PREM 19/2249

PART 13

NT

Confidential Filing

Industrial Relations Legislation
The Employment Bill
Strikes in essential services.

- In attached folder, Green Paper on Trade Unions and their members

INDUSTRIAL POLICY

PART 1 : May 19

PART 13 : Feb. 19

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~3.3.87~~							
~~23.2.87~~							
~~24.2.87~~							
~~27.2.87~~							
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~~22.6.87~~							
~~24.6.87~~							
~~29.6.87~~							
29.9.87							
PART ENDS							

PREM 19/2249

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INDUSTRIAL POLICY

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PART 13 : Feb. 1987

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~~16.6.87~~							
~~22.6.87~~							
~~24.6.87~~							
~~29.6.87~~							
29.9.87							
PART ENDS							

PART 13 ends:-

N. BLACKWELL TO PM 29.9.87

PART 14 begins:-

ATT. CREW TO SS/EMP 2.10.87

Prime Minister'
You will also wish to look at
N Fowler's letter.
Do you wish to
write as proposed?
DRV
30/9

Prime Minister **29 September 1987**

Legislation for Trade Union Reform

The memorandum from Mr Fowler proposes dropping the provision for the new Commissioner to take legal action on behalf of a complainant, confining his support to paying costs and arranging assistance from legal counsel. This seems to be a last ditch attempt by officials to run away from one of the key functions of the Commissioner - a role which they have never liked.

The whole rationale for the Commissioner was to reduce the barriers to an individual union member - who might be intimidated by High Court legal proceedings - in taking action to ensure that his union abided by ballot and other procedures. To dilute the role so that the Commissioner provides no more than a complementary system of legal aid is totally inadequate.

The excuse given for this change is the apparent legal difficulty of enabling the Commissioner to take action in his own name when he does not have a direct interest in the action; it is suggested that this might need be ratified by amending the rules of the Supreme Court. However, the Department of Employment have indicated that Parliamentary Counsel would draft around this if instructed so to do.

Recommendation

The role of the Commissioner in helping the individual trade union member to carry his case forward is a crucial part of his function. We should insist that it is maintained.

(i) If legally practical, counsel should draft legislation that would enable the Commissioner to take part in legal action in his own name on the complainants' behalf as originally intended.

(ii) If this is not feasible, the wording of the Bill should make clear that the Commissioner has an obligation to act as an agent for the complainant (where he is satisfied that there is a valid case) in preparing the case, instructing counsel and "hand-holding" the litigant through the legal procedures.

This is likely to be supported by the Lord Chancellor's Department, who have been worried that a watered down Commissioner role would simply look like a special case of legal aid.

NRB

NORMAN BLACKWELL

Ind policy

Industrial

Relations

Legislation

Pt 1 3

RC/CON/10

CONFIDENTIAL

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The Rt Hon Lord Havers,
Lord Chancellor
Lord Chancellor's Department
House of Lords
London SW1

25 September 1987

Dear Michael,

LEGISLATION FOR TRADE UNION REFORM: THE COMMISSIONER

Following consideration of the draft of the Green Paper "Trade Unions and their Members" at E(A) last January, your predecessor and the then Paymaster General agreed (letters of 6 and 10 February) that an option should be included in the relevant chapter for the proposed new Commissioner to be able to take part in a legal action jointly with a complainant, or in his own name on the complainant's behalf. The Annex to the draft E(A) paper attached to my minute of 18 June to the Prime Minister included this option (para d of item 12) among the other forms of support which the Commissioner could provide.

Parliamentary Counsel was instructed to draft an appropriate provision as part of the forthcoming Employment Bill. However, he has now concluded that such a provision would be inappropriate where the Commissioner did not have a separate interest which would justify his participation as a party in the legal actions. He suggests that if importance is attached to what is essentially a matter of presentation, a possible approach would be to amend the rules of the Supreme Court but that this might conflict with the principles of these rules. Parliamentary Counsel has indicated that he will only draft as instructed on this matter if I give him a specific direction to do so.

I have given further consideration to the question of how the Commissioner's support should be provided, and have reached the conclusion that his support should be confined to reimbursing relevant legal and associated costs or arranging and directly paying for assistance from a solicitor, counsel or other representation.

We have always intended that the Commissioner should only be able to take or continue any legal action as long as there was a supported complainant eligible to bring the action and willing to see it pursued. Thus the Commission would have to reveal the name of the person on whose behalf he was acting if challenged by the defendant union to show that the person was a complainant eligible to bring the action, and if the supported complainant decided that he wanted to withdraw from an action being taken jointly with the Commissioner, or by the Commissioner on his behalf, the Commissioner would also have to withdraw. Other items in the legislation will, of course, protect union members who apply for or receive the Commissioner's assistance from disciplinary action by their union.

We must maintain the important principle that we have observed since 1979, that legal action should be taken where necessary by those who otherwise would be deprived of the rights and duties owed to them. We have not risked and should not now risk giving our opponents the opportunity to claim that the state is interfering of its own motion in the affairs of any particular trade union. It is much more effective to provide union members themselves with the statutory rights, and the ability to enforce those rights, which will prevent abuses of power by their unions. I believe that the scope for misunderstanding or misrepresentation will be much less if the Commissioner is precluded from becoming a party to the proceedings we envisage.

In recommending the option of enabling the Commissioner to be a party to an action, your predecessor suggested that it would help to draw a clear distinction between the Commissioner's support and the legal aid scheme. However, I understand that in the sort of case which will attract the Commissioner's assistance legal aid might not be granted in practice, even if it were available in theory, because the applicant might be unable to show that he personally had a sufficient material interest in the outcome. We are already agreed that some kind of special help is warranted to enable union members to pursue High Court legal actions against their unions, and providing direct financial support or specialist services should be an effective means of securing the help that is required.

I hope, therefore, that you can agree that the option of enabling the Commissioner to act jointly with, or in his own name on behalf of, a supported complainant can be dropped. A response by 29 September would be appreciated, since I aim to have a draft of the Employment Bill ready to present to the meeting of L Committee on 21 October.

I am copying this to the Prime Minister, members of E(A), the Attorney General, the Minister of State Privy Council Office, and Sir Robert Armstrong.

Yours ever Norman

NORMAN FOWLER

Industrial Rels: Legislation PT13

CONFIDENTIAL

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

29 June 1987

Dear John,

TRADE UNION REFORM: PROPOSALS FOR LEGISLATION

The Prime Minister has seen your Secretary of State's minute of 25 June which commented on correspondence about the proposed legislation on trade union reform.

The Prime Minister is now content with the proposals. She agrees that instructions to Counsel should include the presumption that the Commissioner will normally provide support to applicants in the circumstances described in your Secretary of State's minute. She is also content, subject to the views of the Chancellor of the Duchy of Lancaster, with the proposed treatment of charges imposed by trade unions for allowing access to accounts.

I am copying this letter to Richard Stoate (Lord Chancellor's Office), Michael Saunders (Law Officers' Department), Michael Stark (Minister of State, Privy Council Office), Private Secretaries to Members of E(A) and Trevor Woolley (Cabinet Office).

Yours,

David.

DAVID NORGROVE

John Turner, Esq.,
Department of Employment

Prime Minister

Agree to write as proposed?
Content also with the proposal indicated in the second page of Mr Fowler's minute, subject to Mr Clarke's views?

DHR 26/6

Yes

PRIME MINISTER 26 June 1987

TRADE UNION REFORM: PROPOSALS FOR LEGISLATION

Norman Fowler's response to your comments on the role of the Trades Union Commissioner is a useful clarification. Department of Employment officials confirm that there is now a clear understanding that the legislation should be drafted in such a way as to establish a presumption that the Commissioner will support or act on behalf of legitimate complainants. He would retain discretion not to act only in cases where there was insufficient evidence that a breach of duty had occurred, or where the union had already rectified its breach of duty, or there was some other technical reason not to proceed.

The separate point raised by Kenneth Clarke about ensuring that unions do not impose high charges to deter members from gaining access to accounts has validity, but is effectively dealt with under the conditions proposed in the Act.

We recommend that you confirm that the Secretary of State can now go ahead to announce the Government's decision on the contents of the Bill, while underlining his proposal to ensure that the Commissioner's presumption to act is appropriately reflected in the drafting of the Bill.

Norman Blackwell

Agreed

NORMAN BLACKWELL

CONFIDENTIAL

CCPG

PRIME MINISTER

TRADE UNION REFORM: PROPOSALS FOR LEGISLATION

I refer to your Private Secretary's letter of 22 June. I have also seen copies of the minutes of 22 June from Kenneth Clarke and of 24 June from Nigel Lawson.

I am grateful for confirmation that you are generally content with my proposals, and that you agree that taking the Certification Officer out of the process would be a useful simplification. I see no difficulty in your suggestion that the initial list of rights and duties in scope of the Commissioner's support should be extended to include access to accounts and the proposed duty on trustees; and my proposal provides for further additions to be made by Affirmative Resolution.

I have given further thought to the Commissioner's discretion in the light of your suggestion that he should be required or placed under an obligation to support applications in certain circumstances. If the Commissioner had no choice but to support from public funds a High Court action in pursuance of a declaration from the Certification Officer, serious problems might arise where the union had already rectified its breach of duty. Equally an element of discretion appears implicit in the suggestion that he should be obliged to act if presented with clear evidence that a breach of duty has occurred.

I believe these considerations have weight and that the Commissioner must be allowed to exercise a discretion. It is not in any case desirable that he should be constrained to give priority to applicants who had been through proceedings before the CO over those applying directly to the High Court.

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It was my intention, however, that the Commissioner's discretion should not be absolute and that where the CO had found against the union and no action had been taken to remedy the breach of duty an applicant should normally be entitled to expect support. I propose, if you agree, to ensure that this presumption is reflected in the instructions to Counsel.

I entirely agree with Kenneth Clarke that unions should not be enabled to deter reasonable enquiries by the charges they impose for allowing access to accounts. The legislation will reflect our expectation that charging should be the exception rather than the norm and should not be allowed to operate in such a way as to cut across the basic right. On the other hand I am anxious to avoid providing the unions with pretexts for non-compliance and it would be difficult to define in legislation the items for which it is suggested that a charge might properly be imposed. I therefore propose, if you agree, to maintain the twin limitations that the charge should represent no more than the administrative cost to the union and that it should be reasonable.

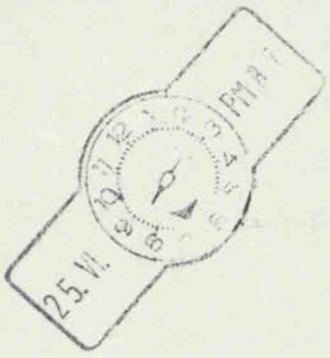
Content? Yes

I have received no other comments on the substance of my proposals. As suggested in my minute of 18 June, therefore, I intend if you are content to make known our decisions on the proposals to be included in the Bill on Tuesday 30 June during the Debate on the Address.

I am copying this to the Lord Chancellor, the Attorney General, the Minister of State, Privy Council Office, members of E(A) and Sir Robert Armstrong.

NF

25th June 1987



INDUSTRIAL POL: Legislation PTB

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CONFIDENTIAL

CC(87)

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

24 June 1987

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

NBR.

Norman

TRADE UNION REFORM: PROPOSALS FOR LEGISLATION

You sent me a copy of your minute of 18 June to the Prime Minister.

I am content for the Memorandum to be cleared by correspondence and I have no difficulty with your proposals. I have also seen Kenneth Clarke's minute of 22 June to the Prime Minister and would not object to his proposed amendment.

I am copying this letter to the Prime Minister, the Lord Chancellor, the Attorney General, the Minister of State, Privy Council Office, members of E(A) and Sir Robert Armstrong.

Yours ever,
NL

NIGEL LAWSON

INDUSTRIAL POLICY - Industrial Relations legislation
Pr 13

SH

bc BG.

10 DOWNING STREET

LONDON SW1A 2AA

22 June 1987

From the Private Secretary

Dear John,

TRADE UNION REFORM: PROPOSALS FOR LEGISLATION

The Prime Minister has seen your Secretary of State's minute of 18 June which set out proposals for further legislation on trade union reform.

The Prime Minister had one comment on the proposals, which relates to the role of the proposed Commissioner. In the Green Paper proposals the Commissioner had discretion to support trade union members in enforcing their rights to a pre-strike ballot or in preventing the use of union funds for political objectives, but a statutory duty to support an application to enforce a ruling of the Certification Officer on matters such as breach of election rules. Under the new proposals the Commissioner would be able to support action in the High Court on any breach of duty without his requiring a ruling by the Certification Officer, but a decision to offer or withhold material assistance would now always be at the Commissioner's discretion.

The Prime Minister agrees that taking the Certification Officer out of the process would be a useful simplification. However, she has suggested that it would be worth considering some closer specification of cases in which the Commissioner would be required rather than simply expected to offer support. She believes that the Commissioner should have an obligation to support any application either where the Certification Officer has already ruled in the applicant's favour or where the Commissioner is presented with clear evidence that a breach of duty has occurred.

The Prime Minister has also suggested that the list of duties where the Commissioner would have an obligation to act should be extended to cover rights of access to union accounts and the duty on union officials not to apply funds in contravention of the terms of court orders.

The Prime Minister is otherwise content with the proposals, subject to the views of colleagues.

I am copying this letter to the Private Secretaries to members of E(A), Richard Stoate (Lord Chancellor's Office), Michael Saunders (Law Officers' Department), Michael Stark (Minister of State's Office, Privy Council Office), and Trevor Woolley (Cabinet Office).

Yours David.

DAVID NORGROVE

John Turner, Esq.,
Department of Employment

010

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CCBS

THE CHANCELLOR OF THE DUCHY OF LANCASTER
AND MINISTER OF TRADE AND INDUSTRY

NFBM

PRIME MINISTER

TRADE UNION REFORM: PROPOSALS FOR LEGISLATION

WITH DKN

I have seen Norman Fowler's minute of 18 June. As you know, I was closely involved in formulating the present policy. I therefore strongly support Norman's proposals.

The only point of detail on which I would comment concerns the proposal to allow trade unions to charge for the administrative cost of providing access to their accounts. The intention behind this proposal was to deter vexatious applications. I am concerned, however, that some unions may use it as a means of deterring reasonable enquiries. I therefore suggest that it should provide for free access but that a reasonable charge might be imposed for extracts, photocopies, etc.

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

K C

22 June 1987

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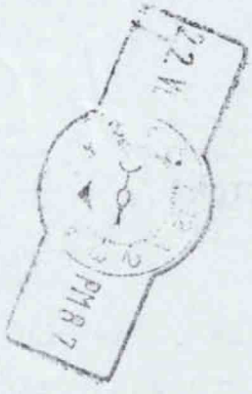
22



Prime Minister

Content with Mr Fowler's proposals amended as suggested by Mr Bladwell, but be prepared to hold a meeting if necessary?

PPS please

PRIME MINISTER 19 June 1987

TRADE UNION REFORM

DCR 19/6.

For the most part these proposals follow closely the previous Green Paper and our Manifesto commitments, but the obligations of the Commissioner need to be more tightly defined.

Role of the Commissioner

The proposals maintain the important principle that the Commissioner should be able to act in his own name on the complainant's behalf if this is requested. However, changes in the proposed role of the Commissioner make his obligation to act slightly ambiguous; this needs tightening up.

In the Green Paper the Commissioner had discretion to support trade union members in enforcing their rights to a pre-strike ballot or in preventing the use of union funds for political objectives, but a statutory duty to support an application to enforce a ruling of the Certification Officer on matters such as breach of election rules (Part I of the Trades Union Act 1984).

Under the new proposals, the Commissioner would be able to support action in the High Court on any breach of duty without first requiring a ruling by the Certification Officer (a useful simplification), but a decision to offer or withhold material assistance will now always be at the Commissioner's discretion (para 12c). The proposals go on to suggest that, in exercising that discretion, he would be 'expected' to offer support in any particular case where he believed that the applicant was likely to be successful. This seems unnecessarily vague, and the power of discretion could leave him open to political pressure.

We recommend that the Commissioner should have an obligation to support any application where either (a) the Certification Officer has already ruled in the applicant's favour or (b) the Commissioner is presented with clear evidence that a breach of duty has occurred.

We also recommend that the list of duties where the Commissioner would have no obligation to act should be extended to cover rights of access to union accounts and the duty on union officials not to apply funds in contravention of the terms of court orders.

Other changes

There are a number of other small but worthwhile changes, which are all welcome.

(1) Where a strike call is selective (applying to only a few work locations), the members at any one location will now have the right to seek an injunction against being called out on strike if there is a majority vote against industrial action at their particular workplace (even though there may have been a majority in favour of strike action amongst all the members balloted.) (paragraph 1c)

(2) It is now intended to include a Code of Practice to provide more detailed regulation of workplace ballots. (Postal ballots are only required for elections).

(3) Protection against closed shops is extended to include immunity from industrial action to establish or maintain pre-entry as well as post-entry closed shops

(4) The Commissioner and Certification Officer are enabled to refund travelling expenses of members of the public invited to attend meetings.

(5) Union-only labour contract provisions are extended so that government departments and Crown bodies such as the NHS cannot engage in contracts that specify the work must be done by members of a trade union.

(6) The 1986 wages Act is amended to require an employer to end deduction of union membership subscriptions from an employee's wages at the request of the employee.

Conclusions

The proposals should be approved as they stand, with the exception of tightening up the wording on the obligations of the Commissioner to act on behalf of union members at their request when convinced that breaches of union duties have occurred.

Norman Blackwell

NORMAN BLACKWELL

INDUSTRIAL POLICY: Industrial Relations legislation
Pr 13.

DM/A19

CONFIDENTIAL

CUG.

PRIME MINISTER

TRADE UNION REFORM : PROPOSALS FOR LEGISLATION

I have drawn up proposals for inclusion in the Bill which we are to introduce in the autumn following consultation on the Green Paper "Trade Unions and their Members". These now also extend, as proposed in my letter of 15 June to Willie Whitelaw, to cover amendments to the Employment and Training Act 1973. The attached memorandum briefly sets out my reasons for putting forward the proposals on trade unions as they now stand; these are described in more detail in Annex B.

Will request if required

Our policy in this area was discussed in January when we decided to publish the Green Paper and the main proposals are clearly set out in the Manifesto. It would be convenient to make known our decisions on the detailed content of the Bill in the course of the Debate on the Address, and there is of course an urgent need to proceed with drafting the Bill. Against this background you may feel that my Memorandum could be cleared by correspondence. If colleagues have difficulties, on the other hand, I should be grateful if they could let me know quickly and if we could then discuss them at a meeting of E(A) in the course of next week.

I am copying this letter to the Lord Chancellor, the Attorney General, the Minister of State, Privy Council Office, members of E(A) and Sir Robert Armstrong.

N F

18 June 1987

CONFIDIENTAL

TRADE UNION REFORM: PROPOSALS FOR LEGISLATION

Memorandum by the Secretary of State for Employment

1. The Green Paper "Trade Unions and their Members" (Cm 95), which my predecessor published together with the Paymaster General on 24 February, made proposals for legislation to make trade unions more democratic and establish new rights and protections for individual members in respect of their unions. Following public consultation the main proposals were included in our Manifesto, as set out in Annex A. A large majority of the comments expressed approval of one or more of the proposals or of their general thrust and I foresee no problem with most of them. I now seek agreement to proceed with legislation, as described in Annex B. Annex C provides a numerical analysis of the comments received on the Green Paper.

Issues

2. Public consultation revealed some opposition to proposal 2, to protect non-strikers against disciplinary action by their union. Significant support was expressed only by two major employers. I have therefore carefully reconsidered the arguments, but have not been persuaded to modify our position. This proposal was set out in the Manifesto and I conclude that we should maintain it on the original basis of principle, that no employee should be forced to break his employment contract by fear of union discipline.

3. Proposal 11, to extend the statutory election requirements to cover non-voting members of the principal executive committee (the "Scargill clause") also attracted much comment. A real

difficulty would face professional and quasi-professional bodies (eg the BMA) if we proceeded with the initial proposal without modification. To prevent this I propose (Annex B, para 11d) to make an exception for "special register bodies" as established under the 1971 Industrial Relations Act and now defined by s.30 of the Trade Union and Labour Relations Act 1974 as amended (no new body can be added to this list).

4. Proposal 12 in the Annex represents the outcome of further development of the points covered in chapter 6 of the Green Paper. I have concluded that the new Commissioner should have discretion in deciding which cases to support and should not, as originally envisaged, be subject to a duty to support any particular complaints. My proposal (Annex B, para 12c) means that a union member wishing to enforce the election provisions can get the Commissioner's assistance for High Court actions without pursuing the complaint initially through the Certification Officer (CO). It is thus unnecessary to impose on the CO any new duty with respect to the content of his declarations - a proposal which appeared likely to give rise to practical difficulties - although he may be expected to continue to include observations about remedial action in his declarations.

5. Two points on ballotting call for further consideration. A number of public comments have canvassed stricter controls on workplace ballots. I am convinced that it is right to allow pre-strike ballots to be held at the workplace but I see a case for more detailed regulation. An obvious solution would be to issue a Code of Practice, but existing powers (s.3 of Employment Act 1980) are inadequate. I propose to give further consideration to taking powers that would allow me to issue such a Code, but have not included this in Annex B because I have yet to decide about its content. The other issue on ballotting, which is mentioned in the Green Paper (para 5.19) is the cost of independent supervision. Such costs could no doubt be made eligible for public support by amendment of the Trade Union

Ballot Funding Scheme (TUBFS). There is no argument of principle, however, for relieving unions of a cost which many already bear voluntarily.

6. Annex B contains three proposals (13-15) which were not canvassed in the Green Paper but which sit easily with its central theme. The first is uncontroversial. The second, extending to Crown bodies the prohibition of the Employment Act 1982 on union-labour only clauses in contracts, corrects an oversight in the drafting of the Employment Act 1982. The third would strengthen the protection afforded by the Wages Act 1986 in respect of the "check-off" of union subscriptions.

International Aspects

7. There are no EC implications nor potential adverse consequences in terms of UK obligations under the European Convention on Human Rights. The proposals are being proofed against these and other relevant treaty obligations.

Public Expenditure

8. The impact of the proposals on public expenditure has been discussed with Treasury officials. Additional PES provision of £3m in each of the years 1988/89-1990/91 will be sought to cover Department of Employment Group costs of this legislation, including its effects on applications and payments from the TUBFS, costs of the Commissioner for trade union affairs, and a special publicity campaign to make trade union members aware of the duties owed to them and means of their enforcement. It has been agreed with the Lord Chancellor that any quantifiable net costs on a scale allowing for transfer under PES rules which fall on his Department's provision will be so transferred from Department of Employment provision.

9. Amendments to Employment and Training Act 1973

I propose in the same Bill to make the amendments to the Employment and Training Act 1973 which are necessary to give effect to our Manifesto commitments on the Manpower Services Commission and its programmes.

10. The Committee is invited to endorse the preparation of legislation as proposed in Annex B and in paragraph 9 above.

June 1987

ANNEX A

MANIFESTO COMMITMENT

" We will introduce legislation to:

empower individual members to stop their unions calling them out on strike without first holding a secret ballot of members;

protect individual members from disciplinary action if they refuse to join a strike they disagree with;

ensure that all members of trade union governing bodies are elected by secret ballot at least once every five years;

make independently supervised postal ballots compulsory for such elections;

limit further the abuse of the closed shop by providing protection against unfair dismissal for all non-union employees, and removing any legal immunity from industrial action to establish or enforce a closed shop;

provide new safeguards on the use of union funds;

establish a new trade union commissioner with the power to help individual trade unionists to enforce their fundamental rights".

Ind Pol: Ind Rels PT B

ANNEX C

COMMENTS RECEIVED AS AT JUNE 12 ON THE GREEN PAPER 'TRADE UNIONS AND THEIR MEMBERS'

118 comments on the Green Paper have been received. A complete list of those who commented is attached.

82 of the comments received can be classed as expressing approval of one or more of the proposals contained within the Green Paper, or the general thrust of the Green Paper. The remaining 36 rejected the proposals.

ANALYSIS

1. Right of trade union members to restrain their union from authorising or endorsing industrial action without a secret ballot.

52 comments have been received on this proposal: 39 were in favour.

	Employers/Employers' orgs.	Unions	Organisations	Individuals
For	17	9	7	6
Against	0	8	3	2

2. Right of trade union members not to be subject to disciplinary action for refusing to take industrial action.

62 comments received on this proposal, 14 were in favour.

	Employers/Employers' orgs.	Unions	Organisations	Individuals
For	6	4	2	2
Against	10	17	9	12

3. Right of trade union members to take action to enforce their common law or statutory rights.

19 comments have been received on this proposal, 14 were in favour.

	Employers/Employers' orgs.	Unions	Organisations	Individuals
For	4	2	4	4
Against	0	4	1	0

4. Statutory duty for trade union trustees not to apply union funds in contravention of the terms of a court order.

41 comments have been received on this proposal, 25 were in favour.

	Employers/Employers' orgs.	Unions	Organisations	Individuals
For	11	8	4	2
Against	1	10	4	1

5. Statutory limitation on the ability of trade unions to offer indemnities to those acting on their behalf.

35 comments have been received on this proposal, 18 were in favour.

	Employers/Employers' orgs.	Unions	Organisations	Individuals
For	7	4	4	3
Against	3	10	4	0

6. Statutory right for trade union members and their professional advisors to have access to their union's detailed accounts.

45 comments have been received on this proposal, 30 were in favour.

	Employers/Employers' orgs.	Unions	Organisations	Individuals
For	9	9	7	5
Against	2	10	3	0

7. Remove trade union immunity from industrial action to establish or maintain a closed shop.

47 comments have been received on this proposal, 32 were in favour.

	Employers/Employers' orgs.	Unions	Organisations	Individuals
For	13	8	7	4
Against	2	7	5	1

8. Repeal statutory mechanism which allows creation/maintenance of "approved" closed shops.

62 comments have been made on this proposal, 38 were in favour.

	Employers/Employers' orgs.	Unions	Organisations	Individuals
For	13	8	10	7
Against	5	8	5	6

9. Require all political fund ballots and elections to principal executive committees to be by fully postal method only.

51 comments have been received on this proposal, 33 were in favour.

	Employers/Employers' orgs.	Unions	Organisations	Individuals
For	14	7	6	6
Against	0	12	6	0

10. Require independent supervision of elections/ballots.

48 comments have been received on this proposal, 31 were in favour.

	Employers/Employers' orgs.	Unions	Organisations	Individuals
For	12	8	6	5
Against	0	12	5	0

11. Statutory election requirement to cover elections of all members of trade union principal executive committees.

64 comments have been received on this proposal, 22 were in favour.

	Employers/Employers' orgs.	Unions	Organisations	Individuals
For	11	3	5	3
Against	4	23	9	6

12. Require CO decisions to specify the steps necessary to remedy a breach, and a time frame.

23 comments have been received on this proposal, 14 were in favour.

Employers/Employers' orgs	Unions	Organisations	Individuals
4	5	4	1
2	5	2	0

13. Provide that trade union members can obtain support from the new Commissioner to enforce remedial action felt by CO to be necessary.

51 comments have been received on this proposal, 24 were in favour.

	Employers/Employers' orgs	Unions	Organisations	Individuals
For	5	7	7	5
Against	10	11	6	0

14. New Commissioner for trade union affairs to assist trade union members in connection with legal actions to enforce trade union statutory duties.

38 comments have been received on this proposal, 24 were in favour.

	Employers/Employers' orgs.	Unions	Organisations	Individuals
For	5	6	7	6
Against	3	9	2	0

15. DE publicity campaign to draw attention to trade union statutory duties and requirements, and available routes of remedy and enforcement.

7 comments have been received on this proposal, 5 of which were in favour.

	Employers/Employers orgs.	Unions	Organisations	Individuals
For	1	0	3	1
Against	0	2	0	0

List of those making comments:

EMPLOYERS

Apollo Leather Products Ltd

UB Foods Europe Ltd

Shell UK Ltd

Ford Motor Co Ltd

Unilever UK Holdings Ltd

Co-operative Union Ltd

British Coal

John Menzies

Rover Group plc

EMPLOYERS' ORGANISATIONS

National Association of British and Irish Millers Ltd

General Council of British Shipping

Food and Drink Federation

Federation of Civil Engineering Contractors

Chemical Industries Association

Unquoted Companies Group

Institute of Directors

Engineering Employers' Federation

Federation of London Clearing Bank Employers

British Clothing Industry Association

Newspaper Society

Association of Independent Businesses

CBI

TRADE UNIONS

Association of Professional Ambulance Personnel

British Medical Association

Society of Chiropodists

Union of Democratic Mineworkers

Institute of Journalists

Confederation of Health Service Employees

National and Local Government Officers Association

Association of Scientific Technical and Managerial Staffs
(Bournemouth General Branch)

National Union of Railwaymen

Society of Radiographers

Managerial, Professional and Staff Liaison Group

Retained Firefighters Union (Bedfordshire Branch)

Health Visitors Association

Assistant Masters and Mistresses Association
National Union of Journalists
Royal College of Midwives
UK Assoc of Professional Engineers
Equity
Federated Union of Managerial and Professional Officers
Royal College of Nursing
British Dental Association
British Association of Occupational Therapists
Association of Polytechnic Teachers
Association of Magisterial Officers
Society of Telecom Executives
First Division Association
TUC
STUC

OTHER ORGANISATIONS
Institute of Supervisory Management
Industrial Society
Policy Research Associates
Council of Managerial and Professional Staffs
Brewers Society
The Freedom Association
Haldane Society
Witney Constituency Labour Party
Aims of Industry
Institute of Personnel Management
London Chamber of Commerce
British Institute of Management
CTU Greater London Area
CTU Blackpool Branch
CTU Brentwood and Ongar Branch
Liberal/SDP Alliance
Sheffield City Council
Harrow Council
Royal Society of Chemistry

INDIVIDUALS
Mr D Harper
M Clifford Longley
Lord Campbell of Alloway QC
Mr and Mrs Ellsworthy
Mr A W Moss
Mr C W Sinfield

Mr M J A Barraclough
Mr John Flavin
Mr K Ward
Mr John Hotchkis
Mr J Elias
Mr D Sond
Mr J Dunn
Ms W Forrester
Mr H A Chapman
Mr A Ainsworth
Mr F Lee
Mr John Trickett
Mr A M Ardron
Ms J Fookes MP (on behalf of Mr E M Johnston)
Mr Peter Lloyd MP (on behalf of Mr W C Silvester)
Mr D A Branch
Mr G Taylor
Mr I Maclean
Mr K Kjellquist
Mr E Bourne
Mr K Barnsbury
Alderman W Parker
Mr R Broomfield
Dr M Green
Rev C Tombs
Mr K H Harrison
Mr A Tattam
Mr C Sheehan
Dr B W Napier
Mr L Parkin
Mr J C Hopkins
Mr J Long
Mr C G Stuttard
Prof Cyril Grunfeld
Mr J P Hourston
Mr O P Ellis
Mr C B Barlow
Mr M Catton
Ms M Casey

Ind Pol'. Ind Rels PT13.

ANNEX B

LEGISLATIVE PROPOSALS

1. Impose a statutory duty on trade unions, owed to their members, to hold a secret ballot of members due to take part before calling for industrial action

a. Breach of this duty would be grounds for action regardless of the terms of any trade union rulebook. It would be enforceable on application to the High Court by a union member called upon to take industrial action in breach of his contract of employment which had been authorised or endorsed by his trade union. The remedy would be an injunction restraining the union.

b. To protect itself from the threat of such an injunction a union would have to ballot all those of its members who it is reasonable at the time of the ballot for the union to believe will be called upon to take part in the industrial action (and no others). The ballot would also have to satisfy the other conditions imposed by the Trade Union Act 1984 - eg in respect of the question put, secrecy, ballot method, timing in relation to the start of the industrial action, result of the ballot, etc.

c. Where selective industrial action is involved an additional condition will apply. The legislation will enable a trade union member to seek an injunction from the High Court on the grounds that in respect of the particular workplace at which he is employed, and was employed at the time of the ballot, the result of the ballot was a majority vote opposing industrial action. If granted on these grounds, the injunction would then apply to prevent the union authorising or endorsing the industrial action by its members at that workplace. An employer, or customer or supplier of an employer, faced with selective industrial action would have a similar ability to insist on separate analyses of a ballot result by workplace. The union would lose its immunity from legal action in connection with its authorisation or endorsement of industrial action by members in the workplace or workplaces where the majority vote was against industrial action.

2. Create a right for union members not to be subjected to disciplinary measures by a trade union for refusing to take industrial action.

a. Protection will be provided against expulsion or any discriminatory action short of expulsion by a union against a member for refusing or failing to strike, take other industrial action or for crossing any picket line. The protection is to apply whether or not the industrial action would have involved a breach of the employee's contract of employment.

b. The protection will extend to those who vote or speak against industrial action; refuse/fail to take such action for whatever reason; and apply irrespective of whether or not there has been a ballot or the industrial action would have been lawful. Expulsion or other disciplinary penalty for refusing to pay a fine levied for not striking etc will also be actionable under the new provision.

c. The remedy for individuals is to be by way of complaint to an industrial tribunal which will have the power to make a declaration that an individual has been disciplined in breach of the legislation. If the disciplinary action is subsequently rescinded, the individual will nonetheless have a right to apply to the tribunal for compensation if he has suffered loss. Compensation, which will be assessed on the basis of whatever is just and equitable, will be subject to a maximum of £13,240 (as currently available under the 1980 Employment Act following exclusion/expulsion in a closed shop).

d. Where the disciplinary action has not been rescinded following a declaration, complaint may be made to the Employment Appeal Tribunal (EAT). This will have the power to award whatever compensation it considers just and equitable subject to a deterrent minimum of £2,300 and maximum of £13,240 (£21,456 where there is a closed shop, as currently available under the 1980 Act). The proposed minimum is the minimum basic award under the 1982 Employment Act for unfair dismissal for trade union membership, activities or non-membership. The amount of any unrefunded fine will be added by the EAT to the award of compensation, even if that causes the maximum to be exceeded.

e. Legislation will also ensure that unions cannot enforce under the common law of contract any requirement in the rulebook to obey a strike call or to pay a fine.

