute of Management conducted a survey among their members; the percentage of respondents in favour of each particular change is stated.

EO	British Paper and Board Industry Federation (no justification for TUs to enjoy immunities denied to other organisations and individuals; penalties should be limited by formula and only introduced when it is politically expedient)
EO	Scottish Building Employers' Federation
EO	British Furniture Manufacturers
EO	ABCC
EO	British Printing Industries Federation
EO	General Council of British Shipping
EO	Federation of Civil Engineering Contractors (limited financial penalties)
EO	National Association of Warehouse Keepers (limited damages)
EO	National Federation of Building Trades Employers
EO	British Ports Association and National Association of Port Employers
O	Bar Association for Commerce Finance and Industry
O	British Public Warehouse Keepers Committee
O	Institution of Civil Engineers
O	Select Committee
E	Taylor Woodrow Group (unions must be subject to laws in same way as people, companies or any other organisations)
E	Turner & Newall Ltd
E	Esso Petroleum
E	British Leyland
E	Westminster Press
E	Post Office (desirable in principle but only beneficial if could be made effective; PO would use sparingly because of possible damage to industrial relations)

iv) Remove immunity from action in breach of procedure agreements (see also E iv)

EO CBI (further detailed examination needed: primary remedy should be injunction, then damages proportional to size of union)

EO Institute of Directors

EO Scottish Building Employers' Federation (S13 immunities should be removed for action prior to exhaustion of procedure)

EO British Multiple Retailers Association

EO National Federation of Building Trades Employers

EO British Fibreboard Packaging Employers' Association ("machinery" should be set up to consider reforms; immunity to remain if employer breaches procedure)

E Scottish and Newcastle Breweries

E BAT Industries (damages only payable where an injunction has been awarded and disobeyed)

O Select Committee

v) Limit immunity to "in contemplation or furtherance of a trade dispute"

EO Provincial Wholesale Newspaper Distributors Association (limited fines)

EO Aims of Industry

EO British Fibreboard Packaging Employers' Association (longer term reform)

vi) Solution to problem of vicarious liability

EO ABCC (unions to be liable if shown to have furthered unofficial action)

EO CBI (reasonable steps)

EO Institute of Directors (reasonable steps)

EO Unquoted Companies Group (all reasonable steps)

EO British Paper and Board Industry Federation (unions use of procedure agreements should be the means of demonstrating that they have taken all reasonable steps)

EO British Furniture Manufacturers (unions could avoid responsibility for unofficial acts of their members by publication of disclaimer)

EO British Printing Industries Federation (union to retain immunity if it has not supported the action and instructed its members to stop immediately it becomes aware of it)

EO Contractors Plant Association (problems overstated; TUs could control members if it were to their advantage to do so, or to their disadvantage not to; right to immunity, social security, redundancy benefits and tax privileges should be dependent on compliance with legislation, observance of disputes procedures, holding of secret ballots etc.)

EO Federation of Civil Engineering Contractors (all reasonable steps)

EO National Federation of Building Trades Employers (all reasonable steps)

EO British Fibreboard Packaging Employers' Association (account should be taken of the steps union had taken to stop unlawful action)

O Centre for Policy Studies (all reasonable steps)

O Institution of Civil Engineers (S14 immunities should not apply in "unreasonable" cases; alternatively when agreements broken, trade unions should only have S13 immunity)

O Society of Conservative Lawyers (vicarious liability should only arise for acts of full-time officials or for acts of members expressly adopted by union)

O Select Committee (best endeavours)

E Tarmac Construction Ltd (reasonable steps)

vii) Other points made about trade union immunities

EO Engineering Industries Association (unlimited fines in closed shop cases; individuals should be able to sue for threats to general wellbeing by unofficial disruptive action)

EO Unquoted Companies Group (in order to obtain status and privileges unions must be registered bodies with rule books conforming to minimum standards)

EO	National Federation of Self Employed and Small Businesses (TU funds should be vulnerable where commercial contracts are broken as a result of secondary action; unofficial action included)
EO	Road Haulage Association (there is an urgent need to clarify the law and provide a means by which legislation supports and encourages harmonious industrial relations)
EO	Aims of Industry (there should be no immunity for libel or slander even if it is about the subject of dispute)
O	Society of Conservative Lawyers (definition of coverage of immunities must be clear, eg by listing specific torts for which there would be no immunity - libel, fraud, assault, negligence, nuisance, physical intimidation. Also defining by reference to place of action eg employers premises or elsewhere; S17 of 1974 Act as interpreted by House of Lords needs to be returned to objective test advocated by Court of Appeal)
E	Tube Investments (legislation should be introduced if unions encourage/condone members' disregard of law)

B IMMUNITY FOR SECONDARY ACTION

i) No change, 1980 Act sufficient

EO Cooperative Employers Association

E Turner & Newall Ltd

E Tube Investments

E Allied Breweries Ltd

E Ford Motor Company Ltd

E Electricity Council (doubt change would be effective)

E Westminster Press

T NGA (intend to continue secondary action and other traditional trade union activities)

T National Union of Seamen

T International Transport Workers' Federation

T The Educational Institute Scotland (would undesirably restrict legitimate industrial action)

T APEX (right of workers to show solidarity must be preserved)

ii) Too soon - keep 1980 Act under Review

EO CBI

EO Association of County Councils

EO Provincial Wholesale Newspaper Distributors Association

EO Engineering Employers Federation (machinery should be set up to review Act)

EO British Paper and Board Industry Federation

EO Scottish Building Employers' Federation (but if experience shows 1980 Act to be inadequate then immediate further steps under (iii))

EO British Furniture Manufacturers Association

EO Chemical Industries Association

EO	Federation of London Clearing Bank Employers
EO	National Federation of Building Trades Employers (but if Act is shown to be inadequate then immediate steps; possibly (iii))
EO	British Fibreboard Packaging Employers' Association
O	Industrial Society
O	Bar Association for Commerce Finance and Industry
O	Institute of Personnel Management
O	Society of Chief Personnel Officers in Local Government
T	Federation of Professional Officers Associations
T	Managerial Professional and Staff Liaison Group
E	Scottish and Newcastle Breweries
E	Chloride
E	Reed International
E	GKN
E	Ready Mixed Concrete
E	Shell UK
E	British Railways Board
E	Post Office

iii) <u>All secondary action should be unlawful</u>

EO	38% of British Institute of Management
EO	Contractors' Plant Association
EO	Federation of Civil Engineering Contractors
EO	Association of Independent Businesses
EO	Aims of Industry
EO	National Federation of Self Employed and Small Businesses Ltd
EO	The Newspaper Society

O British Ports Association and National Association of Port Employers

O Freedom in Action

O Centre for Policy Studies

O British Public Warehouse Keepers' Committee

E Tarmac Construction Ltd

E Esso Petroleum

E Rank Hovis McDougall

E Times Newspapers

E Taylor Woodrow Group

E British Leyland

E Trafalgar House

iv) Immunity only for specific types of secondary action

EO 36% of British Institute of Management

EO National Chamber of Trade (only where the action relates specifically to firms which are associated with those in the main dispute)

EO British Printing Industries Federation (only where no primary action is possible and/or where secondary employer is providing material support; secondary blacking to compel union membership should be added to scope of S18 of E Act 1980)

EO General Council of British Shipping (material support)

EO Chemical Industries Association (if experience of Act is successful then immunity should be further limited to where no primary action is possible or against employers who provide material support to the employer in dispute)

EO National Association of Warehouse Keepers (eg material support)

EO London Chamber of Commerce and Industry (immunity for action by employees employed by the same employer or subject to the same collective/statutory arrangements for terms and conditions as primary employer's employees, or by trade union officials representing the foregoing in an official dispute)

v) <u>Lawful only after secret ballot</u> (see also Fiv)

EO British Fibreboard Packaging Employers' Association (in addition there should be 7 days notice of the secondary action and action should only start after the primary action has started)

EO British Printing Industries Federation

EO Institute of Directors

EO CBI (if the Employment Act proves inadequate: there should also be a notice requirement and action should not begin before primary action has started)

EO National Chamber of Trade

EO Road Haulage Association (and action to be taken only after 7 days notice and primary action has started)

E Allied Breweries Ltd

E BAT Industries

vi) <u>Limit immunity for secondary action to interference with commercial contracts of employer in dispute</u>

EO Union of Independent Companies

EO ABCC

EO British Multiple Retailers Association (immunity should be removed from all breaches of contract where employer in dispute is not a party to relevant contract)

EO British Printing Industries Federation

vii) <u>Other points concerning secondary action</u>

EO Unquoted Companies Group (secondary action should be unlawful if it is taken against a third party acting in a neutral manner; immunity should be revoked in respect of a breach of <u>any</u> contract)

EO General Council of British Shipping (if trade dispute changes are not made, S42 of Merchant Shipping Act should be amended so notice of strike can only be given when the dispute involves seafarers and their own employer directly)

E BAT Industries (secondary action should be lawful only after a period of notice)

T

Engineers' and Managers' Association (the law is in a mess; if it is fair to restrict unions' freedom for effective action, it should also be fair to restrict employers' freedom to avoid its effects, eg by transferring production. If employees are subject to a lock-out, it should be unfair to restrict secondary action).

C PICKETING

i) No change/1980 Act sufficient

EO	Association of County Councils
EO	Cooperative Employers Association
EO	Engineering Industries Association
EO	ABCC
E	Turner & Newall
E	Tube Investments
E	Electricity Council
E	British Railways Board (police neutrality must be protected)
E	Westminster Press
T	Engineers' and Managers' Association
T	Royal College of Nursing (right of employees to draw attention to grievances should not be unreasonably restricted)
T	Managerial Professional and Staff Liaison Group
T	APEX (criminal law should be sufficient)

ii) Too soon, keep 1980 Act under Review

EO	CBI
EO	49% of British Institute of Management
EO	Provincial Wholesale Newspaper Distributors Association
EO	EEF (standing review body should be set up)
EO	National Chamber of Trade (will small employers use Act?)
EO	Scottish Building Employers' Federation (unless Act is shown to be inadequate - then immediate steps should be taken to strengthen it)
EO	British Furniture Manufacturers (machinery should be set up for a review in 1983, unless there is trouble earlier)
EO	British Multiple Retailers Association

EO	British Printing Industries Federation
EO	Chemical Industries Association
EO	General Council of British Shipping
EO	Road Haulage Association
EO	Federation of London Clearing Bank Employers
EO	British Ports Association and National Association of Port Employers
EO	British Fibreboard Packaging Employers' Association
EO	London Chamber of Commerce and Industry
O	Industrial Society
O	Society of Chief Personnel Officers in Local Government
O	Bar Association for Commerce Finance and Industry (there is a case for further restriction, but the Act should be given a chance first; unions would become more responsible if S13 and S14 were brought into line)
O	Association of Chief Police Officers, Superintendents' Association, and Commissioner of Police of the Metropolis
E	Allied Breweries Ltd
E	Scottish and Newcastle Breweries
E	Reed International
E	GKN
E	Ready Mixed Concrete (changes will only be successful if they focus on abuses of current law)
E	Shell UK
E	Post Office
T	Association of Polytechnic Teachers
T	Federation of Professional Officers' Associations
T	Assistant Masters and Mistresses Association

iii) <u>Injunctions against Act of picketing</u>

EO 60% of British Institute of Management (but the Institute of Industrial Managers which is affiliated to the BIM does not support)

EO CBI (if experience of E Act 1980 merits the change)

EO EEF (legislation should be prepared now to hold until needed)

EO British Furniture Manufacturers (only if the trade unions succeed in evading the provisions of the Employment Act)

EO Contractors' Plant Association

EO Federation of Civil Engineering Contractors

EO National Federation of Building Trades Employers (only full time trade union officials should retain the right to picket)

O Institute of Personnel Management

E Esso Petroleum

E British Leyland

E Trafalgar House

iv) <u>Injunctions against unions</u>

E Chloride

v) <u>Remove immunity from picketing at ones own place of work in the course of secondary action</u>

EO Food Manufacturers Federation Inc

EO 55% of British Institute of Management

EO Federation of Civil Engineering Contractors

EO National Federation of Self Employed and Small Businesses

EO Incorporated National Association of British and Irish Millers

EO Aims of Industry

EO Union of Independent Companies

E Tarmac Construction Ltd

E Taylor Woodrow Group

vi) Employers should be able to call directly for police assistance in enforcing civil law against pickets

In favour

EO 43% of British Institute of Management

EO Chemical Industries Association (it is regrettable that police do not make enough use of current powers)

EO Federation of Civil Engineering Contractors

EO Aims of Industry

EO Incorporated National Association of British and Irish Millers (police should have an obligation to ascertain names and addresses)

O British Public Warehouse Keepers' Committee

E Tarmac Construction Ltd

E BAT Industries (police should be obliged to collect names)

T APEX

Opposed to this on grounds of police neutrality

EO Association of County Councils

EO Food Manufacturers Federation Inc

EO British Furniture Manufacturers

EO British Printing Industries Federation (opposed to greater involvement of the police or the criminal law in picketing)

EO London Chamber of Commerce and Industry

EO British Fibreboard Packaging Employers' Association

O Association of Chief Police Officers, Superintendents Association and Commissioner of Police of the Metropolis (except of course to uphold criminal law; against making it offence to withhold name and address where no other offence has been committed)

O Scottish Police Federation (support existing Code of Practice)

O Association of Chief Police Officers (Scotland)

O Association of Scottish Police Superintendents

O Police Federation of England and Wales

E Ford Motor Company Ltd

E Chloride

E Electricity Council

E Post Office

T NGA

T Engineers and Managers Association

T Assistant Masters and Mistresses Association

T National Union of Seamen

vii) Other proposals

EO Unquoted Companies Group (picketing should be restricted in the same way as proposed for other industrial action; redress should be available from unions as well as individuals)

EO Contractors' Plant Association (propose a formula for a legal maximum of up to 6 pickets; immunity should be conditional on the wearing of an identity badge showing name, employer, union (if any) and photograph - failure to wear would be a criminal offence leading to loss of any social/redundancy payments; bussing of illegal pickets would make the transport company liable for legal action; mobile workers should only be allowed to picket their own depot)

EO National Association of Warehouse Keepers (in order to qualify for immunity pickets should "register" by displaying names and addresses)

O Freedom in Action (picketing should be confined to premises and to those directly involved; picketing should not be unreasonable, intimidatory or inconvenience members without penalty)

O British Public Warehouse Keepers' Committee (voluntary code is acceptable if sections 13 and 14 brought into line)

O Society of Conservative Lawyers (obstruction of premises by picketing over and above provisions of the Code of Practice should be a civil tort)

E Ford Motor Company Ltd (suggest clarification of "at or near place of work" to cover multiplant sites and industrial estates)

E Esso Petroleum (limit pickets to 6)

E Taylor Woodrow Group (limit pickets to 6)

E Trafalgar House (limit pickets to 6)

T NGA (Employment Act is a fundamental attack on rights)

T National Union of Seamen (Employment Act already goes too far)

D DEFINITION OF A TRADE DISPUTE

i) <u>No change/opposed to change</u>

EO	Cooperative Employers Association
O	Industrial Society
O	Society of Personnel Officers in Local Government (wait until effect of 1980 Act clearer)
E	Shell UK (there should be evidence of abuse before change)
E	Westminster Press
T	National Union of Seamen
T	NGA (any change would increase scope for judicial interpretation)
T	Engineers and Managers Association
T	International Transport Workers' Federation
T	The Educational Institute of Scotland
T	APEX

ii) <u>Return to the 1971 formula that disputes must relate "Wholly or mainly to" one of the issues listed in the definition</u>

EO	CBI
EO	Institute of Directors
EO	International Shipping Federation
EO	Engineering Industries Association
EO	Engineering Employers Federation (at an appropriate time when redrawing definition)
EO	40% of British Institute of Management (53% wish to exclude disputes with 'major political element')
EO	Unquoted Companies Group (but it would be impractical to make specific provision to deal with political disputes)
EO	British Paper and Board Industry Federation

EO	British Furniture Manufacturers (if it seems appropriate when occasion arises)
EO	Chemical Industries Association
EO	Contractors' Plant Association
EO	General Council of British Shipping
EO	London Chamber of Commerce and Industry
EO	British Fibreboard Packaging Employers' Association
EO	Federation of Civil Engineering Contractors
EO	Road Haulage Association
EO	National Association of Warehouse Keepers
EO	Federation of London Clearing Bank Employers
EO	National Federation of Building Trades Employers
EO	British Ports Association and National Association of Port Employers (disputes should be related "significantly" to one of issued listed)
O	Centre for Policy Studies
O	Institute of Personnel Management
O	Institute of Civil Engineers
E	Turner & Newall (favour change but the company has not suffered under current definition)
E	Esso Petroleum (disputes should be primarily related to one of the issues listed)
E	Chloride
E	Reed International
E	Ready Mixed Concrete
E	British Leyland (union should have immunity only if the industrial action concerns industrial matters affecting the company in dispute)
T	Association of Polytechnic Teachers (disputes should be "mainly" related to one of the issues listed)

iii) <u>Exclude disputes between "Workers and workers"</u>

E   CBI

EO   EEF (no urgency)

EO   Institute of Directors

EO   Engineering Industries Association

EO   Unquoted Companies Group

EO   British Paper and Board Industry Federation

EO   Scottish Building Employers Federation

EO   ABCC

EO   British Printing Industries Federation

EO   Contractors' Plant Association

EO   General Council of British Shipping

EO   Federation of Civil Engineering Contractors

EO   Road Haulage Association

EO   Aims of Industry

EO   National Federation of Building Trades Employers

O   Centre for Policy Studies

O   Bar Association for Commerce Finance and Industry

O   Society of Chief Personnel Officers in Local Government (possibly)

O   Institute of Civil Engineers

E   Tube Investments

E   Scottish and Newcastle Breweries

E   Reed International

E   Taylor Woodrow Group

E   BAT Industries

E   Trafalgar House

E   Shell (possible)

iv) <u>Exclude action relating to "matters overseas"</u>

EO	Institute of Directors
EO	EEF (no urgency)
EO	International Shipping Federation (disputes related to employment conditions determined or agreed outside UK should be excluded)
EO	Unquoted Companies Group
EO	British Printing Industries Federation
EO	Contractors' Plant Association
EO	General Council of British Shipping
EO	Road Haulage Association
EO	British Fibreboard Packaging Employers' Association
O	Centre for Policy Studies
E	Tube Investments

v) <u>Exclude disputes between employees and an employer other than their own employer</u>

EO	Union of Independent Companies
EO	45% of British Institute of Management
EO	International Shipping Federation
EO	Unquoted Companies Group
EO	Contractors' Plant Association
EO	Road Haulage Association
EO	Aims of Industry
EO	The Newspaper Society
EO	British Fibreboard Packaging Employers' Association
EO	London Chamber of Commerce and Industry (unless the workers in dispute are subject to same terms and conditions as that employers' employees)

O Centre for Policy Studies (the definition should be restricted to employees of the employer who is in dispute, and officials negotiating for those employees)

E Tube Investments

E Taylor Woodrow Group

E British Railways Board (merits some consideration)

E Post Office

E Trafalgar House

vi) Specific Changes to deal with shipping

In favour

EO International Shipping Federation (believes it should be done by changes as at ii, iv, v, vii)

EO General Council of British Shipping (no immunities for disputes over terms/conditions negotiated outside GB)

EO Unquoted Companies Group (other suggested changes should cover this)

E Ready Mixed Concrete (ships in British ports should be protected where there is no dispute to which members of the crew are party)

Against

T National Union of Seamen

T International Transport Workers' Federation (unjust, unwise and unnecessary to single out for special treatment)

T The Merchant Navy and Airline Officers' Association

vii) Exclude disputes with union as party if no employee in firm is or wishes to be member of that union

EO International Shipping Federation

EO Provincial Wholesale Newspaper Distributors Association (the subject of a dispute should be directly related to improved conditions for participants)

EO CBI

EO Unquoted Companies Group

EO National Federation of Building Trades Employers

EO Scottish Building Employers Federation

EO ABCC

EO Contractors' Plant Association

EO General Council of British Shipping

EO The Newspaper Society

EO Aims of Industry

E Ford Motor Company (minor point but some merit)

E Taylor Woodrow Group

E British Railways Board (merits some investigation)

E British Leyland

T Association of Polytechnic Teachers

viii) Other suggestions on definition of trade dispute

EO Institute of Directors (there should be no dispute until procedure/conciliation has been followed through)

EO National Chamber of Trade (politically motivated industrial action should be illegal)

EO Federation of London Clearing Bank Employers (the definition of action short of strike should be clarified; employer should be given power to suspend without pay)

EO Federation of Civil Engineering Contractors (disputes over membership/non-membership of a trade union on the part of a worker should be excluded; disputes should not attract immunity until formally notified to employer concerned - in writing)

O Centre for Policy Studies (no dispute until procedure has been exhausted unless employer has broken procedure)

O Select Committee (a clear Government restatement is needed of the fact that pure political strikes are not within current definition)

O Freedom in Action (no political disputes)

Tarmac Construction Ltd (the definition should be narrowed: employer must have been clearly notified of nature of dispute)

E Esso Petroleum (the decision as to whether a dispute is in furtherance of a trade dispute should not depend on the view of the parties to that dispute - there should be an objective test)

E Electricity Council (after tripartite discussions disputes about demarcation, union membership, representation and discipline should be excluded and should be resolved by agreement and, if necessary, effective arbitration)

E Post Office (political disputes should be excluded - but there are problems of definition)

E Trafalgar House (there should be a dispute only after procedure has been followed)

E LEGALLY ENFORCEABLE COLLECTIVE AGREEMENTS

i) No change/opposed to change

EO Association of County Councils

EO Chemical Industries Association (unworkable, would be disadvantageous to employer)

EO Cooperative Employers Association

EO EEF (impractical, destabilising)

EO Provincial Wholesale Newspaper Distributors Association

EO British Paper and Board Industry Federation (but procedure agreements should be structured to be effective means of resolving grievances)

EO Scottish Building Employers' Federation

EO British Furniture Manufacturers (unworkable)

EO General Council of British Shipping (impractical)

EO London Chamber of Commerce and Industry (expensive, disruptive, impractical)

EO Road Haulage Association (retrograde step)

EO Federation of London Clearing Bank Employers (no need at the moment, though not opposed in principle if trouble with interpretation of agreements made it more desirable)

EO Incorporated National Association of British and Irish Millers (although legal enforceability has a part to play under certain circumstances and in certain situations)

O Society of Chief Personnel Officers in Local Government (there is insufficient evidence that it would improve industrial relations)

O Industrial Society

E Courtaulds

E Turner & Newall Ltd

E Allied Breweries Ltd (Beer Division)

E Ford Motor Co Ltd (unworkable)

E Chloride (not at present)

E GKN

E Ready Mixed Concrete (not in life of present Government)

E Unilever (unions would withdraw from agreements)

E Shell UK

E British Railways Board (would cause deterioration in industrial relations)

E Post Office (not until there is greater demand from both sides of industry)

E Westminster Press

T Royal College of Nursing

T NGA

T Engineers' and Managers' Association (employers and unions should decide on enforceability)

T Federation of Professional Officers Associations

T Association of Polytechnic Teachers

T Assistant Masters and Mistresses Association

T National Union of Seamen

T APEX (would cause reversion to dangers of 1971 Act)

ii) <u>All agreements should be legally enforceable</u>

EO Engineering Industries Association (major agreements should ideally be in writing and legally enforceable)

EO Unquoted Companies Group (unless parties agree to contrary, in writing)

EO National Chamber of Trade

EO ABCC (unless parties agree to contrary)

EO Contractors' Plant Association (unless parties agree to contrary; observance of agreements should be encouraged by linkage to legal, tax and social privileges; there should be a Code of Practice prior to legislation)

EO Association of Independent Businesses

EO National Association of Warehouse Keepers

EO Aims of Industry (unions' and employers' funds should be liable for breaches; and, in the longer term, 3 year agreements with legally binding cooling off periods should be encouraged)

EO National Federation of Self Employed and Small Businesses (consideration might be given to development of practice whereby TUs are made parties to certain types of commercial contracts as suppliers of skill and labour)

EO British Ports Association and National Association of Port Employers (in context of fundamental change to system of positive rights)

O Bar Association for Commerce Finance and Industry (long term objective)

O British Public Warehouse Keepers' Committee (funds should be at risk if procedures broken)

E Allied Breweries Ltd (Food Division)

E Chevron Oil (UK) Ltd (agreement to run for minimum of 12 months)

E Esso Petroleum

E Times Newspapers

E Taylor Woodrow Group (unions should be heavily fined if agreements are broken)

E British Leyland (but enforceability of substantive agreements a long term development)

iii) <u>Procedure agreements legally enforceable</u> (but not substantive agreements)

EO ABCC (where there is no industry-wide agreement there would need to be a model procedure which could be imposed (either by ACAS or SoS))

EO British Multiple Retailers Association (there should be a model disputes procedure which on application of either side could be imposed on parties to collective bargaining arrangements by an independent body; procedures could be enforced against employer by requiring him to indemnify the State for benefits provided to employees concerned, and he should remain liable for wages; if a union broke procedure it should not be entitled to declare a strike official, or to pay strike pay; it would lose immunity unless it had taken appropriate steps to discourage members' action)

EO Federation of Civil Engineering Contractors (there should be mandatory procedures and ACAS conciliation where there is no collective agreement; financial penalties should be limited; there should be a right to dismiss fairly any/all employees involved, possibly with warning procedure)

EO National Federation of Building Trades Employers

EO British Ports Association and National Association of Port Employers (important that agreements should clearly identify the parties concerned)

E Esso Petroleum

E Reed International (if parties consent procedure agreements should be made legally binding with CAC as final arbiter)

E BAT Industries

E British Leyland (tribunal should impose agreement if either party refuses)

E Trafalgar House (there should be stiff penalties for breaking agreements)

iv) Remove immunity from breaches of procedure agreements*

EO 83% of British Institute of Management (also 64% consider there should be no strike within currency of agreement)

EO CBI (if there is no procedure the parties should be required to submit to conciliation and to give 7 days notice)

EO Institute of Directors (agreements should be deemed to include status quo provision)

EO British Printing Industries Federation

EO Scottish Building Employers' Federation

EO British Fibreboard Packaging Employers' Association

EO Road Haulage Association (where no procedure exists conciliation must have been attempted; after exhaustion of procedures, there should be a minimum of 7 days notice before action can lawfully be taken)

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* This list does not correspond exactly with that in 3A(iv) which refers only to removal of S14 immunities. This section contains those who want to remove either S13 or S14 immunities or both from breaches of procedure agreements.

E Scottish and Newcastle Breweries

E Rank Hovis McDougall

E BAT Industries

E BP

O Bar Association for Commerce Finance and Industry (CAC should rule on breaches)

O Select Committee

v) Other comments

EO Association of County Councils (there should be more effective disputes procedures with status quo clauses)

O Central Arbitration Commission (there is a need for clearer tighter agreements with good procedures, whether or not enforceable; if enforceable, there should be an independent system of local, district and central arbitration procedures, specialised by industry.)

O Industrial Society (Government should produce a code of good practice)

O Institute of Personnel Management (ACAS guidelines on procedure agreements should be updated and better standards of agreements encouraged. Government should take lead in public sector)

O Society of Conservative Lawyers (there should be a special tax concession for employees agreeing to work within legally enforceable collective agreements)

E Electricity Council (there should be an independent body to make non-binding recommendations on breaches of agreements and on the steps parties should take to remedy them).

