PREM 19/2735

PART 14

MT

CONFIDENTIAL FILING

INDUSTRIAL RELATIONS LEGISLATION

THE EMPLOYMENT BILL

STRIKES IN ESSENTIAL SERVICES

+ Proposals for further reform of industrial relations law

In addition: D. Emp report "Industrial Action in Essential Services in EC"

INDUSTRIAL POLICY

PART 1: MAY 1979

PART 14: OCT 1987

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
2.10.87		25.10.88					
		31-10-88					
5.10.87							
		7.11.88					
12.10.87		10.2.89					
15.12.87							
15.1.88		8.3.89					
23.2.88		16.3.89.					
1.3.88							
3.3.88							
2.3.88							
18.1.88		PART 14 CLOSED					
21.3.88							
23.3.88							
29/3/88							
20.1.88							
11.1.88							
11.1.88							
22.4.88							
6.5.88							
18.5.88							
25.5.88							
8.6.88							
11.6.88							
20.7.88							
21.7.88							

PREM 19/2735

PART 14 ends:-

D Emp to Pg 20/3/89

PART 15 begins:-

SS/Emp to Pm 23/5/89

CC P.U.

Department of Employment
Caxton House, Tothill Street, London SW1H 9NF
5803
Telephone 01-273 . . . . . .
Telex 915564 Fax 01-273 5821

Secretary of State

RA

Prime Minister 2

mo

Paul Gray Esq
Private Secretary to the
Prime Minister
10 Downing Street
LONDON
SW1

20 March 1989

Dear Paul,

GREEN PAPER : "REMOVING BARRIERS TO EMPLOYMENT"

...I attach a copy of our Green Paper, published today, together with the Press Notice which summarises and comments upon it.

I am copying this to the Private Secretaries to all members of the Cabinet, the Attorney General, and to Sir Robin Butler.

Yours sincerely,

Clive Norris

CLIVE NORRIS
Principal Private Secretary

EMPLOYMENT
DEPARTMENT

Department of Employment
Caxton House
Tothill Street
London SW1H 9NF
Press Office (24 hrs) 01-273 6950
Public enquiries 01-273 6969
Exchange 01-273 3000

PRESS NOTICE

69/89

20 MARCH 1989

GOVERNMENT ACTS AGAINST CLOSED SHOP

Announcing the publication today of a Green Paper setting out further proposals for the reform of industrial relations and trade union law(1), the Secretary of State for Employment, Norman Fowler, said:-

"The high priority which the Government have given to removing barriers to jobs has made an important contribution to the remarkable growth in employment in this country. This process should be continued. The Green Paper I have published today sets out proposals for further reforms of industrial relations and trade union law.

In particular, the review of the closed shop which I set in hand last December has shown that while the measures we have already taken have broken the grip of the post-entry closed

(1) "Removing Barriers to Employment: Proposals for the further reform of industrial relations and trade union law", Cm 655 (HMSO, £3.20). A summary of the Green Paper forms part of this Press Notice.

shop, initial recruitment to some 1.3 million jobs is still restricted by the pre-entry closed shop(2). This constitutes an unacceptable barrier to employment which limits the number of people who can get jobs; reduces the supply of skilled labour; and it artificially drives up labour costs. This, in turn, results in higher prices, lower output and inefficient use of the nation's resources. It is estimated that there could be more than 100,000 extra jobs available if the pre-entry closed shop had never existed. The Government consider it is time to act against the pre-entry closed shop and the Green Paper sets out a remedy for those denied a job because they do not belong to a union.

It is also time to review the limits for lawful organisation of industrial action. The Green Paper proposes the removal of immunity for organising secondary action by workers of an employer not party to the trade dispute. The threat of such action can destroy jobs by deterring new enterprises from setting up in this country.

The Green Paper also proposes that those working under contracts "for services" should have the same statutory right to restrain their union from calling on them to take industrial action without a proper secret ballot as those who work under contracts "of employment".

In addition, it is right to consider extending certain functions and powers of the Commissioner for the Rights of Trade Union Members. The Green Paper proposes that it should be possible for the Commissioner's assistance to be available in connection with proceedings relating to certain breaches of union rules which amount to a matter of 'substantial public interest'. It also proposes enabling the Commissioner

---

(2) Details of the relevant findings are provided in the Annex to this Press Notice.

to appear alongside an applicant in the title of assisted proceedings.

These proposals continue the step-by-step reform of industrial relations and trade union law which has achieved so much since 1979. By removing further barriers to employment, these reforms will assist the continued growth of the economy and the creation of even more new jobs in the coming decade".

NOTE TO EDITORS

1. The consultation period closes on 20 June 1989.

2. A summary of the Green Paper is attached.

SUMMARY OF GREEN PAPER

"REMOVING BARRIERS TO EMPLOYMENT"

PROPOSALS FOR THE FURTHER REFORM OF INDUSTRIAL RELATIONS AND TRADE UNION LAW

The Green Paper is set out in four chapters. Comments on the issues covered, and the proposals made, should be sent to arrive no later than 20 June to:-

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

CHAPTER 1 - "INTRODUCTION"

1. This chapter describes the reforms of industrial relations and trade union law undertaken by the Government since 1979. Figure 1 sets out various freedoms, rights and protections now available to individuals and employers as a result of these reforms.

2. Removing barriers to economic efficiency has made an important contribution to the improvement in the employment scene. The chapter sets out key statistics to demonstrate the recent growth in jobs, more flexible patterns of employment, and the fall in unemployment. It is, however, essential to continue the search for greater flexibility, to examine obstacles to the growth of jobs, and ensure that the legal framework for industrial relations is adapted to the needs of the 1990s.

3. The chapter outlines the main proposals in the Green Paper.

CHAPTER 2 - "THE PRE-ENTRY CLOSED SHOP"

This chapter invites comments on the proposal that legislation should provide a right of complaint to an industrial tribunal for any individual whom an employer refuses to engage on the ground of non-membership of a trade union or of any particular trade union, or on the ground of refusal to agree that he will become a member after his employment has started.

4. This chapter recalls that the White Paper "Employment for the 1990s", published in December 1988, announced that the Government intended to examine the operation of the pre-entry closed shop and review the steps employers had taken to use the freedom the law has given them to get rid of closed shop arrangements. The review involved:

- consideration of all the available research and survey evidence;

- discussions with some 40 employers' organisations and individual employers;

- a specially commissioned survey of over 1,600 employees, undertaken between 22 February and 6 March 1989. (A note summarising the findings of this survey is attached as an Annex.)

5. The closed shop is defined as any employment situation in which particular jobs can only be filled, in practice, if the worker is willing to become and remain a member of a specified trade union, or one of a number of specified trade unions. Where a post-entry closed shop exists, an employer may take on a non-unionist, so long as such a recruit joins the union shortly after

starting the job. In the pre-entry closed shop, an individual has to be accepted as a union member before starting work.

6. The main findings of the review of the closed shop are that:

- the closed shop, and particularly the pre-entry closed shop, damages profitability and destroys jobs by artificially pushing up labour costs. It also restricts the supply of skilled workers. It is estimated that there could be over 100,000 more jobs available if the pre-entry closed shop had never existed;

- the pre-entry closed shop is an infringement of the liberty of the individual. Where it is in operation, workers seeking employment cannot choose for themselves whether to join a trade union; in order to get a job they are obliged to do so;

- employers have made limited use of the freedom the law now gives them to get rid of closed shops. Although very few employers now operate formal post-entry closed shops, about 1.3 million workers are still covered by post-entry arrangements. Pre-entry closed shops (whether formal or de facto) are still found in all the major sections of the economy and are particularly prevalent in certain industries and areas. They also cover some 1.3 million workers.

7. The chapter notes that previous Employment Acts have already eliminated many of the worst abuses of the closed shop. Dismissal of an employee, or discriminatory action short of dismissal, for non-membership of a union is now unfair. Industrial action to enforce any closed shop is now unlawful. But it is still lawful

for an employer to discriminate against workers who are not members of a trade union by refusing to engage them.

8. In the Government's view, the findings of the review of the closed shop constitute a substantial case for further legislation, and it is accordingly proposed that the remaining loophole should be closed by giving individuals a statutory right not to be refused engagement on the ground of non-membership of a trade union. Any individual who believed that he had been discriminated against in this way would be able to complain to an industrial tribunal. If the tribunal found that engagement had been refused on the ground of non-membership, it would make a declaration to that effect. If the employer still refused to engage the individual, the tribunal would be able to order the employer to pay compensation to him. The amount of compensation could be calculated on the same basis as applies to refusal of engagement because of discrimination on grounds of sex or race. The maximum in such cases is currently £8,500.

9. An alternative approach mentioned in the chapter would be to give individuals a right of complaint to the High Court. An industrial tribunal would, however, be a more appropriate forum because procedures at a tribunal are less formal, less expensive, easier of access and quicker than those of the High Court. In addition, industrial tribunals already hear complaints from individuals who believe that they have not been recruited by an employer because of discrimination on grounds of sex or race, as well as complaints from individuals who believe that they have been dismissed from employment because they are not union members.

10. The chapter notes that simply to make the closed shop unlawful would provide no effective remedy for those affected by it. The law provides a direct remedy to those who are discriminated against on grounds of sex or race. In the Government's view it must equally do so for those discriminated against on the ground of non-membership of a trade union.

11. The remainder of the chapter considers specific issues which arise from the proposal and on which the Government would welcome views. These are:

- that the proposed new right should be given to people who are not members of a particular union, or one of a number of particular unions (or of a particular branch or section of a union, or one of a number of such branches or sections), as well as to people who are not members of any trade union at all;

- that legislation should protect individuals from being refused engagement either because they are not members of a union at the time of recruitment or because they refuse to agree at the time of recruitment to join a union after their employment has started;

- that no exception should be made in the case of trade unions which are also professional organisations, such as the British Medical Association and the Royal College of Nursing.

CHAPTER 3 - "INDUSTRIAL ACTION"

This chapter invites comments on the following proposals:-

(a) To remove immunity from inducement of workers of an employer not party to a trade dispute to breach or interfere with the performance of contracts, except insofar as such inducement occurs in the course of lawful picketing;

(b) To extend the requirements for balloting before a union authorises or endorses any industrial action so that they apply to such action by union members working under contracts "for services"; and

(c) To extend the definition of "secondary action" so that it includes inducement of action by those who work under contracts "for services".

12. This chapter describes the improvement in industrial relations, and the reduction in the number of strikes and days lost through industrial action, since the 1970s. It notes that these improvements have been achieved at the same time as the Government's reform of industrial relations and trade union law. There are, however, no grounds for complacency, and the process of modernising the law is a continuing one, with the limits for the lawful organisation of industrial action subject to periodic review.

Immunity for organising secondary action

13. The law which enables inducement of breach or interference with the performance of contracts to benefit from "immunity" is

described, in particular the present statutory provisions concerning immunity for organising "secondary" action. These provisions of the Employment Act 1980 were, of course, framed at a time when secondary action had been much more widespread than in recent years.

14. Various considerations point to the need to change the present law as it affects immunity for organising secondary action. In particular:-

- there is no good reason why, in general, employers not party to a dispute should be at risk of having such action organised against them;

- the threat of secondary action with the aim of forcing a new enterprise to accept certain terms and conditions may deter employers from starting up in this country; this sort of threat was made when the American Ford Motor Company was planning a new factory at Dundee; and

- the present law is complicated; in the absence of a court judgment it might be difficult for those involved to determine whether there would be immunity for organising secondary action in certain circumstances.

15. The Government therefore propose to remove immunity from the organisation of secondary action by workers of an employer not party to the trade dispute.

16. Lawful picketing may involve attempts to persuade workers of other employers to breach or interfere with the performance of contracts. However, the Government propose no change to the law on picketing.

Balloting on industrial action by those working under contracts "for services"

17. The chapter recognises that the law on balloting before a union authorises or endorses industrial action has done much to help ensure that union members are given the opportunity to express their willingness or otherwise to take such action. There have been notable examples of members voting against industrial action which their unions might otherwise have sought to organise. It is, of course, essential that ballots are properly conducted, and satisfy all the statutory requirements.

18. The formulation of the law currently applies the balloting requirement only to union members working under contracts "of employment". There are, however, union members (for example many freelance workers in the performing arts, and self-employed workers in construction) who are engaged on contracts "for services" rather than "of employment". It is possible for a "trade dispute" (as defined in the Trade Union and Labour Relations Act 1974) to involve such workers, and for its organisation to have immunity.

19. The Government therefore propose to ensure that union members working under contracts "for services" have the same right to a proper ballot before their union induces them to take industrial action as have those working under contracts "of employment". Employers whose workers are engaged under contracts "for services" should also have protection against a union organising unballoted action by them.

Extending definition of "secondary action" so that it includes action by those working under contracts "for services"

20. The present definition of "secondary" action, inter alia, covers inducement or threat to break or interfere with the performance of a contract "of employment". There is, however, no

reason why secondary action should attract immunity simply because those who take part work under contracts "for services" rather than contracts "of employment".

21. Another proposal in this chapter would remove the present immunity for organising secondary action, but would not affect that immunity in respect of acts arising during the course of lawful picketing. Where picketing is otherwise lawful, but gives rise to breach or interference with the performance of contracts "for services" immunity would therefore continue to be available.

CHAPTER 4 -
"THE COMMISSIONER FOR THE RIGHTS OF TRADE UNION MEMBERS"

This chapter invites comments on the following proposals:-

(a) To enable the Commissioner, at the discretion of an assisted person, to appear alongside the assisted person in the title of proceedings; and

(b) To extend the proceedings in scope of the Commissioner's assistance to enable the Commissioner to assist certain proceedings arising from complaints that union rulebook provisions had not been, or will not be, observed where the Commissioner views the complaint as a matter of substantial public interest.

22. It is not much use union members having rights to protection against abuses of power by their unions if there are unnecessary obstacles to their using the law to enforce these rights. It is also important to maintain the principle, applied in the Government's reform of industrial relations and trade union law since 1979, that the use of legal proceedings to prevent or restrain unlawful acts should be left to those directly affected by those acts. It has never been the Government's intention to encourage unnecessary proceedings, but to help ensure that proceedings can be taken if necessary.

Commissioner to appear in the title of assisted proceedings

23. The Commissioner's assistance is available only where a union member eligible to bring proceedings in his own right applies for that assistance and is willing to see the proceedings brought or continued. But at present the Commissioner cannot appear in the

title of those proceedings, and could not do so unless legislation allows this - even though the Commissioner is not (and will not be) a party to such proceedings.

24. If it was possible for the Commissioner to appear alongside the assisted person in the title of assisted proceedings, however, this could give an assisted person more assurance that the Commissioner stood behind him in the proceedings. It could also increase awareness of the Commissioner's assistance, and afford useful publicity for the Commissioner's office.

25. There might be cases in which the assisted person would prefer not to have the Commissioner appearing in the title of proceedings. There is no reason why the decision about this should not be left to the assisted person.

Extend the proceedings in scope of the Commissioner's assistance

26. The proceedings currently in scope of the Commissioner all relate to the enforcement of union members' statutory rights and of statutory duties owed by unions to their members. The full list of proceedings in scope of assistance is set out in Figure 2 of the Green Paper. The Employment Act 1988 envisaged a possible extension of the proceedings in scope of the Commissioner's assistance.

27. In addition to statutory rights and duties, a union's rulebook is, in effect, a contract between the union and members. The rulebook may impose obligations on a union to follow certain procedures in connection with particular activities, and it gives members rights to ensure that such procedures are followed. These rights are enforceable by individual members affected, through court proceedings.

28. Members contemplating or taking proceedings against their union on the ground that they have been denied rights or duties

owed to them under the terms of their union's rulebook may face considerable disadvantages. Trade unions are large organisations with substantial resources and expertise to call upon when legal proceedings are imminent or taking place. Conversely, union members considering or taking proceedings may well face problems in view of the high costs such proceedings could involve. It will always be daunting for a member to contemplate taking on his union without assistance and support.

29. It is therefore proposed that the Commissioner should have discretion to grant assistance, where she views the complaint as a matter of substantial public interest, in connection with proceedings arising from a complaint by a member that his union has failed, or is likely to fail, to observe the requirements of its rulebook relating to:

- obtaining or nominating candidates for election to union office;

- selection for or election to union office (for example regional, area or branch officials)

- nomination, selection or election of representatives to attend meetings concerned with union policy and practices (for example, a rules-revision conference);

- expulsion or other union discipline, or determining the actual disciplinary penalties imposed on union members;

- enabling the union to authorise or endorse industrial action;

- union ballots of members;

- applying union funds or property;

- imposing, collecting or distributing strike levies; or

- the composition of union bodies, eg conferences or committees, and procedures to be followed by them in taking decisions.

30. Union members would be protected against disciplinary action by their union if taken because they had sought assistance from the Commissioner in connection with any of these matters. The Commissioner's assistance would continue to be available only in connection with proceedings arising from complaints that would be heard at first instance in the High Court.

31. It would be inappropriate to use public funds to support such proceedings unless they were of potential relevance to union members other than just the member making the complaint. In considering an application for assistance about these matters, therefore, the Commissioner should take into account whether the award by the court of the remedy sought by the member would be of relevance to other union members. This criterion would be used by the Commissioner to decide whether an application constituted a matter of "substantial public interest".

ANNEX

NEW SURVEY RESULTS ON THE CLOSED SHOP

* Around 2.6 million employees currently work in closed shops.

* Half of these employees - 1.3 million - work in pre-entry closed shops. This is substantially more than was previously thought.

* Closed shops are most common in the nationalised industries where nearly a quarter of employees work in them.

* About two fifths of employees in pre-entry closed shops say they would be dismissed by their employer if they lost or resigned their union membership.

* These are the main findings of a recent survey of individuals carried out for the Employment Department by NOP Market Research Limited.

* In most respects the survey's findings on the characteristics of employers and employees involved in closed shops in 1989 are consistent with previous research.

Until now the most recent research evidence on the extent of the closed shop in Britain dated from 1984. The Workplace Industrial Relations Survey of that year yielded estimates of the coverage of both pre-entry and post-entry closed shop arrangements. These were based upon interviews with managers and resulted in estimates of around half a million for the pre-entry and just over 3 million for the post-entry closed shop[1].

---

[1] Neil Millward and Mark Stevens, British Workplace Industrial Relations 1980-1984 (Gower, 1986)

As part of the Department's review of the closed shop it was decided that new estimates of the extent of the practice were needed. A specially designed survey of individuals was commissioned to obtain the required information. Questions were inserted into the NOP Random Omnibus Survey for two weeks, starting on 22 February.

The NOP Random Omnibus Survey is a regular weekly survey of individuals carried out by NOP Market Research Limited. It is based upon a sample drawn at random from the Electoral Register and involves face-to-face interviews in the respondent's home. The sample in the first week of fieldwork was 1949 individuals of whom 830 were employees; the response rate was 51 per cent. A second week's fieldwork, which ended on 6 March, yielded a sample of 1720, of whom 780 were employees. Results presented in this paper are mostly based upon the first week's results and have been weighted to compensate for unequal probabilities of selection. The second week's information - which was for a more restricted range of questions - is at present only available in unweighted form. It has been taken account of in the numerical estimates of the extent of the closed shop.

The Questions

The survey question on the current coverage of the closed shop was, 'if someone were to be recruited now to do your job, would they have to be a union member,

before being considered for the job, or
before taking up the job, or
after starting the job, or
would they not be required to be a union member?'

Respondents were shown a card by the interviewer to help them understand and choose between the four options.

The first category is clearly the core of what has conventionally been called the **pre-entry** closed shop. The **third** category identifies the **post-entry** closed shop. The second category is a new one in surveys of the closed shop and identifies a weaker form of the traditional pre-entry closed shop. Splitting the pre-entry form into two categories which were treated as one in previous research creates some uncertainty about comparisons between the NOP survey results and previous estimates. However, it seems unlikely that this change of question wording will have affected the estimates in a substantial way. Comparisons with previous results are more likely to be affected by the use of a sample of employees, rather than local managers or trade union officials: in some cases there will be an element of subjectivity about whether any particular job is one involving compulsory union membership, even though in the majority of cases employees and managers will agree. There are also likely to be some differences in view about the form of closed shop arrangement that exists.

The extent of the closed shop in 1989

The results of the question on the current coverage of the closed shop are shown in the following table.

Estimated numbers of employees in the main types of closed shop, 1989

	employees	percentage of all employees
Trade union membership required:		
before being considered for the job	800,000	4
before starting the job	500,000	2
after starting the job	1,300,000	6
Total membership of closed shops	2,600,000	12

Thus the pre-entry and the post-entry closed shop each cover of the order of 1.3 million employees. These are central estimates which are subject to sampling error[2]. The overall figure of 1.3 million for the pre-entry closed shop is better regarded as lying between 1 million and 1.6 million employees.

Comparison with previous estimates

These figures indicate a substantially larger number of people in pre-entry closed shops than was previously thought. A 1978 study estimated the coverage of the pre-entry closed shop as at least 837,000.[3] The same study anticipated a decline in the practice up to 1982, but did not include separate re-estimates for pre-entry closed shops. Estimates based upon the 1984 Workplace Industrial Relations Survey (WIRS) put the extent of the practice at around 500,000. Given the trends in union membership and the new legislation affecting post-entry closed shops during the intervening period, it seems unlikely that the pre-entry closed shop fell sharply in the early 1980s and rose even more dramatically thereafter.

Other possible explanations for the differences between the various estimates are more plausible. Firstly, there may be substantial differences in perception between employees and managers about whether a closed shop exists for any particular job. Managers may be more likely to report closed shops only where the

---

[2] The calculation of sampling errors has been based upon the standard formula for a simple random sample of size 1610 with a confidence interval of 95 per cent plus an assumed design factor of 1.2. The design factor allows for the fact that the sample was of multi-stage design and has larger sampling errors than a simple random sample.

[3] Stephen Dunn and John Gennard The Closed Shop in British Industry (Macmillan, 1984).

arrangements are subject to joint management-trade union agreements.[4] Employees on the other hand may have a wider set of circumstances in mind when they say that union membership is compulsory. These might include circumstances where local knowledge of the strength of union organisation at a workplace is such that there would be no point in a non-member applying for a job there.

For similar reasons employees and managers might have different views about the type of closed shop situation. This might well lead to managers reporting a post-entry closed shop, usually on the basis of a formal agreement with the unions, while some employees would see the situation as one where only current union members would have a chance of being appointed. If this explanation were true it would explain why the current survey results give a higher proportion of closed-shop members in pre-entry situations, while the overall figure for all types of closed shop - about 2.6 million - is consistent with earlier research and expected trends.

Another, but probably less important, explanation might be that non-respondents in the survey of individuals are less likely to be closed-shop members than non-responding establishments in surveys of workplaces. However, even if all non-respondents to the NOP survey were not in closed shops this would only reduce the estimated number in pre-entry closed shops to about 650,000; and such an extreme assumption is highly implausible. Unfortunately, as with most surveys, it is impossible to ascertain how different non-respondents are from respondents.

Recent changes in closed shop membership

Because of the presumed difficulties of comparing individual and employer-based estimates of the closed shop, the NOP survey included a question on the situation when the respondent first took up his or her current job. The comparisons between the results of this question and the question on current closed-shop membership suggest an overall decline over recent years, most noticeably in the case of post-entry situations. This analysis reinforces the overall estimates of coverage as being lower than in earlier years.

Union density in closed shop situations

As expected the survey results show union density to be 100 per cent in virtually all pre-entry closed shops. The survey question was, 'at the particular place where you work, roughly what proportion of people doing your kind of work are members of a trade union?' In pre-entry situtations covered by the first of the two categories shown in the Table virtually every respondent answered '100 per cent'. Fewer than a tenth answered 'nearly 100 per cent' and none gave an answer lower than this. By comparison, just over a half of respondents in post-entry situations answered '100 per cent'. Thus union density is 100 per cent in

[4] In the 1984 WIRS 95 per cent of closed shop arrangements were supported by a written or oral agreement between management and unions.

pre-entry closed shops much more commonly than in post-entry cases.

However, situations of 100 per cent union density are by no means confined to closed shop situations. Nearly a half of respondents who reported 100 per cent membership in their workgroup were in 'open shops'. And four fifths of those who reported union density in their workgroup as nearly 100 per cent were in open shops.

Employer and workplace characteristics

The survey results are very consistent with previous research findings on the types of workplaces that have closed shops.

Closed shops are virtually absent in small workplaces where, of course, union density is generally much lower. Only 3 per cent of employees in workplaces with fewer than 25 employees are in a closed shop.

In small firms - identified in the survey as firms with fewer than 25 employees and only a single site - there are virtually no closed shop employees.

Nationalised industries have the highest incidence of closed shops, both pre- and post-entry, as already known from other sources.[5] Nearly a quarter of workers in these industries said they worked in a closed shop and 12 per cent described the situation as pre-entry.

Reasons for union membership

The closed shop features strongly among the reasons that employees give for being a union member. Union members were asked what was the most important reason for their membership. The most common response overall was 'to protect me if problems come up in the future' (39 per cent) followed by 'to get higher pay and better conditions' (23 per cent). But in 10 per cent of cases the most important reason for membership was that it was 'a condition of having the job'. This proportion is very close to the proportion of employees in closed shops.

Sanctions on closed shop employees

Employees in pre-entry closed shops face a formidable range of sanctions if they lose or give up their trade union membership. Asked what consequences there would be for them at work in such circumstances, about two fifths replied that they would be dismissed or made to resign by their employer. Others mentioned a range of sanctions from fellow workers. Only one in every six of these employees said that there would be no consequences for them at work if they ceased to be a member.

---

[5] Millward and Stevens (1986) op cit.

SECRET AND CMO UNTIL 1 AUGUST 1989

EDM(75)

10.

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

16 March 1989

Dear Bryony,

REFORM OF INDUSTRIAL RELATIONS AND TRADE UNION LAW

The Prime Minister was grateful for your Secretary of State's minute of 14 March concerning the possibility of enabling the Commissioner for the Rights of Trade Union Members to appear alone in the title of proceedings against a Trade Union initiated by a member, thereby protecting the member's anonymity. In the light of the points your Secretary of State makes, the Prime Minister is content that this proposal should not be pursued at this stage, but she has noted that your Secretary of State will continue to keep the matter under review.

The Prime Minister has also seen the draft Green Paper circulated under your letter to me dated 10 March. Subject to the views of colleagues, she is content with the draft, and has noted that your Secretary of State plans to publish the Green Paper early next week.

I am copying this letter to the Private Secretaries to members of E(A), the Lord Chancellor, the Attorney General, the Minister of State, Foreign and Commonwealth Office (Mrs Chalker) and to Sir Robin Butler.

Yours,

Paul

PAUL GRAY

Miss Bryony Lodge
Department of Employment

SECRET AND CMO UNTIL 1 AUGUST 1989

PRIME MINISTER

POLITICAL DONATIONS - see also note by Lord Privy Seal

May I set out how I see this issue:

(i) you are right that full reversal is the proper course. You correctly perceive that company directors are a cautious lot and will only make donations when they can do so without having to stand up in public and be counted. The Boyd-Carpenter arguments - copy attached - provide a perfectly reasonable defence that the existing law makes adequate provision for shareholders to express their views;

(ii) you are right, therefore, to reject alternative amendments. These concede the principle of separate identification of political contributions and will be the thin end of the wedge;

(iii) the issue is simply whether reversal should take place;

(iv) the Denham concordat in the Lords may be of recent origin but it is very much in the Government's interest. It does not have a guaranteed majority day by day and the House of Lords has no guillotine. The self-denying ordinance is essential to deliver the Government's ambitious legislative programme;

(v) a concordat is in the Government's short-term interest also. The Opposition could cause a great deal of trouble on time sensitive Bills such as the Water and Electricity privatisations. The only sanction is a threat of reform in the longer term;

(vi) you argued that to make the reversal in the Commons would provide a platform for an extensive public debate, with the implication that reversal in the Lords avoids this. But is this correct? It is inevitable that the issue will be raised when the Bill comes to the Commons;

(vii) the true choice therefore is

(a) reversal in the Lords, followed by a Vote on a Labour amendment in the Commons

(b) acceptance in the Lords followed by a Vote in the Commons to reverse it.

Either way there is a Vote in the Commons, but not one on which the Government will be in any difficulty. It could be argued that the furore caused by reversal in the Lords would make (a) a more contentious course;

(viii) reluctantly I conclude that reversal in the Commons is the right course.

The Lord President has been to see me.

i) He thinks the idea of a demanding threshold is no good. If it is pushed too high, shareholders simply fall back on their existing rights under company law.

ii) He will support you at the meeting if you are able to persuade the Lord Privy Seal and Lord Denham to reverse the amendment, but

iii) it is his view that you should reflect very carefully before overriding their judgment.

iv) He too prefers reversal in the Commons.

AT

ANDREW TURNBULL

15 March 1989

SL3BIJ

CCBUP

HOUSE OF LORDS HANSARD 30-1-89

L[redacted] Boyd-Carpenter: It was pleasant to hear the noble Lord, Lord Williams of Elvel, applauding the [redacted]. It was particularly pleasant to hear it from those Benches because that has not always been the theme of the Labour Party. However, when one comes to the specific proposals which he is putting forward, I believe that he is probably somewhat exaggerating the significance of the subject matter.

Generally, compared with the sums involved in the report and accounts of almost any company, the political donations to be given, if any, are absolutely trivial. However, to pick them out for a separate resolution which requires the [redacted] I take the noble Lord's point that some shareholders may object to political contributions being made to any political party by the company in which they are shareholders.

However, under the present system there is nothing to prevent them from [redacted] at the annual general meeting. Those of us with experience of being on company boards know perfectly well that if, at a company's annual general meeting, there were serious criticisms of political contributions being made by the company by any appreciable number of shareholders, the board would carefully review the situation in respect of them for the following year. Equally, if there are [redacted] who object it is absolutely pointless to go through the whole [redacted], which would on that hypothesis be heavily voted down after [redacted].

One can rest content with the present situation. I speak from some experience of company boards. I know that if there is any suggestion of a political contribution, boards look very carefully into the practical position as to whether the success or failure of a particular political party will be in the interests of or detriment to the company. That is the test which is in general applied. As a board is elected to apply its general judgment to the affairs of the company, including matters of much greater significance to the company than the relatively trivial amounts involved in political contributions, it seems to be straining at a gnat to insist that this [redacted] should be separated out for the purposes of a separate resolution.

The noble Lord, Lord Williams of Elvel, in a sense [redacted] yet the test that these are payments not directly for the purposes of the company but perhaps indirectly applies just as much to these charitable donations as to political contributions. One cannot help wondering why the noble Lord is so much more interested in picking out political contributions than [redacted]. One can perhaps speculate as to the reasons.

However, I do not think that there is a problem here. As I have said, the experience of any of us who have served on boards is that, if there is a serious objection to a political contribution being made by a company and that objection is voiced at all substantially at the annual general meeting, that contribution will be looked at very carefully for the following year. There is always a sensible sensitiveness of boards of directors on this subject as to whether such a donation would be acceptable to shareholders.

The attempt to separate out political contributions from charitable contributions [redacted] expenditure of a company is highly artificial. Many company contributions—for example, contributions to [redacted]—are not of very direct interest to a company but may well, particularly in the case of political contributions be of considerable indirect and future interest. However, there is no hard and fast line, as the noble Lord, Lord Williams of Elvel, seemed to suggest, between political and charitable contributions, on the one hand, and all other company expenditure on the other. If the noble Lord is to be logical he would have to separate out several other items—for example, contributions to trade associations—for a separate resolution. Whatever else that would do, it would have the effect of unduly prolonging company annual general meetings to an intolerable extent.

I hope that the noble Lord will not feel that he is on to a particularly important argument or a right one. One the whole, the present law under which political donations have to be disclosed—and it is absolutely right—is perfectly adequate to deal with the situation and we should leave it alone.

recei[illegible] from the cinema industry and its attendant tech[illegible]logies?

Lord Strathclyde: My Lords, the film industry's exports remain at a high level and reached £264 million in 1987, 25 per cent. up on the previous year. Likewise, exports of television programmes have shown a welcome overall increase in recent years; they amounted to £118 million in 1987.

Lord Graham of Edmonton: My Lords, the Minister says that it is not up to the Government but up to the industry to look after itself. Why do not the Government take into account the support other countries give to their indigenous film industries? Is not the Minister concerned about imports of second-rate and rubbishy films which fill our screens and are shown on television when considered in the light of developments in the film industry?

Lord Strathclyde: My Lords, I believe that it must be up to the consumer to decide what he wants to watch on his television screen. Therefore, if people want to watch second-rate films that is up to them. The British film industry makes some extremely good films——

Lord Graham of Edmonton: Then why not support them?

Lord Strathclyde:—which are supported in a minor way. Other countries have problems because they wish to support their own languages. We do not need to do that because English is world-renowned.

Lord Peston: My Lords, may I take the Minister back to his answer to the previous question but one? Was he saying that we are running a positive balance of payments surplus on film and television activities? I heard him quote the export figures. Can he quote the import figures and the differences between the two?

Lord Strathclyde: My Lords, I am not able to do so at the present time. I shall write to the noble Lord and let him know.

Baroness White: My Lords, can the noble Lord tell us whether he makes any distinction between the English language and American?

Lord Strathclyde: My Lords, for the sake of today I believe that any film which is made in Britain for export is in the English language and that any imported from America is American.

Lord Stoddart of Swindon: My Lords, if the noble Lord tells us that the British people are those who decide what is seen on their televisions screens, what is the purpose of the Rees-Mogg commission?

Lord Strathclyde: My Lords, that is an entirely different question. There are organisations which oversee what is shown on television as regards obscenity and so forth—for example, the British Board of Film Classification, local authorities and, ultimately, the courts.

Lord Marley: My Lords, is the Minister aware that a recent British film, "A Fish Called Wanda", has won two important awards? Should not note be taken of that?

Lord Strathclyde: My Lords, I am delighted that the noble Lord has brought that to our attention.

Industrial Action Balloting

2.50 p.m.

Baroness Turner of Camden asked Her Majesty's Government:

When they anticipate that consultation on the draft code of practice on industrial action balloting will be completed.

The Parliamentary Under-Secretary of State, Department of Social Security (Lord Skelmersdale): My Lords, any representations on the draft code should be sent to the Department of Employment to arrive no later than 3rd February, 1989.