3. Protect trade unionists' rights to bring complaints or cases to the courts, tribunals, Certification Officer or Commissioner for trade union affairs in order to enforce common law or statutory rights.

a. Protection will be provided against expulsion or discriminatory action short of expulsion by a union against a member for seeking to enforce against their union

i) any common or statute law rights
ii) the membership contract (ie the union rulebook) and
iii) making an application to, otherwise consulting with, or giving evidence to the Certification Officer, the Commissioner for trade union affairs, industrial tribunals, the Employment Appeal Tribunal (EAT) and any court of law.

b. The remedy and compensation available will be as for item 2 (ie complaint to an industrial tribunal and subsequently to the EAT if, following a declaration, disciplinary action is not rescinded).

c. In considering cases, tribunals will be required to consider only whether disciplinary action has been taken for an inadmissible reason, not whether the individual was justified in making the initial complaint/application for which he was disciplined.

d. Unions' ability to restrict access to the courts etc will also be limited. This will be done by a provision giving members the right, despite any union rule to the contrary, to bring a complaint to the High Court where internal procedures have taken longer than six months to complete. The court would then decide the issue unless the union could show that there were exceptional reasons to justify it being allowed more time.

4. Establish a statutory duty on trade union trustees not to apply union funds in contravention of the terms of court orders (even if acting with the authority of the union's rules)

a. Legislation will impose a statutory duty on the trustees of a trade union not to apply the property of the union in contravention of the terms of a court order made against the union or any person who was acting on behalf of the trade union. The duty will extend to the trustees of other unions to prevent both payments made to the union or person subject to the order and use of property by the second union which breaches or aids and abets a breach of the terms of the order.

b. The new duty will apply whether or not the application of the property is in accordance with the terms of the trust upon which the property is held, or whether the trustees are acting in accordance with the rules of the union.

c. A member of a union who was a member when the breach occurred and is a member when his application is made will be able to make an application to the High Court. The remedy will normally be the removal by the Court of the existing trustees and the appointment of a receiver in their place to hold office until the union has appointed new trustees (whom the Court considers to be suitable) in accordance with the provisions of its rules. Exceptionally, if it considers that the breach is relatively insignificant, the Court may appoint a receiver for a specified period and suspend the existing trustees for that period, or it may order the trustees not to apply the property of the union in breach of their duty.

5. Impose a statutory limitation on the ability of trade unions to offer indemnities to those acting on their behalf

a. Legislation will prevent the payment of certain indemnities to officials regardless of any rules of the union which might provide for such indemnities to be made.

b. Union officials will not be able to be indemnified when they incur fines for:

- contempt of court
- crimes of violence
- public order offences

c. Where a member of a union believes that a payment has been made in breach of the statutory provisions on payment of indemnities he should be able to make an application to the High Court provided that he was a member of the union when the breach occurred and at the time when the application is made.

d. The remedy will involve the court making an order requiring (i) the union to recover any sums advanced as indemnities, and (ii) the person to whom payment was made to repay the sum advanced.

6. Create a statutory duty for trade union members to be allowed access to inspect their union's detailed accounts, and to do so accompanied by professional advisers

a. The legislation will put unions under a statutory duty to provide a member on request with access to the accounting records. A union will be able to delay complying with an application for access for up to a maximum of fifteen days. The union will also be able to make a charge for the service limited to the administrative cost of providing the access required, providing it has notified the member in advance of its intention and of the basis on which the charge will be calculated. The member will have the right to be accompanied by a qualified accountant, who may be required, at the request of the union, to give an undertaking that any information he obtained would only be used to assist his client.

b. The right will be enforceable by anyone who was a member of the union at the time when the application for access to the accounts was made, and during the period covering the accounting records to which access is sought.

7. Remove immunity from industrial action to establish or maintain a closed shop.

a. Legislation will remove immunity from anyone organising industrial action by employees to force their own employer to dismiss or discriminate against or not to recruit non-union members, or members of a particular union. This will remove immunity from industrial action designed to establish or maintain both the pre-entry and post-entry closed shops.

8. Repeal the statutory mechanism which allows the creation/maintenance of 'approved' closed shops.

a. Those provisions of the 1982 Employment Act which currently allow the "fair" (ie uncompensated) dismissal of certain non-union employees in an "approved" (ie balloted) closed shop will be repealed. All dismissals for non-union membership will accordingly be unfair; and this will be complemented by providing similar protection against action short of dismissal for non-union membership.

b. Time limits for application to a tribunal and the compensation available will be as provided for in existing legislation. Protection against unreasonable exclusion/expulsion in a closed shop and against dismissal for refusing to make payments in lieu of union membership will be retained.

c. Existing approved closed shops (around one hundred) will cease to have that status on Royal Assent to the Bill, thus extending full protection to the employees who work in them.

d. Legislation will also remove the possibility of employers seeking to enforce union membership requirements through legal action on the terms of individual employment contracts. This will provide some protection where a pre-entry closed shop operates. It will not, however, give any rights to an individual refused a job because he refuses to join a union (or is a union member).

9. Require all elections to trade union principal executive committees (PEC), and obligatory ballots on political funds, to be by the fully postal method only (ie members receiving and returning ballot papers by post).

a. By amending the Trade Union Acts of 1913 and 1984, legislation will require ballots on political funds and on elections to the PEC respectively to be held by the fully postal method. In the case of political funds, the statutory criteria against which rules are approved by the Certification Officer (CO) before incorporation by unions into their rulebooks will be amended. In the case of elections, unions will be placed under a statutory duty to hold ballots by the fully postal method.

b. On PEC elections, the existing complaints procedure to the High Court or to the Certification Officer will be retained. Union members will, however, be able to apply to the Commissioner for trade union affairs for assistance with an application to the High Court.

c. On political funds, where a ballot infringes union rules, legislation will provide a new avenue of complaint to the CO, in addition to the existing right of complaint to the High Court.

10. Require independent supervision of election/political fund ballots

a. Unions will be required to have ballots for the election of members of the principal executive committee (pec) of a union and on political funds independently supervised.

b. Solicitors and accountants who are independent of the union concerned will be eligible to act as supervisors, but the Secretary of State will also have a discretionary power to authorise bodies such as the Electoral Reform Society so to act. The supervisor will be required to keep a record matching the serial numbers of ballot papers with names of union members, and completed ballot papers will have to be returned directly to him for retention. The union will, however, be free to determine whether the supervisor will conduct the despatch and/or count of ballot papers or supervise the union's own actions.

c. The supervisor will be under contract to the union but will be subject to no statutory duty. If he becomes aware of any impropriety during the conduct of a ballot, he will be expected to seek remedial action from the union. If dissatisfied with its response, he should refer to the matter in his report. Otherwise, his report may state simply that he had no reason to believe that such basic matters as fair and accurate counting of the ballot papers had not taken place. The report should be distributed to members by the union or published in the union's journal. Members will, as now, be able to complain to the Certification Officer or to the High Court about a faulty ballot citing the supervisor's report. They will in addition be able to complain if the union does not engage a supervisor in accordance with the new duty.

d. Members will be given the right to inspect the union's membership register and there will be a requirement to print ballot papers under secure conditions, serially numbered and indicating clearly the ballot concerned.

11. Extend the statutory election requirements to cover elections of all trade union principal executive committee (PEC) members, Presidents and General Secretaries.

a. The election requirements of the 1984 Trade Union Act, which apply only to voting members of a union's PEC, will be extended to all PEC members. This will expressly include the President (where one exists) and the General Secretary.

b. To limit the potential for evasion, the election requirement will also apply to any other individual who is entitled by rule or by custom and practice to attend PEC meetings and to speak on the full range of issues.

c. The statutory election requirement will require existing employed/appointed General Secretaries to stand for election when they might otherwise have expected to remain in office until retirement. However, individuals who have been employed for a period of at least 10 years will be permitted to retain office until retirement provided they are within two years of retirement age (under union rules or social security legislation) and have been elected/appointed in the five years preceding Royal Assent to the Bill. Most individuals will be in breach of the new legislation immediately and any who lose an election and consequently their job will be unable to claim unfair dismissal .

d. The extension of the election requirement will not, however, be applied to "special register bodies" set up under the 1971 Industrial Relations Act. These include bodies such as the British Medical Association which, although a trade union, also has a professional function as well as unions such as the Educational Institute of Scotland (EIS) and the Institute of Journalists (IoJ). The full list is set out below: it is not possible for any further body to be listed and those on the list which have merged with other unions may no longer be able to claim special register status.

Association of Assistant Mistresses
Association of Clinical Biochemists
Association of Headmistresses

Association of Occupational Therapists
Association of Optical Practitioners
British Dental Association
British Dietetic Association
British Medical Association
Chartered Society of Physiotherapy
District Surveyors Association (Incorporated)
Educational Institute of Scotland
Headmasters Conference (Incorporated)
Incorporated Association of Assistant Masters in Secondary Schools
Incorporated Association of Headmasters
Incorporated Brewers Guild
Institute of Chiropodists
Institute of Health Service Administrators
Institute of Journalists
Royal College of Midwives
Royal College of Nursing and National Council of Nurses of the United Kingdom
Society of Authors
Society of Chiropodists
Society of Radiographers
Society of Remedial Gymnasts
United Commercial Travellers' Association (25)

12. Create a Commissioner for trade union affairs.

a. The Commissioner will be able to offer advice to trade unionists about, and financial support in conducting, legal action in the High Court against their unions. This advice and support will initially extend to statutory duties owed by trade unions to their members under the terms of:-

(i) Part I of the Trade Union Act 1984 (and as amended by subsequent legislation) - ie elections and membership registers;

(ii) Section 3(1) of the Trade Union Act 1913 (as amended by section 17 of the Trade Union Act 1984) - ie the requirement that trade unions should not spend money on "political objects" without a properly established political fund;

(iii) The new duty not to call for industrial action without support in a properly held secret ballot from those it is reasonable for the union to believe will be called upon to take part in such action.

Provision will be made for additions to the matters in scope of the Commissioner's advice and support functions by means of Affirmative Orders approved by resolution of each House of Parliament.

b. The Commissioner will be appointed by the Secretary of State for Employment, and will be classified as a Non-Departmental Public Body. He will be required to present an annual report of his activities which the Secretary of State for Employment will lay before Parliament, and to observe the normal conventions in respect of public expenditure and accounting. The Commissioner will be independent, and free from directions from any Minister of the Crown other than in connection with accounting matters.

c. A decision to offer or withhold material assistance will always be at the Commissioner's discretion. In exercising that discretion he would be expected to offer support in any particular case where he believed that the applicant was likely to obtain the remedy sought from the court and secure the observance of the statutory duty or duties involved. In addition, in any case which was difficult to assess in these terms, the Commissioner might also properly offer support if he believed the complaint concerned matters as yet untested in applications to the High Court or the Certification Officer, and/or involved significant points of principle or complexity that the complainant might find it difficult to pursue unaided, and/or was connected with a matter the Commissioner judged to be of substantial public interest. There will be no particular requirements on the Commissioner in terms of how he goes about determining and reaching a view on these matters, save that he will be obliged to take into account the terms of any relevant declaration by the Certification Officer drawn to his attention by the applicant. In no circumstances is the Commissioner to act entirely on his own behalf or on his own initiative - there must always be an application from a person for his support, and that person must be eligible to bring the complaint concerned to the court in his own right and willing to bring the complaint or see it brought.

d. The Commissioner will reach a decision about whether to offer support and then, if prepared to do so, seek the applicant's preference about which of the available forms of support should be employed. The choice of which to adopt will be for the applicant to decide. The available form of support will involve the Commissioner:-

(i) Entering into a commitment to reimburse relevant legal and other associated costs through direct payment to the complainant; and/or

(ii) Arranging (and directly paying for) assistance from a solicitor or counsel and/or for representation in steps preliminary or incidental to any proceedings; and/or

(iii) Joining the legal action himself as a party acting with the complainant, or in his own name on the complainant's

behalf, with a commitment that all relevant legal and other associated costs would be carried by him (ie the Commissioner).

e. Arrangements will be made to ensure that there is no possibility of funding a complaint through both the Commissioner's support and legal aid. Support from the Commissioner would mean that those otherwise eligible for legal aid would lose such eligibility in the case concerned, and an applicant who successfully applied for and utilised legal aid could not call upon the Commissioner for support.

13. Enable Commissioner for trade union affairs and Certification Officer to refund travelling expenses of members of the public invited to attend certain meetings or hearings

a. The Commissioner will, on occasion, need to invite individuals to visit him in connection with applications for his advice or support. The costs of associated travel and related expenses should be recoverable by those concerned and payable to them by the Commissioner.

b. The Certification Officer has a role in hearing complaints about breaches of statutory duty arising from the terms of Part I of the Trade Union Act 1984. Legislation will give the Certification Officer the ability to offer reimbursement of travelling and related expenses to named persons invited to attend such meetings in their individual capacity (ie not as representatives of the complainant or the union). Re-imbursement will also be allowed on the same terms for meetings arising in connection with the Certification Officer's proposed new role in hearing complaints about the conduct of political fund ballots.

14. Extend union-only labour contract provisions so that restrictions apply to commercial contracts in existence or offered by the Crown

a. Legislation will extend the provisions of sections 12 and 13 of the Employment Act 1982 to the Crown. These sections delcare void any term or condition of a contract for the supply of goods or services which requires that only persons who are (or are not) members of a trade union are to do work for the purposes of the contract, or that the contractor should recognise, negotiate or consult with trade unions or trade union officials. This will lay Government Departments and Crown bodies such as the NHS open to legal action by those damaged by attempts to impose such conditions.

15. Give union members the right to end check-off arrangements.

a. An amendment to section 1(5)(d) of the 1986 Wages Act will be made to ensure that any deduction of union membership subscriptions from an employee's wages will be in breach of the Act if made after the receipt by the employer of a signed statement to the effect that the employee considers himself no longer a member of the union and wishes to cease paying subscriptions.

b. The normal remedy and time limits available under that Act will apply ie complaint to a tribunal within three months of the deduction being made with full repayment by the employer of any money deducted unlawfully.

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cc BG

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

20 March 1987

Dear Robert,

ESSENTIAL SERVICES

Thank you for your letter of 19 March about strikes in essential services.

The point of the Prime Minister's comment was not to suggest that the Government might be more positive about the prospect of legislation. (Indeed the Prime Minister agrees with the Paymaster General on this.) It was rather that the proposed line to take indicated a possibility of legislation even though no acceptable way of legislating against strikes in essential services has yet been found.

I am sending a copy of this letter to the Private Secretaries to members of the Cabinet and to Sir Robert Armstrong.

Yours,

David.

(DAVID NORGROVE)

Robert Ledsome, Esq.,
Paymaster General's Office.

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DM/Conf62

CONFIDENTIAL

CCBG

Department of Employment
Caxton House Tothill Street London SW1H 9NF
Telephone Direct Line 01-213.....5949.
Switchboard 01-213 3000

D Norgrove Esq
10 Downing Street
LONDON
SW1A 2AA

19 March 1987

Dear Dave

ESSENTIAL SERVICES

Thank you for your letter of 23 February conveying the Prime Minister's agreement with the conclusions of the paper attached to the Paymaster General's minute on this subject.

In connection with the line to take in response to questions in the context of the Green Paper the Prime Minister asked what future legislation the Paymaster General had in mind if the behaviour of the unions in essential services in the future made this desirable. Our response was to omit all reference to the possibility of future action and to limit ourselves to saying that the position would be kept under review.

The Paymaster General's view on the point raised by the Prime Minister is that, while action to stop strikes in essential services is attractive in principle, the costs of the practical steps assessed by the paper outweigh the benefits at a time when strikes in essential services, as elsewhere, are far less common. Indeed, to proceed to consultation about legislation now, or to promise to do so, could detract from the generally favourable public reception given to the recent Green Paper. However, this is not to say that future events will not demand that the Government look again at one of the options in the paper or cast the net wider. But, at present, the Paymaster General feels that it is best not to hold out the prospect of consultation on the premise that legislation will be introduced, but rather to undertake to keep the matter under review.

PAYMASTER GENERAL

I am sending copies of this letter to the Private Secretaries to the members of the Cabinet and to Sir Robert Armstrong.

Yours sincerely

Robert Ledsome

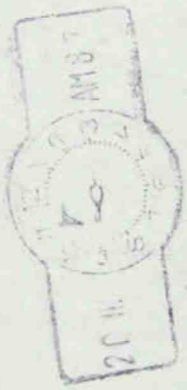
R J LEDSOME
Private Secretary

IND POL

I RELATIONS

LEGISLATION

PT 13



Reference 4/OS 107/84

MR DEEKS No.10.

cc Miss Dimond
Miss Lamond
Mr Irwin

TRADE UNION MEMBERSHIP IN EUROPE

1 You asked about levels of trade union membership in Europe in recent years. I have been unable to trace any recent published material on this showing comparisons over time.

2 The attached table* has been compiled from material obtained by labour attaches from national government, EC and some union sources. I am afraid it is not very comprehensive but is the best that could be done given the limited time available. The figures for Belgium could not be included in time, however I understand that they show an increase in union membership. *Annex I

3 The 1987 estimate for France was provided by our Paris Labour Attache no official statistics have been available since 1982 because the unions dispute each others' declarations.

4 The picture presented by the 1985 ILO Report (Annex II) of a decline in membership in many European countries has been confirmed by us recently via informal contact with European experts. The general picture does show a decline in recent years, at different rates and probably using different statistical bases. We can of course request more detailed information from our various sources but this is likely to take some time. As you can imagine, the figures given are somewhat sensitive and may not be accurately computed even within the country of origin.

M JOHNSTON
18 March 1987

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Annex 2.

Table A

TRADE UNION MEMBERSHIP IN EUROPEAN COUNTRIES : 1974 ONWARDS

millions

	1974	1978	1979	1983	1985	1986	1987
FRANCE ⊕	5.160	5.370	5.320	5.00 (1982)	n/a	n/a	3.5(estimate)
FRG	7.406	7.752	7.833	7.746	7.719	n/a	n/a
ITALY *	7.255	8.681	8.793	8.860	8.851	8.925	n/a
NETHERLANDS	1.291	1.364	1.309	1.332	1.212	1.199	1.196
AUSTRIA	1.580	1.629	1.641	1.660	1.671	n/a	n/a

⊕ No official statistics available after 1982
*Figures for Italy include pensioners - about 20% of the total

Sources: National Government and EC Statistics.

March 1987

World Labour Report Vol II Annex II.

ILO Geneva (1985)

Table 1.1
Trade union membership as a percentage of the economically active population in OECD countries in the early 1980s

Degree of unionisation (percentage)	Country
80-90	Finland, Sweden
70-80	Belgium, Denmark
60-70	Austria, Luxembourg, Norway
50-60	Australia, Ireland, Italy, United Kingdom
40-50	Federal Republic of Germany, New Zealand
30-40	Canada, Greece, Japan, Netherlands, Switzerland
15-30	France, Portugal, Spain, United States

in co-operation with the trade unions themselves. In the Philippines, government statistics show that the number of registered trade unions decreased from about 7,000 in 1975 to 1,660 in 1980.[7]

Trade union membership

Membership of trade unions varies from one country to another, ranging from nearly 100 per cent of the workforce in certain industrialised centrally planned economies to single percentage figures in some developing countries. Exact and comprehensive statistics are not always kept and the figures available are sometimes misleading. Some rough approximations can nevertheless be given. For the 22 member countries of the OECD, for instance, the approximate ranges of trade union membership as a percentage of the economically active population[8] are shown in table 1.1.

Over the past 20 years trade union membership has gone up and down with labour market fluctuations but also with recruitment drives, the union's overall performance, the stock of accumulated demands and grievances and the political attitude of governments. Total membership of trade unions in many countries has declined recently, chiefly as a result of the general recession and the structural changes experienced in the manufacturing sector. In the United Kingdom, for example, union enrolment fell by 3.7 per cent in 1980 and 5.9 per cent in 1981;[9] in the Netherlands and Sweden, the declines were about 4 per cent; in the Federal Republic of Germany the drop was 2½ per cent during the same year.[10] In Spain, union membership decreased considerably during the period 1980-83, owing not only to high levels of unemployment but also to the relatively secondary role assigned to trade unions at the enterprise level.

However, membership has not declined everywhere. In Denmark and Norway, for instance, membership in the LO Confederations continued to rise in 1980, 1981 and 1982. Furthermore, the development of unionism during the present century shows that periods of decline or stagnation are followed by periods of growth. A 1980 analysis of total union density in selected industrialised countries indicates that there has been a long-run trend towards expansion.[11]

Demographic trends have also affected and will probably continue to affect both the number of union members and the role of trade unions in collective bargaining. In industrialised countries declining birth rates, combined with growing restrictions on the entry of foreign workers, might lead in the future to manpower shortages. While these shortages could increase the bargaining power of trade unions, they may not improve total membership figures. In developing countries, where birth rates continue to be high, unions will probably find themselves in the opposite situation, i.e. with more affiliates and less bargaining power.

Other factors affecting the growth of unions are numerous and varied: difficulties encountered in organising certain regions or sectors where anti-union sentiments or indifference towards organisation run high; the lingering opposition of certain employers; the prevalence of small and medium-sized enterprises in some countries where

lasting organisations are difficult to set up; the inability of some workers to perceive the advantages of unionisation in countries where some other bodies are assuming trade union functions; and the increasing number of part-time migrant, transient and temporary employees, all of whom are difficult to organise. These factors may explain why union membership in the United States has remained at around 22 per cent of the labour force for about 12 years.[12] Union rivalries and priority concern for macro-sociopolitical objectives, at the expense of enterprise-level activities, may account for the relatively small degree of unionisation in other countries. However, the relatively low percentage of union affiliation in some countries should not obscure the fact that union membership tends to concentrate in certain key industries and the public service, which means that in some sectors unions actually exert more influence than the overall percentage might suggest.

The inclusion of union security clauses (an arrangement whereby union membership or some of its financial obligations become a condition of employment) in many collective agreements in a number of industrialised countries (Australia, Canada, New Zealand, United Kingdom, United States) has contributed in the past to the rapid growth of membership. While in some parts of the world (e.g. most of continental Europe, certain French-speaking African countries and Latin America) the closed shop and the union shop (in which only union members may be employed) and their modified versions continue to be prohibited or are regarded as superfluous, a number of developing countries (Ghana, Mauritius, Mexico, Philippines, Venezuela) now authorise the inclusion of such clauses in collective agreements or even make provisions for their application in the law. From being a purely Anglo-Saxon phenomenon, union security has thus spread to a number of other countries and new groups of workers (e.g. public employees and white-collar workers). In addition, the underlying purpose of union security arrangements seems to have changed. Nowadays they tend to reflect the socially recognised need to promote a strong and stable trade union movement rather than the original concern with mere survival.[13]

The growth of trade unions in developing countries

The above-mentioned difficulties regarding the reliability of union membership data are particularly acute in developing countries. In most of them trade unions do not keep accurate records because a considerable proportion of their members may live in remote areas or may be employed irregularly, as in the case of migrant and seasonal labour. Quite often unions tend to inflate the membership figures for the purpose of gaining influence or recognition. In a few cases, however, local unions prefer to deflate figures in order to pay lower fees to the national centre. All of this has led some experts to suggest that in developing countries the notion of "dues-paying members" should be replaced by that of "followers" or "sympathisers" and that the measure of the real power of a workers' organisation is better represented by, for instance, the number of workers who are willing to support the union in a strike or who usually attend union meetings.

Data on dues-paying members exist for a number of countries, but they are often not comparable between countries. This is so because different criteria are used to calculate the percentage of trade union membership. Sometimes this is given in respect of the total number of wage earners or even wage earners in the non-agricultural sector, and sometimes reference is made to the total labour force or the economically active population. In spite of these difficulties, and with all due reservations, table 1.2 gives some rough indications of union membership rates in relation to the total labour force in 40 countries.[14]

Rates of unionisation in developing countries have also been affected by the current economic

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CCBG

Treasury Chambers, Parliament Street, SW1P 3AG
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27 February 1987

The Rt. Hon. Kenneth Clarke QC MP
Paymaster General
Department of Employment
Caxton House
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LONDON
SW1

INDUSTRIAL RELATIONS LAW: EMPLOYERS NEED TO SHOW DETRIMENT

Thank you for your letter of 17 February.

I am grateful to you for the further thought you have given to this question. As you recognise, there remains a degree of uncertainty about where non-commercial employers stand. This is not an academic question, as demonstrated by the very real problem that arose when the Treasury took a writ against CPSA in March '85. There are obviously detailed arguments for and against further legislative provision and since there are a number of issues for consideration I believe it would be best if our respective officials were to discuss them. Having considered possible courses of action, they can then recommend whether or not it would be desirable to take a collective ministerial view about possible amendments to legislation. If you are content, I shall ask my officials to make the necessary arrangements.

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

NIGEL LAWSON

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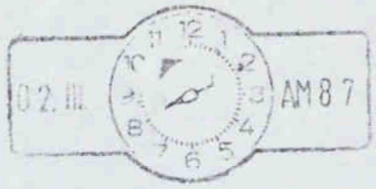

Mr. Younger: There are two points worth making in connection with that question, which is a perfectly fair one. First, all the security conditions and security arrangements that apply at the present will apply in the future. All that will have changed is the precise form of the management. I remind the hon. Gentleman and the other Labour Members who have expressed doubts of the structure of the management company that I have announced today. Certainly 29·9 per cent. of the shareholding is held by Brown and Root, whose parent company is an American company, but BICC has 29·9 per cent. and the Weir Group has 29·9 per cent. Barclays de Zoete Wedd has just over 10 per cent. That is a clear security for anyone who feels that there is foreign ownership of the dockyard. There is clearly a large majority shareholding of non-foreign ownership, for what that is worth. I expect all of those companies to be dedicated to the success of the dockyard under its new management.

Mr. Martin J. O'Neill (Clackmannan): Will the Secretary of State please be more specific about what he thinks the outcome will be in relation to key employees? Will those be people who are at present in the employ of the Ministry of Defence or are they likely to be Brown and Root placemen in the new organisation? Would it not be more sensible to make the terms of the contract clear and explicit so that employees could decide whether they wished to participate in the incentive scheme and so that people are not asked to take a pig in a poke, as the British Navy is having to do in this wretched business?

Mr. Younger: No, the British Navy is not taking any pig in a poke; it is taking an alternative form of management which should have a better chance of making a success of the dockyard. Of course, the key personnel could come from those presently employed in the dockyard and they could also come from outside. It should be an advantage for the future management of the dockyard to obtain the best talents from either of those two sections. The details of the scheme should be negotiated between the unions and representatives of the work force and the new management.

Trade Unions

3.55 pm

The Paymaster General and Minister for Employment (Mr. Kenneth Clarke): With permission, Mr. Speaker, I wish to make a statement on trade unions and their members.

Since 1979 we have proceeded step by step to introduce a succession of measures which, together, have helped achieve the least number of working days lost to industrial action for a generation. We have sought to restore a proper balance of bargaining power between trade unions and employers. We have also sought to establish democraticrights for individual members within their unions. Above all, we have sought to promote an environment in which both sides of industry can work together to generate the wealth the country needs.

We have observed closely the impact of our legislation. In general, progress has been marked and encouraging. However, some unions have declined the opportunity to put their house in order, and union members have not always felt able to take a stand and ensure that abuses are corrected. It is therefore clear that we need now to take another step both to strengthen the rights of individuals within a union and to reinforce their ability to exercise those rights. That is why we are today publishing a Green Paper "Trade Unions and their Members" which sets out a number of possible changes, on which comments are invited, as a basis for further legislation.

The Government have always believed that individuals should be able to choose for themselves whether to belong to a trade union. We also object strongly to attempts to coerce an employer into putting someone out of work on the ground that the person does not belong to any union or to a particular union. Our earlier measures have certainly reduced the scope for the worst excesses of the closed shop. However, I am afraid that in some industries the power of the closed shop still remains. We therefore propose measures which will end the legal protection of a post entry closed shop in any circumstances.

The present law allows a closed shop to be enforced if a weighted majority of employees votes for it in a ballot. Few major employers have yet been affected by this provision but in the cases where ballots have produced a lawful closed shop the rights of many individuals to choose whether to join a union or not have been extinguished. Experience has shown that unions' legitimate interests are not seriously weakened where the closed shop is not protected by law. The repeal of balloting provisions for the closed shop would give any individual dismissed for not belonging to a union the right to compensation for unfair dismissal. We also propose to end all legal immunity for industrial action designed to force an employer to create or maintain any closed shop. In short, we are proposing to end completely the use of the law in any circumstances to sustain the closed shop.

The most important feature of democracy within a trade union must be the right of the members to a secret vote in the direct election and re-election of their union leaders. The Trade Union Act 1984 established such a right for the election of the voting members of union executives and created a presumption that postal ballots would be used. However, a large number of trade unions have retained workplace ballots and the conduct of such ballots continues to give rise to controversy. Now is the

[Mr. Kenneth Clarke]

time to act against these abuses. When we legislated in 1984, many trade unions did not have lists of membership of sufficient quality to serve as electoral rolls. Since 1984 they have been required to have such lists and they have now had the time and opportunity to draw them up. There is, therefore, no longer any reason why we should not move to the most secure method of balloting available —the secret postal vote under independent supervision.

The process of election is intended to ensure that the leadership of a union is, and remains, responsible to its members. In practice, not all trade union leaders have been required to be elected. We now propose to make presidents, general secretaries and any others with seats on the executive subject to direct democratic election.

The right to choose to go to work during industrial action is an essential freedom. We believe that union members are entitled to a vote on whether their union should call them out on strike in the first place. We also believe that they are entitled to continue to go to work and honour their contract of employment if they disagree with their union's call. At the moment, legislation does not give union members any right to take action to restrain their unions from calling a strike without a ballot. Nor do they have any statutory protection against disciplinary action by their union if they cross a picket line or carry on working during a dispute. We proprose to give them both.

Recent events have thrown light on the unusual ways in which some unions run their financial affairs. Union members ought to be seriously concerned about some of the manoeuvres that have been used to evade or circumvent the jurisdiction of the courts when unions find themselves in conflict with the law. The Green Paper considers possible safeguards that might be enacted in legislation, of which the most fundamental is a right of access for every member, accompanied by a professional adviser, to current union accounting records.

It is not enough to provide rights and protection for individual citizens if, in practice, they find it too daunting to claim them. As things stand trade union members need to be exceptionally determined and courageous if they are to embark on the process of enforcing the full rights that the law now gives them. Parliament has provided agencies to help employees to complain against employers about discrimination on grounds of race or sex. It is clear that there is now a need for a new commissioner for trade union affairs to advise and support union members who need to make a formal complaint and perhaps take legal action against unions and their officials who appear to be failing to comply with statutory duties. The new commissioner would help to make sure that trade unionists can defend both their existing rights and the new rights we propose giving them in this Green Paper.

The next steps that I am announcing today are wholly consistent with our approach to trade union reform through the period of office of this Government. We believe that trade unions behave more responsibly when they are in close touch with the views of their members and take steps to ensure that their actions command members' support. We have watched closely developments since 1984 and the Green Paper is based on our experience of events since the last legislation. Its proposals frame sensible solutions to specific problems that can be expected to work in practice. Consultation has, of course, always been an important part of our process of law reform in this area and the Government will welcome informed comment on these latest proposals.

Mr. John Evans (St. Helens, North): May I first draw attention to the usual iniquitous practice of Government Ministers issuing statements to the press, as witnessed in the headline in the new *London Daily News* "Tory assault on unions", before the statement was issued to the House.

Today's announcement is a further petty, vindictive and miserable attack upon the rights of millions of working trade unionists. It is an extension of the blacklegs' charter that has been introduced by successive Secretaries of State over the past eight awful years of this Goverment. It is savagely ironic that this statement has been introduced by a Secretary of State who sits in the other place and has not been elected to anything by anybody. However he is discussing the democratic rights of trade unionists and that is hypocrisy of the highest order.

Once again we have heard the usual weasel words from the Department of Employment. When that Department is not fiddling the unemployment statistics it turns away for a moment to attack, once again, the trade unions. The Minister's statement informs us that fewer working days are now lost than for a generation. The fact is that, per thousand workers employed, there is more time lost now than there ever was under a Labour Government. I certainly suggest that the statement in the Green Paper —if I cannot use the word lie—was a perversion of the truth.

The statement informs us that the Government intend to extend the rights of trade union members. That is from a Government who have, over the past eight years, successively and repeatedly destroyed the employment rights of millions of workers. That is from a Government who even vetoed the modest Vredling proposals to give rights to part-time workers. That is from a Government who are currently abolishing the rights of teachers to have any sort of trade union rights, free collective bargaining or the right to discuss their prospects with their employers.

The Minister's statement informs us that he proposes to insist upon postal ballots. Can the Minister inform the House why there is nothing in the Green Paper that forces employers to provide workplace facilities for employees to carry out their trade union activities? If workers could participate in their trade union activities at their workplace it would represent the greatest single extension of trade union democracy. Perhaps the Minister can inform the House why it is that every study suggests that there are far more people participating in workplace ballots than there are participating in postal ballots. My union, the Amalgamated Engineering Union, can confirm that.

Why have the Government not said something about the Murdochs of this world? They have used the Government's legislation in the worst possible fashion to create companies, which have denied workers their basic human rights in relation to their contracts of employment. Why have the Government said nothing about the miners who lost their jobs, who have been declared innocent by industrial tribunals, but who are still denied the right of employment by British Coal? Why is there nothing about those rights in the Green Paper?

The Minister's statement informs us that we shall have an Eastern European style commissar for trade union affairs. Why are we to have a commissar for trade union affairs, yet there is to be self-regulation for the City of

London, where some of the biggest crooks in the world are currently operating? It is the height of hypocrisy for the Government, who talk about self-regulation for business, to seek to shackle the trade union movement.

What is the period of consultation? The Minister has not informed us. My hon. Friends and I suspect that the statement is part of the election manifesto of the Tory party. We welcome that. Millions of trade unionists will see through this miserable exercise and will rally to the support of the Labour party at the next election.

Mr. Clarke: On the question of present industrial harmony we lost 1·9 million working days through industrial action in 1986. That is the lowest yearly total for 20 years. I believe that the process of reform that we have introduced in the trade union movement will help to improve the harmony in industry that we require for economic recovery.