F SECRET BALLOTS

i) No change/opposed to change

EO	Association of County Councils
EO	Cooperative Employers Association
EO	EEF
EO	GLC
EO	Union of Independent Companies (provided that closed shop is outlawed)
EO	Scottish Building Employers' Federation (but use of public funds should be encouraged)
EO	British Fibreboard Packaging Employers' Association (non-mandatory ballots should be encouraged)
EO	British Furniture Manufacturers
EO	British Paper and Board Industry Federation (at the moment)
EO	ABCC (1980 Act establishes reasonable position)
EO	Chemical Industries Association (1980 Act far enough)
EO	National Federation of Building Trades Employers (but greater use should be encouraged by publicity)
EO	London Chamber of Commerce and Industry
O	Industrial Society
O	Institute of Personnel Management
E	Turner & Newall Ltd (voluntary ballots should be encouraged)
E	Food Motor Company Ltd (voluntary ballots should be encouraged)
E	Scottish and Newcastle Breweries (voluntary ballots should be encouraged)
E	GKN
E	Electricity Council
E	Shell UK (desirability of change is not yet proven)

E	British Railways Board
E	Post Office
E	Westminster Press
T	NGA (deeply suspicious)
T	Association of Polytechnic Teachers
T	National Union of Seamen
T	Managerial Professional and Staff Liaison Group
T	Engineers' and Managers' Association
T	APEX

ii) Compulsory ballots in elections

EO	National Association of Warehouse Keepers
EO	Aims of Industry (with 3 year limit on term of office)
EO	National Federation of Self Employed and Small Businesses (there should be model rules to be enforced by Certification Officer)
O	Centre for Policy Studies (elections should be at fixed intervals; triennial?)
E	Taylor Woodrow Group
E	BAT Industries
E	Trafalgar House

iii) Compulsory ballots before industrial action

EO	55% of British Institute of Management
EO	Engineering Industries Association
EO	Food Manufacturers Federation Inc.
EO	General Council of British Shipping (ballots should be conducted by neutral third party)

EO National Association of Warehouse Keepers (immunity should be dependent on holding ballot)

EO Aims of Industry (immunity dependent)

EO Incorporated National Association of British and Irish Millers

O Centre for Policy Studies (it should also be possible to have a triggered ballot for the ending of strikes)

O Freedom in Action (80% majority needed; ballot should be at union expense with independent supervisor, at request of not less than 15% of workforce, or, where there is more than one union 20%; action unsupported by ballot should be declared unofficial and its organisers should have no immunity)

O British Public Warehouse Keepers' Association (union funds should be at risk if no ballot has been held)

O Select Committee

E Allied Breweries Ltd (in essential public services)

E Esso Petroleum (union should lose immunity if no ballot)

E Rank Hovis McDougall

E Taylor Woodrow Group

E BAT Industries

E British Leyland (union immunity should be removed if no ballot)

E Trafalgar House

T Assistant Masters and Mistresses Association

iv) <u>Compulsory ballots before secondary action</u> (see also B v)

EO National Chamber of Trade

EO British Printing Industries Federation

EO British Fibreboard Packaging Employers' Association

EO Institute of Directors

EO CBI

EO Road Haulage Association

E Allied Breweries Ltd

E BAT Industries

v) Extension of present funding provisions

EO CBI (on pay offers)

EO Provincial Wholesale Newspaper Distributors Association

E Reed International (closed shop review ballots, pay offers under legally binding agreements)

E BAT Industries (pay offers)

O Bar Association for Commerce Finance and Industry (pay settlements)

T Royal College of Nursing (pay offers)

vi) Triggered ballots

EO Federation of Civil Engineering Contractors (there should be a right for an employer/union to demand a ballot before strike/action short of strike)

EO Federation of London Clearing Bank Employers (before calling strike action; failure by a union to hold ballot when requested could make union funds liable to actions by employees and employers)

EO British Ports Association and National Association of Port Employers (500, or 15% of members, should have right to call for ballot before major official strikes; results binding on pain of loss of immunity)

O Society of Chief Personnel Officers in Local Government (it should be possible for 15% to trigger a compulsory, secret, public-funded ballot on matters of importance to employees' livelihood)

O Centre for Policy Studies (see iii) above)

O Freedom in Action (see iii) above)

T Federation of Professional Officers' Associations (union membership details should be made available to everyone to facilitate triggering)

vii) <u>Other suggestions about ballots</u>

EO Cooperative Employers Association (Code of Practice)

EO British Institute of Management (voluntary ballots should be encouraged; and should be administered by joint management/union committee or outside body; arrangement for recourse to ballot should be included in procedure agreements)

EO CBI (publicity campaign to encourage voluntary use)

EO British Printing Industries Federation (no compulsory ballots or public funds for ballots for unofficial action)

EO Contractors' Plant Association (employers' and Government/ACAS should have right to call for secret ballot, conducted independently, of <u>all</u> employees involved; immunity should be removed where no ballot has been held; 80%-90% majority should be needed for action)

EO Association of Independent Businesses (Code of Practice on communication and balloting)

EO National Federation of Self Employed and Small Businesses (would prefer 7 day cooling off period to compulsory ballots)

O Industrial Society (if Government remains convinced of the use of the secret ballot as an aid to productive industrial relations, it should extend use in the public sector, then if successful the lessons could be applied to industry as a whole)

O Institute of Personnel Management (ACAS should prepare ballot guidelines)

O Society of Conservative Lawyers (direct legislation would be ineffective and counterproductive; ballots for elections generally desirable, but approach should be to equate senior TU officials with directors of companies, with analagous provision for regular re-election. No criminal penalty, but any union member could go to court to enforce them; might be advisable to legislate so unions are obliged to provide in rule books for power to hold a secret ballot (without def. of circumstances); there should be a special tax penalty deductible under PAYE on any wage increase won by strike action not backed by secret ballot)

E Trafalgar House (employers should have right to hold ballot and no industrial action should be taken before it is held.)

G CLOSED SHOP AND UNION MEMBERSHIP ISSUES

i) No change to legality of closed shop/1980 Act sufficient/Allow 1980 Act time to work before further measures

EO British Paper and Board Industries Federation

EO British Multiple Retailers Association

EO Cooperative Employers Association

EO Chemical Industries Association (informed tripartite debate is needed on 'Human Rights' which could present closed shop in better public light)

EO EEF (on grounds of disruption)

EO Road Haulage Association

EO Provincial Wholesale Newspaper Distributors Association (impractical)

EO Federation of London Clearing Bank Employers (no further legislation in next 12 months)

O Industrial Society (banning the closed shop is no longer an option after the experience of the 1971 Act; allow the Code of Practice longer operation before further change)

O Institute of Personnel Management

E Scottish and Newcastle Breweries

E Shell UK

E Ford Motor Company Ltd (would create widespread conflict)

E Ready Mixed Concrete (unlikely to be effective)

E Electricity Council

E Securicor (closed shop eliminates inter-union squabbles; would prefer no closed shops but banning would cause more harm than good)

E British Railways Board

E Turner and Newall

E GKN

E GLC

T Engineers and Managers Association (although legal status of Code inadequate)

T Managerial Professional and Staff Liaison Group

T NGA (committed to concept of closed shop; opposed to any restrictions)

T National Union of Seamen

T APEX

ii) Closed shop should be void/unlawful

EO Union of Independent Companies

EO Food Manufacturers Federation Inc

EO Engineering Industries Association (unlimited fines)

EO National Chamber of Trade

EO Contractors Plant Association (unless they have been approved by 80% affirmative ballot when they are set up and periodically thereafter)

EO Federation of Civil Engineering Contractors (and there should be a right to belong/not to belong to chosen TU)

EO Association of Independent Businesses

EO National Association of Warehouse Keepers

EO Aims of Industry (eventually throughout industry; but immediately in civil service/local authorities)

EO National Federation of Self Employed and Small Businesses

EO Glasgow Chamber of Commerce

O Freedom Association

C Bar Association for Commerce Finance and Industry (a union membership agreement without secret ballot approval should be unenforceable)

O British Public Warehouse Keepers' Committee

T Association of Polytechnic Teachers (should be long term aim of Government; in short term should be made illegal in National and Local Government)

E Apex Stationery

E Taylor Woodrow Group

E British Leyland (support in principle but in view of practical problems it can only be brought about in the long term)

iii) Pre-entry closed shop void/unlawful

EO CBI

EO Association of County Councils

EO British Fibreboard Packaging Employers' Association

EO London Chamber of Commerce and Industry

E Rank Hovis McDougall

E Times Newspapers

E Shell UK (possibly, in longer term)

iv) Proposals to strengthen remedies for those facing dismissal because of closed shop

EO Institute of Directors (first remedy should be reinstatement; failure to reinstate should lead to compensation up to maximum of 104-156 weeks pay subject to ceiling of £130 per week in addition to the basic and compensatory awards)

EO Aims of Industry (interim relief should be granted to employees who have been sacked because of the closed shop)

EO CBI (there should be a higher level of compensation equivalent to the existing additional award, for those not reinstated)

EO Chemical Industries Association (there should be increased compensation to help those dismissed by politically motivated employers)

EO Contractors Plant Association (in unfair dismissal proceedings ex-employee or Tribunal should be able to "join" the trade union and/or union officials with employer; there should be stiffer penalties for employer/union including loss of legal immunities and fiscal and social benefits; damages should be available to the dismissed employee, not just pre-defined, modest compensation)

O Bar Association for Commerce Finance and Industry (main remedy should be reinstatement; if impracticable/uncomplied with then applicant should be entitled to additional award of compensation)

O Society of Conservative Lawyers (the idea of strengthening powers of industrial tribunals to order reinstatement in closed shop dismissal situations should be examined)

O The Guild of British Newspaper Editors (increased compensation)

O Institution of Electrical Engineers (increased compensation)

O Select Committee (increased compensation)

E Westminster Press (law should provide for implementation of reinstatement; if this is not acceptable to Government then very much higher compensation should be payable)

E Trafalgar House (reinstatement or punitively higher compensation)

E Rank Hovis McDougall (higher compensation)

E BAT Industries (higher compensation)

T Association of Polytechnic Teachers (TU should be joined in proceedings, and there should be no immunity for TU funds)

T Federation of Professional Officers Associations (present remedies inadequate)

T Managerial Professional and Staff Liaison Group (increased compensation)

v) <u>Periodic reviews</u>

EO CBI

EO Association of County Councils (75% majority needed or UMAs should automatically lapse after 4 or 5 years)

EO British Institute of Management (45% of members in survey consider reviews should be a legal requirement; 66% favour reviews when they are requested by a certain percentage of employees covered by the agreement; 49% favour reviews only when agreed by both parties; 53% favour reviews if there have been major changes in the company; 87% believed that it should be unfair to dismiss an employee for not being a union member unless there have been periodic review ballots showing continued support for the closed shop)

EO British Printing Industries Federation (every 4 or 5 years)

EO	Contractors' Plant Association (the regular review of all closed shops is vital, say every 5 years, and within 3 years of the 1980 Act, ie by 1983)
EO	General Council of British Shipping
EO	Water Companies Association (should be required by legislation, at least in essential services)
EO	Incorporated National Association of British and Irish Millers
EO	British Ports Association and National Association of Port Employers (20% of workforce should have right to trigger a review ballot; 2/3 majority should be required to maintain agreement; it should be possible to hold further ballot after 2 years)
O	Freedom Association (as an interim measure all existing agreements should be reviewed - if not banned now)
O	Bar Association for Commerce Finance and Industry (compulsory, every 5 years or less)
O	Freedom in Action (paid for jointly by employers/unions)
O	Society of Chief Personnel Officers in Local Government (Government should consider whether 20% triggered review would be preferable to statutory periodic review)
E	Reed International
T	Association of Polytechnic Teachers (compulsory, 80% approval needed)
T	Federation of Professional Officers Associations (every 5 years, or more often if triggered)
T	Managerial Professional and Staff Liaison Group (Certification Officer should oversee ballots which should be held every five years unless a given percentage of members want one earlier; there should now be a review of all pre-Employment Act UMAs)

vi) <u>Union only labour clauses void/unenforceable/unlawful</u>

EO	Union of Independent Companies
EO	CBI
EO	EEF
EO	British Institute of Management (47% want to see them made illegal <u>but</u> 45% consider that the Code goes far enough)
EO	National Chamber of Trade

EO Scottish Building Employers' Federation

EO ABCC (it should be a criminal offence - Crown should prosecute, as small firms are unlikely to act against sole purchaser)

EO Federation of Civil Engineering Contractors

EO Aims of Industry (one firm should be able to take legal action against another for attempting to introduce closed shop conditions into contracts or quotations; local authorities should also be prevented from carrying out this practice; nationalised industries and companies should not be able to refuse access to non-union drivers/workers)

EO National Federation of Building Trades Employers (as first step)

EO London Chamber of Commerce and Industry

O Bar Association for Commerce Finance and Industry (all clauses seeking to impose union membership on 3rd parties should be void and unenforceable)

O Select Committee

E Allied Breweries

E Turner & Newall Ltd

E Tarmac Construction Ltd

E Ready Mixed Concrete

E British Railways Board

E BAT Industries

E Trafalgar House

vii) Outlaw discrimination against non-union firms

EO Union of Independent Companies

EO EEF

EO Federation of Civil Engineering Contractors (such practices as tender lists being compiled on the basis of union labour only requirements should be outlawed)

EO Association of Independent Businesses

EO National Association of Warehouse Keepers

EO Aims of Industry

EO National Federation of Self Employed and Small Businesses

T Printing Trades Alliance (also discrimination against firms employing members of particular unions should be outlawed)

viii) Make unlawful action against non-union employees

EO CBI (immunity should be removed from all industrial action intended to force the employees of another employer into union membership)

EO Contractors' Plant Association (immunity should be removed from action compelling employees at same or another firm to join a trade union)

EO National Association of Master Bakers, Confectioners and Caterers (employees' freedom of choice in matters of union membership should be paramount)

EO Association of Independent Businesses (consideration should be given to the need for strengthening the rights of the individual, by repeal of immunities)

EO General Council of British Shipping (disputes intended to force employees of another employer into union membership should be excluded from definition of trade dispute)

EO Incorporated National Association of British and Irish Millers (there should be proper safeguards for dissenters)

EO Road Haulage Association (disputes intended to force employees of another employer into a trade union should be excluded from definition of trade dispute)

O Bar Association for Commerce, Finance and Industry (S18(2) of the Employment Act 1980 should be amended by removing the words "or at the same place")

O Freedom Association (there should be a right to join or not to join a union or employers' association)

O Freedom in Action (there should be no penalty for ceasing to be member/refusing to join)

O Select Committee (unions should lose immunity for actions designed to force employees of another employer into trade union membership)

E BAT Industries (all industrial action to compel workers of another employer to join union should be unlawful)

E British Leyland (immunity should be removed from action against own employer to force closed shop on another employer)

ix) Special groups

O Society of Chief Personnel Officers in Local Government (it would be useful to clarify whether or not a UMA which allows subscription to charity is a UMA in law, and therefore whether it escapes the restrictions of the 1980 Act)

O Royal Society of Chemistry (individuals, eg professional chemists, with specific statutory duties should be excluded from present/future closed shops)

O Institute of Mechanical Engineers (members of professional bodies should have legal right to a clause in UMAs supporting professional codes of practice over union instructions)

O Institute of Road Transport Engineers (as IME above)

O Institution of Civil Engineers (members of professional bodies should not be required to take industrial action in conflict with their code of conduct)

O Council of Engineering Institutions (as ICE above)

O Institution of Electrical Engineers (members of professional bodies should not have to choose between code of conduct and union instructions)

T Royal College of Nursing (opposed to closed shop in principle; agreements should make allowance for employees who are subject to code of ethics or conduct)

T Association of Public Service Professional Engineers (groups of individuals protected by 1980 Act should be extended to include those involved in "the maintenance and protection of public health and public safety")

x) Other points about the closed shop

EO Unquoted Companies Group (there should be "right not to belong"; conscience clause is open to abuse/misunderstanding; if closed shop is approved by at least 80% of those entitled to vote, non-union members could be obliged to contribute equivalent to charity)

EO ABCC (all closed shop dismissals should be unfair)

EO British Printing Industries Federation (there should be a right against unreasonable operation of closed shop)

EO General Council of British Shipping (a right to make a donation to charity in lieu of union membership should be reintroduced)

EO Aims of Industry (the free rider argument is fallacious and should be disposed of; union settlements tend to benefit indifferent workers and the principle of freedom of choice must transcend other factors)

O Centre for Policy Studies (European Court of Human Rights decision should be implemented)

O Industrial Society (the Society is against coercion and arbitrary use of union only labour practices to extend TU membership, but considers that companies should come to terms with fears and legitimate objectives of TUs in attempting to negotiate such clauses)

O Institution of Civil Engineers (immunities should be limited to disputes concerned only with establishment or retention of closed shop, excluding those disputes involving operation of a "conscience clause".)

O Select Committee (any ruling of European Court should be implemented without delay)

T Institute of Journalists (immunity should be removed from industrial action intended to compel own employer to operate a closed shop)

T Managerial Professional and Staff Liaison Group (all UMAs should be registered with Cerfitication Officer)

E Rank Hovis McDougall (80% threshold for approval of new closed shops in 1980 Act should be raised)

E Shell UK (possibly in longer term restricting immunity to agency shops should be considered, and a remedy for individuals who suffer from unreasonable operation of closed shop should be provided)

E Post Office (in a closed shop there should be protection from dismissal for not taking part in dispute)

E BP (closed shop should be replaced by agency shop)

H PROTECTING THE COMMUNITY

i) No change/opposed to change

EO	ABCC (unwise to ban strikes)
EO	CBI (purely legal remedies are unlikely to be effective but an enquiry could usefully be set up into pay determination: the solution will be primarily economic rather than legal)
EO	Cooperative Employers Association (undemocratic)
EO	General Council of British Shipping (no special arrangements necessary for shipping)
EO	Provincial Wholesale Newspaper Distributors Association
EO	Chemical Industries Association (nothing would be effective)
EO	Federation of Civil Engineering Contractors (the price of buying out strikes would be unacceptably high: possibly contagious to non-essential industries, and therefore inflationary)
E	Ford (public sector should improve industrial relations management)
E	British Railways Board (change would be desirable but unenforceable)
E	GLC
T	NGA (experience of war-time legislation brings into question the efficacy of any legal sanctions in trying to enforce decisions upon large bodies of employees or in seeking to reinforce collective bargaining)
T	Engineers and Managers Association
T	National Union of Seamen
T	The Educational Institute of Scotland
T	APEX

ii) Voluntary no strike agreements

EO	Association of County Councils
EO	EEF (if possible)
EO	British Institute of Management (if possible)

EO Institute of Directors (for key workers <u>outside</u> public utilities (see also iv))

EO British Furniture Manufacturers

EO British Printing Industries Federation

EO Water Companies Association (if (iv) considered impossible)

EO National Association of Health Authorities in England and Wales (voluntary agreements are only likely to be acceptable if comparability with other groups is ensured; appropriate penalty/reward clauses would be a fruitful subject for discussion; there is a strong case for arbitration binding on both sides where there is no right to strike)

EO Federation of London Clearing Bank Employers

EO British Ports Association and National Association of Port Employers (but difficult in ports)

O Council of Engineering Institutions (maintenance of services and manning levels should be subject to national joint agreements. If none, members of professions should follow code of conduct.)

T Royal College of Nursing (there could be a voluntary Code of Practice for essential services to settle dispute without industrial action)

E GKN (there would have to be some inducement; this should only be offered to the most essential categories to avoid inflationary effects)

E Westminster Press (for firemen, ambulancemen, doctors and nurses, Government should negotiate voluntary agreements which provide for compulsory arbitration)

E GLC (no-strike agreements can only work if linked to legally enforceable agreements, and this usually implies indexation or automatic arbitration as quid pro quo - this is expensive so it should only be applied in appropriate sectors)

iii) <u>Statutory cooling off period</u>

EO EEF (the Government should declare itself ready if necessary to take power to order cooling-off periods)

EO 66% of British Institute of Management (but not Institute of Industrial Managers; Government power to order statutory cooling off period)

EO Unquoted Companies Group (new tribunal should be able to order cooling off periods to a maximum of 60 days, where cooling off could help promote settlement by negotiation)

EO British Printing Industries Federation

EO Contractors' Plant Association (statutory benefits should be dependent on observance)

EO Water Companies Association

EO National Association of Warehouse Keepers (it gives time to make alternative emergency arrangements)

EO ; Incorporated National Association of British and Irish Millers

E BAT Industries

iv) <u>Outlaw strikes in essential services</u>

EO 64% of British Institute of Management (if (ii) not possible; the loss of right to strike should be balanced with agreed pay comparability and recourse to arbitration)

EO Institute of Directors (the Government should "buy out" the right to stike in essential services by establishing a satisfactory form of wage determination, or a system of binding arbitration)

EO Engineering Industries Association (in services where health and life are at stake)

EO National Federation of Self Employed and Small Businesses (in public sector to balance job security; withdrawal of privileges eg pension rights, should be considered as sanction)

EO Water Companies Association (strike action in water service should be illegal)

EO Aims of Industry (introduce in stages. Stage 1: armed services, police, prison workers, defence civil servants. Stage 2: power, water workers and all civil servants)

EO London Chamber of Commerce and Industry (industrial action by particular workers can only be outlawed if guarantees are given with regard to comparability and other matters, together with an effective grievance system)

O Freedom Association (in return for loss of unfettered collective bargaining rights workers in essential services should enjoy a degree

of statutory protection; also Government should take steps to make essential services less monopolistic.)

O Bar Association for Commerce, Finance and Industry (SoS should be given power to designate services/industries for special legislation to outlaw strikes called without proper notice)

E Turner & Newall Ltd

E BAT Industries (Government should have the power to declare particular strikes unlawful)

E Westminster Press (if voluntary no strike agreements not obtainable)

E Trafalgar House (with appropriate compensation)

v) <u>Other suggestions about protection of the Community</u>

EO EEF (an employer should be allowed to relieve himself of the burden of having to maintain employees pay when large sectors of the economy are paralysed by industrial action and he is unable to continue operations: Government should be ready to take power to order strike ballots)

EO Unquoted Companies Group (1920 Act powers should be amended; to include other essential services; to update criteria for emergency; there should be new national tribunal (replacing EAT) with power to order cooling off period; SoS should have power to call for secret ballot where he considers doubts exist as to support for action, and where serious threat to the economy or national interest. Where ballots are held under union rules those rules should meet minimum standards.)

EO National Chamber of Trade (as a minimum trade unions should be compelled to state arrangements for protecting national interest/to deal with emergencies before striking in essential industries/services)

EO Aims of Industry (members of the public should be regarded as legally interested parties capable of taking action against, eg, political strikes)

EO British Ports Association and National Association of Port Employers (Secretary of State should have power to require a secret ballot in a major dispute which threatens the national interest or public health/security)

O Society of Chief Personnel Officers in Local Government (a detailed study of the Emergency Powers Acts and their possible extension to include major strikes might be worthwhile)

O Central Arbitration Committee (an independent body to whom disputes could be put after exhaustion of procedure would reduce danger of confrontation with law)

O Institute of Mechanical Engineers (the public interest in matters of safety, health etc should be safeguarded by allowing members of professions to disobey union instructions)

O Industrial Society (there may be merit in Government gaining experience of some of Green Paper's ideas in essential services - eg no strike clauses, ballots, cooling off periods - then good practice could be generalised; quid pro quo might be comparability awards)

O Institution of Civil Engineers (immunities should be removed from disputes in essential services)

O Society of Conservative Lawyers (secret ballots should be required before industrial action in narrow range of essential services; it should be unlawful for employer to pay increases demanded by any strike without the backing of a ballot)

O Select Committee (SoS should issue consultative document with detailed proposals for dealing with action endangering public health/safety)

E Ford Motor Company Ltd (see (i): the pay round should be coordinated for all public sector groups; there should be an NEDC-type forum to consider public sector pay; irregular industrial action should be dealt with forcefully and consistently)

E Courtaulds (flexible comparability)

E Scottish and Newcastle Breweries (sound procedure agreements should be established)

E British Leyland (Government and industry should study solutions)

E Tube Investments (when business operations are disrupted by disputes in which they are not involved, which disrupt essential services, the Government should take powers to enable the suspension of employment contracts, statutory periods of notice, and requirements for consultation on redundancy and for redundancy payments)

T Assistant Masters and Mistresses Association (changes in Emergency Powers Acts would be ineffective, unenforceable and could worsen industrial relations in times of national emergency)

T Managerial Professional and Staff Liaison Group (ACAS should draw up code on arbitration procedures.)

Chapter 4: POSITIVE RIGHTS

i) Do not favour

EO	Union of Independent Companies
EO	Association of County Councils
EO	Cooperative Employers Association
EO	Institute of Directors
EO	Provincial Wholesale Newspapers Distributors Association
EO	British Paper and Board Industries Federation
EO	Contractors' Plant Association (highly undesirable)
EO	British Furniture Manufacturers
EO	British Printing Industries Federation
EO	General Council of British Shipping (benefits largely theoretical, could not solve immediate problems)
EO	Federation of Civil Engineering Contractors (practical effects impossible to forecast)
EO	National Association of Warehouse Keepers (preferable to improve tried and tested laws)
EO	Federation of London Clearing Bank Employers
O	Industrial Society
O	Bar Association for Commerce Finance and Industry
O	Centre for Policy Studies
O	Institute of Personnel Management
O	Institution of Civil Engineers
O	Select Committee
E	Ford Motor Company Ltd
E	Turner & Newall Ltd
E	Esso Petroleum (would be exploited and extended)

E Chloride

E Reed International

E British Leyland

E Westminster Press

T Assistant Masters & Mistresses Association

T Royal College of Nursing

T Engineers and Managers Association (not advisable without further detailed impartial investigation)

T NGA (suspicious of Government's motive)

T Association of Polytechnic Teachers (change would be unsettling and would not change rights substantially)

T National Union of Seamen

ii) <u>Merits Investigation/beneficial in longer term</u>

EO CBI (the CBI would support the use of labour courts, based on existing industrial tribunals and EAT with the power to award injunctions or compensation; further appeals should go to Court of Appeal or House of Lords)

EO 74% of British Institute of Management

EO EEF (draft should be prepared for detailed consideration, though politically inadvisable at the moment)

EO ABCC (not as immediate priority)

EO British Multiple Retailers Association (favour Royal Commission)

EO Chemical Industries Association (deserves long term study in context of possible Bill of Rights)

EO London Chamber of Commerce and Industry

EO Incorporated National Association of British and Irish Millers (there should be detailed consultation over several years)

EO National Federation of Building Trades Employers (there should be a clear definition of limitations of right to strike; it might be necessary to balance some limitations by obligations on large employers to some form of employee participation)

EO British Ports Association and National Association of Ports Employers (complex, but possibly beneficial - long term consideration needed)

O Society of Chief Personnel Officers in Local Government (desirable after thorough expert examination)

O Freedom in Action (there must be a right for an individual, alone or collectively, to withdraw his or her labour in the event of a dispute genuinely about pay and conditions at the place of work. Equally employers must have a right to 'fire' on breach of contract, non-performance, misbehaviour or other conduct prejudicial to the well-being of the company or its work-force)

O Council of Engineering Institutions

O Institution of Electrical Engineers (a change to positive rights system would be desirable but difficult to implement, although with severe recession and high unemployment now may be best time: would be willing to help develop legislation)

E Allied Breweries Ltd

E Chevron Oil (UK) Ltd (would lead to better industrial relations and help shift balance in industrial relations)

E Scottish and Newcastle Breweries

E Rank Hovis McDougall

E GKN (same as EEF)

E Ready Mixed Concrete

E Shell UK (consider as part of wider enquiry (see final section of paper))

E British Railways Board

E Post Office

E BAT Industries

E BP

iii) <u>Other suggestions on positive rights</u>

EO Unquoted Companies Group (reinstatement of S147 of 1971 Act would effectively provide right to strike, S128(3) would provide right not to strike; analysis of problems surrounding immunities and rights is incomplete if it ignores the Donovan Commission's recommendations on TU rules and compulsory registration)

EO Association of Independent Businesses (consideration should be given to the need for strengthening the rights of individuals. No new laws need be written; simply need a repeal of past law and immunities)

EO Scottish Building Employers' Federation (right to strike should be limited to action wholly or mainly in contemplation/furtherance of trade dispute; trade unions need to be held more accountable for actions of members)

EO National Federation of Self Employed and Small Businesses (immunities and positive rights not mutually exclusive; strengthen rights and obligations while modifying immunities)

EO British Fibreboard Packaging Employers' Association (introduction of whole new legal system too great a leap; step by step development of positive rights by making immunities more specific would be preferable)

O Centre for Policy Studies (most of civil law immunities should be removed; minor adjustments to the existing law in respect of specific torts should be made; general law of conspiracy should be reviewed and unions given corporate, limited liability status)

Other Issues not covered in the Green Paper

Employers' Organisations

Engineering Employers Federation

(Legislation should be enacted to enable an employer whose business is disrupted by industrial action by some of his employees to lay off other employees without pay; the law should be changed to exclude an industrial tribunal from considering the fairness or otherwise of the dismissal of an employee who was dismissed while taking industrial action; laid-off employees of the same grade or class as those taking industrial action should be excluded from unemployment and supplementary benefit).

Union of Independent Companies

(Government should set up fund to aid small employers who become victims of unlawful disruptive action and to guarantee legal costs to companies seeking recovery of damages from such actions)

Cooperative Employers Association

(Government must give serious consideration to problems they might cause for employers whose current industrial relations and bargaining arangements are entirely satisfactory)

Engineering Industries Association

(Employers should have right of selective re-employment after unofficial action so as to be able to refuse re-engagement of organisers)

Unquoted Companies Group

(There should be a new national tribunal set up permanently, completely independent of Government, to replace EAT; to be available to parties in dispute by direct access; to take over i.r. responsibility from ordinary courts; to have powers of enforcement; and to be required to provide for conciliation before formal hearing of cases)

ABCC

(Unions should be covered by Companies Acts or equivalent)

Contractors' Plant Association

(There is a good case for a Code of Practice to be prepared on the content of trade union rule books and for compliance with its major provisions to be linked to various privileges)

Aims of Industry

(Financial affairs of unions should be subject to legislation as for companies; in longer term, political levy should only be collected from those opting in; Trade Unions should be deemed responsible for a percentage of official strikers' benefits - State benefits should be regarded as loan to be deducted from pay after strike; unofficial strikers should be ineligible for benefit - union should be unable to "officialise" a strike before one week elapsed; there should be a Royal Commission on restrictive practices)

National Federation of Self Employed and Small Businesses
(There should be no restrictions on granting interim injunctions in industrial disputes; TUs should have statutory framework of accountability and responsibility)

Employers

Ford Motor Company
(Government should review funding of union training to encourage a joint union/management approach; financial and professional assistance could be made available to trade unions seeking to improve their organisations)

Times Newspapers
(There should be a right to lay-off all staff if impossible to publish as a result of a breach of agreement by one section of staff)

GKN
(Withdrawal of individual economic and legal privileges should be considered as means of making striking less comfortable - "deeming" of strike pay was move in right direction; also employers should be able to lay-off and suspend statutory and contractual employment obligations in suitably severe circumstances)

Shell UK
(There should be a Royal Commission or Committee or Inquiry whose terms of reference should allow the examination of the whole question of relationships amongst employers, employees and, where appropriate, Government. As part of its work it could examine the prospect of changing to a rights based system of trade-union law. It should also investigate the constitutional and social implications of closed shops in local Government and of many forms of industrial action in essential services)

Westminster Press
(There should be a right to lay-off staff if a strike by key workers cuts off revenue)

Trafalgar House
(Guarantee payment schemes should be suspended where employees are laid off as a result of industrial action by workers whether employed by the same or another employer).