Baroness Turner of Camden: My Lords, I thank the Minister for that Answer. Is he aware that the code, as at present drafted, contains no fewer than 22 steps which unions are expected to take before they can call an industrial dispute, and that some of those steps go far beyond the provision of legislation? Is that part of the Government's step-by-step approach to industrial action, possibly rendering it illegal at some point in the future, and is it their view that employees with a grievance should simply "put up and shut up"?

Lord Skelmersdale: No, my Lords, of course it is not: we do not have that intention in mind at all. Four broad principles were followed in the Government's approach. The first was that the code would be most helpful if it contained within the same set of covers the infomation needed about the relevant law and good practice. I believe that both those conditions are clearly identified within the code. The second was that the detailed recommendations on how the balloting process should be conducted ought to take account of existing guidance on good practice for the conduct of balloting. The third was that once the proposal to take power to issue such a code was known particular ideas should be drawn upon that had been put to the Government. The fourth was that the code's recommendation should be based as far as possible on what was known about how unions had conducted industrial action ballots. I believe that that condition is also fulfilled within the code.

Lord Rochester: My Lords, can the noble Lord assure the House that, in dealing with ballots on industrial action affecting different places of work, the wording of the code will be less difficult for managers and trade union representatives to understand than is the section of the Employment Act 1988 which relates to that matter? In the light of his response to the noble Baroness, Lady Turner, may one take it that the requirements of the code in its final form will be no more prescriptive than those of the Act?

Lord Skelmersdale: My Lords, the answer to the second supplementary question put by the noble Lord is: yes, he may certainly take it that the contents of the code will be no more prescriptive than the Act.

The code is already far less obscure in its drafting than is Section 17 of the Act. If the noble Lord has not seen that section I shall willingly furnish him with a copy later this afternoon.

Lord Campbell of Alloway: My Lords, is the Minister aware that the code is admissible in court proceedings under Section 3(8) of the Act which introduces it? If he is so aware, can he look at it again to decide whether it is fairly suitable for that purpose by reason of its indulgence in a mass of exhortation and want of simplicity?

Lord Skelmersdale: My Lords, I had thought that that point may be raised so I have made investigations. The legal status of the code is that it is not prescriptive but it is admissible in evidence in the field of general employment law. However, as my noble friend has asked me to look further at the matter I shall do so.

Lord Dean of Beswick: My Lords, is the Minister aware that if, when applied, the code makes it more difficult for a verdict on an official dispute to be reached by the members of the union, and also extends the period before it can be reached, unofficial action may result which no one wants and which is often to the disadvantage of everyone concerned?

Lord Skelmersdale: My Lords, no, I do not believe that that is so. The noble Lord will remember that the same criticism was directed towards the various legislative steps taken by the Government since 1979. We now have the lowest record for industrial stoppages for many years. I do not believe that the previous legislation, or the final code when it is issued, will lead to damaging industrial relations.

Business

2.55 p.m.

Lord Denham: My Lords, at a convenient moment after 3.30 this afternoon my noble friend Lord Ferrers will, with the leave of the House, repeat in the form of a Statement an Answer to a Private Notice Question in another place on the dispute at Wandsworth Prison.

Civil Aviation (Air Navigation Charges) Bill [H.L.]

Lord Brabazon of Tara: My Lords, I should like to express my thanks to my noble friend Lord Strathclyde for taking the Bill through Second Reading at such short notice while I was unavoidably absent. I should also like to thank other noble Lords for their support of this most useful measure.

I beg to move that this Bill be now read a third time.

Moved, That the Bill be now read a third time.—(*Lord Brabazon of Tara.*)

On Question, Bill read a third time.

Lord Brabazon of Tara: My Lords, I beg to move that the Bill do now pass.

Moved, That the Bill do now pass.—(*Lord Brabazon of Tara.*)

On Question, Bill passed, and sent to the Commons.

Petroleum Royalties (Relief) and Continental Shelf Bill

The Earl of Dundee: My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Commitee. Therefore, unless any noble Lord objects, I beg to move, on behalf of my noble friend Baroness Hooper, that the order of commitment be discharged.

Moved, That the order of commitment be discharged.—(*The Earl of Dundee.*)

On Question, Motion agreed to.

Companies Bill [H.L.]

2.58 p.m.

Lord Strathclyde: My Lords, on behalf of my noble friend Lord Young of Graffham, I beg to move that the House do now resolve itself into Committee on this Bill.

Moved, That the House do now resolve itself into Committee.—(*Lord Strathclyde.*)

On Question, Motion agreed to.

House in Committee accordingly.

[The LORD ABERDARE in the Chair.]

Clause 1 [*Introductory*]

Lord Williams of Elvel moved Amendment No. 1:

Page 1, line 11, leave out ("and")

The noble Lord said: I should like to speak to Amendments Nos. 1, 2 and 106, which stand in my name and that of my noble friend, Lord Peston.

We are at the start of what may prove to be a long Committee stage. Speaking from the Opposition Benches generally, I wish to say that I shall try to deal with the business as quickly as possible. I am sure that I speak for my noble friends in that regard.

The present situation under the Companies Act 1985 is that directors must state in their report contributions made for political purposes and also for charitable purposes. The report, together with the company's accounts, is laid before shareholders at a general meeting and approved or otherwise. It is approved in its totality because, under the present legislation, shareholders do not have the ability to select bits and pieces from the report, to vote against one sentence rather than another, or to vote in favour of one paragraph rather than another.

So that if any shareholder or any group of shareholders wishes to object to contributions for political or charitable purposes, they have to disapprove; that is to say, in general meeting they have to vote against the ordinary resolution to approve the report and accounts as a totality; in other words, they stand or fall in their entirety.

There is no record in my experience—and I have attended one or two general meetings in my time—of shareholders voting against an ordinary resolution to approve the report and accounts solely because they disagree with one possibly minor item. There is an obvious reason for that. The rejection of the report and accounts, even the rejection of the directors' report were that to be possible, would amount to a rejection of the commercial management of the company. If that company were a listed company that would amount to a serious effect and possibly a catastrophic fall in the share price, which would undoubtedly suffer from that vote.

No shareholder who is presumably an investor for commercial reasons in a company has any interest in such a course of action because no shareholder will willingly vote to reject the whole of the directors' report and/or the accounts of the company simply because he objects to one item in it. That is the financial equivalent of turkeys voting for Christmas. Therefore, my amendments seek to isolate the decision on what are non-commercial payments from the decision on whether or not to approve the directors' report and accounts, which is basically a report on the commercial conduct of the firm.

I accept and willingly accept that the logic of our position is that a similar arrangement should be made for charitable contributions. I should not stand in the way if the Government wish to come forward with such an amendment. Nevertheless, I believe that provision should be made along the lines of the amendment for what I have in mind.

Specifically, my proposals are contained in Amendments Nos. 1 and 2 which are paving but introduce the concept that boards of directors should not, without separate shareholder approval, spend shareholders' funds on non-commercial purposes without that specific resolution of shareholders in ordinary general meeting. Amendment No. 106 is the substantive amendment which explains how, in our view, that could be done. It provides for a section of the directors' report to be left unsigned, that is, the selection on contributions for political purposes, and framed in the form of a proposal to shareholders. Obviously, if directors decide to make such a proposal, they will recommend that. It is perfectly proper that the board of directors should recommend such a proposal to shareholders and the resolution, in consequence, will be proposed in general meeting in the proper form.

These proposals are simple and, in our view, necessary to bring the law up to date. First, we are not trying to discriminate against any political party. Those companies which wish to contribute to the Conservative Party, the Labour Party, the Social and Liberal Democrat Party, the Social Democrat Party, the Communist Party, the National Front or whichever party it may be, will have to follow the same procedure.

Secondly, over the years we have had a number of measures passed by this Chamber designed to ensure that trade unions abide by a process of ballot and approval of their members both on the principle of the political levy and on the question of contracting out.

Thirdly, and more importantly, over the years I accept—however much some of us may deny the figures—that there has been an extension of share ownership. As a result of many factors such as privatisation issues, publicity, and now possibly the conversion of building societies into plcs, share ownership has become much wider and will continue to follow that course. There are millions of new shareholders. We hope that the Government are supportive not only of the fact of wider share ownership but also of the responsibilities implied in that. In other words, we hope that the Government will encourage a form of shareholder democracy in a way in which they have encouraged democracy on a wide front elsewhere in the trade unions.

Shareholders should be allowed to have their say in how funds are spent by their boards of directors in other than commercial matters. The central issue here is that extension of shareholder democracy. How can we possibly approve of a wider spread of share ownership if new shareholders are to be presented with a *fait accompli* in the way in which their money is spent for other than the purposes for which they invested and on causes to which they may, in their own political lives, be deeply opposed? Should they not have a chance to register a vote on the subject? If directors can persuade them that that is right, then that is perfectly fair and logical. If not, the shareholders should have the right to oppose without, in doing so, bringing their company crashing down, as in the present situation, around their ears.

I believe that this is in line with what the Government have been trying to do over the past few years and I very much hope that the Government will support our amendment.

3 p.m.

Lord Lloyd of Kilgerran: We on these Benches support the amendments so ably presented to the Committee by the noble Lord, Lord Williams of Elvel. It seems to us to be clearly in the public interest that, whichever party is being considered for those sort of financial proposals, the law should be changed to include these amendments.

Lord Boyd-Carpenter: It was pleasant to hear the noble Lord, Lord Williams of Elvel, applauding the increase in wider share ownership. It was particularly pleasant to hear it from those Benches because that has not always been the theme of the Labour Party. However, when one comes to the specific proposals which he is putting forward, I believe that he is probably somewhat exaggerating the significance of the subject matter.

Generally, compared with the sums involved in the report and accounts of almost any company, the

[LORD BOYD-CARPENTER.]

political donations to be given, if any, are absolutely trivial. However, to pick them out for a separate resolution which requires the full paraphernalia to be put to the general meeting seems extraordinarily disproportionate. I take the noble Lord's point that some shareholders may object to political contributions being made to any political party by the company in which they are shareholders.

However, under the present system there is nothing to prevent them from saying so at the annual general meeting. Those of us with experience of being on company boards know perfectly well that if, at a company's annual general meeting, there were serious criticisms of political contributions being made by the company by any appreciable number of shareholders, the board would carefully review the situation in respect of them for the following year. Equally, if there are very few shareholders who object it is absolutely pointless to go through the whole machinery of putting a special resolution, which would on that hypothesis be heavily voted down after a considerable waste of time and energy.

One can rest content with the present situation. I speak from some experience of company boards. I know that if there is any suggestion of a political contribution, boards look very carefully into the practical position as to whether the success or failure of a particular political party will be in the interests of or detriment to the company. That is the test which is in general applied. As a board is elected to apply its general judgment to the affairs of the company, including matters of much greater significance to the company than the relatively trivial amounts involved in political contributions, it seems to be straining at a gnat to insist that this one small point should be separated out for the purposes of a separate resolution.

The noble Lord, Lord Williams of Elvel, in a sense gave that case away when he admitted that he was not proposing any amendment in respect of the often much larger charitable donations which are made; yet the test that these are payments not directly for the purposes of the company but perhaps indirectly applies just as much to these charitable donations as to political contributions. One cannot help wondering why the noble Lord is so much more interested in picking out political contributions than he is apparently in dealing with the, on the whole, much larger problem of charitable donations. One can perhaps speculate as to the reasons.

However, I do not think that there is a problem here. As I have said, the experience of any of us who have served on boards is that, if there is a serious objection to a political contribution being made by a company and that objection is voiced at all substantially at the annual general meeting, that contribution will be looked at very carefully for the following year. There is always a sensible sensitiveness of boards of directors on this subject as to whether such a donation would be acceptable to shareholders.

The attempt to separate out political contributions from charitable contributions and from every other expenditure of a company is highly artificial. Many company contributions—for example, contributions to trade associations—are not of very direct interest to a company but may well, particularly in the case of political contributions be of considerable indirect and future interest. However, there is no hard and fast line, as the noble Lord, Lord Williams of Elvel, seemed to suggest, between political and charitable contributions, on the one hand, and all other company expenditure on the other. If the noble Lord is to be logical he would have to separate out several other items—for example, contributions to trade associations—for a separate resolution. Whatever else that would do, it would have the effect of unduly prolonging company annual general meetings to an intolerable extent.

I hope that the noble Lord will not feel that he is on to a particularly important argument or a right one. One the whole, the present law under which political donations have to be disclosed—and it is absolutely right—is perfectly adequate to deal with the situation and we should leave it alone.

Baroness Seear: The noble Lord, Lord Williams of Elvel, said that he was perfectly prepared to include charitable contributions; indeed, I think that it would be highly desirable to do so. The Government never stop saying that industry should make a contribution to every conceivable good cause in the country. I often wonder when this free market, capitalist Government will realise that the purposes for which money is put up to industry is the development of industry, the reduction in prices and the payment of dividends and of wages. If the Government have their way a great deal of the money would go to all sorts of extraordinary places. If the noble Lord, Lord Boyd-Carpenter, is saying that he will support the amendment if charities are included with political contributions, I am sure that most of us on this side of the Committee would be only too pleased to agree with him.

3.15 p.m.

Lord Morris: Not for the first time I am sure that Members on this side of the Committee will be grateful for the extremely clever way in which my noble friend Lord Boyd-Carpenter has marshalled his arguments and, indeed, his very clever debating points. We should also be grateful for the moderate way in which the noble Lord, Lord Williams of Elvel, has argued this point.

At the heart of the argument, to use the language of the Income Tax Act, runs the point about expenditure which is both wholly necessary and exclusively for the use of the business. The characteristics of this particular type of expenditure—namely, political contributions and charitable donations—are that the direct link with the normal expenditure of the company can always be construed as somewhat tenuous.

The characteristic that boards of directors and governments have in common is that they are both highly suspicious of the democratic process in that it can so often inhibit the directors' view of the right progression and growth of the company and indeed growth in the view of the government.

The point missed by my noble friend Lord Boyd-Carpenter is this. How can he possibly hold the view that he does—I am sorry if I am bringing in a boring political point which the noble Lord, Lord Williams of Elvel, was far too nice to raise—about political contributions by the unions and the way that that is done and at the same time object to this amendment? I cannot see how he can possibly square that circle.

Lord Rochester: I should like briefly but strongly to support this amendment. Speaking on behalf of my noble friends at the Second Reading of the Trade Union Bill 1984, I said that we considered there was an urgent need to find fairer ways of financing political parties in this country. In Committee I tabled an amendment which if it had succeeded would have had the effect of delaying the operation of Part III of the Act dealing with trade union political funds until such time as alterations had been made to the Companies Act 1967 much in line with the amendment that the noble Lord, Lord Williams of Elvel, has proposed.

Recent revelations concerning the clandestine way in which contributions from certain large companies have allegedly been made to the Conservative Party make an amendment more urgent than ever. There is a need for a much more even-handed approach as between contributions from individuals to trade union funds and from companies to political parties. I am well aware of the distinctions that can be drawn between the two cases, but I do not think that they are of a kind to invalidate the principle underlying this amendment. I hope that the Committee will support it.

Lord Strathclyde: The noble Lord, Lord Williams, in his opening words said that we were starting a long Committee stage and he is correct. However, I hope that at the end of our deliberations we will have a better Bill from the Government's point of view. Unfortunately, we do not seem to have started particularly well with Amendments Nos. 1, 2 and 106.

The effect of the amendment to Clause 1 would be to make provision for the second amendment, which would provide that where a political contribution has been disclosed in the directors' report, that part of the report should not be signed but be put to the annual general meeting for approval by ordinary resolution.

The Government are opposed to these proposals. It may more readily help Members of the Committee to understand the reasons for our opposition if I explain the provisions of the existing Companies Act that relate to the disclosure of political contributions. Very briefly, companies have been required since 1967 to disclose in the directors' report any gifts of money for political purposes that exceed a specified sum, currently £200. In each case the amount of the donation must be shown, as must the name of the recipient. The directors' report is part of the documentation that must be sent to shareholders before the company's annual general meeting.

While there is no obligation under the Companies Act for companies to request the prior approval of shareholders for such donations, it is possible for shareholders who are concerned at the nature or scale of such donations as are revealed in the report to raise the subject in discussion of the accounts at the annual general meeting. My noble friend Lord Boyd-Carpenter made this point in what I thought an excellent speech. Moreover, shareholders have the right to have an ordinary resolution put to the general meeting under the normal procedures for such resolutions thus enabling them to express any more general concerns that they may have on the subject of political donations. The Government accordingly consider these existing safeguards of the shareholders' interests to be wholly adequate and view the proposed amendments as wholly unnecessary.

The noble Lord, Lord Williams of Elvel, and my noble friend Lord Morris made what I believe was an unfortunate comparison between commercial companies and trade unions. That is a false analogy. It is like comparing apples and bananas. A commercial company is there to take people's money and to invest it in order to create a profit and a dividend at the end of the year. It is not for me to lecture Members of the Committee opposite on what a trade union is all about; but it must be something entirely different, financed by subscriptions rather than through people's investments. I hope that Members of the Committee the Opposition will feel able to withdraw the amendment.

Lord Williams of Elvel: I am most grateful to Members of the Committee who have participated in this short debate. It has been extremely useful. The problems raised by my amendment do not seem of a kind that will easily go away. I say to the noble Lord, Lord Strathclyde, that I did not find the Government's answer wholly convincing.

The noble Lord, Lord Boyd-Carpenter, applauded my appreciation of wider share ownership. I was very careful in choosing my words. I personally applaud wider share ownership by employees; I am neutral on the question of wider share ownership in general. I am opposed to privatisation by bribe. However, I leave that aside. It is a political point, and we are not having a political discussion.

The noble Lord, Lord Boyd-Carpenter, continued by saying that he did not see why these small amounts of relatively little significance should go through the full paraphernalia of what he called a special resolution. I am not arguing for special resolution but an ordinary one at the general meeting. If they are so very small why should they not be approved quite easily at a general meeting? Furthermore, it is my experience, possibly contrary to that of the noble Lord—both of us have experience of these matters—that drafting another ordinary resolution is not the end of the world. There are ordinary resolutions put to shareholders by company secretaries. They are easily drafted. The format is quite simple, consisting possibly of two or three extra lines of printing on the document that summons the shareholders to a general meeting. I do not see that I am trying to create a great bureacracy of some kind.

The noble Lord, Lord Boyd-Carpenter, referred to a possibility that the noble Lord, Lord Strathclyde, picked up; namely, that those shareholders who

[LORD WILLIAMS OF ELVEL.]

object to such contributions can stand up and speak or write in. To use the expression of the noble Lord, Lord Boyd-Carpenter, the following year the directors will take those representations into account. The noble Lord, explained in full exactly as I did the existing situation. We are dealing with companies nowadays which have millions of shareholders. If the Abbey National becomes a plc the estimate is that there will be more than five million shareholders. They may be spread up and down the country. They will not be arriving at the Plaisterers Hall, the Goldsmiths Hall, or wherever the function is held, to badger the board of directors. But they still have an equal interest of one share for one share in the conduct of the company. I do not see that that is a very serious point.

The noble Baroness, Lady Seear, supported my logic. The noble Lord, Lord Boyd-Carpenter, did not move a manuscript amendment to my amendment arguing for the inclusion of charitable contributions. If such an amendment had been moved I would have willingly accepted it, as I said at the outset. The noble Lord, Lord Morris, was right in saying that there is a hard and fast line between political and charitable contributions and those to trade associations. The hard and fast line is drawn by the Companies Act 1985. It is already there. I am not trying to change any aspect of that basic legal principle.

The noble Lord, Lord Strathclyde, responded to the noble Lord, Lord Morris, on the question of trade unions. I must say a word on the subject since it has been raised. I address my appeal to Members of the Committee opposite and to those on the Cross-Benches, who, over a number of years, have vociferously—if I may say so without offence—advocated the democratic process in trade unions. That is the process of ballot. I wholly accept that they have done so in good faith. I may have disagreed with the effects of what they were supporting, but I do not challenge the good faith of what they were intending.

I say to those Members of the Committee quite frankly that one either supports democracy in all its forms and in all of its extensions or one does not. There is no halfway house about it. Democracy, like freedom, is indivisible. If Members of the Committee support democracy, as I believe they do, they will recognise that I am only trying to extend to the shareholders of a company the same right that trade unionists now have; namely, the right to decide at the end of the day how their money is spent. In the case of shareholders, it is a right to decide without bringing the whole company down around their ears. That is an important point.

If Members of the Committee opposite and those on the Cross-Benches who constitute the majority in the Committee, do not support this proposition, then we accept that they are happy that decisions will be taken in smoke-filled rooms and presented as a *fait accompli* to shareholders at a general meeting. One or two shareholders may rise to complain, but that is not going to get them anywhere. I like to believe that all Members of the Committee have a sense of fairness that transcends party politics and unites us. I believe this to be one of those issues that impinges on fairness. I hope that the Committee will support me in that belief.

3.28 p.m.

On Question, Whether the said amendment (No. 1) shall be agreed to?

Their Lordships divided: Contents 106; Not-Contents, 93.

DIVISION NO. 1

CONTENTS

Airedale, L.	Kearton, L.
Allen of Abbeydale, L.	Kilbracken, L.
Amherst, E.	Kilmarnock, L.
Ardwick, L.	Lawrence, L.
Banks, L.	Leatherland, L.
Beaumont of Whitley, L.	Liverpool, Bp.
Birk, B.	Llewelyn-Davies of Hastoe, B.
Bonham-Carter, L.	Lloyd of Kilgerran, L.
Bottomley, L.	Lockwood, B.
Briginshaw, L.	Lovell-Davis, L.
Broadbridge, L.	McIntosh of Haringey, L.
Bruce of Donington, L.	McNair, L.
Burton of Coventry, B.	Mais, L.
Callaghan of Cardiff, L.	Mason of Barnsley, L.
Carmichael of Kelvingrove, L.	Mayhew, L.
Carter, L.	Mishcon, L.
Cledwyn of Penrhos, L.	Morris, L.
Craigavon, L.	Mountevans, L.
Cudlipp, L.	Mulley, L.
David, B.	Northfield, L.
Davies of Penrhys, L.	Ogmore, L.
Dean of Beswick, L.	Oram, L.
Donaldson of Kingsbridge, L.	Paget of Northampton, L.
Donoughue, L.	Peston, L.
Dormand of Easington, L.	Phillips, B.
Elwyn-Jones, L.	Pitt of Hampstead, L.
Ewart-Biggs, B.	Ponsonby of Shulbrede, L. *[Teller.]*
Ezra, L.	Rathcreedan, L.
Falkland, V.	Reilly, L.
Fisher of Rednal, B.	Ritchie of Dundee, L.
Flowers, L.	Rochester, L.
Foot, L.	Sainsbury, L.
Gallacher, L.	Seear, B.
Gulpern, L.	Sefton of Garston, L.
Gladwyn, L.	Serota, B.
Graham of Edmonton, L.	Shackleton, L.
Greenhill of Harrow, L.	Shepherd, L.
Gregson, L.	Somers, L.
Grey, E.	Stallard, L.
Grimond, L.	Stedman, B.
Hampton, L.	Stoddart of Swindon, L.
Hanworth, V.	Strabolgi, L.
Harris of Greenwich, L.	Taylor of Blackburn, L.
Hatch of Lusby, L.	Taylor of Mansfield, L.
Hayter, L.	Tordoff, L. *[Teller.]*
Hirshfield, L.	Turner of Camden, B.
Hooson, L.	Underhill, L.
Hughes, L.	Williams of Elvel, L.
Hunt, L.	Wilson of Langside, L.
Jacques, L.	Wilson of Rievaulx, L.
Jay, L.	Winchilsea and Nottingham, E.
Jenkins of Hillhead, L.	Winterbottom, L.
Jenkins of Putney, L.	
John-Mackie, L.	

NOT-CONTENTS

Ailesbury, M.	Beloff, L.
Alexander of Tunis, E.	Belstead, L.
Alexander of Weedon, L.	Benson, L.
Allerton, L.	Blyth, L.
Arran, E.	Borthwick, L.
Barber, L.	Boyd-Carpenter, L.
Belhaven and Stenton, L.	Brabazon of Tara, L.

Broxbourne and Vaux, L.	Macleod of Borve, B.
Broxbourne, L.	Margadale, L.
Butterworth, L.	Marley, L.
Caithness, E.	Merrivale, L.
Caldecote, V.	Mersey, V.
Campbell of Alloway, L.	Mottistone, L.
Campbell of Croy, L.	Mountgarret, V.
Carnock, L.	Mowbray and Stourton, L.
Cathcart, E.	Munster, E.
Cockfield, L.	Napier and Ettrick, L.
Constantine of Stanmore, L.	Norfolk, D.
Cottesloe, L.	Norrie, L.
Davidson, V. *[Teller.]*	Nugent of Guildford, L.
De Freyne, L.	Orkney, E.
Denham, L. *[Teller.]*	Oxfuird, V.
Dudley, B.	Pender, L.
Dundee, E.	Pennock, L.
Effingham, E.	Peyton of Yeovil, L.
Ellenborough, L.	Platt of Writtle, B.
Elliot of Harwood, B.	Porritt, L.
Erne, E.	Portland, D.
Erroll of Hale, L.	Reay, L.
Ferrers, E.	Rippon of Hexham, L.
Fraser of Kilmorack, L.	St. Davids, V.
Gainford, L.	Saltoun of Abernethy, Ly.
Gridley, L.	Seebohm, L.
Hailsham of Saint Marylebone, L.	Sempill, Ly.
Halsbury, E.	Shannon, E.
Havers, L.	Skelmersdale, L.
Hesketh, L.	Strathclyde, L.
Hood, V.	Strathcona and Mount Royal, L.
Hylton-Foster, B.	Strathspey, L.
Jessel, L.	Swansea, L.
Johnston of Rockport, L.	Terrington, L.
Kinnaird, L.	Teviot, L.
Lauderdale, E.	Thomas of Gwydir, L.
Limerick, E.	Thorneycroft, L.
Lloyd of Hampstead, L.	Vaux of Harrowden, L.
Long, V.	Windlesham, L.
Mackay of Clashfern, L.	

Resolved in the affirmative, and amendment agreed to accordingly.

Lord Strathclyde: I beg to move that the House do now resume.

Moved accordingly, and, on Question, Motion agreed to.

House resumed.

Wandsworth Prison

3.37 p.m.

The Minister of State, Home Office (Earl Ferrers): My Lords, with the leave of the House, I should like to repeat the Answer to a Private Notice Question on the dispute at Wandsworth Prison which has just been given in another place.

"At 7.30 a.m. yesterday about 100 uniformed staff at Her Majesty's Prison Wandsworth went on strike. Fourteen uniformed staff worked normally. At about 9.30 a.m., under contingency plans, 60 staff in managerial grades from around the prison service were deployed in Wandsworth to maintain order and prison routines. There were inevitable delays and arrangements could not be made for prisoners to take exercise but meals were served and visits took place normally.

"This morning at seven o'clock 197 police officers went into Wandsworth to assist the governor and to work alongside prison staff. During the normal working week many more staff are needed than for the Sunday routine. Although 34 uniformed prison staff are working normally today, peace and order could not have been maintained in the prison without the use of police officers.

"Naturally these events have led to heightened tension in the prison and there have been one or two incidents but loyal prison staff and the police have managed to keep the prison running as near normally as possible.

"Since last November prison officers at Wandsworth have been refusing to take a full number of prisoners. As a result about 50 prisoners have had to be kept unnecessarily in police cells. Talks at national, regional and local levels have taken place over many months in an effort to resolve the dispute. The new working systems introduced yesterday are intended to make more effective use of staff resources and contain no unusual or threatening features. The action of the POA branch at Wandsworth in going on strike is completely unjustified. I call on them to go back to work under the governor's authority forthwith."

My Lords, that completes the Answer which was given by my honourable friend the Parliamentary Under-Secretary of State.

3.40 p.m.

Lord Elwyn-Jones: My Lords, before the action of calling in the police this morning was taken, had the appropriate dispute procedures been carried out between the Home Office and the prison officers which normally call for continuance of the status quo and then negotiation? Further, is it the case that the prison officers were told that new rotas would not be imposed, as proposed by the governor, for 15 days if the prison officers accepted another 50 prisoners from police cells? If that suggestion had been made, and had been accepted, would not that have aggravated the already dangerous situation which arises in Wandsworth where the official prison population is 1,259 and where in fact there are 1,505 prisoners?

Therefore was not the action this morning of calling in the police in those numbers—men who are, in any event, worthy, but who are not qualified to carry out prison officers' duties—somewhat reckless in all the circumstances?

Lord Harris of Greenwich: My Lords, in thanking the noble Earl for repeating the Statement in this House, is he aware that many of us have become increasingly concerned about the apparently never-ending disputes in a limited number of London prisons? Can the Minister confirm that the consequence of those disputes has been to increase the number of prisoners being held in police cells, in both London and elsewhere? Does he agree, in the situation which he has outlined today, that it is essential to give firm support to prison management because otherwise this continuing anarchy in a limited number of prisons will continue?

Earl Ferrers: My Lords, the noble and learned Lord, Lord Elwyn-Jones, raised the matter of

[EARL FERRERS.]

negotiations with the prison officers. The introduction of the new shifts had already been delayed for two weeks while more discussions took place. At a meeting last Thursday a further postponement of two weeks was offered, provided that the POA lifted their action of imposing a ceiling of 1,505 prisoners and returned to the occupation ceiling of 1,555. The POA refused that offer.

Following the Home Secretary's meeting with the POA national executive committee on 9th September last, the POA at Wandsworth lifted their industrial action on 18th October. That was in return for a regional manpower review of the staffing levels at the prison taking place. On 11th November industrial action was again imposed to limit the prison population to 1,505. I think that the noble and learned Lord will see that there has been every conceivable negotiation with the POA in order to bring the new system into operation. However, the POA has consistently refused to go back to the occupation ceiling of 1,555.

The noble and learned Lord asked whether the action to call in the police was reckless. I am bound to tell him that it was not a reckless act; it was a proper one which was agreed upon in order to ensure the safety of the prisoners in Wandsworth and that the gaol, as a whole, operated properly. It would have been unreasonable to have allowed the staff to leave without having taken proper action to ensure the correct running of the gaol.

The noble Lord, Lord Harris of Greenwich, said that many people were fed up with disputes of this nature. I entirely agree with him. Prison officers have a responsibility to run the prisons under the direction of the governors of the prisons. Much effort has been expended to allay their fears and to enable their work to be properly carried out. Therefore when such action is taken, which jeopardises not only the prisons but the prisoners themselves—and, as the noble Lord, Lord Harris of Greenwich, rightly says, those people who are remanded in police cells—I think that most people would agree that it is unacceptable. Quite clearly because the prison officers have consistently refused to return to the normal ceiling of 1,555 people in Wandsworth, 50 other people have been obliged to remain in police cells which is not the right place for them.

Lord Graham of Edmonton: My Lords, is the Minister aware that the executive of the POA is in the middle of organising a ballot of its members urging that the dispute, which has lasted for a long time, should be called off? Is he further aware that the executive of the POA has spent many weeks trying to urge its branches to accept the proposals? With that knowledge, is it not therefore extraordinary that the Government have connived at the situation in Wandsworth where a new governor has come in and sought to impose arrangements, on the local branch which were the subject of negotiation with the old governor?

Does the Minister recognise that there are many ways in which the Government could be seen to stand accused of being deliberately provocative at this time? Further, will he also urge upon the new governor that the way out of this impasse is to work with the POA so that when the national dispute is called off such matters may then be dealt with sensibly?

Earl Ferrers: My Lords, the noble Lord asked whether the action taken was provocative, in view of the fact that a ballot is going to be held on 6th February. I do not agree with him. The POA's national executive committee has recommended members to vote in favour of lifting the national industrial action. We welcome that fact. However, the dispute at Wandsworth has nothing to do with that; it is specific to that prison.

The noble Lord said that he thought the action was provocative. He then asked whether the governor should not learn to work with the POA—if I may have the noble Lord's attention for half a minute, when he has finished discussing the matter with the noble Lord the Opposition Chief Whip, it would be helpful. I am trying to answer his question, but I am quite happy to defer the matter until his attention is released. I am happy to see that I now have his attention. Unfortunately, during that time I have forgotten the question which I was trying to answer.

If I recall correctly, the noble Lord asked whether it would be proper for the new governor to work with the POA. The noble Lord will know perfectly well that this is a dispute which need not have taken place. As I explained to his noble and learned friend Lord Elwyn-Jones, a great deal of work and effort has gone on between the governor and the POA to ensure that this would not be necessary. The fact that the POA has called the dispute is one of considerable regret. Of course the governor will work with the POA—as all governors do—but it is also up to the POA to accept its responsibilities.

Lord Graham of Edmonton: My Lords, perhaps I may respond briefly. As the Minister is aware, I represent the interests of prison officers. I must declare that interest. Surely he is aware that this dispute, which has national implications, also has local implications at Wandsworth. Part of the reason for the ballot which will be held is to call off the national dispute, with local arrangements being made satisfactorily. Can the Minister confirm that the police have said that they are horrified at the action of the Government as this is the first time that the police have been called into prisons since 1919?

Earl Ferrers: My Lords, I shall not confirm the remarks made by the noble Lord. Of course it is undesirable to bring the police into the prisons. I am sure that the noble Lord will be the first to realise that, if by the action of the POA those prisons have become unsafe, then it is up to the governor to take action to ensure that the prisons are made safe. It is for that reason that the police were sent in. They were sent in in support of the governor and to work with him; not to take over the prison.

Viscount Davidson: My Lords——

Lord Elwyn-Jones: My Lords, the noble Viscount had his head bowed when I was getting up—a rare

R 15/3

Prime Minister 2.

LORD PRESIDENT

cc Mr Bearpark
Mr Maclean

Agreed MG

STATEMENT ON TRADE UNION LAW REFORM

I understand that Mr Fowler now wishes to announce the publication of his White Paper on Trade Union Law Reform during the course of the Budget debate on Monday 20 March rather than by a Statement during that week. This seems sensible and fits in well with the need to keep extra business during that week to the minimum. If you, the Chief Whip and No 10 are content I will let Mr Fowler's office know.