I have listened to his diatribe and I am astonished that the hon. Member for St. Helens, North (Mr. Evans) has produced this explosion of rage and a confusion of slogans, such as the "blacklegs' charter" as a description for proposals that confer on individual members of trade unions the rights to a secret, well-organised ballot for the leadership of the union and to insist that their union calls a ballot before they go on strike, and provides that the unions should allow their members to know how they spend members' funds. I believe that the hon. Member will have difficulty in sustaining his attack in the face of such propositions.

On the question of postal ballots and workplace ballots, and the suggestion that there may be a higher turnout at workplace ballots, I accept that turnout is a relevant consideration. However, the main thing that people want when they take part in an election is some guarantee about the integrity of the election and the efficiency with which it is organised. Workplace ballots may produce a higher turnout because more ballot papers are generally available for various people to cast. An independently supervised postal ballot is better. *[Interruption.]* The reason we did not do it under the Trade Union Act 1984 was that unions did not have up-to-date lists of members. Therefore they did not have an electoral register and that was one of the objections put forward by the unions. They have had two years in which to produce those lists of members and we propose to make this change.

The hon. Member for St. Helens, North asked about the position of Mr. Rupert Murdoch, the recent strike, and the impact of the Green Paper. The main two changes that the proposals in the Green paper would have had, if they had been in force at time of the News International dispute, would have been first, that any individual SOGAT wholesale worker could have obtained an order restraining his union from calling a strike without balloting the wholesale workers. As the law stands it was left to News International to seek compensation and seek sequestration of the union's assets. As a result of the proposals in the Green paper any union member may have stopped his union from committing suicide and pulled it back from the sequestration by insisting there was no call for industrial action until a ballot was held.

The other change would have been that no disciplinary action could have been so lightly entertained by the National Union of Journalists against its journalists, and by the Transport and General Workers Union against its lorry drivers for taking action during that dispute. On both scores, the proposals in the Green paper are adequately supported by the experience of News International.

The idea of describing the commissioner for trade union affairs as a kind of eastern European commissar, when his duty is to assist the individual to protect the rights which Parliament gives him in existing or future legislation, is absurd. The commissioner is modelled closely on the Race Relations Commission and the Equal Opportunities Commission. I very much doubt whether the hon. Gentleman would denounce those commissions as having eastern European-type commissars. I suspect that he heavily supports them.

We have named a date, early in May, and there will be two month's consultation. We are, of course, looking forward to comments on, and constructive criticism of, these proposals to ensure that we consider how best to put them into practical effect.

Mr. Ian Gow (Eastbourne): Is my right hon. and learned Friend aware that many Conservative Members believe that the right to work ought not to depend on whether a man is or is not a member of a trade union but should depend only on a person's suitability and willingness to work? Will my right hon. and learned Friend confirm that, in response to his proposals in the Green Paper, he will be prepared to consider making it unlawful for there to be a closed shop arrangement in the United Kingdom?

Mr. Clarke: In effect, any post entry closed shop will be devoid of legal protection under our proposals. Anybody who is dismissed for not belonging to the "right" trade union—in the opinion of his employer or of trade union officials who pressurise the employer — will be entitled to compensation at a punitive level to compensate him for what I agree is a serious infringement of individual liberty and personal choice in the workplace.

Mr. Malcolm Bruce (Gordon): Is the Minister aware that I find myself in the rather surprising position of welcoming the Government's conversion to substantial tracts of alliance policy? On the issue of postal ballots and the selection of office bearers in trade unions, why did the Government resist amendments to legislation to this effect when they were moved by David Penhaligon two years ago? Of course, I welcome the fact that the Minister is now saying to the House that what he told us then was not Government policy and was impossible is now to be introduced in the form of a pre-election proposal for reforming the trade unions. To that extent, I obviously welcome the statement. Will the right hon. and learned Gentleman acknowledge that it would be better if he proceeded with industrial reform in the context of extending industrial democracy in general? That would be a fair-minded and even-handed approach.

Mr. Clarke: If we are indeed moving closer together, of course, I welcome that. The more support for these measures, the better. I recollect that the voting pattern of the alliance parties on the three previous stages of industrial relations reform was singularly confused. On the second of the Bills, they voted on both sides in differing numbers at different stages of the debate. It is clear that the process of reform would never have got under way if alliance Members had been in any position to block it. As I understand it, the latest alliance proposals suggest that

[Mr. Clarke]

we should make it easier to establish a closed shop by reducing the weight of the majorities required by the present legislation. I fear that we are going in diametrically opposite directions on that proposition.

As for independently supervised postal ballots, we are now in agreement with the alliance. The difference between us is that, two years ago, it would have been impractical to propose such a thing to unions that did not have lists of members and could not produce an electoral register. Now that we have given them two years during which they have been required to produce an electoral register, it is practical to take that step. The only difference between the alliance and the Government on that proposition, I am glad to say, is that the alliance proposed it when it was unrealistic and we took steps to ensure that it would be realistic before we put it forward.

Mr. Andrew Rowe (Mid-Kent): Does my right hon. and learned Friend agree that one of the most discouraging and cynical operations at the moment is the battle that goes on between trade unions for membership in which the rights and aspirations of their members are very much ignored? Will my right hon. and learned Friend reassure us that these proposals will go some way towards ensuring that, in competition between unions for membership, the quality of service and not the political aspirations of general secretaries will make the difference?

Mr. Clarke: I agree with my hon. Friend that the further we go down that road, the better. I believe, as, I feel sure, does my hon. Friend, that it is entirely a matter of individual choice whether a person joins a particular union or decides to change his union. No person should be at the risk of losing his job because he falls out with his union. Unions should be voluntary associations of people who are brought together in a properly run democratic institution.

Mr. Ron Leighton (Newham, North-East): Does this mean that the Government are revising their attitude towards ballots? Under previous Conservative legislation introduced by the chairman of the Conservative party, there could be closed shops, provided that the workers voted for them, as they did with unprecedentedly high majorities. Now that the workers have voted in favour of those closed shops, the Minister proposes to abolish the ballots. Are we to understand that he is in favour of ballots only when they go his way but, when the ballots go the other way, he wants to abolish them? Is that what the right hon. and learned Gentleman is saying? Does this mean that the police will no longer have to join the Police Federation, whether they like it or not? Since the right hon. and learned Gentleman has this tender concern for private organisations and is intervening so that they can put their own house in order, does this mean that there will be a ballot for the chairmanship of the Conservative party? Does it mean that individuals can inspect the Conservative party's accounts?

Mr. Clarke: With the experience of recent years, we have seen that, in those industries where the closed shop has come to an end, this has not fatally wounded the trade union movement, as people said it would. We have also found that, where the closed shop has been retained and lawfully protected,the individual's right to choose, which my hon. Friend the Member for Mid-Kent (Mr. Rowe) defended, was extinguished. There have been cases — notably that of the tugboat men at Bristol — where people have lost their jobs during the past two or three years because they were not in the correct union. We believe that that is wrong. The post entry closed shop will be effectively finished because it will not be legally protected in any particular employment.

The position of the chairman of the Conservative party is not remotely analogous with the organisations about which we are talking. The leadership of a trade union should be answerable to its membership. It takes decisions which can affect the livelihood of its members. Whatever power my right hon. Friend the chairman of the Conservative party has, he cannot put remotely at risk — certainly not directly — the livelihood of my hon. Friends and those who follow our policies.

Mr. Conal Gregory (York): I welcome the Green Paper introduced by my right hon. and learned Friend. I am sure that it will bring a further note of democracy into the trade union movement as has happened with the right to buy under housing legislation introduced by my right hon. and learned Friend's colleagues. I ask him to extend an invitation to the nationalised industries since, with hindsight, they are forced into a closed shop. A great number of my constituents in York and elsewhere have said that, by sheer coercion, they are forced to join a trade union which is totally unrepresentative of them. They will certainly welcome the opportunity of commenting on the Green Paper.

Mr. Clarke: I am grateful to my hon. Friend. I trust that the changes which we are making will have their effect on the nationalised industries, as elsewhere. It is significant that we shall effectively give a remedy to those railwaymen who have been disciplined for refusing to take part in industrial action. I think that in 1982 both railway unions went in for disciplinary action against spectacular numbers of their members simply because their members chose to continue working and providing a service to the public.

Mr. Kevin Barron (Rother Valley): Since the Minister talks about the rights of individuals not to belong to a trade union, will he reflect on what has happened under trade union legislation over the past six years? Trade union members in the midlands coalfield have been sacked for being active members of the National Union of Mineworkers. While the right hon. and learned Gentleman reflects on that, will he reflect on the workplace ballots which have been held for many years under the guidance of the NUM, which have been a classic example of how to run private ballots, whereby individuals can take decisions without ballot papers going to the homes of people who have left trade unions? I experienced that when I changed homes many years ago.

Mr. Clarke: If anybody is dismissed because of his union membership, that is unfair dismissal. It that is the sole cause of dismissal, he is entitled to compensation. Our proposals are to make that equal in both directions. The idea that the hon. Gentleman should cite the midlands coalfields as an example of good practice is a little inappropriate. It is not so long ago that the coalfields had a call to strike in which no ballot took place before the strike was called. It succeeded in severing the union. That

preceded my right hon. Friend's legislation. Since that time, all that we have done has been to make sure that the law guarantees the right to a ballot, which the NUM's rule was supposed to do until it was flouted by the present leadership a few years ago.

Sir Kenneth Lewis (Stamford and Spalding): Does my right hon. and learned Friend agree that most people accept that trade unions must belong to their members, and, therefore, that the extension of voting must be acceptable in terms of industrial democracy? Does he have any knowledge of whether the TUC and individual unions are prepared to consult on this matter? *[Interruption.]* They might get an invitation to Downing street for beer and sandwiches. Will the matter require one Bill or two Bills? When is the first Bill expected?

Mr. Clarke: I have sent invitations to the TUC inviting it to give its comments and to meet me if it wishes. I am sure that the TUC, together with many individual trade unions, will take up that matter. It will be interesting to see whether, in fact, the reactions of Opposition Members have run ahead of the trade unions.

My right hon. Friend said that unions should belong to their members. I wait to hear whether the various general secretaries — for example, Clive Jenkins, Rodney Bickerstaffe and Arthur Scargill — will argue that it is wrong to make them stand for re-election at the hands of their own members. I am not sure how they will argue that point in public. I have no doubt that it will come out in the course of consultation.

The next step is to consult and reflect on what we get in response. On past form, of course, having consulted, we shall move to a White Paper and eventually to a Bill, but all kinds of events may supervene before we get to the legislative chain.

Mr. Michael Welsh (Doncaster, North): If the Minister's opinion is that there should be a ballot for strikes to take place, and if those who have no desire to strike are in the minority, so they can still work, how will one know who voted against a strike?

Mr. Clarke: The right is not confined. On each day, an individual should be free to decide whether he or she wishes to continue to go to work or to cross a picket line. That is the kind of choice that we have, particularly in situations in which the individual faces two conflicting calls — one from the trade union calling for industrial action, and the other from the employer insisting that the individual carry out the contract of employment and show some loyalty to the firm. In he end, it is an individual choice. It is wrong that people should be disciplined if they take a view that is not shared by the leadership or even the majority of their trade union.

The role of the ballot is still important. As long as the union ballots and gets a majority of its members, it has total immuity as a union against actions that could otherwise be brought by the employer in tort, contract and so on. The ballot has legitimacy, but it does not mean that individuals who want to work should be coerced by the rest of those involved into not crossing picket lines.

Several Hon. Members *rose*——

Mr. Speaker: Order. I ask for brief questions, please.

Mr. Andy Stewart (Sherwood): I welcome my right hon. and learned Friend's statement, and so will my constituents who were subjected to 12 months of tyranny by people who had never heard of the word "democracy". For their own protection, they had to set up their own Union of Democratic Mineworkers. The Government's proposals will give the remaining members of the NUM the opportunity to remove the man who brought their own great union into disrepute.

Mr. Clarke: My hon. Friends constituents and my constituents in the Union of Democratic Mineworkers have every reason to remember how deep the commitment to democracy was or was not in the case of the trade unions, the Labour movement and the National Union of Mineworkers. Our experience in Nottinghamshire certainly reinforces the need for continuing law reform of the kind we described today.

Mr. Eric S. Heffer (Liverpool, Walton): Is the right hon. and learned Gentleman aware that the seven major changes already outlined in the Green Paper, if they are followed up by the Government's proposals, will add up to one thing only, and that is industrial slavery for the mass of ordinary workers? The Government have gone out of their way to undermine and to destroy the rights of the trade union movement in the interests of capital and employers. I give notice to the right hon. and learned Gentleman that, sooner or later — certainly under a Labour Government — the measures will be destroyed because the workers will not stand for them for ever. Ultimately, they will get rid of the anti-trade union legislation brought in by the Government in the interests of employers.

Mr. Clarke: The general public would not agree with the hon. Gentleman's description of a modern, democratically based union as tantamount to introducing industrial slavery. A union that is led by people who command the genuine support of its members and take care to consult and to take them with them if they contemplate action tend to be more powerful as well as more responsible than those led by narrowly elected little caucuses that seek to lead their members on political grounds and use the discipline of the closed shop, and so on, to get support for such actions.

The hon. Gentleman is totally out of touch with the times, let alone with the current political mood and the current economic climate. We are seeing the emergence of the kind of trade unionism that is much more useful to its members but, of course, quite redundant to the political aims of the hon. Gentleman.

Mr. Peter Thurnham (Bolton, North-East): I welcome the Green Paper, particularly the provisions for postal balloting for the election of union officers. As one who rebelled on that issue, I ask my right hon. and learned Friend to think carefully before the Government should ever be tempted to vote in the same Lobby as Opposition Members on such an issue.

Mr. Clarke: I am delighted to hear that my hon. Friend has not changed his mind and that we are in total agreement on supervised postal balloting. I congratulate him on his prescience.

Mr. Nigel Spearing (Newham, South): The Minister has made it clear that the Green Paper is ostensibly concerned with individual rights and democracy. How does he reconcile those sentiments with the fact that the Government are denying the whole teaching profession the right to joint collective bargaining with employers on

[Mr. Nigel Spearing]

a national basis? Does it not show that there is great inconsistency between the Green Paper and the statutes? Does it not suggest also that the Government are concerned with forcing down rates of pay for ordinary people?

Mr. Clarke: The issue to which the hon. Gentleman has referred had its background in a totally collapsed bargaining process between rival and warring trade unions on the one side and politically divided employers on the other. It has failed, unfortunately, to come to a negotiated conclusion for over two years. Obviously, questions about the way in which we have decided to resolve the problem should be addressed to my right hon. Friend. He advocates a temporary arrangement which will enable us to consult the parties, reach a settlement and then work towards re-establishing some workable procedure and machinery for this vital national service.

Mr. Charles Wardle (Bexhill and Battle): Does my right hon. and learned Friend agree that rank and file trade unionists and the general public will recognise the justice in measures that enable individuals to continue to work with impunity, even though the majority of their union colleagues decide to go on strike, and in measures that enable them to examine precisely what has happened to the proceeds of their union subscriptions?

Mr. Clarke: I agree with my hon. Friend about the judgment that the public will make about the reaction of Opposition Members to that measure as a black legs charter, with the occasional call of "scab" from the Opposition, as my hon. Friend defends the undoubted right of someone to decide whether he or she wants to go to work. I agree also with my hon. Friend that most trade union members will not see why on earth there is opposition to the suggestion that they should have access to the current accounts of their trade unions. In fact, they had such rights for 100 years until the last Labour Government repealed them.

Mr. Max Madden (Bradford, West): Does the Paymaster General not understand that a great many trade unionists resent being lectured about democracy by Ministers representing the Conservative party? Does he also not understand that, rather than embarking upon another round of trade union bashing, the vast majority of the public want him to create genuine, well-paid jobs for people who are desperately seeking work? Finally, if the Paymaster General cares about industrial democracy, will he have a word with the Secretary of State for Defence, who told the House earlier this afternoon that those whose jobs are being sold are not even to have the right to look at the contract for selling their jobs and livelihoods?

Mr. Clarke: I agree with one small phrase that the hon. Gentleman used. I think that there are some trade union leaders who resent being talked to about democracy, but they would resent that, from whatever quarter. Fortunately, there is emerging a number of trade union leaders who are democratic, who know how to live with democracy and who are also very powerful figures, as they command support in their unions and take care to consult their members before they take action. The difference between those trade union members and the kind whom the hon. Gentleman defends is that the more modern trade unionists are more responsible vis-à-vis their industries and the companies in which their members work. They may be powerful figures, but they use their power in a way that pays regard to the long term interests of their members.

Mr. Spencer Batiste (Elmet): Is my right hon. and learned Friend aware that the proposals he has announced this afternoon will be widely welcomed among rank and file trade unionists across the country, none more so than by those in the NUM, a union that has been brought to the verge of bankruptcy and that has denied access to financial information and whose president is able to use loopholes in the law to avoid re-election? Will he ensure that these important provisions are brought into law to protect rank and file trade unionists at the earliest possible opportunity?

Mr. Clarke: The NUM is indeed a shining example of the worst of problems, with its rules having been changed to make sure that its president does not have to stand for re-election by its members, with attempts having been made to change the rule book to exclude members from the right of access to the law courts and with attempts having been made to provide wide immunity for officials who have acted in breach of the law. Most members of the NUM—let alone ex-members of the NUM, who now, in despair, have gone to the Union of Democratic Mineworkers—will welcome any attempt to bring back democracy and proper accountability to that trade union.

Mr. Tony Lloyd (Stretford): If the Paymaster General is really sincere in saying that this proposal is about the extension of democracy and the rights of the majority and that it is not about the rights of capital, will he tell the House how these measures would have helped the National Union of Journalists and the Society of Graphical and Allied Trades members at Wapping to get rid of Rupert Murdoch?

Mr. Clarke: It would not have helped them to get rid of Rupert Murdoch, but it would have helped them to have a proper say in the activities of their own trade unions. *[Interruption.]* I shall try to avoid a lengthy repetition of what I said earlier. The funds of SOGAT were sequestered because it did not carry out a ballot of its wholesale members. It called out on strike its wholesale members but it did not ballot those members. The result was that SOGAT lost its immunity. Rupert Murdoch's News International took action against it and was awarded compensation, and eventually had the union's funds sequestered. If these proposals had been in force, it would have been open to an individual member of SOGAT being called out on strike to seek an order restraining his union from commencing strike action until a ballot had been held. That would have enabled the members of the union to save the union from itself and to pull back from the unlawful action that brought it near to ruin.

Mr. Tony Marlow (Northampton, North): My right hon. and learned Friend is seeking to introduce welcome rights and safeguards for ordinary, individual trade union members. Will my right hon. and learned Friend write to the hon. Member for St. Helens, North (Mr. Evans) in the absence of his more moderate hon. Friend, the hon. Member for Kingston upon Hull, East (Mr. Prescott), and ask him urgently to tell us which of those rights he intends

to oppose, because there are millions of trade union members who would like to know the answer to that question fairly quickly?

Mr. Clarke: That is worthwhile suggestion that I shall certainly act on. Three years ago the Labour party fought tooth and nail against the introduction of pre-strike ballots and the direct election of executives. Since then, it has committed itself to the total repeal of what we have achieved so far, so I am afraid that I regard its reaction to our present Green Paper as wholly predictable and consistent with its opposition to genuine democracy inside the trade union movement for the last 10 years or more.

Mr. Peter Pike (Burnley): Does the Paymaster General not recognise that most trade union members will regard this as a blatant attack on the trade union movement and as an attempt to shackle the trade union movement and weaken its ability to negotiate fair play and working conditions? Is it not a fact that trade union members already within the democracy of the trade union movement have the right to change the rules if they wish? Does he not recognise that many trade unionists will regard it as complete hypocrisy if the law outlined in this Green Paper has to be approved by a House that is not democratically elected and by the other place that is unrepresentative?

Mr. Clarke: First, I do not accept that unions such as the Electrical, Electronic, Telecommunications and Plumbing Union, or the AUEW, which will have no difficulty complying with this as the last step, are in any way shackled or inhibited from looking after the interests of their members. In fact, they are far more powerful unions to face across the negotiating table that many of the old dinosaur unions with unrepresentative leadership and shaky command over their own followers. Also I do not accept that we can just leave it to the members to exercise their rights by getting the rule books changed. Simply to rely on the rule books involves going through a process of branch meetings, rules conferences, and so on, and that is not a secure, democratic route for the ordinary trade union member to follow. Therefore I do not think that this proposal will be opposed by most trade unionists, as the hon. Gentleman declares. Most trade unionists will see this as an attempt to give them individually a greater say in whatever action their unions want to take.

Mr. Roy Galley (Halifax): My right hon. and learned Friend's Green Paper will be both apt and timely and he is heartily to be congratulated on bringing forward proposals that will have the rare distinction of being both popular and just. Will he also consider that it may now be timely to take the first steps towards restricting the right to strike for those who carry out essential services and who, by their strikes, disadvantage most those who are in greatest need? Should we not consider tempering the right to strike of workers in vital public services with a sense of responsibility to the wider community?

Mr. Clarke: I am grateful to my hon. Friend for his remarks. I agree with him in disapproving most strongly of people taking strike action that adversely affects patients and pupils in hospitals and schools. I do not think that any of us support strike action in essential services, taken against members of the public who are not parties to the dispute. On the other hand, we have no present intention of legislating on the matter because in practice it is extremely difficult to formulate proposals that would be effective and enforceable. However, we shall continue to keep the matter under review. At the moment, thanks to all the other legislative changes that we have made, I am glad to say that industrial peace is more or less restored in most of the essential services. The problem will arise again only if there is a fresh outburst of industrial action in the essential services.

Mr. Richard Caborn (Sheffield, Central): It was interesting to hear the Paymaster General speak on behalf of the AUEW. as a member of the AUEW, I think that these proposals are extremely undemocratic and that, if anything, this proposed legislation will tilt matters clearly in favour of employers. That is not democracy; it is turning democracy on its head. There can be a ballot on the shop floor, but those who participate in it and vote against the majority decision can continue to work. It is ironic that this Government should be putting this type of legislation on the statute book. They have broken more international conventions than any other previous Government. This Government prevented the Vredeling proposals and the fifth directive from reaching the statute book. I noted the Paymaster General's attitude towards the teachers. I presume that his own profession — the barristers — will not be affected by the legislation. On the one hand, we take rights off workers; on the other, we allow absolute immunity to the legal and other professions because of the closed shop.

Mr. Clarke: The effect of the strike ballot is to give a trade union total immunity against action that might otherwise be taken against it by employers or by the employer's customers or suppliers. The effect of a strike ballot should not be that individual members who still want to go to work should be coerced, intimidated or subjected to disciplinary action, or that they should not be allowed to cross picket lines. Democracy does not entail the right to intimidate or coerce individuals or to take unfair action against them. They are perfectly entitled to exercise their right to go to work. As for the Bar, this legislation will apply to the Bar Council as much as to any other trade union. In the days when I practised at the Bar, we did not have a closed shop and, as far as I am aware, there is no closed shop at the moment. I should certainly vote against the establishment of a closed shop.

Mr. Peter Bruinvels (Leicester, East): I welcome my right hon. and learned Friend's statement, especially as it concerns free, secret and democratic postal ballots. Is he aware that this will be of particular importance to those members of the Civil and Public Service Association who, before the elections for the general secretary, faced massive intimidation and, I believe, election-rigging, which explains why John Macreadie won the election rather than John Ellis? Is he further aware that, after the teachers' surveys and elections for future industrial unrest, ballot papers were hanging around classrooms? My right hon. and learned Friend's announcement today will ensure that we have true, free and proper elections. That is good for the interests of all union members throughout the country.

Mr. Clarke: My hon. Friend is right to recall the shambles that surrounded the CPSA elections. A re-run also had to be ordered in the Transport and General Workers Union and apparently there is some controversy

[Mr. Clarke]

in the National Union of Seamen. That may explain the absence of one of the more prominent members of that union from the Chamber this afternoon.

Given that we want to see the executive elected properly and directly, it is essential that we ensure that elections are organised fairly, supervised properly and conducted with great secrecy.

Mr. Dennis Skinner (Bolsover): If this Green Paper is so good, and if those institutions which have not already adopted such systems are to be regarded as dinosaurs, why did not the Prime Minister tell the Institute of Directors that it, too, should come under the aegis of the Green Paper? Why should not the Green Paper apply also to the CBI? Why should it not apply to the medical profession, and the legal profession to which the right hon. and learned Gentlemanhas referred? Why in all this talk about self-regulation for the City, could not the Paymaster General take another step-by-step approach and tell his friends in the Cabinet that they ought to apply the provisions to the stock exchange and other areas of the City of London where swindlers proliferate and support the Tory party? Is not the truth of the matter that, just prior to the next general election, the Government are taking another step-by-step approach with a view, eventually, if they are successful in the election, to abolishing the right to strike?

Mr. Clarke: First, the new proposals will apply to absolutely any organisation that is a trade union and, so far as I am aware, that includes, and always has included, the British Medical Association and similar bodies.

With regard to the City, we have just introduced regulatory arrangements and they are subject to legal restrictions. The self-regulatory mechanism is backed up by legal penalties for those who depart from it. It is pointless to make broad-brush comparisons with other parts of our way of life in order to try to evade the crucial point which faces the hon. Member for Bolsover (Mr. Skinner) and his colleagues. The Opposition must determine why they are so opposed to simple concepts such as the direct election of the executive by the members and of giving the members the right to decide whether they will be called out on strike.

Mr. Eric Forth (Mid-Worcestershire): Is my right hon. and learned Friend aware that his statement will be greatly welcomed by some of my constituents who are, regrettably, still having problems in terms of ballots, closed shops and many related matters? Will he look especially at the role of the certification officer and the ease of access that ordinary union members have to that officer in his capacity to supervise the regularity and correctness of ballots? Will he, in particular, consider the holding of hearings by the certification officer and the payment of expenses for ordinary union members to allow them easy and effective access to the certification officer?

Mr. Clarke: I am grateful to my hon. Friend. The certification officer tries to provide a reasonably informal route for complaint. However, there is no doubt that he can take up to six months to hear complaints. That can involve a member facing the certification officer with the union and its lawyers ranged against him and there may be a great deal of procedural argument. Nevertheless, the certification officer has made a number of orders, but unfortunately he lacks the powers to enforce them. At least one union, the Technical, Administrative and Supervisory Section appears to have implied recently that it will not comply with the declaration of the certification officer who claimed that the election rules should be brought in line with present legislation. For that reason, we believe that a commissioner is required to give support to individual complainants in proper cases and to ensure that someone is not overawed or intimidated and that the law is not just ignored.

Mr. Tony Banks (Newham, North-West): Why do the Government spend so much time extolling free trade unionism in countries such as Poland and so much time trying to destroy free trade unionism in this country? How can the Minister refer, as he does in paragraph 2.10 of the Green Paper, to the right to work despite a strike, yet not extend the right to work to the 4 million unemployed people in this country? As he said earlier that the unions should belong to their members, what would be the Government's attitude to these proposals if the unions, through balloting and consultation of the members, told the Government to stick the Green Paper?

Mr. Clarke: My idea of a free trade union is one that elects its own leadership and consults its membership about the way in which it behaves. The hon. Gentleman's idea of a free trade union may be one in which the leadership emerges from some small political caucus, where some leaders are appointed for life and where members are not entitled to be consulted before a strike is held. I believe that the Government's reaction to the activities and events in Poland is wholly consistent with our attempt to have free and democratic unions in this country.

Mr. David Winnick (Walsall, North): Is the Minister aware that I am the vice-president of a trade union which, since 1890, has always belonged to its members and has never needed any lectures in democracy from a political party which did not get around to electing its leader until 1965 and which even now, as I told the Prime Minister, does not subject the party chairman to any form of election? Is it not a form of political corruption for a party which receives fairly substantial sums of money from big business to use its political power to undermine the rights of working people at their places of employment?

Mr. Clarke: I am delighted to learn that the hon. Gentleman's trade union has always complied with the type of measures that we are now suggesting should be prescribed by law. Undoubtedly it will have ease in complying with our provisions. He should welcome our attempt to spread good practice to the likes of the National Union of Mineworkers, the Confederation of Health Service Employees, the National and Local Government Officers Association, TASS and other trade unions which would not have got anywhere near internal democracy unless the law had intervened to look after the members' interests.

Mr. John Evans: I want to take this opportunity to inform the Paymaster General and his right hon. and hon. Friends that the Labour movement welcomes the opportunity to take on the Tory party and the alliance at the next election on the basis of free trade unionism and the right to strike.

Will the Paymaster General now answer the question that he has been evading all afternoon? Why is it that one side of industry — the workers — must be regulated by Government diktat while the other side of industry—big business and the City — is allowed to practise self-regulation?

Mr. Clarke: I look forward to the challenge that we should argue these points before the electorate, given the nature of the Labour party's commitment to repeal everything that we have done and to return to a position in which indirectly elected leaders of trade unions will tell their members to rely on the rule book as a remedy.

On the imbalance to which the hon. Gentleman referred, there are strict constraints on the behaviour of companies and employers, and there always have been. There are strong protections for workers who have been unfairly dismissed, including people unfairly dismissed for exercising their right to belong to a trade union. It is simply absurd to suggest that there is any reason why trade unions should be outside a basic regulatory system which will not weaken the unions in any way, but will ensure that their membership and workers at the workplace will be the real holders of power in the trade union rather than the unelected, irresponsible minorities.

Parliamentary Conduct

4.48 pm

Mr. Andrew Faulds (Warley, East): I am grateful to you, Mr. Speaker. I rise to apologise to you, Sir, and to the House, for my discourtesy and disregard for parliamentary conduct yesterday. Having looked at column 24 of yesterday's *Hansard*, I realise that my words could have been interpreted as a personal accusation against a right hon. Member of this House, and I withdraw unreservedly the phrase in question. May I also express my regret that I did not on two occasions at once resume my seat when you rose, Sir.

Points of Order

Mr. Jeremy Corbyn (Islington North): On a point of order, Mr. Speaker. You will recall that last week there was a statement by the Minister of State, Home Office concerning the removal of Tamil asylum-seekers from this country and the following day you granted a private notice question to my hon. Friend the Member for Coventry, South-East (Mr. Nellist). News has just come through that the right of the Tamils to seek a judicial review against the Home Office decision has been granted and that, therefore, they cannot be removed from this country until that review has been heard.

My question for you, Mr. Speaker, is this. Can you advise the House so that we can ensure that the decision of the House last year, which granted hon. Members the right to place a stop on that removal, can now be implemented by the Home Office and the Minister concerned brought to the House to explain his disgraceful conduct in trying to remove asylum-seekers from this country against the spirit of the terms of the Geneva convention?

Mr. Max Madden (Bradford, West): Further to that point of order Mr. Speaker.

Mr. Speaker: It is not a point of order for me. Order does not arise. I can advise both hon. Members, because I suspect that they are making the same point, that the proper course of action is to seek to obtain a statement on this at an appropriate time. It is not a matter of order today.

Mr. Madden *rose*——

Mr. Speaker: Order. It cannot be a point of order for me.

Mr. Madden: I am not asking you, Mr. Speaker to take a decision now on this, but to reflect on——

Mr. Speaker: I spend my life reflecting. I do not need to reflect on a matter which is clearly a question for the House, and not a matter of order.

Mr. Madden *rose*——

Mr. Speaker: I am reflecting on my feet. The hon. Gentleman should have a go at this tomorrow.

Mr. Rob Hayward (Kingswood): On a point of order, Mr. Speaker. In column 24 of *Hansard* yesterday you gave guidance in relation to comments that have been made about people who are not Members. Has any guidance been given to the Table Office in relation to that in the light of the fact that I have traced 7ft of criticisms of the Prime Minister's son and husband during this Parliament? Will your ruling avoid that sort of condemnation?

Mr. Speaker: Order. I repeat what I said yesterday. If the early-day motions on the Order Paper do not meet the criteria, they are brought to me for my attention. I cannot recollect that any of those particular early-day motions, which are probably from two years ago, were ever brought to me for my attention.

Mr. Dennis Skinner (Bolsover): On a point of order, Mr. Speaker. I know that you have carefully scrutinised the Select Committees and other Committees of the House. I wonder whether during the course of the day, you would take the appropriate steps, where possible, to find out whether there has been any statement by any Government spokesman on the question of setting up a lifeboat for Morgan Grenfell, one of the firms involved in the Guinness——

Mr. Speaker: Order. I am not responsible for Morgan Grenfell.

Mr. Skinner *rose*——

Mr. Speaker: Order. I cannot help the hon. Gentleman. I am sorry.

Mr. Tony Banks (Newham, North-West): On a point of order, Mr. Speaker. Can you advise me as to how I can raise today on the Floor of the House last night's news that Fulham and Queen's Park Rangers are to be merged? If it was the Royal Opera House that was about to be sold off and turned into luxury flats, hon. Members would be in uproar, yet we cannot get a discussion on this important issue.

Mr. Speaker: Order. I do not quite know where Government responsibility would lie on a matter such as that. The hon. Gentleman might have an opportunity when the Minister responsible for sport is due to answer questions.

BILLS PRESENTED

GANGMASTER

Sir Richard Body, supported by Sir Kenneth Lewis, Mr. Clement Freud and Miss Joan Maynard, presented a Bill to require gangmasters to be licensed by justices: And the same was read the First time; and ordered to be read a Second time upon Friday 6 March and to be printed. [Bill 87.]

DEER

Mr. David Knox, supported by Sir Peter Mills, Mr. Robert Hicks, Mr. Ivan Lawrence, Mr. Tom Torney, Mr. Eric Deakins and Mr. Geraint Howells, presented a Bill to make it lawful for deer kept on deer farms in England and Wales to be killed during a close season: And the same was read the First time; and ordered to be read a Second time upon Friday 27 February and to be printed. [Bill 84.]

Public Opinion Polls (Prohibition at Election Times)

4.54 pm

Mr. Ray Powell (Ogmore): I beg to move,

That leave be given to bring in a Bill to prohibit the holding of, and publication of the results of, opinion polls about voting intentions at times prior to general elections and by-elections to the House of Commons.

The first parliamentary consideration of the problem took place under the auspices of the Speakers Conference on Electoral Law which reported in 1968. That conference recommended that there should be no broadcast or publication in a newspaper or other periodical of a result of a public opinion poll or of betting odds on the likely result of a parliamentary election during a period of 72 hours before the close of the poll. Regrettably, however, that recommendation was not implemented.