Unions

Federation of Professional Officers' Associations
(Some senior professional officers in Local Government face conflict between going on strike and professional responsibilities. If they break a strike they may have to leave their employment - consideration should be given to legislation to provide for adequate compensation)

Engineers' and Managers' Association

(Employers should be forced to resolve recognition claims peaceably by independent means (eg ACAS) rather than leaving the trade union concerned no alternative but to take industrial action)

Other organisations

Society of Conservative Lawyers

(The Society suggest the creation of a commission on TU restrictive practices at some future date - along the lines of the Monopolies Commission or Restrictive Practices Court; there would need to be considerable negotiation with TUs beforehand)

10 DOWNING STREET

Andrew Duguid

Back to you. I'm afraid. I will leave it to you and John to resubmit.

T

6/8

hd PJ

10 DOWNING STREET

Tim.

A copy has gone to David. Can you pl ensure this goes back to the Prime Minister on return?

BG.

6/8.

BF 7/9

R.

CONFIDENTIAL

PRIME MINISTER

TRADE UNION LEGISLATION: THE NEXT STEP

1. Jim Prior will put proposals to E in mid September. You planned to discuss his ideas in advance with him, Francis Pym and the Chief Whip, but this has been postponed to September. By then he may be almost ready with proposals for colleagues. We think this will be a minimalist package with only limited economic and political impact.

2. The attached paper discusses the purposes of further measures of reform, then describes and assesses the options as we see them - within the framework of the step-by-step approach to which the Party is committed.

3. Geoffrey wrote to Jim on 30 July encouraging him to think radically, but his letter did not attempt to say what steps should have first priority during the present Parliament.

4. Since you were unable to discuss the subject with Jim before the holidays, we think Tim or I should send this paper to the Department of Employment - and preferably to other E colleagues to remind them what is at stake. We also think you might find it useful to expand your early September meeting slightly to include colleagues with a direct interest, like Geoffrey and Keith (or Norman Tebbit) and a neutral but hard-headed figure like Patrick Jenkin - who is also a large employer.

Agree? TL

5. If required for reference, we have a convenient summary of the main responses to the Green Paper, prepared by the Institute of Directors research staff. We have sent this to Geoffrey.

JH

JOHN HOSKYNS

Prime Minister

I agree that it would be a good idea to circulate this paper to E in order to get some radical thinking on this crucial issue. Can I send it round saying that you commend its general approach? TL

Not yet - wait until I return - we will decide then not.

CONFIDENTIAL

3 August 1981

TRADE UNION REFORM: THE NEXT STEP

1. PURPOSES

1.1 The purposes of further measures are both economic and political. The economic case is that unions' excessive bargaining power:

(a) is a powerful obstacle to change which inhibits adaptability and productivity; and

(b) imposes a rigidity on wages which causes unemployment and sustains inflation.

1.2 Strikes themselves are not the main measure of the damage: at every negotiation, the knowledge - on both sides of the table - that striking would be easy and cheap for the unions but expensive for employers colours the bargain that is struck or even attempted. Temporarily, trade union bargaining power (outside monopolies) is constrained by high unemployment - with visible benefits to productivity, but no-one wants to rely on that for long.

1.3 Our unique legal framework has contributed to this imbalance of bargaining power. This is not the sole cause and changing it will not achieve miracles. But further legal change is necessary, requested by industry, and, unlike so many of our economic needs, within the power of Government to deliver.

1.4 When considering the economic impact of reform measures, it is useful to keep in mind the distinction between those that help to restore the balance in the private sector and those which might help in public sector near-monopolies (which are less susceptible to legal change). There is only a partial overlap.

1.5 The political purposes are to improve our stance at the next Election by:

(a) manoeuvring the Opposition into promising to repeal/further popular reforms which should, by the Election, be already on the Statute Book.

(b) demonstrating that some of the more difficult but necessary reforms can be made to stick, and so heading off the charge that the Manifesto contains unworkable, confrontational policies;

(c) heading off a more radical approach by the SDP; there is already some evidence of their moving to the right on the unions and the social market economy;

(d) enabling us to explain and defend our economic measures coherently - putting much of the blame for unemployment on unions - and pointing to action taken (not just promises) to avoid a repetition of stagnation and high unemployment.

2. THE NEED FOR A PLAN

2.1 The role of trade unions in our economy is too central for us to be put off by the complexity or risks involved in selecting the next measures of reform. Those measures which stand to achieve most also contain the highest risks. Whatever action we take, there will be some critics who say we've done too much; others too little. From both the economic and political points of view, we want to achieve the maximum possible impact on the bargaining balance without appearing at Election time to have tried to implement essentially unworkable proposals. We need measures to help us demonstrate that we are on the road to putting the economy into some sort of order, with real benefits flowing in a second term. We have to convince industry and the media, as well as our natural supporters, that we have begun to lay the foundations of a healthy economy.

2.2 Different measures have different characteristics, for example:

(a) Those which are readily comprehensible and politically saleable - "you know it makes sense" - but which have limited real impact on the bargaining balance.

(b) Those with significant impact on the balance in the private sector.

(c) Those which curtail the monopoly bargaining power in the public sector.

(d) Those which stand a much greater chance of working if they had a fresh mandate - and would help to attract such a mandate.

2.3 It is unlikely that any measure will bring significant, visible economic benefits during the present Parliament. The political benefits come first.

3. MEASURES AVAILABLE

3.1 Closed shop

Some measures are more concerned with issues of individual liberty than making the economy work. They include the changes which Jim Prior has already suggested in his minute of 30 June, viz: increased safeguards and compensation for dismissal from closed shops; revalidation of closed shops; removing union labour only requirements in contracts. These are widely supported and should not be very difficult to enforce. They are certainly measures which the Opposition will regret being committed to repeal. The judgment on what should be done on the closed shop will obviously be influenced by the European Court decision expected very shortly.

3.2 Making trade unions liable to civil action

Aligning the Section 14 immunity should provide a much more effective means of enforcing the changes in the 1980 Act and any future changes. Legal remedies would still be quite rare and usually confined to injunctions. But the possibility of damages would influence behaviour. Once established, many Green Paper respondents, including CBI, agree that it should restrict the scope for martyrdom by individuals. It would establish the principle that unions are not above the law, but responsible for the costs of their own actions - just like companies or individuals. This is a simple and saleable proposition which received very widespread support, although some (including the CBI) have suggested that there should be upper limits to the damages that can be awarded against trade unions. They and others have suggested that unions should be presumed responsible for the action of their members and officials unless they can satisfy a court that they have used their best endeavours to prevent industrial action. This should lead to greater discipline within unions, though of course this will take time to establish.

3.3 <u>Restricting immunity to primary action only;</u>
<u>Making Procedure Agreements enforceable;</u>
<u>Narrowing the definition of a trade dispute</u>

Several bodies (including CBI) have put forward a neat package which would attempt to make procedure agreements enforceable and remove immunity for all secondary action - doing both by redefining a legitimate trade dispute. Only industrial action against one's employer within procedure would retain immunity. This is a highly attractive package, but it is open to question whether it would work without better means of enforcement (ie the change in trade unions' liability discussed at 3.2 above). Nearly all those who have proposed this redefinition have <u>also</u> proposed that trade union funds should be liable. Without this change, the scope for martyrdom would be increased. But to make <u>both</u> these changes at once would amount to a comprehensive package which might run into such initial opposition that its best chance of success would be on the basis of a mandate - by Election or referendum - to establish clear moral authority for the change.

3.4 <u>Secret ballots</u>

3.4.1 Nearly all respondents want to encourage secret ballots, but they are divided on whether they should be compulsory. The economic impact of this change might be limited, but should be favourable: it is less easy for union negotiators to call a strike quickly or unreasonably when they know that they must first cross the hurdle of a secret ballot. The deterrent effect will be greater if this change is combined with further measures to increase the cost of striking to individual union members, eg by raising the "deeming" level (which in any case should have been at least indexed).

3.4.2 If the requirement were extended to elections for union representatives at all levels, there should be considerable long-term benefit. (In USA, a legal requirement for regular elections by secret ballot for union officers at national, regional and local level, is said to have led to much more responsible union behaviour.) The <u>political</u> benefits of moves to enforce secret ballots are not in doubt. Most voters are repelled by strike decisions taken on a show of hands. It is very hard for unions and the Opposition to argue against the basic democratic procedure of the secret ballot.

3.4.3 Although unions object strongly to interference in their own procedures, we believe the most straightforward way of making this reform is to declare that in future whatever Section 13 and 14 immunities are available, these are <u>only</u> available to trade unions - and their officers and members - which have adopted secret ballots for both elections and strike decisions as part of their own rules. In addition, it would be necessary for the strike decision to have actually been taken by secret ballot to qualify for immunity.

3.4.4 Most respondents have <u>not</u> advocated trying to affect union elections, concentrating on strike decisions. Even on strike decisions, many have argued against <u>compulsory</u> secret ballots. But making all immunity <u>conditional</u> on a secret ballot is not compulsion: it merely defines minimum procedures necessary to obtain a privilege. Strikers who did not comply would take the chance that others (their employers, other workers, aggrieved third parties) might seek a civil remedy.

3.4.5 A halfway house suggested by many companies (which received wide-spread back-bench support last year) is to legislate to provide for the right of a group of workers affected by a proposed strike to petition for a ballot. Again, the sanction could be loss of all immunities.

3.4.6 Another measure proposed by some is that immunity for <u>secondary action</u> should be conditional on a secret ballot having taken place. We think this is objectionable in principle: if we conclude that secondary action is unfair, then it must always be unfair; the right to injure third parties should not simply depend on a vote.

3.5 <u>Restraining public sector bargaining power</u>

3.5.1 In our view, the root problems in the public sector are connected with their monopoly or near-monopoly status. Our first priority should be to introduce an element of competition wherever possible. Legal changes in the status of trade unions can only have a limited impact. The Green Paper discussed a variety of proposals for "protecting the community". In the end, most of these fall down on the problem of enforcement. Few respondents have suggested that strikes should be made unlawful in essential services, though that could come one day, once we have established the means to enforcement. Some (including EEF) favour a power to order a cooling-off period.

3.5.2 Many companies have suggested that the best answer to public sector bargaining power is no-strike agreements. With the present imbalance in bargaining power, the cost of these would often be too high, but in any event they do not constitute a legislative change. (Once the power of the strike threat is reduced, the cost would lower.)

3.5.3 However, there is one suggestion which would have a real impact on bargaining power in the public sector, especially on heading off the growing power of the selective strike. This is the EEF's proposal for enabling firms to lay off white collar workers without pay when their normal work is disrupted by the action of others within the company. The EEF have also suggested a still more radical proposal: that companies should be free to lay off all workers during disruption of essential services. The former idea is overdue and may even gain some support from manual workers, who at present enjoy a less privileged position. Memories of the use of selective action against the taxpayer by the Civil Service are still fresh. But the second idea would be stigmatised as an interference in employment contracts which affected the status of all employees in a fundamental way. It has attractions, but would be very hard to sell.

3.6 Unfair dismissal

Section 62 of the Employment Protection (Consolidation) Act 1978 allows a striker who has been dismissed or not offered re-engagement to claim unfair dismissal if he can show discrimination in this matter. The EEF says this operates unfairly against the employer and urges an early change.

4. THE RIGHT KIND OF PACKAGE

4.1 We have looked carefully at the range of measures possible and the amount of support they have received from respondents to the Green Paper. Most of the major private sector bodies believe that further major changes in the bargaining balance are needed. But although some stress urgency (IoD), others are either equivocal (CBI) or downright cautious (EEF) on the timing of major measures. (EEF press hard, however, on lay-off pay, which was not raised in the Green Paper itself.) Their caution reflects concern that any further changes should stick.

4.2 We think it would be best to rule out either:

(a) an essentially cosmetic package of minor changes; or

(b) a comprehensive package whose workability would be very hard to establish in the lifetime of this Government.

4.3 If a middle approach is accepted - ie one that contains some cosmetics and one or more significant advances - there are still difficult judgments to be made about different levels of boldness and risk. We cannot know in advance how successful a measure will be - still less how it will look after only one or two years. In that timescale, much will depend on circumstances and the personalities and tactics of those involved.

4.4 Although we would like to see more achieved, we think it would be best to limit the next step to:

(a) A bundle of relatively minor changes to correct the worst abuses: increased safeguards and compensation for dismissal from closed shops; revalidation; removing union only requirements for contracts; plus the dismissal for strikers change discussed at 3.6 above.

plus

(b) A change to allow laying-off of white collar workers during disputes within the company or organisation.

plus

(c) one of the following:

(i) making trade union funds liable, by aligning Section 14 immunities with Section 13;

or (ii) making all Section 13 and 14 immunities conditional upon a union requiring secret ballots for strike decisions and elections, and ballots actually taking place;

or (iii) giving, say, 15% of workers affected by a dispute the right to call for a ballot first - with the loss of all Section 13 and 14 immunities where their wishes were denied.

4.5 As regards the items under (c), our preference would be for (i): acting on trade union funds now, and fighting the next Election on a defence of the changes we have made and the intention to move on secret ballots (a popular cause) later. Further moves on procedure agreements, secondary action and the definition of a trade dispute could all come later, once the means of enforcement had been established. This change in the status of trade unions is likely to be resisted at first, but by avoiding other major changes for the present, we should be able to win the argument.

4.6 Early action on secret ballots contains less risks, and could be a rather subtle way of introducing the principle that the long-standing Section 14 immunity is not inviolate. If we chose (ii) or (iii), trade union funds would only arise in circumstances where a ballot had not been held.

5. CONCLUSION

The choice of measures under (c) is the crucial element in the next step. Of course a case can be made for other priorities, but any of the changes in (c) would affect the position of union funds which many Green Paper respondents have recognised as central. We believe it is the key to a new, more responsible, less politicised role for the trade unions. With widespread support from industry, we think the time has come when the idea can be sold that unions should begin to be treated in the same way as companies and individuals (though they would still retain immunities for lawful action). Any step forward will bring the risk of resistance at first, but the alternative of an economy with an unchanged union role is in no-one's interest.

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

Ind : Pol

B

cc A. Duguid

From the Secretary of State

The Rt Hon James Prior MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
London, SW1N 9NA

7 August 1981

Dear Jim,

INDUSTRIAL RELATIONS LEGISLATION

I have seen the Chancellor's letter to you of 30 July putting forward suggestions for legislative measures to curtail the bargaining power of trade unions which we are due to consider after the Recess. On my part, I hope your paper will make positive recommendations in two specific areas.

The first, Nawala-type blackings where there is no dispute between an employer and present or past employees, manifested itself in the shipping industry, which has made its representations directly to you in response to the Green Paper. Since then, blacking where there is no dispute between employer and crew has been directed against British Underwater Engineering Limited, largely owned by the NEB, in an attempt to dictate an employment policy which BUE say would put them out of business. When we discussed the provisions of what is now the Employment Act in E Committee in March last year, we accepted that notwithstanding our manifesto commitment to the protection of individuals, we would have to defer remedial action in this area. But we specifically agreed that industrial action in the merchant shipping industry should be dealt with in a later Bill. The legislation you are considering for the next Session provides the obvious vehicle for implementing this decision. We need urgent action on this because the law, as it stands, causes damage to our national interests by inhibiting lower

From the Secretary of State

cost shipping from using United Kingdom ports thereby increasing the cost of our trade; risks imitative or retaliatory action against our shipping (for example, Panama has threatened to use the Panama Canal in retaliation); prejudices our international defence of the freedom of the seas; and frightens away ship repairing business.

There is, of course, a more general principle here, as the Green Paper acknowledged. In the Nawala case, the employers and employees had no dispute with one another but became the joint victims of blacking by a trade union intent on imposing its policies on them. The same can happen in any sector of employment. While my Departmental concerns apply only to shipping, I would therefore support the suggestion that the problem be dealt with by the most convenient method of a general amendment of the definition of a trade dispute. (Incidentally a suitable amendment would also correct a related problem which has become apparent. That is an anomaly between Section 17 of the 1980 Employment Act and Section 42 of the Merchant Shipping Act 1970, which allows seamen to take lawful industrial action in circumstances which would be unlawful for other workers.)

The second issue is the related question of enforcing union-labour-only contract clauses. I agree that simply outlawing the practice might not be effective, and I wholeheartedly support the plea you make in your letter to me of 21 May that we must all be vigilant in ensuring that the nationalised industries and other bodies we sponsor resist pressure for such union-labour-only requirements. Nonetheless, I think that we need to look again at the legislative possibilities to back up such an initiative although you will know from our earlier correspondence the difficulties about using competition legislation.

From the Secretary of State

But I feel that in this, as in many other issues of industrial relations, it is the balance of industrial bargaining power which must be corrected. Like Geoffrey Howe, I hope that our consideration of legislative reform next Session will be guided by the requirements of our competitive position in the world. I trust that the proposals you will shortly be bringing forward will reflect this.

I am copying this letter to recipients of your minute of 30 June.

John Biffen

JOHN BIFFEN

CONFIDENTIAL

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

30 July 1981

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

Dear Jim

INDUSTRIAL RELATIONS LEGISLATION

In your minute to the Prime Minister of 30 June you explained why it made sense to postpone our consideration of detailed proposals on industrial relations legislation until after the summer recess. I have been taking advantage of the interval to brood a little about my own reaction to the subject and hope I may be allowed to offer some general thoughts.

Your own minute rightly identifies the need for legislation to deal with evident abuses, which would have the prospect of wide support. The examples which you give are understandably concentrated in the area of individual freedom, where the tyrannous aspects of the closed shop are becoming increasingly evident. I am sure that you are right to identify this aspect of the subject as calling for further treatment.

I very much hope however that we shall be able to make some further advance on the wider economic front. It is clear that the present balance of industrial legislation still gives too much scope for collective action to obstruct changes that are economically necessary. This case is probably at its most evident in the nationalised industry field but it is also significant on a wider basis. Indeed the scale of the problem is well brought out in the papers we recently received from Professor Minford of Liverpool University. His analysis suggests that the 'mark-up' on wages in the unionised sector is now around 25 per cent, compared with around 12 per cent fifteen years ago, and that a reduction in that mark-up to its level of the mid 60's could reduce unemployment by around ¾ million.

The possible legal changes which follow from this analysis seem to me to have been well catalogued in the impressive paper which we received from Emmanuel Kaye, as Chairman of the Unquoted Companies Group. I hope very much that your own

/paper, on

paper, on the basis of which E Committee will have to consider all this, will be able to include a reasonably wide range of options, representative of this kind of analysis. Certainly I hope we shall be able to consider some proposals which would begin to impose upon trade union funds some financial responsibility for the consequences of action taken by or on behalf of the union - in particular where the union ought to have, but has not, used its best endeavours to restrain it, such as in breach of procedure in collective agreements.

There are various ways in which we might move towards that objective - for example:

a. alignment of section 14 of the Trade Union and Labour Relations Act 1974 with section 13; this would restrict trade union immunities to action in furtherance of the trade dispute;

b. amend the definition of a trade dispute so that it is wholly or mainly related to the subjects specified in section 29 of the 1974 Act; this would exclude many inter union disputes from the definition;

c. application of immunities only after agreed bargaining procedures have been followed; in the absence of such procedures immunities could apply after conciliation had been sought;

d. possible further curtailment of secondary action;

e. amendment of the Employment Protection Act 1975 to give powers to dismiss strikers or to take back selectively strikers previously dismissed.

Finally, now that all the main submissions on the Green Paper have presumably been received, I think it would also be useful if you could circulate a reasonably full summary of the evidence submitted.

I am copying this letter to the Prime Minister and other E Committee members and Sir Robert Armstrong.

GEOFFREY HOWE

COMMITTEE OFFICE
HOUSE OF COMMONS
LONDON SWIA OAA
01-219 3284 (Direct Line)
01-219 3000 (Switchboard)

INFORMATION FOR THE PRESS.

THE EMPLOYMENT COMMITTEE

At its meeting yesterday , Tuesday 21 July , the Employment Committee agreed to its Report on the Legal Immunities of Trade Unions and other related matters. This Report , the Committee's Second Report of Session 1980-81 , concentrates solely on the Green Paper on Trade Union Immunities.

A photocopy of the typescript is enclosed , and , as it has been reported to the House of Commons , can be quoted freely. The published version , which will include all oral and written evidence submitted to the Committee is expected to be available from HMSO sometime during September.

22 July 1981.

CONFIDENTIAL

HOUSE OF COMMONS

Second Report from the

EMPLOYMENT COMMITTEE

Session 1980-81

THE LEGAL IMMUNITIES OF TRADE UNIONS AND OTHER RELATED MATTERS- THE GREEN PAPER ON TRADE UNION IMMUNITIES

NOT FOR PUBLICATION, BROADCAST OR USE ON CLUB TAPES BEFORE 16.00 HOURS ON 22 JULY 1981. THIS DOCUMENT IS ISSUED IN ADVANCE ON THE STRICT UNDERSTANDING THAT NO APPROACH IS MADE TO ANY ORGANISATION OR PERSON ABOUT ITS CONTENTS BEFORE THE TIME OF PUBLICATION.

Ordered by The House of Commons to be printed 21 July 1981

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SECOND REPORT

The Employment Committee have agreed to the following Report:

THE LEGAL IMMUNITIES OF TRADE UNIONS AND OTHER RELATED MATTERS - THE GREEN PAPER ON TRADE UNION IMMUNITIES

1. The Secretary of State for Employment presented his Green Paper on Trade Union Immunities to Parliament in January of this year and since then the Committee have held seven meetings on this subject, received written evidence from 25 organisations and individuals (many of whom also sent their views directly to the Secretary of State). As the Committee may wish, later in the year, to see any submissions that went to the Department from sources that have not already given their views to them, the Committee are requesting the Secretary of State to provide a list of the organisations and individuals that have submitted comments on the Green Paper, indicating if appropriate whether these comments were sent to him in confidence. The evidence received by the Committee ranged from that submitted by the CBI and the TUC to evidence from distinguished lawyers and industrial relations specialists. The Committee also heard oral evidence from the Lord Chancellor, the Secretary of State, Lord Wedderburn of Charlton, Sir Leonard Neal, and representatives of the CBI, TUC and the Institute of Directors.

Positive Rights

2. In Chapter 4 of the Green Paper the idea is canvassed of introducing a system of positive rights in British industrial law to replace the present system of immunities. For example, instead of legal protection for strikes being secured by the present array of immunities from various common law torts, there would be instituted a positive right to organise a strike.

3. The Green Paper does not identify the proponents of a positive rights system or attempt to assess how much support there is for the idea in industry. From the evidence submitted to the Committee it would appear that the majority of employers and employers' organisations are sceptical. There is virtually no support for the idea among trade unionists. Among lawyers, who would have to work the new system, the Committee did not find much enthusiasm for a change.

4. The Committee, with one dissentient, are of the view that a positive rights system would do little to make the law clearer. There would still be difficult cases at the margin and the law would still have to weigh conflicts between principles as it does at present. The change in terminology from immunities to rights would not in itself reduce the present level of uncertainty in the law or make it more simple and straightforward for practitioners. In his written submission to the Committee, the solicitor, Mr.Lionel Bloch,

argued that much of the debate over positive rights or immunities is purely semantic - that positive rights would merely be immunities in a different verbal dress.

5. The Committee, with one dissentient, consider that a system of positive rights would not reduce the complexity of the law. This complexity is a manifestation of the complexity of the issues in most industrial disputes where the rights of ownership have to be balanced against those of labour, the rights of customers and suppliers against those of the workforce, the rights of the general public against those of certain sections of the public, and so forth.

6. A changeover from an immunities-based system to a positive rights system is a change in the legal framework, a change of form rather than substance. Yet in the course of a technical changeover it would be likely that there would be changes of substance, perhaps deliberate but disguised, or perhaps unintended and even unrecognised at the time. Meanwhile there is no way of knowing for certain whether a changeover to a system of positive rights would, in practice, augment or restrict trade union powers.

7. The formulation of positive rights in industrial relations would, in the opinion of the Committee, with one dissentient, prove very difficult. The Green Paper discusses briefly (paras. 349 to 354), whether there would be positive rights to strike, to organise a strike, not to strike, and to lock-out. It would be very difficult to resolve conflicts between corresponding rights - for example, the positive rights of the pickets would conflict with the positive rights of the those who wished to work.

8. The Committee, with one dissentient, are in no doubt that the introduction of positive rights in one field of British law, industrial relations, while other fields were left untouched, would cause complicated legal anomalies. Two systems would then exist side by side: a continental-style positive rights system in the industrial field and a common law system based on established principles of tort and contract in most other fields. The Green Paper acknowledges this difficulty (para. 373) pointing to it as "a source of confusion". The Committee, with one dissentient, consider it a serious objection to the whole idea of a changeover to positive rights confined to the industrial relations field.

9. The Committee considered the question of timing if a positive rights system were to be introduced. The CBI, in its written evidence, stated that "this could not be undertaken in the short term, given the complex constitutional and legal problems involved". The Lord Chancellor, in his oral evidence, assessed the minimum period for effecting a changeover to positive rights at three years. He considered that it would be essential to have a Royal Commission on the subject. One of its tasks would be to ensure that any proposed positive rights were not inconsistent with Britain's existing legal obligations as a signatory of the European Human Rights Convention.

10. The Committee, with one dissentient, reject the idea of introducing positive rights in the industrial field at the present time. In answer to the questions raised in the Green Paper (para. 382) they consider, on the evidence before them, that a change to positive rights is not necessarily in itself desirable, would do nothing to improve industrial relations, would not be significantly clearer or more comprehensible, would not be any less complex as a system of law, and that, in general, neither employers nor unions would welcome the change.

CHANGES TO TRADE UNION LAW

11. Chapter 3 of the Green Paper sets out a number of possible changes to the present law on trade union immunities. On the issues raised in ths chapter there was considerable divergence of views, and disagreement about what should or should not be done, among those who submitted written evidence and among those who appeared before the Committee as witnesses. These differences were also reflected within the Committee.

12. A number of employers' organisations called for the removal of immunities from political strikes, but the Committee are advised that union immunities under the present law do not protect purely political strikes which have no connection with trade disputes. In view, therefore, of the confusion that exists about the legality of political strikes the Committee consider that a further statement of what the present law is should be made by the Government.

13. Turning to the differences over chapter 3 of the Green Paper, a minority of the Committee are firmly opposed to proposals which would further restrict the immunities of trade unions. They agree with the views expressed by the Lord Chancellor in oral evidence that legislative changes, to be effective and capable of enforcement, must be based on consensus and a demand from the public, and that at present such consensus and demand for changes in trade union law to deal with new or specific grievances do not exist.

14. Indeed the minority of the Committee would maintain that the immunities of trade unions have already been curtailed by the Employment Act 1980 in a way which further tilts the balance in industrial relations against trade unions. As Lord Wedderburn said in his written submission, the law of 1980 diminished trade union rights in Britain (rights which are traditionally expressed in the legal form of "immunities") to a point where it can properly be said that organised workers have never had fewer rights to take industrial action (including picketing) since 1906. The minority of the Committee would favour a return to the legal position as it was following the Trade Union and Labour Relations (Amendment) Act 1976.

15. While critics refer to the privileges of trade unions, the minority of the Committee consider that it is necessary to take into account the great privileges of employers by right of ownership of property and the great bargaining strength

this gives. It is the lack of comparable economic strength of individual working people that makes necessary their combination in trade unions, and the immunities of trade unions are essential to allow them to act in defence of the legitimate interests of those individuals.

16. The Employment Act 1980 and the Codes of Practice on Picketing and the Closed Shop produced great resentment among trade unionists and a feeling that the Government were seeking to attack their fundamental right to defend the interests of working people. A minority of the Committee consider that the possible changes set out in chapter 3 would be likely to add to the present serious social tensions.

17. The minority of the Committee consider that a voluntary system which commands widespread support is a sounder basis for the conduct of industrial relations than any legalistic system which is in itself contentious. They regard labour injunctions and damages against trade unionists as a symptom of, rather than a cure for, industrial conflict. Laws to make trade unions act as industry's disciplinarians misunderstand the democratic basis of trade union authority. Good industrial relations can only be achieved by the voluntary initiatives of management and trade unions.

18. The majority of the Committee take a different view however. They agree with Sir Leonard Neal's analysis that the voluntary system in British industrial relations has largely broken down and consequently needs to be replaced by a legal framework. Sir Leonard argued that a change in attitude within the unions, and the decline in leadership within them, had rendered the voluntary system ineffective.