SC

SC
15.3.89

PERSONAL AND CONFIDENTIAL

cc Boyden

PRIME MINISTER

POLITICAL DONATIONS

1. We are to discuss further this afternoon the handling of the Williams amendment of the Companies Bill.

Present Law on Tabling Ordinary Resolutions

2. Under existing Company law, shareholders have the right at their expense to require a company to give members notice of an ordinary resolution to be put to an Annual General Meeting providing that the shareholders requesting such a resolution have either 5% of the voting rights of the company or they number 100 people each holding an average of £100 shares. Thus it is open to shareholders at the present time to challenge political donations using these provisions providing they satisfy the conditions for tabling resolutions. In practice however these powers are seldom used and we are not aware of any instance in which they have been used to challenge political donations.

Effect of the Williams Amendment

3. The effect is unclear. The requirement under the Companies Act is for the Accounts (including the directors report) to be laid before the company in general meeting - there is no requirement for those accounts to be approved. The amendment provides that where a political contribution has been disclosed in the Directors' report, that part of the report shall not be signed but shall be put to a general meeting for approval by ordinary resolution. It is unclear what would happen if the general meeting did not approve the ordinary resolution. But at worst it could cast doubt on the legality of a political contribution.

4. The Williams amendment as it stands is objectionable for a number of reasons. It seems to elevate political contributions above other matters properly left to the directors discretion; it could give rise to vexatious proceedings at meetings; and as I have said above its legal effect on contributions already made is uncertain.

Amendment in the Lords

5. It would be possible to amend further the Williams amendment in the Lords next week so as to ensure:

i. the ambiguity in the Williams amendment as to the effect on past donations is removed. The effect of inserting the words "consider the appropriateness" would ensure that an adverse vote amounted to a reprimand to the directors but no more;

ii. that the separate consideration be triggered without expense to the shareholder by a requisiton of shareholders and that a threshold is imposed on that requisition, based on existing law. We have hitherto thought in terms of the 5% of total votes which could be cast in the meeting rather than the 100 shareholders with an average of £100 nominal value of shares each. The 5% threshold is a formidable hurdle, bearing in mind that it is rare for more than 20% of total votes to be cast an an AGM. In effect, it is a hurdle of about 25% of likely votes; and

iii. that the timing of a requisition can be limited to the six months falling between the previous AGM to the end of the financial year.

PERSONAL AND CONFIDENTIAL

6. But even if the Williams amendment were to be so amended we should have to defend our decision to reject the 100 shareholders threshold and - to that extent - our departure from the existing provision in company law. Even if we were to succeed it would still be open to shareholders to use existing law to requisition something akin to the Williams amendment using either the 5% of votes or the more liberal 100 shareholders threshold.

Conclusion

7. I have discussed this with the Lord President and the Chancellor of the Duchy this morning. In view of the fact that the existing law could still be utilised to challenge political donations, we came to the view that the only sensible way forward is to reverse the Williams amendment.

8. In my previous minute to you and in our subsequent discussions I have set out the reasons why a reversal in the Lords will create grave difficulties for managing the Legislative Programme and delivering our major bills on time. So far as the Commons is concerned, it is certain that the subject of political contributions will be debated in that House in any event - whatever happens in the Lords.

9. I am sending a copy of this minute to the Lord President, the Secretary of State for Trade and Industry, the Chancellor of the Duchy of Lancaster, the Chief Whip, Lords and the Attorney General.

Nick Gibbons

MP BELSTEAD

15 March 1989

Possible Lords Amendment

As in Bill — PART I — Approval and signing of directors' report. — 234A.—(1) The directors' report shall be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.

Clause 8—*continued*

Williams amendment — 106A — Page 14 line 3, at end insert ("save for any section relating to contributions for political purposes, which shall be left unsigned and shall be expressed in the form of a proposal for ordinary resolution to be approved by the company in general meeting")

Williams amendment as amended by Government amendment — "save that where a requisition has been received under section 234B any section relating to contributions for political purposes shall be left unsigned and shall be expressed to be subject to consideration by the company in general meeting"

"Consideration of political contributions.

234B.-(1) Where a requisition has been duly made under this section, it is the duty of the directors of a public company to move at the next general meeting of the company at which accounts and reports are laid in accordance with section 241 a resolution enabling the meeting to consider the appropriateness of such political contributions as are disclosed in the directors' report laid before the meeting and have not been specifically approved by the company in general meeting.

(2) The number of members necessary for a requisition under this section is the same as that required for a requisition under section 376 (circulation of members' resolutions).

(3) The requisition is not effective unless a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company within the period of six months after the last preceding meeting of the company at which accounts and reports were laid in accordance with section 241.

(4) In the event of default in complying with this section, section 376(7) (offences) applies as in relation to a default in complying with that section.

(5) This section has effect notwithstanding anything in the company's articles; and the requisitionists shall not be required to meet any of the expenses of the company in complying with this section.

(6) In this section "political contributions" means such gifts for political purposes as are required by paragraphs 3 to 5 of Schedule 7 to be disclosed in the directors' report.")

SECRET

9

PRIME MINISTER

INDUSTRIAL RELATIONS REVIEW

You saw over the weekend Norman Fowler's draft Green Paper (Flag A) which he proposes to publish early next week. You had no objections to it.

As promised, Norman Fowler has now written separately to you (Flag B), responding to the remit you gave at E(A) for further consideration of the possibility of enabling the Commissioner to appear alone in the title of proceedings against a trade union, so protecting the member's anonymity. Norman Fowler continues to argue that this proposal should not be pursued.

Content to note Norman Fowler's latest minute, and to agree that the Green Paper should issue without reference to the possibility of the Commissioner's name appearing alone in the title of proceedings?

Yes

Duty Clerk

PP PAUL GRAY

14 March 1989

SUBJECT
CC MASTER

FILE
DA

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

14 March 1989

Dear Nick,

POLITICAL DONATIONS

The Lord Privy Seal came to see the Prime Minister today to discuss how the Government should deal with the Williams Amendment to the Companies Bill in the House of Lords. He returned again later in the day accompanied by Lord Denham.

The Prime Minister set out her concerns about the effect of the Amendment. She argued that the right course was to reverse the Amendment in the House of Lords. Her concern was heightened by the way it appeared the Williams Amendment would operate, i.e. by requiring any section of a company's annual report which related to political contributions to be subject to approval by the company at a general meeting. The effect seemed to be that a director agreeing to a donation would not know at the time whether it would subsequently be approved. This would put him in an unfair position and would be a major deterrent.

The Prime Minister did not think the amendment to the Amendment provided a sufficient safeguard even if the threshold for requisitioning a resolution was five per cent of the votes of shareholders and with over fifty per cent of the subsequent vote being needed to pass the resolution.

The Lord Privy Seal and Lord Denham advised that the convention that amendments defeated in Committee were not retabled at Report Stage was indeed of recent origin but it was very much in the Government's long term interest. Without it there would be no assurance that the Government's legislative programme could be delivered. Straight reversal of the Williams Amendment would cause the Opposition to withdraw co-operation and put a number of major Bills into jeopardy.

No agreement was reached. It was decided to meet again tomorrow (Wednesday). I am trying to set up a meeting for 2.30 pm to which the Lord Privy Seal, Lord Denham, Lord President and the Chancellor of the Duchy of Lancaster are invited. For this meeting I suggest a paper is required covering three points:

(a) an examination of precisely how the Williams Amendment works including the extent to which it operates ex post. It should be examined to see whether there were any defects which would justify either reversing it or severely amending it;

(b) an examination of a substitute amendment which would impose a more demanding threshold and which would minimise the extent to which political donations were spotlighted for special treatment;

(c) an examination of the pros and cons of reversal in the Lords and Commons. This needs to bring out that even if there were reversal in the House of Lords there would still be amendments tabled by the Opposition in the Commons. It would need to weigh up whether it was easier to resist a Labour amendment having knocked out the Williams Amendment first or whether it would be better simply to tackle the Williams Amendment.

The Lord Privy Seal agreed to take charge of a meeting to carry out this work, drawing on such legal advice as he deemed necessary. Can this paper reach No.10 by lunchtime.

I am copying this letter to Steven Catling (Lord President's Office), Neil Thornton (Department of Trade and Industry), Peter Smith (Chancellor of the Duchy of Lancaster's Office) and Rhodri Walters (Lord Denham's Office).

Yours sincerely,

Andrew Turnbull

(ANDREW TURNBULL)

Nick Gibbons, Esq.,
Lord Privy Seal's Office.

Secretary of State
for Employment

8(A+C)

PRIME MINISTER

ENABLING THE COMMISSIONER FOR THE RIGHTS OF TRADE UNION MEMBERS TO TAKE PROCEEDINGS ON BEHALF OF A UNION MEMBER

At our discussion of my proposals for a Green Paper at E(A) on 23 February, I promised to give further consideration to the possibility of making arrangements to enable the Commissioner for the Rights of Trade Union Members to appear alone in the title of proceedings against a trade union initiated by a member, thereby protecting the member's anonymity.

The Commissioner can provide assistance to a union member who is both eligible to bring the proceedings in his or her own right, and willing to do so. This is consistent with an important principle of our reform of industrial relations and trade union law since 1979, that the initiation of proceedings is left to those who are affected by an unlawful act.

We have created no role for the Government to intervene as a positive agent, nor set up special judicial machinery as was attempted in the 1971 Industrial Relations Act. This has helped us to avoid criticisms of unwarranted intrusion into union affairs by a State institution. I think it is important that the Commissioner should not be able to act except where there is a complainant eligible and willing to bring proceedings.

If we enabled the Commissioner to take proceedings in her own name alone, the union would almost certainly always challenge whether there was in fact a union member eligible to bring proceedings and willing for the Commissioner to do so. It would then be necessary for the Commissioner to reveal the identity of the complainant, so the union member's anonymity cannot be preserved by such means.

Secretary of State
for Employment

B

If we attempted to give the Commissioner power to determine a complainant's eligibility to bring the proceedings in such a way that her decision could not be challenged in court, this would amount to giving her powers similar to those a court itself would exercise. If the Commissioner had the powers of a court, or acted in the way that a court would do, this would amount to a quite different role from that envisaged when the post was established in the 1988 Act. Any such arrangement would be unprecedented, and likely to provoke applications for judicial review, eg on the ground that the Commissioner's new power had been exercised improperly. This would be undesirable in itself, and unlikely to achieve the objective because in the course of a review it would be extremely difficult (if not impossible) to protect the union member's anonymity.

It is worth recalling that we have already made arrangements to give union members protection against being disciplined by their union for applying for, obtaining or making use of the Commissioner's assistance. I am confident that the Commissioner would not reveal an applicant's identity to other parties to potential proceedings at any stage prior to such proceedings unless the applicant agreed this should be done. Intimidation of union members is a matter for the criminal law.

In view of these considerations, I believe that the proposal should not be pursued. I will, of course, continue to keep the matter under review in the light of further experience of the effectiveness of the Commissioner and any evidence that applicants for her assistance suffer intimidation.

C

I am copying this minute to other members of E(A), the Lord Chancellor, the Attorney General, the Minister of State, Foreign Office, and Sir Robin Butler.

N F

14 March 1989

1 of 18

7 (A-LL)

SECRET AND CMO UNTIL 01 AUGUST 1989

Department of Employment
Caxton House, Tothill Street, London SW1H 9NF

Telephone 01-273 5803
Telex 915564 Fax 01-273 5821

Secretary of State

Prime Minister

You may like to glance at the weekend at this draft Green Paper which E(A) agreed should be published before Easter. Mr. Forder will write separately next week but you point on the Commission's new role appearing in actions. Meantime, do you have any major worries on this draft?

RRCG 10/3

NO

Paul Gray Esq
Private Secretary
10 Downing Street
LONDON
SW1

10 March 1989

Dear Paul

Following agreement at E(A) on 23 February to his proposals for further reform of industrial relations and trade union law, my Secretary of State has asked me to circulate the attached draft Green Paper which he proposes to publish early in week commencing 20 March. He has asked that any comments be sent to reach this office by mid-day on Wednesday, 15 March.

This letter is copied to the Private Secretaries of members of E(A) and of the Lord Chancellor, the Attorney General, the Minister of State, Foreign and Commonwealth Office and Sir Robin Butler.

Yours ever

Bryony

BRYONY LODGE
Private Secretary

SECRET AND CMO UNTIL 01 AUGUST 1989

B.

RIGHTS AND FREEDOMS

Removing barriers to employment by further reform of industrial relations and trade union law

---

Cm XXX Her Majesty's Stationery Office £X.XX net

C

RIGHTS AND FREEDOMS

Removing barriers to employment by further reform of industrial relations and trade union law

Presented to Parliament by the Secretary of State
for Employment by Command of Her Majesty
March 1989

London
Her Majesty's Stationery Office
£X.XX net

Cm XXX

D

CONTENTS

Invitation to comment

The Government would welcome views on the issues and proposals set out in this document. Comments should be sent, to arrive no later than 20 June, to:

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

E

Chapter 1 - Introduction

1.1 Since 1979 the Government have given high priority to a programme of step-by-step reform of industrial relations and trade union law.

1.2 A major purpose of this programme has been the removal of unnecessary barriers to jobs. Before 1979 poor industrial relations was a major cause of job losses. Since then, employers have been given new freedoms which have enabled them to manage their businesses more efficiently and productively. Trade union members have been given the freedom to decide for themselves whether or not they wish to take part in industrial action. The balance of power between employers and trade unions has been redressed. Figure 1 sets out the major rights, freedoms and protections now provided by the Employment Acts of 1980, 1982 and 1988 and the Trade Union Act 1984.

1.3 Removing barriers to economic efficiency has made an important contribution to the improvement in the employment scene. The recession of the early 1980s hit the UK labour market hard, but since then the UK has rediscovered the art of job growth. A combination of strong and steadily increasing output, improved industrial relations and a more flexible labour force has provided the framework within which enterprise and job and training opportunities can flourish.

1.4 The numbers in the workforce in employment have increased enormously since March 1983 when job growth resumed. Over the five and a half years to September 1988, 2.8 million jobs and training places have been created. All the ground lost during the recession, and more, has been regained and the workforce in employment now stands at its highest ever level. The scale of this increase in jobs is unsurpassed in the post-war period.

F

1.5 The pattern of job growth also reflects increasing flexibility in the labour market. Since March 1983 self-employment has risen by around 800,000 and the number of part-time employees has risen by a similar amount. But not all the job growth has been in these areas of the economy. The 1.6 million increase in the number of employees in employment includes 800,000 working full time.

1.6 The unemployment situation has also greatly improved. Since July 1986, there has been a record-breaking decline in unemployment. By January 1988 this was below 2 million, down 1.1 million from its peak. It had fallen in each of the last 30 months, the longest fall since the war and the largest on record. **[CHECK ALL FIGURES STILL UP-TO-DATE IMMEDIATELY BEFORE PUBLICATION.]**

1.7 All parts of the economy have benefited:

- unemployment has fallen in every region

- long term unemployment is down more than half a million from its peak of 1.37 million and has recently been falling at a faster rate than total unemployment

- unemployment among the young (18-24) has also fallen faster than total unemployment

- results from the Labour Force Survey suggest that the unemployment rates among ethnic minorities have fallen faster than for the population as a whole.

1.8 The improvements which have taken place show the value of the Government's policy of removing barriers to the efficient working of the labour market. But it is essential to continue the search for greater flexibility, and to examine obstacles to the growth of jobs which still remain. In this context we must ensure that the

G

legal framework for industrial relations is adapted to the needs of the 1990s.

1.9 The Government consider that it is time to take action against the pre-entry closed shop. This is a restrictive practice, limiting the number of people who can obtain employment in the areas it covers. Its effect is to drive up pay levels. Pre-entry closed shops also have a particularly damaging effect on the supply of skilled workers by restricting access to training places. The overall result is higher prices, lower output and an inefficient use of the economy's resources.

1.10 It is also important to keep under review the limits within which industrial action can be lawful. The harm which inappropriate and unnecessary forms of industrial action can do to the economy, and to jobs, needs no emphasis. Much has been done already, not least through the right which both employers and trade union members now have to insist on a properly-conducted secret ballot before industrial action. But the Government consider that it is time to examine afresh whether the immunities for secondary action established in 1980 are still appropriate. In general the Government's view is that employers who are not parties to a dispute should no longer be exposed to the threat of industrial action - a threat which can deter new enterprises from setting up in this country.

1.11 Finally, the Government consider that thought should be given to whether the scope of the Commissioner for the Rights of Trade Union Members should be extended.

1.12 The Government invite comments on the proposals for further reform of the law set out in this consultative document. Chapter 2 deals with the pre-entry closed shop, Chapter 3 with industrial action (including secondary action) and Chapter 4 with the Commissioner.

H

1.13 The terms of the consultative document apply equally to men and women but, for simplicity, the masculine pronoun is used. Unless otherwise indicated the term "court" is used to mean the High Court in England and Wales and the Court of Session in Scotland. The Annex provides a glossary of trade union titles quoted in abbreviated form.

Figure 1

Freedoms, Rights and Protections

EMPLOYMENT ACT 1980

Individuals given:

- **protection** against dismissal or discrimination for non-union membership in a closed shop in the case of strongly held personal convictions.

Employers given:

- **freedom** to decide for themselves whether or not to recognise trade unions;
- **right** to restrain unlawful picketing;
- **right** to restrain indiscriminate secondary action;
- **freedom** from inappropriate restrictions in determining pay levels.

EMPLOYMENT ACT 1982

Individuals given:

- increased **protection** and compensation if dismissed because of a closed shop.

Employers given:

- **freedom** to take legal action for injunctions and damages against trade unions themselves;
- **right** to restrain industrial action which is not about employment-related disputes between workers and their employer;
- **right** to restrain secondary action intended to establish or maintain union labour only contracts;

TRADE UNION ACT 1984

Individuals given:

- **right** to regular ballots to decide whether their union should undertake political activities;
- **right** to elect by secret ballot all voting members of their union's executive.

Employers given:

- **right** to restrain industrial action unless there has been a properly-conducted secret ballot;

EMPLOYMENT ACT 1988

Individuals given:

- **right** to restrain their union from calling on them to take any industrial action not supported by a properly-conducted secret ballot;
- **protection** against dismissal for non-union membership in all circumstances;
- **right** to inspect their union's accounting records;
- **protection** against unjustifiable discipline by their union (eg for working during a dispute);
- **right** to elect all principal union leaders by secret postal ballot under independent scrutiny;
- **right** to take legal action against trustees if they permit union funds to be used unlawfully;
- **right** to apply to the Commissioner for the Rights of Trade Union Members for assistance in taking certain court proceedings against their trade unions.

Employers given:

- **right** to restrain industrial action intended to establish or maintain any union closed shop practice.

5

Chapter 2 - The Pre-entry Closed Shop

2.1 The White Paper "Employment for the 1990s" (December 1988) announced that the Government intended to examine the operation of the pre-entry closed shop and review the steps employers had taken to use the freedom the law has given them to get rid of closed shop arrangements.

2.2 This review was carried out over the period December 1988-February 1989. It considered all the available research and survey evidence, and discussions were held with some 40 employers' organisations and individual employers. In addition, a specially commissioned survey of [nearly 2000] adults was undertaken between 22 and [27 February] 1989.

The nature of the closed shop

2.3 The closed shop means any employment situation in which particular jobs can only be filled, in practice, if the worker is willing to become and remain a member of a specified trade union or one of a number of specified trade unions. The two main forms of the closed shop are: the post-entry closed shop, where the employer may take on a non-unionist, so long as such a recruit joins the union shortly after starting the job (unless he is covered by an agreed exemption), and the pre-entry closed shop, where the individual has to be accepted as a union member before starting work in a job that is covered by the arrangement. It is the latter form which was given particular attention in the review.

2.4 The relevant research[1] identifies three main types of the pre-entry closed shop. In craft qualification shops (such as in

---

(1) Stephen Dunn and John Gennard, 'The Closed Shop in British Industry' (Macmillan: 1984).

general printing) craft unions restrict full membership to those who have completed apprenticeship or similar training and, in some cases, limit the number trained in this way through, for example, apprenticeship ratios. In labour supply shops (as in the London wholesale markets) the union operates as an employment agency, being recognised by the employer as the sole or main supplier of labour. In the labour pool shop (as in merchant shipping) employers recruit from a recognised pool of labour confined to members of the union. It is likely that the craft qualification and labour pool shops have been the most prevalent.

2.5 Some pre-entry closed shops were established on an industry-wide basis, as in merchant shipping and the theatre, but in most cases the arrangement was a local one, operated at individual workplaces. In 1984 most workplaces with any form of closed shop had a written agreement covering the practice(2), but this was less true of pre-entry than post-entry cases. It was also more common for pre-entry arrangements to be partial, covering particular job categories rather than all manual employees at the workplace.

Extent

2.6 The numbers of people in closed shops increased to a peak of over 5 million in 1978(3). Since then there has been a fall to around 3.6 million in 1984(4) and around 3 million in early 1989 (5).

2.7 The pre-entry closed shop covered over 800,000 workers in 1978 (3). That figure was explicitly a minimum estimate for a

(2) Neil Millward and Mark Stevens, 'British Workplace Industrial Relations 1980-1984' (Gower: 1986).

(3) Dunn and Gennard, op. cit.

(4) Millward and Stevens, op. cit.

number of reasons, including the difficulty of obtaining reliable information from employers and trade unions in some industries, notably construction, although the closed shop was known to exist there. The most recent evidence(5) [found] [suggests] that there is still a similar number of workers in jobs where it is necessary to be a union member before being considered for the job, and that in addition there are about half a million workers in jobs where new recruits are required to join a union before starting work. In total, therefore, the number of people covered by all types of pre-entry closed shop arrangements is of the order of one and a quarter million.

2.8 The pre-entry closed shop therefore remains widespread. There are concentrations in shipping, printing, manufacturing, the theatre and the London wholesale markets. It is also present in construction and road haulage and is found across all major sectors of the economy, largely reflecting its importance in the traditional craft occupations.

Economic effects

2.9 The main direct economic effect of the closed shop is to raise pay levels. Over recent years a considerable body of research has established that manual workers are paid more in plants where unions bargain over pay, even taking account of a large number of other factors. The range of the "union mark-up" is wide, and one important element in explaining the variation is the presence or absence of a closed shop(6).

(5) Based upon questions in a survey of [1949] adults between 22 and [27 February] 1989. This survey, which was specially commissioned as part of the review of the closed shop, involved face to face interviews with a random probability sample of adults, conducted by NOP Market Research Limited.

(6) D Blanchflower, A Oswald and M Garrett, 'Insider Power in Wage Determination' (LSE Centre for Labour Economics Discussion Paper 319: 1988).

2.10 The pay effect is most marked with the pre-entry closed shop. Recent analysis(7) suggests that the existence of a pre-entry closed shop raises the earnings of manual workers by over 10 per cent on average. In plants subject to relatively little product market competition it raises wages by about 20 per cent(8). In the small proportion of plants in competitive industries which have both a pre-entry closed shop and a high level of union coverage in the industry, wages can be up to 30 per cent higher. The pre-entry closed shop appears to raise the pay of other manual workers in a plant, not just those it directly covers (8),(9). It also tends indirectly to push up earnings levels more generally in local and national labour markets.

2.11 There is evidence that the closed shop has a negative impact on company profitability[10]. It is also likely to have an adverse effect on labour productivity.

2.12 The closed shop is sometimes associated with higher levels of industrial action. A 1987 study[11] found a positive relationship between the presence of a closed shop and the probability of a recent strike by manual workers. Some employers

---

(7) M B Stewart, 'Union Wage Differentials, Product Market Influences, and the Division of Rents' (LSE Centre for Labour Economics Mimeo: November 1988).

(8) M B Stewart, 'Collective Bargaining Arrangements, Closed Shops and Relative Pay' (Economic Journal 97: 1987).

(9) D Blanchflower and A Oswald, 'The Determination of White-collar Pay (LSE Centre for Labour Economics, Discussion Paper 307: 1988).

(10) S J Machin and M B Stewart, 'Unions and the Financial Performance of British Private Sector Establishments' (University of Warwick mimeo: September 1988); D Blanchflower and A Oswald, 'Profit Related Pay: Prose Discovered?' (Economic Journal 98: 1988).

(11) A Booth and R Cressy, 'Strikes with Assymetric Information: Theory and Evidence' (City University mimeo: August 1987).

have reported that the pre-entry closed shop is associated with high levels of non-strike action such as go-slows and blackings.

2.13 Because it raises aggregate labour costs, the pre-entry closed shop reduces total employment in the economy. It is estimated that if it had never existed and labour costs had consequently been 10 per cent lower for the workers currently covered by pre-entry closed shops, the direct effect would be that aggregate employment would be higher by over 100,000. The total impact on employment would have been greater because in addition, labour costs would have been lower for **other** workers in plants with pre-entry closed shops; the wage premium in **post-entry** closed shops would have been lower; and labour costs would have been lower elsewhere in the economy through greater competition in the labour market.

2.14 The pre-entry closed shop also has major underlying effects of a longer-term nature. In particular, it reduces the supply of labour in the main trades affected, and has contributed to the shortages of skilled labour in the economy. This is likely to be at least as important as the more direct effects discussed above, both in reducing the flexibility of the labour market and in adverse effects on wage costs and employment levels.

Practice of employers

2.15 One purpose of the review was to establish what steps employers are taking to use their freedom to get rid of closed shop arrangements. Extensive evidence on this was obtained from employers and employers' organisations.

2.16 Largely as a result of the Government's earlier legislation, few employers now attempt to enforce post-entry closed shops. In several cases (eg footwear manufacturing, British Gas, British Shipbuilding, British Rail Engineering Ltd) formal post-entry arrangements have been suspended or scrapped. In others (eg Ford,

National Freight Company) formal agreements have been left in place but are no longer enforced. The survey found little evidence of formal post-entry closed shops still being operated, though some local authorities make it a formal condition of engagement that the new recruit agrees to join one of a number of specified trade unions or to make a charitable donation equivalent to union dues. Informal post-entry arrangements are also scarce but union membership levels often remain very high where the post-entry closed shop formerly applied, eg 90 per cent or more - no doubt reflecting peer group pressures as well as other factors.

2.17 Formal pre-entry closed shops were most clearly evident in the shipping, printing and theatrical industries. Under national agreements covering much of the shipping industry, ratings are required to be registered seafarers and, once registered, cannot start work with a unionised company unless they are union members.

2.18 In the general printing industry, skilled employees are usually members of either the NGA or SOGAT. As a result, employers often notify vacancies to the local union branch, which will then put forward members for interview. This applies particularly to the NGA, a craft union covering only skilled printing and pre-press occupations, but also applies to some extent to SOGAT, which has some skilled as well as semi- and unskilled members. There are also post-entry arrangements in a number of companies.

2.19 As regards the theatre, the Theatrical Management Association (TMA), which represents those concerned with theatrical production in the provinces, entered into new casting agreements with Equity in August 1988. Students graduating from an accredited acting or stage management course are now placed on Equity's Register for two years. If they are able to obtain a suitable offer of employment from a TMA member during that time, they will be given provisional membership of the union. However, graduates from non-accredited courses and non-graduate newcomers to the profession can only obtain Equity cards under a quota system

administered by the TMA. Where West End theatres are concerned the position is more straightforward; an agreement between the Society of West End Theatre and Equity provides that individuals are unable to obtain employment unless they are already in possession of an Equity card.

2.20 Outside these three industries, few employers surveyed had ever operated formal pre-entry closed shops. Some employers in the road haulage industry require new recruits to have a union card to enable them to gain admittance to particular locations (eg the docks, especially in Liverpool where all road haulage employers notify the TGWU when new labour is required). At the London wholesale markets (eg Smithfield), the TGWU still acts as a recruitment agency for employers,nominating a potential candidate from the union's pool whenever a vacancy arises.

2.21 It is clear from the survey, however, that informal pre-entry arrangements remain widespread. For example, employers in the exhibition industry are unlikely to take on anyone who does not possess a union card, for fear of industrial action if a non-member was found to be working at an exhibition site. A number of employers operate de facto pre-entry closed shops when recruiting skilled craftsmen, regarding union membership as evidence of the required skills. This attitude was particularly prevalent in engineering but was also found in the construction industry.

2.22 The evidence obtained from employers on the widespread extent of the pre-entry closed shop is amply confirmed by the most recent evidence in paragraph 2.7 above.

The situation elsewhere in the European Community

2.23 Evidence obtained in the course of the review shows that formal closed shops are illegal in many other European Community countries and are rare even where they are not illegal. France,

P

West Germany, Italy, Luxembourg, Spain and Portugal all have legislation which explicitly or implicitly prohibits the closed shop. Holland has a formal closed shop arrangement in the printing industry but 'conscientious objectors' are exempt and, in practice, use of this let-out is freely available. Informal closed shops do exist in some countries but appear to be much less widespread in any of them than in Britain.

Need for further action

2.24 The review shows that:

- the closed shop, and particularly the pre-entry closed shop, can push up wages very significantly, with consequent damage to profitability and to jobs. It also has indirect effects which reduce the flexibility of the labour market and adversely affect wage costs, employment levels and the supply of skilled workers. It is a restrictive practice and a barrier to employment;

- the pre-entry closed shop is an infringement of the liberty of the individual. Where it is in operation, workers seeking employment cannot choose for themselves whether to join a trade union; in order to get a job they are obliged to do so;

- employers have made limited use of the freedom the law now gives them to get rid of closed shops. Although very few employers now operate formal post-entry closed shops, about one and three-quarter million workers are still covered by post-entry arrangements. Pre-entry closed shops (whether formal or de facto) are still found in all the major sectors of the economy and are particularly prevalent in certain industries and areas. They cover some one and a quarter million workers.

2.25 In the Government's view, these findings constitute a substantial case for further legislation.

2.26 Previous Employment Acts have already eliminated many of the worst abuses of the closed shop. Any dismissal, or discriminatory action against an individual short of dismissal, on the ground of non-membership is now unfair. Industrial action to enforce any closed shop is now unlawful. But it is still lawful for an employer to discriminate against workers who are not members of a trade union by refusing to engage them.

2.27 **The Government now propose to close the remaining loophole by giving individuals a statutory right not to be refused engagement on the ground of non-membership of a trade union.** Any individual who believed that he had been discriminated against in this way would be able to complain to an industrial tribunal. If the tribunal found that engagement had been refused on the ground of non-membership, it would make a declaration to that effect. If the employer still refused to engage the individual, the tribunal would be able to order the employer to pay compensation to him. The amount of compensation could be calculated on the same basis as applies to refusal of engagement because of discrimination on grounds of sex or race. The maximum in such cases is currently £8,500.

2.28 An alternative approach would be to give individuals a right of complaint to the High Court. The Government believe, however, that an industrial tribunal would be a more appropriate forum because procedures at a tribunal are less formal, less expensive, easier of access and quicker than those of the High Court. Industrial tribunals already hear complaints from individuals who believe that they have not been recruited by an employer because of discrimination on grounds of sex or race, as well as complaints

R

from individuals who believe that they have been dismissed from employment because they are not union members.

2.29 It has been suggested by some that the Government should "ban" closed shops or otherwise make them unlawful. That approach would be unlikely to achieve the desired effect. The word "banned" has no legal meaning, and to say that something is banned does not necessarily prevent it. What is needed is to give the victim an effective remedy. The law provides a direct remedy to those who are discriminated against on grounds of sex or race. In the Government's view it must equally do so for those discriminated against on the ground of non-membership.

Particular aspects

2.30 A number of specific issues arise from the Government's proposal. These are considered in the remainder of this chapter. The Government would welcome views on them.

2.31 The Government consider that the proposed new right should apply to people who are not members of a particular union, or one of a number of particular unions (or of a particular branch or section of a union, or one of a number of such branches or sections), and to people who are not members of any trade union at all. An employer who has a pre-entry union membership agreement with union A might refuse to engage both an individual who belongs to no union and an individual who is a member of union B. The act of discrimination is essentially the same - a refusal of engagement because the individual is not a member of union A - and it seems right that both individuals should have a remedy.

2.32 Another issue for consideration is the situation - found, as noted earlier, with certain local authorities - where a job applicant is not required to be a union member at the time of engagement but is engaged subject to the explicit understanding

5

that he will become a union member within a specified period after taking up employment. Such an applicant is already protected from dismissal on the ground of non-membership if he fails to join the union within the time allowed, but is clearly placed in a difficult position at the time of the job interview. If he expresses reluctance to become a union member he may well not get the job. But he will not want to agree to do something that he has no intention of doing, even if he knows that the post-entry closed shop cannot be enforced. Moreover, he might find himself in difficulties if he agreed to join the union after taking up employment and then failed to do so. Dismissal on the ground of non-membership would automatically be unfair, but the employer might argue that the dismissal was not on account of non-membership but on account of dishonesty.

2.33 The Government therefore believe that legislation should protect individuals from being refused engagement either because they are not members of a union at the time of recruitment or because they refuse to agree at the time of recruitment to join a union after their employment has started.

2.34 It may be argued that an exception should be made in the case of trade unions which are also professional organisations, such as the British Medical Association and the Royal College of Nursing. This would allow employers to refuse engagement to jobs in the professions concerned on the ground of non-membership of these bodies. Membership of such bodies is not however a requirement for employment in the National Health Service. What is required for employment as a doctor, for example, is to be on the General Medical Council's register, not to be a member of the BMA. No exception, therefore, seems to be required.

T

Conclusion

2.35 The Government's legislation has done much to reduce the power of the closed shop and its coverage has declined significantly since 1979. But the pre-entry closed shop is still widespread, and is a barrier to employment. The Government therefore believe that individuals should be given a statutory right not to be refused engagement on the ground of non-membership of a trade union.

2.36 **The Government invite views on their proposal for legislation to provide a right of complaint to an industrial tribunal for any individual whom an employer refuses to engage on the ground of non-membership of a trade union or of any particular trade union, or on the ground of refusal to agree that he will become a member after his employment has started.**

Chapter 3 - Industrial Action

3.1 When the Government came into office in 1979, strikes were one of the major barriers to improving Britain's economic performance. Days lost through industrial disputes had risen to new high levels during the late 1970s. A series of major strikes and continual minor disputes posed great difficulties for many firms and industries. Poor industrial relations affected productivity and profitability, and this led to reductions in employment. The effect of disputes was to export job after job to other countries, and to create a reputation for unreliability which made it harder to sell our goods and services abroad.