To avoid taking too much time I shall not deal in too much detail with the wide discrepancies of the opinion polls that have been published in recent times, save to mention the recent bizarre one for "Newsnight" on the Greenwich by-election, presented by Vincent Hanna who I am given to understand, is developing the concept that by-elections are created entirely for his personal amusement. That poll result alone should be sufficient to persuade the House of the necessity of a free passage of my Bill.

Numerous attempts have been made by hon. Members to persuade the House to agree to measures for some control, and on 22 October 1985 I presented a somewhat similar Bill which was defeated by four votes. This time I feel confident that the results of recently published polls will persuade hon. Members on both sides that it is becoming even more essential to acquire some sort of control. If the rumours that I have heard today are correct, there might be opposition to my Bill. If that is so, I sincerely hope that this time, unlike the previous occasion, the argument will be soundly based and the occasion not used to expound and develop differences which might have occurred in the Greenwich by-election.

In recent weeks we have been subjected to all sorts of political fortune-telling which is about as accurate as the palmist on the pier. Is it too much to ask that for just three or four weeks we should be spared the peddling of those pointless predictions? Opposition to the Bill and the protestations that I have received have come mainly from interested parties, press barons and pollsters who obtain rich pickings from attempting to predict the results. It is all too easy to manipulate random sampling to ensure that the result is one that will boost circulation or stimulate further interest and assignments for the polster. Nevertheless, we all appreciate that on many occasions it is the press which deliberately distorts some of the fair and reasonably conducted polls.

No fewer than 50 option polls were carried out during the four and a half week campaign of the 1983 general election. When we include the private and unpublished polls undertaken on behalf of political parties and interest groups, that represents a formidable amount of polling activity. Nevertheless, the reliability and validity of the opinion polls and perhaps more significantly the influence of the polls on the election itself is a cause for grave concern.

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27 February 1987

In attached folder.

Dear Mr Norgrove

GREEN PAPER "TRADE UNIONS AND THEIR MEMBERS"

Further to Chris Capella's letter of 23 February, I attach a copy of the Green Paper "Trade Unions and their Members".

I also attach a revised statement and press notice. You will note that the first sentence has been amended.

I am sending a copy of this letter and attachments to Private Secretaries to members of the Cabinet, the Chief Whip and Sir Robert Armstrong.

R J Ledsome

R J LEDSOME
Private Secretary

February 24 1987

MORE RIGHTS FOR UNION MEMBERS PROPOSED IN GREEN PAPER

The creation of a special Commissioner for trade union affairs is one of a number of fresh proposals for strengthening the rights of trade union members put forward for discussion by the Government in a Green Paper published today.*

Other proposals contained in the Green Paper include:

- removing legal immunity from strikes called to force a closed shop;

- taking away the remaining legal protection for the closed shop;

- requiring secret postal ballots under independent supervision for the election of members of union executive bodies;

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*"Trade Unions and their members' Command 0000 HMSO Price 00

- election by secret postal ballot under independent supervision of union Presidents and General Secretaries and every other member of the union executive whether or not they have a vote on that executive;

- an effective right to choose to go to work or cross a picket line despite a strike call.

The special Commissioner for trade union affairs would provide advice and support to individual union members who need to make a complaint and perhaps take legal action against a union and its officials who may be failing to comply with statutory duties. The Green Paper suggests that at present individual trade union members may be deterred from taking their union to court because of the difficulty of pursuing cases.

The Green Paper also proposes that trade union members should have the right of access to the union's financial records.

A statement to both Houses of Parliament by the Secretary of State for Employment, Lord Young and the Paymaster General, Kenneth Clarke says :

"Since 1979 we have proceeded step by step to introduce a succession of measures which together have helped achieve the least number of working days lost to industrial action for a generation. We have sought to restore a proper balance of bargaining power between trade unions and employers. We have sought to establish democratic rights for individual members within their unions. Above all, we have sought to promote an environment in which both sides of industry can work together to generate the wealth the country needs.

"We have observed closely the impact of our legislation. In general, progress has been marked and encouraging. However, some unions have declined the opportunity to put their house in order, and union members have not always felt able to take a stand and ensure that abuses are corrected. It is therefore clear that we need now to take another step both to strengthen the rights of individuals within a union and to reinforce their ability to exercise those rights. That is why we are today publishing a Green Paper "Trade Unions and their Members" which sets out a number of possible changes, on which comments are invited, as a basis for further legislation.

"The Government has always believed that individuals should be able to choose for themselves whether or not to belong to a trade union. We also object strongly to attempts to coerce an employer into putting someone out of work on the ground that the person does not belong to any union or to a particular union. Our earlier measures have certainly reduced the scope for the worst excesses of the closed shop. However I am afraid that in some industries the power of the closed shop still remains. We therefore propose measures which will end the legal protection of a post entry closed shop in any circumstances. The present law allows a closed shop to be enforced if a weighted majority of employees vote for it in a ballot. Few major employers have yet been affected by this provision but in the cases where ballots have produced a lawful closed shop the rights of many individuals to choose whether to join a union or not have been extinguished. Experience has shown that unions' legitimate interests are not seriously weakened where the closed shop is not protected by law. The repeal of balloting provisions for the closed shop would give any individual dismissed for not belonging to a union the right to compensation for unfair dismissal. We also propose to end all legal immunity for industrial action designed to force an employer to create or maintain any closed shop. In short, we are proposing to end completely the use of the law in any circumstances to sustain the closed shop.

"The most important feature of democracy within a trade union must be the right of the members to a secret vote in the direct election and re-election of their union leaders. The 1984 Act established such a right for the election of the voting members of union executives and created a presumption that postal ballots would be used. A large number of trade unions have retained work place ballots and the conduct of such ballots continues to give rise to controversy. Now is the time to act against these abuses. When we legislated in 1984, many trade unions did not have lists of membership of sufficient quality to serve as electoral rolls. Since 1984 they have been required to have such lists and they have now had the time and opportunity to draw them up. There is, therefore, no longer any reason why we should not move to the most secure method of balloting available - the secret postal vote under independent supervision.

"The process of election is intended to ensure that the leadership of a union is, and remains, responsible to its members. In practice not all trade union leaders have been required to be elected. We now propose to make Presidents, General Secretaries and any others with seats on the executive subject to direct democratic election.

"The right to choose to go to work during industrial action is an essential freedom. We believe that union members are

entitled to a vote on whether their union should call them out on strike. We also believe that they are entitled to continue to go to work and honour their contract of employment if they disagree with their union's call. At the moment, legislation does not give union members any right to take action to restrain their unions from calling a strike without a ballot. Nor do they have any statutory protection against disciplinary action by their union if they cross a picket line or carry on working during a dispute. We propose to give them both.

"Recent events have thrown light on the unusual ways in which some unions run their financial affairs. Union members ought to be seriously concerned about some of the manoeuvres which have been used to evade or circumvent the jurisdiction of the courts when unions find themselves in conflict with the law. The Green Paper considers possible safeguards which might be enacted in legislation, of which the most fundamental is a right of access for every member, accompanied by a professional adviser, to current union accounting records.

"It is not enough to provide rights and protections for individual citizens if they in practice find it too daunting to claim them. As things stand trade union members need to be exceptionally determined and courageous if they are to embark on the process of enforcing the full rights which the law now gives them. Parliament has provided agencies to help

employees to complain against employers about discrimination on grounds of race or sex. It is clear that there is now a need for a new Commissioner for trade union affairs to advise and support union members who need to make a formal complaint and perhaps take legal action against unions and their officials who appear to be failing to comply with statutory duties. The new Commissioner would help to make sure that trade unionists can defend both their existing rights and the new rights we propose giving them in this Green Paper.

"These next steps which I am announcing today are wholly consistent with our whole approach to trade union reform through the period of office of this Government. We believe that trade unions behave more responsibly when they are in close touch with the views of their members and take steps to ensure that their actions command members' support. We have watched closely developments since 1984 and the Green Paper is based on our experience of events since the last legislation. Its proposals frame sensible solutions to specific problems which can be expected to work in practice. Consultation has of course always been an important part of our process of law reform in this area and the Government will welcome informed comment on these latest proposals."

DRAFT STATEMENT FOR SECRETARY OF STATE AND PAYMASTER GENERAL ON THE GREEN PAPER "TRADE UNIONS AND THEIR MEMBERS."

Since 1979 we have proceeded step by step to introduce a succession of measures which together have helped achieve the least number of working days lost to industrial action for a generation. We have sought to restore a proper balance of bargaining power between trade unions and employers. We have sought to establish democratic rights for individual members within their unions. Above all, we have sought to promote an environment in which both sides of industry can work together to generate the wealth the country needs.

We have observed closely the impact of our legislation. In general, progress has been marked and encouraging. However, some unions have declined the opportunity to put their house in order, and union members have not always felt able to take a stand and ensure that abuses are corrected. It is therefore clear that we need now to take another step both to strengthen the rights of individuals within a union and to reinforce their ability to exercise those rights. That is why we are today publishing a Green Paper "Trade Unions and their Members" which sets out a number of possible changes, on which comments are invited, as a basis for further legislation.

The Government has always believed that individuals should be able to choose for themselves whether or not to belong to a trade union. We also object strongly to attempts to coerce an employer into putting someone out of work on the ground that the person does not belong to any union or to a particular union. Our earlier measures have certainly reduced the scope for the worst excesses of the closed shop. However I am afraid that in some industries the power of the closed shop still remains. We therefore propose measures which will end the legal protection of a post entry closed shop in any circumstances. The present law allows a closed shop to be enforced if a weighted majority of employees vote for it in a ballot. Few major employers have yet been affected by this provision but in the cases where ballots have produced a lawful closed shop the rights of many individuals to choose whether to join a union or not have been extinguished. Experience has shown that unions' legitimate interests are not seriously weakened where the closed shop is not protected by law. The repeal of balloting provisions for the closed shop would give any individual dismissed for not belonging to a union the right to compensation for unfair dismissal. We also propose to end all legal immunity for industrial action designed to force an employer to create or maintain any closed shop. In short, we are proposing to end completely the use of the law in any circumstances to sustain the closed shop.

The most important feature of democracy within a trade union must be the right of the members to a secret vote in the direct election and re-election of their union leaders. The 1984 Act established such a right for the election of the voting members of union executives and created a presumption that postal ballots would be used. A large number of trade unions have retained work place ballots and the conduct of such ballots continues to give rise to controversy. Now is the time to act against these abuses. When we legislated in 1984, many trade unions did not have lists of membership of sufficient quality to serve as electoral rolls. Since 1984 they have been required to have such lists and they have now had the time and opportunity to draw them up. There is, therefore, no longer any reason why we should not move to the most secure method of balloting available - the secret postal vote under independent supervision.

The process of election is intended to ensure that the leadership of a union is, and remains, responsible to its members. In practice not all trade union leaders have been required to be elected. We now propose to make Presidents, General Secretaries and any others with seats on the executive subject to direct democratic election.

"The right to choose to go to work during industrial action is an essential freedom. We believe that union members are

entitled to a vote on whether their union should call them out on strike. We also believe that they are entitled to continue to go to work and honour their contract of employment if they disagree with their union's call. At the moment, legislation does not give union members any right to take action to restrain their unions from calling a strike without a ballot. Nor do they have any statutory protection against disciplinary action by their union if they cross a picket line or carry on working during a dispute. We propose to give them both.

Recent events have thrown light on the unusual ways in which some unions run their financial affairs. Union members ought to be seriously concerned about some of the manoeuvres which have been used to evade or circumvent the jurisdiction of the courts when unions find themselves in conflict with the law. The Green Paper considers possible safeguards which might be enacted in legislation, of which the most fundamental is a right of access for every member, accompanied by a professional adviser, to current union accounting records.

It is not enough to provide rights and protections for individual citizens if they in practice find it too daunting to claim them. As things stand trade union members need to be exceptionally determined and courageous if they are to embark on the process of enforcing the full rights which the law now gives them. Parliament has provided agencies to help

employees to complain against employers about discrimination on grounds of race or sex. It is clear that there is now a need for a new Commissioner for trade union affairs to advise and support union members who need to make a formal complaint and perhaps take legal action against unions and their officials who appear to be failing to comply with statutory duties. The new Commissioner would help to make sure that trade unionists can defend both their existing rights and the new rights we propose giving them in this Green Paper.

These next steps which I am announcing today are wholly consistent with our whole approach to trade union reform through the period of office of this Government. We believe that trade unions behave more responsibly when they are in close touch with the views of their members and take steps to ensure that their actions command members' support. We have watched closely developments since 1984 and the Green Paper is based on our experience of events since the last legislation. Its proposals frame sensible solutions to specific problems which can be expected to work in practice. Consultation has of course always been an important part of our process of law reform in this area and the Government will welcome informed comment on these latest proposals.

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Department of Employment
Caxton House Tothill Street London SW1H 9NF
Telephone Direct Line 01-213 5949
Switchboard 01-213 3000

David Norgrove Esq
Private Secretary to
the Prime Minister
10 Downing Street
LONDON SW1A 2AA

23. February 1987

Dear David,

GREEN PAPER "TRADE UNIONS AND THEIR MEMBERS"

As you know, the Green Paper, the final draft of which was sent to members of EA under cover of the Paymaster General's letter of 17 February to Mr Luce, is to be published tomorrow (24 February).

... Attached is a copy of the statement which the Secretary of State and the Paymaster General will be making to the House of Lords and the House of Commons at 3 pm and at around 4 pm respectively. They will be holding a press conference immediately thereafter.

You will also find it useful to have the accompanying press notice, which includes a summary of the Green Paper, and a question-and-answer brief. The line on essential services in the brief takes account of the Prime Minister's comments which you relayed in your letter of 23 February to me.

I am sending a copy of this letter and attachements to Private Secretaries to members of the Cabinet, the Chief Whip, and Sir Robert Armstrong.

Yours ever.
Chris Capella

CHRISTOPHER CAPELLA
Private Secretary

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DRAFT STATEMENT FOR SECRETARY OF STATE AND PAYMASTER GENERAL ON THE GREEN PAPER "TRADE UNIONS AND THEIR MEMBERS."

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The process of election is intended to ensure that the leadership of a union is, and remains, responsible to its members. In practice not all trade union leaders have been required to be elected. We now propose to make Presidents, General Secretaries and any others with seats on the executive subject to direct democratic election.

The right to choose to go to work during industrial action is an essential freedom. We believe that union members are

entitled to a vote on whether their union should call them out on strike. We also believe that they are entitled to continue to go to work and honour their contract of employment if they disagree with their union's call. At the moment, legislation does not give union members any right to take action to restrain their unions from calling a strike without a ballot. Nor do they have any statutory protection against disciplinary action by their union if they cross a picket line or carry on working during a dispute. We propose to give them both.

Recent events have thrown light on the unusual ways in which some unions run their financial affairs. Union members ought to be seriously concerned about some of the manoeuvres which have been used to evade or circumvent the jurisdiction of the courts when unions find themselves in conflict with the law. The Green Paper considers possible safeguards which might be enacted in legislation, of which the most fundamental is a right of access for every member, accompanied by a professional adviser, to current union accounting records.

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employees to complain against employers about discrimination on grounds of race or sex. It is clear that there is now a need for a new Commissioner for trade union affairs to advise and support union members who need to make a formal complaint and perhaps take legal action against unions and their officials who appear to be failing to comply with statutory duties. The new Commissioner would help to make sure that trade unionists can defend both their existing rights and the new rights we propose giving them in this Green Paper.

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February 24 1987

MORE RIGHTS FOR UNION MEMBERS PROPOSED IN GREEN PAPER

The creation of a special Commissioner for trade union affairs is one of a number of fresh proposals for strengthening the rights of trade union members put forward for discussion by the Government in a Green Paper published today.*

Other proposals contained in the Green Paper include:

- removing legal immunity from strikes called to force a closed shop;

- taking away the remaining legal protection for the closed shop;

- requiring secret postal ballots under independent supervision for the election of members of union executive bodies;

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*"Trade Unions and their members' Command 0000 HMSO Price 00

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- election by secret postal ballot under independent supervision of union Presidents and General Secretaries and every other member of the union executive whether or not they have a vote on that executive;

- an effective right to choose to go to work or cross a picket line despite a strike call.

The special Commissioner for trade union affairs would provide advice and support to individual union members who need to make a complaint and perhaps take legal action against a union and its officials who may be failing to comply with statutory duties. The Green Paper suggests that at present individual trade union members may be deterred from taking their union to court because of the difficulty of pursuing cases.

The Green Paper also proposes that trade union members should have the right of access to the union's financial records.

A statement to both Houses of Parliament by the Secretary of State for Employment, Lord Young and the Paymaster General, Kenneth Clarke says :

"Since 1979 we have proceeded step by step to introduce a succession of measures which together have helped achieve the most peaceful period in industrial relations for a generation. We have sought to restore a proper balance of bargaining power between trade unions and employers. We have sought to establish democratic rights for individual members within their unions. Above all, we have sought to promote an environment in which both sides of industry can work together to generate the wealth the country needs.

"We have observed closely the impact of our legislation. In general, progress has been marked and encouraging. However, some unions have declined the opportunity to put their house in order, and union members have not always felt able to take a stand and ensure that abuses are corrected. It is therefore clear that we need now to take another step both to strengthen the rights of individuals within a union and to reinforce their ability to exercise those rights. That is why we are today publishing a Green Paper "Trade Unions and their Members" which sets out a number of possible changes, on which comments are invited, as a basis for further legislation.

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"The right to choose to go to work during industrial action is an essential freedom. We believe that union members are

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"These next steps which I am announcing today are wholly consistent with our whole approach to trade union reform through the period of office of this Government. We believe that trade unions behave more responsibly when they are in close touch with the views of their members and take steps to ensure that their actions command members' support. We have watched closely developments since 1984 and the Green Paper is based on our experience of events since the last legislation. Its proposals frame sensible solutions to specific problems which can be expected to work in practice. Consultation has of course always been an important part of our process of law reform in this area and the Government will welcome informed comment on these latest proposals."

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GREEN PAPER "TRADE UNIONS AND THEIR MEMBERS"

SUMMARY

1. The Green Paper is set out in six chapters. The appendix to this summary sets out the particular proposals made in the Green Paper.

CHAPTER 1 - "INTRODUCTION"

2. Having described some of the main changes to industrial relations and trade union law since 1979, the chapter notes that:-

- these have secured important and beneficial changes by making trade unions more accountable and responsive to their members and by encouraging initiatives to improve industrial relations;

- nonetheless there is still more to be done so that ordinary trade union members have the effective protection they are entitled to enjoy in a free society.

3. The content of the subsequent chapters is indicated, and comments invited. Comments should be sent to reach the Department of Employment by 5 May, and addressed to:-

Department of Employment
Industrial Relations Branch B
Caxton House
Tothill Street
London SW1

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CHAPTER 2 - "RIGHTS OF TRADE UNION MEMBERS"

4. Part II of the Trade Union Act 1984 makes it a condition of trade unions' immunity from certain legal actions that they do not organise industrial action without first securing support in a secret ballot of their members involved. Having reviewed experience of the use of these provisions, the chapter suggests that they could now usefully be complemented by imposing a duty on trade unions to obtain majority support in a secret ballot of members due to take part in industrial action and secure majority support from such a ballot before authorising or endorsing industrial action. The duty would be enforceable by any member due to take part in the industrial action, on application to the High Court which would have the power to restrain a union from authorising or endorsing unballoted industrial action (but not the power to order a trade union to hold a ballot).

5. The right of an individual to choose to go to work despite a call to take industrial action is an essential freedom. The chapter describes examples of how trade unions have disciplined, and even expelled, members who exercised this right, and points out that trade unions can lead members into industrial action for the consequences of which the union may have legal immunity but its members do not. It is argued, therefore, that the right to go to work needs further statutory protection, which could take the form of:-

- enabling a union member disciplined for refusing to take industrial action to obtain a declaration to that effect, and an award of compensation for any loss suffered, from an industrial tribunal;

- if expelled from a union under such circumstances, and not readmitted, enabling a trade union member to seek compensation (at a deterrent level) to be awarded by the Employment Appeal Tribunal.

The chapter concludes that such remedies should be available in all cases, whether the industrial action concerned was lawful (ie the trade union had legal immunity for its role) or not.

6. The chapter goes on to suggest further steps to ensure that trade union members are not deterred or prevented from enforcing their rights. Noting that there are precedents for such protection (e.g. in the Sex Discrimination and Race Relations Acts), and that trade unions rules might operate to restrict members' access to the courts, it proposes:-

- protection (through a system along the lines of that described in para 5 above) against disciplinary action taken by a union on grounds that a member has sought to enforce common law or statutory rights through the courts or industrial tribunal system, by complaint to the Certification Officer or by other available means; and

- statutory clarification that trade union members could not be deprived of the right of reasonable access to the courts.

CHAPTER 3 - "SAFEGUARD AND CONTROL OF UNION FUNDS"

7. This chapter is concerned with the system of safeguards and controls protecting trade union members' interests in the financial affairs of their unions. The current system can come under strain where unions find themselves in conflict with the law, and members have a legitimate interest in the use to which their union funds are put and the avoidance of risks to union funds through fines or damages, arising from unlawful activities by unions themselves.

8. Having noted the changes in the law since 1979 which have opened up the possibilities of civil court action being taken against trade unions, and hence the prospect of awards of damages or fines for contempt, the chapter suggests that those responsible for conducting union affairs should be deprived of the capacity to breach the terms of court orders. A possible way forward would be to impose a statutory duty on trade union trustees to prevent funds being spent in defiance of a court order; a duty which would extend to the trustees of other unions which might otherwise offer financial support. If the duty was breached, union members could refer the matter to the courts, opening the way for the appointment of a receiver to take charge of the union's affairs if the breach continued or was not rectified.

9. The chapter considers whether there is a need to impose a statutory limitation on the extent to which trade unions may indemnify those acting on their behalf in respect of damages awarded or fines imposed for unlawful actions. Many union rulebooks make provision for indemnities. It would be quite wrong for those acting on a union's behalf to assume that they could count on having fines paid if these arose from criminal or contempt of court proceedings; but common law precedent already imposes certain limitations.

10. At present union members have no statutory right to see their union's detailed accounts. The chapter suggests that such a right of access should be created for union members, and that it should include a right to be accompanied by professional advisers so that members can understand what the accounts actually mean.

CHAPTER 4 - "THE CLOSED SHOP"

11. The Government has always believed that individuals should be able to choose for themselves whether or not to belong to a trade union. Having reviewed developments in the law affecting closed shops since 1979, and evidence about the extent of closed shop practices, the chapter concludes that the power of the closed shop has not come to an end, and that not all of its abuses have been eliminated.

12. There are objections in principle to allowing an employer to be coerced into rejecting a candidate for a job, or putting someone out of work, on union membership or non-union membership grounds alone. It is suggested, therefore, that trade unions' ability to press employers to establish or maintain closed shops should be restricted by removing inmunity from such action by trade unions.

13. This would be complemented by repealing the closed shop approval provisions contained in the Employment Act 1982, so that dismissal for non-membership of a trade union would be automatically unfair.

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CHAPTER 5 - "EXTENSION OF DEMOCRACY IN TRADE UNIONS"

14. The Trade Union Act 1984 sought to ensure that trade union members had a direct say in important decisions of their unions, and an opportunity to vote on these issues. Ballots for certain specified purposes were required to be held by individual, direct voting systems, either by post or at the workplace, and basic requirements on secrecy and for the avoidance of malpractice were laid down. Having reviewed experience since the provisions came into effect, the chapter notes that a large number of trade unions have retained workplace balloting; that there have been some significant controversies about the organisation of ballots; and that trade unions which have observed the requirements of the 1984 Act in respect of compiling and maintaining registers of their members should be in a position to adopt postal balloting methods even if this was not the case prior to 1984.

15. The chapter therefore concludes that:-

- legislation should be amended to require trade union elections and political fund ballots to be undertaken by the fully postal methods (and to be subject to independent supervision);

- postal balloting can nonetheless be unsuitable for ballots on industrial action, for which the issue can be of immediate concern to a relatively small proportion of a union's membership, and speed of decision making of the essence.

16. In addition, the chapter argues that it is difficult to justify the current restriction of the terms of the Trade Union Act 1984 to the election of voting members of trade unions' principal executive committees. Non-voting General Secretaries and Presidents of trade unions can also be powerful figures in the policy making process. The proposal, therefore, is to extend the Act's requirements to include the election of General Secretaries, Presidents and any other non-voting member of trade unions' principal executive committees.

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CHAPTER 6 - "ENFORCEMENT OF STATUTORY DUTIES"

17. Certain statutory duties - for example those created by Part I of the Trade Union Act 1984 in respect of elections to principal executive committees and the compilation and maintenance of registers of members' names and addresses - are owed by trade unions to their members in general, and proceedings on the grounds that they have not been observed can be instituted by any member without the need to show a direct personal loss or damage. The enforcement system for requirements of this nature needs to enable interested parties to initiate complaints easily and at reasonable personal cost, to ensure that such complaints are handled speedily and remedies where complaints are upheld are effective, and to be associated with adequate protection for individuals against unfair treatment by trade unions if they bring complaints. There is a clear public interest in ensuring that statutory duties are observed, and precedents exist for special help being provided to complainants where warranted (e.g. as available through the Equal Opportunities Commission and the Commission on Racial Equality).

18. The chapter reviews experience with the present complaints and enforcement system applying to statutory duties created by Part I of the Trade Union Act 1984. It concludes that there are now seen to be deficiencies and inadequacies in some respects - for example the Certification Officer's powers to remedy breaches are not comprehensive, the High Court is not being used, and several trade unions have announced publicly that they will not comply with the law. It is therefore suggested that, while there are good reasons to continue to restrict the right to initiate complaints to members of a trade union which is the subject of the complaint(s) and the dual route of initial complaint (to the Certification Officer or the High Court) is worthwhile, the system nonetheless needs modification. The approach proposed is to provide that:-

- the Certification Officer, where he judges that a breach of duty created by Part I of the 1984 Act has occurred, should specify as part of his declaration/decision the steps needed to remedy the breach and the timescale for remedial action (these details could consist of commitments given by the trade union itself, but go beyond these if the Certification Officer was not satisfied with what the trade union offered);

- where an eligible complainant believed that remedial action as required by the terms of the Certification Officer's declaration/decision had not been taken, he should be entitled to get advice and support from a new authority in making an application to the High Court for a declaration and enforcement order requiring the trade union to comply with the law.

19. This new authority (the Commissioner for trade union affairs) might underwrite the plaintiff's legal costs involved in any court action, and/or act in his own name on the complainant's behalf, and/or act jointly with the complainant (the chapter invites comments specifically on the relative merits of these options). The Commissioner might also, in addition to his duty as described in para 18 above, be given discretion to support in a similar way complaints by trade union members that their union(s) had breached other statutory duties, or might support court action to correct a breach of a duty or duties created by Part I of the Trade Union Act 1984 before the Certification Officer had enquired into and made a declaration on any such breach (and in place of any such enquiry) in a matter of substantial public interest. The chapter suggests that the Commissioner's discretionary powers be confined to support of complaints arising from breaches of duty which, like those created by Part I of the Trade Union Act 1984, are owed by unions to their members in general, and that this should cover:

- complaints that a trade union (or unions) were authorising or endorsing unballoted industrial action (the new duty proposed in Chapter 2 of the Green Paper, see para 4 above); and

- the existing requirement that trade unions do not spend money on "political objects" without a properly established political fund.

20 The chapter also proposes that the protection against disciplinary action by trade unions initiating complaints which is proposed elsewhere in the Green Paper (Chapter 2, see paras 5 & 6 above) should extend to cover members taking complaints to the Commissioner.

21. Finally, the chapter proposes that the Department of Employment should make a special effort to publicise, and draw to the attention of trade union members, the statutory duties which are owed to them as members, and that such publicity should also offer advice and guidance on how individual members can seek to remedy breaches of such duties they think may have occurred.

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Appendix

GREEN PAPER "TRADE UNIONS AND THEIR MEMBERS"

LIST OF PROPOSALS

1. Set out below is a brief description of the particular proposals for legislative changes and other action put forward in the Green Paper.

CHAPTER 2 - "RIGHTS OF TRADE UNION MEMBERS"

2. Create a right for union members to restrain their union from authorising or endorsing industrial action involving breach of employment contracts where the union has not obtained majority support from those taking part in the action in a properly held secret ballot.

3. Create a right for union members not to be subjected to disciplinary measures by a trade union for refusing to take industrial action.

4. Protect trade unionists' rights to bring complaints or cases to the courts, tribunals, Certification Officer or Commissioner for trade union affairs in order to enforce common law or statutory rights.

CHAPTER 3 - "SAFEGUARD AND CONTROL OF UNION FUNDS"

5. Establish a statutory duty on trade union trustees not to apply union funds in contravention of the terms of court orders (even if acting with the authority of the union's rules).

6. Impose a statutory limitation on the ability of trade unions to offer indemnities to those acting on their behalf.

7. Create a statutory right for trade union members to be allowed access to inspect their union's detailed accounts, and to do so accompanied by professional advisers.

CHAPTER 4 - "THE CLOSED SHOP"

8. Remove trade union immunity from industrial action to establish or maintain a closed shop.

9. Repeal the statutory mechanism which allows the creation/maintenance of "approved" closed shops.

CHAPTER 5 - "EXTENSION OF DEMOCRACY IN TRADE UNIONS"

10. Require all elections to trade union principal executive committees, and obligatory ballots on political funds, to be by the fully postal method only (ie members receiving and returning ballot papers by post).

11. Require independent supervision of such elections/ballots.

12. Extend the statutory election requirements to cover elections of all trade union executive members, Presidents and General Secretaries.

CHAPTER 6 - "ENFORCEMENT OF STATUTORY DUTIE"S

13. Require Certification Officer's decisions on complaints of breach of statutory duty in connection with executive elections and registers of trade union members to indicate, where a breach is found, the steps necessary to remedy it, and the time limit within which such steps should be taken.

14. Provide that where the remedial action identified by the Certification Officer is not taken, the original complainant (or another member of the trade union concerned) can obtain support from a new Commissioner in subsequent legal action.

15. The new Commissioner to be empowered to offer advice and support to trade unionists in connection with legal action to enforce:-

- trade union duties in respect of elections and registers in a matter of substantial public interest even though there has not been a prior enquiry or declaration/decision by the Certification Officer; and

- certain other duties (ie the new duty not to authorise or endorse industrial action without obtaining majority support from those taking part in a properly held secret ballot, and the requirement not to spend money on "political objects" without a properly established political fund) owed by trade unions to their members in general.

16. A special Department of Employment publicity campaign to publicise, and draw the attention of trade union members to, the statutory duties and requirements owed to them by their unions, and available routes of complaint/enforcement to remedy any breach of these.

EN PAPER - 'TRADE UNIONS AND THEIR MEMBERS'

GENERAL QUESTIONS AND ANSWERS (Q & A on 'Wapping' dispute and on each chapter of the Green Paper filed below)

Q - Why more legislation? What evidence of abuse?

A - The need for further protection for union members is spelled out in the Green Paper itself. Abuses range from the mass disciplining of members who try to carry on working or cross a picket line during a strike to union leaders who scheme and devise ways of avoiding legislation which has been overwhelmingly welcomed by union members.

- Government has always spoken in terms of "step by step". The major trade union abuses were remedied by earlier legislation but problems remain and the individual member is still not fully protected against abuse of union power in practice.

Q - Isn't this just a further attack on the trade unions, following the previous Acts and GCHQ, inspired by an approaching Election rather than by any real need to legislate?

A - No. The Green Paper points to real and genuine abuses, ranging from disciplinary action against union members who refuse to strike in breach of contract (eg the NUJ) to evasion of the statutory duties as regards union elections (eg Arthur Scargill).

Q - What about essential services?

A -

We have no present intention of putting forward proposals specifically to limit strikes in essential services, but we continue to monitor developments closely.

Q - What about legally enforceable collective agreements?

A - The problem is establishing a basis for legal enforcement which would be valuable and desirable to employers and TU's in practice. In this step we are concentrating particularly on the separate question of the Union and its members.

Q - **Aren't the Green Paper proposals a gross interference in internal union affairs (designed to cause their demise)?**

A - No. Unions are powerful institutions and the position of a person in the labour market and at his place of work can be seriously affected by his relationships with his union. In the main, these are minimum standards of democracy and protection which individuals are entitled to expect and which "good" unions are already providing.

Same complaint made about 1984 Act: unfounded then as now.

Q - **Proposals are major interference in internal affairs of trade unions when City is being left to regulate itself?**

A - Not an appropriate analogy and incorrect in detail. The Financial Services Act introduced an extensive statutory framework to regulate the activities of the financial services sector and protect the rights of investors. "Self-regulation" by the City will have to comply with the law, and this often means the criminal law. The Green Paper proposals are entirely related to civil law remedies which aggrieved trade union members can, or will be able to, use.

Q - **Is this part of a campaign to break up national bargaining?**

A - No. But the measures are consistent with my view that firms should decide for themselves what to pay, not have it imposed on them from outside.

Q - **Hasn't the CBI said no more legislation required?**

A - CBI did not focus upon the issues raised by this Green Paper. The CBI was speaking about the balance of power which they feel is now about right due to our legislation. They didn't however rule out further legislation even on this.

Q - **Will you stop employers setting up a web of associated companies to trap unions into secondary action, like Mr Murdoch at Wapping?**

A - The assertions that News International exploited the laws on secondary action were never tested in the Courts. As far as we know the injunctions against SOGAT and the NGA were granted because they failed to first hold a ballot of the members involved.

Q - Why not ban all secondary action?

A - We believe the existing legislation already adequately safeguards the employer's right not to be dragged into disputes which are nothing to do with him, and strikes the right balance in this area.

Q - What about special help for small firms?

A - No particular relevance to theme of Green Paper.

(Difficult to define "small" in this context due to varying relationship of size of workforce and turnover/profit. Key remedies already available to employers (eg ex-parte injunctions) may be quite inexpensive, and legal aid would be available to some. Eddie Shah showed that the existing legislation can be used most effectively by a small employer.)

Q - If dismissal in a closed shop is automatically unfair shouldn't dismissal in a strike be automatically unfair?

A - Presumably that would mean that strikers' jobs must be kept open for them without any time limit. That would be likely to turn a shut-down into a permanent closure.

Q - Why not introduce a right to strike?