19. The proposals for legal changes which follow are those which, in the opinion of the majority of the Committee, should be treated as legislative priorities to fill the gaps caused by the breakdown of the voluntary system. They do not constitute a complete legal framework, they are merely a selection of the most urgent items.

20. The Committee noted the widespread support among employers, as shown in the written and oral submissions they received, for the introduction of legally enforceable collective procedural agreements, as is the case in many other countries. Members of the Committee visited Norway and Sweden and were impressed by their system of industrial relations, which includes legally enforceable procedural agreements. Trade unionists in those countries told the Committee that they benefit from the more orderly approach to industrial relations which results from this. However trade unions in those countries appear to be closely involved in overall economic policy discussions with their Governments.

21. The majority of the Committee therefore propose that trade union immunities be forfeited, thus putting trade union funds at risk, when industrial action takes place before agreed procedures have been exhausted, or, in their absence, before conciliation through ACAS, or other specified statutory conciliator, has been tried and has failed.

22. They take the view that whatever other trade union reform is instituted, it should be backed by an effective sanction in the form of making trade union funds liable. The immunity for union funds should be no wider than that for individuals and the Trade Union and Labour Relations Acts 1974/76 should be amended accordingly. They consider that the vulnerability of union funds, rather than the ultimate possibility of imprisoning individuals, who can easily be portrayed as martyrs, should become the main sanction to ensure effectual enforcement of trade union law.

23. The Committee acknowledge that there are some difficulties with vicarious liability if union funds are exposed to civil suits for damages, and to payment of legal costs in interlocutory proceedings for injunctions. Nevertheless, the majority of the Committee consider that this problem can be satisfactorily resolved by allowing the unions to preserve their immunities if they can show that they have used their best endeavours to restrain their members from the industrial misconduct complained of. If the union were to discipline its members by suspending them from membership or suspending or disqualifying them from union office or suspending their strike pay, then it would satisfy the 'best endeavours' criterion and the union's funds would not be put at risk.

24. The majority of the Committee are concerned about strikes in essential and emergency services. They are of the view that industrial action which puts public health or public safety at risk poses a very serious problem, which must be tackled without delay. The Secretary of State for Employment informed the Committee that his Department would be producing consultative documents on a variety of matters covered by the Green Paper. The majority of the Committee therefore consider that the Secretary of State should initially produce a consultative document setting out detailed proposals for dealing with those forms of industrial action which endanger public health or safety.

25. The majority of the Committee would wish to see legislation introduced without delay to provide for automatic secret ballots before a strike may be called. They consider on present evidence, that the best way of accomplishing this would be to make union immunities conditional upon the holding of such secret ballots. However, it is recognised that there are other methods which deserve consideration and the majority of the Committee urge that the Secretary of State should produce proposals to show how this may best be done. Meanwhile they note that some trade unions already operate strike ballots.

26. The majority of the Committee consider that urgent action must be taken to curb the closed shop. The next step must be to stop the spread of the closed shop into new areas and to roll it back in areas in which it has already taken hold. If there were a ruling to this effect from the European Court at Strasbourg it should, in the opinion of the majority of the Committee, be implemented by primary legislation without delay; and it was noted that the Lord Chancellor, in his oral

evidence to the Committee, had indicated that the Government would respond quickly to the findings of the European Court. A majority of the Committee agreed that the long delays in bringing cases before the European Court were unacceptable and that the incorporation of the European Convention on Human Rights into United Kingdom law would overcome this difficulty.

27. The majority of the Committee propose that unions should lose their immunities for industrial action designed to force the employees of another employer into trade union membership. They also consider, in line with proposals received from the CBI, that clauses in contracts and tenders requiring the contractor or supplier to use only trade union labour should be void and unenforceable.

28. The majority of the Committee propose that the level of financial compensation for dismissal for not belonging to a union be raised, as suggested to the Committee by the Institute of Directors and a number of other bodies.

29. The majority of the Committee are convinced of the need for legislation at an early date on the matters which are enumerated in paragraphs 20 to 28 of this Report. They endorse the step-by-step approach to trade union reform and they observe that the next step is now due.

Please file
C.P.

10 DOWNING STREET

Good, thank you. MH 15 vii

Mr Whitmore

I have postponed the industrial regulation meeting to Wednesday 2nd Sept.

C.P.

15/7.

CONFIDENTIAL

7 July 1981

MR HOSKYNS

cc Mr Wolfson
Mr Walters
Mr Lankester

TRADE UNION REFORM

1. As you know, I have received from Department of Employment copies of all their submissions received on the Green Paper. A list of the contributors to date is attached.

2. I am planning to check through the main ones only in order to be able to assess the weight of opinion behind each of the several major proposals. Obviously, this must be done by 24 July if the results are to be included in a note for the Prime Minister's meeting with Mr Prior and others on 28 July.

3. The main areas I plan to be looking at are:

- exposure of trade union funds
- making procedure agreements enforceable
- redefining a trade dispute
- removing immunity for all secondary action
- secret ballots: for strikes
  for elections
- facilitating injunctions against "the act of picketing"
- closed shop: more compensation
  reinstatement
  abolition
- restricting strikes in essential industries
- measures to combat the selective strike (allowing lay-offs).

4. You (or others to whom this note is copied) might be interested to glance at the attached list in case there are any submissions in which you are especially interested. If you (or others) want me to be looking at any other areas of reform in particular, please let me know by 9 July. I don't want to go through the main submissions more than once if I can possibly avoid it.

ANDREW DUGUID

CONFIDENTIAL

GREEN PAPER ON TRADE UNION IMMUNITIES: RESPONSES

CONFEDERATION OF BRITISH INDUSTRY

THE POST OFFICE

THE FREEDOM ASSOCIATION

BRITISH PUBLIC WAREHOUSE KEEPERS' COMMITTEE

THE NATIONAL ASSOCIATION OF WAREHOUSE KEEPERS

SCOTTISH BUILDING EMPLOYERS' FEDERATION

TRAFALGAR HOUSE LIMITED

HOME OFFICE

BRITISH LEYLAND

GENERAL SYNOD OF THE CHURCH OF ENGLAND:
BOARD FOR SOCIAL RESPONSIBILITY
(INDUSTRIAL COMMITTEE)

SCOTTISH POLICE FEDERATION (VIA
SCOTTISH HOME AND HEALTH DEPARTMENT)

CHLORIDE GROUP LIMITED

CENTRAL ARBITRATION COMMITTEE

WESTMINSTER PRESS LIMITED

ALLIED BREWERIES LIMITED

REED INTERNATIONAL LIMITED

LONDON CHAMBER OF COMMERCE AND INDUSTRY

THE BRITISH PAPER AND BOARD INDUSTRY FEDERATION

THE BRITISH FURNITURE MANUFACTURERS FEDERATED ASSOCIATIONS

THE PROVINCIAL WHOLESALE NEWSPAPER DISTRIBUTORS ASSOCIATION

THE GUILD OF BRITISH NEWSPAPER EDITORS

GREATER LONDON EMPLOYERS' SECRETARIAT

BRITISH PETROLEUM

THE UNION OF INDEPENDENT COMPANIES

CHEVRON OIL (UK) LIMITED

COUNCIL OF ENGINEERING INSTITUTIONS

BRITISH INSTITUTE OF MANAGEMENT

FORD MOTOR COMPANY LIMITED

THE WATER COMPANIES' ASSOCIATION

THE NATIONAL CHAMBER OF TRADE

THE INSTITUTION OF CIVIL ENGINEERS

SEVENTH-DAY ADVENTISTS

CONSERVATIVE AND UNIONIST CENTRAL OFFICE:
NORTHERN COUNTIES AREA

WORKERS AID ASSOCIATION

MANCHESTER BUSINESS SCHOOL

ENGINEERS' AND MANAGERS' ASSOCIATION

ROYAL COLLEGE OF NURSING

PRINTING TRADES ALLIANCE

INSTITUTE OF DIRECTORS
SCOTTISH DIVISION

THE NATIONAL ASSOCIATION OF MASTER BAKERS,
CONFECTIONERS AND CATERERS

TOBACCO INDUSTRY EMPLOYERS' ASSOCIATION

SHELL UK LIMITED

THE MEDWAY AND GILLINGHAM CHAMBER OF COMMERCE

CHEMICAL INDUSTRIES ASSOCIATION LIMITED

NORTH WEST THAMES REGIONAL HEALTH AUTHORITY

THE NORTH STAFFORDSHIRE CHAMBER OF COMMERCE AND INDUSTRY

MIRFIELD CHAMBER OF TRADE

TARMAC CONSTRUCTION LIMITED

THE INSTITUTION OF MECHANICAL ENGINEERS

NATIONAL GRAPHICAL ASSOCIATION

INSTITUTE OF DIRECTORS

ENGINEERING EMPLOYERS' FEDERATION

THE ELECTRICITY COUNCIL

ENGINEERING INDUSTRIES ASSOCIATION

TUBE INVESTMENTS LIMITED

TURNER & NEWALL LIMITED

INSTITUTE OF JOURNALISTS

FEDERATION OF PROFESSIONAL OFFICERS' ASSOCIATIONS

UNIVERSITY OF LONDON: DEPARTMENT OF EXTRA-MURAL STUDIES

BIRMINGHAM CHAMBER OF INDUSTRY AND COMMERCE

HOUSE OF COMMONS WHITLEY COMMITTEE: TRADE UNION SIDE

THE UNIVERSITY OF NEWCASTLE UPON TYNE

THE BAR ASSOCIATION FOR COMMERCE, FINANCE AND INDUSTRY

UNIVERSITY OF STRATHCLYDE:
DEPARTMENT OF SOCIOLOGY

ROAD HAULAGE ASSOCIATION

SECURICOR

UNILEVER UK HOLDINGS LIMITED

ADVISORY, CONCILIATION AND ARBITRATION SERVICE

FOOD MANUFACTURER'S FEDERATION INCORPORATED

THE NEWSPAPER SOCIETY

TAYLOR WOODROW GROUP

THE ASSOCIATION OF BRITISH CHAMBERS OF COMMERCE

THE INDUSTRIAL SOCIETY

ASSOCIATION OF PUBLIC SERVICE PROFESSIONAL ENGINEERS

BRITISH PRINTING INDUSTRIES FEDERATION

GLASGOW CHAMBER OF COMMERCE

NATIONAL FEDERATION OF BUILDING TRADES EMPLOYERS

BRITISH MULTIPLE RETAILERS ASSOCIATION

GENERAL COUNCIL OF BRITISH SHIPPING

THE INTERNATIONAL SHIPPING FEDERATION LIMITED

CENTRE FOR POLICY STUDIES

UNQUOTED COMPANIES GROUP

CONFIDENTIAL AND PERSONAL

ccs: CDL
CWO
Mr. Hoskyns
Mr. Wolfson

File

10 DOWNING STREET

From the Principal Private Secretary

1 July 1981

Dear Richard,

INDUSTRIAL RELATIONS LEGISLATION

I have written to you separately, replying formally to your Secretary of State's minute of 30 June to the Prime Minister about industrial relations legislation. In that letter I have conveyed the Prime Minister's agreement to Mr Prior's proposal that he should bring forward a paper to E Committee in mid-September.

But as I explained to you on the telephone this morning, the Prime Minister would welcome a preliminary and entirely confidential meeting with your Secretary of State, the Chancellor of the Duchy of Lancaster and the Chief Whip before the House rises to hear from Mr Prior how his thinking is moving. We will be in touch with your office and with David Heyhoe and Murdo Maclean, to whom I am sending copies of this letter, to arrange a time.

Yours ever,

Clive Whitmore.

(1) Before the rises.

(2) 1 hour

S/Emp.
CDL

Richard Dykes Esq.,
Department of Employment.

AH

CONFIDENTIAL AND PERSONAL

CONFIDENTIAL

File AH

ccs. Cabinet
CWO
CO
Mr. Hoskyns
Mr. Wolfson

10 DOWNING STREET

From the Principal Private Secretary

1 July 1981

Dear Richard,

INDUSTRIAL RELATIONS LEGISLATION

The Prime Minister has seen your Secretary of State's minute of 30 June 1981 about future legislation on industrial relations and she agrees that he should bring forward his proposals to E Committee in mid-September.

I am sending copies of this letter to the Private Secretaries to the other members of the Cabinet, to Murdo Maclean (Chief Whip's Office) and to David Wright (Cabinet Office).

Yours ever,

Clive Whitmore.

Richard Dykes Esq.,
Department of Employment.

AH

CONFIDENTIAL

CONFIDENTIAL

PRIME MINISTER

INDUSTRIAL RELATIONS LEGISLATION

1. I was invited by Cabinet on 17 June (CC(81)23rd Meeting) to make proposals to E Committee in July following the consultations on the Green Paper on 'Trade Union Immunities'. I have so far received some 200 written representations, many of the more important only in the last week. As is to be expected following the Green Paper, a wide range of ideas have been submitted on how we might move forward, both through the law and by other means, towards a better framework for industrial relations.

2. It is already clear that there is a strong weight of opinion which will support the introduction of legislation next Session to deal with evident abuses with the prospect of widespread support. For example, we clearly need to protect individuals against ready dismissal from closed shops, to increase substantially the compensation available to those who might not finally retain their jobs, to ensure that existing closed shops are regularly reviewed and to deal with union labour only requirements in contracts. But on these and many other matters I am still awaiting a considered response from a number of bodies and companies who I know are anxious to put forward their views and a number of important organisations including the CBI are seeking meetings to develop the views they have already put forward. These meetings can be expected to provide additional reflections on the views of other respondents, indeed I judge it important that they do. Even when there is agreement on objectives, the consultations thus far already exhibit a variety of preferred means for their attainment. Only three trade unions affiliated to the TUC have so far responded, but there is in prospect a wider response to which at least we will need to consider our tactical reaction. The Select Committee on Employment will be reporting on the Green Paper at the end of the month. We cannot, of course, reach final decisions on matters concerning the closed shop until we have the judgement of the European Court on the British Rail case and the Chancellor of the Duchy has assured me that a Bill could be accommodated in the Programme if introduced early in the New Year.

3. The decisions we need to take about the content of the legislation will be critical, both politically and industrially. I would not want them rushed before I am sufficiently confident that I have fully explored what industry and other opinion might seek, by what means and with what effects. I would therefore propose, if you agree, to complete fully the consultations in train and in prospect before putting forward my detailed proposals to E Committee. This I would propose to do by mid-September, when we have returned from the Summer Recess.

4. I am sending copies of this minute to members of the Cabinet and to Sir Robert Armstrong.

J P

30 June 1981

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PRIME MINISTER

You asked whether it would be a good idea to publish all the submissions on the Green Paper on Trade Union Immunities in one volume.

The Department of Employment tell me that they see some problems with the idea of publishing submissions on the Green Paper. They have already had over 80 submissions, and the figure is still rising. It would be a time-consuming and expensive business to publish all these. They point out that some organisations will in any case make their own arrangements for publishing their submissions.

When Cabinet considers the response to the Green Paper, Ministers will be given a summary of all the submissions that have been made. You may wish to reconsider then whether there would be anything to be gained from publishing the submissions, or the summary - itself.

15 June 1981

cc: Mr. Duguid

Prime Minister 2

12 June 1981

MR RICKETT

UNQUOTED COMPANIES GROUP SUBMISSION ON TU GREEN PAPER

1. This is a masterly critique - pointing out many of the Green Paper's omissions and misinterpretations. It recommends changes in industrial law which would, in time, lead to a much better balance of bargaining power in industry, more responsible trade unions and greater protection for the individual. Many of its recommendations amount to a return to the 1971 Act.

2. The Prime Minister knows that we are following the submissions on the Green Paper closely. There is an unmistakeable groundswell of management opinion in favour of further changes, with plenty of broad, though less informed, public support. There is also strong back-bench pressure, though this is narrowly focused on the closed shop at present.

3. Many of the measures supported by other employers' associations are also found in this submission. Its main recommendations are:

   (a) Exposing trade union funds, by removing the S14 immunity and establishing vicarious responsibility unless a union has taken "all reasonable steps" to prevent unlawful action.

   (b) Ending immunity for all forms of secondary action.

   (c) Restricting the definition of a trade dispute.

   (d) Providing for enforceable collective agreements - with provision for explicit opting out. (CBI's Jarratt group - not yet endorsed - have proposed an arguably tougher version of this change.)

   (e) Restoring the right not to belong to a trade union. (But UCG are not apparently suggesting a change in the remedy for an unfair dismissal. Others have suggested reinstatement or much larger compensation terms.) UCG accept the requirement for a contribution to charity where a closed shop has been validated by 80% of those eligible to vote.

(f) Responsibility for industrial disputes to go Industrial Tribunals and a new National Tribunal.

(g) Discretionary powers for Government to order the cooling-off period and a secret ballot in the national interest.

(h) Some extension of the coverage of the Emergency Powers Act (this is being studied in Government).

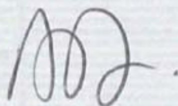
(i) More rigorous application of standards to unions, through registration.

4. We are in no doubt that all these measures would be worthwhile. The difficult political judgment will be:

- How soon should the next step be taken? (We agree with the UCG that this should be the next session.)

- How much should be done in one step? (There is a strong political case for proceeding step by step. A powerful myth - which UCG convincingly expose as such - has built up that the 1981 Act tried to do too much and was therefore unworkable. This viewpoint cannot be ignored.)

5. If the political judgment is that an all-embracing Act cannot be risked, we think the most important single next step is to establish the liability of trade union funds. Nothing else will be so effective in requiring unions to behave more responsibly and exert greater control over their members. This is the way to a more ordered system. We do not believe that big steps can be taken on the closed shop, but some movement here may help to galvanise political support.



ANDREW DUGUID

10 DOWNING STREET

POLICY UNIT

28 May 1981

Dear Clive,

GREEN PAPER ON TRADE UNION IMMUNITIES

I should be very grateful if you could send me copies of all responses to the Green Paper as they arrive at your Department. If you see any difficulty about this, please let me know.

Yours sincerely,

Andrew

ANDREW DUGUID

Clive Tucker, Esq.,
Department of Employment.

INSTITUTE OF DIRECTORS

From the Director General

T.K. Results after May 12th

5 May 1981 CF p.a.

Director General
Walter Goldsmith

116 Pall Mall
London
SW1Y 5ED
Telephone
01-839 1233
Telegrams
Boardrooms
London SW1
Telex 21614

Dear Member

The Green Paper on Trade Union Immunities

The Institute of Directors will next month submit its views to the Government on the questions raised by the Green Paper on Trade Union Immunities. The Institute's views are at an advanced stage of preparation, following research effected through branch discussion papers and the work of the Industrial Relations Committee. The Institute's principal proposals are set out below. You are asked to read them carefully, and then to answer the single question set out on the tear-off portion of this letter. Please return the tear-off slip to me in the reply paid envelope enclosed, if possible not later than Tuesday 12 May 1981.

Amongst Main IOD Proposals

The Institute believes that any further employment legislation should be designed to improve the nation's economic performance and to increase opportunities for union members' views to influence union decision-making.

Current legislation should therefore be amended so that:

a. it becomes possible to sue trade unions (rather than individuals alone) for unlawful actions;
b. industrial action becomes unlawful where it is in breach of agreed procedure;
c. secondary industrial action (eg blacking) becomes lawful only after a secret ballot of those to be involved in the secondary action;
d. the definition of a trade dispute is narrowed to exclude from immunity against actions in court industrial action taken for political purposes or as a tactic in inter-union disputes;
e. closed shops are further discouraged by increasing compensation paid to those unfairly dismissed to a punitive level.

Timing of legislation

The principal arguments for and against legislation during the 1981/82 Parliamentary session are as follows.

For: a. The action the Government has taken so far in the Employment Act 1980 does not tackle the fundamental problems and falls short of what was expected before their election. The situation should be redressed without delay.

b. If these proposals for further legislation will help

improve industrial performance, they should be implemented right away.

c. The time is right for taking action now. There is no indication of public sympathy with trade union opposition to further legislation, and little likelihood that trade unions could rally support, given current levels of unemployment. This position might not outlast the recession.

Against:

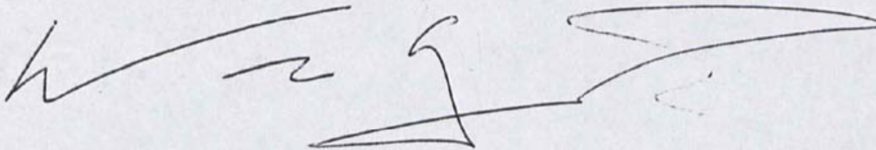
a. Fresh legislation should not be introduced until it is possible to judge the extent to which the Employment Act is proving successful.

b. Immediate further legislation might be sufficient to mobilise massive trade union opposition which would jeopardise both the Employment Act and the Government's prospects of re-election.

c. The Government should first seek voluntary reforms from trade unions. If these were not forthcoming, then legislation should be introduced.

It is on the timing of legislation that the Institute seeks your advice.

Yours sincerely



Walter Goldsmith

The Question

The Prime Minister has assured the Institute that time will be provided during the 1981/82 session of Parliament for further legislation if that were shown by the consultations on the Green Paper to be necessary or desirable. Should the Institute urge the Government to legislate during the 1981/82 session of Parliament?

Please place your tick in the appropriate box.

YES ☐ NO ☐

Position held:..............................

Nature of business:.........................

No. of employees:...........................

CONFIDENTIAL

24 March 1981

MR LANKESTER

cc Mr Sanders

TRADE UNION REFORM

1. As you know, the deadline for the Green Paper consultative exercise is 30 June. In our notes to the Prime Minister of 28 November 1980 and 15 December 1980, we expressed concern that this timescale might effectively rule out even the possibility of taking a further legislative step during the 1981/2 session. The Chancellor expressed the same anxiety in his letter to Mr Prior of 8 December.

2. Department of Employment suggested that the June deadline did not preclude action during the 1981/2 session, although Mr Prior told us he thought it might turn out to be a better tactic to use the prospect of further legislation as a Sword of Damocles, until the next Manifesto was written. No decision was taken on timing; by implication it was left to be considered in the summer.

3. Could you tell me whether the contingency need for legislation - for which the Chancellor and, I think, the Prime Minister are convinced - is reflected in the arrangements for forthcoming legislation, including the contingency arrangements? If not, do you not think we should consult the Prime Minister about this?

ANDREW DUGUID

PMG NOTE: 2/81

BACKGROUND NOTE

GREEN PAPER ON TRADE UNION IMMUNITIES

1. The Green Paper was published on 15 January 1981.

2. The Government undertook in its election Manifesto to review the law on trade union immunities in the light of recent judicial decisions.

3. Some changes were enacted in the 1980 Employment Act, notably in restricting immunities in secondary action.

4. This Green Paper provides a detailed analysis of other aspects of the subject and seeks comments and views by June 30, 1981. A number of organisations, including the CBI, emphasised the need to allow adequate time to consult their members.

5. The Green Paper makes clear the Government's view that improvements in industrial relations are essential to economic recovery. It does not however put forward recommendations for further changes in the law, but seeks to open up the debate on these issues before coming to decisions.

6. The Government is thus not committed to further legislation. But equally it has not ruled out the possibility of further legislation if this seems desirable in the light of these consultations and the operation of the Employment Act.

7. The Green Paper looks at a number of issues that have been the subject of discussion in recent years. Notably immunity for trade union funds, immunity for secondary action, picketing, definition of a trade dispute, legally enforceable collective agreements, secret ballots, closed shop and protecting the community. It also discusses the question of replacing immunities by a system of positive rights. Each section concludes by posing questions on which the Government is seeking views.

8. Further context for the discussion is provided by a chapter on the history and development of immunities and descriptions of industrial relations law in a number of other countries.

Chancellor of the Duchy of Lancaster
& Paymaster General
Privy Council Office
68 Whitehall
LONDON SW1

15 January 1981

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

Industrial Policy

Tim Lankester Esq
Private Secretary
10 Downing Street
LONDON SW1

15 January 1981

Dear Tim

I enclose an advance copy of the Green Paper on trade union immunities which my Secretary of State will be publishing at 4.00pm this afternoon.

I am copying this letter to the Private Secretaries of other members of E Committee, the Lord Chancellor, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

Marie Fahey

MISS M C FAHEY
Private Secretary

Prime Minister 4

The Unquoted Companies' Group

Founded in 1968 to study the interests of the unquoted sector

Date: 8th June, 1981

Please reply to:
Sir Emmanuel Kaye C.B.E.
Lansing Bagnall Limited,
Kingsclere Road,
BASINGSTOKE, Hants.
RG21 2XJ.

The Rt. Hon. James Prior, M.P
Secretary of State for Employment,
Caxton House
Tothill Street
LONDON S.W.1.

My dear Secretary of State,

GREEN PAPER ON TRADES UNION IMMUNITIES

In response to your invitation to industry and others concerned on the issues covered in your Green Paper, CMnd.8128, presented to Parliament in January of this year, I forward herewith a Submission prepared by The Unquoted Companies' Group.

As has been our practice in the past, copies of this letter and our Submission are also being sent to the Prime Minister, the Chancellor of the Exchequer and the Secretary of State for Industry.

We would welcome, at your convenience, an opportunity to discuss with you the points made in our Submission.

With kindest regards
Yours ever,
Emmanuel.

THE GREEN PAPER "TRADE UNION IMMUNITIES"

(Cmnd 8125, January 1981)

A SUBMISSION BY

THE UNQUOTED COMPANIES GROUP

June, 1981.

C O N T E N T S

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	PREFACE	
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P R E F A C E

This Submission is a response to the Government's request for comments on the specific issues raised in the Green Paper. It does not, therefore, cover other areas of industrial relations legislation where we think that changes are needed. Nevertheless, it embodies recommendations which we believe would help restore the health and competitiveness of British industry and stimulate the energies, enterprise and satisfaction of people at work.

Clearly, no change in law can in itself create good industrial relations. But bad law impedes the efforts of responsible people: good law gives them support and incentive. This is the main point at issue: and the need for change is urgent.

Some people say that such reforms should not be attempted until there is broad agreement between the parties most affected. We think this is unrealistic. The experience of other countries as well as Britain shows that employers and trade union leaders have not agreed about proposed legislation in this field. It therefore falls inevitably to Government to effect such changes in the law - with broad support from the general public.

History shows, too, that considerable time - usually several years - is needed for adaptation to change, and for its benefits to become apparent. In the short-term there may be intensification of conflict.

We have reflected carefully on this widespread evidence in considering the very material matter of timing.

We agree that proposed legislation should be based as far as possible on consensus; that it must be seen by public opinion generally to be sensible and fair - and not just an aid to greater efficiency. This said, it is our considered view that the reforms most urgently needed will not be undertaken without risk of strong resistance from trade union leadership; that to make the avoidance of confrontation a paramount consideration of policy is unrealistic; and that to delay action on grounds that delay may induce the attainment of consensus is illusory.

We believe that nothing can be gained - and much will be lost - if decisions on this vital issue are held over until the next General Election. The country just cannot afford the perisitent lack of predictability and accountability in the sphere of industrial relations if it is to regain competitiveness. Furthermore there are important reasons for bringing the principles of our industrial relations system into line with those of our partners in Europe.

We most strongly recommend that proposed reforms in this field should be outlined in the Queen's Speech next November.