3.2 The last ten years have seen a major improvement in our industrial relations record. Working days lost through industrial action are now running at 3.5-4 million a year, compared with an average of 13 million a year during the 1970s. The annual number of stoppages recorded in each of the last four years has been lower than in any other year since 1940. Britain's industrial relations reputation has been transformed, and new jobs and employment opportunities have followed.

3.3 It can be no coincidence that the improved record of the 1980s has been achieved at the same time as the Government's reform of industrial relations and trade union law. These reforms helped correct the imbalances of power between trade unions and employers, and between trade unions and their own members, which were among the fundamental causes of the problems of the 1970s. The atmosphere of industrial relations today is very different. Legislative reform has contributed significantly to the important changes of attitude which have made this improvement possible. But there are no grounds for complacency; the process of modernising the law is a continuing one.

3.4 It has long been recognised that the law has a legitimate role to play - indeed an essential one - in defining the limits within which industrial action can lawfully be organised. These limits must be subject to periodic review, to ensure that the legal framework reflects the needs of our economy and our society now and for the immediate future. The law must be adapted to present-day realities and the needs of the 1990s.

Immunity for organising secondary action

3.5 Organising industrial action would be unlawful under the common law if it was not for the immunities provided by statute. Under the common law, which is case-law developed by the courts as opposed to statute law passed by Parliament, it is unlawful to induce people to break their contracts or to interfere with the performance of a contract,or to threaten to do either of these things. Anyone organising a strike or industrial action would be liable to legal proceedings by employers or others damaged by the action if there was not special protection - "immunity" - for inducing it. As the law stands at present, that immunity can apply to organising certain forms of secondary action.

3.6 If there is a trade dispute between an employer and his workforce, industrial action by workers of another employer, in support of the workers in dispute, is secondary action - sometimes known as "sympathy" action. Section 17(2) of the Employment Act 1980 defines "secondary" action as action which induces workers of an employer who is not a party to a trade dispute (1) to break or interfere with the performance of their contracts of employment.

---

(1) There is a statutory definition of "trade dispute" in section 29 of the Trade Union and Labour Relations Act 1974 (as amended by the Employment Act 1982). Such a dispute exists where there is a dispute between workers and their own employer, and that dispute is wholly or mainly about employment-related matters.

W

3.7 As a result of the 1980 Act, where secondary action interferes with the performance of commercial contracts, or threatens to do so, its organisers do not have immunity unless all four of the following conditions are satisfied:

a. the workers involved in the secondary action work for a customer or supplier of the employer in dispute;

b. that customer or supplier has a current commercial contract with the employer in dispute;

c. the principal purpose of the secondary action is directly to prevent or disrupt supplies to or from the employer in dispute during the dispute; and

d. the secondary action is likely to achieve that purpose.

3.8 The 1980 Act also makes possible immunity for inducing industrial action by workers at an associated employer (2) of an employer in dispute, or at the associated employer's customers or suppliers, where both the following conditions are satisfied:-

a. the principal purpose of the action is to prevent or disrupt the supply of goods or services which but for the dispute would have been supplied by or to the employer in dispute; and

b. the action is likely to achieve that purpose.

---

(2) "Associated employer" is defined in section 30(5) of the Trade Union and Labour Relations Act 1974 as follows:

> "For the purposes of this Act any two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control; and in this Act 'associated employer' shall be construed accordingly."

X

The need for change

3.9 The arrangements described above were framed in the light of circumstances in 1980, at a time when secondary industrial action had been much more widespread than it has been in more recent years. But it is now right to ask whether the immunities described in paragraphs 3.7 and 3.8 are still justified.

3.10 The Government believe that the following considerations indicate that the present law needs amendment:

a. In general there is no good reason why employers who are not party to a dispute should be at risk of having industrial action organised against them.

b. The threat of secondary action may deter employers from starting up for the first time in this country, with harmful effects on new investment and on jobs. For example, there might be a threat of secondary action being organised among workers of the new firm's customers or suppliers, with the aim of forcing the new enterprise to accept certain terms and conditions. This sort of threat was made when the American Ford Motor Company was planning to establish a new factory at Dundee. Regardless of whether they are lawful or unlawful under the present law, there is no good reason why any threats of this kind, or the organisation of action of this kind, should enjoy immunity.

c. The law as it stands is complicated, and it could well be difficult for those involved to determine, in the absence of a court judgment, whether there would be immunity for organising certain secondary action. An example might be secondary action which involved a union inducing transport workers to refuse to move coal to power stations, or within

4

power stations, in support of an industrial dispute between British Coal and its employees. If the coal was part of a shipment including other goods from other suppliers, it might be very difficult to know whether there would be immunity for refusal to move the shipment as a whole. The same would apply if the coal was unloaded and stored with coal from other suppliers, from which it could not be distinguished, and transport workers then refused to move any part of the store of coal.

3.11 The same considerations do not apply to the law on picketing. A worker employed by a party to a dispute, picketing at his own place of work, may attempt to persuade another worker not to deliver goods. This may amount to inducement of the latter to break or interfere with the performance of his contract of employment. Unless the induced worker's employer is a party to the dispute in connection with which the picket is taking place, the picket would be unlawful secondary action unless provision was made to the contrary. Such provision is made in the 1980 Act so that pickets who are in dispute with their own employer do not lose immunity by doing no more than peacefully picketing as the law (3) allows. The Government propose no change to the arrangements described in this paragraph.

---

(3) Picketing is declared lawful by section 15 of the Trade Union and Labour Relations Act 1974 (as amended by the Employment Act 1980) only if the following conditions are satisfied:

a. the picketing is at or near the pickets' own place of work; and

b. the purpose of the picketing is peacefully to obtain or communicate information, or peacefully to persuade a person to work or not to work.

There are certain limited exceptions to a. above, to cover the position of union officials, those who do not normally work from any one particular place, and those who do not have a place of work because the termination of their employment gave rise to the dispute which the picketing supports.

Z.

3.12 **The Government therefore propose to make it unlawful to induce industrial action by workers of an employer not party to a trade dispute, except in the case of lawful picketing.**

Balloting on industrial action by those doing work under contracts "for services"

3.13 The Trade Union Act 1984 made it a condition of immunity that a trade union intending to organise industrial action which interferes with contracts must first hold a properly conducted ballot of the members who will be induced to take part in the action. The Employment Act 1988 gave individual union members a statutory right to restrain their union from inducing them and others to take or continue any industrial action without such a ballot.

3.14 This legislation has done much to help ensure that union members are given the opportunity to express their willingness or otherwise to take part in, or continue with, industrial action which their union may organise. The Advisory, Conciliation and Arbitration Service Annual Report for 1987, for example, bears out the view that balloting on industrial action has now become a common practice among unions. There is a firm and widespread expectation among union members that they will be consulted by secret ballot before being called on by their union to take or continue with industrial action. This is a major step forward to secure union members' rights, and make unions properly accountable to their members.

3.15 Balloting can also avoid industrial action which the members concerned do not want. There have been some notable examples of union members voting against industrial action which their union might otherwise have sought to organise. In the last year alone, ballots of local government workers, miners and dockers produced majorities against industrial action which their unions might otherwise have organised.

AA

3.16 It is of course essential that ballots should be properly conducted. The Government have issued a draft statutory code of practice "Trade union ballots on industrial action", whose purpose would be to promote desirable practices in relation to the conduct of such ballots. Consideration is being given to further steps which may be taken in the light of representations received on the published draft. If such a code is in due course approved by Parliament and brought into effect the Government will carefully consider any evidence that unions are failing to take the code's recommendations about good practice into account, or are failing to apply them where it is appropriate and practicable to do so.

3.17 At present the requirements of the law on balloting before a union's authorisation or endorsement of industrial action apply only in respect of action taken by those employed under contracts of employment (4). The relevant definition of "contract of employment" is as follows:-

> "A contract of service or apprenticeship, whether it is express or implied and (if it is express) whether it is oral or in writing." (5)

3.18 There are many union members who work under arrangements which do not come within this definition. The most obvious examples are "freelance" workers, such as those working in the performing arts, and self-employed workers in the construction industry who are engaged on contracts "for services" rather than "of employment". It is perfectly possible for a trade dispute to

---

(4) See reference in sections 10(1) and (2) of the Trade Union Act 1984, and the definition of "industrial action" in section 1(8) of the Employment Act 1988

(5) Section 30(1) of the Trade Union and Labour Relations Act 1974.

BB

involve such workers; the definition of employment for the purposes of a trade dispute is wide enough to include them(6).

3.19 The Government believe that there is no reason to deprive union members doing work under contracts "for services" of the assurance that they will have the opportunity of, and right to, a properly conducted ballot before their union induces them to take industrial action.

3.20 In addition, the present law on immunity for organising secondary action defines such action as, inter alia, action which involves inducement or threat "to break a contract of employment" (or to interfere or induce another to interfere with the performance of such a contract) (7). The Government's proposals to make certain changes to this legislation have been described in paragraphs 3.5-3.12 above.

3.21 The Government believe there is no reason why secondary action should attract immunity simply because those who take part in it work under contracts "for services" rather than contracts of employment. It would therefore be appropriate to extend the definition of secondary action so that it covered inducement etc to break or interfere with the performance of contracts "for services" as well as contracts of employment.

---

(6) The definition of "employment" in section 29(6) of the Trade Union and Labour Relations Act 1974 (which defines "trade dispute") states that:

> ""employment" includes any relationship whereby one person personally does work or performs services for another."

(7) Section 17(2) of the Employment Act 1980.

CC

3.22 The Government therefore propose to amend the law so as to:-

a. extend the statutory requirements for union ballots on industrial action so that they would apply to the authorisation or endorsement by a union of industrial action taken by its members working under contracts "for services"; and

b. extend the definition of secondary action so that it includes action by those who work under contracts "for services".

Conclusion

3.23 Britain's record on industrial action has improved greatly since 1979, with important benefits to the economy. But it is right to keep the law on industrial action under review, to ensure that it continues to meet current and future needs. With this in mind the Government invite views on the changes proposed in paragraphs 3.12 and 3.22 above.

DD

Chapter 4 - The Commissioner for the Rights of Trade Union Members

4.1 It has been a consistent principle of the Government's approach to the reform of industrial relations and trade union law that the use of legal proceedings to prevent or restrain unlawful acts should be left to those directly affected by such acts. This applies not only to employers and their customers and suppliers who may be damaged by, for example, unlawful inducement to take industrial action, but also to union members when their union denies them their statutory rights, or fails to carry out statutory duties owed to them.

4.2 It is not much use, however, having provisions in the law which can protect union members against abuses of power by their union, if there are unnecessary obstacles to their using the law where necessary to enforce their rights. The Trade Union Act 1984 therefore gave members a choice of routes of complaint if their union breached its statutory duties in respect of elections to its principal executive committee or in respect of its membership register. While able to seek a remedy from the High Court, members were also given access to the quicker, less expensive and less formal mechanism of a hearing before the Certification Officer (1). In addition, the Employment Act 1988 established the Commissioner for the Rights of Trade Union Members, with power to grant material assistance to union members contemplating or taking certain court proceedings against their union, its officials or trustees.

4.3 It has never been the Government's intention to encourage unnecessary proceedings, but to help ensure that proceedings can be taken as and if necessary. The Government would be quite content to see few proceedings (and few applications for assistance to the

---

(1) After making appropriate enquiries following a complaint, the Certification Officer decides whether to make a declaration saying that the union has breached its statutory duties on elections or membership register.

EE

Commissioner, or to the Certification Officer for a declaration) provided that this is because unions are not breaching statutory duties or denying members their rights.

The Commissioner

4.4 The Commissioner's office opened for business in December 1988. The proceedings currently in scope of the Commissioner's assistance are set out in Figure 2. The Commissioner is independent of Government control, and cannot be directed by Ministers to assist, or not to assist, any particular application. Union members who apply for the Commissioner's assistance are protected against being disciplined by their union for having done so (2).

(2) A member disciplined by his union for this reason may complain to an industrial tribunal which, if it finds the complaint well founded, will make a declaration to that effect. The declaration can lead to an award of compensation being made by the industrial tribunal, or in some cases, by the Employment Appeal Tribunal.

FC

Figure 2

Proceedings currently in scope of the Commissioner's assistance

At present the Commissioner for the Rights of Trade Union Members is able to grant assistance in connection with applications to the High Court, and High Court proceedings arising out of complaints by a union member that his union:-

- has, without the support of a properly conducted secret ballot, authorised or endorsed industrial action in which he and other members are likely to be (or have been) induced to take part;

- has not observed statutory requirements in respect of elections to its principal executive committee or membership register;

- has applied its funds for electoral or party political purposes without a properly constituted political fund;

- has failed to comply with the rules approved by the Certification Officer in any ballot, or proposed ballot, on the use of funds for electoral or party political purposes;

- has failed to bring or continue any proceedings to recover union property applied to pay or compensate any individual for any penalty imposed for an offence or for contempt of court;

- has denied his statutory right to inspect its accounting records; or

- trustees have caused or permitted, or propose to cause or permit, any unlawful application of the union's funds or property.

GG

4.5 Assistance provided by the Commissioner may include paying for legal advice and representation, or making arrangements for advice and representation to be provided. Anyone granted assistance is given a choice about the arrangements to be made for this, for example whether the assisted person will employ legal advice and representation himself and be reimbursed by the Commissioner, or whether he will choose to have the Commissioner make payments for these services directly on his or her behalf. In granting assistance the Commissioner will always indicate the extent of that assistance,for example up to what stage in any current or prospective court proceedings it will be available (3).

4.6 In general the Commissioner has a wide discretion to decide whether to grant assistance. However, the Commissioner is required to grant assistance if an application concerns court proceedings which relate to the same matter as a declaration against the applicant's union already made by the Certification Officer about a union election or membership register, and it appears to the Commissioner that the applicant has a reasonable prospect of obtaining a court order from proceedings.

Commissioner to appear in the title of assisted proceedings

4.7 Consistent with the principle described in paragraph 4.1 above, the Commissioner's assistance is available only where a union member eligible to bring proceedings in his own right applies for that assistance and is willing to see the proceedings brought or continued. The Commissioner is under a statutory duty to provide assistance on terms which will ensure that any person against whom assisted proceedings are taken will be informed of

---

(3) Where the assistance relates to any court proceedings the Commissioner is under a duty to pay costs or expenses awarded against the assisted person by the court as a result of those proceedings

HH

that assistance. But at present the Commissioner cannot appear in the title of those proceedings.

4.8 If it was possible for the Commissioner to appear alongside the assisted person in the title, this could give the assisted person more assurance that the Commissioner stood behind him in the proceedings. It could also increase public awareness of the grant of assistance and of the Commissioner's role.

4.9 There might however be cases in which the assisted person would prefer not to have the Commissioner appearing in the title of proceedings. There is no reason why the decision about this should not be left to the assisted person.

4.10 **The Government therefore propose to enable the Commissioner, at the discretion of an assisted person, to appear alongside the assisted person in the title of proceedings.**

Extend the proceedings in scope of the Commissioner's assistance

4.11 The proceedings currently in scope of the Commissioner (see Figure 2) all relate to the enforcement of union members' statutory rights and of statutory duties owed by unions to their members. The Employment Act 1988 envisaged a possible extension of proceedings in scope of the Commissioner's assistance. The time is now right to consider extension.

4.12 A union's rulebook is in effect a contract between the union and the individual member. In addition to statutory rights and duties, the rulebook contract of membership may impose obligations on a union to follow certain procedures in connection with particular activities, and it gives members rights to ensure that such procedures are followed. These rights are enforceable by individual members affected, through court proceedings.

11

4.13 Members contemplating or taking proceedings against their union on the ground that they have been denied rights or duties owed to them under the terms of their union's rulebook may face considerable disadvantages. Trade unions are large organisations with substantial resources and expertise to call upon when legal proceedings are imminent or taking place. Conversely, union members considering or taking proceedings may well face problems in view of the high costs such proceedings could involve. It will always be daunting for a member to contemplate taking on his union without assistance and support.

4.14 It took considerable courage, for example, for members of the National Union of Mineworkers to decide to seek a remedy from the court when their union sought to call industrial action without following the procedures required by its rulebook in 1984. There may well have been other cases where members might have wished to take proceedings to enforce the terms of their union's rulebook but have not felt themselves able to do so. Even during the first couple of months of operation, the Commissioner has had applications for assistance from members contemplating proceedings based on a perceived denial of rights owed to them under their union's rulebook, and has had to turn them down because such proceedings are not currently within scope of assistance.

4.15 It is therefore proposed that the Commissioner should be able, on application, to grant assistance in connection with proceedings arising from a complaint by a member that his union has failed, or is likely to fail, to observe the requirements of its rulebook relating to:

- obtaining or nominating candidates for election to union office;

- selection for or election to union office (for example regional, area or branch officials)

JJ

- nomination, selection or election of representatives to attend meetings concerned with union policy and practices (for example, a rules-revision conference);

- expulsion or other union discipline, or determining the actual disciplinary penalties imposed on union members;

- enabling the union to authorise or endorse industrial action;

- union ballots of members;

- applying union funds or property;

- imposing, collecting or distributing strike levies; or

- the composition of union bodies, eg conferences or committees, and procedures to be followed by them in taking decisions.

4.16 Union members would be protected against disciplinary action by their union if taken because they had sought assistance from the Commissioner in connection with any of these matters. The Commissioner's assistance would continue to be available only in connection with proceedings arising from complaints that would be heard at first instance in the High Court.

4.17 It would be inappropriate to use public funds to support such proceedings unless they were of potential relevance to union members other than just the member making the complaint. In considering an application for assistance about these matters, therefore, the Commissioner should take into account whether the award by the court of the remedy sought by the member would be of relevance to other union members. This criterion would be used by the Commissioner to decide whether an application constituted a matter of "substantial public interest". The Commissioner would retain discretion to decide whether to grant assistance, even if

KK

the public interest criterion was satisfied in relation to a particular application and the application was in scope of assistance (4).

4.18 The Government therefore propose to extend the proceedings in scope of the Commissioner's assistance to enable the Commissioner to assist certain proceedings arising from complaints that union rulebook provisions had not been,or will not be, observed where the Commissioner views the complaint as a matter of substantial public interest, as described in paragraphs 4.15-4.17 above.

Conclusion

4.19 The Government have already taken major steps to protect trade union members against abuses of power by their unions, not least by the setting up of the Commissioner for the Rights of Trade Union Members.

The Government invite comments on their proposals:

- to enable the Commissioner to appear in the title of assisted proceedings (paragraph 4.10 above)

- to extend the scope of the Commissioner's assistance (paragraph 4.18 above).

---

(4) The Commissioner may also need to take into account that a court can, at its discretion, refuse to hear a case brought by a member if he has not fully used any procedure provided in the union's rules for pursuing such a grievance. However, section 2 of the Employment Act 1988 provides that the court must deal with the complaint if the member has previously made a valid application to the union for the grievance to be resolved or submitted for consideration in accordance with the union's rules, and the application to the court was made more than six months after the union received the member's application.

LL

ANNEX

Abbreviated union titles

BMA	British Medical Association
EQUITY	British Actors Equity incorporating the Variety Artistes Federation
NGA	National Graphical Association
NUM	National Union of Mineworkers
SOGAT	Society of Graphical and Allied Trades
TGWU	Transport and General Workers Union

PERSONAL AND CONFIDENTIAL

CC GCP

PRIME MINISTER

POLITICAL DONATIONS

1. On the first day in Committee on the Companies Bill in the Lords, the Government were defeated on opposition amendments requiring any section of a company's annual report which relates to political contributions to be subject to approval by the company at a general meeting. In the event only the paving amendment was made to the Bill because Lord Williams of Elvel, the Opposition spokesman, inadvertently failed to move the substantive amendment, (amendment 106). But the amendments were linked and the House would most certainly expect the Government not to stand in the way of amendment 106 being moved formally at Report Stage.

2. Clearly these amdendments are not acceptable and I have been considering ways in which their effect might be reversed. There are four possibilities:

i. Reversing the amendments at Report Stage in the Lords

In theory it would be possible to reverse the amendments at Report Stage. But in practice we would be accused on all sides of the House of bad faith, and be in breach of a convention which we have scrupulously observed of not seeking to reverse at Report any defeat suffered at Committee. This convention often works to the advantage of the Government by preventing the retabling of opposition amendments; for instance the Chelwood amendment on last year's Local Government Finance Bill, once defeated, did not surface again. However by breaching the convention ourselves we would give the opposition the opportunity to retable Committee Stage amendments on Report and proceedings would become protracted and the management of future business made very difficult indeed.

ii. Amend the Opposition amendments at Report Stage in the Lords

It would be possible to amend the opposition amendments at Report Stage in such a way as to render them harmless while retaining enough of their substance so as to avoid the criticism that we were completely breaching the convention set out at i. The opposition amendments would be amended by the Government so as to make specific provision for a company to table a resolution for separate consideration of contributions for political purposes subject to requisition either by 5% of the votes of shareholders or by 100 shareholders owning an average of £100 of shares. (Such an approach would have the advantage of being based on existing provisions in company law under which shareholders have the power (seldom if ever used) to requisition resolutions.) The 5% threshold by itself would be the more likely to negate the effect of the Opposition amendment, but would be more difficult to get through the House.

iii. Amend the opposition amendments at Report Stage in the Lords and reverse them completely in the Commons

It would be possible to amend the opposition amendments in the Lords as set out at ii. above and then remove the provisions completely in the Commons. There is however a very serious disadvantage in this course of action in that, in addition to a contentious Lords debate at Report and a major debate in the Commons, there would be a second crucial vote in the Lords on Consideration of Commons Amendments - three further debates in all.

PERSONAL AND CONFIDENTIAL

iv. Reverse the amendments in the Commons

It would be possible to do nothing further in the Lords and reverse these amendments in the Commons. This would of course raise the profile of the debate in the Commons and give rise to further debate in the Lords at Consideration of Commons Amendments. But this option would have the advantage of giving only one "bite at the cherry" in each House.

3. John Wakeham and I have discussed these possibilities with David Young, David Waddington and Bertie Denham. We are agreed that options ii. and iv. offer the best prospects for resolving the problem. Personally, I would very strongly recommend option ii; failing that, option iv.

4. I am sending a copy of this to John Wakeham, David Young, David Waddington and Bertie Denham.

BELSTEAD

8 March 1989

IND POL Negotiation Pt 4

cc BLP

PRIME MINISTER

POLITICAL DONATIONS

1 I thought I would let you have a brief comment on the options set out by John Belstead in his note to you earlier today. This is a delicate matter in which policy and business management considerations are heavily intertwined and to some extent in conflict.

2 My preference, like yours, would be for the first option of simply deleting the amendment at Report Stage in the Lords. But the points made against this course by John Belstead must be taken extremely seriously and I am not at all sure whether in practice it is feasible.

3 My concern about the second option, which would leave on the statute book a provision which sets a threshold before the matter of political donations could be challenged at an AGM, is whether it would be satisfactory to the Party Treasurers and to institutional investors. David Young I know has had a talk with Alistair McAlpine but we really need to be fully reassured. There are also at least two other considerations here; whether the threshold itself, as proposed, can be set at a sufficiently high level without provoking the same reaction in the House of Lords as the first option. The second is simply whether it is presentationally acceptable for there to be, in statute, a specifically differentiated method for dealing with political donations at an AGM. The present position is that political donations have to be separately identified in the Accounts and/or the Directors' Report but there is no easy or separate way of handling their consideration at a Shareholders Meeting. Under existing Company Law shareholders can requisition a meeting and a separate vote on any matter, including presumably Political Donations if they can obtain the threshold support set out in John Belstead's Minute, but in these circumstances have to do it at their own expense, which is a major deterrent.

4 I had initially thought the third option, to weaken the amendment in the Lords and then remove it entirely in the Commons, offered the best way of meeting the business management concerns while achieving the desired result, but John Belstead's points are sufficient to change my views. I do not think this is a runner.

5 I have, therefore, reluctantly come to the conclusion that the fourth option, simply to delete the amendment in the Commons, is, despite its presentational and political drawbacks both in the House and outside, the right one to fall back on unless we can be really satisfied that the second option is absolutely and totally foolproof. I do not come to this conclusion easily. But unless we can be sure that the amended statutory provision suggested by John Belstead cannot, in any way, rebound upon us, I do not think we have any other choices.

JW

8.3.89

IND POL: Legislation PTH.

cc Lynton

PRIME MINISTER

POLITICAL DONATIONS

When you raised this in Cabinet you told the Lord Privy Seal that the amendment must be reversed in the Lords "and no half measures". The Lord Privy Seal's minute puts forward four options:

a) reversal in the Lords;
b) requisiting either by 5% of the votes of shareholders or 100 shareholders earning an average of £100 shares;
c) the same amount followed by reversal in the Commons;
d) straight reversal in the Commons.

The Lord Privy Seal favours b) with d) as his fall-back. The Lord President considers that b) is not satisfactory as an end state and it would leave political donations spotlighted in the procedures laid down in Statute.

Points which strike me are:

i) This needs to be sorted out quickly as any amendment would have to be put down on Thursday, 16 March.
ii) Lord Denning is threatening to resign if there is reversal in the Lords. If you were to be prepared to wear that you would need to consider the consequences for the handling of Government business in the Lords in general.
iii) While 5% of the votes of shareholders is a comfortably high threshold 100 x £100, ie £10,000, looks well within the reach of even the smallest Trade Unions who, for the same £10,000 could target one Company after another.
iv) It is implied that Lord Young has squared Alistair McAlpine but I would be surprised if he were happy with the 100 x £100 even if he could live with the 5%. You will also want to know whether Sir Hector Laing is content.

v) I think it is right to reject option c) which gives three opportunities for debate requiring a full turn out in the Lords to be mobilised twice, on one occasion for no real purpose if the amendment is to be reversed in the Commons.

The Lord President will stay behind after Cabinet to discuss this.

P.L. Hody

pp. ANDREW TURNBULL
8 MARCH 1989

MRMAKK

PRIME MINISTER

MEETING OF E(A): 23 FEBRUARY

There are three items on the agenda. You saw some of the papers over the weekend: the full set is now enclosed, divided into the three folders.

Folder 1: trade union law

The papers are:

- Flag A: Norman Fowler's paper (already seen);
  Flag B: Cabinet Office brief (new paper);
  Flag C: Policy Unit brief (new paper).

The key issues are:

- are you content with the measures Norman Fowler proposes to include in the Green Paper? The Cabinet Office brief raises a number of queries;

- are there any further measures that should be included? Paragraph 10 of the Cabinet Office brief lists some possibilities; and the Policy Unit recommend you to press for the inclusion of return-to-work ballots, varying periods between ballots and industrial action, and requiring individual written authority from each employee once a year before union dues can be deducted from their pay;

- the timetable for the Green Paper - should it be before Easter as Norman Fowler recommends, or left until the late spring/early summer?

Folder 2: future of the national road construction programme

The papers are:

- Flag D: Mr. Channon's paper (already seen);

- Flag E: Cabinet Office brief (new paper);
- Flag F: Policy Unit brief (already seen).

The main issue is the terms of an announcement Mr. Channon makes about increasing the road construction programme. He has raised his ambitions since the December discussion, and wants commitment to 2,600 miles of new and improved roads by the year 2000 - which is tantamount to a doubling of the road programme. The Chief Secretary will resist such a firm commitment, on the grounds of pre-emption of future Survey decisions. In December you were anxious not to announce a big public expenditure increase without knowing which other programmes would finance it. One possible outcome would be to agree a general form of words, perhaps referring to a "substantial" increase in the programme.

Other issues to be settled are:

- whether to proceed with a feasibility study of road pricing in an urban centre;

- whether Mr. Channon should be given £25 million from the 1989-90 Reserve to undertake preparatory work on an expanded road programme.

Folder 3: creating a private sector in roads

The papers are:

- Flag G: Mr. Channon's paper (in your weekend box, but you may not have had a chance to look at it);
  Flag H: letter from the Chief Secretary (new paper);
  Flag I: Cabinet Office brief (new paper);
  Flag J: Policy Unit brief (already seen).

Mr. Channon proposes publication of a draft consultation document on privately financed roads. The most difficult issue is what should be said about the additionality and public sector comparisons (paragraphs 48-50 of the draft). The Chief Secretary's letter proposes amendments to this section.

I have discussed this with John Major. He does, I think, recognise the need for a more forthcoming approach to private sector proposals than the Treasury has traditionally adopted. The amendments he proposes do go a long way to meet Mr. Channon's points. The Policy Unit fully support Mr. Channon on this. But I think John Major is right to want to modify the proposed simple approach in paragraph 48 that any private sector proposal to finance a road scheme which is not in the Government programme should be regarded as additional. Paragraph 7(b) of the Cabinet Office brief points out that such a rule would provide an enormous incentive for DTp to ensure that any road proposal which had a reasonable chance of being privately financed should be excluded from the published programme.

The other main issue to settle is Mr. Channon's proposal for an early competition to give the private sector an opportunity of putting forward plans for privately financed roads.

PAUL GRAY
22 February 1989

SECRET - CMO

P 03372

PRIME MINISTER

FURTHER REFORM OF TRADE UNION LAW
E(A)(89)7

DECISIONS

1. Mr Fowler's paper seeks decisions about the content and timing of his Green Paper on further reform of trade union law.

2. On content, you may wish to run through Mr Fowler's main proposals and check that you are content:

i. pre-entry closed shop. This is his main proposal and there are strong arguments of principle in favour of it. But there are some detailed points about implementation, in particular whether the legislation should allow a right of complaint where an employer refuses to engage a worker because he is a member of a trade union. Mr Fowler proposes not;

ii. Commissioner for Rights of Trade Union Members. Mr Fowler proposes that the Commissioner should be able to appear in the title of assisted proceedings and also that the scope of the Commissioner's assistance to any proceedings should be extended. This latter proposal appears to touch on political funds;

iii. secondary industrial action. The proposal is to remove immunity from any secondary industrial action, another important change which Ministers are likely to welcome;

iv. industrial action ballots. The scope for unballoted industrial action would be reduced by establishing a wide definition of contract which would cover contracts for services as well as contracts of employment;

v. finally, is there anything else? You may wish to consider whether there are any other changes which you would like to see included in legislation next Session.

3. As to timing, Mr Fowler wants to publish the Green Paper before Easter with a three-month consultation period. The main issue may be to consider whether this is the right timetable, given other possible industrial developments, especially in the docks (although most members of the Committee will not know what is proposed there). An alternative might be to agree to publish the Green Paper in May by which time it should be possible to gauge the strength of any dock strike.

BACKGROUND

4 Last summer you asked Mr Fowler to let you have a note early in the New Year on the possibilities for further industrial relations legislation. He accordingly sent you a note which you discussed with him earlier this month and which provided the basis for E(A)(89)7.

ISSUES

Pre-entry Closed Shop

5. Action against the pre-entry closed shop is Mr Fowler's most important proposal. Ministers will probably find the principle acceptable. The following detailed issues arise:

a. Should it be even-handed, so that a right of complaint would lie when an employer refuses to engage a worker because he is a member of a union, as well as because he is not? Mr Fowler proposes not. You may wish to check the scope for complaint internationally.

b. Would it be in breach of an international obligation? Mr Fowler mentions this point but does not develop it. Both the International Labour Organisation and the European Commission on Human Rights might be involved. Mrs Chalker may have views about this.

c. What is the right procedure for complainants? Page 1 of Mr Fowler's detailed note says that the 'favoured' option would be for complaints about the pre-entry closed shops to go to industrial tribunals, but that alternatively it would be possible to establish a right of complaint to the High Court. Mr Fowler does not explain the advantages and disadvantages of each. The Lord Chancellor may have views.

d. The reaction of the public, and especially employers. The general public reaction is likely to be favourable but page 1 of the detailed note says there will be opposition from 'some employers'. You may wish to ask who Mr Fowler has in mind?

Name of Commissioner for Rights of Trade Union Members to appear in the title of assisted proceedings.

6. There is unlikely to be any opposition on this proposal, which would help to reassure union members considering litigation and also give extra publicity to the Office of Commissioner. There appear to be no major points, but if you wished you could ask about:

a. Content of provisions. Page 2 of the detailed note simply says that 'provisions might need to be framed in such a way as to help determine the circumstances in which the Commissioner would appear in the title of an action'. It is not entirely clear what this means.

b. Need for legislation. The note says that the Lord Chancellor would prefer to make the change by legislation rather than by other means, such as altering the rules of the Supreme Court. This suggests that legislation may not be absolutely necessary and, given the pressure on the Parliamentary timetable, you may wish to ask about the point.

Extend proceeding in scope of the Commissioner's assistance

7. Two proposals are put forward:

a. Proposal A (page 4 of detailed notes). This is not fully explained, but would appear to involve the Commissioner in political fund matters. The note implies that there are other political fund issues which would not be dealt with. You may wish to ask more about what is proposed and consider whether the Green Paper should cover them fully.

b. Proposal B. This would extend the Commissioner's scope to any proceedings against a trade union which the Commissioner determined involved 'a matter of substantial public interest'. This would be a very large extension of her powers. It may be welcome, but Mr Fowler says that there might be some overlap with legal aid. You may wish to ask how this overlap would be dealt with, and whether there could be any cost implications. The Lord Chancellor may have views on this point.

Remove immunity from organisation of any secondary industrial action

8. You may wish to agree this proposal. The only point which seems to arise is that it could 'result in complaints to the ILO'. You might wish to ask about this.

Unions to be required to ballot before inducing members to break contracts for services as well as contracts for employment

9. You might wish to ask more about the practical effect of this proposal and who would be affected. Page 7 of the detailed notes says that television could be affected, and that Equity would oppose the change. This would make it a matter of public comment. Subject to this, you may be prepared to endorse the proposal.

Other possibilities

10. There are a number of other possible topics on which Mr Fowler is not proposing legislation in this round:

i. Substituting 'contracting in' for 'contracting out' for political funds.

ii. Extending potential union liability for unofficial industrial action unless it repudiates the action.

iii Applying special requirements, as to notice of action and minimum level of service, to industrial action in 'essential' industries.

iv. Giving the Commissioner power to take proceedings in her own name.

v. Translating recommendations in the Code of Practice on ballots into primary law.

vi. Putting a time limit on the immunity which can be procured by proper secret ballot on industrial action.

vii. Removing immunity from picketing by more than six pickets at any entrance to workplace.