A - A right to strike must necessarily be limited to exclude strike action in unacceptable circumstances eg where there is no trade dispute. Such a right to strike, and immunity for strike action in appropriate circumstances, are two sides of the same coin. In this country our tradition is one of immunities and there is no good reason to change that.

Q - What about providing protection for employees who have been locked-out by their employer?

A - Outlawing lock-out (and dismissal in a strike) would leave employers and their business at the mercy of strikers who have previously chosen to break their contracts of employment. Where the employer takes the initiative by locking out employees who are working normally, however, these employees can sue him for breach of contract. See no need to change this position.

Q - **Why not outlaw the pre-entry closed shop?**

A - Government has never made any secret of its dislike for the pre-entry closed shop but effective measures against it would be an unwarranted burden on employers. Removing a union's immunity to force an employer to reject a job applicant will however reduce the power of the pre-entry closed shop.

Q - **Will you ban employers (eg local authorities) advertising jobs as being for trade union members only?**

A - No. What we propose is action against trade unions attempting to coerce employers to recruit only union members by removing immunity from industrial action to this end.

Q - **Why not protect from dismissal employees who complain to a Wages Inspector?**

A - No particular relevance to theme of Green Paper.

Inspectors ensure that the identity of complainants is treated in confidence thus minimising any risk of dismissal. Would expect an industrial tribunal to find any such dismissal unfair. (Debated fully during passages of Wages Bill).

Q - **What impact on political funds?**

A - The requirement for individual secret postal balloting under supervision will include those relating to the establishment/continuation of political funds. The new Commissioner could also have an important role in supporting cases where unions without political funds spend money on "political objects".

Q - **Why not introduce "contracting-in" to political funds?**

A - The political fund review ballots, which unions were required to hold as a result of the 1984 Act, have made members aware of their right to refuse to pay a levy (for the benefit of the Labour Party). Noticeable reduction in volume of complaints about difficulties in contracting-out, no need therefore for further legislation. Will continue to monitor position.

Q - What about introducing a right to belong to the union of one's choice?

A - Individuals are already protected against dismissal or other action by their employer for belonging to the union of their choice.

Do not see a case for legally requiring a union to accept everyone who applies.

Q - Will you help new unions to gain recognition (eg APAP)?

A - Trade union recognition is a matter for employers to decide. The experiences of the 1970s showed the folly of attempting to legislate in this field.

NEWS INTERNATIONAL DISPUTE - INDUSTRIAL RELATIONS LAW

DISMISSAL OF PRINT WORKERS

Why did the law allow dismissal of people who went on strike?
The law has always allowed employers to dismiss employees who break their contracts of employment. That principle has been recognised under successive Governments, both Labour and Conservative.

Hasn't this Government made it easier for employers to dismiss strikers?
The Government did change the law ~~but only to~~ which now makes it easier for employers to take back strikers who had been dismissed after a certain period of time had passed since their dismissal. But this was not at all relevant in the News International dispute.

Weren't Mr Murdoch's actions simply a means of dismissing employees without having to offer them redundancy payments?
No reason to believe this was the case. In fact the company has been willing to offer generous severance payments to the dismissed print workers.

Shouldn't the law make dismissal in a strike automatically unfair?
Presumably this means that jobs must be left open and guaranteed to all those who strike without any time limit on their return. The effect of any such law would be likely to turn a shut-down into a permanent closure, and to deny jobs to those who want to work for what is on offer.

CONDUCT OF THE DISPUTE

Shouldn't employers respect the results of strike ballots?
A "yes" vote in a strike does not and cannot mean that an employer has to accept all the union's demands. A strike ballot gives union members the right to decide whether they wish to put their jobs at risk by striking. If they choose to take that risk, that is their choice.

Why allow union executives to call off strike action without balloting the members involved?
Individuals should not have to put their jobs at risk without being consulted. There is nothing to stop unions organising ballots on the question of continuing strike action or having this as a requirement in their rulebooks, but a legal requirement to do so would serve no useful purpose.

The dispute has shown that the laws on secondary action can be exploited. The potential issues about secondary action and all the assertions made about News International's use of the law were never tested in the courts. As far as we are aware, the injunctions awarded by the courts against calls by SOGAT, NGA and other unions who tried, or might have tried, to spread the dispute were granted because the unions did not first hold a ballot of the members involved. Limiting the scope for secondary action prevents innocent parties becoming victims of industrial disputes which are nothing to do with them.

The effect of sequestration was a major factor in the unions' decision to end the dispute.

Being penalised for contempt of court is a vital and necessary part of the law of the land and, without this penalty, court orders of all kinds would be virtually meaningless.

The penalty of sequestration imposed on SOGAT for defiance of a court order in January was the penalty for refusing to withdraw an unballoted instruction to its members in wholesalers which was being ignored by the majority of its members.

The threat of sequestration which appeared to cause SOGAT and NGA to end the dispute arose from an action alleging that they were in breach of court orders prohibiting mass picketing and violent demonstrations.

Government's picketing laws prevented SOGAT /NGA from legitimately furthering their dispute.

News International obtained injunctions against the pickets and demonstrators under the common law, as a result of behaviour which constituted nuisance and intimidation. There was nothing in the judgments involved which limited the right of Mr Murdoch's ex-employees to hold peaceful demonstrations at Wapping. The Unions ended the dispute because they faced legal penalties as a result of the violence which had accompanied their picketing and demonstrations. That was the main impact of the law on the dispute. Picketing remains lawful if it is at the place of work, peaceful and not designed to intimidate.

DE IRB

10 February 1987

CHAPTER 2 - RIGHTS OF TRADE UNION MEMBERS

a) Right to a secret ballot before being called upon to take industrial action

Q - Why is it needed?/Isn't the Trade Union Act 1984 sufficient?

A - The Trade Union Act makes unions vulnerable to legal action by an employer where no ballot has been held, but individual union members themselves are unable to restrain their union from authorising or endorsing unballoted industrial action (unless the union's rules make special provision for this).

Q - How will the new right work?

A - Unions would be under a statutory duty to hold a ballot before authorising or endorsing industrial action. A member would thus be able to obtain a court order restraining their union from calling a strike where no ballot had been held. Non-compliance with a court order could lead to contempt proceedings against the union.

Q - Stealing the Labour Party's clothes?

A - Labour party talks about ballots but is silent on when they would be held and whether unions would be bound to abide by the result. Their proposals would lead us back to a new "Winter of Discontent".

Q - Could a union be ordered to hold a ballot by a court?

A - No. A court order would merely restrain the union from authorising unballoted strike action. (The 1984 Act similarly does not enable employers or the courts to require a ballot to be held.)

Q - Why not give individuals a statutory right to a ballot?

A - This could be counter-productive, as a member might insist on a ballot just when the union was proposing to settle a dispute.

Q - Will the right to strike be abolished?

A - No. Individuals' right to withdraw their labour will be unaffected. But the proposal does mean that union leaders will have to consult their members before calling them out on strike or face legal action from the members themselves.

Q - Will working to rule/withdrawal of good will be covered by the proposal?

A - As with the 1984 Act, only official industrial action in breach of employment contracts will be subject to the balloting requirement.

Q - Will a ballot be required to call off strike action?

A - No, unless such a ballot is required under the union's own rules.

b) Right not to be subjected to union discipline (including expulsion) for refusing to take industrial action

Q - Why is it needed?

A - It is a fundamental right to choose to go to work, but many people have been (or are at risk of being) disciplined by their unions for refusing to obey a strike call, eg £1000 fines imposed on 95 NUJ members for working at Wapping, and several hundred mechanics and some miners expelled by the NUM for continuing to work.

Q - How will the new right work?

A - Disciplinary action for refusing to strike will be outlawed and members will be able to complain to an Industrial Tribunal and obtain compensation. This could be at a punitive level if the member has been expelled and the union refuses to reinstate him.

Q - Will a ballot in favour of strike action make any difference?

A - A ballot will continue to protect the union against legal action by the employer. But as strike action involves a breach of the individual's contract of employment (for which he can be dismissed by his employer and may even be liable for damages) the majority, however large it might be, should not be able to enforce its will on individuals who wish to continue working.

Q - Individuals join a union voluntarily, so why should they be protected from the need to honour their obligations to fellow members?

A - That presumes unions are equivalent to social clubs; they are not, as they can have far more influence over their members' lives. Individuals have a contractual obligation to their employer which they entered into voluntarily. They should not be disciplined by their union for honouring such a fundamental matter as their contract of employment.

Q - Isn't this a strike breakers' (scabs') charter?

A - Individuals remain free to strike. But why should they be allowed to force others to do so against their will causing them to lose wages and possibly their jobs.

Q - If unions cannot discipline non-strikers, why shouldn't employers be prevented from dismissing those who exercise their right to strike?

A - Legislation has never restricted an employer's right to dismiss individuals who break their employment contract. See no reason to change that position. Keeping strikers' jobs open for them would be likely to turn a shut-down into a permanent closure.

Q - Won't these provisions hinder unions which wish to halt unofficial strike action or to restrain those engaged in violent or unlawful picketing/marches?

A - No. Only those who have been disciplined for refusing to take industrial action will benefit from the proposal. In any case, the only discipline at Wapping was against those who chose to work rather than to restrain violence (despite suggestions by the courts that disciplinary action might be appropriate in the latter case).

c) Freedom to enforce legal rights

Q - Why is it needed?

A - No point in providing new rights if union members are unable to enforce them. At present, some unions' disciplinary rules are so wide in scope that a member who complained to the courts or to an Industrial Tribunal might be punished for a catch-all offence such as bringing the union into discredit.

Q - How will the new right work?

A - Members would be able to complain to an Industrial Tribunal where they had been disciplined for seeking to enforce a statutory or common law right.

Q - Will complaints about elections be covered?

A - Yes. For example, the NUS members who have complained about recent ballots, and been threatened with disciplinary action should their complaint be unfounded, would be protected if a complaint had involved the Courts, the Certification Officer or the new Commissioner for trade union affairs.

Q - Is there really any need for legislation to annul union rules which seek to prevent members from going to the courts?

A - Courts would not be bound by such a rule but legislation will reassure members that they cannot be stopped from pursuing a complaint against their union. The NUM, for example, has a complex internal complaints procedure which could inhibit individual members from seeking to use the courts.

CHAPTER 3 - SAFEGUARD AND CONTROL OF UNION FUNDS

a) Statutory duty on trade union trustees not to apply union funds in contravention of the terms of court orders

Q - Why is it needed?

A - Because trustees have not always lived up to their name. In the case of the NUM, its trustees acted without the authority of the union's rules and were removed for this, but only following lengthy legal action by some members. A new provision would ensure that other union members were not faced with a similar hurdle should the need arise.

Q - How will the new right work?

A - It will impose a statutory duty on trustees to prevent union funds being spent in defiance of court orders. If necessary, union members will be able to secure the removal of the trustees themselves. The duty would apply also to the trustees of any other union which might be tempted to give financial aid to a union which was subject to a court order.

b) Limitation on ability of a trade union to offer indemnities to those acting on their behalf

Q - Why is it needed?

A - To remove any doubt there may be that union officials can ignore the law or court orders, in the expectation that their union will bear the cost of any resulting fines. (The proposal is a tentative one as common law remedies may be sufficient.)

Q - How will the new right work?

A - By a statutory limitation on the scope of such indemnities.

Q - Will all indemnity provisions be cancelled?

A - No. The proposal is aimed at unions which draw up very wide ranging indemnities (for example, the NUM has 5 separate rules granting its officials and others indemnity for every action they might take, whether in accordance with the rules or not, so long as they have been authorised by the union).

c) Statutory right for union members to be allowed access to union accounts

Q - Why is it needed?

A - Members have an obvious interest in their union's finances, but some unions refuse to allow them access to accounting records. Where access is allowed, some unions (eg NUM) specifically exclude professional advisers, thus reducing the value of access.

CHAPTER 4 - THE CLOSED SHOP

a) Remove trade union immunity from industrial action to enforce a closed shop

Q - Why is it needed?

A - Because unions, by the threat of industrial action, are still able to force employers to dismiss individuals (or refuse to employ them) simply because they are non-union members. For example, three tugboatmen were sacked by their employer because the alternative was the Port of Bristol being brought to a standstill by the TGWU.

Q - How will the new right work?

A - A union which threatened strike action so as to pressure an employer into dismissing or not employing a non-unionist would lose its immunity from legal proceedings. An injunction could therefore be sought from the courts to prevent the strike or to have it called off; and the union could be sued for any losses the employer might have suffered.

Q - What about the pre-entry closed shop?

A - Measures to remove immunity from legal action will have an impact on the pre-entry closed shop as well as on the more numerous post-entry kind. (The Government has never made a secret of its dislike for the pre-entry closed shop, but difficult to frame effective measures against it . A simple ban would probably be circumvented by compliant employers; individuals would have great difficulty in proving the real reason which had led to their rejection, and the resulting litigations would be an added burden on employers.)

b) Repeal of "approval" mechanism for closed shops

Q - Why is it needed?

A - To end the post-entry closed shop and remove once and for all the disgraceful spectacle of individuals being dismissed solely because they refuse to join a union.

(Current legislation still allows the dismissal of certain categories of employee where there is an approved (ie balloted) closed shop, eg those who object to the principle of the closed shop rather than to union membership.)

Q - How will the new right work?

A - A dismissed individual will be able to complain to an Industrial Tribunal which will have the power to order re-employment or substantial compensation.

Q - Isn't this a charter for free riders/bounty hunters?

A - That criticism was levelled at the closed shop provisions of the Employment Act 1982; they proved wrong then and are similarly unfounded now.

CHAPTER 5 - EXTENSION OF DEMOCRACY IN TRADE UNIONS

a) Fully postal voting for executive elections and political fund ballots

Q - Why is it needed?

A - Because workplace balloting is too open to abuse as evidenced by the need to re-run the TGWU and CPSA elections.

Q - How will it work?

A - Unions will be under a statutory duty to hold these ballots by the postal method. Complaints about non-compliance could be made to the Certification Officer or to the High Court with possible assistance from the new Commissioner for trade union affairs

Q - Aren't proposals designed to bankrupt unions?

A - No. Union members are entitled to expect fair and democratic balloting arrangements. The proposals simply respond to the fact that some unions persist in using flawed systems.
(If pressed: will be looking, in light of responses, at whether the ballot refund scheme should continue to operate.)

Q - **Won't postal ballots mean less democracy in unions as**
- turnout will be lower
- members will be disfranchised?

A - The level of turnout is not the only guide to democracy. True democracy requires the ability to vote free from interference and a guarantee that votes will be counted accurately. Workplace ballots fail to meet this test.

There is no reason for members to lose their right to vote as unions have been under a statutory duty to compile a register of their members since July 1984; these should have been fully up to date by October 1985.

Q - Why not require strike ballots to be fully postal?

A - The speed of decision making required and the relatively small proportion of union members concerned means that postal voting is usually unsatisfactory for strike ballots.

b) Independent supervision of postal ballots

Q - Why is it needed?

A - Although postal voting is the best form of balloting, it cannot alone guarantee freedom from ballot rigging. Only independent supervision can provide this. For example, some NUS members are currently complaining about the conduct of recent elections which were fully postal, but unsupervised.

Q - How will it work?

A - By placing unions under a statutory duty to have independent supervision for executive elections and political fund ballots. Complaints about non-compliance could be made by union members to the Certification Officer, or to the High Court with possible assistance from the new Commissioner.

Q - Will it apply to any postal strike ballots?

A - Strike ballots are already required to meet appropriate standards of secrecy, use of ballot papers, and counting of votes. But the possibility of requiring independent supervision is something to be looked at in the light of responses to the Green Paper.

Q - How will the supervision work?

A - Government not wedded to any particular form, so long as it is truly independent and effective. At the least, it would have to cover the despatch and return of ballot papers. Government would welcome comments on possible supervisory systems.

c) Require all executive members to be elected

Q - Why is it needed?

A - Because non-voting executive members, such as General Secretary, President, are not currently required to be elected but can nonethless be the public voice of the union and wield considerable influence. (Arthur Scargill took advantage of the fact that non-voting executive members were excluded from the election provisions of the Trade Union Act 1984 by giving up his vote and so avoiding the need to stand for re-election).

Q - How will it work?

A - Unions will be under a statutory duty to ensure that all executive members have been elected during the previous 5 years. Members would be able to complain to the Certification Officer, or to the Courts with possible assistance from the new Commissioner for trade union affairs.

Q - Why not extend the election requirement to
- lower levels of the union
- delegate conferences?

A - This would greatly increase statutory intervention in union affairs and cause difficulties over defining in legislation exactly who or which body/conference should be elected. Unions themselves would probably be unable to cope with the logistics and cost of fully postal ballots for all positions. Nonetheless, it would be desirable if the standards of democracy which are applied to executive elections voluntarily spread downwards through union hierarchies.

CHAPTER 6 - ENFORCEMENT OF STATUTORY DUTIES

a) CO to specify remedial action and time scale where there has been a breach of the 1984 Act's election provisions

b) Advice and support for complainants from a new Commissioner for trade union affairs

Q - Why are the proposals necessary?

A - Possible breaches of the 1984 Act's provisions seem to have gone unchallenged because members are at a disadvantage when it comes to tackling their union. The new Commissioner would alleviate this problem. It would also ensure that unions could not simply ignore a declaration by the Certification Officer that a breach had occurred (eg TASS has refused to give any undertaking that it will remedy deficient election procedures).

Q - How will it work?

A - On matters concerning elections and registers, where remedial action specified in a decision by the CO has not been complied with, any member will be able to complain to the Commissioner who will be under a duty to support enforcement action in the High Court. The Commissioner could also, at his discretion, and as a matter of substantial public interest, support a complaint to the High Court in the absence of a prior declaration by the CO.

Q - Will the Commissioner deal only with elections and registers?

A - The Government would welcome comments on how wide his powers should be. The Green Paper suggests his powers might extend to include support of complaints about unballoted industrial action and expenditure by unions on "political objects" from general funds.

Q - Won't this be a state prosecutor of unions?

A - No. The initial complaint must still come from a member. All the Commissioner will do is to reduce the disadvantage individual members are under when it comes to pursuing legal action against a union.

Q - Why treat union members as a special case/what about "ordinary" litigants, eg vaccine damaged children?

A - This really is a special case, which I believe justifies the action we have in mind. Before special help is made available, complainants will have to satisfy a third party (either the Certification Officer or the Commissioner) that there is a legal case to be pursued. Moreover, if unions do observe the law, and its requirements, there would be no need for the Commissioner to come into play at all - but he is available to help in appropriate cases.

Trade unions are powerful bodies whose breaches of statutory duty may have an important impact on large numbers of their members and on the community. Individual members who complain often do so not primarily on their own behalf and may be performing a public service.

Q - Why raise the question of how the Commissioner is to help complainants?

A - Government seeking comments on the relative merits of the Commissioner providing money for plaintiffs, or acting in his own name on their behalf, or jointly with them. (One issue is the need to avoid duplicating the present legal aid system; another is finding out exactly what sort of help complainants will really need.)

Q - Why limit the Commissioner's powers to particular issues (or the particular duties cited in the Green Paper)?

A - We do not want to see public money and resources taken up in dealing with frivolous or vexatious complaints, nor to pursue matters of strictly personal interest. The initial role for the Commissioner must be set taking into account the need for cost-effectiveness in the use of public funds, and it is sensible to restrict his interest to matters of general concern.

KEY FACTS

- Strike figures for 1986 show the lowest number of days lost for over 20 years. However the provisional figure of 983 for the number of stoppages is higher than the 903 stoppages recorded as in progress in 1985, which were the lowest figures since 1940

- Over 230 ballots thought to have been held in compliance with the 1984 Act are known to the Department

- Over 100 legal actions have been brought by employers under the 1980 and 1982 Employment Acts and the 1984 Trade Union Acts

- Major strikes averted because of legislation include:
  - CPSA (March 1985) — Ballot held following legal action went against strike
  - London Transport (May 1985) — An injunction was granted in the absence of a ballot and the strike was called off
  - NUR — Following earlier legal action by BR the NUR has held 3 ballots which have gone against strike action. (August 1985 - driver only trains, September 1985 - job losses of signalmen, July 1986 - redundancies in railway workshops)

- The Certification Officer has made 19 declarations under the powers given to him by Part I of the Trade Union Act to investigate complaints from union members about the conduct of elections. In 10 of these the requirements of the Act were found to have been breached. In 3 of the 5 investigations which concerned the TGWU the CO found that the union had not complied with the Act. NALGO has also been found against on 3 occasions

- At least 29 TUC affiliated unions have changed their election procedure to comply with Part I of the TU Act

- No major new closed shops have been introduced since 1980

- Several major employers have ended their closed shop agreements (eg British Rail, British Telecom, United Biscuits)

- The number of employees working in closed shops has fallen from a peak of 5.2 million in 1978 to about 3.5 million now. No more than 40,000 are estimated to be working in approved closed shops and many of those cannot be dismissed without compensation

February 1987

EMPLOYMENT ACTS 1980 AND 1982, TRADE UNION ACT 1984: MAIN PROVISIONS

The 1980 Act:

- gave employers legal remedies against secondary picketing (away from the pickets' workplace)
- gave employers legal remedies against most secondary action (unless strictly targetted on the business of an employer involved in a trade dispute)
- repealed the statutory procedure for claiming trade union recognition from employers
- made changes on unfair dismissals to help small businesses
- introduced closed shop protections for those with conscientious objections or other deeply held personal convictions
- provided funding for postal* ballots held by trade unions

The 1982 Act:

- made it possible to take legal action against trade unions (rather than just individual strike organisers)
- gave employers legal remedies against any industrial action where no dispute exists between employers and their own employees or which is not wholly or mainly about employment matters (eg which is primarily political)
- gave all employees (and employers) statutory protection against unballoted closed shops (any closed shops not approved by an overwhelming majority of the workforce in a secret ballot)
- outlawed union labour only contracts

The 1984 Act:

- required elections to union executives to be by direct, secret ballot normally held by post
- made the holding of strike ballots with provision for secret voting a further condition of unions' legal immunity for organising industrial action
- required unions to hold political fund review ballots every 10 years if they spend money on party politics and wish to continue to do so.

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* Limited to postal ballots by the Regulations made by the Secretary of State under the provisions of the Act.

INDUSTRIAL RELATIONS POLICIES OF OTHER POLITICAL PARTIES

Labour Party

Labour is committed to repealing all industrial relations legislation since 1979, eg

- would relax laws on picketing
- would repeal current laws on closed shop which protect non-union members
- would repeal laws against secondary industrial action
- would repeal the laws which ensure that union members have the right to vote in a ballot before embarking on industrial action. No imposition of specific balloting procedures
- would reinstate comprehensive legal immunities for unions involved in industrial action.

Alliance

- would replace the present legal framework of trade union immunities with a new statute granting positive rights to unions and their members
- would enable a statutory provision for trade union recognition for collective bargaining purposes
- would withdraw the present common law right to dismiss strikers for breach of contract
- would encourage arbitration, with emphasis on 'pendulum' method and no-strike agreements
- would introduce industrial democracy to involve individual employees in decision making at all levels. An Industrial Democracy Agency would be set up to monitor the conduct of businesses in establishing employee involvement

Proposals made by other Bodies

Institute of Directors

Would like to see "a thorough consolidation and simplification" of existing legislation along the following lines:

- removal of the emphasis on collective bargaining in the terms of reference of ACAS;
- outlawing disruption of essential services through industrial action, with compulsory binding arbitration
- making immunities for unions conditional on the observance of procedure agreements
- removing immunity for all secondary action
- removing approval mechanism for closed shop
- emphasis on the right of employees to contract out of contributions to political funds
- introduction of obligatory fully postal balloting before strikes or trade union elections

CBI

The CBI argue that "the balance of power is now about right and what is needed is a period of consolidation".

CONFIDENTIAL

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CCR6

CABINET OFFICE,
WHITEHALL, LONDON SW1A 2AS

Chancellor of the Duchy of Lancaster

Tel No: 270 0020
270 0296

23 February 1987

Chris Capella Esq
Principal Private Secretary to the
Paymaster General
Paymaster General's Office
Department of the Employment
Caxton House
Tothill Street
LONDON
SW1

NBPM

Dear Chris,

ESSENTIAL SERVICES

WITH DCR?

The Chancellor of the Duchy has seen the Paymaster-General's minute to the Prime Minister about essential services.

The Chancellor is pleased to see that this matter has been further reviewed and agrees with the conclusion reached by the Paymaster-General.

Concerning what to say about this question in public, the Chancellor feels that any statement should be as positive as possible, i.e. to say that since the passage of the third stage of the Government's industrial relations reforms, and with changes in pay bargaining arrangements in the National Health Service, strikes in the essential services, as elsewhere, are now far less common.

I am sending a copy of this letter to David Norgrove (No. 10), to the private secretaries to other members of the Cabinet, and to Trevor Woolley (PS/Sir Robert Armstrong).

Yours sincerely

A. Lansley

ANDREW LANSLEY
Private Secretary

IND POL

IND RELATIONS
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PT 13

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10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

23 February 1987

Dear Chris,

ESSENTIAL SERVICES

The Prime Minister has seen the Paymaster General's minute (undated) about possible measures to limit strikes in essential services.

The Prime Minister agrees with the Paymaster General that none of the options canvassed in the paper is worth pursuing further at this stage, and she agrees in particular that procedure arrangements would not succeed.

On the proposed line to take in answering questions, the Prime Minister has noted the Paymaster's intention to say that the Government would not hesitate to consider further legislation if the behaviour of the unions in essential services in the future made this desirable. She has asked what future legislation the Paymater has in mind: surely if it is possible in the future it should be possible now?

I am copying this letter to the Private Secretaries to members of the Cabinet and to Sir Robert Armstrong.

Yours,
David

DAVID NORGROVE

Chris Capella, Esq.,
Office of the Paymaster General.

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ECL

PRIME MINISTER

ESSENTIAL SERVICES

The Paymaster's minute below concludes that there is as yet no acceptable way of limiting strikes in essential services. The paper considers three options, voluntary no strike agreements, procedure arrangements imposed by legislation and model rules (of the table A variety), but concludes that the public expenditure costs and the loss of negotiation as a valuable management tool would not be acceptable save in a very few cases.

The Green Paper on Industrial Relations Reform has been brought forward to next Tuesday 24 February in order to distance it from the NEDC meeting you are to chair on 4 March. Mr. Clarke intends to say if asked that the Government has no present intention of putting forward proposals in this area, but that it will continue to monitor developments closely and will not hesitate to consider further legislation if the behaviour of the unions in essential services in the future made this desirable.

The Policy Unit agree.

Content, subject to the views of colleagues?

David Norgrove

20 February 1987

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CABG.

PRIME MINISTER

ESSENTIAL SERVICES

As we agreed at E(A) on 29 January, following your meeting on 21 January, I have been considering the possibility of introducing measures to limit strikes in essential services. My views are set out in the attached note.

this has been done to help the NEDC meeting you are chairing.

Now that we have brought forward to 24 February the date of publication of our Green Paper on industrial relations reform, I urgently need to resolve the question of what to say about this question in public. I do not believe that we have yet found any practical solution to the problem on which we are ready to go to consultation. Our best line is that we have no present intention of putting forward proposals in this area, but that we will continue to monitor developments closely and will not hesitate to consider further legislation if the behaviour of the unions in essential services in the future made this desirable.

Subject to your agreement, and bearing in mind the importance of having a clear position on this point, I propose to take this line in reply to any questions.

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

K C

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Industrial Action in Essential Services
Note by Paymaster General

1 At the meeting on 21 January it was agreed that the forthcoming Green Paper should not discuss the problem of strikes in essential services, but I was asked to circulate a paper on the options for tackling this problem.

2 Our Manifesto commitment was to "consult further about the need for industrial relations in specified essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity". The background is that:

(a) unions calling industrial action in essential services, as elsewhere, now of course have no immunity unless they have first obtained a majority in a secret ballot of all those due to take part in the action;

(b) the Annex briefly describes all episodes of significant industrial action in electricity, gas, water and the NHS over the last 20 years. Although some were worrying, these industries do not have particularly bad strike records and their workers have not yet held the country to ransom. However, some of them undoubtedly have the power to do so.

3 There are three main options:

- to seek voluntary no-strike agreements;

- to impose by legislation procedure arrangements, breach of which would lead to loss of immunity;

- to impose on the trade unions concerned model rules which would rule out industrial action.

There are no attractions in introducing criminal sanctions in this field - they would not be enforceable.

Seeking voluntary agreements

4 The problem is the difficulty of negotiating no-strike agreements in the essential services at a price which could be afforded. No unions would sign such an agreement unless it provided for some independent means of determining pay which protected them against their loss of industrial strength. Review bodies have been set up for some non-striking groups, but they tend to become very 'client friendly' and therefore expensive. Arbitration mechanisms or indexation are the only alternative and negotiated no-strike deals are almost bound to be subject to access to arbitration at some stage. Some unions might agree to forego strike action whilst a dispute is being arbitered or in breach of an arbitration award. Could the risk of great expense be minimised?

5 I have always been attracted by the idea of 'pendulum arbitration' where the arbitrator must decide in favour of one or other side in toto and cannot split the difference. This could force both parties to submit final claims very close to each other as they sought to get near to an arbitrator's opinion on the current pay market. Excessive claims or mean offers are likely to fail leaving the moderate party victorious in the arbitration and it is argued that this provides a pressure for more realistic claims. Unfortunately this is all rather theoretical and we have few examples of such agreements in this country and it has not been applied for very long in many states in the United States. There is, therefore, very limited experience as yet of pendulum arbitration and the advantages claimed for it are unproven. I have to conclude that it would be very reckless to move to this system now for any significant number of employees.

6 It must also be borne in mind that by no means all issues are arbitrable. An employer would not, and should not, accept binding arbitration on eg redundancy, closures, privatisation, contracting out of services, pension provision, numbers to be employed. Such issues can provide ready cause for industrial action as the miners' strike showed. In so far as they do not provide a binding procedure for resolving such issues, voluntary no-strike agreements (including the much-publicised examples entered into by the EEPTU) do not in fact provide an assurance of no industrial action.

Loss of immunity on breach of procedure arrangements

7 An alternative approach which we considered very carefully about two years ago would be to provide that in specified essential services immunity was lost by industrial action in breach of procedure arrangements. Legislation, not voluntary agreement, would be necessary because a union cannot by agreement waive its statutory immunity. To avoid unions rendering the exercise pointless by simply withdrawing from procedure agreements or by never agreeing to them in services like the NHS where they do not now exist, the legislation would need to lay down minimum procedure arrangements. This would achieve the objective of exposing unions in essential services to injunctions or actions for damages if they called industrial action in breach of procedure. The difficulties are:

(a) for the same reasons as set out above, the minimum procedure arrangements would almost certainly have to include access to binding arbitration. Indeed it is the well-known view of those who advocate this approach, eg the Institute of Directors, that they should. It would be almost impossible to explain to the public that it was "fair" not to. So the problems noted in paras 4-6 above would again arise; → ie the cost mainly.

(b) to lay down minimum compulsory procedure arrangements in certain industries would be an interference with the freedom of action of management and unions in those

industries. It is tempting to claim that this might be beneficial in some cases but it would lead to a serious loss of flexibility in procedures generally and, like all outside impositions of pay and procedures, would deprive management of a potentially valuable management tool.

Imposing model rules

8 A third option might be to lay down model rules, on the analogy of Table A of the Companies Act, which trade unions in specified services might be required to adopt as a condition of immunity; and to include in the rules some form of no-strike requirement or acceptance of a no-strike agreement. The difficulty is again that public opinion would not be likely to accept that we should take away the right to strike of groups of workers without providing as compensation for their loss of bargaining power some objective means of determining their pay. This would again inevitably mean some arbitration arrangements or indexation. The present case of the teachers' dispute has led us to defend the Secretary of State's new power to determine pay as a purely temporary one whilst better arrangements are devised. This position has only arisen after the final discrediting of the negotiating machinery over months of abortive discussions. We still have never contemplated legislation to take away the teachers' right to strike and I suggest we never could do so unless we had some alternative method of determining pay to offer to the teachers. Once more this course would probably be expensive.

Conclusion

9 We have not yet found the answer. The problems are political not technical. If we decided that we wanted to afford no-strike agreements we could no doubt find a way of negotiating or imposing them. But the public expenditure costs and the loss of negotiation as a valuable management tool are not acceptable except in a very limited number of cases. I think our best line would be that we have no present intention of putting forward proposals on industrial action in essential services but that I shall continue

to monitor developments closely. I could state that the Government will not hesitate to contemplate changes in the law if the behaviour of unions in essential services at any time in the future made the consideration of further legislation desirable. Publication of the Green Paper would provide a suitable occasion for putting this line over.

KC

ANNEX

KNOWN INDUSTRIAL ACTION IN KEY PUBLIC UTILITIES IN RECENT YEARS

(1) ELECTRICITY SUPPLY

March 1964:	an official work to rule and overtime ban by the manuals in a dispute on pay and conditions which lasted 8 days and ended with the decision of the Government to appoint a Court of Inquiry.
April 1970:	an overtime ban by the power engineers on a claim to restore their differential over the manuals which lasted 10 days; the dispute was resolved with the appointment of a Court of Inquiry.
December 1970:	an overtime ban and work to rule by the manuals on their pay claim which lasted 8 days; action ended on the appointment of a Court of Inquiry.
Winter 1973/4:	an overtime ban by the power engineers was overtaken by the miners'dispute and then ended.
Autumn 1977:	unofficial action by manuals at a number of power stations mainly in Yorkshire, including a 48 hour strike (supported by only one-third of the workers concerned) and a 15 day overtime ban and work to rule.

(2) GAS INDUSTRY

February/March 1973:	unofficial action on pay claim followed by official action by manual workers for 38 days during which selected stoppages, overtime bans and

withdrawal of co-operation occurred. Settled when improved offer accepted by ballot.

Winter 1975/76: staff withdrew co-operation in late 1975 and for about 3 weeks in February staff and manuals took action which varied by locality from regional one day stoppages to smaller longer stoppages. Supplies were not affected.

13 July 1981: 95 per cent of manual and staff workers struck over the sale of gas show rooms. Supplies were not disrupted.