THE SUBMISSION OF THE UNQUOTED COMPANIES' GROUP ON THE GREEN PAPER "TRADE UNION IMMUNITIES"

Summary and References

CHAPTER 1 - INTRODUCTION

U.C.G. Pages		G.P. Paras.
1/2	This comprehensive review does not mention the two immunities which we believe have had the most damaging influence since 1906.	
2/3	The purpose of the Green Paper is said to be to prompt debate on the role of trade unions and employers. Employees are not mentioned.	33

CHAPTER 2

THE HISTORY AND DEVELOPMENT OF TRADE UNION IMMUNITIES

U.C.G. Pages		G.P. Paras.
5	We regard Section 4 of the 1875 Act as very important - especially in the context of more industrial unrest in essential services. It is not mentioned among the listed "main effects" of the Act.	41
5/6	We question the notion that liability for the unlawful act of inducing a breach of employment contract was an issue in 1906. Neither the T.U.C. nor the Labour Party sought the extraordinary immunity which was given. This, more than anything else, has provoked the British disease of wild-cat strikes in breach of contract. The Green Paper invites no comments on the subject.	45(ii) 46

U.C.G. Pages		G.P. Paras.
7/8	References to legal cases in this Chapter provide strong evidence that, if the law so allowed, employers and others would seek redress from trade unions. This is not mentioned in Chapter 3 A.	44 62 63
8/9	We question the stated conclusions from ROOKES V BARNARD. The Conservative Opposition pledged repeal of the 1965 Act which followed: yet the provisions remain today.	67/69
9/10	We think the account of the operations of the 1971 Act is unbalanced. We give reasons and additional facts.	79/81

CHAPTER 3

POSSIBLE CHANGES TO THE PRESENT LAW ON IMMUNITIES

U.C.G. Pages		G.P. Paras.
	A. THE IMMUNITY FOR TRADE UNION FUNDS	
11	While noting the Donovan Commission recommendation that trade union immunity should only apply in circumstances of a trade dispute, the Green Paper overlooks the equally important Donovan recommendation that even the limited immunity should be given only to Registered trade unions.	109
12/13	We see no need for detailed legislative definition of vicarious responsibility, and give our reasons. In other countries unions are liable unless "all reasonable steps" are taken to prevent or stop the unlawful action.	122

U.C.G. Pages		G.P. Paras.
13	We say that the positive action by the T.G.W.U. following the HEATONS TRANSPORT v T.G.W.U. judgement is a good example of how law can instigate reforms.	117
14	We recommend that trade unions should have vicarious responsibility - subject to "best endeavour" provisions. We also agree with the Donovan Commission recommendation that unions must be registered bodies with rule books conforming to minimum standards.	117
15	We give reasons why, in our view, the effects of putting trade union funds at risk - as in all other countries - would be beneficial.	123/129
16/17	We are confident that the knowledge that any injured party (not only employers) could sue for damages or injunction would have significant impact on trade union behaviour and, in time, their structure and administration.	132

U.C.G. Pages		G.P. Paras.
17/18	We believe that opportunities for individuals to seek martyrdom would be lessened if injunctions could be obtained against trade unions as bodies.	134/135
18/19	We recommend that the Section 14(1) immunities should be revoked - not, as suggested, "narrowed in line with Section 13 immunity". We give reasons.	137

B. THE IMMUNITY FOR SECONDARY ACTION

20/21	We oppose the concept in Section 17 of the 1980 Act that common law rights should be denied to people because they happen to be suppliers or customers of an employer in dispute. We believe that any distinction between lawful and unlawful "secondary action" should be based on whether or not the third party is acting in a neutral manner. We reply to objections to this.	143 152/154

U.C.G. Pages		G.P. Paras.
21/22	We recommend that immunity is revoked in respect of inducing the breach of _any_ form of contract. Again - Britain is unique: but we give other reasons.	155/158
	C. PICKETING	
22/23	We believe that provisions of the 1980 Act are impractical - in particular while "trade unions" include _ad hoc_ groups and while the legal definition of "trade dispute" is so widely drawn. We give illustrations.	166(ii) 168
23/24	We recommend that the legality, participation in, and remedies available in respect of picketing should be identical to the principles applied to any other form of industrial action. Moreover, the law should enable injured parties to obtain redress from unions as well as individuals - as in all other countries.	170/178

D. DEFINITION OF A TRADE DISPUTE

U.C.G. Pages		G.P. Paras.
26	We recommend that, to fall within the legal definition, a trade dispute should be "wholly or mainly" related to some matter listed in the Act - not, as at present, merely "connected with" one or more of the matters. We give reasons.	188/191
27	Provided the above change is made, we do not support proposals to make distinctions where disputes have "a political element".	199
27	We recommend that the definition should exclude disputes between "workers and workers". To be lawful, a trade dispute should be between employers and workers.	202/205
28	We recommend that the term "worker" in relation to a trade dispute should mean only employees of the employers involved or workers dismissed in connection with the dispute.	

U.C.G. Pages		G.P. Paras.
28/29	We recommend that Section 29(4) should be amended so that a trade union cannot be a party to a lawful dispute in its own right.	206/209
29/30	We summarise our reasons for these recommendations.	

E. LEGALLY ENFORCEABLE COLLECTIVE AGREEMENTS

We believe that the manner of presentation of parts of this Section gives a wrong impression. We give reasons:- e.g.-

(i) Enforceable status in some form applies in all countries except Britain - not just "in most Western industrial countries".

(ii) The reference to our "tradition" of "choosing not" to conclude legally binding agreements neglects to mention that our unique Statutory law is mainly responsible for this unique situation. The 1871 Act

(U.C.G. Pages 31/33; G.P. Paras. 224)

U.C.G. Pages		G.P. Paras.
	prevented enforcement between trade unions and employers' associations: and the 1906 Act gave immunities to trade unions not available to individual employers. Thus, enforceable agreements would not have been between parties equal before the law.	
	We suggest that Britain's "tradition" has little to do with merit or free choice.	
33/36	We recommend that Section 18 of the 1974 Act be amended:-	242/244
	First, to provide that agreements should be binding unless they contain express provision to the contrary.	
	Second, to ensure that any such provision must be recorded in writing on each occasion.	
	The reasons for our conclusions are given in some detail.	

U.C.G. Pages		G.P. Paras.
	F. SECRET BALLOTS	
36	We are against any general statutory provision for compulsory secret ballots about industrial action.	246/247 & 260
37/38	We recommend that Government should have power to intervene where the national interest is threatened <u>and</u> where there is doubt as to whether those involved support the industrial action.	248/250
	G. CLOSED SHOP AND UNION MEMBERSHIP ISSUES	
39	We think the most telling <u>economic</u> argument against the closed shop is that the worst industrial conflict in Britain is in industries and services where closed shops are in force.	265

U.C.G. Pages		G.P. Paras.
39/42	We recommend that the right not to belong to a union should be restored.	267
	Dismissal on grounds of non-membership should in all circumstances be "unfair".	273/274
	We further recommend that where a union membership agreement is approved by at least 80% of those entitled to vote, employees who do not wish to join could be obliged to pay an agreed charity the equivalent of the basic union due.	

H. PROTECTING THE COMMUNITY

In our view, the paragraphs dealing with statutory "cooling off" periods are in several respects misleading.

U.C.G. Pages		G.P. Paras.
42/44	First, they give the impression that provisions for strike ballots in the 1971 Act and the American Taft Hartley Act were the same. They were quite different.	314/318

U.C.G. Pages		G.P. Paras.
	Second, it is implied that in America "resulting ballots" have been held in all 24 cases where injunctions have been granted. This is not so. In 17 of the cases the dispute was settled during the cooling off period while employees continued to work. A success rate of over 70%.	
44	In contrast to the Green Paper's reference to the "lack of success" of cooling off periods we believe that this record is impressive. Our view is mildly supported by the single experience under the 1971 Act.	319
44	We are opposed to legislation extending criminal sanctions to industrial action beyond the armed services, police, and merchant seamen. Experience of other countries is that most have problems of enforcement.	330/337

full marks for careful research

U.C.G. Pages		G.P. Paras.
46	We recommend that the 1920 Act powers should be extended to include other essential supplies and services.	
46	We recommend that the 1920 Act criteria for what constitutes "an emergency" should be amended. We propose a formula.	322/324
47/50	We make detailed recommendations for alternative provisions which are less drastic than the ultimate step of declaring a Royal Proclamation of Emergency. They include provision for a cooling off period of not more than 60 days.	
50/53	We recommend the establishment of a new national tribunal. This would replace the Employment Appeals Tribunal and, with the present Industrial Tribunals, take over responsibility for dealing with industrial disputes and related matters. We outline details and give our reasons.	

CHAPTER 4

AN ALTERNATIVE SYSTEM OF POSITIVE RIGHTS

U.C.G. Pages		G.P. Paras.
	It is stated that this chapter is primarily concerned with rights affecting "industrial action". We feel, therefore, that it would have been relevant to mention the following rights under the 1971 Act:-	
55	(i) The right not to be compelled by any Court either to work or to take part in any industrial action. The 1974 Act repealed the second leg.	342/343
55	(ii) In effect, a positive right to strike without being in breach of contract. Section 147 provided that due notice of strike action was neither notice to terminate the contract of employment nor a repudiation of the contract.	

U.C.G. Pages		G.P. Paras.
	This was repealed in 1974. Yet since it was identical to the "positive right" in most countries discussed in this chapter it would seem to be very relevant.	
56/57	We observe that the chapter makes generalisations about "systems of positive rights" as if they were distinct from other "systems". This is not so. We give reasons and examples.	347
57	We disagree that the equivalent of British immunities would be "a right to organise a strike". British law gives immunity to "those who induce or threaten others".	349
57/58	We suggest that reinstatement of Section 147 of the 1971 Act (mentioned above) would bring British law into line with other countries - most importantly our partners in Europe.	349

U.C.G. Pages		G.P. Paras.
58	We recommend the reinstatement of Section 128 of the 1971 Act. No court should have power to compel an employee to participate in industrial action.	351
59	We observe that while the Green Paper often quotes from the Donovan Report it makes no reference to Donovan's recommendations on trade union rules and compulsory registration. We believe that no analysis of immunities and rights in relation to industrial action can be complete if it ignores these issues.	

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THE GREEN PAPER "TRADE UNION IMMUNITIES"

(Cmnd 8125, January 1981)

A SUBMISSION BY THE UNQUOTED COMPANIES GROUP

CHAPTER 1 - INTRODUCTION

1. The Government do not ask specific questions about this Chapter but we make the following brief comment.

2. Para. 8 refers to the 1906 immunities for individuals and trade unions against being sued in tort and concludes that

> "in this way the law gives British trade unions a position for which there is no parallel in other countries".

This opening summary of the crucial 1906 Act provisions makes no specific mention of the two features which, ever since, have had the greatest influence on British industrial relations and have been the subjects of the greatest controversy:-

(i) The unique legal immunity given to individuals who, to promote a "trade

disputé", violate the law by inducing others to commit the illegal act of breaking their contracts of employment.

(ii) The fact that trade unions were given immunity in respect of all torts including unlawful behaviour totally unconnected with "trade union activities" or "industrial action".

These points are of paramount importance. We believe that attention should be drawn to them in this very comprehensive introductory Chapter.

3. We note the statement in paragraph 10 that:-

> "the conduct of our industrial relations...is dependent primarily on managements and trade unions sorting out problems...".

Throughout the Green Paper there seems to us to be a presumption that trade unions are one of but two primary parties in industrial relations. We believe that industrial relations primarily concern the relations between employers and their employees. Trade unions are the agents of employees - acting with their consent. This, at least, should be the assumption on which the subject is debated.

On this same point we question the purpose of the Green Paper (paragraph 33) as being

> "...to prompt a wide and informed debate on...the role in modern life of trade unions and employers...".

We think the role of employees is of equal importance and should have received specific mention accordingly.

CHAPTER 2

THE HISTORY AND DEVELOPMENT OF TRADE UNION IMMUNITIES

1. We make the following comments on this Chapter because, although not invited, we believe that they are relevant to the overall discussion in subsequent Sections of the Green Paper.

2. We observe that in paragraph 34 - as elsewhere in the Paper - reference is made to legal immunities protecting "those who organise" industrial action. While we appreciate that this form of words may simplify, we believe it may also be misinterpreted or misunderstood. There is often a clear distinction between those who "organise" and those who "induce others" to take industrial action - which may be unlawful. But the immunities apply to both.

We think this should be made clear. It could influence many aspects of the debate. There are circumstances in which it is important to protect

people who "organise". In other cases there is no justification for protecting "people who induce others" (perhaps for political reasons) either to "organise" or "to take part in" industrial action.

3. We observe that, in the list of "main effects" of the 1875 Act (para. 41), Section 4 of the Act - which made it a criminal offence for people employed in the supply of gas or water to break their contracts of service - is not mentioned.

4. In our view this 1875 Act provision (extended to electricity in 1919) is of great importance. It was repealed by the 1971 Act and not reinstated in 1974. It can be argued that this is a reason why industrial conflict in these essential services dates from that time.

5. We question the accuracy of what is written in paragraph 45 (ii) - as also the deductions in paragraph 46.

If civil liability for inducing a breach of contract of employment had then become an important issue -

the T.U.C. and the Labour Party would have sought to change the law in 1906. Yet no such provision appeared in the Labour Party's own Bill: nor in any Labour amendment to the Government's Bill!

From this it would appear that no real thought had been given to the matter prior to the introduction of the extraordinary DILKE amendment at the Committee stage: and the fact that the Conservative Opposition accepted this amendment is further evidence of the apparent ignorance which prevailed at the time.

6. We draw special attention to this matter. We regard it as of paramount importance. Giving immunity to people who induce others to break their contracts of employment has had, in our opinion, more serious impact on British industrial relations than any other single statutory provision. This more than anything else has provoked the British disease of the wild-cat strike in breach of contract. The Green Paper avoids the subject and invites no comments on it. We believe this is a serious failure.

7. Because the matter is so relevant to today's debate, we draw attention to what is, in our view, a misleading

conclusion on the outcome of the Taff Vale case in para. 50.

This says that "no one" had previously thought that a union could be sued in its own name for acts done by officials. This may well have been a general impression; but the point had never even been argued until it came before the Courts in the Taff Vale case.

In support of the argument, paragraph 50 says "the cases in the 1890s had all seemed to indicate" that unions were protected. In fact, in the 30 years since the 1871 Act had been passed, a trade union had been sued in tort in only three cases. In two of these the union itself had not appeared; in the third its name as co-defendant was struck out before proceedings began.

8. The reference in paragraph 44 to "a series of important judgements"; in 62 to "a number of important cases" and to "a series of cases"; and in paragraph 63 to "a series of cases in the mid-1960s and early 1970s" seem to provide strong evidence to support an argument that, where appropriate, employers have and would seek redress through the Courts from

trade unions, if the law permitted it. This is important in responding to the questions posed in paragraph 137: and we feel it would have been helpful to include the evidence of history in Chapter 3 A which studies the whole subject of the immunity for trade union funds.

9. We draw attention to what we consider to be an incorrect conclusion given in paragraph 68 resulting from the Rookes v. Barnard case.

It is of course true that the T.U.C., and left-wing academics such as Professor Kahn-Freund, claimed that the House of Lords decision in this case "drove a coach and four through the Trade Disputes Act 1906". But this argument was rejected by the then Conservative Government, and by other leading lawyers and academics.

It is therefore surprising that the Green Paper should make the statement:

> "it seemed possible that whenever a trade union official threatened a strike he might be liable to be sued for intimidation".

This is misleading. The question of "threatening a strike" was never in issue: what was at issue was the threat to break a contract by going on strike. And it was because of this aspect that the Conservative Opposition, both then and in

their subsequent Election Manifestos, pledged repeal of the 1965 Act which followed - and is still effective today.

We think it would have been helpful to include these vital considerations in the "historical" section of the Green Paper.

10. We believe the reference to the unanimity of the Donovan Commission Report - "apart from notes of dissent" - is misleading. We draw attention to this now because the Report is often used as supporting evidence in the Green Paper.

The "notes of dissent" referred to were often on fundamental issues: Mr. Andrew Shonfield's "Note of Reservation" expressed disagreement on major principles; moreover, many of the specific recommendations in the Report were qualified by "a majority of us feel...".

11. We think the statements in paragraph 79 concerning the 1971 Act are unbalanced. The "fierce opposition" referred to both before and after the Act became law came almost exclusively from the T.U.C., union leadership, and the Labour Party. All public

opinion polls in 1970/71 showed that well over 80% of the public, and well over 70% of trade union members, supported the reforms. They also received overwhelming support from employers organisations.

We are concerned that while this short paragraph refers to the challenges in the docks in 1972 and in engineering in 1973/4 - no mention is made of the hundreds of cases which were settled satisfactorily and without dispute through the machinery set up by the Act.

12. The paragraph also states that

> "the operation of the Act was overshadowed by the fact that it led fairly swiftly to the imprisonment of individual workers...".

This is given as a statement of fact, and not of opinion. As such it could influence the current debate. We therefore think it important to mention that imprisonment occurred on one occasion only; and that, even then, it was for contempt of court and not for failure to comply with any provision of the 1971 Act.

CHAPTER 3

POSSIBLE CHANGES TO THE PRESENT LAW ON IMMUNITIES

A. THE IMMUNITY FOR TRADE UNION FUNDS

How wide should the immunity be?

1. Paragraph 109 refers to the Donovan Commission recommendation that trade union immunity should be limited:-

> "...so that it applies to torts committed in contemplation or furtherance of a trade dispute but not as regards any other tort..."

The Green Paper does not mention the even more important Donovan recommendation that to obtain even this restricted immunity trade unions would have to be registered bodies, with strict statutory requirements as to their Rules. We draw attention to this now and make specific proposals later in our Submission.

2. Paragraphs 112, 113 and 115 each mention the important argument that the narrowing of Section 14 immunity

would enable employers to obtain redress for damage done by unlawful action.

We point out that not only employers but any injured parties would be able to seek redress for damage suffered - including employees and members of the general public.

Vicarious Liability

3. We suggest that these paragraphs exaggerate the problem. Our reaction to the conclusions (paragraph 122) is as follows:-

(i) We see no need for any detailed legislative definition of vicarious responsibility. In other spheres of law, the Courts are constantly making decisions about what is "reasonable" or otherwise.

Paragraph 120 refers to Australia - where unions are held liable for unlawful acts of officals and members

unless they can show that they took "all reasonable steps" to prevent or stop them. This, or almost identical, criteria is applied in most other countries - including the U.S.A., Canada, Japan, Germany, Holland, Norway and Denmark. In France and Italy similar criteria are used to establish liability for unlawful actions of officials, but unions are not vicariously liable for actions of members who are not officials.

Paragraph 117 presents the Heatons Transport v. T.G.W.U. case as if to illustrate a major difficulty. We would say that the most significant feature of the case was that, as a direct result of the House of Lords decision, the T.G.W.U. - for the very first time - issued shop stewards with credentials limiting their authority with regard to industrial action. It is a good example of how law can stimulate reform.

(ii) We agree that the Courts will from time to time be faced with "problems of interpretation". However, we believe that if unions had vicarious responsibility - subject to "best endeavours" provisions - this would provide a massive incentive to reform. Moreover, if - as we recommend, and as the Donovan Commission recommended - unions had to be registered (or "certificated") in order to obtain the status and privilege of trade unions - their rule books would soon, where necessary, be clarified and revised to comply with the standards laid down.

(iii) We do not see the relevance of this "conclusion": i.e. that the Courts will sometimes decide not to hold unions responsible. We believe that the reforms we propose as to trade union liability would result in gradual but emphatic progress in the right direction. At present <u>in no circumstances</u> can trade unions be held responsible.

Possible effects on Trade Unions

4. Our comments are broadly in line with paragraph 129 i.e.

(a) If union funds were at risk unions would act much more positively to exercise authority over officials or members who were causing damage to others by unlawful action.

(b) This is supported by experience in other countries. Trade unions invariably "take all reasonable steps" to prevent their members or officials acting unlawfully in a manner which might put union funds at risk.

(c) It is right in principle that anyone who suffers loss or damage through unlawful action by others should be able to seek redress from those responsible. Trade unions elsewhere accept this principle yet operate effectively. There is no reason why this should not be the case in the U.K..

Nature and Extent of Damages

5. Paragraph 130 says that removal of the Section 14 immunity would enable employers to sue trade unions for damages. This, of course, is so: but it would also enable all injured parties to obtain redress. This is important.

6. Paragraphs 131/133 frequently refer to "experience of the 1971 Act": but while the point that "a union could be bankrupted" is made, Sections 116 and 117 of the 1971 Act - specifying the limits to damages which could be awarded against trade unions - are not mentioned. This is fundamental to the debate. Indeed, it was debated at great length before the 1971 measures were introduced.

7. We disagree with the statement - made as of fact, not opinion - in paragraph 132 that:-

> "Narrowing the Section 14 immunity for trade union funds would have little or no impact unless employers were prepared to sue trade unions...".

We are confident that the knowledge that employers (and others) could, if they wished, sue for damages

would have a significant impact on trade union behaviour and, in time, trade union structure and administration. At present unions know they are protected by an impregnable barrier erected for them by Parliament. They are under no risk. Yet it is the risk of being sued which matters most of all.

8. Paragraph 132 also argues that "those who are opposed to a change in the Section 14 immunity" say that an injunction to restrain unlawful action is often preferable to an action for damages.

We agree: but Section 14 immunity prevents employers from seeking injunctions.

"Martyrdom"

9. We find the arguments in paragraphs 134/135 against amending Section 14 immunity unconvincing.

It would not, as implied, provide a substitute for present procedures but an additional remedy. Moreover, we are confident that opportunities or incentive for individuals to seek martyrdom would

be lessened if injunctions could be obtained against unions as bodies. In no country is the "opportunity for individuals to seek martyrdom" totally eliminated.

Conclusion

10. Our response to the two specific questions asked in paragraph 137 is as follows:-

(a) We are confident that if the Section 14 (1) immunities were revoked - so that trade unions were as liable as other bodies for their unlawful acts, and those of their officials and members - then trade union leadership would be much less likely to support, or turn a blind eye to, unlawful action for which the union might be held liable. There would be strong incentive for them to maintain closer contact with their members and step in at the first sign of trouble.

(b) We are confident that if - as in all other countries - employers (and others) could sue trade unions for injunctions and damages, this would be a formidable deterrent to unlawful industrial action.

We anticipate that - as in other areas of civil law - taking people or organisations to court would be a measure of last resort. But as the brief experience of the 1971 Act provisions had begun to illustrate, and as evidence from other countries shows most positively, many employers are prepared to "make use of the ability to sue" when they have exhausted other available procedures.

11. It will be noted from (a) above that we have referred to "revoking Section 14 (1) immunities" instead of narrowing Section 14 immunity in line with Section 13, as suggested in paragraph 137. This is because we believe that the unique immunity given to individuals by Section 13 (1), as amended in 1976, should itself be revoked.

B. THE IMMUNITY FOR SECONDARY ACTION

1. It is difficult for us to respond directly to the questions raised in this Section. This is because we have all along opposed the changes under Section 17 of the 1980 Employment Act. Our position has been made clear in previous Submissions.

In particular, we oppose in principle the concept that normal common law rights should be denied to people simply because they happen to be suppliers or customers of an employer in dispute.

We believe that if there is to be any distinction between lawful and unlawful "secondary action" (including picketing) then it should be on grounds of whether or not the third party is allying himself to the employer in dispute and, in so doing, is actively exerting influence in the dispute. Where the third party is acting in a neutral manner secondary industrial action should be unlawful.

This view is in line with the proposals in paragraph 152: and in reply to the argument in the following

paragraph that they involve "difficulties of practical application" we would say that they are certainly no more complex than those which stem from the 1980 Act provisions.

2. Paragraph 153 suggests that the interpretation of such provisions involves "industrial issues" which the Courts are not well equipped to determine. We agree: and for this reason recommend elsewhere that the present system of Industrial Tribunals should be extended.

(iii) Immunity for Inducing Breach of Contract of Employment

3. We note the suggestion in paragraph 155 that immunity might be restricted to inducing a breach of a contract of employment. We agree that this would revive doubts and uncertainties which arose during the 1950s and 1960s about the effects of industrial action on different forms of contract.

There would be no such doubts if, as we recommend, immunity is revoked in respect of inducing the breach of _any_ form of contract. Britain is unique in giving such immunity and we believe it to be

both wrong in principle and unnecessary. Why should someone who commits the unlawful act of inducing a breach of contract in order to promote an industrial dispute - and in so doing often harms third parties in no way involved in the cause of the dispute - be protected by Statutory law against claims for redress?

The fact that it all began in 1906 in circumstances which have never been explained or understood and the fact that it has become part of British Folklore are not, in our view, good reasons for continuing the injustice.

C. PICKETING

1. Here again we have to relate the various proposals made to our own recommendations for amending the Acts of 1974 and 1980. They cannot be considered as unconnected issues. For example:-

   Para. 166(ii) While the legal definition of "trade union" includes temporary combinations we believe the 1980 Act conditions which speak of

"the union" or a "trade union official" representing a picket are impractical and unenforceable.

Para. 168 We contend that until the legal definition of "trade dispute" is amended it will be easy to elude this 1980 provision. Supporters can always claim that they are in dispute with the employer, and thus justify their presence. For example, those on a picket line can say that their own "trade dispute" - about which they are picketing - is on the grounds that they (or those they represent as "officials") have not been employed by that particular employer.
(S. 29(1)(b) of the 1974 Act.)

2. We believe that any change in law in this field should be in accordance with the following principles:-

(i) Participation in the act of picketing is in essence the same as participation in any other form of industrial action.

(ii) The legality of picketing should be linked to the legality of the industrial action of which it is a part.

(iii) The remedies available through civil action against participants in, or organisers of, a picket line should be identical to those available against participants in, or organisers of, other forms of industrial action.

3. We have recommended that immunities conferred in respect of inducement of the breach of any contract should be revoked. This would then apply to all forms of industrial action - including picketing.

4. We believe that Section 14 immunities are as important in this context as those granted to individuals by Section 13. Picketing is normally organised by unions or union officials. The law should enable parties injured by unlawful action to obtain redress from unions as well as individuals - as in all other countries. And this applies as much to picketing as anything else.

D. DEFINITION OF A TRADE DISPUTE

1. Our comments and recommendations on the issues raised in this Section are given below.

Development of the Definition

2. We would disagree with the statement in paragraph 186 that, with the two exceptions noted in paragraph 184, the 1974 Act definition "is not significantly different" from its predecessors. We think it significant, for example, that people who suffer injury as a result of "disputes connected with facilities for officials of trade unions" should now have no means of redress.

3. Furthermore, we draw attention to the 1976 repeal of the very important qualification to Section 29(3) of the 1974 Act. The Conservative Opposition fought hard to obtain this qualification in 1974 and strongly resisted its repeal in 1976.

In our view the law should not expressly provide that disputes "connected with matters occurring outside

Great Britain" should be lawful trade disputes - even with the 1974 qualification. Here again, British law is unique.

Possible Changes in the Definition

(i) Subject of a Trade Dispute

4. We strongly recommend a return to the 1971 Act provision that, to fall within the definition, a trade dispute had to be related "wholly or mainly to" one or more of the matters listed in the Act. We think it wrong that there need be only a "connection" with such matters. People should not be free to incite disputes of a mainly personal or political character: which have only a remote connection with a genuine industrial dispute.

   The argument in paragraph 191 that it is "by no means easy" to decide which is the "predominant" element in a dispute is not, in our view, persuasive. The Courts are deciding such issues every day in one field or another.

(ii) Political Disputes

5. We believe that the recommendation above, requiring a lawful trade dispute to be "wholly or mainly" related to matters listed in the (amended) Act, adequately covers this problem. We do not support the proposal in paragraph 199 that immunity should be removed from disputes "with a political element". We think this is impractical.

(iii) Parties to the Dispute

(a) Worker and Worker Disputes

6. We see no justification for the provision that these are lawful. Inter-union disputes and quarrels between ad hoc groups of workers in which employers, other employees, or other third parties are in no way involved have caused immense damage: and those who suffer have no legal remedy.

We recommend that this reference in Section 29(1) of the 1974 Act should be deleted. To be lawful, a trade dispute must be between employers and workers. Here again, this would bring U.K. law into line with that of other countries.

(b) Trade Unions as Parties to the Dispute

7. We believe that the questions discussed in paragraphs 206/209 are best resolved by amending Section 29 (4) and (6) of the 1974 Act.

8. We think it wrong that the term "worker" in relation to a dispute with an employer should include people who are neither employees, ex-employees, nor those seeking work. As things stand, it means that legal immunity is granted to any individual who incites, promotes, supports, or takes part in industrial action "in furtherance of" any trade dispute. His interest in stirring up trouble may be purely political.

9. We recommend that the law should make it clear that the term "worker" in relation to a trade dispute means only employees of the employer or employers involved, or workers whose last employment was terminated in connection with the dispute.

10. We also see no justification for making lawful a dispute between a trade union and an employer whose employees are not involved - and may not even be members of the union. We recommend that Section 29(4)

should be amended to make it clear that a trade union cannot be a party to a lawful trade dispute in its own right.

(iv) International Shipping

11. We see no reason to make special provisions to cover the problem of "blacking" of ships. Our recommendations in paragraphs 6 and 9 above would make unlawful the kind of action described in this Section.

Summary

12. The present legal definitions relating to "trade disputes" are so widely drawn as to give organisations and individuals protection under law from the consequences of many damaging activities which have no direct bearing on employer/employee relationships. We see no justification for this.

13. In most countries there is a clear distinction between lawful and unlawful industrial action: and people or organisations who incite, or participate in, the latter are liable for the consequences.

14. We have made specific recommendations in response to the questions raised in this Section. Perhaps the most important in practical terms is that the definition of a lawful "trade dispute" should be amended so that it applies only to disputes between employers and their own employees - or, in certain circumstances, ex-employees. The change would bring this aspect of U.K. law into line with that of most other countries.

E. LEGALLY ENFORCEABLE COLLECTIVE AGREEMENTS

1. We feel that the manner of presentation of parts of this Section gives a wrong impression. Examples are given below.

2. Paragraph 215 states that collective agreements are enforceable "in most Western industrial countries". To put this point into true perspective we think it should be stressed that enforceable status applies in one form or another in all countries - apart from Britain.

3. The second sentence in paragraph 215 could be misinterpreted. Legally binding agreements frequently contain clauses whereby, in given circumstances,

industrial action would not be unlawful. Indeed, such agreements are often very flexible.

4. Paragraph 220 says that the effect of removing immunity from industrial action in breach of a collective agreement "would be to enable an employer...to sue the organisers of the action...".

This is to state only one side. Equally, a trade union or any employee could sue the employer or employer's association if they acted in breach of the agreement or in any way failed to conform to its provisions.

Experience in other countries shows that trade unions take legal action against employers far more often than the reverse.

Legally Enforceable Agreements in Great Britain

5. Paragraph 224, with its quotation from the Donovan Commission Report, refers to the "tradition" in Britain that "management and unions have chosen not to conclude agreements which are legally binding".

To put this matter into perspective we think it

should be said that British Statutory law is mainly responsible for this unique situation. It provides a clear example of how action by Parliament can influence industrial relations.