Timetable

11. Mr Fowler wants to publish the Green Paper before Easter with a three-month consultation period. You will wish to consider whether this is the right timetable, given other possible industrial developments, especially in the docks (of which most other members of E(A) will be unaware). If there is to be a three-month consultation period, and legislation next Session, some postponement would presumably be practical. It might for instance be possible to issue the Green Paper in May by which time it would be possible to gauge its interaction with any dock strike. There could still be three months for consultation: drafting of instructions to Counsel could proceed in parallel.

12. You will in any case wish to ask Mr Fowler to circulate a draft Green Paper to E(A), as he offers. One possibility would be to let work on the Green Paper go ahead on Mr Fowler's timetable, leaving until later a decision, in the light of the latest developments elsewhere, about the date of publication.

HANDLING

13. You will wish to ask the Secretary of State for Employment to introduce his proposals. The Lord Chancellor and the Attorney-General may have views on their implications for the legal system, and the Minister of State, Foreign and Commonwealth Office (Mrs Chalker) on their implications for our international obligations. The business managers will wish to comment on the Parliamentary handling.

R T J WILSON
Cabinet Office
21 February 1989

SECRET

PRIME MINISTER

MEETING OF E(A): 23 FEBRUARY

There are three papers on the agenda - one on Industrial Relations Reform (folder 1) and two on Roads (folder 2).

Industrial Relations Reform

Norman Fowler has now circulated a paper - E(A)(89)7 (Flag A) - containing proposals for next session's Employment Bill that he has already shown you privately. I have also included in the folder his earlier minute - (Flag B) - to which he annexed in category B some possible further measures not recommended for inclusion (these are not mentioned in the E(A) paper).

Apart from considering the coverage of the proposals to go in a Green Paper, you will want to consider further the timing of that document. He is keen to get it out before Easter. When you discussed this with him privately earlier in the week you floated the possibility of leaving the Green Paper until later in the spring/early summer, given other priorities around Easter time.

Roads

The papers are:

Flag C - E(A)(89)6 - future of the National Road Construction Programme

Flag D - Policy Unit comment

Flag E - E(A)(89)8 - Creating a Private Sector in Roads

Flag F - Policy Unit comment

I will let you have Cabinet Office briefing next week.

This will be a difficult discussion to handle on both papers, with the Department of Transport wanting to go a lot further than the Treasury.

PAUL GRAY

17 February 1989

SECRET

PRIME MINISTER 17 February 1989

FURTHER REFORM OF TRADE UNION LAW

Norman Fowler's plan for a Green Paper is fine. Our main concern is that it may appear a bit thin. It could give the impression that the Government has run out of steam in this area and was afraid to tackle outstanding problem areas.

You will want to consider:

1. Is the scope of the Green Paper wide enough?

2. Is it right to rush out a Green Paper by Easter, or would it be better to wait and publish a more substantial document in May or June?

A. SCOPE

Those supporting minimum change will argue that:

- the unions are a busted flush;

- the Government must not risk losing public support by pushing its reforms too far;

- the legislative programme cannot accommodate anything more.

We are sceptical of these arguments:

First, the economy. There is substantial new evidence to suggest that trade unions damage our economic performance. Recent research by the London School of Economics suggests that those firms with a high degree of unionisation are characterised by fewer jobs, lower profitability and higher

SECRET

wages than non-union companies. (See attached article at Annex I). The level of negotiated pay settlements remains disturbingly high. And the ability of unions to bid up wage levels will become more acute as the demand for labour increases. This could hold back our economic progress.

Second, the agenda for reform. The Government has not yet exhausted the agenda of items for reform which would command wide public support. Industrial relations (a strong positive point for the Government in the polls) are slipping down the electorate's list of key concerns. More extensive action could highlight the Labour Party's reactionary attitude to reform, by forcing it into a position of outright opposition. Moreover, the atmosphere could change overnight if the country is faced by a dock strike. The unacceptable face of trade unionism would be brought back to the forefront of the public's mind.

Third, the legislative programme. This is clearly a matter for the business managers. But I understand that Norman Fowler's proposals amount at present to a relatively modest 8 sections of a bill. This compares with the 27 sections on trade unions in the 1988 Act (which was itself only a medium-sized bill).

B. SPECIFIC PROPOSALS

Norman Fowler's proposals cover three broad areas. They are likely to be uncontroversial with the public at large (although opposed by the Labour Party). We support all these proposals, although we have a number of specific comments.

1. **Stopping the Pre-entry Closed Shop.** The closed shop has in fact been dwindling in recent years. Public perception is probably that it has already been outlawed completely. Estimates suggest that around 480,000 workers spread throughout all sectors of the economy are covered by the pre-entry closed shop. (See Annex II). The worst concentrations are in printing, merchant shipping and the theatre.

We have one issue of specific concern:

- should the legislation cover exclusion from employment on the grounds of union membership as well as non-membership? We believe that it should not. It might encourage any aggrieved trade union member (who had not been hired on grounds of suitability) to take employers to an industrial tribunal citing exclusion on grounds of union membership. Such a development would be deeply unwelcome to employers. It might make them oppose the proposal to outlaw the pre-entry closed shop in its entirety.

2. **Enforcement.** We are doubtful whether the proposals to extend the role of the Trade Union Commissioner go far enough. Our main concern is that individual union members may be unwilling to initiate proceedings against the union under their own name. They might legitimately fear intimidation.

The Department of Employment (DE) object to the Commissioner acting in her own name. They argue that (a) this would breach the principle that proceedings should only be initiated by those directly effected, (b) it would be controversial to give the Commissioner the power to determine the locus of the union member. We believe this principle could be preserved in spirit if the Commissioner was able to act in her own name - but only when asked to do so by an affected trade union member. Moreover it must surely be possible for the Commissioner to establish (to the satisfaction of a Court) the bona fides of the individual on whose behalf an action has been brought?

3. **Industrial Action.** We support the proposals to outlaw all secondary action and to bring "freelance" professions (such as acting) within the scope of the balloting requirements of our trade union legislation.

In the first case the public are probably under the impression that secondary action is unlawful already. Unions can, however, legally extend a dispute from the primary company to the first customers or suppliers under the 1980 Act. I understand, for example, that during the Wapping dispute the extension of action to cover TNT was unlawful because the proper balloting procedures had not been followed not because it constituted secondary action.

C. THE OMMISSIONS

The areas most obviously ommitted from Norman Fowler's proposals fall into three broad categories:

1. Items not worth including

- **Political Funds**: the requirement to operate by contracting-in is desirable in principle. In practice it would be difficult to defend politically unless a similar system was required by shareholders. It is not worth opening up a vulnerable flank unnecessarily.

- **Essential Services**: As you know the scope for enforcing "No strike" agreements in essential services has been looked at many times before. Hitherto the quid pro quo - arbitration - has been felt to be too high a price to be worth paying. The options considered by DE are a half-way house which are even less satisfactory. It would be wrong to define some minimum level of service below the norm which the Government believed to be acceptable. The Government would - at a stroke - lose the moral high ground that any strikes in essential services put at risk the safety of the public.

2. **Items worth including for consultation**

Norman Fowler's strategy is to have an early Green Paper with very "white edges". But we believe there is a case for delaying the publication of the Green Paper until May or June, and including items on which it would be useful to consult genuinely. These items include:

- **Return-to-work ballots**: These have been advocated by Sir Jeffrey Stirling. And you asked Norman Fowler to consider them last year. They would address the problem of how to achieve an early return to work in a long drawn out strike. At present if sentiment amongst strikers changes during a strike, those wishing to return to work have to vote with their feet. The experience of the coal and ferry strikes suggests that many are put off by fear of intimidation. A provision to enable individual trade union members to have opinion re-tested during a strike could tackle this problem. It might also bring strikes to a more speedy conclusion.

  DE argue that such ballots could have the opposite effect. This is speculation on their part; they have no evidence to decide conclusively the matter one way or the other. This is just the sort of issue on which it would be helpful to seek the views of employers. It could be portrayed an extension of individual rights.

- **Period between Ballot and Industrial Action**: At present unions will ballot their members even when they have no immediate intention of taking industrial action. The object is to strengthen their bargaining position in negotiation with employers by threatening strike action. DE are unsure as to whether employers would favour a shortening or a lengthening of the period. Consultation would resolve that doubt.

- **Unofficial Action:** We also support the proposal that unions should be made liable for unofficial action unless they repudiate it. It is likely to appear uncontroversial to the public (although the labour lawyers will not like it).

3. **Small technical changes**

There is one proposal which does not appear to have been considered at all by Norman Fowler - the **automatic deduction of union dues**. This would appear relatively minor and technical to the public. But it could have a profound effect.

We believe it is worth considering making it unlawful for union dues to be deducted automatically from employees' pay without individual, written, authority from each employee once a year.

At present the law allows a trade union to agree with an employer that its members will be subject to the "check-off" without their consent. Their only recourse if they object is to leave the union. They should have a right to say how they want their subscriptions collected.

Unions are notoriously inefficient about informing their members about the subscriptions they pay and about any increases. These are decided by union executives without a ballot. This practice extends to special levies for semi-political purposes (eg to fight trade union reforms or privatisation).

The industrial relations lobby will be against this proposal. They have a vested interest in the status quo. For them it is a cosy arrangement and DE will argue that it will impose intolerable burdens on business. This need not be the case. If it is, businesses will see that it is no longer in their interests to continue this cosy arrangement.

The advantages of this proposal are that:

- it could be portrayed as an enhancement of individual rights;
- it would stop union membership and income being artificially inflated as a result of the inertia and ignorance of individual union members. (For these reasons the impact might be particularly strong within the civil service unions);

- it might do more than any legislation to undermine the actual operation of the closed shop by making it easier to opt out.

CONCLUSION

Norman Fowler's proposals are sensible as far as they go. But we believe that in a number of respects they could go further without undermining support for the Government's reforms to date. We recommend that you ask Norman Fowler to carry out further work on a more substantial Green Paper that would include the items outlined above. This would argue against the early publication of a Green Paper around Easter and in favour of May or June.

Andrew Dunlop.

ANDREW DUNLOP

United they fall

Unions may mean better pay, especially for ethnic minorities, but they also mean lower productivity and fewer jobs. David Metcalf poses some awkward questions for the TUC

Sunset in Cleveland: heavily unionised industries tend to low profitability and productivity

All eyes at the Trade Union Congress next week will be on the fate of the electrician's union (the EETPU). Although the immediate cause of the rift between the electricians and the rest of the labour movement is the willingness of the EETPU to sign single-union deals with no strike clauses, the breach has much more fundamental roots than that.

For the electricians are the vanguard of the "new realism". They concentrate on the *size* of the industrial cake and are prepared to co-operate with management to increase output and raise both real wages and profits. Traditional unions concentrate on the *distribution* of the cake. True to a more adversarial style of industrial relations they focus on the size of the slices going to pay and profits rather than on the size of the cake itself.

But both styles of unionism have their drawbacks. New evidence on the effects of unions on pay, productivity, profits and jobs suggests that the more traditional unions—transport and general, seamen and railwaymen, for example—will have to tread very carefully to avoid further big membership losses. But equally, the electricians and engineers will have to work hard to maintain the traditional pay premium (or extra pay) that their members get over and above a comparable non-union worker.

As union activity raises pay and reduces labour productivity (see table 1), profits are consequently lower in union companies. "Good," some would say, "unions are succeeding in their aims. It is the role of unions to control jobs (i.e. lower productivity), raise wages and limit profits". But the problem with this well-worn view is that such activity costs jobs. In the first half of the 1980s one third of unionised workplaces suffered job losses of 20 per cent or more but one third of non-union factories and offices gained a corresponding increase in jobs.

This union impact is stronger where there is closed shop (now *de jure* but not necessarily *de facto*, illegal) than where unions are recognised for collective bargaining, but there is no closed shop. In a study of 52 engineering firms it was found that union activity reduces labour productivity substantially in large firms, and that the effect was especially strong in those with a closed shop.

But equally a closed shop has a customary average pay premium of around 10 per cent. Sometimes the figure is much larger, as in the print trades with their pre-entry closed shop. In workplaces with no closed shop and no strike threat the electricians may be hard pressed to maintain their traditional pay advantage.

Not surprisingly, the combination of higher pay and lower productivity results in worse profits. In the private sector in 1984 only a quarter of managers in workplaces where there was a closed shop reported that their financial performance was superior to the average for their industry. But in non-union workplaces 60 per cent of managers reported above average profitability.

These union effects on pay, productivity and profits spill over into jobs. The plain fact is that in the 1980s non-union companies have a better record on maintaining and creating jobs than do unionised companies. And this is not a statistical illusion where industries suffering job losses across the world just happen to be unionised in Britain. The adverse impact on jobs still shows up when controls are made for such factors.

So, many union leaders face a real dilemma. If they persist in their—quite legitimate—pursuit of higher pay, generous manning levels and lower profits, they may have to come to terms with job and membership losses. The electricians, and the engineering leadership, are trying to square this circle by co-operating more with management. The hope and expectation is that the new style deals will deliver higher pay and higher productivity, resulting in expanding companies with good profit and job prospects. It is too early to tell whether they will succeed or how many others will follow.

But unions have more than what Allan Flanders has called a "vested interest" effect. They also wield the sword of justice. Although this is well documented for issues like health and safety, unfair dismissal and redundancy, the unions' egalitarian effect on pay is much less well known.

Workers covered by collective agreements have significantly lower pay dispersion than uncovered workers. Lower paid groups and minorities also gain more from union membership than their opposite numbers. Overall the structure of pay is narrower than it would be in the absence of unions.

The greater equality of pay among union members than non-union members reflects two forces. First, union members are more homogeneous than non-members. Second, union goals play an important part. As early as the beginning of this century, Sidney and Beatrice Webb wrote "one trade union regulation stands out as practically universal, namely the insistence on payments according to the same definite standard, uniform in its application." The continuing dominance of such collective goals—the rate for

the job—persists to this day in the union sector. Managers in 2,000 workplaces were recently asked to list any factors that had influenced the level of pay in the most recent settlement. Managers in non-union plants were six times more likely to mention merit or individual performance than their counterparts in the union sector.

Lower paid employees or minority groups gain most from union membership. The pay premium for being a union member is higher for women than for men, for blacks than whites, for unskilled than skilled, and for the disabled compared with the able-bodied. Once these discriminated against or less productive groups get under the union umbrella they do better, relative to their non-union counterparts, than do white, male, skilled able-bodied union members relative to their non-union counterparts.

The clearest example of this egalitarian effect comes on race pay differentials (Table 2). For male manual workers in the British labour market, union membership narrows the race wage differential from -19 per cent to -11 per cent for men of West Indian origin and from -19 per cent to -16 per cent for men of Asian origin. But for unions, the labour market would be a more unequal place.

It is an open question whether these egalitarian forces will persist so strongly if the new realists gain the upper hand. The electricians can rightly argue that they opened up some print jobs for blacks and women where these were previously the exclusive preserve of white men. But they are against a national minimum wage because, to be effective, it must narrow differentials. Further, the new-style deals—like that proposed by the Amalgamated Engineering Union for the aborted Ford Plant at Dundee—are more likely to include an element which relates pay to individual performance or local labour market conditions. It may be that such deals mark the thin end of the wedge for the "rate for the job" principle.

Mike Abrahams/Network

Sunrise in London: new industries and working practices have helped the decay of the closed shop

The future of the closed shop is one crucial factor which overhangs much union policy. The institution of the closed shop has been fragile throughout the 1980s and it is now decaying rapidly. A decade ago over five million workers were covered by the closed shop but by 1987 that number had fallen to below three million. The interaction of industrial change, management policy and legislation explains this decline. First, employment has fallen most in old manufacturing industries where closed shops have traditionally been concentrated. Second, many major companies—for example British Telecom in the private sector and British Rail in the public sector—have withdrawn from their previous union membership agreements. Third, this trend to end closed shops has been reinforced by legislation. It is now illegal to dismiss an employee for non-union membership and immunity has been removed from any industrial action designed to create or maintain a closed shop.

As the closed shop withers away the union effect on pay, productivity, profits, jobs and equity may diminish. But such emasculation does not follow automatically. The closed shop may simply have been of symbolic importance—"the last piece of the jig-saw", wrote Stephen Dunn in his book on the closed shop. If that is correct, unions will continue to influence both company performance and to reduce inequality—despite the absence of the closed shop—providing they can maintain their membership. ●

David Metcalf is Professor of Industrial Relations at the London School of Economics

Table 1: Union activity and labour productivity

	Closed shop	*Union recognition no closed shop*	*Non-union*
Number of Employees (million)			
1978	5.2	7.9	9.1
1987	3.0	7.3	10.8
Labour Productivity			
Engineering firms, union compared with non-union	substantial negative	modest negative	—
Pay			
Premium over non-union (%)	9-14	4-7	—
Profitability			
Establishments reporting above average financial performance %	25	44	60
Employment Change 1980-84			
% of establishments reporting:			
Loss of 20% +	37	27	15
Gain of 20% +	9	18	33

Table 2: Race and pay differentials

	Pay differentials compared with white (%)		
Race	*Non-union Members*	*Union members*	*Average*
West Indian	−19	−11	−14
Asian	−19	−16	−17

Source: Calculated from Blanchflower and Stewart, Trade Unions and Race Wage Differentials, Mimeo, LSE, 1987.
Note: Data refer to male manual workers. Other factors that influence pay are controlled for: (e.g.) age, education, type of work (e.g. shift work), plant size.

Industrial sectors with at least 10,000 employees in pre-entry closed shop, 1984

	Industrial sector (SIC Code)	Employees (man+nonman) in pre-entry closed shop, 1984 (000s)	Employees (000s) 1984	Employees (000s) 1987	Employees (000s) 1989	Pre-entry closed shop employees 1989
DIVISION						
0	Agriculture, forestry and fishing	0	348	300	276	0
1	Energy & Water supply (11-17)	13	603	488	431	9
2	Metal manufacturing (22)	18	193	165	151	14
	Non-metallic mineral products (24)	12	222	229	233	13
	'Non-basic' chemicals (255-8)	10	197	200	202	10
	Other Division 2	2	185	176	172	2
3	Metal goods & mech. eng (31,32)	37	1081	1007	970	33
	Shipbuilding (361)	34	88	68	58	22
	Aerospace (364)	13	167	156	151	12
	Other Division 3	16	1097	1022	985	14
4	Food, drink & tobacco (41,42)	28	588	549	530	25
	Textiles (43)	12	235	222	216	11
	Timber & furniture	10	203	214	220	11
	Newspapers (4751)	22	108	88	78	16
	Other publishing (4752-4)	34	238	258	268	38
	Other Division 4	12	1313	1298	1291	12
5	General construction (5000)	14	370	350	340	13
	Other construction (501-4)	20	656	638	629	19
6	Retail distribution (64,65)	14	2025	2081	2109	15
	Other Division 6	16	2170	2332	2413	18
7	Road Haulage (723)	18	217	244	258	21
	Sea transport (74)	14	38	22	14	5
	Other Division 7	16	1073	1069	1067	16
8	Business services (83-85)	14	1258	1545	1690	19
	Other Division 8	0	730	790	820	0
9	Schools (932)	16	1018	1100	1141	18
	Medical services (95)	17	1255	1269	1276	17
	Sport & other recreation (979)	22	273	300	314	25
	Other Division 9	21	3485	3830	4003	24
Total in WIRS establishments		475				453
Allowance for small establishments		25				25
Total - Great Britain		500	21434	22011	22300	478

Sources: Column 1 - Workplace industrial Relations Survey 1984
Column 2 and 3 - Labour Force Survey
Column 4 - linear extrapolation for 1.5 years from columns 2 and 3
Column 5 - Column 1 times Column 4 divided by Column 2

dti

the department for Enterprise

RESTRICTED

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

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

Department of
Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5422
Our ref PS2BZI
Your ref
Date 15 February 1989

Dear Norman.

RESTRICTIVE TRADE PRACTICES : EMPLOYMENT AGREEMENTS

I am writing to seek your agreement to our officials urgently considering in depth the question whether to include employment agreements, in the sense of agreements between employers relating to the pay and conditions of their employees, in the scope of the proposed legislation on restrictive trade practices (RTP) and, if so, on what terms. I recognise that this is a sensitive area but in the light of the current review of RTP policy we need to re-evaluate our position on this type of agreement and be prepared to defend it publicly.

Agreements relating to the pay and conditions of employees are not registerable under the current RTP Act and in discussion in E(CP) on this issue we have preferred exhortation and example rather than inclusion in the legislation. However we have indicated in the Green Paper on RTP policy that we will not automatically carry across such exemptions into the new legislation without their merits having been established afresh.

Following my letter to Nigel Lawson on 21 December, we have already agreed that the rules of the professions should generally be subject to the proposed new RTP legislation in

dti

the department for Enterprise

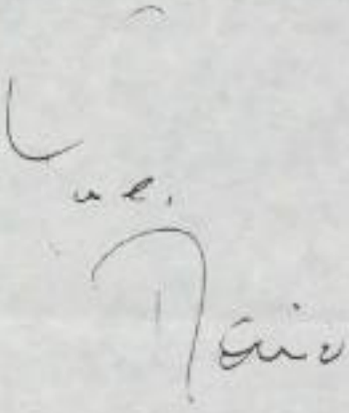
RESTRICTED

the same way as other economic sectors and we have announced this. Carrying forward the exemption of employment agreements might therefore be seen as inconsistent with this and be subject to criticism from our own supporters. Some national pay agreements almost certainly give rise to anti-competitive effects in the industries where they apply, beyond simply the effect on the labour market.

Against this, we could not accurately predict the effects of ending the exclusion, whether on the labour market or on the focus and nature of the proposed competition authority. It would also be highly contentious in industrial relations terms.

I believe that there is a case for our officials to consider the merits and implications of maintaining or ending the exclusion, together with any other options they may identify, with a view to reporting to us in two-three months. This would be too late for my proposed White Paper but a further announcement could be made later in the year.

I am copying this letter to the Prime Minister, members of E(CP), Geoffrey Howe, James Mackay, Douglas Hurd, Peter Walker, Tom King, Kenneth Baker, Malcolm Rifkind, John Wakeham and Sir Robin Butler.



the Enterprise initiative

PERSONAL AND SECRET

Secretary of State
for Employment

PRIME MINISTER

PROPOSALS FOR FURTHER REFORM OF TRADE UNION LAW

This minute is to give you early sight of possibilities for taking forward our strategy of reform of industrial relations and trade union law with a view to legislation in the 1989/1990 session. A place has been agreed for the Bill.

...I have considered a number of proposals, and the attached Annex ...and enclosed booklet describe in detail those which I think should be included in a Green Paper. The legislative programme will be tight next session and I have therefore included only proposals which seem to me the most pressing.

The centrepiece of the Bill would be protection for individuals against the pre-entry closed shop. There is wide support for such a move - including now a well supported Early Day Motion. The interim findings of the review which I set in hand last year show that pre-entry closed shop arrangements remain quite widespread, constitute an infringement of individual rights and are an unacceptable barrier to employment. As you will see from the notes about the proposal, however, there are a number of options about how best to tackle the matter, and it would be helpful to put specific proposals out for public consultation.

b

Secretary of State
for Employment

Other measures, which I believe would provide an important extension of individual rights and employers' freedoms, include:

- **enabling the name of the Commissioner for the Rights of Trade Union Members to appear in the title of assisted proceedings and enlarging his scope to include:**

  (a) any proceedings against a union which the Commissioner determined to be a matter of substantial public interest; and

  (b) possibly all matters relating to union political funds;

- **removing all the remaining immunity for organising any form of secondary industrial action** so that unions will no longer have any immunity for industrial action against employers not party to a 'primary' dispute;

- **require industrial action ballots for workers engaged on 'contracts for services'.** At present such workers (eg in entertainment and construction) are not required by law to ballot before industrial action.

You asked Mr. Fader to compile this last year. ARCB 10/2

These proposals are targeted on specific problems, run no risk of undermining the success we have already achieved, and fit in with our consistent industrial relations philosophy of increasing the freedom of employers and employees to make their own decisions. It would nevertheless be desirable to have the benefit of responses which a public consultation exercise could provide before coming forward with detailed legislative proposals on these matters, not least because such consultation should reveal a considerable amount of support for them.

C

Secretary of State
for Employment

The attached Annex and enclosed booklet set out proposals in two categories:

A Those which should be included in a Green Paper with a view to legislation.

B Those for which a case can be made but which I do not recommend for inclusion this time.

The broad thrust of the "next step" would be to enhance employment prospects by extending workers' rights and increasing employers' freedoms. Accordingly, a possible title for the Green Paper might be :

"Rights and Freedoms - Removing Barriers to Employment by Further Steps in Trade Union Law Reform."

It will, of course, be necessary to consult colleagues on the proposals. If you agree, I would propose to table a paper for a meeting of E(A) and thereafter a Green Paper for publication covering the items in Category A, with legislation to follow in the next Parliamentary Session.

N F

10th February 1989

PERSONAL AND SECRET

M/PFIRTUL8F2 d

ANNEX

PROPOSALS FOR FURTHER REFORM OF INDUSTRIAL RELATIONS/TRADE UNION LAW

CATEGORY A: FOR INCLUSION IN A GREEN PAPER WITH A VIEW TO LEGISLATION

1 **Pre-entry closed shop** - provide right of complaint for individuals where employer refuses to employ them on ground of non-membership and, if even-handed, also on ground of membership of a trade union. Green Paper could put forward detailed proposals, with options for aspects on which it would be useful to have comments. A non even handed approach would be likely to be found to breach international treaty obligations.

2 **Commissioner's name to appear in title of assisted proceedings** - would give applicant assurance that the Commissioner for Rights of Trade Union Members stood behind complainant and also enhance awareness about and reputation of Commissioner.

3 **Extend type of proceedings in scope of Commissioner's assistance to trade union members** - Would include any matters of substantial public interest (eg significant breach of union rules) at Commissioner's discretion. Could also include all remaining High Court proceedings on political funds (unless decided that Green Paper should avoid any reference to political funds on this occasion - see item 1 in Category B).

4 **Remove immunity for organising any secondary industrial action** - Up to now legislation has permitted certain kinds of secondary action. Unreasonable that unions should have immunity to target any employer not party to 'primary' dispute. Sir John Egan known to favour this proposal and support from other employers could be expected.

5 **Widen definition of employment contract to require a union to ballot before inducing members to breach contracts "for services"** - At present industrial action balloting requirements only apply where contracts of employment may be breached. This leaves out many of the self-employed (eg in entertainment and construction) whose contracts are "for services".

CATEGORY B: NOT RECOMMENDED FOR INCLUSION IN THE GREEN PAPER OR LEGISLATION

1 Require 'contracting-in' to trade union political funds - highly controversial and complicated by recent moves in the Lords to require shareholder ballots on company contributions to Party funds.

2 Require explicit union repudiation of unofficial action - trade unions would not escape liability for unofficial action by their members unless they took explicit steps to repudiate it as soon as practicable after it was drawn to their attention. Known support from British Coal, General Council of British Shipping and Sir John Egan. However, the proposal has a legalistic ring. Might also be held to breach international treaty obligations.

3 Impose special conditions applicable to organisation of industrial action in "essential" industries and services - My submission last summer reporting overseas practice promised to keep under review the idea of imposing (i) a period of notice of intent and/or (ii) an obligation to continue to provide a "minimum level of service" during industrial action. However, such changes quite likely to be counter-productive in practice. Employers in industries/services concerned unlikely to support proposals. Could breach international treaty obligations.

4 Empower Commissioner to bring proceedings in own name/at own volition - Would conflict with successful policy since 1979 of leaving initiation of legal action to parties affected, and risk complaint of unwarranted State interference in industrial relations and trade union affairs. Could breach international treaty obligations. Opposed by the Commissioner.

5 Alter four-week limit within which industrial action must start after a ballot - some employers known to favour shortening the period; others likely to argue for lengthening it. No

overwhelming case for this in either direction and impact on strike situations would be unpredictable.

6 **Put into primary legislation certain good practices recommended in the statutory code on industrial action balloting** - comments received from some employers about the draft code indicate some support but it is premature to canvass further changes before the code has been approved by Parliament and brought into effect.

7 **"Time limit" immunity afforded by industrial action ballots to create obligation to re-ballot when the limit expires** - Not recommended. Might impede spontaneous return to work, now protected by section 3 of the 1988 Act which makes union discipline for working during a strike unlawful. Workers more likely to vote in favour of industrial action in the initial ballot if they know they will have another vote later.

8 **Remove immunity for picketing where the number of pickets exceeds six** - Could help ensure orderly picketing but unnecessary because the courts are applying the law as if there was already such a statutory limit (which is recommended in our Code of Practice on picketing).

SECRET

PRIME MINISTER

POLICY MEASURES IN THE EMPLOYMENT AREA

Following your meeting today with Robin Butler, I have arranged for Norman Fowler to have a bilateral with you next Tuesday morning to take stock of various sensitive issues he is currently considering:

- Dock Labour Scheme;
- Wages Councils;
- Job Centres;
- Skill Centres;
- Trade Union Law.

I had a talk with Norman Fowler this afternoon and agreed that he would let you have a note on Monday setting out how he sees the handling and timing of these issues fit together. But meantime, he had already sent you the attached note setting out his proposals for further reform of Trade Union Law, which you may like to glance at over the weekend.

PAUL GRAY
10 February 1989

DS2AOS

SECRET

[redacted]. WHITTINGDALE

POLITICAL CONTRIBUTIONS BY COMPANIES

The arguments put forward by Lord Boyd-Carpenter have a lot of force but the unanswered question is why don't they apply to trade unions.

(i) sums are trivial - so they are for trade union members, ie pence per week checked off their pay;

(ii) nothing to prevent them saying so at annual general meeting - trade union members can raise objections at board meetings and at conference;

(iii) board is elected to apply its general judgment to the affairs of the company - the most senior trade union officials are now elected; why can't they apply their judgment;

(iv) shareholders can sell - yes but they may not want to.

The argument is thus not about the way to treat companies but whether, with more democracy within unions, they are treated fairly. Can you look out the arguments that were put forward in the debates on political fund ballots to see if a better case can be put forward.

ANDREW TURNBULL

2 February 1989

PM2AHU

10 DOWNING STREET

Prime Minister

Lord Young is likely to mention the defeat on the companies Bill in the Lords, but will not want to be too specific about how he intends to put this right. He has some ideas but does not want to give much away at this stage in order to maintain surprise. I have asked for a minute.

AT 1/2

dti

the department for Enterprise

CONFIDENTIAL

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

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

Department of Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5422
Our ref PS5BON
Your ref
Date 7 November 1988

NBPM
Ack
7/11

Dear Norman,

DRAFT CODE OF PRACTICE ON TRADE UNION BALLOTS ON INDUSTRIAL ACTION

Thank you for sending me a copy of your minute of 25 October to the Prime Minister, enclosing the draft Code you are intending to issue for consultation.

Like you, I believe that the appearance of the Code will be generally welcomed by employers. Its contents are likely to be of considerable interest, particularly to organisations representing business, and I am therefore keen that it should be given a wide circulation. This will enable business to identify any potential problems it sees in the Code's provisions. I hope we can have an opportunity to consider the results of your consultation before the Code is brought into effect.

I am copying this letter to the Prime Minister, to other members of E(A), and to Sir Robin Butler.

Yours David

the Enterprise initiative

Ind. Pol: Relations
p. 14

CONFIDENTIAL

fyi JD

bc: BS

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

31 October, 1988.

Dear Clive,

Code of Practice for Trade Union Ballots

The Prime Minister was grateful for your Secretary of State's minute of 25 October. Subject to the views of colleagues, she is content with the proposed code.

I am sending copies of this letter to the Private Secretaries to the members of E(A) and to Sir Robin Butler.

Yours,
Paul

Paul Gray

Clive Norris, Esq.,
Department of Employment.

CONFIDENTIAL

CCPO

Prime Minister

The Policy Unit support these proposals. Content to endorse the Code, subject to the views of colleagues?

AR CG 28/10

PRIME MINISTER

Yes ms

The Employment Act 1988 gave me power to issue a statutory Code of Practice to promote desirable practices in relation to the conduct by trade unions of ballots about industrial action. The procedure for issuing, and bringing into effect, any such code is set out in section 3 of the Employment Act 1980, which also describes the legal status it would have.

Following the required consultation with ACAS, the attached draft Code has been prepared. Also attached is a descriptive summary which details the main recommendations made in the Code. If you agree, I propose to publish the draft Code before the end of this month.

Three months would be allowed for comments on the draft, after which the Code (revised if appropriate) will be presented for Parliamentary approval. I hope that it will be possible to bring the Code into effect around next Easter.

The draft Code should be generally welcome to employers. Its recommendations about what should be done to satisfy the statutory requirements for voters to be able to vote in

secret, without incurring direct cost, free from interference or constraint imposed by their union, and for counting the votes and announcing results, should help remove any doubt about what standards and procedures apply in particular circumstances. They should make it easier for an employer (or union member) to take legal action on the ground that statutory requirements have not been satisfied.

The Engineering Employers' Federation has urged that the Code should not be narrowly restricted to the mechanics of the ballot without reference to the circumstances in which it is held. The EEF should welcome, in particular, the inclusion of recommendations about exhausting procedure before embarking on a ballot, notifying ballot results in detail to employers, and giving notice of intent to organise official action before a union actually does so.

No significant burdens for employers should arise from the Code. Suggestions that a union might seek certain information from them (eg paragraph 29) carry no implication that employers ought to respond unless they wish to do so. The suggestion in paragraph 38 that employers "should consider" whether facilities for a workplace ballot should be provided applies only if provision of facilities would be for a ballot

"in accordance with the Code" (which implies that workplace ballots should be very much the exception), and the employer considers it would "assist the proper conduct of the ballot, in accordance with good industrial relations practices and the requirements of the law".

The TUC and major unions will be critical of the draft Code. They may suspect that certain recommendations - for example those in paragraphs 97 and 98 that more than a simple majority "Yes" vote should be obtained, and a ballot should have at least a 70 per cent turnout of voters if official action is to be organised - may in due course be translated into future primary legislation. Once the Code is issued I will look with particular care at evidence that trade unions are failing to apply such good practices, and will be prepared to come forward with proposals for changes to primary legislation if necessary.