Autumn 1981: staff and senior shift workers 'withdrew co-operation' in support of claim for increased allowances. Shift workers at the majority of transmission centres, control rooms and compressor sites then struck. Exact duration not known. Doubts over adequacy of safety and emergency cover but supplies maintained except when a separate dispute in Norwegian sector of North Sea stopped supplies to some industrial consumers for a few days.

(3) WATER SUPPLY

1977: unofficial strikes by manual workers in part of Liverpool, and for 5 weeks by manual workers in Manchester, caused interruption in supplies to 10,000 people and 3,000 properties respectively.

January-February 1979: during pay negotiations unofficial stoppages by manual workers started with a ten day stoppage in Pennine division of NW Water Authority; sporadic stoppages affected other parts of NW and some divisions of Northumbrian, Severn-Trent, Yorkshire and Welsh Water Authorities.

February-March 1981: unofficial strikes by some 4% of manual workforce in course of pay negotiations were concentrated in North West, Northumbrian, Yorkshire and Thames Authority areas. Overtime bans elsewhere. Action ended with improved pay offer.

January-February 1983: a week's overtime and call-out ban was followed by a $4^1/_2$ weeks' official national strike by all manual workers which was solidly supported; a 3 day strike by craftsmen, about half of whom had previously refused to cross the manuals' picket lines. Settlement followed an ACAS appointed inquiry.

(4) NATIONAL HEALTH SERVICE

March-April 1973: official strikes by ancillary workers began on 1 March following failure to agree a new annual wage settlement which had been due to be implemented from mid-December 1972. Up to 750 hospitals were affected. A settlement was reached on an improved pay offer in mid-April.

October-December 1975: the Doctors and Dentists Review Body recommended changes in the system of payments which would have resulted in lower salaries for some doctors and increases for others. Following a ballot, the British Medical Association instructed doctors not to sign new contracts of service with the NHS. By October some 300 hospitals were affected. The action ended with agreement that the Review Body should be invited to consider an audit of junior doctors' pay and what increase in pay might then be recommended within the current pay policy limits.

January-March 1979: following failure to agree new annual wage settlements for ancillary workers and ambulancemen (due, respectively, on 13 December 1978 and 1 January 1979), official industrial action in a variety of forms began on 22 January. A settlement was reached on an improved offer on 28 March.

November 1979-March 1980: medical laboratory scientific officers officially withdrew co-operation (except for emergencies) from "out of hours" services on a claim for higher premium payments.

April-July 1981: a series of local one-day strikes and two national one-day stoppages were officially called following the rejection of a pay offer due for implementation from January 1981. The offer was finally accepted.

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April-December 1982: following rejection of a pay offer for a new annual pay settlement due from 1 April, ancillary, ambulance and some nursing staff began official action (taking a variety of forms) from 14 April. A settlement was reached in December on a two-year agreement.

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TRADE UNIONS AND THEIR MEMBERS

Presented to Parliament by the Secretary of State for Employment
and the Paymaster General

by Command of Her Majesty

3 March 1987

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INVITATION TO COMMENT

The Government would welcome views on the issues and proposals set out in this document. Comments should be sent by 28 April to:

Department of Employment
Industrial Relations Branch B
Level 3
Caxton House
Tothill Street
London SW1H 9NF

CHAPTER 1: INTRODUCTION

1.1 There have been major changes in industrial relations law since 1979. The Government's step by step approach to the reform of trade union legislation has, among other measures:

- made trade unions themselves liable to legal actions for injunctions and damages for organising unlawful industrial action;

- removed legal immunity from certain particularly unacceptable forms of industrial action, such as indiscriminate secondary strikes or "blacking" and picketing away from pickets' own place of work;

- made it a condition of immunity that before calling a strike or other industrial action a trade union must first obtain the support of those members due to take part through a secret ballot;

- provided for the direct election of voting members of trade unions' governing bodies by secret ballot at least once every five years;

- enabled members of trade unions with political funds to vote at regular intervals on whether their union should continue to spend money on electoral and party political matters;

- provided new protection against unfair dismissal for non-union employees in a closed shop and compensation for those who lost their jobs between 1974 and 1980 when such protection did not exist;

- required secret ballots for new closed shop agreements and regular reviews of existing closed shop agreements by secret ballot.

1.2 These changes have already had profound and wide-ranging effects. Trade unions are coming to recognise the need to be more accountable and responsive to the wishes of their members. Significantly, union members have on a number of occasions refused to be precipitated into industrial action contrary to their best interests and to their own better judgement. There have been some notable examples of trade union calls for industrial action being largely ignored when members were denied a ballot, and action halted by members themselves in circumstances where the employer would have been able to get an injunction to have the action called off or secure damages in the absence of a ballot supporting the action. There is now a firm and widespread expectation amongst members that they will be consulted by secret ballot. Together with the willingness of employers to use the legal rights now available to them - which they have done in about a hundred cases - this is securing important and beneficial changes in our industrial relations system. The country as a whole has gained from the consequent avoidance of much unnecessary and damaging industrial action.

1.3 Progress has been made, too, in the protection of union members against high-handed or unfair treatment by their unions. Both individually and in groups they have used the safeguards and sought the remedies which the law provides. They are now less willing to tolerate treatment from unions which they consider unjust or to be intimidated by threats from union leaders. They have shown themselves ready to seek a remedy if their unions' resources are mishandled or dissipated by the leadership in contravention of the rule book.

1.4 This progress is reinforced by the new provisions for the election of unions' governing bodies which came into effect on 1 October 1985 (the provisions are described in detail in Chapter 5 para 5.1). Their full impact is being achieved progressively as elections fall due. By making it easier for members to take part in secret ballots, and breaking the hold of minorities of union activists, the election requirements may have the most profound effect of all on the way trade unions conduct their affairs and represent their members' interests. The related requirement for unions to maintain proper registers of members' names and addresses will make possible better communications between unions and their members.

1.5 There are other encouraging signs. One is the growing number of companies where employers and unions - and their members - have been able to agree on packages which include well designed disputes procedures, greatly reducing the likelihood of industrial action, together with improved status and security for workers, often going hand in hand with full job flexibility. More generally, there is an evident and determined attempt to improve collective bargaining arrangements. There is the increasing recognition by employers of the importance of communications and employee involvement. These developments, and many others, illustrate the ability of employers, trade unions and employees themselves to take initiatives to improve industrial relations at every level and for the benefit of all.

1.6 But there is more to be done. It is the view of the Government that, having embarked on the process of giving proper and effective rights to union members, it should ensure that those rights are fully developed so that they provide the ordinary member with the effective protection that he or she is entitled to enjoy in a free society. This consultative document discusses a range of possibilities for the further development of legal safeguards, in particular as regards:

- the rights of union members with respect to strike calls (Chapter 2);

- safeguard and control of union funds (Chapter 3);

- further restrictions on the closed shop (Chapter 4);

- tighter requirements for trade union executive elections (Chapter 5);

- more effective arrangements for helping members to ensure that their unions comply with statutory duties and requirements (Chapter 6).

1.7 Comments are invited on the issues raised and proposals advanced in the following chapters. The Annex provides a glossary of trade union titles quoted in abbreviated form in the text of the consultative document itself.

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CHAPTER 2: RIGHTS OF TRADE UNION MEMBERS

Recent Developments

2.1 On 26 September 1984 Part II of the Trade Union Act 1984 came into force. This made it a condition of trade unions' immunity from certain actions in tort that they do not organise strikes or other industrial action without first securing a vote in favour from those of their members who are to be called on to break their contracts of employment. The ballot itself must meet specific statutory requirements as to fairness and secrecy. There can be no doubt that this modest requirement has contributed to a major change in the conduct of industrial relations.

2.2 Employers have made increasing use of the legal remedies available to them against industrial action called without a properly conducted ballot. Almost 40 cases have already been brought by employers in widely differing fields relying on Part II of the Trade Union Act 1984. The £200,000 fine imposed on the TGWU in connection with the Austin Rover dispute in November 1984 provided a clear warning to union leaders tempted to order industrial action without first ascertaining their members' views. This was reinforced during the News International dispute when SOGAT was fined £25,000, and had its assets sequestrated, for refusing to withdraw an instruction to its members employed in wholesalers (who had not been balloted) not to handle the distribution of certain newspapers.

2.3 As a result of these ballot provisions trade union leaders can no longer, as they once did, command industrial action and rely on a tradition of union loyalties and the ready possibilities of sanctions to carry their members with them. Events such as those at London Regional Transport in 1985 - where the majority of members continued to work normally after a court had ruled a strike call unlawful because unballoted - have shown that union members expect the right to decide for themselves whether to strike or not. Opposition to the simple and entirely reasonable test of the wishes of union members is no longer plausible and the great majority of unions have come to accept that they cannot direct members to ignore their own best interests.

Possible Changes: Right to a ballot before being called upon to take industrial action in breach of contract of employment

2.4 Trade unions have no statutory obligation to conduct a ballot before authorising or endorsing industrial action. But if they do not first ballot members in accordance with the requirements of the Trade Union Act 1984 they forfeit immunity to actions in tort. This leaves them open to the possibilities of a High Court injunction for the action to be called off and/or an award of damages against them. Such proceedings may be brought by the employer concerned or by his customers and suppliers. The current provisions do not give a right of legal action to union members to restrain their own union from calling for unballoted industrial action. Such a right, if introduced, could be exercised by directly affected members who do not wish to strike, both those who supported the principle of balloting and were not prepared to accept the loss of the right to vote and those who supported the proposed action but were reluctant to see union funds jeopardised through the loss of immunity which unballoted action would entail.

2.5 A new statutory right could now be seen as a natural complement to those of employers, customers and suppliers introduced by Part II of the Trade Union Act 1984. Moreover, in the light of recent experience there is no reason to doubt that some trade union members would be prepared to use legal rights. In the miners strike no less than 19 common law actions were brought against the NUM by its own members on the grounds that the failure to hold a ballot before calling members out on strike was a breach of the union's own rulebook.

2.6 In outline, the proposal would be to impose a duty on trade unions, owed to their members, to hold a secret ballot of members due to take part before authorising or endorsing industrial action. The duty would be enforceable on the application of a union member or members to the High Court, which could be given power to restrain the union from authorising or endorsing industrial action before a ballot was held. A union which chose to disobey an order from the court would be at risk of proceedings for contempt and possibly fines and/or sequestration of assets. The conditions governing the conduct of the ballot with regard to method of voting, framing of question(s) and other matters, would be in accordance with the requirements of Part II of the Trade Union Act 1984. The right to enforce

the duty would continue unless a ballot won the support of a majority of those voting. As proposed in Chapter 6 special advice and support might be made available to help a trade union member enforce this duty.

2.7 The duty would be enforceable by members due to take part in the industrial action, ie those directly affected by the call to take such action - the same group as would have to be balloted to preserve the trade union's immunity in tort under Part II of the Trade Union Act 1984 (see para 2.1 above). Any individual in the eligible group could take action as described in para 2.6. An individual right would avoid problems - such as undue delay - which might arise if further conditions were imposed, for example, requiring a fixed percentage of the eligible group to make an application to the court. The knowledge that any one of its members directly affected could choose to exercise a right which would prevent it authorising or endorsing a particular call to industrial action without obtaining prior support in a ballot might have a restraining influence on trade union thinking at an early stage.

2.8 The proposal in para 2.6 is limited to enabling eligible trade union members to seek an order restraining their union from authorising or endorsing unballoted industrial action or authorising/endorsing such action where majority support had not been secured in a ballot. This should minimise the chances of court action interfering with the resolution of a particular dispute, which might be more of a problem if, for example, the complainant were given a right to insist that a ballot be held. The decision on whether or not to ballot will remain (as now) with the trade union.

2.9 Having regard to the interests of trade union members and of industrial relations generally, the Government seeks comments on the following issues:

(a) whether it is right in principle that trade unions should invariably and automatically owe a duty to their members not to authorise or endorse industrial action involving breaches of contracts of employment without first conducting a secret ballot of those due to take part in the action and obtaining majority agreement to the authorisation or endorsement;

If so:

(b) whether such a duty should be enforceable by any individual member directly affected as proposed in para 2.6 above.

Possible changes: Right to go to work despite a strike call

2.10 The right of the individual to choose to go to work despite a call to take industrial action is an essential freedom. It can often be challenged, however, by those who take a hard line view of the traditional philosophy of the trade union movement based on the concept of collective strength through solidarity. Some will argue that a secret ballot result in particular justifies the refusal of the individual's right to make his own choice. As APEX reportedly told the TUC, "The majority decision in a ballot compels the weaker brethren among our membership to participate in the dispute"*. The so-called "weaker brethren" are those who do not wish to take industrial action and who, as individuals, choose to go to work rather than strike. This section examines whether individuals wishing to exercise their right to go to work need protection against the possible imposition of sanctions by their unions.

2.11 Subject to certain conditions, trade unions have legal immunity if they induce their members to break their contracts of employment. This immunity does not however protect the individual striker from being sued for damages arising from a breach of his contract and a recent High Court judgment** has suggested that individual employees may also in certain circumstances be liable for damages in tort for losses arising from such breaches. A union may thus lead its members into action for which it has legal immunity but for which the members do not. Although it is rare for an employer to sue his workers individually, if they take industrial action they face a real

---

* Financial Times, 16 September 1985.

** Barretts and Baird (Wholesale) Ltd v Institute of Professional Civil Servants 1987 IRLR 3.

possibility of being dismissed without being able to claim unfair dismissal*. A tough choice therefore faces the union member called by his union to take industrial action: either to follow the union down a path which will almost certainly reduce his income and may lead to loss of job, or to carry on working and face disciplinary action by the union.

2.12 Many union rule books provide scant guidance on the circumstances in which industrial action may be called, by whom, and on what authority. They are far from silent, however, on how to deal with those who disobey the instruction. In the course of disputes in 1985-6 the NAS/UWT, for example, which had no explicit rule on balloting members before issuing such calls, asked only a fraction of its members in teaching whether they would be prepared to take industrial action, and only then when faced with legal action by employers. The rest were, in the words of the General Secretary, Fred Smithies, protected by a union instruction from "the moral pressure which can be applied to others whose union leaves it to themselves to decide by ballot whether or not they will participate in industrial action"**. Those disobeying an instruction of the executive, however, laid themselves open to the penalty of expulsion. Some unions such as NUR and COHSE have created a specific offence of disobeying a strike call, for which the penalties may range from censure and fines to suspension from benefits, disqualification from office and ultimately withdrawal of membership. Some others which impose no specific obligations on the executive

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* Section 62 of the Employment Protection (Consolidation) Act 1978, as amended by section 9 of the Employment Act 1982, provides that an industrial tribunal has no jurisdiction to determine a complaint of unfair dismissal made by an employee who was dismissed while taking part in a strike or other industrial action, provided that the employer dismissed all employees who were taking part in the action at the same establishment as the complainant at the date of his dismissal and did not offer re-engagement to any of them within three months of the date of dismissal without making a similar offer to the applicant. The courts have held that this applies even where the industrial action did not involve a breach of the employment contract (Faust v Power Packing Casemakers (1983 IRLR 117)).

** General letter from Mr Smithies dated March 1985.

to consult the membership before issuing an instruction to strike have a catch-all offence of 'acting contrary to the interests of the union' or 'bringing the union into discredit' through which non-striking members can be disciplined.

2.13 Unions have not been slow to enforce their powers over dissenting minorities. In the summer of 1982, 25-30 per cent of the membership of the NUR declined to obey a strike call by their union; the strike was called off after two days following a vote at the NUR annual conference. The NUR disciplined about 120,000 members. The benefits which members lost as a result of the disciplinary action included the right to hold office, the right to participate in certain elections, and the right to representation at tribunals. The disciplining of so many members led to resignations and defections. An estimated 400-500 members of ASLEF worked normally during the strike and the Executive decided to fine each member £10 for each day worked. In the aftermath of the coal strike, one NUM area expelled several hundred mechanics and some miners. This contributed to the growth of the Union of Democratic Mineworkers. More recently, in the context of the News International dispute, drivers who crossed picket lines were disciplined by the TGWU, and the NUJ imposed fines of £1,000 each on 95 members for refusing to obey union instructions. These and many other examples give rise to serious concern, particularly in those industries where loss of union membership can still have adverse effects on the future job prospects of the individual concerned. Fines can be a financial burden and resignation or expulsion can damage an individual's position in the labour market. It is difficult to justify this when the individual has merely decided that he does not wish to break his contract of employment.

Existing protections

2.14 At present, members who find themselves urged against their will to take industrial action are not without remedy in all cases. If a union acts outside of or in conflict with its rules it can be sued in contract by the aggrieved member. A member may also sue if the union acts in breach of the rules of natural justice, for example, if it denies the member an opportunity to be heard before taking disciplinary action. Furthermore, under Section 4 of the Employment Act 1980 union members who work in a

closed shop have a remedy in respect of "unreasonable expulsion" from their union. "Unreasonable" is not defined in statute but the revised (1983) Code of Practice on Closed Shop Agreements and Arrangements, which must be taken into account in tribunal proceedings where relevant, provides (in para 6.1) that:

> "Disciplinary action should not be taken or threatened by a union against a member on the grounds of his refusal to take part in industrial action called for by the union:
>
> (a) where there were reasonable grounds for believing that the industrial action was unlawful or that it involved a breach of statutory duty or the criminal law; or that it would constitute a serious risk to public safety, health or property; or
>
> (b) where the member believed that the industrial action contravened his professional or other code of ethics;
>
> (c) where the industrial action was in breach of a procedure agreement; or
>
> (d) where the industrial action had not been affirmed in a secret ballot".

It also provides that:

> "Disciplinary action should not be taken or threatened by a union against a member on the grounds that he has crossed a picket line which it had not authorised or which was not at the member's place of work."

In addition, the Employment Act 1982 makes it unfair for an employer to dismiss an employee in a closed shop if he had complained to an industrial tribunal that he had lost his union membership as a result of "unreasonable expulsion" and his complaint was pending or had succeeded before a tribunal.

2.15 These existing remedies are less than comprehensive. Union rules are sometimes framed so as to give the union very wide powers (see para 2.12 above), and the rules of natural justice are unlikely to protect a member against, for example, an excessively heavy fine which he may simply be unable to pay. Statutory protection also is limited in two main ways. First, it does not extend beyond union members who work in a closed shop. Section 4 of the Employment Act 1980 was based on the assumption that only those who worked in closed shops were liable to lose their jobs as a direct result of being deprived of their union membership, and hence they alone required protection. However, since 1 November 1984 employees in closed shops which have not been approved in a ballot would have an automatic claim to unfair dismissal if they were sacked for non-membership of a union. (This is discussed more fully in Chapter 4). Although in practical terms the link with the closed shop has become less significant, trade union members have argued strongly that those who disagree with the policies and actions of their leaders nonetheless value their membership and do not see why dissent should lead to expulsion. Even if their present jobs are not thereby put at risk, future job prospects may still be affected particularly in those industries which operate pre-entry closed shop agreement. Secondly, the legislation does not cover disciplinary action which falls short of expulsion, such as fines or indefinite suspension from membership, and even in cases of expulsion it is not certain that it covers expulsion, for example, for failure to pay a fine.

Protection from disciplinary action for refusing to strike

2.16 It would be possible to provide a statutory right for all union members not to be subjected to disciplinary measures by their union for choosing to work normally and refusing to take industrial action. This gives rise to two important questions:

(a) What should be the member's remedy?

(b) How far should the protection apply?

2.17 As regards the remedy, there seems no reason to depart from the present procedure (under sections 4 and 5 of the Employment Act 1980) of complaint initially to an industrial tribunal. This would enable a union member who had been disciplined for refusing or failing to take industrial action to obtain a declaration to that effect and an award of compensation for any loss suffered.

2.18 It would be possible, in addition, to allow a union member who had been expelled to seek an injunction from the High Court ordering the union to restore his membership. If the union did not comply with the injunction the normal penalties for contempt of court would apply. This might be open to the criticism that other "voluntary" bodies were not legally obliged to keep people in membership and that employers could not be required by the courts to employ those whom they wished to dismiss but only to compensate them for their dismissal. Against those criticisms it can be argued that the comparison between a trade union and an ordinary social club is not wholly valid and that legislation has long recognised the considerable importance to individuals of their position in the labour market.

2.19 An alternative course, which would avoid the objections to an injunction, would be to provide for compensation at a deterrent level, perhaps with a statutory minimum, to be awarded by the Employment Appeal Tribunal (EAT) in all cases where a union refused to readmit a member whom a tribunal had found to have been expelled for refusing to take industrial action. This might also apply to measures short of expulsion: a union member can always refuse to pay a fine if he is protected against expulsion but he needs a specific remedy against loss of benefits or being debarred from holding office.

2.20 It is for consideration whether members should have protection against a call for industrial action only in those circumstances where there are reasonable grounds for believing that the industrial action is unlawful.

2.21 To protect the individual only where he has reasonable grounds for believing the industrial action to be unlawful might give rise to serious practical difficulties. A test in terms of "reasonable belief" means that the tribunal must have an objective regard to all the circumstances of the case: it is not just a test of the union member's state of mind. It is sometimes unclear whether or not industrial action is unlawful; the issues can be complex and normally fall within the jurisdiction of the High Court. In the absence of civil proceedings brought by an employer in the High Court, the union member might in certain circumstances have to produce evidence before the industrial tribunal of commercial contracts and the extent to which industrial action had interfered or threatened to interfere

with them. Without the co-operation of the employer this evidence could be very difficult for union members to obtain. There would also be a possibility of the lawfulness of a strike being tested simultaneously in two different legal actions and before two different judicial authorities, in a High Court action brought by an employer and in a tribunal case brought by a union member.

2.22 More important, however, are the issues of principle. The Government believes that a decision to take industrial action should be a matter for the individual. Every union member should be free to decide for himself whether or not he wishes to break his contract of employment and run the risk of dismissal without compensation. No union member should be penalised by his trade union for exercising his right to cross a picket line and go to work. This argues for clear and practical protection against a union member being disciplined for refusing to take industrial action whatever the circumstances and regardless of whether the inducement was with or without immunity.

2.23 The following new statutory protections are put forward for consideration and comment:

(a) a right for all union members (ie whether or not they work in a closed shop) not to be expelled or otherwise disciplined for refusing or failing to take industrial action, with a right of complaint to an industrial tribunal; and

(b) a further remedy, in the form of compensation awarded by the industrial tribunal or, if the union fails to re-admit an expelled complainant to the union or to withdraw the disciplinary action, by the EAT.

Possible Changes: Freedom to enforce legal rights

2.24 The proposals in the preceding sections would provide a protection for union members choosing to work rather than to take industrial action, and a remedy for such members against being called on to break their contracts of employment before a ballot had approved a decision on industrial action. This section examines whether further steps are needed to ensure that members are not deterred from enforcing their rights.

2.25 The proposed measure to protect the right to go to work despite a call to take industrial action is based on a new statutory right enforceable by complaint to an industrial tribunal and, if necessary, the EAT (paragraph 2.23 above). It would be possible as a further step to provide protection in case of disciplinary action taken by a union against a member on grounds of his having sought to enforce any of his common law or statutory rights (on the analogy of section 4 of the Sex Discrimination Act 1975 and section 2 of the Race Relations Act 1976). This would encompass, for example, members who wished to enforce the union's duty to call for industrial action only after a successful ballot, or those making applications to the Certification Officer or the High Court under Part I of the Trade Union Act 1984.

2.26 Trade unions might also seek to make specific provision in their rulebooks to deny members access to the courts in respect of their common law rights (for example, to be treated in accordance with the union's own rules). Even if not presented directly in those terms, obstacles can be placed in the way of the would-be complainant through a requirement to complete a labyrinthine internal complaints procedure. Courts have in the past shown themselves prepared to nullify rules which purport to oust or postpone their jurisdiction. They are also likely to distinguish between an appeals procedure which is extensive in the interests of ensuring a fair hearing and one which has a different purpose. There would be advantage, however, in clarifying this by legislation so as to provide assurance to trade union members that they could not be deprived of the right of reasonable access to the courts in case of breach of their common law or statutory rights.

Conclusion

2.27 This chapter has focussed on the relationship between trade unions and their members. Much has already been achieved to ensure that unions are more democratic, and individual members have become more ready to challenge their unions when their rights are infringed. The provisions of the Trade Union Act 1984 giving members the right to insist that voting members of union executives stand for re-election by direct voting in a secret ballot at least every 5 years can be expected progressively to enhance the cause of genuinely representative leadership.

2.28 To consolidate and build on these developments the Government has identified three key areas in which further protection for individual members may be contemplated. These concern the duty of trade unions towards their members to hold a ballot before authorising or endorsing industrial action; the right not to be disciplined for working normally despite a call for industrial action; and the freedom to take advantage of the protections the law provides. Implementation of any of these measures would increase the regulatory role of the law in respect of trade unions. The Government is, however, prepared to take such steps as may be necessary to protect the interests of working people and would be welcomed. Comments are sought on both the principles underlying these proposals and on their practical impact on the conduct of trade union affairs.

CHAPTER 3: SAFEGUARD AND CONTROL OF UNION FUNDS

3.1 Questions of accountability are raised with peculiar acuteness in the area of financial responsibility. Union rulebooks generally provide for the normal conduct of the union's affairs, and members have contractual rights to enforce the rules; this chapter is not concerned with the remedies available to union members for breaches of rules. A further safeguard for members' interests is provided by the fact that union property is vested in trustees, although the effect can be limited by the extent of the specific terms of the trust and by the fact that persons acting in the capacity of trustees are subject to direction by the union executive. It has also been held that union officers in general owe a fiduciary duty to the union. However, the system of safeguards and control comes under strain where unions find themselves in conflict with the law. The members, on whose contributions the unions' funds largely depend, have a legitimate interest generally in the use to which these funds are put and, in particular, in avoiding unnecessary expenditure arising from unlawful activities.

Background

3.2 Prior to 1901 it was thought that a union could not be sued for damages in its own name for acts done by its officials. Case law appeared to indicate that the union itself was protected by virtue of the Trade Union Act 1871. However, in 1901 in the case of Taff Vale Railway Co v Amalgamated Society of Railway Servants an injunction was obtained by the employer against the union itself as well as against the officials who were responsible for organising a strike. The question of whether the union itself was liable was fought to the House of Lords, which found that there was nothing in the legislation to protect the union; the injunction thus left the way open for the union to be sued for substantial damages. This case led to pressure from trade unions for immunity for trade union funds, and resulted in the provision in the Trade Disputes Act 1906 that an action in tort could not be brought against a trade union for acts by its members or officials, even though carried out on its behalf. The 1906 Act was repealed by the Industrial Relations Act 1971. Immunities from actions in tort (but not the blanket immunity for trade unions) were re-enacted and extended, though primarily to remove remedies in the ordinary courts for industrial action. In substitution, certain unfair industrial practices

were defined, justiciable in a new court. The 1971 Act was in turn repealed by the Trade Union and Labour Relations Act 1974, which re-enacted the immunity in tort for trade unions, but section 2 of the Act stated that a trade union, although not a body corporate and not to be treated as such, is capable of suing and being sued in its own name.

3.3 The Trade Union and Labour Relations Act 1974 gave trade unions once again a much wider immunity than that conferred on individuals. First, it applied to all torts and not simply to those involving interference with contracts, and secondly, it extended to virtually all acts whether or not they were done in contemplation or furtherance of a trade dispute. The Green Paper* which preceded the Employment Act 1982 argued that there was no case for this special immunity for trade unions and it was abolished by the 1982 Act. The immunity for trade unions is now generally the same as that for individuals such as trade union officials.

3.4 The Employment Act 1982 also defines the circumstances in which a trade union is to be held responsible in tort for certain acts where there is no immunity. Liability arises where the unlawful act in question is authorised or endorsed by a 'responsible person' as defined by the Act. The union may nevertheless escape liability if an unlawful act so authorised is repudiated by the executive committee, president or general secretary of the union. Positive steps to protect its funds have, as a result, been taken by at least one union, the AEU, which has altered its rules to allow only the national committee or executive to authorise industrial action.

Possible Changes: Actions which put unions in breach of the law

3.5 The Employment Act 1982, by opening up the possibility of civil court actions being taken against unions, and particularly in relation to industrial action, has given rise to two healthy developments. It has obliged unions to take responsibility for initiatives undertaken on their behalf and it has reduced the likelihood of individual martyrdom through the imposition of penalties by the courts on individual union officials or members. On the other hand, since individuals may now commit their organisations, they are in a position to expose union funds to the risk of loss arising from legal action. It is reasonable to consider whether there is a need for some statutory restriction of the scope for individuals to bring such damaging consequences upon their organisation.

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* 'Trade Union Immunities' Cmnd 8128.

3.6 One way in which union funds can be put at risk as a result of civil proceedings is through the award of damages. The possibility of an action for damages has a significant deterrent force in individual disputes. However, most proceedings arising from industrial action begin with an application for an injunction; where an injunction is granted and the union obeys it, those with whom it is in dispute will suffer either limited damage or none at all, and the amounts of damages which may be awarded against unions are in most cases limited by statute on a scale related to the size of the union. It is very rare indeed for cases involving industrial action to be pursued to a trial in a claim for damages since the employer's main objective is achieved if he obtains an interlocutory injunction to have the industrial action called off. The risk to union funds in practice is small, though the availability of damages remains a safeguard for the employer. There seems little reason, therefore, to attempt to devise a means by which individual union members could oblige their leaders generally to refrain from any decision which might lead to an action for damages. It may in any case be difficult to determine in advance whether or not the courts would find a particular course of action to be unlawful.

3.7 There is, however, another way in which union funds can be put at risk during civil proceedings. This happens when union officials refuse to obey the terms of an injunction or other court order and make their union liable to be fined and/or have its property sequestrated for contempt of court. Quite different issues are raised by fines imposed as a result of contempt proceedings, since such fines represent the cost of deliberate decisions to flout the law by contravening court orders. There is no limit on the scale of fine which may be imposed, and in some cases fines have amounted to several hundred thousand pounds. Union members who see the funds which they have contributed suffer a loss of this kind may properly question what objective can be achieved and whether their leaders should have the right to put the union's assets so directly at risk in this way.

3.8 There could be no justification for removing or reducing unions' liability to contempt proceedings, including fines. The possibility of such financial penalty has repeatedly been shown to exercise a powerful deterrent effect upon those who might otherwise be tempted to disregard the law's requirements. Removing it would mark a return to the belief that

trade unions are in some sense above the law. It would also deprive the courts of any effective power to enforce orders and expose the courts to open defiance. The aim should not be to diminish a union's potential liability but rather to prevent its officials from exposing it to such liability. On the other hand, although there is scope within the common law in some circumstances for officials to be ordered by the courts to make restitution of funds lost through their actions, the answer does not lie in providing for the penalty imposed for a collective decision to be transferred in all cases from the union to individual officers. This would simply enable the organisation to evade responsibility and open the way for those who would choose the role of martyr.

3.9 One possibility might be to give union members a legal right to seek an injunction restraining the union, individual officials or both from acting in breach of a court order. This would enable members to take action to protect their interest in their union's funds and it would also have the effect of enabling the enforcement of an initial order to be carried forward even where the original plaintiff, for whatever reason, failed to do so. However, it is unlikely that union officials who were prepared to disregard an initial order would be any more disposed to obey a follow-up injunction, even if this was sought by their own members. If they failed to do so the normal remedy available to the members would be proceedings for contempt. In the case of proceedings against the union this would lead to the financial loss which it was the member's objective to avoid. Where the injunction was directed to named individuals, the ultimate penalty for defiance would be imprisonment, which would not be an outcome which the members themselves would normally expect or desire.

3.10 A more sensible course might be to seek to deprive those responsible for conducting union affairs of the capacity to breach court orders, in particular, by preventing them from spending union money on such activities which place them in contempt of court. Under the general law it is possible for union members to seek the removal (and the replacement) of trustees who act without the authority of the union's rules, and an additional mechanism for the control of financial operation is provided by the placing of assets into receivership. The appointment of a receiver is a remedy which has been generally available in the context of trade union

funds since 1971*. The appointment at the end of 1984 of a receiver to take control of the NUM's funds was apparently the first time that this mechanism had been used in this context.

3.11 Unlike sequestration (which was also involved in the NUM case), under which the assets of a union may be seized to enforce compliance with a court order, the appointment of a receiver is essentially a protective move. The object of the appointment is to safeguard property for the benefit of those entitled to it. Such an appointment could therefore be particularly useful where there is a risk of property and funds being wasted by those with the legal title, such as trustees.

3.12 A group of NUM members claimed that the trustees had acted in breach of trust in using union funds to support a strike called in breach of union rules. In making an order appointing a receiver the judge took account of several factors including the attitude of the trustees to the orders of the court, the risk to union funds caused by contempt of court and the removal of the union's assets abroad, making them unavailable to members. In effect, the order meant that all authority for official expenditure was vested in the receiver himself. He put a stop to payments for expenses arising out of the dispute which the court had declared to be unconstitutional in terms of the union's own rulebook. Following the appointment of new trustees the NUM made several attempts to have the receivership lifted, but the receiver remained in post until the application for the discharge of the order had the support of the group of working miners on whose application the receiver was originally appointed, and the court was satisfied that the new trustees would pursue actions begun by the receiver to recover the union's funds.

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* Section 4 of the Trade Union Act 1871 provided that a court could not directly enforce any agreement for the application of trade union funds in the giving of benefits to members. This provision was taken by the courts to preclude the appointment of a receiver over union funds in order to prevent their application contrary to agreement (since to appoint a receiver in such circumstances would be directly to enforce the agreement for the provision of benefits). The 1871 Act was repealed by the Industrial Relations Act 1971; this Act in turn was repealed by the Trade Union and Labour Relations Act 1974, but this particular provision was not re-enacted.

3.13 It is unwise to draw too firm conclusions from the experience of one case. But now that the legal mechanism leading to receivership has been tested it is worthwhile to ask whether it achieved its objective and whether there is any need for further statutory provision. There can be no doubt that receivership protected the assets of the NUM membership by constituting an obstacle to action leading to further substantial fines for contempt. The solution it provided however was only partial - receivership does not necessarily prevent further contempts being committed and fines imposed. In the long run the real interest of the NUM's members must be to ensure that responsibility for financial affairs remains in the hands of trustees who are prepared to act within the framework of the law.