6. Firstly, the 1871 Act specifically prevented the legal enforcement of agreements between trade unions and employers associations: and such agreements in time were to cover the major part of British manufacturing industry. The provision remained effective for a century until the 1971 Act became law.

7. Then there has been since 1906 the inequality under law as between trade unions and the individual employer (apart from the period 1972/74). If the latter were to sign a legally enforceable agreement he would leave himself open to be sued for any alleged breach. The trade union, on the other hand, would in similar circumstances claim legal immunity on the grounds that the facts of an alleged breach on its part amounted to a tort.

The union, moreover, would not be held responsible for the actions of officials and members who broke the agreement or induced others to do so. Employers,

in similar circumstances, could be held liable for the unlawful actions of management representatives.

8. Thus, a legally enforceable agreement in Britain would not be an agreement between parties who are equal before the law. Moreover, for a century employers associations and trade unions were prevented by law from making them so.

The Green Paper does not mention these points. Yet, with this extraordinary background of law it is hardly surprising that Britain has a unique "tradition" of non-enforceable collective agreements. We suggest that the tradition has little to do with merit or choice.

Our Conclusions

9. Over 90% of Britain's strikes are in breach of collective agreements. In most countries such strikes are rare: in some they are virtually unknown. The threat of industrial action - whether by trade unions or employers - comes after one legally binding contract has expired without agreement on the terms of the next. Thus, all parties can anticipate

trouble well in advance - and, if they so decide, prepare for it. There is far less likelihood of an early impact on customers at home or abroad, on other industries, or on the public at large.

10. In our view there is a direct relationship between Britain's almost unique problem of unconstitutional industrial action and the fact that Britain is the one country where collective agreements are not legally binding - and enforceable equally against all signatory parties.

11. We believe that legally enforceable agreements would:

(i) Provide strong incentive to all parties to give more careful thought to the content of the agreement - and explain it to everyone concerned.

(ii) Give strong incentive to trade union officials to maintain closer contact with their members and step in at the first sign of trouble.

(iii) Help to remove a major deterrent to management or unions from taking just

disciplinary measures against people who break agreements or induce others to do so.

12. We reject the view that a reversal to the position under the 1971 Act would serve no useful purpose because most employers would then agree to "opt out" of enforceability. The truth is that, by 1974, enforceability had become an important issue - a bargaining issue - in many negotiations: and a number of agreements had been quietly reached which did <u>not</u> have an "opting out" clause. Acceptance of such a major change is bound to be gradual.

13. For these reasons <u>we recommend</u>:

(i) Section 18 of the 1974 Act should be amended. A collective agreement should be presumed to have been intended by the parties to be legally binding unless it includes <u>express provision</u> that all or part of it is intended not to bind them in law.

(ii) To have legal effect, such a provision would have to be recorded in writing

at the time. Negotiators should not be able to make a general, once for all, disclaimer that none of their decisions, or none in a given period, shall be legally binding.

F. SECRET BALLOTS

1. We note that this Section is concerned specifically with secret ballots before industrial action is taken.

2. We favour the voluntary adoption of this procedure but are against any general statutory provision for compulsory secret ballots. Our main reason is that such a provision could not be enforced in the case of the small-scale unofficial stoppages which make up the overwhelming majority of strikes.

3. While we do not recommend that ballots should be mandatory, we believe that where they are held under union rules the latter should meet minimum standards. For example, they should provide for:-

(a) Voting to be kept secret and for every member to have fair opportunity to cast his vote without interference or constraint.

(b) A recognised independent body to supervise ballots; the supervision to include counting and scrutiny of votes and declaration of results.

4. We consider there is a much stronger argument for intervention under statutory law in the case of major disputes which threaten the national interest <u>and</u> where there are doubts as to whether a majority of employees concerned support industrial action, or have had opportunity to express their views. We would therefore support legislative proposals on the lines of Section 141 of the 1971 Act or of paragraph 98 of the Labour Government's White Paper "In Place of Strife".

5. The example of the British Rail dispute in 1972 - given in paragraph 250 - in no way detracts from the argument for the Secretary of State to have powers in such circumstances.

In our view, the most significant feature of the case was that it succeeded in the prime objective. The trade unions obeyed the Court Order: and the strike was called off while the ballot was held. The fact that an overwhelming majority of employees voted to reject the employer's offer may indicate a misjudgement as to "doubts whether the workers concerned supported industrial action" - but there was no failure of the law.

6. We recommend that the criteria for using powers to order strike ballots should be limited to those under the 1971 Act: i.e.-

   (i) When industrial action has begun, or is threatened and where the Secretary of State considers that there are doubts as to whether the workers concerned support the action; and

   (ii) Where the industrial action involves a serious threat to the economy or the national interest.

7. We make further recommendations about Emergency Powers under Section H PROTECTING THE COMMUNITY.

G. CLOSED SHOP AND UNION MEMBERSHIP ISSUES

1. We make the following comments on specific points made in this Section.

   (i) Paragraph 265 says that there is little evidence that closed shops have "helped to reduce industrial conflict". We would express this much more strongly. Perhaps the most telling economic argument against closed shops is in the evidence that the most habitual and damaging industrial conflict in Britain is in areas where closed shops operate.

   (ii) Paragraph 267 states that, after the 1971 Act became law, "the closed shop continued much as before". This implies that the 1971 provisions had no effect - which is not so. During the short period they were in force there were no reports of new formal agreements being made. The damaging movement towards more closed shops was at least halted. Moreover, both employers and unions were beginning to look with more care at informal

arrangements and their implications.
Did these, for example, involve
any risk of legal action?

Dramatic changes in the long-established system could not have been expected in a matter of two years.

(iii) Paragraph 304 states without qualification that the 1980 Act has "removed immunity from industrial action to compel union membership". This is not so. The most significant immunity in this context is that given to trade unions under Section 14 of the 1974 Act. The 1980 Act leaves it untouched.

Conclusions and Recommendations

2. The changes made in the 1980 Act extend the circumstances in which employees dismissed solely on the grounds of non-membership of a union can obtain financial compensation. We believe that further changes are needed. We deal with individual points in the following paragraphs.

3. We believe that any qualification about an individual's "right not to belong" to a trade union is wrong in principle and also raises many practical problems. In our view the concept of "genuine objection on grounds of conscience or other deeply-held personal conviction" (S.7(2), 1980 Act) is open to abuse, misunderstanding, and a variety of definitions. We believe, too, that such qualifications should not be enshrined in statutory law.

4. We recommend that the statutory right not to belong to a trade union should be restored. This would bring U.K. law into line with that of our partners in Europe. Dismissal on grounds of non-membership should in all circumstances be "unfair".

5. In situations where a union membership agreement is approved in a secret ballot by at least 80% of those entitled to vote - and only in such situations - employees who do not wish to join a union, or any particular union, could be obliged to pay the equivalent of basic union dues to an agreed charity. This concession is, in our view as a matter of practical politics, not unreasonable. Where any overwhelming majority of those affected have voted in favour of

such an agreement, there is bound to be resentment against "free riders".

6. After close study of the arguments set out in the Green Paper we believe that the above recommendations, taken together, would exert effective pressures towards the ultimate abolition of the true closed shop as it exists today. Clearly, no changes in law can produce quick remedies.

H. PROTECTING THE COMMUNITY

1. We first make some specific comments on this Section of the Green Paper.

2. Paragraphs 313/318 dealing with "a statutory cooling off period" neglect to mention certain points which we regard as fundamental.

3. The impression is given that the provisions for strike ballots in the 1971 Act and in the American Taft Hartley Act were the same. This is not so.

Section 141 of the 1971 Act specifically provided

that ballot procedure should only be used where there were doubts whether the workers concerned supported industrial action or had had an opportunity to express their views. This qualification has considerable practical implications.

The concept does not appear in Taft Hartley. If no settlement is reached at the end of the cooling off period a ballot is automatically taken "on the employer's latest offer" - which has been rejected by the union. In such circumstances it is not surprising that the ballot result usually supports the union recommendation.

4. The way that experience of the Taft Hartley Act is presented in paragraph 317 is in our view misleading.

The impression is given that "resulting ballots" were held in all 24 cases where injunctions were granted. This is not so. In 17 of these the disputes were peacefully settled during the cooling off period <u>while employees continued to work</u>. This vital evidence of success is not mentioned. Yet it challenges the argument in paragraph 319 about "the lack of success of cooling off periods...". The success rate is over 70%.

5. We consider that this record provides impressive argument in favour of the system - assuming, of course, that the immunities provided in Britain to trade unions as bodies are removed. The single experience under the 1971 Act - in which the unions involved obeyed the injunction - gives support, however limited, to this view.

Restrictions on Workers in Essential Industries

6. We are opposed to legislation extending the criminal illegality of industrial action to groups of workers other than police, the armed forces and merchant seamen. Our principle reason is the problem of enforcement. The experience of countries where strikes in public services are illegal generally supports this view.

While we disagree with the argument implied in paragraph 333 that a law is bad because "it has been little used" (often, the reverse is true) we think it is foolish to pass laws which are likely to be defied - and then cannot in practice be enforced.

Conclusions and recommendations

7. We believe that in this very difficult area the following considerations are fundamental to any proposals for changing the law:-

(i) It is almost impossible to assess in advance of actual events in what industry or service, and at what time, industrial action should be curtailed.

(ii) The length, or likely length, of the action is frequently a critical factor in making such an assessment.

(iii) There can be no one procedure that will work with uniform success. Flexibility of approach is essential. Options must be open to Government.

(iv) The decision that Government should interfere in any particular industrial action in the public interest is essentially a political decision.

The Emergency Powers Act

8. At present the 1920 Act powers can only be used where there is probable interference with supply and distribution of food, water, fuel, light and transport. We propose that this list should be extended to include other essential supplies and services such as fire, hospital, ambulance, postal, customs and immigration. There may well be others.

9. We recommend, too, that the criteria for what constitutes "an emergency" in the 1920 Act should be amended to bring it into line with modern requirements. We recommend that the formula should be that of the "national emergency" provisions in the 1971 Act: i.e.:- that the industrial action is likely to cause an interruption in the supply of goods or the provision of services which could:

(i) Be gravely injurious to the national economy, imperil national security or create a serious risk of public disorder;

(ii) Endanger the lives of members of the community or expose them to serious risk of disease or injury.

New Emergency Powers

10. We believe that there is need for alternative provisions which are less drastic than the ultimate step of declaring a Royal Proclamation of Emergency. Our reasons are given in paragraphs 4 and 5 above and in paragraphs 4/6 of Section F. We have also taken into account the important considerations set out in paragraph 7 above.

11. We recommend that if, in the Government's view, a situation has arisen, or is likely to arise, which meets the criteria as defined in paragraph 9 above:-

(i) The Secretary of State may apply to a new national tribunal for an order restraining named organisations or individuals from calling, organising, procuring, or financing industrial action, or threatening to do so, for a maximum of 60 days.

(ii) This power should only be used where, in the opinion of the Secretary of State, the deferment or cessation of

industrial action may help in promoting a settlement of the dispute by negotiation.

(iii) The Secretary of State should also have power to apply to the tribunal for an order directing that a secret ballot be held where he has grounds for believing that there is doubt whether the majority of workers concerned support the industrial action and have had opportunity to express their wishes.

(iv) If the order is granted, those responsible for calling or organising the industrial action must defer or discontinue the steps being taken for this purpose.

(v) Any organisation or individual named in an order by the national tribunal who disregards it would be in contempt of court and liable to proceedings for civil contempt. However, no order should compel individuals to return to, or remain

at work. It should not apply to anyone who may be simply participating in the industrial action.

This conforms to the principle first enshrined in Section 128 of the 1971 Act that no one should be compelled to work by any court - or, equally, to participate in industrial action. (It would not, of course, affect the liabilities of individuals who break their contracts of employments).

(vi) The new tribunal should make orders under (i) or (iii) above if, after hearing evidence from the Secretary of State and the parties to the dispute, it is satisfied that an Emergency of the kind outlined in paragraph 9 above has arisen or is likely to arise.

(vii) An order for a "cooling-off" period should not be extended beyond 60 days. The result of any ballot should be made public; but further action to resolve,

or continue, the dispute should be left to the parties concerned. Government would, of course, retain the power to declare a State of Emergency.

Recommendation for a New National Tribunal

1. In the preceding Section we have recommended that a new national tribunal should be established. This, in our view, should not only be available for Emergency situations: it should deal with a wide variety of industrial relations matters. We recommend that it should:-

   (a) Replace the present Employment Appeals Tribunal and take over its functions;

   (b) Be available in specified circumstances to parties in dispute - by direct access;

   (c) Take over from the ordinary courts responsibility for industrial relations matters generally;

(d) Have power to enforce its own decisions about such matters;

(e) Be required to provide opportunities for conciliation between parties before a case is heard formally. This might be through a reference to A.C.A.S.

2. We recommend that the new national tribunal and, at a lower level, the Industrial Tribunals should have exclusive jurisdiction in civil proceedings relating to:-

(a) Inducement of, or threat to induce, any breach of contract in contemplation or furtherance of a trade dispute.

(b) Any breach of a legally binding collective agreement.

(c) Any breach of contract between a trade union and its members.

(d) Any infringement of positive statutory rights in relation to employment, trade union membership or non-membership, and similar matters.

(e) Unlawful activities relating to industrial disputes and industrial action generally.

3. Many of our reasons for making these recommendations will be clear from what we have said elsewhere in this Submission. We believe that industrial relations problems often require the exercise of discretion and judgement based on practical experience rather than the exclusive application of strict legal principles. Furthermore, to be really effective the machinery must work rapidly and be available at short notice - as is generally the case with the present Industrial Tribunals.

4. To ensure that the national tribunal is both proficient and has the confidence of all parties we believe that:-

(i) It must be established on a permanent basis and be completely independent of Government.

(ii) The Chairman must have both senior legal qualifications and direct experience in adjudicating on matters involving employment and industrial relations law.

(iii) The lay Assessors should as far as possible be people known for their independence of view in political matters.

CHAPTER 4

AN ALTERNATIVE SYSTEM OF POSITIVE RIGHTS

1. We have carefully studied this Chapter and believe that the main assumption - i.e. that "a system of positive rights" is an alternative to "a system of immunities" - is misconceived. The second paragraph (340) suggests that other countries have "a positive rights equivalent" to Britain's immunities. This is not so.

2. The following are our specific comments on various sections of the Chapter.

Positive Rights in British Labour Law

3. Paragraph 343 gives examples of positive statutory rights in Britain. The next paragraph then states that none of the examples is concerned with the law relating to "industrial action".

   Since the chapter is primarily concerned with this aspect, we feel it is incomplete without some mention

of the following rights provided under the 1971 Industrial Relations Act:-

(i) The right not to be compelled by any Court either to work or to take part in any industrial action. (Section 128(3))

Section 16 of the 1974 Act re-stated the first "right" only. The second was repealed.

(ii) Section 147 of the 1971 Act provided that due notice of strike action should not be construed either as a notice to terminate the contract of employment or as a repudiation of that contract.

Again, this was repealed in 1974: yet, in effect, it provided a positive right to strike without being in breach of contract. It was the same as the "positive right" given in most countries and discussed in this chapter. We consider that the fact of its existence under recent U.K. law is relevant to the current debate.

4. We would stress, however, that although these 1971 rights concerned "the law as it relates to industrial action" (paragraph 344), they did not "replace" any part of the "system of immunities" discussed in this chapter.

5. We refer to paragraph 347.

We do not know how many foreign systems were studied before this chapter was written - but it seems to us that the basic concept is unclear. In this paragraph - as elsewhere - there are generalisations about "systems of positive rights" as if they were quite distinct from other "systems". This is not so.

If one takes only the five countries whose labour law is briefly summarised in the Appendix - in only one (Sweden) does the law expressly grant a "right to strike or lock-out": and even here, the Constitution provides for exceptions covering the whole field of contract and other law.

6. As to the other countries mentioned - in Australia "strikes are not illegal <u>per se</u>"; in Germany, "there is no formal right to strike"; in France, a strike does not automatically "break the employment contract"; and in the U.S.A. there is no

"absolute right to strike".

These are just five countries: yet Chapter 4 implies that most countries have "legal systems based on positive rights" - and states categorically (paragraph 340) that the Chapter is concerned primarily with law "as it relates to strikes and other industrial action".

7. We now draw attention to statements in paragraph 349.

We disagree that the "exact equivalent" of British immunities would be "a right to organise a strike". Immunity in Britain is also granted to "those who induce or threaten others". Such people may not themselves be <u>organising</u> any industrial action in the sense that it is meant here.

We disagree that the concept of "organising a strike" - as against striking - is different elsewhere. In other countries it is unlawful either to "organise" or to participate in a strike in breach of contract.

As to the last sentence in paragraph 349, we suggest that reinstatement of Section 147 of the 1971 Act

to industrial action is incomplete if it ignores these vital issues.

oooooooooooooooooooo

May, 1981.

(i.e. providing that due notice of strike action is not construed as notice to terminate the contract of employment or as a repudiation of that contract) would clarify the position generally and also bring British law more into line with that of other countries - including, most importantly, that of our partners in Europe.

8. We refer to paragraphs 351 and the right not to strike. We have already mentioned Section 128 of the 1971 Act which provided that no Court could compel an employee to take part in any industrial action in breach of contract. We propose that this provision should be reinstated.

We question the statement that the right not to strike "does not appear to be an issue in other countries". Perhaps the best example is the U.S.A. - where, over the years, there has been massive controversy over "right to work" laws in many States.

At Federal level, Section 7 of the Taft Hartley Act provides that employees have the right to refrain from any industrial action "except to the extent

that such right may be affected by an agreement requiring membership in a labour organisation" (i.e. the agency shop).

This approach does not conflict with our own proposals. Provided union instructions to take industrial action were in accordance with union rules, and were not instructions to strike unlawfully, we see no reason why unions should be prevented from taking disciplinary action against members who refused to follow instructions.

9. This matter is, however, linked to the whole question of trade union rules and their enforcement as part of the contract between a union and its members. And this, in turn, is linked with the vital question of public accountability of trade unions and some means of "audit" of their rules.

10. The Green Paper frequently quotes extracts from the Donovan Report. We note, however, that there is no reference to the Donovan Commission's recommendations on union rules and for compulsory trade union registration. We believe that any analysis of the problems surrounding immunities and rights in relation

File

10 DOWNING STREET

From the Private Secretary

13 January 1981

GREEN PAPER ON TRADE UNION IMMUNITIES

As I told you on the telephone this morning, I have consulted the Prime Minister about the timing of the publication of the Green Paper on Thursday. She is content with your suggestion that it should be published at 3.30, although she has noted that it might be even better to publish at 4 p.m.

N. J. SANDERS

John Anderson, Esq.,
Department of Employment.

1

PRIME MINISTER

cc. Mr. Ingham

Green Paper on Trade Union Immunities

I asked the Department of Employment what time they were proposing to publish the Green Paper next Thursday. They say that they have been considering the alternatives of publication at 2.30 and 3.30, and have tentatively decided to publish at 3.30 so as to avoid the risk of embarrassing you at Question Time.

I said that I did not know what your reaction would be and that I would consult you. There might be something to be said for getting publication over before Question Time, so that you can add your weight to the discussion - always assuming that somebody asks you. Conversely, the Opposition might seek to suggest that the Green Paper is a defeat for you because it does not foreshadow early legislation.

Which would you prefer?

MS

3.30 or 4p.m.

12 January 1981

MS.

mc

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

GTN 213

CC Mr Duguid

R(O/R) to see
MS 8/1

R.

Richard I Tolkien Esq
Private Secretary to
Rt Hon Sir Geoffrey Howe QC MP
Chancellor of the Exchequer
Treasury
Great George Street
LONDON SW1P 3AG

8 January 1980

Dear Richard

TPM

GREEN PAPER ON TRADE UNION IMMUNITIES

You wrote to me on 6 January about a further amendment to the text of the Green Paper which the Chancellor of the Exchequer had suggested.

As John Anderson mentioned in his letter of 30 December the Green Paper is now in the process of being printed and I am afraid that it is not possible to make further changes to the text. My Secretary of State has asked me to say that, while he regrets the constraints which the printing timetable has imposed, he believes that Chapter 2 already makes the point the Chancellor has in mind. The last sentence of para 46 says:

> "It is, however, not possible to make any final judgement about the likely long-term effectiveness of the Act because it was repealed in 1974".

The preceeding sentence of the same paragraph records that "Conflicting judicial decisions led to additional uncertainty" and paragraph 49 points out that the Labour Party were already committed to repealing the 1971 Act when they came to power in 1974 and carried this through within the year.

... I am sending copies of this letter to the Private Secretaries to the Prime Minister and the other members of E, and to David Moore and David Wright (Cabinet Office)

Marie Fahey

MISS M C FAHEY
Private Secretary

SW

cc Mr Duguid
Mr Wolfson
Mr Ingham

2

PRIME MINISTER

To see.
MS
8/1

Caxton House Tothill Street London SW1H 9NA

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

Mike Pattison Esq
Private Secretary
10 Downing Street
LONDON SW1

7 January 1981

Dear Mike.

PUBLICATION OF THE GREEN PAPER ON TRADE UNION IMMUNITIES

My Secretary of State had been intending to publish the Green Paper on 8 January. However, he has been advised by the Chief Whip to delay publication until after Parliament reassembles so as to avoid the risk of complaints from Opposition back benchers and the Select Committee on Employment about releasing it to the press when Parliament is not sitting. Accordingly publication has now been arranged for Thursday 15 January.

I am sending copies of this letter to the Private Secretaries to the Lord Chancellor, the Attorney General, Members of E Committee, the Chief Whip and to Sir Robert Armstong.

Yours ever
Richard Dykes

R T B DYKES
Principal Private Secretary

cc Mr Duguid

PL(0/R) to see
MJS

PL 7/1

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

6 January 1981

Miss M.C. Fahey,
Private Secretary,
Department of Employment

Dear Miss Fahey,

GREEN PAPER ON TRADE UNION IMMUNITIES

The Chancellor has seen your letter of 22 December to John Wiggins.

He has one comment, and that is to suggest that the additional sentence which your Secretary of State proposes to add at the end of paragraph 46 be strengthened to read:

> "Because of its precipitate repeal in 1974, it is not possible to come to a final judgement about what would have been the long-term effectiveness of the Act had it been allowed a better chance to prove itself."

I am copying this letter to the Private Secretaries to the Prime Minister and the other members of E, and to David Moore and David Wright (Cabinet Office).

Yours sincerely,

Richard Tolkien

R.I. TOLKIEN

(Private Secretary)

CONFIDENTIAL

Prime Minister

Copies to

E Committee
Lord Chancellor
Attorney General
Lord Advocate
Sir R Armstrong

DEPARTMENT OF INDUSTRY
ASHDOWN HOUSE
123 VICTORIA STREET
LONDON SW1E 6RB
TELEPHONE DIRECT LINE 01-212 7691
SWITCHBOARD 01-212 7676

From the
Minister of State
Lord Trenchard

cc Mr Duguid

TL(O/R) to see
MS 6/1

TL

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

5 January 1981

Dear Jim

GREEN PAPER ON TRADE UNION IMMUNITIES

Keith is away at present and officials tell me that your re-drafts of Sections A and B of Chapter 3, as recorded in your Private Secretary's letter of 30 December, go a long way to meeting the points which he pressed.

However, having been asked to look at them, I do wonder whether in Section B of Chapter 3 you need the words "reckless and indiscriminate" before the word "interference". It seems to alter the balance of your "on the one hand...and on the other hand".

On the amendment to Section A of Chapter 3, I wonder if you need to suggest that the Trade Unions would need "to adjust their internal organisation" in order to exercise greater control. We all know that they can do so when they want to, but they do not do it when it is difficult but they ought to. This of course lies at the heart of Donovan's much-too-total differentiation between "official" and "unofficial", a distinction which would disappear if the unions, as abroad, had to deliver. I therefore suggest the removal of the words "to adjust their internal organisation". The sentence could then read "...were prepared to exercise much greater control over....".

I am copying this letter to recipients of the previous correspondence.

Yours
Tom

LORD TRENCHARD

CONFIDENTIAL

FILE

JD

cc Mr Duguid

Ind Pol.

10 DOWNING STREET

From the Private Secretary

31 December, 1981.

Dear Ann,

Green Paper on Trade Union Immunities

The Prime Minister has considered your Minister's minute of 30 December in which he expresses his dissatisfaction with the revised draft of paragraph 34, Chapter III D, of the Green Paper (Mr. Prior's minute of 19 December refers). The Prime Minister's view is that the minutes of the E Committee meeting on 16 December correctly reflected what was decided, and she therefore believes that the amended draft as circulated by Mr. Prior should stand.

I am copying this letter to the Private Secretaries to Members of E Committee, and to David Wright (Cabinet Office).

Yours sincerely,

Tim Lankester.

Miss A.U. Willcocks,
Department of Trade.

CONFIDENTIAL

CS

cc Mr Duguid

Caxton House Tothill Street London SW1H 9NA

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GTN 213

2 pps.

R I Tolkien Esq
Private Secretary to the
Chancellor of the Exchequer
Treasury
Great George Street
London SW1

30 December 1980

Dear Richard

GREEN PAPER ON TRADE UNION IMMUNITIES

Your letter of 22 December to Richard Dykes mentioned 3 points the Chancellor wished to make on the amendments to the text of the Green Paper set out in the note attached to my Secretary of State's minute of 19 December to the Prime Minister.

The first point related to Section F of Chapter 3 (secret ballots). The minutes of E require that in amending this section "care should be taken not to lose the support of the unions by leading them to believe that the Government were contemplating legislation to make secret ballots for elections mandatory". The reality of this danger is made clear in the TUC handbook on the Employment Act 1980 which appeared just before Christmas. Para 60 of the handbook says:

> "The ballot funds scheme is clearly intended as the 'carrot' to gain trade unionists' acceptance for the rest of the legislation. However, the scheme threatens the autonomy of unions. Leading government supporters have indicated their keenness to make secret ballots mandatory, and acceptance of this offer to fund secret ballots would make it far easier to compel all unions to use secret ballots in the future".

However my Secretary of State has accepted a suggestion from John Hoskyns which bears on the point and has added the following sentence at the end of the redrafted second paragraph:

> "Some have gone further and urged that immunities should only be available for those trade unions which adopt democratic procedures for both elections and strike decisions".

The Chancellor's second point related to the redrafted fourth paragraph of Chapter 5. My Secretary of State has agreed that this should be amended to read as follows:

"Essentially what is involved in each case is finding a balance between the conflicting needs and interests of those involved: the interests of employers seeking to manage their business effectively as against the interests of trade unions in carrying out the function of representing their members; the ability of trade unions to mount effective industrial action as against the need for the individual to be protected against the abuse of trade union power; and the interests of those in dispute as against the interests of the rest of the community, including employers and employees who have no connection with the dispute but whose business and jobs may be threatened".

The Chancellor's third point related to para 46 of Chapter 2. My Secretary of State's reasons for not making the Chancellor's suggested amendment are set out in Marie Fahey's letter of 22 December to John Wiggins.

My Secretary of State has asked me to say that he believes he has now fully met the points discussed at E and in some respects has gone beyond what was agreed. The amended text of the Green Paper has now been sent to the printers and, subject to the agreement of the Chief Whip, my Secretary of State intends to publish in on Thursday 8 January.

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

Yours sincerely

John Anderson.

J ANDERSON
Private Secretary

cc Mr Duguid

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

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

30 December 1980

Dear Ian

GREEN PAPER ON TRADE UNION IMMUNITIES

Your Secretary of State wrote to mine on 16 and 23 December suggesting further amendments to the text of the Green Paper.

My Secretary of State thinks the concern your Secretary of State expressed in his letter of 16 December about possible misunderstanding of the reference to "the need for professional personnel management" in para 22 of Chapter 1 is best met by omitting these words - which are not material to the main argument - altogether.

Turning to your Secretary of State's letter of 23 December, his first comment on the amendments circulated by my Secretary of State on 19 December relates to para 26 of Section A of Chapter 3. The words "proponents of change" in the first sentence match the words "opponents of change" in para 25: these two paragraphs are intended to be a summary of the arguments in the preceeding 5 paragraphs but this will not be clear if the former words are omitted and the latter remain. On the point of substance the experience of 1971-74 certainly does not suggest that putting trade union funds at risk leads them to establish greater control over their members, but of course it cannot automatically be assumed that if union funds were again put at risk they would react - or rather fail to react - in the same way. On reflection therefore my Secretary of State thinks it right that both in para 26 and in para 17 where this issue is mentioned a qualification (eg "it could be argued" should be included. Accordingly he has added "it could be argued" after "The effect" in the 7th sentence of para 17 and redrafted para 26 as follows:

"On the other hand, proponents of change point out that trade unions can and in certain circumstances already do exercise control over their members. They therefore argue that if the funds of trade unions were at risk they would find ways of safeguarding them by exerting greater control over their members. Britain is unique in the nature and extent of the immunity the law confers on trade unions as such and trade unions in other countries operate effectively within a framework of law under which they can be sued if their officials or members act unlawfully or in breach of a legally enforceable collective agreement. If trade unions were prepared to adjust their internal organisation so that they exercised greater control over their members the problems of deciding when a union was vicariously responsible for the acts of its members would be considerably reduced".