The draft Code satisfies specific commitments given during the passage of the 1988 Act, for example to recommend that postal voting, subject to satisfactory standards of independent scrutiny, should be the preferred method for conducting industrial action ballots. As I promised in the letter from my Private Secretary to yours of 19 July, the draft includes

(paragraph 103) a recommendation that unions should apply proper standards to any process of seeking members' views about continuing official industrial action after such action has started.

I am copying this to other members of E(A) and to Sir Robin Butler.

NF

25 October 1988

SUMMARY OF DRAFT CODE OF PRACTICE ON TRADE UNION BALLOTS ON INDUSTRIAL ACTION

The draft Code makes the following points, among others:-

An industrial action ballot should only be undertaken if "official" industrial action is really in prospect; it is a misuse of the balloting process, and potentially damaging to good industrial relations, if a ballot on industrial action takes place when there is no need for it.

No ballot should be held unless procedures which might resolve the dispute without recourse to industrial action have first been exhausted;

No ballot should be arranged without prior notice being given to any employer whose employees are to be given entitlement to vote;

The trade union should ensure that certain procedures (described in the code) are followed in preparing for industrial action ballot in order to properly establish entitlement to vote, and whether separate place of work ballots are required;

It is desirable to conduct industrial action ballots by fully postal voting with satisfactory standards of independent scrutiny; this method should be adopted wherever all of a union's members are given entitlement to vote, and in all other cases where practicable to do so;

Certain steps should be followed to ensure that statutory requirements - for example secret voting in "workplace" and other ballots, and accurate counting of votes cast - are satisfied;

The trade union should not authorise or endorse industrial action before it has taken steps to notify, as the law requires, certain details about the ballot result; it should also respond positively to a request for such details about the result from any employer whose employees were entitled to vote;

Even if a properly-conducted secret ballot shows a majority for industrial action, a trade union should carefully consider all other options for resolving the dispute before proceeding to organise such action;

If the trade union decides to induce industrial action it should give sufficient notice to all its members concerned, and any employer whose employees it proposes

to induce to take part in the action, before actually inducing the action;

If the trade union decides to seek members' views about continuing "official" industrial action, any vote undertaken for this purpose should be by means of a properly-conducted secret ballot.

The draft Code also:-

Offers an example of an industrial action ballot voting paper which would satisfy the relevant statutory requirements applying to such voting papers;

Suggests that the trade union might not consider it appropriate to authorise or endorse industrial action, even if there is a majority "Yes" vote in answer to the required question(s), unless it is a very substantial majority and/or the turnout in the ballot is at least 70 per cent of those entitled to vote;

Sets out (in Annexes) the text of relevant sections of the Trade Union Act 1984 as amended by the Employment Act 1988.

The attached note provides a further detailed summary of various recommendations made in the draft Code.

ANNEX

SUMMARY OF DRAFT CODE OF PRACTICE ON TRADE UNION INDUSTRIAL ACTION BALLOTING

1. The purpose of this Code is to provide practical guidance to promote the improvement of industrial relations and desirable practices in relation to the conduct by trade unions of ballots about industrial action. It should assist trade unions and their members who are directly involved in such ballots, and employers, and their customers and suppliers, who may be affected by "official" industrial action by a trade union.

2. Following the Preamble and Introduction (Section A), Sections B-F of the Code deal with the various stages of industrial action balloting. Trade unions, and any of their members, officials or employees responsible for the organisation of an industrial action ballot should have regard to the guidelines on good practice set out in each Section.

3. Three general principles underlie the Code:-

(a) Individual union members should have a sufficient opportunity to indicate whether they are prepared to take part in industrial action before their union proceeds to organise it;

(b) Proper standards of democratic conduct should be applied to the balloting process; and

(c) The balloting process should be conducted in accordance with good industrial relations practice.

4. The Code itself imposes no legal obligations and failure to observe it does not by itself render anyone liable to proceedings. But section 3(8) of the Employment Act 1980 provides that any provisions of the Code are to be admissible in evidence and taken into account in proceedings before any court or industrial tribunal or the Central Arbitration Committee where they consider them relevant.

5. The following pages set out, in summary form, the good practices which Sections B-F of the Code state that trade unions **should follow**. There are, in addition, a number of procedures and practices that the Code states trade unions **should consider** in order to ensure that statutory requirements and good practices are observed.

6. The Code also states that where a trade union decides to use the "workplace" balloting method in accordance with the Code, the employer(s) of the union's members given entitlement to vote should consider whether the provision of such facilities as would assist the proper conduct of the ballot, in accordance with good industrial relations practices and the requirements of the law, should be made available to the trade union.

SECTION B - WHETHER AN INDUSTRIAL ACTION BALLOT WOULD BE APPROPRIATE

1. Before a ballot is contemplated:-

(a) Any agreed procedures, either formal or informal, which might lead to the resolution of a dispute without the need for industrial action should be completed; and

(b) If such procedures are exhausted, or are unavailable, consideration should be given to using any other practicable means of resolving a dispute including, where appropriate, seeking assistance from the Advisory, Conciliation and Arbitration Service (ACAS).

2. A trade union should hold a ballot on industrial action only if:-

(a) It is contemplating authorising or endorsing industrial action; and

(b) It would be lawful for the union to organise the industrial action concerned if the statutory requirements in respect of the ballot were satisfied.

3. No ballot on industrial action should be organised by a trade union, however, until it has assessed whether there is sufficient demand from its members to justify holding one.

4. A trade union should not organise a ballot on industrial action if its real purpose is different - for example to obtain trade union members' views about their union's negotiating position, or about an offer made by an employer.

5. Whenever an industrial action ballot is in prospect, the trade union should inform any employer whose employees may be given entitlement to vote of its intention to hold the ballot. Sufficient time should be allowed for any response which the employer(s) may wish to make before the trade union proceeds with the ballot.

SECTION C - PREPARING FOR AN INDUSTRIAL ACTION BALLOT

6. The trade union should:-

(a) Take into account good industrial relations practice in the timing of the ballot;

(b) Make appropriate arrangements for independent scrutiny of the ballot.

7. The relevant individual(s) or body in the union who would authorise or endorse the industrial action with which the ballot is concerned should have responsibility for establishing the proper "balloting constituency" for the ballot in accordance with the statutory requirements.

8. The trade union should review the "balloting constituency" (or that part or parts of it for which it is proposed to aggregate votes across different places of work) against the relevant statutory requirements whenever such aggregation is proposed. The relevant individual(s) or body in the union who would authorise or endorse the industrial action with which the ballot is concerned should have responsibility for taking decisions about the aggregation of votes which may follow this review.

9. "Fully-postal" balloting, with satisfactory standards of independent scrutiny, should be the preferred method of conducting industrial action ballots unless this is impracticable in the time available. This method should be chosen wherever the ballot is about the authorisation of industrial action by a trade union unless it is particularly important, and consistent with the promotion of good industrial relations, to obtain members' views sooner than the use of this method would allow. It should always be chosen for any industrial action ballot where the "balloting constituency" covers all the members of a trade union.

10. "Semi-postal" balloting - where voting papers are made available at the workplace or some other location, but are returned to a central point by post for counting - should normally be the choice in circumstances where a fully postal ballot is not considered practicable; it will be important to ensure that satisfactory standards of independent scrutiny are applied so as to give all concerned confidence that the proper security will be applied to the balloting process.

11. "Workplace" balloting should be adopted only where it is clearly apparent that neither of the alternative methods described in paragraphs 9 and 10 above is practicable.

12. The trade union should ensure that adequate arrangements are made for independent scrutiny so that all concerned can have confidence in both the conduct and result of the ballot.

13. An independent scrutineer should be appointed by the trade union to oversee the balloting process, and report on its conduct. The scrutineer's report should be made available to the trade union's members on demand after the ballot has taken place.

14. An industrial action ballot should never be started at a time when the ballot itself could be harmful to good industrial relations. The trade union should be sensitive to the risk, for

example, of prejudicing the chances of resolving the dispute through negotiation and should time the ballot so as to minimise such risk.

15. While the required question(s) may be framed in different ways, and the voter MUST be asked whether he is willing to take or continue the industrial action the union may authorise or endorse, the issue posed by any particular question on the voting paper should be put as directly as possible and not in a way which might confuse a voter.

16. The relevant required question(s) should appear on the voting paper separately from any other question that might also appear. Voters should be left in no doubt that in answering the required question(s) they are responding to the question(s) alone. No voter should be misled by the framing of the required question(s) into believing that, for example, he is being asked to agree to an opinion about the merits of the dispute or issue to which the industrial action may relate. Nor should a voter be asked if he is prepared to "support" industrial action as part of the same question which asks him if he is prepared to take part in it.

17. The trade union should ensure that neither the required question(s), nor anything else which appears on the voting paper, is presented in a way which might encourage a voter to answer "No" rather than "Yes", or "Yes" rather than "No", as a result of that presentation.

18. The trade union should include on the voting papers information which may help to protect the security of the balloting process. The trade union should determine for itself what may be necessary in this respect, and should seek the advice of any independent scrutineer appointed in connection with the ballot.

19. Arrangements for the production and distribution of the voting papers should be such as to ensure that no mistakes are made which

might invalidate the ballot through a failure to satisfy the statutory requirements.

20. The trade union should seek the advice of any independent scrutineer appointed in connection with the ballot about appropriate arrangements for the printing and distribution of voting papers and be guided by any such advice offered.

21. The trade union should do all it practicably can to ensure that any information it supplies to members in connection with the ballot is accurate and cannot mislead voters in the process of forming their opinions about which way to vote.

SECTION D - HOLDING AN INDUSTRIAL ACTION BALLOT

22. The trade union should take all reasonably practicable steps to make sure that the requirements of the law are known to its members who are given entitlement to vote.

23. The trade union should ensure that any such scrutineer is aware of the relevant statutory requirements that apply to the conduct of the ballot.

24. Where the voting method is by "workplace" balloting, with votes cast at one or more places of work or some other more convenient location, arrangements for independent scrutiny should be made for every location where votes are cast.

25. Particular care should be taken so that none of the trade union's members, officials or employees involved in distributing voting papers do anything during that part of the balloting process which might be construed as "interference or constraint".

26. The trade union should ensure that all of its members, officials and employees who might - even by accident or unintentionally - interfere with or constrain those entitled to vote in an industrial action ballot are aware of the potential consequences if their behaviour is regarded as having either of these effects. The trade union should, for example, periodically issue general reminders about this statutory requirement and, in addition, make special efforts to bring such reminders to those of its members, officials and employees who are to be involved in any way with the organisation or conduct of any particular industrial action ballot.

27. Arrangements for the ballot should not involve those entitled to vote having to incur expenditure on fares or petrol in order to either collect or complete a voting paper.

28. The trade union should make arrangements so that:-

(a) Where "fully-" or "semi-postal" balloting methods are used, those properly entitled to vote are supplied with pre-paid reply envelopes along with the voting paper so that they do not have to incur any postal costs themselves in order to vote;

(b) Where the "workplace" balloting method is used, the time allowed for voters to collect their voting papers and to cast votes should be outside the normal working hours of those properly entitled to vote if that is necessary to ensure that they do not risk losing pay as a consequence of participating in the ballot.

29. If anyone properly entitled to vote in an industrial action ballot shows the trade union that the arrangements proposed for, or applied to, the ballot were such that there will be, or were,

direct costs to him or any other person properly entitled to vote, the trade union should take whatever practicable steps are necessary to remedy the problem.

30. Whatever method of balloting is adopted, the trade union should:-

(a) Clearly identify which of its members is properly entitled to vote and ensure (by whatever checks it is reasonably practicable to apply) that they are on the voters' list (or relevant voters' list if there are separate lists for separate locations or places of work);

(b) Advise those entitled to vote, well in advance, of where, when and how the balloting will take place;

(c) Make suitable arrangements to supply a voting paper to each member given entitlement to vote who will be on holiday or special leave (including sickness or maternity leave) during the time when balloting will be taking place, or is located overseas;

(d) Fix the start of balloting so as to give adequate time for any membership register or roll which will be used to be brought up-to-date.

31. For "fully-" and "semi-postal" balloting the period between distribution of voting papers to those entitled to vote and the date by which completed voting papers should be returned should be such as to allow at least:-

(a) 7 days if voting papers are distributed and/or returned by first class post;

(b) 14 days if voting papers are distributed and/or returned by second class post.

32. The trade union should establish an appropriate system which will allow checks to be made to ensure that:-

(a) No-one properly entitled to vote is accidentally disenfranchised; and

(b) No uncompleted voting paper comes into the hands of anyone not properly entitled to vote who might use it to cast a vote to which he is not entitled.

Advice on these matters should be sought from any independent scrutineer appointed in connection with the ballot.

33. For "workplace" balloting (or any variant involving the casting of votes other than by postal return of voting papers):-

(a) Postal voting papers should be provided to anyone properly entitled to vote who is known to be unable, for whatever reason, to collect his voting paper at the time or location where they are issued or to cast his vote at the location where "workplace" balloting is to take place; steps should then be taken to record any such special distribution of voting papers so as to avoid duplicating their issue and to allow sufficient time for such voters to return their completed voting paper;

(b) The actual issue of voting papers should be entrusted to someone known to be "neutral" on the issue concerned - for example, a local independent scrutineer appointed by the union;

(c) Where an independent organisation or individual is not handling the issue of voting papers, this should not

be entrusted to one member, official or employee of the trade union alone;

(d) Everyone properly entitled to vote should be advised where and when balloting will take place, and what identification will be required in order to establish entitlement to vote at the location where his vote may be cast;

(e) The time allowed for balloting should take into account any different working patterns in shifts and areas of plant so that all those properly entitled to vote have adequate time to cast their votes if they wish to do so.

34. In all ballots, conducted by whatever method, any list(s) of those properly entitled to vote, and the voting papers themselves, should be compiled and handled so as to preserve the anonymity of the voter so far as this is consistent with the proper conduct of the ballot. The trade union should seek the advice of any independent scrutineer appointed in connection with a ballot on procedures which should be followed for this purpose.

35. The trade union should take sufficient steps to ensure that a voter's anonymity is preserved when a voting paper is returned by post. This means, for example, that so far as reasonably practicable:-

(a) Envelopes in which voting papers are to be posted should have no distinguishing marks from which the identity of the voter could be established;

(b) The procedures for receiving and counting voting papers returned by post should not prejudice the statutory requirement for secret voting.

36. For "workplace" ballots, the trade union should, as far as reasonably practicable, make the following arrangements:-

(a) Voting should take place in a room or area where there is privacy for the voter to mark his voting paper and cast his vote;

(b) No-one should be allowed in that room or area at the time when voting is taking place except those issuing voting papers, any independent scrutineer appointed in connection with the ballot, and those properly entitled to vote; once the voter has cast his vote he should leave the room or area;

(c) A single, secure and locked receptacle ("ballot box") should be provided in the room or area used for voting at the time when voting is taking place, with its key held by a "neutral" individual such as an independent scrutineer overseeing the balloting process; completed voting papers should be placed in that receptacle by the voter personally;

(d) If the completed voting papers are to be taken out of a "ballot box" and then posted (or otherwise sent) all together to a central location for counting, then each voter should be given a sealable envelope in which to put his completed voting paper, the envelope should be placed into a locked "ballot box" as described above, and at the end of the voting period all such envelopes should be transferred unopened to the central location.

SECTION E - FOLLOWING AN INDUSTRIAL ACTION BALLOT

37. The trade union should ensure that the following procedures are followed as appropriate:-

(a) All unused or unissued voting papers are destroyed as soon as possible after the time allowed for voting has passed and the necessary information for checking the number of voting papers issued and used has been prepared;

(b) Completed voting papers are not accepted after the official close of voting;

(c) The organisational arrangements for conducting the count of votes cast are settled well in advance of the actual ballot, and any equipment or facilities needed in the conduct of the count are available to those concerned;

(d) All those involved in the counting process, particularly those doing the actual counting of completed voting papers, are properly briefed as to their responsibilities, including the statutory requirements mentioned above;

(e) Any independent scrutineer appointed in connection with the ballot has sufficient access to any location where votes are to be counted at any time when that counting is in progress;

(f) All voting papers to be counted at any one location have been received before the count starts;

(g) All voting papers received by post are put separately into a locked and secure room as soon as they

arrive, and are kept under such secure conditions until removed for counting;

(h) At least one individual, "neutral" on the issue concerned and not involved in the actual count, is made responsible for adjudicating on any voting paper(s) which those doing the actual counting propose to reject as "spoiled", and that those doing the actual counting refer any such voting paper about which they are in doubt to the adjudicator;

(i) If voting papers arrive at the counting location in envelopes, such envelopes are regularly removed from the counting area once they have been opened and voting papers removed for counting;

(j) The counting room is locked and secure whenever counting staff are not actually at work;

(k) Counting staff are not disturbed or distracted by any person with a particular interest in the result of the ballot during the process of the count;

(l) Voting papers, once counted, are stored under secure conditions (ie so that they cannot be tampered with in any way but are available for checking if necessary) for at least 6 months after the ballot.

38. The trade union should make arrangements in respect of the ballot that will help to ensure that its result can be notified as required.

39. A trade union should ensure that it is in a position to announce the required details as soon as reasonably practicable after the process of counting the ballot votes is completed, and

that it can meet any request from anyone entitled to vote to supply the information on a personal basis.

40. The trade union should not proceed to authorise or endorse industrial action without first taking steps to satisfy the statutory requirements for notifying details of the result of a ballot.

41. The trade union should also respond positively to a request from any:-

(a) Employer whose employees participated in the industrial action ballot, and/or any employers' association representing such employers, for such details of the ballot result as the law requires a trade union to provide to those entitled to vote in the ballot;

(b) Person entitled to vote for other information which the union has concerning the ballot, its result or conduct; such information might include, for example, any report provided about the ballot by an appointed scrutineer, confirmation of the number of voting papers prepared and issued, or details of the systems that were employed to ensure that proper standards were applied to the conduct of the balloting process.

42. If the trade union decides to authorise or endorse industrial action by its members, it should:-

(a) Inform all its members concerned of its decision to authorise or endorse industrial action, and its reasons for doing so, before inducing them to take or continue that action;

(b) Inform any employer whose employees' industrial action has been authorised or endorsed of the trade union's decision to do so, allowing sufficient time before any consequent inducement by the union takes place for the employer to make any necessary arrangements to ensure that there is no risk to the health and safety of other employees, or the general public, as a result of the consequences of "official" industrial action.

Sufficient notice of a trade union's intention should be given both to such members and to any such employer before the trade union proceeds to induce the industrial action.

43. Wherever a trade union decides to seek its members' views about continuing with industrial action it has authorised or endorsed, the same standards should be applied to the process of seeking their views as are set out in this Code.

CONFIDENTIAL

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

5 September 1988

NO STRIKE AGREEMENTS

The Prime Minister was most grateful for your Secretary of State's minute of 29 August and the enclosed report. She has read this with interest and has noted that your Secretary of State will be monitoring developments closely.

(PAUL GRAY)

Nick Wilson, Esq.,
Department of Employment.

CONFIDENTIAL

cc PM

cc PM: mtg with Jack Reed Jan '80

PRIME MINISTER

NO STRIKE AGREEMENTS

Background

Your Private Secretary's letter of 30 March asked for a Report on developments in European countries regarding the encouragement, or imposition through legislation, of "no strike agreements" in essential services; it drew particular attention to recent legislation in Italy.

The Report attached has been drawn from information supplied by labour attaches and labour reporting officers covering other EC countries. It also includes (pp 29-31) a description of existing UK arrangements for limiting industrial action and its effects in essential services.

Findings

The Report confirms that there appears to be little interest in "no strike agreements" as a regulatory technique, although the legal arrangements in a number of countries (eg Denmark, Spain) mean that all collective agreements are to some extent "no strike agreements" during the period of their currency.

The Republic of Ireland's legislative framework is essentially similar to the UK's and it is interesting to note (para 11.5 of the Report) their intentions for future legislation to impose a strike "notice" period and to produce non-statutory codes of practice regarding levels of service to be maintained in certain sectors. The Danish and Dutch systems also have some similarities with ours, but their collective bargaining arrangements (and in Denmark the degree of Parliamentary intervention) are very different.

Elsewhere there is a constitutional "right to strike", and the usual sanction for illegal or unlawful industrial action is the loss of rights, such as protection against dismissal, which the individual employee would otherwise have while taking industrial action. This sanction already exists in the UK, of course, where taking industrial action is almost invariably a breach of the employment contract and grounds for "fair" dismissal.

Other points to emerge include:

(a) recent initiatives in various countries (eg Italy, Portugal, Spain) are designed to enhance their governments' ability to take action in situations that might, in the UK, lead to the use of Emergency Powers legislation. For this reason the chapter on the UK looks at our existing arrangements for mitigating the effects of industrial action in certain services and supplies;

(b) in Belgium and the Netherlands limitations on the right to strike which would otherwise exist for workers in certain sectors or occupations are connected with ratification of the European Social Charter;

(c) some minimum period of strike notice and a requirement that for certain services a "minimum" or "skeleton" level of staffing must be maintained during industrial action appears in French, Greek, Italian, Portuguese and Spanish legislation. The sanctions for failure to observe the relevant requirements ("conscription" or loss of individual

protection against dismissal) are quite different from what might be perceived as the appropriate penalty within the UK system (loss of immunity for those organising unlawful industrial action);

(d) recent developments in Italy are directly related to public concern about a recent but long-running series of strikes, particularly in transport. Several "Bills" were produced, which in Italy is a process akin to our Green/White Paper consultations. The Government's present legislative proposal (para 7.11 of the Report) does not ban or outlaw all strikes; leaves the detailed terms of "self-regulation codes" to be decided by collective bargaining; and includes measures which enhance the status of recognised unions and impose obligations on employers.

Next Steps

Following the then Paymaster General's review of options for limiting strikes in essential services and his minute to you in February 1987, it was agreed that none of the measures examined should be proceeded with. It was considered, in particular, that the public expenditure costs and loss of negotiation as a valuable management tool, which those options would involve, were not acceptable except in a very limited number of cases (eg Police, Fire Service).

The record of industrial action in those services which might be considered "essential" has in recent years been generally good. The successful legislative strategy for industrial relations which we have followed since 1980 bears equally upon the essential services, of course, as upon all other sectors.

In particular, the removal of immunity for most secondary industrial action and for action which is unsupported by a secret ballot of all the employees called upon to participate, is likely to be as successful in restraining any future trade union militancy in essential services as it has already been in other sectors.

Nevertheless it is clearly useful to know how other countries tackle industrial action in essential services, even though differences between the legal frameworks, industrial relations traditions, and recent incidence of significant stoppages affecting those services mean that particular action taken or comtemplated by our EC partners is incapable of direct application in the UK context.

I shall of course continue to monitor developments closely. If at some future date the behaviour of the unions in essential services indicates a need for action, I think there are some aspects of European practice which might then be worth examining further. I have in mind, in particular, a set period of strike notice and the maintenance of a minimum service during industrial action.

NF

August 29

INO Pa: Legislation PTT4

012/3294

CCPS.

CONFIDENTIAL

Treasury Chambers, Parliament Street, SW1P 3AG

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

MJPM
RHG
21/7

21st July 1988

Dear Norman,

file with PG

REDUNDANCY REBATES - EMPLOYMENT BILL 1988-89

Thank you for showing me a copy of your letter of 15 July to the Prime Minister, seeking agreement to the abolition of the remaining redundancy rebate, and two minor changes in redundancy payments legislation.

I welcome your proposal to abolish the remaining 35 per cent redundancy rebate to employers with less than 10 employees. As you say the average rebate is now as low as £437 and it appears to be of little benefit for most employers. On that basis I am content with the abolition of the rebate. I also welcome the worthwhile public expenditure savings of about £11 million in each of the PES years which will result from abolition. These will be a helpful addition to the redundancy fund savings you have already offered.

I am also content with the two minor changes you propose to Section 122 (10) and 125 (2) of the Employment Protection (Consolidation) Act 1978.

I am copying this letter to the Prime Minister, E(A) colleagues, John Wakeham and Sir Robin Butler.

Yours Ever,
John

JOHN MAJOR

dti

the department for Enterprise

The Rt. Hon. Kenneth Clarke QC MP
Chancellor of the Duchy of Lancaster and
Minister of Trade and Industry

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

Department of
Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

NBPM
Rec'd
21/7

Direct line 215 5147
Our ref
Your ref
Date 21 July 1988

Dear Secretary of State

I have seen a copy of your minute to the Prime Minister about Redundancy Rebates and two minor points in the Employment Bill.

I agree with your proposal to abolish the remaining rebates for small firms on redundancy payments.

As to the first point in your Annex, I should like my officials in the Insolvency Service to have the opportunity to consider the detailed implications. On the second, I am prepared to agree, in principle, subject to the view of my Department's solicitors on how this should be effected in legislation.

In both cases, the interested practitioners' professional bodies would need to be consulted, but I hope that we can leave our officials to resolve any points at issue.

I am copying this to the Prime Minister, E(A) colleagues, the Leader of the House, the Chief Secretary and Sir Robin Butler.

Yours sincerely,

Linda Joyce

pp KENNETH CLARKE

(Approved by the Chancellor and signed in his absence).

LS8AAM

C/F

NB

To chase "early in the New Year" request in the last paragraph.

NLW

21 July 1988

CONFIDENTIAL

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

21 July 1988

I have shown the Prime Minister your letter of 19 July about a suggestion put to her for changes to the statutory requirements on industrial action balloting.

The Prime Minister was interested to read your Secretary of State's views on this suggestion. She agrees with him that there are attractions in the proposal that 10 per cent of members might trigger a secret ballot six weeks into a strike to circumvent the likely intimidation of a union mass meeting. The Prime Minister has noted the difficulties in this procedure. She agrees that your Secretary of State should examine closely, over the coming months, ways of taking forward the Government's successful step by step strategy of industrial relations reform, including the particular suggestion referred to above. Clearly, legislation could not be included in the next session, but such legislation is a possibility for the 1989/1990 session. She would be grateful if your Secretary of State could let her have a further note early in the New Year, on the possibilities as he sees them for further industrial relations legislation.

N. L. WICKS

Nicholas Wilson, Esq.,
Department of Employment.

CONFIDENTIAL

CONFIDENTIAL

cc PU

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

20 July 1988

NBAM
RRCB
20/7

Dear Norman

REDUNDANCY REBATES - EMPLOYMENT BILL 1988/89 offlet

Thank you for sending me a copy of your minute of 15 July to the Prime Minister.

I note that you expect that the provisions which would be required to give effect to your proposed changes should be short and uncontroversial. On this understanding, I should be content for the necessary provisions to be accommodated in the Employment Bill for next Session.

I am copying this letter to the Prime Minister, other members of E(A) and Sir Robin Butler.

Yours ever

JOHN

JOHN WAKEHAM

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

CONFIDENTIAL

file

DS

PRIME MINISTER

cc: Mr. Dunlop

"RETURN TO WORK" BALLOTS

Andrew Dunlop (Flag A) suggests that you should ask Mr. Fowler to explore the feasibility of giving workers a statutory right to require a further strike ballot, say six weeks after a strike has begun. In fact I have already asked Mr. Fowler's views, which are set out in his office's letter at Flag B.

Mr. Fowler sees attractions in the proposal, but wants to see the effect of the Employment Act 1988 before deciding whether to legislate. It is not clear whether this delay is prevarication or prudent application of the step-by-step approach to IR reform.

My own view is that there looks to be a good case for legislation of this sort. Certainly Jeffrey Sterling's experience suggests it would be useful.

How would you like to proceed?

Agree:

either to allow Mr. Fowler the time he wants, with a view to possible legislation in the 1989/90 Session;

or to urge him to consider it for the next Session's Employment Bill?

N. L. WICKS

19 July 1988

Y SWYDDFA GYMREIG
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel 01-270 3000 (Switsfwrdd)
01-270 (Llinell Union)
Oddi wrth Ysgrifennydd Gwladol Cymru

WELSH OFFICE
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 01-270 3000 (Switchboard)
01-270 (Direct Line)
From The Secretary of State for Wales

The Rt Hon Peter Walker MBE MP

CONFIDENTIAL

CT/12325/88/PS

19 July 1988

Dear Secretary of State

REDUNDANCY REBATES - EMPLOYMENT BILL 1988/89

Thank you for copying to me your minute of 15 July to the Prime Minister.

I am content with the changes you propose. But I hope you will consider whether at least some part of the saving made by abolishing rebates should be used in other, more positive, ways of helping small firms to succeed and grow. Otherwise, while there may be little reaction from small firms themselves, our critics may exploit the change as inconsistent with our declared policy of encouraging small businesses and the vital contribution they make to the economy

I am copying this to the Prime Minister, members of E(A), the Leader of the House and The Chief Secretary, and to Sir Robin Butler.

Yours sincerely

Keith Davies

Approved by the Secretary of State and signed in his absence.

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

Ind Pol: Legislation
Pt 14

PRIME MINISTER

cc: Mr. Dunlop

"RETURN TO WORK" BALLOTS

Andrew Dunlop (Flag A) suggests that you should ask Mr. Fowler to explore the feasibility of giving workers a statutory right to require a further strike ballot, say six weeks after a strike has begun. In fact I have already asked Mr. Fowler's views, which are set out in his office's letter at Flag B.

Mr. Fowler sees attractions in the proposal, but wants to see the effect of the Employment Act 1988 before deciding whether to legislate. It is not clear whether this delay is prevarication or prudent application of the step-by-step approach to IR reform.

My own view is that there looks to be a good case for legislation of this sort. Certainly Jeffrey Sterling's experience suggests it would be useful.

How would you like to proceed?

Agree:

either to allow Mr. Fowler the time he wants, with a view to possible legislation in the 1989/90 Session;

or to urge him to consider it for the next Session's Employment Bill?

N.L.W.

I think we should hear Norman Fowler's views before making up our minds. NL

N. L. WICKS

19 July 1988

CONFIDENTIAL

cc PS

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213.....
Switchboard 01-213 3000 GTN Code 213
Facsimile 01-213 5465 Telex 915564

N L Wicks Esq
10 Downing Street
LONDON SW1A 2AA

19 July 1988

Dear Nigel,

PS with P.S.

Thank you for your letter of 16 June seeking my Secretary of State's views about a suggestion put to the Prime Minister for changes to the statutory requirements on industrial action balloting.

My Secretary of State certainly understands, and sympathises with, the concern that intimidatory mass meetings could be used as a device to give the impression of continuing support for industrial action. He is considering, as a first step, including in the statutory code of practice on industrial action balloting, to be issued under the Employment Act 1988, a recommendation that unions should apply proper standards to any process of seeking members' views about continuing industrial action once that action has started. He expects to publish a draft in September and, after a period for public consultations, to lay the Code before Parliament early in 1989.

A number of important steps have already been taken which bear on the problem. If a union is to preserve its immunity for organising industrial action it must get support for that action from a properly-conducted secret ballot before making it official. And after 26 July union members will have a new right, provided by the 1988 Employment Act, to restrain their union if it calls on them to take any kind of industrial action without majority support in a ballot which satisfies the statutory requirements. It may well be that members will sometimes be in a better position than employers to judge whether those requirements have actually been satisfied in any particular case.

CONFIDENTIAL

The Government's legislation makes it much more likely that union members are now aware that taking industrial action can breach their contracts of employment and put their jobs at risk. Regardless of the result of any ballot they may reject a call to take such action, or they may choose to return to work after industrial action has started. Over a thousand NUS members, for example, accepted the terms offered by P&O and returned to work against the instructions of their union (had they known there was to be a new ballot they might have awaited its outcome). The new Act protects every union member against union discipline imposed for rejecting a call to take industrial action or for returning to work after such action has started.

My Secretary of State shares the concern that these steps may not be enough, however, and agrees that there are attractions in the proposal that 10 per cent of members might trigger a secret ballot six weeks into a strike to circumvent the likely intimidation of a union mass-meeting. But there are also some potential problems in this suggestion and these will need careful consideration. A new ballot might be triggered, for example, by a group of militant members, by design just when employees were beginning to give up and return to work, or when the employer was about to secure the trade union's agreement to his offer. There would be a risk that this could extend the industrial action unnecessarily for several weeks until the result of the new ballot was known. There would also be serious technical difficulties, for example in verifying the legitimacy of any ten per cent group of members and protecting their anonymity. It was for similar reasons that no right to trigger a ballot was given to union members in Section 1 of the 1988 Act.

These are real problems, but my Secretary of State intends to examine ways of requiring reballoting during a strike closely over the coming months in taking forward the Government's successful step by step strategy of industrial relations reform. When the 1988 Employment Act has been brought more fully into force by the end of this year, and as experience grows of its operation in practice, particularly the new protection for union members against discipline by their union for working during a strike, he will want to review the scope for further legislation.

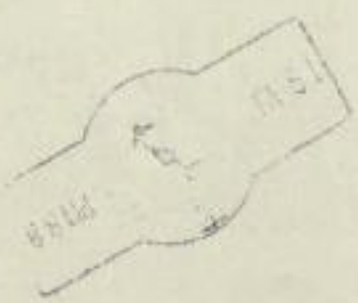
Yours sincerely

Beverley Evans

for NICK WILSON
PRINCIPAL PRIVATE SECRETARY

J

1ND POC PT13



PRIME MINISTER 19 JULY 1988

"RETURN TO WORK" BALLOTS

I discussed with Sir Jeffrey Sterling today the issue of how to enhance the rights of individual trade union members to bring industrial disputes to a speedy conclusion.

His ideas - which have been forged in the heat of the P and O dispute - are interesting and well worth pursuing further. You may wish, therefore, to raise them with him at your meeting tomorrow.

The Existing Position

At present an individual union member has a right to a ballot before being called out on strike. From there on the initiative lies with the union executive either to call off the strike or to hold another ballot to re-test the membership's opinion. In practice union leaders often seem to interpret an affirmative pre-strike ballot as the green light to "Tough it out".

The problem for the individual union member is that has no mechanism for precipitating the end of the dispute. And he may be locked into a dispute that runs far longer than he perceives to be in his own best interests.

If he wishes, therefore, to return to work of his own accord, he will be forced to run the gauntlet of pressure and intimidation from his union and colleagues.

From next week he will enjoy greater protection. He will, for example, no longer be able to be disciplined by his union for failing to support a strike.