3.14 In the NUM case union members sought the removal of trustees who were acting without the authority of the union's rules. Statutory protection may be necessary to prevent the application of union assets to any action in breach of a court order even though the trustees may be acting with the authority of the union's rules. A possible way forward would be to impose a statutory duty on a trade union's trustees to prevent any funds being spent in defiance of a court order. So as to prevent funds being dissipated in support of an action by one trade union in breach of a court order the duty would extend to the trustees of other unions who might otherwise offer such support. This duty would override any less stringent obligations that trustees may bear by virtue of the terms of their trust. If the duty were owed specifically to the individual members it would be open to any of them to refer the matter to the court should they have reason to believe it was not being complied with. The remedy would reflect existing relief available under the general law and involve the possible removal of the existing trustees and the appointment of either new trustees or a receiver (pending the appointment of new trustees). It is certainly arguable that persons bearing the title of trustees may properly be required to prevent the use of the assets they are supposed to be protecting in deliberately unlawful acts.

Possible Changes: Indemnity for fines or damages

3.15 Union funds may also suffer loss as a result of unlawful activities where officials or members acting on behalf of the union are indemnified by the union in respect of damages awarded or fines imposed upon them as individuals. This device has been used in civil cases where the scope of

trade union immunities made it necessary to proceed against individuals, and this practice was noted by the Donovan Commission; a number of unions (including NALGO, TASS, CPSA, NAS - UWT, NUM, BMA, ISTC, IRSF) still make provision in their rules for indemnities. In general, union rules appear designed to extend no further than civil damages, but they are subject to a variety of conditions; the NUM provides for indemnity for "any act" which receives the union's backing. Indemnities for civil damages are likely to be used relatively rarely since, as stated already, damages claims are seldom pursued in industrial action cases and, in particular, now that the gap between individual and trade union immunities has been closed by the 1982 Act making unions as well as individuals liable to damages.

3.16 More serious consideration needs to be given, however, to the possible use of indemnities in criminal and contempt proceedings. For example, union officials may in the course of industrial action commit or incite others to commit criminal acts, including offences of violence to persons or property, which should have no place in trade union activity. It would be quite wrong for those acting with a union's backing to believe - possibly on the basis of a rule to this effect - that they could count on having their fines paid for offences of this kind.

3.17 The law already provides some answer to this question. A rule which clearly provided for the commission of a criminal offence would be held by the courts to be void as being contrary to public policy, and any payment under such a rule could be prevented as ultra vires. The situation is less clear where a rule merely permits payments in connection with criminal acts. A decision in one case in 1976* suggests that rules must not be

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* In Drake v Morgan (1976) ICR 56 it was held that a resolution by a union to indemnify its members against any fines imposed upon them in connection with offences committed on a picket line was not contrary to public policy because it was made after the offences were committed and so was not encouraging the commission of offences. However, the Court added that this might not be the case if a union continued to make resolutions of this kind, thus giving rise to the expectation that a union would indemnify its members against the consequences of future offences. A resolution by a union to indemnify any of its members who might commit offences in the future would, however, be contrary to public policy and so invalid; this view was confirmed in the case of Thomas v National Union of Mineworkers (South Wales Area) (1985) ICR 886.

could be provide for [illegible] in respect of future criminal acts since this would amount to encouraging the commission of offences; a court would find such use to be ultra vires and could order that the indemnity was of no effect. The common law position may, therefore, be expected to produce the result that unions would only exceptionally be legally entitled to pay fines incurred by their members or officials. It is for consideration, however, whether it is acceptable that indemnities should be available, even exceptionally, where penalties are incurred, for example, in respect of injuries to persons or damage to property.

3.18 If this issue appears to call for statutory intervention, it would be necessary to bear in mind that criminal liability does not arise solely in the sort of circumstances envisaged above. Trade unions, like other bodies, are subject to a range of obligations which are backed by penal sanctions; obvious examples are provided by health and safety legislation. The provision in section 2(1)(d) of the Trade Union and Labour Relations Act 1974, which enables criminal proceedings to be brought against a trade union in its own name, has not been tested in the courts; it is natural that enforcement proceedings should be taken against the individuals who bear administrative responsibility within the union. The possibility of indemnity for officials might need to be kept open in certain circumstances which would need to be clearly defined.

3.19 With regard to fines for contempt of court, however, it may be thought that there would seldom be any justification, now that injunctions may be issued against unions and fines imposed on them, for allowing individuals to be indemnified in respect of fines for deliberate breaches of court orders where contempt proceedings are brought against them. On the other hand, it cannot be assumed that plaintiffs will always exercise their option of naming the union itself in proceedings. There is a possibility that on some occasions particular officials may find themselves held personally liable for decisions, made perhaps by a union committee, for which they were not solely responsible or with which indeed they might not have agreed. The scope for willing martyrdom would also be substantial.

3.20 The case for taking action in this area is primarily that at present the individual member seeking to mount a challenge in the courts to indemnities offered by his union must rely upon the uncertain basis that

the provision in the contract of membership, or its application, be void on grounds of "public policy". A secondary point is that rules providing for indemnity, such as those adopted by the NUM following their experiences during the 1984 strike, which would risk being struck down by the courts may nevertheless be retained or applied for so long as they are not subjected to legal challenge.

3.21 There would be scope for statutory limitation on the extent to which unions may indemnify those acting on their behalf, both to clarify the position and to provide a more certain basis for action by members in individual cases. The complexities involved, however, in ensuring that reasonable exemptions were provided for need to be recognised.

3.22 The question to be considered is whether the issue of indemnities is sufficiently serious to merit direct statutory intervention. Is it enourgh for the members to register their disapproval of such practices when casting their votes at union elections?

Possible Changes: Members' access to union accounts

3.23 The issue of accountability naturally gives rise to questions about the extent to which unions conduct their affairs openly, in particular by making their accounts available for inspection. At present a union member has no statutory right to see the detailed accounts, though he has the same right as any member of the public to inspect those accounts required by the Trade Union and Labour Relations Act 1974 to be included in the union's annual return to the Certification Officer and also has the right to be supplied on request to the union with a copy of that return. In addition, many unions give further rights through the rule book.

3.24 The present position gives rise to concern. It is reasonable to assume that a union member has a greater interest in his union's affairs than members of the public. However, in a significant number of major unions, which do not contain provisions on this matter in their rule books, members may be limited to the information available from the Certification Office or on request from the union. The information required to meet statutory provisions only gives an outline of a union's financial affairs and is usually supplied by the union's head office on behalf of the whole union rather than by individual branches. In addition, because it consists

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of accounts which have had to be audited, it still not reflect the current state of the union's affairs. There are isolated examples of unions which, through their rule books, seek explicitly to limit members' rights of inspection to the audited accounts.

3.25 Where the rule book does give a right of inspection of accounts this has been interpreted by the courts as including a right to be accompanied by professional advisers. The majority of members are likely to require expert advice and explanation to understand such records. Rules, such as that adopted by the NUM in 1985, which specifically exclude the right to professional advice may have the practical effect of denying members informed access to the books.

3.26 A right of access for members to unions' detailed accounting records was originally provided in the Trade Union Act 1871 but was eventually repealed as a result of the Trade Union and Labour Relations Act 1974. The developments noted in paragraphs 3.24 and 3.25 suggest that a similar right should now be re-introduced and that this should also give members the specific right to be accompanied by professional advisers.

Conclusion

3.27 There is understandable concern that those responsible for trade union funds should be subject to strict control by the members. This chapter has outlined some of the protections which are currently available and set out suggestions by which they may be clarified or extended. Wilful confrontation of the law to the extent that a union attracts massive fines for contempt is fortunately a rare event. Where it does occur, any failure by trustees to act in accordance with the terms of their trust may be remedied by the appointment of a receiver. This is not a step to be taken lightly. The solution it provides, while effective, is both blunt and temporary but it may be justified by the seriousness of the threat to union funds. The question arises whether this process should be extended by placing a statutory obligation on trustees, owed to the members, to prevent the application of union assets in contravention of court orders.

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3.28 A further cause for concern is the introduction by at least one major union of rules to indemnify its officials for the consequences of any actions whether legal or not. The probability is that some at least of the possible applications of such rules would be found by the courts to be void on grounds of illegality. But it would be possible to legislate to limit the indemnity that a union could purport to afford individuals so that indemnity for fines imposed for particular unlawful acts, including contempt of court, was not possible. This would make it easier for individual members to challenge such a rule.

3.29 Finally, steps could be taken to prevent any trade union, through its rule book, denying members and their advisers access to current accounting records. A statutory right of inspection of the kind that existed until 1974 could be re-established.

3.30 The Government would welcome views on the above analysis and, in particular, on the following points:

(a) would it be desirable to impose a statutory duty on trustees not to apply union funds in contravention of court orders; would this be welcomed by the membership at large?

(b) would legislation limiting the circumstances in which officials could be indemnified lead on the whole to more responsible trade union stewardship; if so, how might such circumstances be defined?

(c) should statutory provision be made for members to be entitled to inspect current accounting records, and to be accompanied by professional advisers?

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CHAPTER 4: THE CLOSED SHOP

4.1 The Government has always believed that individuals should be able to choose for themselves whether or not to belong to a trade union. For that reason it has been opposed in principle to the operation of union membership agreements, or closed shops as they are usually called, which make membership of a trade union a condition of employment. Recognising that closed shops had for many years been a major feature of this country's industrial relations system, the Government introduced measures in the Employment Act 1980 designed simply to limit the worst of the closed shop abuses, and subsequently built upon these in the Employment Act 1982. As explained below, concern has continued to be expressed about the operation of closed shops and this chapter explores the possible need and options for further legislative steps to curb their operation.

Background

4.2 The second half of the 1970s witnessed a significant extension of these agreements at heavy cost in terms of individual hardship. The Trade Union and Labour Relations (Amendment) Act 1976 made it possible for any employee in a closed shop who was not a trade union member to be dismissed "fairly" - ie without any compensation at all - unless, in effect, he could satisfy an industrial tribunal that he belonged to a religious sect which specifically forbade him to belong to a trade union. Many of the closed shop agreements introduced between 1976 and 1979 were modelled directly on the legislation of 1976 and allowed no exceptions for employees who objected to trade union membership on conscientious grounds or for non-union employees whose employment preceded the introduction of the closed shop. It has been estimated that as a result of closed shop agreements some 500 employees were dismissed from their jobs without any compensation in the years preceding 1980. Under the 1976 legislation these employees had no remedy in law. The treatment of three British Rail employees under that legislation was subsequently found to constitute a breach of the European Convention on Human Rights.

4.3 The closed shop in Great Britain has undergone fundamental changes in recent years. An academic study* estimated that in 1978 closed shop

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* Stephen Dunn and John Gennard, "The Closed Shop in British Industry" (Macmillan: 1984)

arrangements affected some 5.2 million employees in Great Britain. Although these were heavily concentrated in the older manufacturing industries, the legislation of 1976 had encouraged the extension of the closed shop into areas, for example of white-collar employment, where it had previously been unknown. The same study estimated that by 1982 the numbers working in closed shops had fallen to some 4.5 million. By early 1984, according to recent research*, the number working in closed shops had fallen even further to about 3.5 million. A continuation of this downwards trend would suggest a current figure nearer to 3 million people covered by some sort of closed shop arrangement.

4.4 Part of the explanation for this sharp reversal in the trend of the late 1970's lies in the decline in employment in the older manufacturing industries where closed shops have traditionally been concentrated. But two other factors have been crucial in reducing the closed shop population. In the first place, the extension of the closed shop into new areas of employment has been halted. The Employment Act 1980 took steps to prevent closed shops being imposed on employees regardless of their wishes by making dismissal for non-union membership in a new closed shop automatically unfair unless the employees affected had first expressed overwhelming support for the closed shop in a secret ballot.

4.5 The second new factor in the decline of the closed shop population has been the decision of a number of major employers to withdraw from their closed shop agreements altogether. Employers who have been reported as terminating their closed shop agreements include the Water Authorities, United Biscuits, British Rail and British Telecom. Others, including British Gas, Rolls Royce and GEC (Coventry) have made it clear that they will not dismiss employees on grounds of non-membership of a trade union; British Coal gave a similar undertaking to those of its employees who were threatened with expulsion from the NUM because they refused to strike, thereby ending the informal closed shop which they had tended to operate.

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* British Workplace Industrial Relations 1980-1984, Millward and Stevens (Gower: 1986).

4.6 The trend on the part of employers to put an end to the closed shop has no doubt been reinforced by the relevant provisions of the Employment Act 1982, which extended the balloting requirements of the 1980 Act to closed shops which had been in existence on or before 14 August 1980. Since 1 November 1984 therefore, to be 'approved' a closed shop must have been supported in a secret ballot in the preceding five years by either 80% of employees affected or 85% of those voting. If no ballot is held, or if the required majority is not reached, the closed shop does not count as approved and any employee dismissed for non-union membership will be able to bring a successful claim to an industrial tribunal. From its day to day advisory work ACAS is aware of over 100 closed shop ballots which have been held since 1980. Most of these have achieved the majority required to support their continuance, but most were held around November 1984 when the balloting provisions affecting pre-1980 closed shops came into force. TUC policy is to advise members to boycott any closed shop ballots, and it seems to have been the case in practice that ballots were generally held only where it was thought that the outcome would reveal popular support. Although the figures are approximate, it seems clear that so far only a tiny proportion of those affected have been given the opportunity to say whether they want to remain in closed shops. The effect of this, however, is that virtually all closed shops are now without legal sanction, in the sense that the dismissal of any employee on the grounds of non-union membership would automatically be unfair.

4.7 The Employment Acts of 1980 and 1982 also considerably extended the categories of non-union members protected against dismissal in approved closed shops. These now include:

- employees who genuinely object on grounds of conscience or other deeply held personal conviction to being a member of any trade union whatsoever or of a particular union;

- employees who were already employed before the closed shop agreement covering their jobs took effect and who have at no time subsequently been members of a trade union in accordance with the agreement;

- employees who work under a closed shop agreement which took effect after 14 August 1980, who were entitled to vote in the first or only ballot under which the closed shop agree-

ment was approved, and who have not since then been members of a trade union in accordance with the agreement;

- employees who at the time of dismissal either had been found by an industrial tribunal to have been unreasonably excluded or expelled from the trade union which they were required to join under the closed shop agreement or had a complaint of unreasonable exclusion or expulsion by that union pending before a tribunal; and

- employees who are bound because of their qualifications to observe a written code of conduct and have left or been expelled from their trade union, or refused to join a union, because of a conflict between that code of conduct and a union instruction to take industrial action.

The Employment Act 1982 also substantially increased the levels of compensation available for such employees, particularly where a tribunal order for reinstatement or re-engagement had not been complied with, and provided them with the right to apply for 'interim relief'. Interim relief, an order that their contract of employment should continue until their complaint of unfair dismissal had been decided, was previously available only to those claiming to have been dismissed for trade union membership or activities.

4.8 Since the Employment Act 1980 came into force on 15 August 1980 less than 60 complaints of dismissal for non-membership of a trade union have been made to industrial tribunals, over half of which were subsequently withdrawn following a conciliated settlement. The contrast with the experience of the closed shop in the period prior to 1980 (para 4.2) is clear and unmistakeable.

4.9 A further development in the decline of the closed shop was the prohibition imposed by the Employment Act 1982 on union labour only and union recognition clauses in connection with contracts for the supply of goods or services. These are requirements which make it a condition of being included on a tender list or of obtaining a contract that the contractor employs only trade union labour or recognises, consults or negotiates with trade unions. These clauses had a particularly harmful

effect on small non-unionised firms and were commonly to be found in contracts for work with some local authorities. The Department of the Environment has noted the disappearance of such clauses from local authority contracts and is not aware of any significant complaints that authorities are failing to observe the relevant legislation. There is no direct means of monitoring the impact of the provisions on employers generally but it appears that no case has been brought to court by an aggrieved contractor. What evidence there is suggests, therefore, that the practice has been virtually eradicated.

4.10 The Employment Act 1982 also deals more generally with trade union action taken against an employer with the object of forcing his supplier or customer to operate a closed shop, ie secondary action to impose a closed shop. It was in the light of this provision that the attempts made by the NGA in 1983 to induce advertisers not to place advertisements with the Stockport Messenger Group came to grief. This was one of a number of unlawful activities which led to the union suffering damages and fines for contempt in disobeying court orders which together totalled some £800,000. It failed in its objective to impose a closed shop.

4.11 The closed shop has traditionally been associated with restrictive practices, not least in the printing industry. Further restrictions on the closed shop would provide greater flexibility in the labour market and increased freedom of choice for employers when recruiting. At present, in some industries unions act as employment agencies and dictate who may be interviewed. They may also, by restricting individuals to particular categories of membership, effectively prevent those who are otherwise qualified from applying for suitable vacancies.

4.12 Much has been done to ameliorate problems associated with the closed shop, but it cannot be claimed that the power of the closed shop has come to an end or that all scope for abuse has been stamped out. A number of proposals for further legislation can be considered. These are discussed below.

Possible Changes: No immunity for industrial action to enforce a closed shop

4.13 The law could go further and seek to restrict more severely a union's ability to press for the operation of a closed shop. A trade union which

forces an employer to dismiss someone unfairly for non-membership already risks incurring financial penalties. It may be 'joined' ('sisted' in Scotland) - that is, made party to the unfair dismissal proceedings - either by the employer or by the dismissed employee. In the event of compensation being awarded to the employee, the union may be required to meet part or all of the cost. This provision was seen in action for the first time in 1984 when the TGWU forced an employer to dismiss three long serving employees because they refused to join the union after a secret ballot in favour of a closed shop. The union was able to do this, despite the fact that the employer had no wish to introduce a closed shop and the men had statutory protection against unfair dismissal, because it threatened to make official a strike of other employees which would effectively have brought the Port of Bristol to a standstill. The TGWU was accordingly joined in the tribunal proceedings and, when the dismissals were found to have been unfair, was ordered to pay all of the compensation.

4.14 The sums paid in compensation to the tugboatmen as a result of their unfair dismissal case, although totalling several thousand pounds, were small compared with the huge losses which would have been suffered by the employer and his suppliers had the port indeed been closed down. An employer, however, is at present unable to take legal proceedings against a union which calls upon his staff to take primary industrial action ie, action taken by workers against their own employer, to enforce a closed shop so long as the union has complied with other statutory requirements (eg on balloting). An option for consideration is whether immunity should be removed from such primary action. This would enable employers who object to the closed shop to seek injunctions restraining such action and to claim damages for losses incurred as a result. It could also be expected to weaken pre-entry closed shop arrangements.

4.15 It would be necessary to consider whether the loss of immunity should apply to disputes arising out of 'approved' as well as 'unapproved' closed shops. As explained in para 4.6, in order to gain approval closed shops must achieve the support in a secret ballot of at least 80% of the employees concerned or 85% of those voting. For closed shops introduced after 14 August 1980 the first approval can only be achieved on the vote of 80% of those affected. It might be felt that, where the wishes of the

workforce have been so overwhelmingly expressed, it is reasonable to allow those employees the right to enforce the agreement through industrial action against their own employer. The categories of employee exempted from any agreement are now extensive, although employees may still lose their job through returning their union card or being unwillingly deprived of it some time after the closed shop has been voted on.

4.16 An alternative view is that it is wrong in any circumstances to give immunity to industrial action designed to force the hand of an employer who may be inclined to refuse to introduce a closed shop agreement, to operate an existing one humanely and flexibly, or to bring an agreement to an end. Since the ballot from which approval derives does not test the view of the employer, he should not be denied redress if pressured to comply. Moreover there are objections in principle to allowing an employer to be coerced into rejecting a candidate for a job or putting someone out of work on union membership grounds alone.

Possible Changes: Closed Shop Dismissals

4.17 This chapter has so far mainly considered the position of employers who might not wish to operate a closed shop and a possible amendment to the law to safeguard their position. The closed shop is however fundamentally about individual freedom of choice: whether or not to be a union member. At present, it is always automatically unfair to dismiss an individual for union membership or activities, but it is still possible for a non-union member to be dismissed fairly where (a) there is an 'approved' closed shop and (b) he does not come within one of the protected categories. The numbers concerned are relatively small but, in a matter as important as freedom of choice, it may be thought wrong for anyone at all to be forced to compromise on a question of principle in order to obtain or keep a job. This leads inevitably to the question whether there is any longer a justification for closed shop dismissals to be protected by law.

4.18 To ensure that union members and non-members are treated alike when it comes to protection against dismissal would entail the repeal of the closed shop approval provisions of the Employment Act 1982. These provisions were introduced to ensure that closed shops had the support of the employees concerned and approval lapses if a further ballot is not held within five years. The closed shop then becomes 'unapproved' and all dismissals for

non-union membership are automatically unfair. Repealing the approval mechanism would, therefore, have the effect of ensuring that no further closed shops could become approved and all dismissals for non-union membership would become automatically unfair. At one time, such a proposal might have been seen as a radical departure. The Government's step by step approach, however, has helped to change attitudes to the closed shop, which is now much less popular than in the 1970s. There is a strong case for ending altogether the special protection afforded in law to the closed shop and so ensuring equal treatment for union members and non-members. This could be done in isolation, but employers might then be pressed to operate union membership requirements by means of industrial action to which at present they have no legal defence. It would seem reasonable, therefore, to introduce as one package the proposals put forward in this chapter on loss of immunity and removal of the approval mechanism.

Conclusion

4.19 The power of the closed shop has been eroded by recent legislation. The number of people who may lose their jobs for non-union membership without substantial compensation is small. But there are still grounds for concern. The Government would therefore welcome views on whether:

(a) immunity should be removed from all industrial action designed to create or maintain a closed shop;

(b) the legislative provisions which allow a non-union member to be dismissed fairly on grounds of non-union membership where there is an 'approved' closed shop should be removed.

CHAPTER 5: EXTENSION OF DEMOCRACY IN TRADE UNIONS

Background

5.1 The Trade Union Act 1984 was concerned with democracy in trade unions. Its election provisions came fully into force on 1 October 1985 and since then trade unions have been under a statutory duty to ensure that voting members of their principal executive committees are elected according to the provisions of the Act at intervals of not more than five years. Subject to any more stringent requirement imposed by union rules, existing elected voting executive committee members wishing to remain on the committee must stand for re-election within five years of having last done so. The effect of these provisions will therefore be gradually but increasingly felt over the next few years. The provisions on pre-strike ballots, on the other hand, have already had a considerable impact since they came into force on 26 September 1984. A number of early cases involving some very large employers have encouraged unions increasingly to hold secret ballots as an automatic preliminary to calling industrial action. And the experience of organising large-scale political fund review ballots according to strict rules was a major exercise in union democracy.

5.2 The Act has sought to ensure that members have both a direct say in the important decisions of their union and a reasonable opportunity to vote. It has done this by requiring ballots to be by an individual, direct voting system held either by post or at the workplace* or somewhere more convenient to the member voting. The Act also lays down basic requirements on secrecy and for the avoidance of malpractice to ensure that once votes had been cast they were counted accurately. For example, it specifies that ballots should be by the marking of a ballot paper in secret, and that voters s' ld be free from interference or any other constraint. The intention in drawing up these standards was to prohibit such discredited practices as balloting at inconvenient branch meetings, indirect block voting systems for union elections and the holding of strike votes by show of hands in the intimidatory atmosphere of the mass meeting. In doing so, the Act represents a significant advance over the practices to which many trade unions have been accustomed over the years.

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* Part I of the Trade Union Act 1984 is based on the belief that postal ballots would become the norm and provides that, for executive elections, workplace ballots are only acceptable if they can meet the same democratic standards as those conducted by post.

5.3 The importance of the change being brought about by these provisions is widely recognised. However a large number of unions have retained workplace balloting and there have been some significant controversies about the organisation of such ballots. There is scope, therefore, for the provisions to be further strengthened or extended, particularly in the light of events since Parliament approved the Trade Union Act 1984. The purpose of this chapter is to consider some possibilities for building on the present provisions.

Voting methods

5.4 The key issues to be considered when framing any new balloting requirement are the degree to which members are guaranteed the right to vote in ballots, and the degree to which the system could be at risk from manipulation. It is also important to consider the extent to which members are likely to use their right to participate. In practice, there may be some tension between these different considerations and a balloting system may have to give greater attention to some points than to others.

5.5 In framing the provisions of the Trade Union Act 1984, the Government was concerned first of all to establish the members' right to vote in executive elections. Possible voting systems were then evaluated against the extent to which they encouraged participation and their vulnerability to manipulation. The Government rejected two systems outright. Voting by show of hands at mass meetings might arguably encourage participation but was clearly open to manipulation. Voting at branch meetings held away from the members' own workplaces might or might not be open to manipulation, depending on how it was conducted, but it was wholly unsuitable for providing a proper and acceptable level of participation.

5.6 This left three possible voting systems:

- fully postal voting, in which ballot papers are sent by post to the address supplied by each member and are returned individually by post;

- semi-postal voting, in which ballot papers are distributed to members by non-postal methods - most probably at the workplace - but are returned individually by post; and

- workplace voting, in which members cast their votes at their workplace.

Properly supervised and organised, a fully postal system is least susceptible to manipulation, whether of an extreme or of a subtle nature. Ballot papers are despatched from a central point against a full electoral roll and are less open to misappropriation than those which are distributed by other means. The members have the opportunity to vote away from possible pressures which might arise at the workplace. The Government's view is that fully postal ballots (under independent supervision, see below) are to be preferred in election and political fund ballots, where the subject to be decided upon allows sufficient time for the balloting process to be undertaken. They are sometimes much less suitable for strike ballots, for which the issues can be of immediate concern and speed of decision making of the essence. In addition, the numbers of those involved in individual strike ballots can be very small.

5.7 In framing the provisions of the Trade Union Act 1984 on elections and political fund ballots, the Government was conscious that, because many unions did not have precise details of their members, it would have been unreasonable and probably impracticable to expect them to move in one stage to fully postal balloting. This was the main reason why the Act also allows for workplace and semi-postal voting, in those cases under certain conditions.

5.8 The Trade Union Act 1984 required unions to compile and maintain a register of their members' names and postal addresses. They should therefore now be in a position to hold fully postal ballots (a practice previously adopted by only a relatively small number of unions). The concern over some recent non-postal ballots, most notably the ballot held in 1984 for the election of the TGWU General Secretary, and the more recent CPSA elections for General Secretary and Treasurer, suggest that it is timely to examine this issue more closely, and to consider what further steps should be taken in the direction of postal balloting.

Possible Changes: Postal balloting

5.9 Despite efforts to maintain its register of names and addresses, a union's register like any other register of members or electors may never be completely up-to-date. The extent of the disfranchisement of some members has an effect on the level of participation in all ballots. This arises partly because of members moving house,* but a more significant

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* According to the 1981 Census, approximately one in twenty heads of households had moved house in the previous year.

factor is the movement of members in and out of the union, whether through a change of jobs or through taking up or leaving employment. Union registers, particularly in large general unions, may decay faster than Electoral Rolls and do not benefit from equivalent statutory underpinning (eg a full annual household survey). Modern technology can solve most of the problems but it can only act on the information which members remember to give about their movements. One union, however, the EETPU, by contacting each member by post at least five times a year, with back-up action where the member is no longer at his previous address, has achieved a position where it claims its register of members is on average as little as 4% out-of-date.

5.10 The EETPU may be helped by a relatively stable membership and some other unions could perhaps have more difficulty in maintaining a membership register as accurate as theirs. However, the requirement in the 1984 Act extends to securing, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date. Union registers should, therefore, become progressively more accurate even if all unions do not go to the same lengths in their efforts to fulfil this requirement.

5.11 Participation is also affected by voters' behaviour. There is some evidence from the political fund review ballots to suggest a greater percentage poll in a ballot held at a workplace than by post. Possible reasons for disparity in voting behaviour, if there was sufficient evidence to support it, would perhaps be inertia or forgetfulness on the part of postal voters or the encouragement to vote provided by the example of colleagues doing so at the workplace and the convenience of doing so, for example when going on or off shift.

5.12 Although similar disparities have been evident previously in election ballots, the political fund ballots are a basis for comparison because they all relate to the same issue and were conducted within a short time of each other. However another factor, arguably even more important, was the nature and effectiveness of the different unions' pre-ballot campaigns and there were other factors which produced widely varied turn-out figures. The EETPU, which probably provides the best example of the impact of postal voting in view of the accuracy of its register, suceeded in achieving a participation rate of 46% in its fully postal ballot. ASLEF, however,

which had provision in its rules for some workplace voting but in the event reportedly used only fully and semi-postal voting, achieved a turnout of 85% (which was similar to the best turnouts in workplace ballots) and a turnout of 67% was recorded by the TSSA in its postal ballot. GMBATU, which gave some members a postal vote and others a vote at their workplace, recorded a participation rate of 66% amongst workplace voters and 44% amongst postal voters. The NUR, on the other hand, experienced more similar turnout levels of 68% amongst workplace voters and 59% amongst postal voters.

5.13 Workplace ballots cannot guarantee a higher turn out than a postal method. Moreover, even if there was sufficient evidence that workplace ballots do produce higher turnout levels they are not without their own serious disadvantages. For example, in the case of the TGWU General Secretary election, which was not covered by the 1984 Act, an investigation carried out by the Industrial Society led to the conclusion that irregularities had occurred at eight of the branches considered which the union should look into. At one branch which returned 800 votes, 799 had been completed by the same person in favour of one candidate whilst the remaining vote was spoilt. In general, the report recommended that scrutineers needed to be more questioning and should be "suspicious" of branches where 85% of votes were for one candidate. Similarly, following the 1986 CPSA elections for General Secretary and Treasurer, an independent enquiry was commissioned from the Electoral Reform Society. This found various electoral irregularities and suggested that a further ballot should be held under revised procedures. The union agreed to rerun the election, as had the TGWU. In neither case were claims of widespread ballot rigging upheld but they do suggest a need for more secure electoral arrangements.

5.14 In addition to the problems evidenced by the TGWU and CPSA elections, there is also scope in a workplace ballot for unduly pressuring voters to influence their choice of candidate. Outright intimidation and threats are illegal and victims could complain to the police. In addition, the Trade Union Act 1984 already imposes certain requirements as to freedom from pressure about which complaints may be submitted either to the Certification Officer or the courts. Because of the scope for subtler forms of pressure in a workplace ballot, however, there is a real question whether such ballots can ever be totally free from suspicion. Having ensured that individuals have a right to participate in ballots the Government is determined to ensure that they are able to do so without

constraint and that all the votes cast are properly reflected in the result. If necessary, therefore, because of their greater degree of security the Government is prepared to take the further step of insisting on postal ballots for executive elections and political fund ballots.

Possible Changes: Independent supervision of ballots

5.15 A requirement for ballots to be fully postal should increase their security. But they can still be exploited quite easily unless they are independently supervised.

5.16 A number of trade unions already employ the services of the Electoral Reform Society for the counting of votes (following both postal and non-postal ballots). In the case of the EETPU, the Electoral Reform Society is responsible for the whole (fully postal) balloting process - sending out ballot papers, receiving them back and counting the results. For the TGWU's re-run ballot for the post of General Secretary held in 1985, the union retained the services of their accountants to oversee their ballot counting arrangements (which followed voting at branches). The CPSA, which holds ballots at the workplace, retains chartered accountants as independent returning officers but also turned to the Electoral Reform Society for an investigation into complaints of ballot rigging following its 1986 elections for General Secretary and Treasurer.

5.17 In postal ballots malpractice could take a number of forms. Ballot papers might, for example, be completed by people who were not entitled to vote if - for reasons discussed earlier - they were sent to the wrong address. This is not in fact likely to be a significant problem, since there would seldom be any incentive for those concerned to take the opportunity to vote as they would not normally be members of the union holding the ballot. There is a more realistic possibility that ballot papers could be withheld from those entitled to vote by manipulating the membership register or could be misappropriated or copied and then filled in and returned in the normal way. Opportunities for malpractice could also arise while returned ballot forms were waiting to be counted and during the counting process itself.

5.18 Independent supervision could most easily provide a check on the counting process. It could also provide a means of ensuring that ballot

papers were not withheld from particular members either deliberately or because of faulty despatch arrangements. On the other hand, it would not of itself rule out the systematic misappropriation and misuse of ballot papers. Clumsy forgeries of the kind identified by the Director of the Industrial Society when inquiring into the 1984 TGWU election ballot would no doubt be spotted, but a reasonably determined forger might evade detection depending upon the degree of oversight exercised by the supervisor. Adequate supervision therefore should probably extend to oversight of the issuing of ballot papers as well as their receipt and counting.

5.19 An additional factor to be considered is the cost to unions of employing outside organisations rather than relying on their own resources. The precise cost would depend on the extent to which independent supervisors became involved in the balloting process. If, as with the EETPU, supervisors were to be involved with the whole process the total cost could be very significant indeed*. The Trades Union Congress is currently considering whether there is scope for establishing a balloting service for unions.

5.20 There is as yet no evidence to suggest that gross malpractice is at all commonplace. It is not, however, sufficient in the Government's view to rely any longer on a belief that ballot procedures supervised by those most concerned about the result are adequate, even where those procedures are fully postal.

Issues involved with supervision

5.21 However desirable independent supervision may be, there are practical issues which would need to be resolved, for example the responsibility of an independent supervisor to the membership and who should be qualified to act in this capacity.

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* One estimate put ERS costs at between £5,000 and £10,000 for a 50,000 strong union - Financial Times 3 February 1986.

5.22 At present, individual union members have a right of complaint to the Certification Officer or to the courts where they believe there has been a breach of Part I of the Trade Union Act 1984. The vigilance of some ten million union members provides the most important and appropriate safeguard and proposals are made elsewhere (see Chapter 6) for enhancing the individual member's rights in this area. Clearly, however, an independent supervisor would need to be appointed by and be primarily responsible to a single person or body. It would seem appropriate for an independent supervisor to be appointed by and to submit reports on ballots to the principal executive committee which is the body with power to commit the union to a particular course of action. The supervisor would, however, be reporting on elections to that same body and it would be essential for a written report to be available to the electorate itself to avoid any possibility of suppression. This might be achieved in practice by means of an article in the union journal so long as individual members were guaranteed the right to see and to receive a copy of the full report. In this way, any irregularity may be corrected by the principal executive committee itself acting on its own authority; but if the executive is not willing to act, then individual members would have access to evidence with which to make an application either to the Certification Officer or the courts.