As regards your Secretary of State's suggested changes to Section B of Chapter 3 my Secretary of State is prepared to delete the words "which the law ought to respect" from the final sentence of para 12 and to redraft the third sentence and the opening of the fourth sentence of para 8 as follows:

"On the one hand trade union solidarity and assistance to fellow workers has long been a feature of industrial disputes in the UK. On the other hand those who are not parties to a dispute (including other workers) are entitled to protection from reckless and indiscriminate interference with their businesses and livelihood. Sympathetic action has too often been used as the pretext for ...".

As regards the redrafted paragraph 4 of Section G of Chapter 3 my Secretary of State is content to add the words your Secretary of State suggests to the last sentence and, following your telephone call before Christmas, he has decided to insert the words "Individual employees should have the right to decide for themselves whether or not to join a trade union" as a new sentence following the fourth sentence in paragraph 2 and as a consequence to delete the rest of the original sentence together with the words "they point out that" at the beginning of the last sentence of paragraph 4.

Finally my Secretary of State has agreed to amend the second sentence of the redrafted para 4 of Chapter 5 to read as follows:

"Essentially what is involved in each case is finding a balance between the conflicting needs and interests of those involved: the interests of employers seeking to manage their business effectively as against the interests of trade unions in carrying out the function of representing their members; the ability of trade unions to mount effective industrial action as against the need for the individual to be protected against the abuse of trade union power; and the interests of those in dispute as against the interests of the rest of the community, including employers and employees who have no connection with the dispute but whose business and jobs may be threatened".

These amendments in my Secretary of State's view fully meet the points discussed at E and in some respects go beyond what was there agreed. Subject to the agreement of the Chief Whip he intends to publish the Green Paper on Thursday 8 January and the amended text has now been sent to the printers.

I am sending copies of the letter to the recipients of your Secretary of State's letter of 23 December.

Yours sincerely

John Anderson.

J ANDERSON
Private Secretary

1

PRIME MINISTER

Green Paper on Trade Union Immunities

At E Committee on 16 December, Mr. Prior was asked to make various amendments to his draft Green Paper. His minute at Flag A sets out the revisions in detail, and these seem to take into account just about all the points that were made in E.

The Chancellor has subsequently suggested one or two further amendments, and I understand that these have been accepted. In addition, John Hoskyns suggests that the section on secret ballots should be strengthened to include something on the following lines - "Some have argued that the full range of immunities should only be available for trade unions which conduct elections and strike decisions by secret ballot." Mr. Prior has also accepted this revision.

Mr. Tebbit, however, has now said (Flag B) he is dissatisfied with Mr. Prior's revision of the section on Nawala. Mr. Prior's revision is sidelined at Flag C, and follows precisely the wording of the E Committee minutes. The Cabinet Office tell me that the minutes exactly reflect the wording which Robert Armstrong proposed to you in manuscript, and which you read out. Mr. Prior's strong view is that we should stick to these words.

Mr. Tebbit would like to strengthen the passage to give a greater indication that we are concerned about the operation of the present law affecting international shipping. He claims that the Committee decided only to make a very small adjustment to the form of words proposed by John Nott at Flag D. My own recollection is that it was decided at the end of the meeting to change Mr. Nott's draft rather more substantially - on the lines set out in the E minutes.

I doubt whether it is worth taking Mr. Prior on on this relatively minor point at this late stage - the Green Paper has to go to press tomorrow. If you agree, I will tell Mr. Tebbit's office that you think it would be best to stick to the amendment already put forward by Mr. Prior.

I believe the minutes are correct. The opening words were changed to those which appear now. M

T

30 December 1980

cc Mr Duguid

DEPARTMENT OF TRADE
1 VICTORIA STREET
LONDON SW1H OET

TELEPHONE DIRECT LINE 01 215 3781
SWITCHBOARD 01 215 7877

From the
Parliamentary Under Secretary of State

CONFIDENTIAL

PRIME MINISTER 30th December 1980

GREEN PAPER ON TRADE UNION IMMUNITIES

Jim Prior's minute to you of 19 December enclosed a text of the Green Paper amended following our discussion at the meeting of E on 16 December (E(80)44th meeting).

I am concerned that the redrafted paragraph 34 in Chapter III D - which follows the minutes of our meeting - does not accurately reflect what I believe we had agreed. I do not recall that the text which appears in the minutes was approved as such. I understood that the only substantive changes to the text proposed in John Nott's letter of 12 December were to delete "very" in the first line and "serious" in the fourth line.

I apologise for raising the point at this late stage but my reason for doing so is that while, of course, we clearly decided not to announce our earlier decision to legislate, our public stance in the Green Paper should be that the Government is concerned about the way the law operates in respect of international shipping, and that consideration at least should be given to legislation.

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

AUW
p.p. NT

(approved by and signed in his absence)

cc:- Mr Hoskyns
Mr Wolfson

MR LANKESTER

Green Paper on Trade Union Immunities

You asked if we had any comments on the amendments to the text of the Green Paper on Trade Union Immunities.

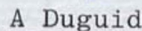
I have only one. This is a point we have made before, and I thought Mr Prior had agreed to look at it. In the section on secret ballots, we would like to see at least a brief reference to the idea that immunity for trade unions should be linked to "constitutional" procedures. Mr Prior has reasonably argued that we should not imply that we are considering mandatory use of secret ballots for elections. We are not suggesting this.

The point could be covered by a sentence along the following lines at the end of the new paragraph 2 of Chapter III F:-

> "Some have argued that immunity should only be available for those unions which adopt democratic procedures for both elections and strike decisions."

I really don't think it would be very provocative to make a passing reference to this idea. Leaving it out at this stage would make it more difficult to make this change later, if the Government wanted to do so.

Its the election point that we regard as an important long-term reform.



A Duguid

23 December, 1980

Ind Pol.

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

22 December 1980

Richard Dykes Esq
Private Secretary
Department of Employment
Caxton House
Tothill Street
LONDON SW1

R
30/12

Dear Richard,

GREEN PAPER ON TRADE UNION IMMUNITIES

The Chancellor has three points to make on the amendments to the text of the Green Paper which were set out in the note attached to your Secretary of State's minute of 19 December to the Prime Minister.

First, he is anxious that the first two paragraphs of Chapter 3, Section F, do not sufficiently reflect the views expressed in favour of presenting as a live issue the possibility of charge over union elections. This case was made in John Hoskyns' minutes of 15 December and 28 November, and quite strongly pressed at E.

Secondly, the Chancellor would like to see a reference in the redrafted fourth paragraph of Chapter 5 to the position of individual members threatened by the use of trade union power.

Finally, he had hoped to see included the substance of the two sentences which John Wiggins suggested in his letter of 16 December for addition at the end of Chapter 2, paragraph 46.

The Chancellor hopes that your Secretary of State will agree to make further revisions to reflect these points.

Copies go to recipients of your Secretary of State's minute.

Yours sincerely,

Richard Tolkien

R I TOLKIEN
Private Secretary

CS

Ind Pol

Caxton House Tothill Street London SW1H 9NA

Telephone Direct Line 01-213 6400
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GTN 213

cc NBPM

A J Wiggins Esq
HM Treasury
Great George Street
London SW1

22 December 1980

23/12

Dear Mr Wiggins

Thank you for your letter of 16 December to Richard Dykes with the Chancellor's suggestion for a further amendment to chapter 2 of the Green Paper on trade union immunities.

The effect of the Chancellor's amendment to paragraph 46 of chapter 2 is to give the impression that the imprisonment of the three dockers in the Chobham Farm case in 1972 (described in paragraph 47(2) of the Green Paper) was the result of an erroneous decision by the Court of Appeal in the Heaton's case, which the House of Lords subsequently overturned. The history of this period is, of course, very complicated, and following your letter we have checked again the details of the cases described in paragraph 47. It is, however, very difficult on the facts of those cases to sustain the view that the National Industrial Relations Court's (NIRC's) order for the imprisonment of the dockers was consequent upon the Court of Appeal decision in Heaton's.

This is because the NIRC made the order against the dockers, instructing them to refrain from interfering with the passage of vehicles in and out of the Chobham Farm depot, on 12 June 1972, the day before the Court of Appeal decision in the Heaton's case. It was not until the 13 June that the Court of Appeal in the latter case decided that the union was not responsible for the conduct of its shop stewards and that primary relief should be sought against the individuals rather than the union. The NIRC subsequently decided on 14 June to commit three dockers at Chobham Farm to prison but the decision was clearly taken because the dockers were in contempt of the Court's order of 12 June. It had nothing to do with the Court of Appeal's decision on the 13th.

It may be worth adding also that the three dockers were never actually imprisoned in the Chobham Farm case. The warrants for their arrest were signed on 14 June, but the NIRC delayed the execution of the warrants to allow the dockers time to appeal. This was the occasion when the Official Solicitor intervened to apply successfully to the Court of Appeal on the dockers' behalf that the evidence of contempt before the NIRC had been insufficient to justify imprisonment.

The case in which five dockers were actually imprisoned for contempt was that of Midland Cold Storage Ltd, which is described in paragraph 47(3) of the Green Paper. It may be therefore that the Chancellor had this case in mind in suggesting his amendment. Even if this is so, it is still difficult to support the view that the NIRC's decision in this case was the result of the Court of Appeal decision in Heatons. The NIRC made its order against seven dockers in the Midland Cold Storage case on 10 July, several weeks after the Heaton's judgement and committed five of them to prison for contempt 12 days later on 22 July. But at not stage in the proceedings did the NIRC refer to the Court of Appeal's decision in the Heaton's case that relief should be sought against individuals rather than the union. Indeed the NIRC's only reference to the Heaton's judgement was in the context of whether or not there was an industrial dispute.

For all these reasons my Secretary of State does not believe it is possible on the facts to justify the view that either the threat of imprisonment in the Chobham Farm case or the actual imprisonment in the Midland Cold Storage case was the consequence of the Court of Appeal's decision in the Heaton's case. He is not therefore able to accept the first part of the Chancellor's proposed amendment. He is, however, willing to accept an amendment to make it clear that the early repeal of the 1971 Act makes it difficult to make final judgements about its effectiveness and is proposing to add the following sentence at the end of paragraph 46:

> "It is, however, not possible to make any final judgement about the likely long term effectiveness of the Act because it was repealed in 1974".

I am copying this letter to the Private Secretaries to the Prime Minister and the other members of E, to David Moore and David Wright.

Marie Fahey

MISS M C FAHEY
Private Secretary

Prime Minister

I will ask the Policy Unit to look at this on Monday.

TL 19/12

A

PRIME MINISTER

GREEN PAPER ON TRADE UNION IMMUNITIES

I have amended the text of the Green Paper to take account of the points made at the meeting of E on 16 December. The changes are set out in the attached note. So that I can meet the timetable for printing I should be grateful to receive any comments on these amendments by 22 December.

I am sending copies of this minute to members of E Committee, the Lord Chancellor, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

JP
19 DECEMBER 1980

CHAPTER III A

Para 26: Add at end

"They point out that Britain is unique in the nature and extent of the immunity the law confers on trade unions as such and that trade unions in other countries operate effectively within a framework of law under which they can be sued if their officials or members act unlawfully or in breach of a legally enforceable collective agreement. They argue that if trade unions were prepared to adjust their internal organisation so that they exercised greater control over their members the problems of deciding when a union was vicariously responsible for the acts of its members would be considerably reduced".

Para 34(b): amend to read (additional words underlined)

(b) to what extent would employers in practice make use of the ability to sue trade unions for injunctions and damages in cases of unlawful action.

/And for the same reason, amend the second sentence of para 8 to read:

"This would mean that a trade union itself could be sued for an injunction or damages and its funds would be at risk if the officials ......"_7

CHAPTER III B

Para 8: Add after third sentence

"The concept of sympathetic action can be distorted and used as a

C

pretext for extending a strike or blacking to involve employees and employers who have no interest or connection with the original dispute. Its purpose can become simply to inflict maximum damage and the interests of those not involved in the dispute and the community as a whole can suffer severely."

CHAPTER III D

Delete para 34 and substitute

34. The question is whether the operation of the present definition of trade dispute is satisfactory in relation to international shipping for the reasons set out in paras 31-32 above and whether consideration should be given to making such changes in the law as are needed to protect ships in British ports from industrial action in cases where there is and has been no dispute to which members of the crew are a party. It would of course be necessary to continue to allow lawful industrial action to be taken in furtherance of disputes concerning the dismissal of any members of the crew.

Conclusion

35. The Government would welcome views on the issue discussed in paras 31-34 and the others discussed in this section.

(a) have problems arisen in areas other than those mentioned due to the current definition of "trade dispute"?

(b) are changes needed in the areas discussed in this section or in other areas?

(c) what is likely to be the practical effect of any changes on the immunity for industrial action?

CHAPTER III F

Paras 1 and 2: redraft as follows

1. The practice of holding secret ballots for the election of union officers or to decide whether or not to accept a specific pay offer or to take industrial action is well established in some trade unions. But this practice is still very far from being general and progress in extending it has been slow. The importance of proper democratic procedures for the election - and periodic re-election - of union officials is pointed out in para 20 of Chapter I. Only the adoption of such prcedures will enable trade unions to meet the criticism that their leaders are often out of touch with the views of their members and sometimes pursue policies which the majority of their members do not support. The Government has accordingly taken steps through the Employment Act to provide funds for the use of secret ballots in trade union elections and for other purposes (see para 7 below).

2. This section is concerned with the specific issue of secret ballots before industrial action is taken. The increasing damage industrial action can inflict on the community has led to demands that the decision of a trade union to take such action should be reached only after fully consulting the wishes of its members. Too often in recent years it has seemed that employees have been called out on strike by their unions without proper consultation and sometimes against their express wishes. In many cases it has appeared that

employees have had no choice but to obey the union instruction or to face the threat of expulsion from the union. This had led to increasing demands for trade unions to hold secret ballots before a strike is called. A number of proposals have been advanced to ensure that industrial action is called by a trade union only when it demonstrably has the support of the union members concerned in a secret ballot. In particular, it has been proposed that immunity for calling industrial action should be made dependent in certain circumstances on the union having had a ballot of the members to determine whether the majority wish that industrial action to be taken.

CAPTER III G

Redraft paras 1-4 as follows:

1. The closed shop is the term customarily applied to an agreement or arrangements which requires employees to join a specified union as a condition of getting or holding a job.

2. The Government's view of the closed shop is clear: it is opposed to the principles underlying it. That people should be required to join a union as a condition of getting or holding a job runs contrary to the general traditions of personal liberty in this country. It is acceptable for a union to seek to increase its membership by voluntary means. What is objectionable, however, is to enforce membership by means of a closed shop as a condition of employment. Closed shops and the practices they can engender damage the image of trade unionism itself. The Government believes that these views are increasingly shared, not least within trade unions themselves.

3. Closed shops are a major feature of British industry, covering about 5 million manual and white-collar workers, and they are found over a wide spectrum of industries in both the private and public sectors. There are many employers as well as trade unionists who hold that they are of importance in helping to create stability in industrial relations. It is argued that the closed shop helps to establish unions as stable and effective organisations representing the workforce as a whole; encourages the responsible co-operation of unions with each other and with management; and helps to ensure that unions have the ability to comply with, and see that their members comply with, agreements they enter into.

4. However, there is little evidence that closed shops have helped to reduce industrial conflict and some closed shops are undoubtedly used as a basis for establishing and maintaining restrictive practices which impede efficiency. The closed shop has been used increasignly as a means of denying business to, and in some cases threatening with extinction, firms whose employees are not members of a union. In some industries it has become common practice for union members working in a closed shop or in a firm where there is a high degree of union membership to refuse to handle goods from non-union sources or to let non-union employees of other companies work alongside them at the same place of work. The purpose of such action may be to compel the employees in non-union firms to become union members or to defend the jobs of union members against what is seen by the unions as a threat from non-union firms. It is arguable, however, that these practices are often more a means of protecting outdated and inefficient methods of working than of defending union members against any more

direct threat to their employment. These arguments are adduced by those who believe that, as a matter of principle, individual employees should have the right to decide for themselves whether or not to join a trade union and that the law should guarantee them this right. They point out that in many other countries the law declares the closed shop illegal or provides employees with a right not to belong to a trade union (see Appendix).

CHAPTER V

Para 1: substitute the following:

> "The Government believe that improvements in our industrial relations are essential to our economic recovery. Our industrial relations have acted as a barrier to increased productivity and efficiency and have been bedevilled by strikes and other forms of industrial action. As a result they have operated in the interests neither of management nor employees and have clearly damaged the interests of the community at a whole. The question is how far improvements in our industrial relations can be brought about by changes in the law. This Green Paper is intended to provide the basis for a full and informed public debate".

Delete paras 3 and 5 and redraft para 4 to read as follows:

> "This Green Paper examines two distinct sets of problems. First, it considers a number of propositions which have been made for changes within our existing legal system. Essentially, what is involved in each case is finding a balance between the

conflicting interests of those directly involved: the interests of employers seeking to manage their businesses effectively and the interests of trade unions carrying out their necessary function or protecting their members; and the interests of those in dispute and of the rest of the community, including employers and their employees whose business and jobs may be threatened. Secondly, the Green Paper considers the problems which derive from the complexity and uncertainty of our present contract and tort-based system of law. It is in the interests of everybody that the law in this area should be as clear as is possible and be seen to be relevant. The basic question here is whether we should break loose from our present system by replacing it with a system based on positive rights".

Ind Pol

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

16 December 1980

Richard Dykes Esq
Private Secretary
Department of Employment
Caxton House
Tothill Street
LONDON SW1N 9NA

Dear Richard,

GREEN PAPER ON TRADE UNION IMMUNITIES

The Chancellor had one further suggestion for an amendment to the Green Paper which he did not mention at E Committee this morning. He would like to add a further two sentences at the end of Chapter 2, paragraph 46 on the following lines:

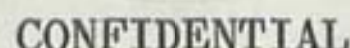
> "It must however be acknowledged that the imprisonment of individuals (see paragraph 47(2) below) was in fact a consequence of a Court of Appeal decision which was subsequently overturned by the House of Lords. The long-run history of the 1971 legislation might have been different if it had not been prematurely and precipitately repealed."

I am copying this letter to the Private Secretaries to the Prime Minister and the other members of E, and to David Moore and David Wright (Cabinet Office).

Yours sincerely

John Wiggins

A J WIGGINS
Principal Private Secretary



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P.0403

PRIME MINISTER

GREEN PAPER ON TRADE UNION IMMUNITIES
(E(80) 148)

BACKGROUND

The Secretary of State for Employment circulated a draft of his Green Paper on Trade Union Immunities under cover of his minute of 17 November to you. He has now revised the draft to take account of suggestions made in correspondence. The new text, with the amendments sidelined, is attached to his Memorandum E(80) 148.

2. The CBI have made clear that they need a consultative period of six months if they are to sound out their members fully. If the Secretary of State can get clearance this week he would propose to publish the Green Paper shortly after Christmas (the public undertaking is to publish "before the end of the year") and set a closing date for consultations at 30 June 1981.

3. In the correspondence the most fundamental suggestions came from the Chancellor of the Exchequer - his letters of 8 and 10 December - and from the Secretary of State for Industry in his letter of 10 December. The Secretary of State for Trade has also raised the question of whether the Green Paper should include a commitment to legislation to deal with the Nawala problem.

4. The Chancellor of the Exchequer's main criticism, on which he was supported by the Secretary of State for Industry, was that the November draft was too studiously neutral and that it failed to bring out the strong need for a change in the balance of industrial relations. The Secretary of State for Employment remains of the view that the introduction and discussion of such changes need very careful handling and timing. He has, however, made substantial changes to his introductory paragraphs in order to meet the Chancellor's point.

5. In response to other major suggestions he has:-

(i) In paragraph 20 of the introductory chapter put the case for postal (ie secret) ballots for trade union elections more strongly, although he is anxious to avoid any suggestion that the Government is contemplating legislation to make secret ballots mandatory - see paragraph 2 of his cover note.

(ii) In Section A of Chapter 3 put the questions on immunity for trade union funds more positively (paragraph 34) and inserted a new paragraph 26.

(iii) Amended paragraph 30(ii) of Section E of Chapter 3 to refer more positively to the advantages of introducing legally enforceable agreements.

6. The Nawala case raised the issue of the blacking of international shipping in UK ports where there is, and has been, no dispute between the owner and the crew past or present. It is discussed in the section on international shipping in paragraphs 31-34 of Section D of Chapter 3. The Secretary of State for Trade, supported by the Lord Advocate, argued that the Green Paper should announce that the Government intends to legislate on this problem in due course (this is on the strength of your summing up at a meeting of E on 24 March when you said that industrial action in the shipping industry should be reserved for separate treatment in a later Bill - E(80) 11th Meeting, Item 2). The Secretary of State for Employment, supported by the Lord Chancellor, argues that it would be inappropriate to announce in the Green Paper a commitment to legislate on this particular issue in advance of general consultation on it and on other related matters. He points out that it has, moreover, yet to be decided how to tackle this complex problem in legislation.

HANDLING

7. In introducing his paper the Secretary of State for Employment will no doubt explain how he has handled the main points put to him and how

he now sees the timing. You may wish to make clear to the Committee that you do not want to take drafting points which can be cleared urgently in correspondence and that the discussion should focus on major issues. The Chancellor of the Exchequer and the Secretary of State for Industry will wish to say whether they are now satisfied. In addition you may want to call on Mr Tebbit (representing the Secretary of State for Trade who will not be back from his trip to Spain) to speak on the Nawala issue.

8. The main questions are:-

i) is the Committee satisfied that the broad balance and approach in the Green Paper are now right?

ii) are there any major policy issues which members still think are not covered satisfactorily?

iii) is it accepted that there should be no specific commitment in the Green Paper, prior to consultation, to legislate on the Nawala issue?

CONCLUSIONS

9. In the light of the discussion you will wish to record conclusions:-

either approving publication of the Green Paper as soon as possible subject to clearance in correspondence of any outstanding drafting points;

or as above, but resuming discussion of any major issues if there is time at the meeting of E prior to Cabinet on Thursday morning;

or if it is clearly impossible to resolve the issues before Christmas, agreeing to resume discussion at an E as soon as possible in January, recognising that this will mean some amendment to the overall timetable - for example, postponing the closure date for consultation to the end of July 1981.

P Le CHEMINANT

Cabinet Office
15 December 1980

15 December 1980
Policy Unit

PRIME MINISTER

GREEN PAPER ON TRADE UNION IMMUNITIES

1. We think the latest draft of the Green Paper is much improved. We have three remaining comments:

Secret ballots

2. The new paragraph 20 of the Introduction enjoins unions to adopt democratic processes. This is a very important long-term union reform which it is very hard for anyone to oppose. Jim Prior argues that even to mention "mandatory" secret ballots for elections would put further progress at risk. But we do not believe that it would be so dangerous to invite comment on the idea that the full range of trade union immunities should only be available to "constitutional" unions - ie those with democratic procedures. This idea has appeared elsewhere. It deserves airing - without commitment - in the chapter on secret ballots. The Green Paper already canvasses many other ideas which are anathema to the trade unions. It would be quite wrong to fail to raise this subject - which is not "mandatory", since unions would be free not to comply - for fear that even to mention it would provoke them. Democracy can never be a dirty word.

3. We also think the Annex describing the American system should say that secret ballots for regular elections - at local, regional and national level - are a legal requirement there.

Vicarious liability

4. Paragraph 17 and paragraphs 20-25 of Section A still seem too negative about requiring a trade union to show that it used its "best endeavours" to bring unlawful action to an end. Paragraph 17 says this could well weaken trade union authority. The opposite view - that authority might be strengthened - is expressed only very briefly at paragraph 26.

Timing

5. In June 1979 the CBI supported a quick Employment Bill to deal with the urgent priorities, and said:

"The CBI is also making an urgent study of the whole question of trade union immunity from legal action, including the problems of secondary action in all forms, and of the enforceability of procedural agreements."

By September 1979, they had produced an internal report. In September 1979, they said:

"In due course the law may have to be further amended . . . Many of our members have expressed concern that trade unions themselves are largely immune from action in tort, and have recommended that they should be accountable in law for their actions and for those undertaken on their behalf."

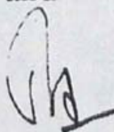
In March 1980, they expressed a preference for removing immunity for <u>all</u> secondary action, and said:

"Council laid great stress on the need for the Government to bring forward at the first opportunity a comprehensive Green Paper which would deal with the legality of industrial action and the responsibility of trade unions in this regard."

6. Now, eighteen months after beginning their urgent study, the CBI say they would much prefer a longer period than six months. We doubt that a longer period is really necessary. But if the six months is accepted, would this effectively rule out even the possibility of taking a further legislative step during the 1981/2 Session? If so, we support Geoffrey Howe's suggestion that the period could be reduced. We should not close the option of moving more quickly if the climate is right, or if we can <u>make</u> the climate right, by public debate.

7. In any event, we believe it is very important that there should be a full debate among Cabinet colleagues <u>while the consultation period proceeds</u> about our intentions on trade union reform. (My letter of 12 December sets out the case for this.) We hope that the responses to the Green Paper will be circulated to all members of E when they are received.

8. I am copying this minute to Geoffrey Howe, Keith Joseph, Jim Prior and Robin Ibbs.



JOHN HOSKYNS

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

From the Secretary of State

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

12 December 1980

Dear Jim

GREEN PAPER ON TRADE UNION IMMUNITIES - THE NAWALA PROBLEM

Many thanks for your further letter of 5 December.

I recognise the argument that a Green Paper may not be a suitable place to announce a firm commitment to legislate. In view of this I can agree, in spite of our decision in March that we would need to legislate on this problem in due course, that the Green Paper need say no more than that we are concerned about the problem, and that we believe serious consideration should be given to making such changes in the law as are necessary to deal with it.

I therefore attach what I should like to see as the concluding paragraph 33 of the section on "Definition of a Trade Dispute".

I am sorry that I shall be in Spain on Tuesday when this matter is to be discussed in E. I hope that you will be able to accept this compromise as meeting the anxieties which you and Quintin Hogg have expressed. I put it forward on the understanding that it does not alter the decision we have already taken on this matter.

I am copying this letter and its enclosures to the Prime Minister and other members of E, the Lord Chancellor, the Home Secretary, the Attorney General, the Lord Advocate, the Secretary of State for Social Services and Sir Robert Armstrong.

Yours ever

John

JOHN NOTT

SUGGESTED RE-DRAFT OF CONCLUSION ON "DEFINITION OF A TRADE DISPUTE"

Conclusion

33. The Government is ~~very~~ concerned about the operation of the present definition of trade dispute in relation to international shipping for the reasons set out in paras 30-31 above. It believes that ~~serious~~ consideration should be given to making such changes in the law as are needed to protect ships in British ports from industrial action in cases where there is and has been no dispute to which members of the crew are a party. It would of course be necessary to continue to allow lawful industrial action to be taken in furtherance of disputes concerning the dismissal of any members of the crew. The Government would welcome views on this issue and the others discussed in this section:

(a) have problems arisen in areas other than those mentioned due to the current definition of "trade dispute"?

(b) are changes needed in the areas discussed in this section or in other areas?

(c) what is likely to be the practical effect of any changes on the immunity for industrial action?

sc Mr Duguid
Mr Wolfson

TPL (O/R)

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

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

11 December 1980

Dear Jim,

GREEN PAPER ON TRADE UNION IMMUNITIES

Thank you for letting me see your draft Green Paper on Trade Union Immunities. In the note attached to this letter I make some drafting suggestions and some more extensive general comments, particularly from the NHS point of view, on what is proposed. My general comments may perhaps tie up with others you will be receiving from colleagues with responsibilities for other parts of the public sector and may suggest further redrafting. One broad point which I feel I must make is that there is no substantive discussion anywhere in the paper of the possibilities of new limitations on industrial action falling short of a strike. Is this something which you regard as beyond your present remit and if so is discussion of this contemplated elsewhere?

We shall clearly be seeking to co-ordinate an NHS management view after the publication of the Green Paper, at which time I may need to supplement the attached notes.

I agree that the wide debate you propose can only be beneficial and I am grateful for having a chance to contribute at this early stage.

Yours ever

Patrick

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SUGGESTED DRAFTING CHANGES AND GENERAL COMMENTS ON THE GREEN PAPER

Chapter 1

The NHS has had its industrial relations problems in recent years - though not so many as some of its critics suggest - but they have not generally been of the kind described in the chapter. The common form has been disruption as a result of a national pay dispute, though admittedly there has been a growing tendency for national disputes to be no more than umbrellas under the shadow of which various forms of local action take place. But even where there has been extensive industrial action, as in 1978/79, it has usually been accepted that patient services should be maintained. There have, of course, been variants to this general pattern and there are examples of bad industrial relations locally leading to repeated unofficial action.

More specifically, paragraph 26 is obscure. Does the third sentence have a general meaning or is some particular framework being proposed? The sense of the paragraph should be clarified or it should be omitted.