I do not believe, however, that even this protection is strong enough.

More subtle pressure can still be brought to bear. And the natural haemorrhage back to work may lag well behind the shift in opinion in support of a return to work. A dispute might, therefore, be prolonged unnecessarily.

A New Approach

Jeffrey Sterling's idea is to provide a mechanism which would provide an opportunity for holding a secret ballot of all those involved in the dispute after it had begun and at regular intervals thereafter. The object would be to test support for a return to work.

It would only require 10 per cent of those on strike to request a ballot to trigger this mechanism. This would correspond with the right of 10 per cent or more of shareholders to require the company, in which they own shares, to hold an extraordinary general meeting.

The details of this proposal would need to be looked at carefully. Two areas which require further examination are:

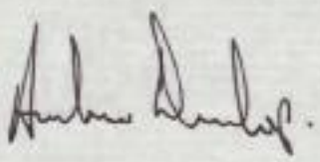
a) How to prevent abuse by a militant hardcore who might use this device as a delaying tactic to head-off a return to work;

b) How to protect the anonymity of those requesting a ballot while at the same time verifying their right to do so.

Conclusion

This seems to me a sensible proposal which accords very well with our basic philosophy of handing more power back to the individual.

I recommend that you ask the Secretary of State for Employment to explore more fully the feasibility of this proposal.



ANDREW DUNLOP

10 DOWNING STREET

PRIME MINISTER

Jeffrey Sterling is coming to see you for a general chat tomorrow. He will raise one point regarding a possible change to industrial relations legislation, on which a note is below.

N.L.W.

N. L. Wicks

19 July 1988

FILE
SLW

CONFIDENTIAL

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

18 July 1988

Dear Mike,

REDUNDANCY REBATES - EMPLOYMENT BILL 1988/89

The Prime Minister was grateful for your Secretary of State's minute of 15 July. Subject to the Lord President's views on the implications for the legislative programme, she is content with the proposed policy changes.

I am copying this letter to the Private Secretaries to members of E(A), the Leader of the House, the Chief Secretary and Sir Robin Butler.

Yours,
Paul

Paul Gray

Nicholas Wilson, Esq.,
Department of Employment.

CONFIDENTIAL

cc CO LPSO HMT
C&T DOE D/M
L/House WO
DST SO
MAFF D/N
CAB NIO
DTI

Prime Minister
Content to give policy approval to ending remaining redundancy rebates and to the 2 minor tidying-up provisions.

RRCG
15/7

PRIME MINISTER

Yes ms

REDUNDANCY REBATES - EMPLOYMENT BILL 1988/89

I am writing to seek colleagues' agreement to the abolition of remaining redundancy rebates, and to two minor changes in redundancy payments legislation, in the Employment Bill planned for next session.

We abolished the rebates formerly paid to employers on their statutory redundancy payments in 1986, except for employers with less than 10 employees. These continue to receive rebates of 35% at a public expenditure cost of £11m a year (from the Redundancy Fund). A recent survey has shown that the average rebate payment is only £437. This can hardly be of much benefit to employers, and I do not anticipate any significant reaction to abolition from small firms. Abolition would enable us to make a worthwhile public expenditure saving of £11m.

The two minor changes are set out in the Annex.

I hope that E(A) colleagues will agree that I should make these changes. If any see objection it would be very helpful to know by 19 July.

If these changes are agreed, I hope the Leader of the House will be able to agree to their inclusion in the Employment Bill which has a place in the legislative programme for 1988/89. The Bill is already amending the redundancy payments legislation for EC reasons, so they fit very closely with one of its main provisions. I expect all three amendments to be uncontroversial and to require minimal space in the Bill. Early enactment would of course maximise the public expenditure savings. Amendment of the redundancy payments legislation does not happen frequently, so if we miss this opportunity there may be no suitable vehicle for some time.

I am sending copies of this to E(A) colleagues, to the Leader of the House and the Chief Secretary, and to Sir Robin Butler.

NF
15 July 1988

ANNEX

SECTION 122(10) OF EMPLOYMENT PROTECTION (CONSOLIDATION) ACT 1978

Where employers are insolvent, the Redundancy Fund pays certain outstanding debts (eg arrears of wages) to the employees. The legislation requires the Department to await a statement from the receiver or liquidator of the amount payable, unless there is unreasonable delay. There are cases where there is no unreasonable delay but where the Department already knows the amount payable. The requirement to await a statement delays the payment to the employee and means that the Department pays fees to receivers and liquidators for unnecessary work. A change in the legislation would make it possible to go ahead in appropriate cases without the statement, with a small saving to public expenditure on fees (about £50,000 a year).

SECTION 125(2) OF THE EMPLOYMENT PROTECTION (CONSOLIDATION) ACT 1978

Where the Redundancy Fund makes payments to the employees of an insolvent business, for example arrears of wages, s125 provides for the Department to have a priority claim on the assets of the business where there are insufficient funds to meet employees' preferential claims in full. Legal doubts have been raised as to whether s125 achieves that intention. A test case taken to settle the matter failed to do so but found that the provision has no application to receiverships (though it is not disputed that it applies to liquidations). The uncertainty is undesirable, the distinction drawn between receivership and liquidation is untenable, and there is potential loss to public funds if the priority intended by the Act is not followed. It is therefore proposed to restore the intended meaning. Officials of the Department of Trade and Industry have been consulted and agree.

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

16 June 1988

STRIKE BALLOTS

The Prime Minister would be grateful for Mr Fowler's views on a suggestion for a further change in the law regarding strike ballots which has been put to her. The suggestion is as follows.

Once a strike begins, it is entirely a matter for the Union Executive whether to call another secret ballot. Often, unions appear to respond to shows of hands at mass meetings where there can be scope for intimidation, in order to suggest that continued strike action has mass support. It has been suggested to the Prime Minister that, as part of the Government's campaign to give rights back to union members, there is a case for giving union members on strike, a statutory right to require a further strike ballot, say, six weeks after the strike (and perhaps at further intervals thereafter) has begun and if, say, 10 per cent of the members concerned so request. There may need to be provision to protect the anonimity of those requesting the new ballot.

The Prime Minister would be grateful to have Mr Fowler's views and assessment of this proposal.

N. L. WICKS

Nicholas Wilson, Esq.
Department of Employment

Cde SL
CCD/Grup

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

8 June 1988

Thank you very much for your letter and enclosed paper of 7 June to Mr. Bearpark from whom I have recently taken over.

I will ensure that this is seen by the right people.

DOMINIC MORRIS

John Barron, Esq.

Booklets sent to D/Emp

file

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

8 June 1988

Further to Mr. Bearpark's letter of 3 May reporting the outcome of a meeting between the Prime Minister and John Barron and Milton Johns of Equity, they have now sent in a further paper on the dispute about the television film 'Betty'.

I do not think this calls for any action but you should be aware of it.

DOMINIC MORRIS

Peter Baldwinson, Esq.,
Department of Employment

DM

14 WESTMORELAND TERRACE
LONDON SWIV 4AL
01-828 3382

CC BG (letter + paper only)

7th. June 1968.

Dear Mr Bearpark

T.V. Film - BETTY

I enclose the paper as promised by Milton Johns and myself following our meeting with the Prime Minister. ✓ make recon at file

We remain hopeful that the television production will be made and, in the meantime, we believe that this fairly full document will set the record straight with regard to the original dispute.

I also enclose copies of the two "agreements" which are referred to in the document.

Yours sincerely,

(John Barron)

P.A. Bearpark, Esq.,
10 Downing Street,
S.W.1.

"B E T T Y"

Equity has had long established agreements with London Weekend Television for the engagement of its members in drama, light entertainment, situation comedy and similar productions. These agreements have been negotiated collectively with the Independent Television Association (formerly the ITCA) and applied to all engagements offered to Equity members engaged by an ITV Company. Unlike a number of other Broadcasting Unions, there are no "local deals" with individual Companies but of course the individual performer (or his/her agent) negotiates a fee for the engagement on offer.

These arrangements have worked very successfully over the years and no major dispute between Equity and the ITV Companies has arisen in the last quarter of a century. Equity's relationships with London Weekend in particular have over the years been extremely cordial and constructive. Any difficulties have been resolved by negotiation and rarely reached even the formal disputes procedures provided for in the Equity/ITVA Agreements.

The handling by London Weekend Television of the dispute over "Betty" was, inexplicably, in sharp contrast to this tradition.

Background

As has already been indicated Equity has an established agreement with the ITV Companies for the engagement of its members. The Agreement (copy attached) provides for the artist to be paid a programme fee (the Union established by negotiation the minimum programme fee) and this fee is subject to individual negotiation, taking into account the importance of the part, the length of the engagement and the status of the actor in the profession generally. This initial payment entitles the ITV Company to transmit the production once on the ITV Network. In addition the artist is paid for each day on which he/she works at a flat rate fee negotiated by Equity and is then entitled to additional payments related to the use of the programme. These secondary payments include both repeat fees

for second and subsequent UK transmissions and a range of residual payments relating to sales to overseas territories. Equity has also negotiated agreements which enable ITV programmes to be sold in the videogram market and to the new cable and satellite services.

The agreements with the ITV Companies, which have of course been revised on an annual basis over the years, take into account the Company's ability to virtually guarantee UK Network transmissions and their ability to administer secondary payments to the performers for overseas uses.

The agreements with the ITV Companies have in no way been operated restrictively. They have enabled the Companies to build up a highly successful record of sales to overseas territories, they have in no way inhibited co-financed or co-production deals with overseas broadcasters, and they have been found to be perfectly acceptable to the employers to make the vast majority of major drama productions for British television. They are the agreements on which Equity members were engaged both in the studio and on location for such productions as "Jewel in the Crown", "Brideshead Revisited", and, for London Weekend Television, "Blade on the Feather", "Cream in my Coffee" and, more recently, "Scoop".

In addition to the agreements with the Independent Television Companies Equity has also had equally long established agreements with the British Film and Television Producers Association (B.F.T.P.A) and, more recently, the Independent Programme Producers Association (I.P.P.A.).

These agreements differ noticably from the ITV Agreement in that the salary paid to the actor, also the subject of individual negotiation, gives the producer world-wide uses of the programme without further payment except in the case of sales to the United States of America and second and subsequent showings on UK television. A copy of this Agreement is also enclosed.

The difference between the two agreements stemmed principally from the fact that that employers who had access to this Agreement were genuinely independent (ie; they obtained much of the budget for a production from sources other than a UK television outlet), that they often had no guaranteed outlets either here in the UK or elsewhere and that they were often Companies which, once the production had been completed, would pass on the rights in the production of any sophisticated system of secondary use payments to the performers.

As the two agreements currently stand there can be no doubt but that the agreement with the ITV Companies provides overall a better reward to the actor, especially in relation to a continuing flow of payments for overseas sales and secondary uses. The question therefore of which agreement is used for major television productions is not therefore an academic or pedantic one but a matter of a real concern to performers.

It is Equity's long-term intention to seek by negotiation to minimise any disadvantage to the performer resulting from the use of these two agreements - and for that matter the agreements Equity has with the BBC. This is not to say that the Union is seeking to impose upon the Independent Producers the same structure of agreements which exist with the ITV Companies and BBC. It is merely an attempt to ensure that actors are not materially worse off as a result of their being offered a contract under one agreement as opposed to another.

It was precisely because the Union recognised that the traditional distinctions between "in-house" ITV and BBC productions and other forms of film and television prodution - the growth of co-productions, the stated government policy of seeking to encourage independent prodcution etc - that Equity gave notice to the BFTPA and IPPA of its desire to renegotiate the television and feature films agreements with them.

That process had been started well in advance of the dispute over "Betty" and is continuing with a hope that new agreements can shortly be concluded.

"BETTY"

Despite the fact that London Weekend Television's original intention was to make "Betty" itself and to engage Equity members under the ITV Agreement, they decided without any consultation with Equity - and for reasons utterly unconnected with either the engagement of actors or musicians - to commission an independent producer to make the programme away from LWT studios and by the engagement of freelance production staff. London Weekend apparently made it a condition of this commission - again without consulting Equity - that performers should be engaged under the BFTPA/IPPA Agreement rather than their own agreement.

These decisions were taken despite the fact that the entire budget for the production was coming from London Weekend Television itself and that London Weekend Television's agreements with the "independent" producer involved London Weekend owning and being responsible for all distribution rights in the programme.

These decisions were taken well in advance of Equity even knowing of the production taking place and London Weekend Television proceeded to commit themselves and the independent producer to substantial pre-production costs well in advance of approaching either Equity or the Musician's Union.

The first Equity knew of "Betty" was when a pre-production meeting (a standard procedure for consulting all of the Unions likely to be involved in a production) was called only a matter of days before the start of principal photography. At that meeting the representative of the Musician's Union expressed the view that, as London Weekend Television were the sole financiers of the programme and were to retain all rights in it, that the appropriate agreement for the engagements of musicians would be the ITV Agreement. The Equity representative at that meeting expressed a similar view but said that the matter was one which the Equity Council would have to consider in view of the importance of the production.

DIARY OF SUBSEQUENT EVENTS

9th February — The governing body of Equity (the elected "Council") decided, in the light of a potential dispute, to take a flexible attitude to this one production in order to ensure that it could go ahead as planned and to protect job opportunities for Equity members. The Council agreed, on the recommendation of the senior staff, that the BFTPA/IPPA Agreement could be used as the basis for engaging Equity members subject to guarantees being forthcoming that members should not be substantially worse off as a result of the concession not to insist on the correct terms of the ITV Agreement applying.

The Equity Council was anxious - even at this, its first, consideration of the matter - to separate out "Betty" from the general discussions which were taking place with the Independent Producers to seek to obtain agreements which would facilitate independent access to the BBC and ITV.

Eagerworth were informed of this decision that same day and asked to meet with the Union to discuss the matter further.

10th February — Some 24 hours after having been informed of the Council's decision, Eagerworth then telephoned the Equity office giving the Union less that 60 minutes to reverse the decision of the Council and accept that the BFTPA Agreement should apply with no guarantees.

The Equity staff responded by saying that there was no way that they could change constitutionally the decision of the Council in that way but reiterated their willingness to meet with the independent producers and/or London Weekend Television.

11th February — London Weekend Television - who up until this time had made no approaches to Equity at all about this important production in which they claimed to have invested so much capital - called a press conference to announce the cancellation of "Betty", "due to the intransigence of the Union". Equity heard of this decision from a reporter not from London Weekend Television or Eagerworth Productions.

12th February — Equity and the Musician's Union met and decided to offer to meet London Weekend Television and/or Eagerworth to seek to reverse the decision to cancel the show. LWT refused out of hand.

16th February — The Equity Executive Committee met and, in view of the importance of the matter, decided to call an emergency meeting of the full Council - a fairly unprecedented step - and that meeting took place on 18th February.

18th February — At the Council meeting a report was given on discussions which had taken place between Equity staff and a number of those members who had been contracted to work on "Betty" (including Twiggy and Christopher Lee) and, as a result of those discussions, it was agreed to take a fresh initiative and to seek further meetings with London Weekend Television and Eagerworth in an endeavour to rescue the production.

19th February — A meeting took place between Equity, The Musician's Union, Eagerworth, London Weekend Television and a representative of teh BFTPA. At that meeting all endeavours to suggest a solution to the matter were firmly rejected by the representative of London Weekend Television.

Subsequently Eagerworth took the initiative of offering to submit the dispute to arbitration in the hope the production could still go ahead. Equity agreed that such a proposal should be put to London Weekend Television. London Weekend Television again refused out of hand to allow Eagerworth to proceed to arbitration.

It was only at this stage that Equity decided to issue an instruction to Equity members not to accept contracts for "Betty" - and it did so in light of the fact that neither Eagerworth nor London Weekend Television had attempted to refer the matter to the formal dispute procedures in the BFTPA/IPPA and ITV Agreements respectively.

SUMMARY

* "Betty" was cancelled by London Weekend Television, not by Equity.

* London Weekend Television made no attempt to even discuss the matter with Equity prior to their public announcement of its cancellation.

* The "independent" producer, Eagerworth, indicated a willingness to negotiate a settlement with Equity and the Musician's Union but were prevented from doing so by London Weekend Television.

* London Weekend Television were, as the sole financiers and sole rights holders in the production, the "de facto" employer and bear full responsibility for the cancellation of the programme.

* Equity was not seeking to make a "test case" over this production indeed quite the contrary in that it had been decided to concede such issues of principle as were involved by agreeing to depart from the ITV Agreement.

2nd POL: Legislation
A 14

Tuesday
6th June
1630

1

Tom,

Please see. No hurry for interview, but pl make early contact with Lord R's secretary. N.

PRIME MINISTER

LORD ROTHSCHILD

You may remember that Lord Rothschild came to see you the other day about a scheme regarding trade union law.

He has telephoned again today. He has another idea which he wishes to put to you. I was as discouraging as I politely could be. But he would like to come and see you.

Agree to see him for 15 minutes?

N.L.W.

Yes

N. L. Wicks

25 May 1988

Note to front door on 7/6

Black Granada OVE 100

[Lord R is unable to walk up the steps so his car has to be allowed in]

DSG.58

FROM THE PRIVATE SECRETARY

HOUSE OF LORDS.
LONDON SW1A 0PW

GS/5 CF

24 May 1988

Miss Beverley Evans
Private Secretary to the Secretary of State
for Employment
Caxton House, Tothill Street
LONDON SW1H 9NF

NBPM

RRC6
2/5

Dear Beverley,

COMMISSIONERS FOR THE RIGHTS OF TRADE UNION MEMBERS

Thank you for your letter of 18 May.

The Lord Chancellor was disappointed that his suggestion could not be adopted, but he is content to wait until we have some practical experience of how the Commissioner's office works before any changes are made. There will be obvious benefits in having the views of a Commissioner on what changes are necessary.

I am copying this to the Private Secretaries to members of E(A), the Attorney General, the Minister of State Privy Council Office and Sir Robin Butler.

Yours ever, Paul

Paul Stockton

Int'l Pol: Relations
A 14

MC/Conf 29

CONFIDENTIAL

Caxton House Tothill Street London SW1H 9NF

5803

Telephone Direct Line 01-273 .....
Switchboard 01-273 3000 Telex 915564
GTN Code 273 Facsimile 01-273 5124

Your Reference: L62/74/02

Paul Stockton Esq
Private Secretary to the Lord Chancellor
House of Lords
LONDON
SW1A OPW

18 May 1988

Thank you for your letter of 21 April to Nick Wilson.

My Secretary of State is content with the form of words which the Lord Chancellor suggested might be included in the title of proceedings where assistance is provided by the Commissioner for the Rights of Trade Union Members. The suggestion came too late, however, to be considered for inclusion in the current Employment Bill, which was given its Third Reading in the Lords on 25 April. If further amendments were accepted during Commons consideration of Lords amendments the Bill would be undesirably delayed since these would have to go back to the Lords.

As Nick Wilson mentioned in his letter to Paul Gray of 28 March, the Government amendment which will require notification of the Commissioner's assistance to any party involved in proceedings for which it is granted will ensure that a union will know when the Commissioner stands behind a complainant. The need to go beyond this, either by approaching the Rule Committee or by legislation, can certainly be reviewed at an appropriate time; the Commissioner may well at some stage come forward with ideas about desirable changes to make that assistance more effective. My Secretary of State feels, however, that it would be undesirable to seek to make significant and controversial changes without having some practical experience of the Commissioner's powers as presently proposed.

CONFIDENTIAL

I am copying this letter to the Private Secretaries to members of E(A), the Attorney General, and the Minister of State Privy Council Office and to Sir Robin Butler.

BEVERLEY EVANS
Private Secretary

IND POLICY: Industrial Relations

legislation pt 14

JOHN BARRON

14 WESTMORELAND TERRACE
LONDON S.W.1
01-828 3352

6th. May 1988.

Cf PPS

PB 9/5

R 7/5

Dear P. Bearpark.

Milton Johns and I are most grateful for the arrangements you made for us to meet the Prime Minister.

To have such a meeting was, of course, a great occasion for us both. We feel we made some progress!

A short paper to you will follow with regard to the problems with London Weekend Television over the film "BETTY" about which the Prime Minister was rightly concerned.

Yours ever,

John.

P.A. Bearpark, Esq.,
10 Downing Street,
S.W.1.

INO POC : Legislation PTH.

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

3 May 1988

EQUITY

Thank you for your letter of 15 April which contained briefing for the Prime Minister's possible meeting with John Barron and Milton Johns of Equity. The meeting duly took place today.

Messrs. Barron and Johns did not raise any specific points with regard to Equity but used the occasion to describe its activities and the ways in which they felt it was different from other trade unions concerned with entertainment and broadcasting. They left with the Prime Minister the enclosed paper setting out Equity's role. They did not discuss any points which require follow-up action.

P A BEARPARK

Peter Baldwinson, Esq.,
Department of Employment

SCBUp

PRIME MINISTER

John Barron and Milton Johns are coming in to see you at 12 o'clock on Tuesday. Their original letter is in the folder. The Department of Employment have provided the attached brief on Equity which you might wish to glance at, but it is possible that their concerns will range slightly wider than this.

PAB

PAB

29 April, 1988.

File

CF

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

26 April 1988

I am writing on behalf of the Prime Minister in response to the letter which you and Milton Johns sent her on 23 March. Mrs. Thatcher would be very pleased to see you both for half an hour, and I would like to propose the time of 0930 on Wednesday, 18 May. Could you please let me know if this is agreeable? My telephone number is: 01-930 4433.

RF

Now Tues 3/5. 12.00

29/4

P. A. Bearpark

John Barron, Esq.

10 DOWNING STREET

LONDON SW1A 2AA

THE PRIME MINISTER

Tessa

Can you arrange a time at the place – as rush.

Dear Mr. Barron. 0930 Wednesday 18. May – ½ hr. Andy

Thank you very much for the letter which you and Milton Johns sent me on 23 March. It is very kind of you to offer to come in and explain more fully the contribution which Equity members make to British industry. I am very aware of this, and if you wish to send in a note with some more details, I will of course ensure that this is properly considered. But as you can probably imagine, my diary really is so very full at present that I cannot see any prospect of being able to arrange a meeting in the near future. I am sure you will understand.

With very best wishes,

We agreed that I should see them

John Barron, Esq.

CONFIDENTIAL

File bc: BG

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

25 April 1988

NO STRIKE AGREEMENTS

The Prime Minister was grateful for the material provided in your letter to me of 22 April, and she awaits with interest the further report you are now preparing.

Paul Gray

Ms. Beverley Evans,
Department of Employment.

CONFIDENTIAL

JH/CONF/65

CONFIDENTIAL

CC SG

Caxton House Tothill Street London SW1H 9NF
5803

Telephone Direct Line 01-273 .....
Switchboard 01-273 3000 Telex 915564
GTN Code 273 Facsimile 01-273 5124

Prime Minister

I regarded this information following ~~for~~ your meeting with Jack Reel. You will see ✱ (last paragraph) that DE promise a further report.

RHC6
22/4

22 April 1988

Paul Gray Esq
10 Downing Street
LONDON
SW1A 2AA

Dear Paul,

NO STRIKE AGREEMENTS

At Flag

Your letter of 30 March to Nick Wilson asked for a report on developments in other European countries with respect to no-strike agreements in essential services and related legislation. You referred in particular to Italy. I am sorry that I have not been able to reply earlier.

It is apparent from information already available, notably in published material, that regulation of industrial action in public or essential services has recently been a live issue in a number of European countries, including Italy, Spain and Portugal. We are not at present aware that particular interest has been shown in no-strike agreements as a regulatory technique, although it seems that something of the kind may underpin the German approach. By its nature, of course, it is a technique which is likely to be sufficiently effective to protect essential services only where unions are strong in membership and internal organisation.

A comparative exercise requires specific developments to be interpreted against the background of the general legal framework and culture of industrial relations in each country. In a number of countries it is possible to impose fresh regulations by simple prescriptions inserted into an accepted legal framework. For example, in both Spain and France the Constitution provides a right to strike which is subject to restrictions imposed by law. France long ago built on this basis a series of restrictions relating to essential services,

including obligatory advance warning of strikes and the maintenance of a minimum level of service. In Spain, where the Constitution refers explicitly to legal regulation of the right to strike which will ensure the maintenance of essential services, a draft law prepared at the end of last year envisages Government intervention in case of unlawful strikes, and raises the issue of interpretation of the constitutional reference to essential services.

The situation in Italy is very complex. Developments must be seen against the background of a major dispute in air transport and more distantly of unrest on the railways. The activities of splinter groups and local union sections have undermined the code of self-regulation by the established unions and led to pressure for legislation. Following a series of other initiatives and proposals the Minister of Labour in the government of S. Goria proposed in January new legislation to control strikes in essential services; the definition of the minimum level of services which must be protected and how to run them by a system of direction; the grounds which would justify a strike, and the timing and means of announcing it; the means of arbitration; the methods of intervention if the rules were broken and consequent sanctions.

In response the three union confederations formulated their own proposals, which included a mix of self-regulation, collective bargaining procedures and legislative measures, and would provide for official intervention and return-to-work orders issued by the President of each Regional Council. The proposals were welcomed by the Minister of Labour but criticised by employers as too weak. The Goria government fell in February and there is now no immediate prospect of fresh legislation to control strikes.

I hope that these considerations will complement and help to put into perspective the information which the Prime Minister has already received. We shall pursue our investigation of the question and let you have a more considered report as soon as possible.

Sincerely

Beverley.

BEVERLEY EVANS
Private Secretary

Industrial Policy - Labor Relations Legislation

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary 22 April 1988

Dear Nick,

EMPLOYMENT BILL

The Prime Minister has seen your Secretary of State's further minute of 20 April, and is content with the course of action now proposed.

I am sending a copy of this letter to the Private Secretaries to members of E(A), Paul Stockton (Lord Chancellor's Department), Mike Eland (Lord Privy Seal's Office), Crispin Hain-Cole (Office of the Minister for Defence Procurement), Rhodri Walters (Government Whips, House of Lords), Alison Smith (Lord President's Office), and Trevor Woolley (Cabinet Office).

Yours,
Paul

(PAUL GRAY)

Nicholas Wilson, Esq.,
Department of Employment.

FROM THE PRIVATE SECRETARY

cc PSG

HOUSE OF LORDS,
LONDON SW1A 0PW

Your ref: HK-CON-63
Our ref: L62/74/02

21 April 1988

NBlm d
This day. B/F 2 weeks. If DE
have not replied by then.
RRCG 22/4

Dear Nick,

Legislation for Trade Union Reform
The Commissioner

Thank you for copying to me your letter of 28 March to the Prime Minister's Private Secretary.

The Lord Chancellor has noted the Prime Minister's views on the naming of the Trade Union Commissioner in the title of proceedings where assistance is provided for the trade union member. Although the Commissioner will not be a party to the proceedings, the Lord Chancellor has suggested that the title could describe the relevant party as being "(assisted by the Commissioner)" without implying a more active role than the Commissioner will in fact have.

However the Lord Chancellor would prefer to see provision concerning the title to these actions made by means of an amendment to the Bill. He is concerned that any proposed rule amendment to the same effect would meet with stiff opposition

.../when referred

Nicholas Wilson Esq
Department of Employment

when referred to the Supreme Court Rule Committee. The members of this Committee would normally expect good technical reasons for supporting a rule change. They may not be persuaded by arguments based on presentation alone. Proceeding by way of amendment to the Bill will also make it clearer that requiring an addition to an action's title in this context is not taken as a precedent for further additions elsewhere.

I am copying this letter to the recipients of yours.

Yours, Paul

PAUL STOCKTON

Industrial Policy - Ind Relations Legislation

AT 1(c)

Rothschild

10 DOWNING STREET
LONDON SW1A 2AA

THE PRIME MINISTER

3rd May, 1988

Dear Victor.

Thank you so much for coming in to see me earlier this month. It was very good to see you and I was delighted that you were able to look at the silver which remains in pride of place in my study.

I was very interested by the suggestions you made for restricting the practice of deducting union dues from pay. I asked my official to consider these and while recognising the obvious attractions in your idea, they have identified a number of practical difficulties! As you know, the Government's latest proposals for reform of the law relating to trade unions are currently passing through your own House. If we decide to implement a further measure of reform of the labour laws - and it is certainly possible that we shall - then this area is one which will bear consideration.

Yours ever

Margaret

The Lord Rothschild GBE GM FRS

4

WEEKEND BOX

PRIME MINISTER

You will want to see Peter Stredder's note (at flag A) on Lord Rothschild's suggestions (flag B) for restricting the practice of deducting union dues from pay.

I agree with the three difficulties which Peter sees with this voluntary scheme. Peter suggests instead of a voluntary scheme the inclusion of provisions in the next Employment Bill which might make check-off illegal or make the practice more burdensome so that less use will be made of it.

Do you wish me to pursue the ideas of Lord Rothschild and Peter Stredder with Mr. Fowler?

I don't think so. It would be best to draft a reply to Lord R.

N.L.W.

N.L. WICKS
20 April 1988

M. Whittingdale

Will you now write the "patient" letters to Lord R.

N L W
22.5.4

EL3CRT

ce BG.

Prime Minister
Contact with Pic
change of plan?

PRCG 20/4

PRIME MINISTER

EMPLOYMENT BILL

Yes subject

My minute of 8 April set out the action which I proposed in response to Lord Wyatt's Third Reading amendment on postal ballots. The situation has now changed and we shall need to adopt a different course.

Lord Wyatt has now made clear that he would not be prepared to withdraw his proposal if we were to table an amendment requiring ballots before national industrial action to be held by post. His amendment is quite different from the one which attracted many of our supporters at the Report Stage; it is defective in a number of ways and would be likely to produce undesirable results. If it is not withdrawn we shall need to argue against it and seek to have it rejected.

We are in any case not in a position to offer our own amendment. Despite significant differences from Lord Wyatt's earlier amendment, the Public Bill Office considers that our proposal would re-open a question which has been settled on division and is therefore unacceptable. John Belstead and Bertie Denham are firmly of the opinion that any attempt to bend the rules would make management of other Bills extremely difficult.

Our supporters in the Lords will no doubt expect us to show that we have taken account of their views, and I have no doubt that we should encourage the adoption of postal ballots wherever this is reasonably practicable. It is true that our Green Paper pointed to difficulties which could arise in some

cases if postal ballots were universally required, and there appears to be no significant evidence of abuse in connection with pre-strike ballots. I think, therefore, that at this time it is right to take a further step and make clear that the adoption of postal ballots before strikes will be strongly encouraged in the statutory Code of Practice which I intend to issue once the Bill is enacted. This will have the same statutory basis as, for example, the existing Code on Picketing, which has proved to carry real weight. We are tabling an amendment to enable the process of consultation to start as soon as the Bill receives Royal Assent.

Bertie Denham is hopeful that on this basis we may avoid fresh embarrassment over Lord Wyatt's amendment. I believe that many of our supporters will recognise that his present proposal is not what they voted for on 28 March and that our response represents a sensible step forward. They may be further encouraged by an amendment which we are tabling, in response to a point made by Lord Mottistone (who voted for the Wyatt amendment), to tighten further the requirements on the words to appear on voting papers.

I am copying this to members of E(A), the Lord Chancellor, John Belstead, David Trefgarne, Alec Dundee, Bertie Denham and John Wakeham and to Sir Robin Butler.

NF

20th April 1988

INDUSTRIAL POLICY:
Employment Bill 1944

MR WICKS 17 April 1988

c Mr Whittingdale

You asked me for a note about Lord Rothschild's suggestion that the Government should suggest to employers that they should no longer deduct union subscriptions at source (the practice known as "check-off"), leaving it to union members to make individual arrangements with their unions.

I see some difficulty with a voluntary scheme of the kind proposed since:

- These arrangements are normally the subject of collective agreements between employers and trade unions. These could not be breached unilaterally and the abolition of "check-off" would therefore have to be negotiated. It is doubtful that many employers would be prepared to do this, since the benefits to them are not obvious. Although it might weaken the unions in the medium term it could initially be disruptive.

- The Government would certainly need to take the lead here in dealing with its own employees. Yet only last year, the Government specifically changed its agreement to enable it to withdraw "check-off" as a punitive measure during the industrial action associated with last year's pay round.

- It therefore seems quite likely that a voluntary approach would be pursued by few employers and to the extent that it was, cause disruption out of all proportion to its usefulness.

Nevertheless, check-off perpetuates the collectivist ethos in which managements deal with unions rather than communicate directly with their workforces. It also makes financial accountability of unions to their members less direct.

A more fruitful approach to changing these attitudes than Lord Rothschild's suggestion might be to include provisions dealing with this measure in the next Employment Bill, as a part of package of measures to extend individual rights. There are two possible options:

- To make the practice illegal. In future union dues would have to be collected direct from union members. As Lord Rothschild points out, this would not conflict with deduction of contributions to charities at source.

- To allow the practice to continue but to require members to give instructions to the employer to initiate payments and for each subsequent change in the rate.

These options are ccertainly worth pursuing, although it is not clear where the balance of advantage lies. The current Employment Bill provides for employees to instruct their employers direct to cease deductions when they leave their union. I suggest that the best course is for you to write to Mr Fowler's private secretary asking for a note for the Prime Minister on the options and consequences of changing the present position on check-off including the position for the Civil Service.

Peter Stredder

PETER STREDDER

IND Pol : Legislation PT14.

At the moment an employee's Union dues are deducted by Management from his payroll packet. It is suggested that from some specified date, say October 1 1988, this practice should cease and each individual should have the responsibility of making whatever payment he wishes to his Union or Unions, or some other worthy cause (wife or husband?). If the worthy cause is a Registered Charity the payment is deductable from the employee's gross pay. If not, not.

This does not conflict with the Chancellor's recent concession that £240 can be deducted per year from a person's gross pay and given to a charity before tax is levied, because this only applies to Registered Charities.

The Unions are not Registered Charities. Employers and employees might both be interested.

None of this needs legislation. Employers should simply be "advised" that the proposed changes would be desirable and acceptable.

Given the Chancellor's concession that up to £240 may be deducted from a person's gross income before paying tax provided the £240 goes to a Registered Charity, might it not be illegal to do the same with Union dues which are not Registered Charities?