5.23 The creation of a single statutory authority to undertake a supervisory role is not attractive. It would be inappropriate to impose such a role on the office of the Certification Officer; his semi-judicial responsibilities in relation to union elections would need to be preserved, and there would be a risk of jeopardising his reputation for independence. A new statutory body could be regarded as inappropriate in that it would be a State mechanism closely overlooking and enquiring into the detail of union affairs. Its true independence might come to be questioned. It would also need a large enough staff to cope with the election activity of some 400 unions, some of which could have more than one election each year. Amongst voluntary organisations, The Electoral Reform Society has an established reputation in this area but it might be thought inappropriate to enshrine this or any other similar body in legislation as a statutory authority.

5.24 An alternative approach would be to define criteria which an independent supervisor should meet. These would need to provide adequate safeguards over the independence and competence of would-be supervisors,

whilst at the same time avoiding the establishment of any cumbersome and controversial approval system. Supervisors might, for example, simply be required to be independent of the trade union whose election they were overseeing. It would be possible to strengthen this to require the body to be independent of trade unions and employers generally. This would prevent the possibly undesirable situation of one union inviting another to scrutinise its elections whilst leaving eligible organisations such as the Electoral Reform Society and the Industrial Society. It might, however, unless expressly stated to the contrary, eliminate organisations, like accountancy firms and management consultancies, whose principal customers are employers. Legislation would need also to require potential supervisors to meet some standard of competence in order to avoid organisations with no experience whatsoever offering their services to trade unions.

5.25 Applying tests of independence and competence could lead to court action where a trade union's members disagreed with the principal executive committee's choice of supervisor. One way of minimising this risk would be to side-step the problem of defining acceptable independent supervisors by allowing the appointment of members of certain recognised professions such as accountants and lawyers. Special reference would then be needed to bodies such as the Electoral Reform Society if they were not to be excluded.

Possible Changes: Extension of the Trade Union Act 1984 election provisions

5.26 At present, the Trade Union Act 1984 election provisions apply only to voting members of a union's principal executive committee. It is for consideration whether the provisions should be extended to cover other members.

5.27 The Government's decision to apply the provisions to voting members of principal executive committees reflected its stated policy of providing for unions to reflect more accurately the views of their members. The voting members of a union's executive represent the "voice of the union" and have the power to decide the union's course of action. The Government had regard to the arrangements in some unions whereby certain national officials are appointed as employees of the union - often from

outside the union - on the basis of their professional expertise and, although attending meetings of the principal executive committee, do not have a vote on it. It was argued that it was unreasonable that someone who was appointed to a job under normal terms and conditions of employment, and subject to the possibility of dismissal like all other employees, should later have that employment put at risk through having to stand for election. Under the provisions as enacted it is possible for any appointee who has been accorded a vote on the executive, and is therefore at risk of coming within scope of the Act, simply to be deprived of that vote.

5.28 Whilst the considerations which led to the current statutory position remain strong , there is no doubt that a loophole has been provided for important union officials who were elected rather than appointed. The rules of one major union (the NUM) have been changed to deprive its President and General Secretary of a vote on the union's executive, and so remove from the holders of those elective offices an obligation to stand for re-election at the intervals prescribed in the Trade Union Act 1984.

5.29 In many unions it is very difficult to argue that the non-voting General Secretary is a less powerful figure in the policy-making of the union than a voting member of the executive. The sensible course seems now to be to extend the requirements to include all General Secretaries, Presidents and executive members whether elected or appointed. In this way the members themselves would be given a direct say in the appointment of all members of the union's governing body. Only then could there be any certainty that officials who speak for the union (and may be seen in some sense by the public as being the union itself) fully represent those for whom they speak.

Conclusion

Postal balloting

5.30 For reasons explained in paragraphs 5.4 to 5.14 of this chapter the Government considers that there is justification for requiring unions to use fully postal voting for elections to the principal executive committee and for political fund ballots. The Government would, however, welcome comments on this section of the Green Paper.

Independent supervision of postal ballots

5.31 Paras 5.15 to 5.25 consider the possibility of imposing a duty on unions to adopt independent supervision as a means of monitoring those ballots which are required under statute to be fully postal, sets out some possible problems which might arise with this proposal and suggests remedies. The Government would welcome views on the arguments contained in this section.

Extension of Trade Union Act 1984 election provisions

5.32 The Government would also welcome views on the desirability of extending, as suggested, the provisions of the Trade Union Act 1984 to all General Secretaries, Presidents and members of union principal executive committees, on the lines discussed in paras 5.26 to 5.29.

CHAPTER 6: ENFORCEMENT OF STATUTORY DUTIES

Background

6.1 The rulebook contract of membership and the observance of natural justice impose various requirements concerning trade unions' obligations to individual members. These rights are enforceable by individual members directly affected ie those who suffer personal loss or damage as a result of such requirements being broken or ignored. Trade unions are also required to observe certain statutory duties. In particular Part I of the Trade Union Act 1984 imposed new duties on trade unions in connection with:

(a) the election of voting members of principal executive committees (Sections 1-3); and

(b) the compilation and maintenance of a register of members' names and addresses (Section 4).

A feature of these duties is that proceedings against a trade union on the ground that they have not been observed can be instituted by any member. The exact eligibility conditions for making a complaint for this purpose are set out in Section 5 of the Act. It is not necessary for a complainant to show a direct, personal loss or damage.

6.2 The Trade Union Act 1984 gave jurisdiction for the purposes of enforcement to the High Court (in Scotland the Court of Session). The court can make declarations specifying the provisions with which a trade union has failed to comply. If a declaration has been made the court must, unless it considers that to do so would be inappropriate, issue an enforcement order which will detail necessary remedial action to be taken within a specified period of time. Once such an enforcement order has been made, compliance can be required by any member of the trade union*, not just the person who brought the original action.

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* Specifically a member of the union at the time when enforcement proceedings are begun and at the time when the original order was made.

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6.3 Court orders can offer effective sanctions through contempt proceedings if such orders are ignored or not complied with. However, the process of application to the court can be expensive and daunting for the individual. Trade union members are therefore offered another route of complaint, to the Certification Officer. The Certification Officer issues decisions and is given power to make declarations.* However, the Certification Officer cannot issue enforcement orders - he is not operating as a court - and to obtain such an order it would be necessary for a trade union member to make a separate application to the court. Where a subsequent application is made the court is required to have due regard to any declaration, reasons or observations in the Certification Officer's decision but it might nevertheless be necessary to argue the case all over again. An individual with a justifiable complaint that a trade union had failed to observe a statutory duty could be faced with taking action through the court to enforce remedial action by the trade union, even if the Certification Officer issued a declaration in his or her favour. The fact is that at the moment members need to be exceptionally determined and sometimes courageous if they are to embark on the process by any existing route of claiming and enforcing the full rights which the law seeks to give them.

6.4 In addition this consultative document proposes creating a new duty owed by trade unions to their members not to authorise or endorse industrial action involving breach of employment contracts without obtaining majority support from those due to take part in such action in a properly held secret ballot (Chapter 2, paras 2.4-2.9). There are also other cases - for example where a union member wishes to complain about a union which has no political fund spending money on "political objects" - where the individual must take a complaint to the High Court in order to enforce compliance with the statutory requirement.

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* Investigation of complaints about trade union elections and registers is not the Certification Officer's only function. His functions include: determining the independence of trade unions; seeing that unions maintain proper accounting records; approving the ballot rules of trade unions wishing to conduct political fund ballots, and dealing with complaints about breaches of political fund rules; ensuring compliance with statutory procedures for trade union amalgamations and changes of name; operating the funding scheme for secret postal ballots in specified circumstances. Full details are available in the Annual Report of the Certification Officer.

6.5 The enforcement system for requirements of this kind needs to (a) enable interested parties to initiate complaint procedures easily and at reasonable cost, (b) ensure that such complaints are handled speedily and that remedies available where complaints are upheld are effective, and (c) give protection against unfair treatment of complainants by the trade union(s). There is a clear public interest in ensuring that these statutory duties are observed. The time has come to consider the need for a public authority to play a role in securing observance of the law, where the issues involved justify it, if individuals might otherwise be deterred from bringing cases to the courts because of their complexity, the financial costs involved or for any other reason. The Equal Opportunities Commission and the Commission on Racial Equality are empowered to support individual cases in connection with complaints about discrimination on grounds of sex or race. Under the Housing Act 1980 the Secretary of State is given wide discretion to provide assistance to individuals bringing actions dealing with major points of principle arising from the provisions of that Act.

Experience with the Present Complaints/Enforcement System on Elections and Registers

6.6 Since Part I of the Trade Union Act 1984 came into operation the Certification Officer has issued eighteen decisions on cases where complainants argued that statutory duties had been breached. Ten declarations upholding complaints have been made by the Certification Officer. To date nine of the Certification Officer's decisions and declarations have related to the requirements of Sections 1-3 of the Trade Union Act 1984 (on executive elections). In the one case concerning Section 4 the Certification Officer found that NALGO had failed to compile a register of the names and proper addresses of their members.

6.7 So far as is known there have been no cases at all so far where an individual has sought a declaration or enforcement order from the courts. This may mean that no member has felt strongly enough about an issue or that the route to the Certification Officer has always seemed preferable. It may be, however, that the prospect of litigation against a trade union is too formidable for individual members.

6.8 Experience so far has been positive in a number of respects. For example:

(a) Trade unions have shown themselves willing to co-operate with enquiries undertaken by the Certification Officer - no doubt an important consideration has been that complaints are (and must be) in all cases brought by their own members.

statutory duties are observed. The time has come to consider the need for a public authority to play a role in securing observance of the law, where the issues involved justify it, if individuals might otherwise be deterred from bringing cases to the courts because of their complexity, the financial costs involved or for any other reason. The Equal Opportunities Commission and the Commission on Racial Equality are empowered to support individual cases in connection with complaints about discrimination on grounds of sex or race. Under the Housing Act 1980 the Secretary of State is given wide discretion to provide assistance to individuals bringing actions dealing with major points of principle arising from the provisions of that Act.

Experience with the Present Complaints/Enforcement System on Elections and Registers

6.6 Since Part I of the Trade Union Act 1984 came into operation the Certification Officer has issued eighteen decisions on cases where complainants argued that statutory duties had been breached. Ten declarations upholding complaints have been made by the Certification Officer. To date nine of the Certification Officer's decisions and declarations have related to the requirements of Sections 1-3 of the Trade Union Act 1984 (on executive elections). In the one case concerning Section 4 the Certification Officer found that NALGO had failed to compile a register of the names and proper addresses of their members.

6.7 So far as is known there have been no cases at all so far where an individual has sought a declaration or enforcement order from the courts. This may mean that no member has felt strongly enough about an issue or that the route to the Certification Officer has always seemed preferable. It may be, however, that the prospect of litigation against a trade union is too formidable for individual members.

6.8 Experience so far has been positive in a number of respects. For example:

(a) Trade unions have shown themselves willing to co-operate with enquiries undertaken by the Certification Officer - no doubt an important consideration has been that complaints are (and must be) in all cases brought by their own members;

(b) The Certification Officer has not been overwhelmed by frivolous or vexatious complaints, and has been able to issue decisions and declarations within the timescale (within six months of an application so far as reasonably practicable) that the legislation requires;

(c) In several instances trade unions have re-run elections - or undertaken to hold fresh elections - when the Certification Officer's declaration has concluded that the terms of the Act have not been observed (eg NUR executive elections; TGWU executive election in South West Region; UCW executive elections for lay members). In other cases, unions have given assurances that rules or procedures will be changed to ensure future compliance (ACTT executive elections; TGWU executive election in Scottish and Inner London Regions: various aspects of the conduct of NALGO Council elections and the establishment of a register of NALGO members' names and addresses) and it is too soon to say that any have failed to comply with those assurances.

6.9 However, it has also become apparent that the present arrangements are deficient or inadequate to some extent. The Certification Officer's powers are not comprehensive and the courts are not being used. In one decision (concerning elections to the TASS principal executive committee) the Certification Officer commented on the reluctance of senior representatives of the union to give positive assurances that remedial action would be taken to correct breaches of statutory duty, and pointed out that no evidence had been produced of any steps taken or contemplated since Part I of the Trade Union Act 1984 came into force to move towards meeting the law's requirements. But he could only conclude that "until corrective steps are taken ... the union is vulnerable to legal action by any member wishing to seek ... an enforcement order from the court".*

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* Certification Officer's decision D/1/87

6.10 Most seriously, several trade unions have announced publicly that they will not change their rules and practice to comply with Part I of the Trade Union Act 1984. NALGO has indicated that it will defend in the High Court the present federal system by which its executive is chosen even though the Certification Officer has observed that it may not meet all the requirements of the legislation. COHSE has held elections to its executive which appear to be in breach of the statutory requirements. They may have hoped that no member would come forward to make a complaint against them. However, it was always unlikely that every member would be satisfied with electoral procedures that fall short of the standards required by the law. It is more likely that individuals are not attracted by the complaint and enforcement process open to them at the moment. Clearly a trade union may be at a considerable advantage (in terms of ability to pay costs, obtain expert legal advice etc) against an unsupported individual in defending legal actions in the High Court.

Possible Changes: Development of the Present Complaints/Enforcement System

6.11 The legal protections given to individual members by existing legislation cannot be regarded as satisfactory if those protections are not readily accessible. There are some good reasons for continuing to restrict the right to initiate complaints to members of a trade union which is the subject of the complaint. The duties concerned are expressed as statutory duties but they are above all owed by unions to their own members. Faced with complaints unassociated at any stage with one or more of their members, trade unions might well try to refuse co-operation with enquiries on the ground that the complainant had no direct interest in the union's affairs.

6.12 The dual route of complaint (ie to the Certification Officer and/or the High Court) established by Part I of the Trade Union Act 1984 has a major advantage compared with a single route of complaint direct to the court. Individuals have used the informal and inexpensive option of seeking a declaration from the Certification Officer. This element of the system needs to be preserved as a straightforward means for individual trade unionists to uphold their rights as members to see that their unions comply with statutory duties. Indeed, the system might benefit from better publicity and information about the Certification Officer's ability to enquire into complaints and the matters which applicants should bear in

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mind in bringing complaints to him. Complaints to the Certification Officer might also be encouraged if this gave a complainant a meaningful advantage in terms of any enforcement of remedial action through the court which might eventually be necessary.

6.13 One option might be to replace the Certification Officer's declarations by orders which would be enforceable in, and as if they were orders of, the High Court. However, this would require turning the Certification Officer's procedures and status into those of a court - including giving him powers to compel the attendance of witnesses, production of documents etc. Such an option might effectively reduce the advantages to the individual of complaining to the Certification Officer, rather than directly to the courts. There would also be an evident risk of a conflict of jurisdictions on related, similar or even the same issues.

6.14 A more attractive approach would be to provide that:

(a) Where the Certification Officer makes a declaration specifying the provision or provisions of Part I of the Trade Union Act 1984 with which a trade union has failed to comply he would also be required to specify any steps which he considered it appropriate for the union to take (if not already taken) in order to remedy, or prevent repetition of, the declared failure. The Certification Officer would still be required to specify any such steps taken or agreed to be taken by the union. But the proposal is that he would go further if not satisfied that any, or any adequate, steps had been taken or been agreed to be taken by the union. In addition, the decision would be required to specify the timescale within which he considered it reasonable that any remedial action should be taken; and

(b) Where the original complainant, or any other individual who would have been eligible to make the original complaint, believes that such remedial action has not been taken by the union within the specified time-scale, he would be able to seek advice and support from a new authority (the Commissioner for trade union affairs). The Commissioner would be under a statutory duty (if satisfied that the union has not taken the appropriate remedial

action) to support an application to the High Court for a declaration and enforcement order. The Commissioner would underwrite the plaintiff's legal costs involved in the court action. It might also be possible as alternatives that the Commissioner could act in his own name on the complainant's behalf, or jointly with the complainant. In a matter of substantial public interest the Commissioner might have the power to support or take High Court action on behalf of a complainant without prior proceedings before the Certification Officer.

The court would retain discretion as to whether or not to make a declaration and any enforcement order, although it would continue to be under a duty to have regard to any declaration, reasons, observations (and, in addition, any specified remedial steps) contained in the Certification Officer's decision.

6.15 This system would apply to breaches of statutory duty arising from Part I of the Trade Union Act 1984, and could be extended to cover those duties as amended or extended by current proposals. An individual complainant and his union would then know that a public authority existed with powers to advise and assist in suitable cases in this area. A complainant would know in particular that once a declaration had been obtained from the Certification Officer no further significant costs would arise for him (or any other member of the union who would have been eligible to make the original complaint) in obtaining a declaration and an enforcement order from the High Court should the terms of the decision be ignored.

6.16 The new Commissioner would be separate from the Certification Officer, though he would need to keep in touch with relevant decisions and liaise closely on certain occasions. The Certification Officer's role need not be prejudiced by his establishment. In addition to the duty attaching to the Commissioner in respect of enforcement of court actions under the provisions of Part I of the Trade Union Act 1984, he might also be given discretion to support in a similar way complaints from trade union members that other statutory requirements were being breached. For example, the Commissioner might be empowered to advise and support individuals who sought to take legal action in the High Court to help enforce:

(a) the proposed duty not to authorise or endorse industrial action without majority support from those due to take part in such action in a properly held secret ballot; and

(b) the requirement applying to trade unions not to spend money on political objects (as defined in section 3 of the Trade Union Act 1913 as amended by section 17 of the Trade Union Act 1984) without a properly established political fund.

As in the procedure outlined in para 6.14 (b) above, the Commissioner might support court action, or act in his own name either on the complainant's behalf or jointly with the complainant.

6.17 The Government would welcome views on the appropriate functions which such a Commissioner could exercise in enforcing relevant statutory duties by helping trade union members to pursue action through the courts to ensure that statutory requirements are not breached. While it seems apparent that the Commissioner would have a useful role in support of enforcement of statutory duties arising from Part I of the Trade Union Act 1984, and the discretion to support enforcement of the requirements mentioned in para 6.16 above would be valuable, his role could be developed to encompass other statutory duties and requirements. It might, however, be a sensible next step to confine the Commissioner's functions initially to supporting cases relating to breach of duties which, like those arising from Part I of the Trade Union Act 1984, relate to duties owed by unions to their membership in general.

6.18 This consultation document (Chapter 2, paras 2.24-2.26) emphasises the importance of protecting the right of access of trade union members to the courts and the Certification Officer without the fear of disciplinary action being taken against them. Such protection ought to apply equally to members seeking to ensure observance, or remedy breaches, of statutory duties by taking complaints to the new Commissioner.

6.19 The establishment of new arrangements could provide the opportunity for the Department of Employment to make a special additional effort to publicise, and draw to the attention of trade union members, the existing

statutory duties applying to trade unions. Such publicity might also offer guidance and advice on how individuals can seek to remedy breaches they think may have occurred. This would parallel efforts already made by Government Departments to publicise routes of complaint, for example, on aspects of consumer law or, more closely, what is done to tell employees about their statutory rights against employers in cases where they feel they have been dismissed or disciplined unfairly.

Conclusion

6.20 Paras 6.14-6.18 set out proposals for overcoming problems which individual trade unionists may face if action in the High Court in pursuance of their right to see that their unions observe statutory duties is inaccessible on grounds of cost or for other reasons. They build upon the dual route of complaint established by the Trade Union Act 1984.

6.21 This does not mean that trade unions should inevitably as a consequence of the proposals be faced with more High Court actions. There should be no need for such actions at all provided that trade unions do not breach their statutory duties or, if they do, that remedial action is taken as soon as possible or the terms and remedial steps set out in the Certification Officer's decisions are observed.

6.22 However, the new enforcement system and the proposed publicity campaign (para 6.19) might (at least initially) increase the volume of complaints made to the Certification Officer or the High Court. The Certification Officer would also have to specify more exactly the steps needed to remedy any breach of statutory duty. But these would be welcome developments if their end result was more widespread attention to, and observance of, the terms of relevant statutory duties by trade unions themselves.

6.23 Comments are requested on:

(a) the need to re-inforce the present system by which members may enforce statutory duties applying to trade unions under the terms of Part I of the Trade Union Act 1984;

(b) the need to extend the same system to help the individual member enforce these statutory duties on his union in the light of legislative changes that might follow from proposals in Chapter 5 of this consultative document;

(c) the desirability of the proposal made in para 6.14-6.18 to develop the present enforcement system, in particular:

- the proposal for a new Commissioner;

- the statutory requirements to which the Commissioner's advice and support role should extend;

- the relative merits of the Commissioner underwriting the plaintiff's legal costs, or acting in his own name on behalf of a complainant, or acting jointly with a complainant;

- whether the Commissioner should be able to support or take High Court action directly (ie without any prior proceedings before the Certification Officer) on behalf of a complainant in cases where the Certification Officer has the power to make declarations.

ANNEX

ABBREVIATED UNION TITLES

ASTMS	Association of Scientific Technical and Managerial Staffs
AEU	Amalgamated Engineering Union
ASLEF	Associated Society of Locomotive Engineers and Firemen
COHSE	Confederation of Health Service Employees
CPSA	Civil and Public Services Association
EETPU	Electrical Electronic Telecommunication and Plumbing Union
GMBATU	General Municipal Boilermakers and Allied Trades Union
NUJ	National Union of Journalists
NUS	National Union of Seamen
NAS/UWT	National Association of Schoolmasters and the Union of Woman Teachers
NUR	National Union of Railwaymen
NUM	National Union of Mineworkers
NGA	National Graphical Association
SOGAT	Society of Graphical and Allied Trades
TASS (AUEW)	Technical Administrative and Supervisory Section (Amalgamated Union of Engineering Workers)
TGWU	Transport and General Workers Union
UCW	Union of Communication Workers
UDM	Union of Democratic Mineworkers

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CC BG

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NBPM at this stage

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
HM Treasury
Great George Street
LONDON SW1

17 February 1987

Dear Nigel,

INDUSTRIAL RELATIONS LAW

At our meeting on 21 January, you raised the question of employers' need to show detriment, and in particular financial detriment, in order to be able to bring actions in tort against trade unions. At the meeting of E(A) on 29 January I promised colleagues that I would consider this point, and whether any change in the law was required.

We are, of course, dealing here with the common law rather than industrial relations legislation. The common law appears to require a plaintiff suing on one of the "economic" torts (eg inducing a breach of contract) to have sustained pecuniary loss, that is damage which is capable of being represented in terms of a financial loss, such as loss of profit or revenue or the extra labour costs resulting from the need to employ more expensive staff in substitution for strikers. I attach a note prepared by my Department's Solicitors which describes our understanding of the position. You will note the conclusion (para 7) that, although some financial loss must be proved where it would not otherwise be inferred, it is not necessarily the case that a plaintiff who operates a non-commercial organisation could not show some financial damage flowing from induced breach of contracts to which he was a party.

Given this, and bearing in mind that Government Departments (Treasury, DHSS and DE) have not been inhibited from initiating common law proceedings against trade unions to prevent or halt unlawful industrial action recently, I do not think that changes to the law are required. However, if you or others have particular cases in mind where it can be demonstrated that present arrangements constitute a significant obstacle limiting the possibility of useful

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action, and can suggest the changes which should be made to overcome the problem, I would be interested to have the details, and prepared to reconsider my conclusion.

I am copying this to other E(A) colleagues and Sir Robert Armstrong.

KENNETH CLARKE

ANNEX G

N O T E

ECONOMIC TORTS : DAMAGE

Damage is the gist of the economic torts such as inducing breach of contract. Thus, knowingly to induce a third party to break his contract to the damage of the other contracting party without justification is a tort.

2 The authorities give no precise details as to the measure of damages in respect of the economic torts. The courts have consistently followed Lord Esher M.R.'s judgement in Exchange Telegraph Co v Gregory (1896)1 Q.B.147 at p.153, a case relating to procuring breach of contract. He said -

> "To say that the damage must be such as can be measured - that you must shew how much the wrongful act complained of would injure the person against whom it is done - is no answer..... It is not necessary to give proof of specific damage. The damages are damages at large..... Though I think there must be some damage to support an action for infringement of the plaintiff's common law right, it is enough to shew that the act complained of was done in such a way as to be likely to damage the plaintiff, though proof of specific damage be not given."

3 Damages are said to be "at large" (in the words of one judge) in the sense of damages "such as the jury may give when the judge cannot point out any measure by which they are to be assessed, except the opinion and judgement of a reasonable man." As McGregor on Damages (a principal practice work) states: damages are particularly difficult to assess where loss is caused by reason of other people refusing to enter into or ceasing from relationships, whether of a business or social nature, with the plaintiff.

4 In Goldsoll v Goldman (1914) 2 Ch.603 at p.615 (an inducing breach of contract case), Nevile J. said -

> "..... in my opinion it is one of those cases in which damages are essential to the right of action by the covenantee against one who has induced his covenantor to break the contract with him.

> But in this case there is evidence of damage which I think sufficient, and in addition to that I think authorities which bind me - notably the case of Exchange Telegraph Co v Gregory - shew that in such a case the damage may be inferred, that is to say, that if the breach which has been procured by the defendant has been such as must in the ordinary course of business inflict damage upon the plaintiff, then the plaintiff may succeed without proof of any particular damage which has been occasioned him."

5 The primary protection afforded by the economic torts is compensation for business losses. It is not unnatural, therefore, for the kind of damage which is likely to be inferred by the courts to be loss of profits. Beyond lost profits, the plaintiff may seek to recover expenses incurred as a consequence of the tortious conduct: see British Motor Trade Association v Salvadori (1949) CH.556; cf. Messenger Newspaper Group Ltd v N.G.A. (1984) I.R.L.R.287.

6 It would seem that, although it is said that damages are "at large", the only loss which the courts are prepared to infer is pecuniary or financial loss and not non-pecuniary loss. (Heads of non-pecuniary loss in the law of tort would comprise: (1) pain and suffering: (2) physical inconvenience and discomfort; (3) injury to reputation; (4) mental distress; and (5) loss of society.) Pratt v B.M.A. (1919) I.K.B. 244 is authority for stating that pecuniary loss is necessary to the cause of action though McCardie J. added (at p.281) that -

> "The court or jury, once actual financial loss be proved, may award a sum appropriate to the whole circumstances of the tortious wrong inficted."

7 It would appear from the authorities that some financial loss must be proved where it would not otherwise be inferred in the case of a plaintiff with a commercial undertaking. Nevertheless, it is not necessarily the case that a plaintiff who operates a non-commercial organisation could not show some financial damage flowing from induced breach of contracts to which it was a party.

MK/O

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cc BG

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WRGM.

The Rt Hon Richard Luce MP
Minister of State
Privy Council Office
Great George Street
LONDON SW1P 3AL

17 February 1987

Dear Richard,

You wrote on 4 February offering comments on the proposal for a new Commissioner for trade union affairs, as put forward in my draft Green Paper.

You will recall that the discussion at E(A) on 29 January concluded that special arrangements could be justified where individual members need support to take their trade unions to the High Court. The available evidence of need is displayed in the Green Paper, and I am convinced it is sufficient.

I acknowledge that the proposal may attract criticism from those who seek to draw comparisons with legal aid. However I believe this comparison can be avoided and answered. I do not see the Commissioner as primarily a source of funds, although this is one option and one possible reading of the proposal as drafted. As you will see from the attached revised version of the Green Paper, I have amended the text of chapter six to bring out the alternatives more clearly.

I have also added a footnote to para 6.3 which makes it clear that enquiries arising from complaints about breaches of statutory duties imposed by Part I of the Trade Union Act 1984 are only a small part of the Certification Officer's work. I am convinced that we could not enhance his functions to include the powers and duties of the proposed Commissioner without taking away the responsibility of ACAS for his running costs and ending his ability to carry out other tasks which he has carried out for decades and which depend on trade union co-operation. The alternatives need to be presented in the Green Paper in such a way as to avoid provoking a withdrawal of trade union co-operation with the Certification Officer.

I appreciate your concern that description of the Commissioner as an ombudsman might have unfortunate repercussions. I have only used the term "ombudsman" in discussions as a convenient shorthand and you will see that the word "ombudsman" does not

appear in the Green Paper text. As far as the PCA Bill is concerned, you will be able to point out, if the issue is raised, that the Commissioner for trade union affairs is not an ombudsman, either in terms of title or status. As to the other difficulties you mention, I think we must rest on the fact that the case for special help in the enforcement of trade unions' statutory duties by members is made out to our statisfaction, and leave it to others to seek to make a case for similar special help elsewhere if they can do so.

I am grateful for your comments and those from other colleagues, which have been taken on board in the attached version of the Green Paper. This has now gone to the printers and will be published early in March.

I am copying this letter to the Lord Chancellor, Solicitor General, members of E(A) and Sir Robert Armstrong.

KENNETH CLARKE

INDUSTRIAL POLICY

LEGISLATION

PT 12

Cabinet Office

MANAGEMENT AND PERSONNEL OFFICE

From the Minister of State
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The Rt. Hon. Richard Luce MP

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C87/415

NISPI.

Rt Hon Kenneth Clarke MP
Paymaster General
Department of Employment
Caxton House
Tothill Street
LONDON SW1

4 February 1987

Dear Kenneth,

It was agreed at the meeting of E(A) on 29 January that you would consider further the role of the proposed Commissioner for Trade Union Affairs. I have two points to make arising out of my responsibility for policy on Non-Departmental Public Bodies (NDPBs) and my interest in the possible wider implications (for the Parliamentary Commissioner for Administration (PCA) and others) of what could be seen as a new type of ombudsman.

On the NDPB side, the appointment of such a Commissioner would mean the addition of a new quango. I think it is important therefore, especially if prominence is to be given to it in the Green Paper, that his creation should be demonstrably justified as the most cost-effective means of discharging necessary functions. Anything less would be open to criticism as inconsistent with our publicly stated policy. At present the draft Green Paper does not adequately confront the question of the need for a Commissioner in view of the lack of tangible evidence of people being deterred from bringing cases or of the Certification Officer being defied, and especially it does not make clear why the current legal aid provisions are inadequate for the need. Nor does it sufficiently explore alternative ways of dealing with the problem if action is required, for example by enhancing the functions of the existing Certification Officer without effectively giving him the status of a court.

My other concern is for the implications, for ombudsmen generally, of drawing the Commissioner's functions in such a way that he might appear as a new type of ombudsman, narrowly focussed on a single relationship and directly involved in assisting or even instituting court actions. This could add to the pressures for

ombudsmen's reports to be enforceable in the courts: a pressure so far resisted as tending to do harm to the special position of ombudsmen. It could also make it more difficult to resist the calls for other narrowly tasked types of ombudsmen now being heard, for example the Labour Party's idea for an education ombudsman. Most immediately, it could also cause problems during the passage of the PCA Bill, which I shall shortly be taking through committee and which is intended to extend the existing powers of the PCA to investigate Government departments, by allowing him to investigate listed NDPBs. It would be most unfortunate if the passage of this non-controversial Bill were to be complicated by calls for an extension of the PCA's role so as to enable him to seek enforcement of his decisions through the courts or to assist complainants in seeking a legal remedy.

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

Richard

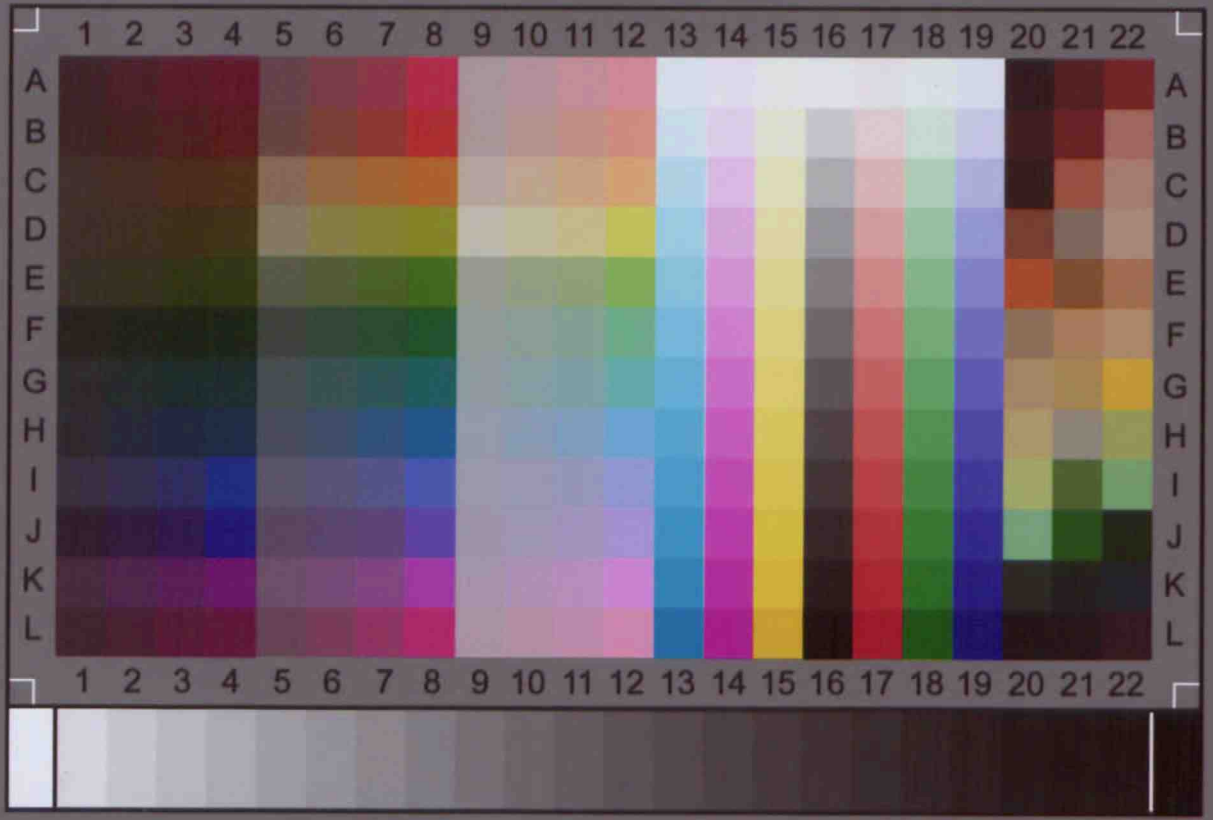
RICHARD LUCE

PART 12 ends:-

DRN to PM 28-1-87

PART 13 begins:-

MS/MPO to Pay Sec 4.2-87



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