Chapter 3A

The incidence of unofficial action is lower in the NHS than seems to be the case in industry generally. Nevertheless the problems of increasing local autonomy and loss of central control within trade unions are very material. It does seem doubtful, however, whether legal changes designed to make unions liable for the unlawful, as opposed to the unofficial, actions of their officials would make any real impact on this problem. The answer almost certainly lies in sound procedure agreements and firm management. We are moving on both these fronts in the Health Service having, within the last year, seen agreement on a new local disputes procedure and having given local managers much more freedom than previously to deal with industrial action, including industrial action falling short of a strike.

The chapter might include a mention, as an example of indirect financial pressure on trade unions, of the Social Security (Number 2) Act 1979, which

reduces by £12 per week the supplementary benefit "requirements" of a striker's family. This is known in some cases to have put pressure on trade unions to pay, or increase, strike pay and it could well lead, indeed may already have led, some unions to take a closer look at the boundary between official and unofficial action.

Chapter 3B

Taking the draft as it stands, the second half of paragraph 8, which presents the arguments for and against further abridgement of the immunity for secondary action, requires some clarification if the balance of the argument is to be properly understood. Perhaps a simple "however" in the sentence beginning "Except where...." would suffice.

As a somewhat wider point, however, the argument that continued operation by the primary employer will normally indicate a lack of support in his work-force for the cause of the dispute is not really relevant in services like the NHS where there are a large number of unions and where the need to maintain services to patients throughout periods of industrial action is generally accepted. Some qualification of the argument to reflect these circumstances might be considered.

And whilst not specific to the NHS, is there not a case to be made for leaving matters alone until the effectiveness of the new 1980 Act provisions have been tested? As the draft says (paragraph 9) there are some who argue that we have already gone too far in restricting secondary action. This will of course be difficult to judge since the test will not be how many actions are brought against unions but in how many cases prescribed secondary action is not resorted to, but it will surely be difficult to justify going further without any evidence as to how the new provisions appear to be working out.

Chapter 3C

The matters covered in this chapter go to the heart of some of the more difficult problems in the public sector and more might generally be made of the difficulties

which arise where the Government is the main employer or the provider of finance. The line between action in furtherance of a genuine trade dispute and political action is fine in relation to disputes arising, for example, directly or indirectly, over cuts in public sector spending. More mundanely, the NHS has problems of this nature over such matters as proposed hospital closures and it is possible that the implementation of management structures by the future district health authorities could be challenged. Both these areas are, of course, ones where, subject to proper consultation, management decisions must be enforceable, the requirements to stay within cash limits now being statutory. Demarcation disputes also occur in the NHS and experience indicates that it is almost inevitable that the employer becomes involved. Thus any attempt to reduce the problem by excluding disputes between "workers and workers" from the definition of a trade dispute would probably have little effect.

Chapter 3D

As the chapter suggests, the history of attempts to influence employers and trade unions to conclude legally enforceable agreements might be regarded as not encouraging further initiatives in this area. The analysis which is given is certainly right in suggesting that legal enforeability is more difficult where local bargaining is common. And the fact is that in the NHS local bargaining has become common and will be increasingly so if the efforts we are making to allow local management greater flexibility in relation to the setting of pay levels, gradings, etc are successful. There is almost certainly more of a case for encouraging the conclusion of legally-binding procedure agreements though, having said that, it has to be recognised that it is the scope rather than the application of such agreements which frequently cause problems, eg under a disputes procedure, what matters should be regarded as negotiable.

Experience in the USA quoted in paragraph 3 is that about the same number of days are lost in strikes as in the UK, but these are concentrated in the period of renegotiation. For a service industry like the NHS, a major dispute, especially one spanning several staff groups, presents greater problems for a management trying to maintain services than does a series of minor disputes.

Chapters 3E F and G

As with the new restrictions on the immunity in relation to secondary industrial action, would it not be preferable to let the non-mandatory ways of encouraging secret ballots, the increased protection for individuals in relation to closed shops and the restrictions on secondary picketing provided for in the Employment Act be tested before any further measures are taken?

Chapter 3H

Experience in the NHS would endorse the point made, in considering strike bans, that, on the whole, workers in key sectors have shown restraint in using their industrial power and that, even during disputes, essential services can be maintained by agreement. The voluntary ban on strike action by the Royal College of Nursing (and the Royal College of Midwives), whose growing membership makes them perhaps the most important staff organisation in the NHS, reflects the same attitudes. It seems important therefore to continue to maintain this tacit agreement and not to risk the safeguards in favour of a statutory ban, which it would almost certainly be impossible to enforce, or even by too direct pressure for no-strike agreements. Though I shall of course, continue to repeat my willingness to negotiate such agreements, I am not hopeful that any positive response will be forthcoming.

Chapter 4

The reality behind the discussion in this chapter is that one is concerned to define the limitations on the right to strike etc, and it is largely a question as to whether this could be more palatably presented within a positive rights system than as a series of restrictions on immunities. Recent history suggests that it is by no means certain that the greater judicial intervention that would flow from a positive rights system would be effective, but by the same token the uncertainty which exists today about the limits on union activities is equally unacceptable. I should like to see how the debate develops after publication of the Green Paper before finally coming down one way or the other.

JU

CONFIDENTIAL

DEPARTMENT OF INDUSTRY
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Secretary of State for Industry

10 December 1980

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

Dear Secretary of State

1 Thank you for sending me a copy of your minute to the Prime Minister of 17 November enclosing the draft Green Paper.

2 This is a good wide ranging review and I appreciate the efforts you have made to cover the points we explored in earlier correspondence. I do, however, feel like Geoffrey Howe, that the draft is perhaps too even-handed in its approach and we might discuss collectively the case for shading the presentation to reflect a little more what we would favour. I set out my own thoughts below. You may also be interested in Tom Trenchard's comments, a copy of which I attach and which I generally endorse.

3 I believe that the Green Paper needs to make out the powerful case which exists for further reforms. The introduction should thus spell out the facts of our relative economic decline and the part which our industrial relations have played in this. While we must acknowledge the legitimate role of trade unions in protecting their members' interests, we should also explain our view that too often in the past they have pursued the narrower self interest which whilst superficially attractive in the short term has ultimately harmed the well being of union members and their families, including their pensioner parents. The result is the widespread acceptance in industry of the sort of practices and inefficiencies with which we are all familiar and our consequently dismal productivity. The process has been encouraged by the very wide freedoms which the trade unions have enjoyed under the law which have undermined industry's confidence and ability to manage its affairs efficiently and profitably. The constraint has often been the threat of striking rather than strike action itself so that the aggregate of days lost through strikes does not reflect the extent of the damage done.

4 Your draft rightly stresses that management too has an important responsibility for establishing trust and for explaining the economic realities. These are not of course aims which can be enforced by law. But in most other areas management is

/already ...

CONFIDENTIAL

already constrained by an abundance of laws. It is unions that are not.

5 Should the main body of the Green Paper perhaps indicate more clearly those areas where we believe that change is desirable? I fully understand that in examining particular options we must set out the problems as well as the opportunities. But should we not also guard against presenting the unacceptable as if it were acceptable or so emphasising the obstacles that we make progress even harder to achieve (indeed I do wonder whether there may not be a case for drastically shortening the Paper in order not to give the inevitable hostages to fortune involved in a lengthier document?)?.

6 My thoughts on particular sections include the following:

A) Immunity for Trade Union funds

Paragraph 9 argues in very reasonable terms the case for bringing trade union immunities into line with those for individuals. But the following paragraphs tend to under-estimate the controls which trade unions can and already do exercise over their members. Is it not fair to argue that if the present immunities were reduced in this way, the unions would find ways to safeguard their funds and exert the discipline which has hitherto been lacking? My point is that under present law they can choose to assert their authority, or to disclaim it, as it suits them: they should not continue to have it both ways.

B) Immunity for secondary action

It seems wrong to sanctify 'trade union solidarity' as paragraph 8 (and some other parts of the Paper) tend to do. Nor should it be accepted simply because Donovan said it was familiar. Should not the emphasis in this section be (as in our manifesto) to protect those not involved in a dispute against damaging secondary action? The only sure method of doing so is to withdraw immunity for all secondary action.

D) Collective agreements

The draft should, I suggest, canvass support for our moving firmly in the direction of legally enforceable agreements and ask for views on how this might be achieved as quickly as possible.

E) Secret ballots

We should, I propose, include a passage introducing the idea that the election of union leaders should be by secret ballot. This would be consistent with our broader aim of encouraging more democratic decision making by trade unions.

/F ...

F) <u>The closed shop</u>

I should like to see a more positive treatment of the case for periodic reviews of closed shops through a ballot. People should be as free to choose <u>not</u> to join a union as to choose to join one. We could afford also to be less reserved in our handling of the other abuses of the closed shop detailed in paragraphs 26-41; the arguments against action here are not compelling.

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

Yours sincerely

Michael Kenny

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

2/12

CONFIDENTIAL

SECRETARY OF STATE

GREEN PAPER ON TRADE UNION IMMUNITIES

I received the draft green paper (sent by Mr Prior to the Prime Minister on 17 November) on 28 November.

It calls for comments by 5 December. I have read most of it through quickly. Is it the longest green paper ever?

Anyway, I think it is the wrong approach. It reads half as though it were a Royal Commission report by the Department of Employment - a kind of updated Donovan. I had visualised a much shorter paper raising all the key issues as questions.

It perpetrates a number of central errors of Donovan (4 of whose members were contemporary leading trade unionists). The most important one being that there is a distinct separation of official union action and the British unofficial disease, ignoring the fact that some of our trade union leaders have over two decades been fairly openly encouraging a degree of anarchy. It thus never really poses the thought that neither unions nor members should be allowed to have it both ways, ie to join a strong union for collective strength but to retain the right to act irrespective of that union, for some union leaders to have militant members pushing the boat out, without any legal recourse to them or responsibility by them.

The description of the foreign position in these respects is misleading particularly in relation to the USA.

The argument that it is not just to hold union leaders or union funds responsible falls to the ground if their protection lies in these being able to remove membership cards from members not adhering to the union's official position in a dispute.

This is the ultimate position in most other countries and because it is so, it is almost never reached. This is in turn why they almost never have unofficial strikes or breaches of agreement. That in turn is a main reason why they have high productivity and we have low productivity.

The point, however, is that this Government must not commit itself to the apparent acceptance of so much of our unique position in a green paper. I have only given the above as one important example. The whole document is littered with potential 'Petards'.

I also feel that there is too much stress on the difference between common law immunities and positive rights. The same results can be achieved by either route.

There is much else that will be criticised as mistatement of history and attitudes of employers and unions. I appreciate that much of this doesn't matter in a green paper but the document really commits the Government to excluding reforms which could bring us anythere near to the real situation in other countries.

One realises of course, that attitudes based on unique immunities have become entrenched to a degree which results in many employers not recommending further legal reform at present. They fear it being counter-productive. However, don't let us publish a paper which in many areas will make it harder not easier, through a step by step approach, ultimately to reach a balanced bargaining position without which monetarism alone can only work with a very high level of unemployment.

Will you send this on to Jim.

F.J.A.

pp LORD TRENCHARD

1. December 1980

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

10 December 1980

The Rt Hon James Prior MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
LONDON SW1N 9NA

Dear Jim

GREEN PAPER ON TRADE UNION IMMUNITIES

As promised in my letter of 8 December, I attach a list of my comments on and some suggested amendments to the text of the draft. I hope these will prove helpful when a revised version is prepared.

As indicated there my main concern is that the present draft is too placatory in tone and does not go far enough in bringing out the need for change in the balance of industrial relations. Perhaps I could just add that there are two issues in particular which I think need to be given some prominence and a rather bolder presentation in the revised text - the case for exposing trade union funds to legal process and the need for secret ballots at union elections.

I am copying this letter plus attachment to the Prime Minister and Members of E Committee, to the Home Secretary, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

Yours ever
Geoffrey

GEOFFREY HOWE

SUGGESTED AMENDMENTS TO DRAFT GREEN PAPER ON TRADE UNION IMMUNITIES

CHAPTER 1

(i) Paragraph 6 should be framed in terms of renewing the debate which has been taking place. Both "In Place of Strife" and the Industrial Relations Act 1971 should also be mentioned.

(ii) Paragraph 8 should make the point that the protection of trades unions and their members under present law is of a character and on a scale which does not exist elsewhere. The reference to "essential protection" against trade union funds being drained away should be toned down. To call it essential is to prejudge the central issue in the Green Paper.

(iii) After line 7 of paragraph 9 there should be a reference to trade unionists being reluctant to be deprived of their right to work under certain circumstances. Also the need to respect the interests of the private individual, should feature in this paragraph.

(iv) The third sentence of paragraph 12 should be deleted.

(v) Paragraph 16 might usefully take the opportunity to put a little pressure on union leaderships as well as management on the question of employee involvement.

(vi) Paragraphs 19 and 20 as drafted lean a little too heavily in favour of our present voluntary system

/of industrial

of industrial relations. Might it be better to talk of uncooperative attitudes being obstacles that would have to be overcome in para 19 and delete the references to waiting for consensus in para 20. If we did decide to act, the latter would undoubtedly be quoted against us.

CHAPTER II

(i) The tone of paragraphs 42-48 seems rather too negative. The Act was not foredoomed from the start and would have prevailed if the first 1974 Election had turned out differently. Paras 46-48 also seem a little inaccurate in places from my recollections. In particular the TGWU ended up by being rather more co-operative than the present draft suggests. The following draft is put up as a cock-shy which your officials might like to consider.

(ii) Para 46 "Both before and after it became law the 1971 Act encountered fierce opposition. The TUC ... National Industrial Relations Court (NIRC). The provisions of the Act were put to two major tests: in the docks in 1972, and in the engineering industry in 1973/4. It is not easy to reach clear conclusions about the effectiveness of both the Act and the TUC's campaign of opposition from these two episodes. As history shows, the TUC was not long able to sustain its campaign of total non-cooperation with, and non-recognition of, the Court; while the authorities found themselves severely embarrassed in using the Act by the fact that it led fairly swiftly to the imprisonment of individual workers and a growing anxiety about the extent to which its provisions could be operated in practice. What is, however, fairly clear is that the Act was put into operation in circumstances rendered

/unusually confused

unusually confused and testing by certain decisions of the Courts at crucial moments."

(iii) Para 47(1). Redraft from sentence 3 on:
"In line with the TUC's campaign not to recognise the NIRC, the Union initially refused to appear in court or to obey the injunction. It was fined ... This caused ... to defend themselves. The TGWU then decided to pay the fine and to appeal the case to the Court of Appeal, claiming that it had tried to enforce the order that the blacking should cease, but could not secure the cooperation of its members. The case was argued ..."

Following the sense of the end of para 47(1), line 5 of (2) should be redrafted, subject to a final check on the facts:

"... the Court of Appeal having wrongly declared the day before that individuals, not the unions were liable ..."

Finally towards the end of penultimate sentence, para 47(3) could be amended as follows:

"the Union was to be held financially responsible for the actions by its unofficial committees, and that the imprisonment of the five dockers was a mistake."

One could then delete the last sentence.

(iv) Para 48. Redraft the last sentence as:
"The Union ... called a national strike but then called it off after accepting an offer from a group of anonymous donors to pay the fines and compensation owed by the AUEW."

/CHAPTER III: Section A

CHAPTER III: Section A

(i) One issue not considered in this section is whether - if immunities are to be limited or removed - private persons might take legal action against trade unions and their members. Thus at the end of paragraph 33 and additional question along the following lines ought to be posed:

> "Should the right to sue in the event of restriction in immunities be confined to employers or should it be extended to individual employees, employers affected by but not directly involved in a dispute itself or the general public at large?"

(ii) Section C para 20: the last sentence seems a little complacent in view of the quite fundamental issues raised in the last two decades.

(iii) Section E: the issue of secret ballots needs to be raised here and given prominence. Mention should be made of the Landrum-Griffin Act in the USA and perhaps also to the reform of our own AUEW. The case for democracy in this area would receive widespread support making it difficult for unions to oppose.

(iv) Section F: This section does not seem to come down quite crisply enough against the closed shop; we must not be seen to implicitly acquiesce in its continuation.

(v) Might there be some advantage in bringing forward Section G so that it followed the section on individual immunities with which it is closely connected?

/(vi) Section H:

(vi) Section H: the tone of this section is rather disappointing. Is there not scope for something more positive which would articulate the basic rights involved in protecting the community in a wider sense extending to the right to work, the right to enjoy access to essential goods and services and the right to have some protection as an individual against the unbridled exercise of powers by others? We must try to avoid the appearance of resigned acceptance of the status quo and general scepticism about our freedom to take action. Thus the conclusion of paragraph 33 would avoid statements such as "any changes in the law must have the overwhelming support of the whole community, if they are to see it succeed".

Prime Minister
To note

HOUSE OF LORDS,
SW1A 0PW

8 December 1980

Dear Jim:

Green Paper on Trade Union Immunities

Thank you for sending me a copy of your minute of 17th November to the Prime Minister together with this draft Green Paper.

I support the line which you have taken in the Green Paper. It seems to me entirely right to publish this consultative document in fairly neutral terms, setting out the possible options without making positive recommendations. The need for further legislation is yet to be established and I think it is important to avoid giving the impression that we wish to introduce a successor to the Employment Bill in the near future. There have been so many changes in the law in this field in recent years, as the Green Paper points out, that a period of consolidation may be generally welcomed. The six month period which you envisage for consultation on the Green Paper should give us an opportunity to see how successful the Employment Act is in practice, as the need for futher legislation will depend, to a great extent, on the success or failure of the measures we have already taken. Consequently, I welcome the matter-of-fact approach which you have adopted and which should elicit constructive comment.

I have seen copies of your correspondence with John Nott on the Nawala problem. My own view is that we would be ill-advised to resurrect the general issues raised by the Nawala for which it may be very difficult to legislate. It would certainly be premature to announce our intention to legislate when we have no idea of the precise solution we should adopt. Furthermore, as the Green Paper does not make positive proposals for legislation in any other field, an announcement of a commitment of this kind in relation to one specific problem would look out of place. I would, therefore, support the line you propose to take in your letter to John Nott of 5th December.

.../Copies of

The Right Honourable
The Secretary of State for Employment.

Copies of this letter go to the Prime Minister, the Home Secretary, the Members of E Committee, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

Ind Pol. May 79

Legislation

IND POL

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

8 December 1980

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

Dear Jim

GREEN PAPER ON TRADE UNION IMMUNITIES

Thank you for sending me a copy of the draft Green Paper. As you know, I take a great interest in this subject and welcome the opportunity to comment.

My overall reaction to the draft is that it is rather too studiously neutral. I appreciate the need for a sensitive and cautious presentation of the issues; but in my view the draft does not really go far enough to bring out the need for change in the balance of industrial relations. Nor does it lay sufficient emphasis on our increasingly poor and unbalanced labour relations as a factor both actively inhibiting economic growth and inflicting unacceptable curbs on society. I would therefore like to see the draft focus rather more on this need for change which I believe is widely appreciated. This calls in particular, perhaps, for a clearer "steer" in the introduction, as well as a number of more specific changes elsewhere.

It is often argued that there are dangers in trying to proceed too quickly in reforming industrial relations, and there obviously are. But in my view there are equally great risks in not moving fast or far enough at a time when major structural change in the economy will inevitably put pressure on existing industrial relations machinery and institutions, and when we may have, perhaps, the best or even only opportunity for constructive change for some time to come.

/I do not

I do not share the view, which seems to underpin the present draft, that the absence of law in British industrial relations has worked well. Rather I would suggest that while this arguably may have been the case till earlier this century, it was clearly not the case by the end of the 1950s, when the need for legal remedies became unchallengeable. Over the last twenty years, there has been an accumulation of legal obligations and duties placed on the employer. It has not, of course, made things better. But the reason is not because the law in general is inappropriate, but because the particular changes made have been ill-judged and have strengthened the union's position at the expense of management at a time when social and technical change was having the same effect anyway. It is that imbalance which now needs to be redressed, and hence my desire for a more positive line in the Green Paper. The text should be tilted rather more towards the case for some redress in the balance of industrial relations so as to indicate the case for further necessary reforms, building on those laid down in the 1980 Employment Act. Moreover, in stating the case for change, the Green Paper should not concentrate too narrowly on the balance between employer and union. The rights of the private individual and the need to safeguard his interests against those of the union must also be an important element in any reforms contemplated. This issue is not adequately considered in the present draft.

I will put forward some detailed amendments on the text as soon as I am back from Dublin. But in the meantime I would ask you to consider two suggestions on the handling of the Green Paper. I think you will agree that the importance and wide relevance of this subject is such that Ministers should have the opportunity to discuss the draft before Christmas. E Committee would probably be the most appropriate forum. Secondly I note that the draft calls for a response from interest parties before 30 June 1981. If the consultation period is as long as this, that would seem to preclude the possibility of legislation in the next session. In order to keep this option open I would favour a rather shorter consultation period.

/I am

I am copying this letter to the Prime Minister and Members of E Committee.

GEOFFREY HOWE

2 PP

QUEEN ANNE'S GATE LONDON SW1H 9AT

MBPM

4 December 1980

7.12

Dear Jim

GREEN PAPER ON TRADE UNION IMMUNITIES

Thank you for copying to me your minute of 17th November to the Prime Minister, with the draft Green Paper on Trade Union Immunities.

I have only one point of substance to make on the draft. This concerns chapter IV, An Alternative System of Positive Rights. I appreciate the attractiveness of an approach based upon positive, statutory rights, but there are clearly difficulties both of principle and of practice in adopting such a system. Though I welcome the balanced approach taken in the draft Green Paper and see merit in widening discussion of these issues, the question whether there should be a system of positive rights in labour law cannot, logically, be isolated from the question whether we should have some general form of Bill of Rights.

This, of course, touches upon a wider question than the subject matter of your paper, but I think it would be helpful if some reference were made to this in the course of the chapter.

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

Yours ever

Willie

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

ps

Ind Pol:

Caxton House Tothill Street London SW1H 9NA

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000 GTN 213

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

5 December 1980

Dear Secretary of State,

GREEN PAPER ON TRADE UNION IMMUNITIES - THE NEWALA PROBLEM

Thank you for your further letter of 2 December.

As you say, our officials have been going over these issues in detail and are considering how the text of the Green Paper might be amended to clarify the treatment of this subject. I think it will certainly be helpful if we can make it clear that our concern is limited to "the blacking of international shipping in United Kingdom ports where there is and has been no dispute between owner and crew, present or dismissed". It is the possibility that legislation might enable ship owners to replace European crews with lower paid crews from the third world (as in the Nawala case itself) without any risk of lawful industrial action which makes this whole issue so explosive. It is important that whatever is said in the Green Paper should not be capable of being misrepresented in this way.

I consider however that it would be inappropriate to announce in the Green Paper a commitment to legislate on this one issue in advance of general consultation on it, as on all the other matters canvassed in the Green Paper, with the CBI, TUC and other interested parties. In any case a White Paper not a Green Paper, is the proper vehicle for firm legislative proposals.

We are, moreover, a long way from knowing how to tackle this very complex problem in legislation. If we announce a commitment to legislate without defining the scope and nature of the proposal we run precisely the risk of misrepresentation to which I have referred. I would be opposed therefore to announcing any firm intention to legislate until we have a fully worked out proposal and can see precisely what would be involved. I think the prime requirement now is to clarify the discussion of this subject in the Green Paper so that there is no doubt about the nature of our concern.

I hope that our officials can pursue this urgently in the next few days, so that we do not lose the possibility of publishing the Green Paper before Christmas as we have undertaken to do.

I was pleased to note that apart from this point you are content with the rest of the Green Paper as drafted.

I am sorry I have not signed this myself but I wanted you to have it before the weekend.

Copies of this letter go to the Prime Minister, the Lord Chancellor, the Home Secretary, our colleagues in E, the Attorney General, the Lord Advocate, and Sir Robert Armstrong.

Yours sincerely

R T B Dykes

R T B DYKES
/Approved by the Secretary of State and signed in his absence/

With the Compliments
of

THE LORD ADVOCATE

4 December 19 80

LORD ADVOCATE'S CHAMBERS
FIELDEN HOUSE
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Telephone : Direct Line 01-212 0515
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The Rt. Hon. James Prior, MP.,
Secretary of State for Employment,
Department of Employment,
Caxton House,
Tothill Street,
London SW1N 9NA.

4 December 1980

Dear Jim,

Thank you for sending me a copy of your draft Green Paper. I have also received a copy of John Nott's letter of 2nd December. In view of the discussion of the "Nawala" problem I agree with him that it would be wise to give an indication that a decision has been taken to legislate on this matter.

Generally, the paper is, if I may say so, a very clear analysis both of the present position and of the considerations for and against any possible changes. I find particularly interesting your treatment of the idea of substituting a system of positive rights for the present system. I think it is good to have a separate treatment of this possibility which, coming so late in the development of our law, would present formidable difficulties, but might, on the other hand, provide a suitable opportunity for a new start.

Finally, to take account of the Scottish position, may I make a suggestion. Somewhere in the introduction, perhaps about paragraph 7, a sub-paragraph should be inserted explaining that there are two systems of law in the United Kingdom, which, while they differ, particularly in terminology, are very similar in effect in the field with which the Green Paper is concerned. The sub-paragraph should contain a brief explanation about tort/delict and injunction/interdict and should conclude by saying that, for the sake of brevity, the terminology of the English system would be used in the remainder of the text. If you are minded to approve this suggestion, perhaps our respective officials could discuss the details.

I am sending a copy of this letter to the Prime Minister, the other Members of E, the Home Secretary, the Lord Chancellor, the Attorney General and Sir Robert Armstrong.

Yours ever,

James.

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

cc Mr Duguid

Prime Minister — Ind Pol?

To note.

From the Secretary of State

CONFIDENTIAL

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

2/12

2 December 1980

Dear Jim

GREEN PAPER ON TRADE UNION IMMUNITIES - THE NAWALA PROBLEM

I delayed reply to your letter of 10 November until I had seen the text of the draft Green Paper, which you circulated with your minute of 17 November to the Prime Minister. I understand your aim is to clear it without a collective discussion if possible.

I should still prefer the Green Paper to announce the decision we made at E on 24 March to legislate on the Nawala problem in due course. I was sorry to see from your letter that we were at cross-purposes following our earlier discussion. As I said in my letter to you of 4 February, it was no intention of mine that immunity should be withdrawn in the event of a dispute between a shipowner and a dismissed crew. However, our officials have now met to go over the ground again, and I think it is understood that we are concerned only with the blacking of international shipping in United Kingdom ports where there is and has been no dispute between owner and crew, present or dismissed.

I entirely accept that we did not agree in E Committee in March how or when we should legislate on this matter, but merely that we should. I agree also that we did not resolve then to announce the decision in the Green Paper. Yet surely it would look very odd to omit it from such a wide-ranging survey and then to introduce legislation on it subsequently.

CONFIDENTIAL

From the Secretary of State

CONFIDENTIAL

Your letter asked if this problem may have gone away since we resolved to act on it. I am afraid it has not. Attempted blackings continue: several of them successful. (Even if there had been a lull, that would not be surprising or reassuring at a time when the Government is known to be reviewing the legislative position.)

The Green Paper itself need not of course say exactly how this problem will be tackled in legislation. But I think it should make clear our resolve to find a solution. Our officials are now in touch to discuss best working for this purpose, and I hope they will be able to present us with a re-draft acceptable to us both, and to colleagues generally. Subject to this I am content with the rest of the Green Paper as drafted: but if questions still remain for resolution between Ministers they can no doubt be settled at a discussion in E Committee.

I am sending a copy of this letter to the Prime Minister, the other Members of E, the Home Secretary, the Lord Chancellor, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

Yours ever
John.

CONFIDENTIAL

JOHN NOTT

E.R.

FILE

RH

MR HOSKYNS

The Prime Minister has read your note of 28 November and the paper which you enclosed with it on the Trade Union Immunities Green Paper. She has not made any specific comments; but as regards further action now, she has said that you should decide which are the most important points and then incorporate them in a minute which she would like you to send in your own name to the Department of Employment. She would then like you to discuss these points with the Department of Employment.- presumably officials and Ministers - in advance of the draft green paper being discussed in E Committee. (There has not yet been a definite request for an E discussion; if other Ministers do not ask for one, then we will do so in the Prime Minister's name).

T. P. LANKESTER

1 December, 1980

1 December 1980
Policy Unit

PRIME MINISTER

GREEN PAPER ON TRADE UNION IMMUNITIES

I note that you would like me to draft a minute and send it myself to Jim Prior and then discuss our comments on the Green Paper draft with him and/or his officials.

I want to make sure that our comments do not run into the sand at that point. I therefore propose, if you are agreeable, to send Jim a covering letter which makes two points:

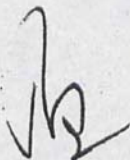
1. That we prepared our comments on the Green Paper draft for you and that you asked me to copy them to Jim.

2. That I have also copied them to Geoffrey and Keith as I know that they have already made suggestions to Jim about the contents of the Green Paper.

If I don't do this, there is a risk that we will have discussions with Jim and his officials; that he will say that he is not persuaded by our recommendations; and that it will then be impossible for me to copy our comments to Geoffrey and Keith so that they themselves can raise them before or at E.

Would you be agreeable to my taking this line?

Or would you prefer me to communicate with Jim only and not send copies to Geoffrey or Keith?



It would be best to take them up with Jim first.
MT

JOHN HOSKYNS

PART 6 ends:-

28-11.80

PART 7 begins:-

1.12.80