IND POL · Legislation pt 14.

des/E/88

RESTRICTED

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 5803

Switchboard 01-213 3000 GTN Code 213
Facsimile 01-213 5465 Telex 915564

Paul Gray Esq
10 Downing Street
LONDON
SW1A 2AA

15th April 1988

Dear Paul

EQUITY

You sent me a copy of your letter of 5 April to Alison Brimelow about a request from Mr John Barron and Mr Milton Johns, Vice President and Hon Treasurer of Equity, for a meeting with the Prime Minister.

Messrs Barron and Johns may want to discuss the fact that the Employment Bill will extend the requirement for regular election of members of trade union principal executive committees to include the General Secretary of Equity (along with those of other trade unions). They and two others came to see Mr Patrick Nicholls, Parliamentary Under Secretary, about this on 29 March (not as representatives of Equity but as Conservatives active in Equity) and Mr John Cope, Minister of State, saw Mr Marius Goring, a former Vice President of Equity, on 11 April. They are concerned that election might change the General Secretary's 'non-political' position as servant of the Executive Council which they say is how the post has always been regarded in Equity, and that election might be sought by political, perhaps extremist, figures.

Ministers replied that the extension of the election requirement was canvassed in the 1987 Green Paper and, in general terms, in the May 1987 Manifesto. Its inclusion in the Bill has been widely supported. A change at this very late stage (the Bill has passed Report Stage in the Lords) is out of the question. An exemption for small unions would raise the problem of where to draw the line (eg what about the NUJ or the National Union of Seamen, both of similar size to Equity?). Ministers noted too that the arguments put to them did not suggest - rather the contrary - that a majority of members of Equity would in fact vote for a General Secretary of a different kind, in a postal ballot under independent supervision (as would be required).

RESTRICTED

The Prime Minister may wish to consider the request for a meeting against this background. It will be seen that a considerable amount of Ministerial time has already been devoted to Equity's concerns, and that there is no possibility of conceding a change in the Employment Bill of the kind they seek.

You may also wish to be aware that another matter Equity have been discussing with this Department is recent changes in this Department's procedure for consulting them about work permit applications.

I am sending copies of this letter to Alison Brimelow (DTI) and Nick Sanderson (Home Office).

Yours ever

Peter

PETER BALDWINSON
Private Secretary

EQUITY

1. EQUITY represents the creative contributors to the profession of entertainment - actors, singers, dancers, variety artists, stage managers, designers and directors. Equity does not represent technical or clerical staff.

2. EQUITY was founded in 1930 as a result of a group of well known West End theatre actors informing the then theatre managers that they would only perform in plays where contracts were agreed which would protect the interests of the unknown and low paid performers.

   Thus, perhaps uniquely in trade union history, it was the leaders of the profession, not the rank and file, who took the initiative.

3. EQUITY gradually came to represent its members not only in the theatre but in cinema films and radio and, since the war, in Television. Equity's current membership is in the region of 37,000.

4. EQUITY has had a long standing reputation for moderation. It has sought to protect its casually employed members by seeking agreements with employers by negotiation not confrontation. The Union has not been involved in any major confrontation with employers in decades and does not believe it right to instruct its members to act in breach of contract.

5. EQUITY has, virtually from its outset, believed in the supremacy of the postal ballot in the conduct of its internal affairs. The Equity Council, the governing body, is elected by a secret postal ballot of the entire membership and all major rule changes and policy matters are determined by referendum. These principles were built into the consititution of Equity - and practiced - long before Government intervention secured them more widely.

TELEVISION

Television is now by far the major field of employment and income for Equity members. To begin with it was BBC only and then, from 1955, ITV. Subsequently a number of other independent employers emerged through the medium of production of television material on film, as opposed to studio production on tape. More recently the pace of change in television production and methods of distribution has increased rapidly and Equity has responded positively to these changes.

Agreements

Equity has established, by free negotiation, contracts with:-

The BBC;

The Independent Television Companies;

The British Film and Television Producers and the Independent Programme Producers Association;

The Institute of Practitioners in Advertising and Advertising Film and Videotape Producers Association (for television commercials).

These Agreements:-

1. contain no restrictive "manning" clauses whatsoever.
2. provide only minimum terms of employment - all fees above the minimum, the vast majority, are negotiated by individual members or Agents acting on their behalf.
3. protect "copyright", or performers rights, by making provision for:-
   a) repeat showings of programmes in the UK.
   b) sales of programmes to broadcasters in other countries;
   c) miscellaneous exploitation by videogram, satellite, etc.

Are the previsons in 3(a),(b) and (c) restrictive? We believe not.

* Repeats will only take place if the programme is a success (ie, if the perfomers have succeeded in their task.) A repeat of a successful programme will often meet the needs of the viewer and is extremely cost-effective for the broadcaster, being much cheaper than newly originated programme material

* Sales to overseas broadcasters are crucial to the UK producer bringing much needed income back into the country and into more domestic television production. Both the BBC and ITV Companies have had major successes in this area both from sales to the USA and elsewhere. The payments to the performers for such sales are relatively small - except, possibly, for a rare sale to a US commercial network when the employer will be hugely imbursed.

* Sales to the emerging markets - videogram cable, satellite, etc - are at present even less rewarding but all such uses have been catered for in Equity's agreements with the BBC, ITV Companies and the Independent producers.

The income to Performers from work in Television and the secondary uses of their performances is crucial to the acting profession. Income from these sources helps to sustain the actor during periods of unemployment - the casual nature of work opportunities means some 80% of actors not being in work at any one time - and keeps the actor available in the "pool" of talent when next required by an employer. Television earnings also help compensate for the very low rates of pay for actors in other areas of employment, especially the subsidised theatre.

Restrictive Trade Union Practices

Equity welcomes the opportunity of demonstrating to the Monopolies and Mergers Commission that restrictive practices are non existent in Equity's television agreements. There are no "manning" provisions, no escalation overtime provisions, no paid holidays, no pension rights, no profit sharing schemes - only one job to be filled by one performer and, usually, a performer desperately anxious to get the part.

As was indicated earlier Equity is responding to the rapid changes in film and television production. Agreements have been concluded covering video, cable and satellite exploitation and the Union has indicated to both the BBC and ITV Companies a willingness to revise its current agreements. Discussions are taking place at this very moment with the BFTPA and IPPA to secure a new agreement which will facilitate Access by Independents to the BBC and ITV Companies.

All we are trying to do is to seek to protect the future use of our members work in the same way as authors and composers who rely on worldwide copyright agreements.

MR. STREDDER

Lord Rothschild left with the Prime Minister yesterday the note attached concerning employee's union dues. I should be grateful to know whether it is worth pursuing Lord Rothschild's suggestion.

N. L. WICKS

12 April 1988

RULES AS AT JUNE 1986
All previous rules rescinded

BRITISH ACTORS' EQUITY ASSOCIATION

INCORPORATING THE VARIETY ARTISTES' FEDERATION

Independent Trade Union

8 Harley Street,
London W1N 2AB
01 – 637 9311

General Secretary:
Peter Plouviez

INDEX

RULES

1. Title

The Association shall be known as the "BRITISH ACTORS' EQUITY ASSOCIATION incorporating the Variety Artistes' Federation" and may be called for shorttitled purposes "British Equity".

2. Office

The Office of the Association shall be 8 Harley Street, London W1, or at such other place as may from time to time be agreed upon by the Council.

Notice of any change in the situation of the registered office shall be sent to the Registrar of friendly societies in the form prescribed by the Trade Union and Labour Relations Act 1974.

3. Objects, Powers and Duties

A. Objects

As a non-party political and non-sectarian Union:

(i) to promote, protect and further on a professional basis the art of theatre, variety, opera, dancing, films, broadcasting and similar forms of entertainment;

(ii) to promote, protect and further the artistic, economic, social and legal interests of its Members in their professional capacity;

(iii) to maintain the professional rights and liberties of its Members individually and collectively;

(iv) to secure by organisation and all other effective methods, unity of action to achieve the best possible terms and conditions of work in all fields in which Members are engaged;

(v) to represent the interests of individual Members and of the membership as a whole in dealings with Proprietors, Managers, Agents and others and also to adjudicate between Member and Member;

(vi) to promote by negotiation between representatives of British Equity and the Employers, Agents or others concerned, the settlement of disputes arising in connection with terms and conditions of employment or service.

B. Powers and Duties

(a) To issue all necessary instructions to the Members, through its elected Council, in accordance with the above Objects.

(b) To negotiate rates of pay and conditions of employment.

(c) To assist in promoting legislation in support of the above Objects.

(d) To take any lawful action the Council (as the governing body) may deem advisable and desirable to promote the above Objects, and protect and further the professional interests of the Members.

(e) To accumulate from the contributions of the Members funds adequate for the promotion of the above Objects and the provision of any benefits specified hereafter.

(f) To promote and maintain an Emergency Fund for the assistance and protection of Members who, in the opinion of the Executive Committee, are in need of such assistance.

(g) To establish when necessary *ad hoc* fighting funds.

(h) To enter into a contract or contracts of insurance with Lloyd's underwriters or other reputable insurance companies for the purpose of providing accident and other benefits to Members as provided under the Rules.

(i) To provide benefits on the death of a Member as provided under the Rules.

(j) To maintain a Superannuation Fund for the benefit of some or all of the employees of British Equity and make such contributions to such Fund as may be approved by the Executive Committee.

(k) To provide legal advice and legal assistance to Members so far as the law allows and as provided under the Rules.

(l) To collect and distribute to Members payments due to them by way of royalties, 'use fees' and the like, and retain from the sums so collected sums sufficient to cover the costs of the administration of these payments.

(m) To maintain journals or newspapers in the interests of British Equity.

(n) To co-operate with kindred organisations, societies or associations by affiliation, federation or other suitable methods in the promotion of these and similar objects and aims, but at no time to affiliate British Equity, its Branches, Committees or Regions to any political party or sect, or to any organisation, society or association which is itself affiliated to any political party or sect.

(o) To acknowledge the right of individual members to hold and express their personal political and other beliefs both in their private and professional capacities.

4. Qualification for Membership

The following shall be eligible for membership:

(1) Any person who exercises professional skill in the provision of entertainment whether as artist, producer, stage manager or in any similar capacity in the theatre, music hall, films, radio, television and like media. None the less the Executive Committee shall have the power to grant to any applicant for membership Temporary Membership only for such period and upon payment of such entrance fee and subscription as it may deem appropriate.

(a) **Provisional Membership.** Persons (other than those admitted as temporary members or under (2) or (3) of this Rule) applying for membership shall, if admitted, be admitted as provisional members PROVIDED THAT the Executive Committee shall have power to admit applicants as full members in cases considered by it to be appropriate. Provisional members shall, except where these Rules provide otherwise, be entitled to all the privileges of the Members of the Association.

(b) **Full Membership.** Full membership shall be granted by the Executive Committee to any person who has been a provisional member for not less than 30 weeks' and satisfies the Executive Committee that he has had not less than 30 weeks professional experience. For this purpose, in films, radio and television, a week's professional experience shall mean any period of 6 days during which the artist has been professionally employed irrespective of the number of days' work: engagements in clubs and cabaret for performance on less than 4 consecutive days shall be deemed to constitute one half week's professional experience.

(c) Provisional members shall, upon achieving qualification for full membership, apply therefor upon the form provided by the Association and shall supply such information as may be required in respect of such qualification.

(2) Any person who in the opinion and in the discretion of the Executive Committee is or has been so closely connected with the stage, films, radio or television, as to qualify him to be a Member.

The Council shall have power to appoint any Member an honorary Member of Equity. Upon and after such appointment such Member shall remain a full Member for the rest

of his life without payment of any of the fees and subscriptions laid down in Rule 7 hereof.

(3) All foreign artists working in the United Kingdom under a permit issued by the Ministry of Labour upon such terms and conditions as to duration of membership, fees and privileges as the Executive Committee may decide, provided that the Executive Committee shall, so far as practicable, follow the principle of reciprocity in imposing fees and conditions upon foreign artists, so that they shall be treated, while in this country, on the same or similar terms to those applicable to British artists in the countries from which the foreign artists come, and provided that the Council shall endeavour to secure reciprocal arrangements between British Equity and the appropriate organisations in other countries to reduce and limit the fees charged to Artists from their respective countries in order to encourage a free exchange of artists.

5. Applications for Membership

Every application for membership shall be made on a form supplied by the Association, signed by the applicant, and furnishing the following particulars: name, address and nationality; and the same shall be delivered, together with the entrance fee, to the Secretary. Every application shall also be signed by two Members in full benefit as proposer and seconder, who can, to the best of their knowledge, endorse the statements made by the applicant.

6. Election Etc.

(1) The election of Members shall be by a majority vote of the Executive Committee present at any meeting. But no candidate shall be accepted who is not qualified under Rule 4.

(2) A Member in full benefit shall mean one who has not resigned, been suspended or expelled, and who is not more than 13 weeks in arrears with his subscriptions, fines, levies or dues, and who is not the holder of an Honourable Withdrawal Card.

(3) A Member who is not in full benefit shall not be entitled to any benefits or privileges of the Association except at the discretion of the Executive Committee as provided in Clause (4) below.

(4) In the event of a Member being taken ill, or being unemployed, and in such a position owing to such illness or

unemployment that he cannot pay his dues, the Executive Committee shall have power to keep such Member in benefit for such period as they think fit, or until in their opinion he is in a position again to pay his dues. They shall also be empowered to fix a lower rate of contribution to be paid by the Member during his illness or unemployment.

They may impose upon the Member concerned a scale of repayment of his arrears incurred whilst he was being kept in benefit, and this scale of repayment shall run concurrently with his ordinary dues on the resumption of payment of the latter. Failure to repay the arrears on the scale laid down shall entail loss of benefit.

(5) A Member may apply for and shall be granted an Honourable Withdrawal Card, provided he is in good standing at the time of application; such card shall not entitle a Member to remission of subscription unless he withdraws and remains away from the profession for at least twelve months from the date of issue. Any Member holding an Honourable Withdrawal Card wishing to re-enter the profession may apply to resume payment of subscription for which there shall be payable the sum of £5 or such sum as shall be decided from time to time by the Council to cover the cost of administration.

6A. Transferred Members

Members of The Variety Artistes' Federation upon the date of transfer of that Union's engagements to British Equity (hereinafter called "the Transfer Date") shall become Members of British Equity upon the Transfer Date without payment of entrance fee. Rules 5 and 6 shall have no application to such Members (hereinafter called "Transferred Members"). Thereupon a Transferred Member shall for the purposes of these Rules be deemed to have been a Member of British Equity as from the date since which he has been continuously a member of The Variety Artistes' Federation.

7. Fees and Subscriptions

Subject to the provisions of Rule 4 (1), (2) and (3):

(1) The entrance fee payable on joining the Association shall be £5 or such sum as may from time to time be decided upon at a general meeting of the Members.

(2) Each Member shall (in addition to the £5 mentioned in (1) above), pay a subscription payable annually in advance on 1st January or by four equal instalments in advance, such

quarters commencing on 1st January, 1st April, 1st July and 1st October, according to the rates outlined below, or such rates as may from time to time be decided upon at a general meeting of the Members, as follows:

(a) Reference in paragraphs (b) to (k) below to a Member's gross earnings (as therein defined) shall include a reference to such earnings of any limited liability company whose objects include the provision of the Member's services in the exercise of professional skill in any one or more of the capacities set out in Rule 4(1) and which is controlled by the Member and/or a member or members of his family.

(b) A Member whose gross earnings from the exercise of professional skill in any one or more of the capacities set out in Rule 4(1) in any fiscal year exceeds the sum of £10,000 shall pay, in respect of the year beginning on the 1st January following the end of such fiscal year, a subscription of 1% of his gross earnings, but not exceeding a subscription of £1,000.

(c) A Member whose gross earnings from the exercise of professional skill in any one or more of the capacities set out in Rule 4(1) in any fiscal year exceeds the sum of £9,000 but not £10,000 shall pay, in respect of the year beginning on the 1st January following the end of such fiscal year, a subscription of £92.

(d) A Member whose gross earnings from the exercise of professional skill in any one or more of the capacities set out in Rule 4(1) in any fiscal year exceeds the sum of £8,000 but not £9,000 shall pay, in respect of the year beginning on the 1st January following the end of such fiscal year, a subscription of £82.

(e) A Member whose gross earnings from the exercise of professional skill in any one or more of the capacities set out in Rule 4(1) in any fiscal year exceeds the sum of £7,000, but not £8,000 shall pay, in respect of the year beginning on the 1st January following the end of such fiscal year, a subscription of £72.

(f) A Member whose gross earnings from the exercise of professional skill in any one or more of the capacities set out in Rule 4(1) in any fiscal year exceeds £6,000 but not £7,000 shall pay, in respect of the year beginning on the 1st January following the end of such fiscal year, a subscription of £62.

(g) A Member whose gross earnings from the exercise of

professional skill in any one or more of the capacities set out in Rule 4(1) in any fiscal year exceeds £5,000 but not £6,000 shall pay, in respect of the year beginning on the 1st January following the end of such fiscal year, a subscription of £52.

(h) A Member whose gross earnings from the exercise of professional skill in any one or more of the capacities set out in Rule 4(1) in any fiscal year exceeds £4,000 but not £5,000 shall pay, in respect of the year beginning on the 1st January following the end of such fiscal year, a subscription of £42.

(i) A Member whose gross earnings from the exercise of professional skill in any one or more of the capacities set out in Rule 4(1) in any fiscal year exceeds £3,000 but not £4,000 shall pay, in respect of the year beginning on the 1st January following the end of such fiscal year, a subscription of £32.

(k) A Member whose gross earnings from the exercise of professional skill in any one or more of the capacities set out in Rule 4(1) in any fiscal year does not exceed £3,000 shall pay a subscription of £20.

(l) A Member who notifies the office of the Association in writing that

  (i) he or she has reached the minimum age of eligibility for State Retirement Pension; and

  (ii) has not exercised the option to defer the payment of State Retirement Pension; and

  (iii) has been in membership of the Association for 21 years or more, may pay a reduced subscription of £2.

(m) A Member who is suffering hardship may make a written application to the Treasurer for permission to pay a reduced rate of subscription to be decided by him. If the Member is dissatisfied with the Treasurer's decision, an appeal can be made to the Executive Committee and any information supplied will be treated as confidential. The decision of the Executive Committee on the matter shall be final and binding. However, if any such Member is proved to have supplied false information, the Executive Committee may take whatever disciplinary measures it deems necessary in accordance with Rule 10.

(3) In addition to their subscriptions, all Members shall pay

such fines, and levies as may from time to time be imposed by the Council in accordance with the Rules of the Association.

(4) A Card of Membership, with spaces for all subscriptions, shall be issued to each Member, and only persons appointed shall collect subscriptions, and give receipts in the form prescribed from time to time for the same; such collectors shall forward all moneys received to the head office of the Association at regular stated intervals. Subscriptions may also be paid either direct to the office of the Association or by Bankers' Order.

(5) A Member who pays his subscription to a person **not** authorised to collect such moneys will do so at his own risk, and such payment shall not be considered a payment to the Association unless actually received by the Association.

(6) The Card of Membership must be shown on demand to any person duly authorised by the Secretary or other persons duly appointed by the Executive Committee.

(7) A Member's Card shall be deemed to be a statement of the Member's financial standing in the Association, but if it be found that a Member has permitted a false entry to be made, or his arrears to be altered on or erased from the card, the Member may be expelled. (See Rule 10). In case a Member's card cannot be found, the books of the Association shall be held to be sufficient evidence to decide any dispute about a Member's standing. A new card may be obtained on the payment of 10p.

8. Termination of Membership

(1) In case of death.

(2) By resignation, in which case all fees and dues are payable until and including the week in which such resignation is sent in.

(3) In case of expulsion.

(4) Notwithstanding anything in these Rules the Council may by giving six weeks' notice in writing terminate the membership of any Member if necessary in order to comply with a decision of the Disputes Committee of the Trades Union Congress.

(5) Without prejudice to the provisions of Rule 10 (f) and subject to the discretion of the Executive Committee, the membership of a Member shall terminate upon his becoming 26 weeks in arrears of subscription.

9. Reinstatement of Members

If a Member who resigns or loses his membership through non-payment of dues or any other causes, applies to be reinstated, the Executive Committee shall have power to reinstate the applicant on payment of such entrance fee as the Executive Committee may deem appropriate, which in no case shall be less than £1, and such sums on account of arrears, if any, as the Executive Committee may decide. Such reinstated Member shall not be in full benefit until the expiration of six months from the date of reinstatement.

10. Expulsion and suspension

(1) If any Member be satisfactorily proved:

(a) to have tampered with, falsified or otherwise misused any books or documents of the Association or his or any other Member's Card of Membership;

(b) to have, contrary to these Rules, obtained possession of, or refused to give up when in his possession, any books, paper, any Card of Membership, or any other documents or effects belonging to the Association;

(c) to have refused to sign or execute any cheque, transfer deed or other document to which his signature or execution was required by these Rules;

(d) to have refused to obey these Rules or to comply with an order by them authorised;

(e) to have acted in a way considered by the Executive Committee to be detrimental to the interests of the Association;

(f) to be 13 weeks or more in arrears of money due to the Association;

(g) to be working without the appropriate written contract in any capacity which is covered by an authorised Equity contract;

then such Member may be fined or suspended for so long as the Executive may think proper or may be expelled from the Association as provided in this Rule.

(2) No Member shall be expelled by vote of the Executive Committee alone. The Executive Committee shall report his case to the Council, who shall consider it at their next meeting. If a two-thirds majority of those present is obtained in favour of expulsion, his expulsion shall be considered complete, and all his dues, levies, etc. paid to that date forfeited.

(3) No suspended Member may attend any meeting of the Association unless by desire of the Executive.

(4) In any case where a Member appeals to a general meeting against an order for expulsion by the Executive, such expulsion shall not take place previous to the appeal being heard. If a Member has refused to remit monies ordered by the Executive to be paid by such Member, he shall immediately be suspended, notwithstanding appeal, but in all cases the Executive's reasons for arriving at such decisions shall be clearly stated.

11. Legal Advice

(1) Legal advice in any case of dispute in connection with professional engagements, may be obtained free of charge by any Member at any time after joining. **Application must be made to the Secretary in writing or personally, accompanied by**

(a) Card of Membership.

(b) Written detailed statement of the facts.

The Secretary will, if the request is considered by him to be reasonable, refer him to the Solicitors, or, where the Member is absent from London, communicate with the Solicitors himself, and in that case send their reply at once to the applicant.

Members must, without delay, afford all information and assistance within their power that the Solicitors may require.

(2) Legal advice shall consist of consultation and direction or information only, verbally or by letter of reply, and does not entitle the applicant for such advice to any further service on the part of the Solicitors, unless legal protection is granted.

12. Legal Aid and Protection

(1) Any Member applying for legal protection must not be more than 13 weeks in arrears with his subscription and/or levies, dues, loans or fines.

(2) But free legal protection may be granted to any Member of the Association if the Council deem it advisable in the special circumstances of any particular case.

(3) Cases to be taken charge of must arise directly from disputes, differences or other questions relating to their

professional work and other matters vital or necessary to the interests of the Association as a whole or its individual Members.

(4) The Association will, as a rule, exception being permitted only by the Executive under special circumstances, NOT take charge of:

(a) Cases which arise through the Member's own fault;

(b) Cases in which one Member intends to bring action against another, unless the complaint is against a Member acting in the capacity of a Proprietor, Manager or Agent;

(c) Cases of a private character, and not arising out of professional work;

(d) Cases against parties who are known or who in the opinion of the Executive are likely to be insolvent, and where attachments and execution would be useless; also against parties whom the Association has repeatedly published warnings. Should legal protection have been refused on these grounds, and the party to be proceeded against later on (but before the debt becomes null and void on account of the Statute of Limitations) come into property or money, the Member shall have the right to submit his application again to the Council.

(5) No case shall be taken charge of whenever the Executive considers the Funds of the Association insufficient for the purpose.

(6) All statements in support of requests for legal protection, in pursuance of Clause (1) of this Rule, must state plainly that, not merely legal advice, but free protection is applied for, and a full account of all circumstances of the case, strictly in accordance with the truth, to the best of the applicant's belief and knowledge, must be given, accompanied by all contracts and other documents having reference to same.

(7) The Association will take full charge of the lawsuit if the Executive, after full examination of all the facts and circumstances of the case submitted to it, or otherwise obtainable, approves of its being conducted, and in that case all costs incurred, such as costs of Court, witnesses' fees, solicitors' and counsels' fees, and the Member's reasonable travelling expenses, shall be borne by the Association.

(8) Whenever the Association takes charge of any case, the

Member or Members concerned must forthwith sign the following declaration:—

> In consideration of the British Actors' Equity Association granting me/us legal protection, I/we hereby undertake that I/we will not interfere with, negotiate for a settlement, nor do anything whatever in the course of the proceedings instituted, or withdraw same, without the consent of the Council, and if any loss arises due to my/our interference, or withdrawal, or from any act of mine/ours contrary to this undertaking, or by reason of my/our non-appearance at Court, if such attendance is necessary on the hearing of the action, or by reason of my/our having withheld any documents or papers, or concealed any information (which, had it been before the Council at the time legal protection was granted, would have induced them to withhold protection) then, in that case, I/we will refund to the Actors' Equity all costs and expenses which it has been put to on my/our behalf.

(9) A Member for whom a case is being conducted must always keep the Secretary or the Solicitor informed of his address, permanent or temporary. Should he fail to do so, he must bear all the consequences resulting therefrom, and will be held responsible for all costs incurred if the case be lost through his negligence in any respect.

(10) Should the case which has been taken charge of by the Association be lost or dropped on account of purposely or knowingly untrue or incomplete information on the part of a Member for whom it is carried on, then the said Member shall be liable to bear the full costs of the case, and refund to the Association any and all expenses which it may have incurred.

(11) Should the Court, before allowing the case to be proceeded with, demand security for costs, the same shall be furnished by the Association, providing the Council deem it advisable.

(12) In deciding whether legal protection shall be granted in any case submitted, the decision shall apply only for the Court of first resort, and if appeal is thought necessary the facts must be submitted to the Council again, to decide whether such appeal should be taken or not.

(13) The decision of the Council shall be final in all cases submitted to it. No Member shall have legal redress against

such decision, nor is the privilege of Members to legal protection one which can be contended for in a Court of Law.

(14) Legal protection will not be granted without the permission of the Council to any Member in reference to any dispute if at the time the dispute originates he is not in full benefit.

13. Benefits

(a) **Accident Benefit**
A Member who is totally disabled owing to accidental non-fatal bodily injury from outward and visible cause and who is at the date of the accident in full benefit, shall receive benefit subject to the terms and conditions of the contract for the time being subsisting between the Association and the underwriters or insurance company, and to such terms and conditions as are notified to the members from time to time.

(b) **Funeral Benefit**
On the death of any Member not disentitled to benefits according to Rules, payments shall be made in respect of funeral benefit on a scale to be approved from time to time by the Council but in no case should those payments be less than:

1 year's membership £15
2 years' membership £18
3 years' membership £21
4 years' membership £24
5 years' membership £27

and £3 for every additional year of membership up to a maximum of £150.

On the death of a Member's wife he shall be entitled to one-half of the above-named sums, but no benefits shall be allowed for more than one wife.

Funeral Benefit shall not be payable in any case where death is due to war injuries as defined in Paragraph 8(1) of the Personal Injuries (Emergency Provisions) Act, 1939, 2 and 3 Geo. 6, Ch. 82.

13A. V.A.F. Death Levy and Bonus Funds

(1) The balance of the Death Levy and Bonus Funds of The Variety Artistes' Federation as at the Transfer Date together with all interest accruing thereon shall be banked in a separate account and shall be applied only for the purpose of paying benefit in accordance with this Rule.

(2) Death Benefit shall be payable in respect of Transferred Members, who were contributors to the said Death Levy and Bonus Funds at the Transfer Date.

(3) The sum payable by way of Death Benefit from the said Funds shall be the amount (if any) by which the Funeral Benefit payable in respect of a deceased member pursuant to Rule 13 falls short of the equivalent of £1 for each year in respect of which such member has been a contributor to the said Funds up to the Transfer Date but excluding the first year. If the said Funds shall be exhausted, then Death Benefit shall be payable out of the general funds.

(4) The Council may in its discretion apply the whole or part of the said benefit in payment of the necessary funeral expenses of the deceased Member.

(5) Upon the death of such a Transferred Member the Death Benefit calculated as above shall be paid forthwith to his nominee, subject to deduction of any sum paid under (4) above. Should such Member not have appointed a nominee, or should such nominee have predeceased such Member the payment shall be to the deceased Member's next of kin.

(6) The Council may appoint a Sub-Committee and delegate to it full powers to administer such Funds.

14. Financial Year

The financial year shall end on 31st December in each year, and the accounts of the Association shall be made up to and including that day, and shall be audited by a professional auditor who shall have qualifications in compliance with the requirements of the Trade Union and Labour Relations Act 1974 and shall be appointed by the Council. It shall be the duty of the auditor to prepare the Association's annual statement of accounts and balance sheet and in preparing same to carry out such investigations as shall enable them to form an opinion on the following:

(1) whether proper records are being kept at Head Office;

(2) whether a satisfactory system of control of its transactions has been maintained at Head Office;

(3) whether the accounts to which the balance sheets refer are in agreement with the accounting records.

Bankers

The Bankers of the Association shall from time to time be appointed by the Council.

15. The Managing Body

A Council of 67 Members shall as from the Election of the Council in June 1980, be elected every two years by the entire body of Members in accordance with Rules 16-17 made up of the following numbers of Members elected from the panels of candidates specified below:

Panel of Candidates	*Number of Members to be elected*
General List	29
Chorus	5
Variety and Circus Artists	8
Area Representatives:	
London	1
Midlands Area	1
Northern Area	1
Northern Ireland	1
Scotland	1
South East Area	1
South West Area	1
Wales	1
Stage Management	2
Television Stage Manager	1
Opera	1
Ballet	1
Walk-Ons	3
Theatre Directors	1
Theatre Designers	1
Repertory	1
Concert & Session Singers	1
Theatre in Education	1
Stunt Performers	1
Afro Asian Artists	1
Ice Skaters	1
Audio Artists	1
Total	67

Executive. At its first meeting after election the Council shall appoint 17 of its Members, three of whom shall be representatives of the Chorus Members of the Association and four of whom shall be representatives of the Variety and Circus Artist Members of the Association, who, together with the Officers, shall form the Executive Committee. Five Members shall form a quorum.

Should any Member of the Executive Committee be unable to attend Executive Committee Meetings for a prolonged period,

the Member shall inform the General Secretary who shall invite the next unsuccessful candidate to attend in place of the absent Member during his or her period of absence. Any permanent vacancy occurring amongst the elected Members of the Executive Committee shall be filled by the next unsuccessful candidate.

16. Qualification for Council or Office

(1) A candidate for the Council or any office in the Association, who shall be a Member, in full benefit, must give his or her consent in writing and be proposed by two Members in full benefit or in the case of candidates for the Council as Area Representatives either by the relevant Area Committee or by two Members in full benefit. Proposers and seconders of candidates to panels other than the General List shall be required to satisfy the same requirements under Rule 17(7A) as to their substantial connection with the area or branch concerned as the candidate.

(2) No Member of the Council shall be capable of contracting, participating or otherwise receiving any benefit, either directly or indirectly, in the profits of any contract or arrangement of any nature that the Association might enter into, but this provision shall not apply to the officials or directors of any enterprise or company promoted or controlled by and for the benefit of the Association.

(3) No Member shall be eligible for election to the Council if:

(a) through managerial position or financial involvement he has the power to employ any other Member or to influence negotiations for wages and conditions of employment on behalf of any manager or employer;

(b) he belongs to any association of managers or employers;

(c) he is a member of any board or panel with whom Equity are in the process of negotiating terms or conditions of employment.

Any elected Member of the Council who undertakes any of the above occupations during his term of office shall automatically and immediately forfeit his membership of the Council.

This Rule shall not apply to:

(a) Directors solely responsible for casting, having no direct connection with negotiations over wages and conditions of employment or serving in a purely honorary and non-administrative capacity;

(b) the freely elected representatives of democratic or co-operative companies;

(c) persons employed by or directly answerable to the Council of Equity.

17A. Election of Council and Officers

(1) The Council shall, as from the election of the Council in June 1980, be elected every two years by the full vote of the Association as provided in clauses 6 – 11 of this Rule. At the termination of the period of office they shall retire. In the event of any seat on the Council becoming vacant during the life of the Council, through any cause whatsoever, such seat shall be filled by the first on the list of unsuccessful candidates in the panel of candidates for which the former Member had been elected at the last election.

Should any Member of the Council be unable to attend Council meetings for a prolonged period that Member shall so inform the General Secretary and the Council shall have the power to co-opt to serve in the place of the absent Member the first on the list of unsuccessful candidates in the panel of candidates for which the absent Member had been elected at the last election, in place of the absent Member during his or her period of absence.

(2) The Officers of the Association shall be the President, two Vice-Presidents, Treasurer and General Secretary. The Officers shall be entitled *ex officio* to attend all meetings of the Association and its Committees.

(3) The President and the Vice-Presidents and the Treasurer shall be elected every two years from the members of the Council, but shall remain in office until re-elected or replaced every two years by the then Council in the United Kingdom voting by ballot.

(4) The Treasurer and the Trustees shall be Members of the Association, but not necessarily of the Council, and shall be elected by the then Council in the United Kingdom. The Trustees shall be in office until they voluntarily retire or are removed in accordance with Rule 28, and shall be *ex officio* Members of the Council, but without voting powers unless duly elected thereto.

(5) The Secretary of the Association shall be known as the General Secretary, and shall be appointed by a vote taken of the then Council in the United Kingdom; he shall be paid a salary determined by the Council, and shall remain in office until a resolution to remove him is carried by a

two-thirds majority of the then Council. His agreement with the Council shall be subject to three months' notice on either side.

(6) Retiring Members of the Council shall be eligible for re-election provided they are duly proposed and seconded.

(7) All nominations for candidates for the Council shall be on the recognised printed form, shall be signed by the proposer and seconder (or by such officer as the Area Committee may appoint in the case of candidates for Area Representatives nominated by such Committee) and shall be delivered to the Secretary not more than 50 days after the date of the Annual General Meeting that precedes the election of the Council.

(7A) Candidates nominated to panels of candidates other than the General List and the proposers and seconders of such candidates shall be required to produce evidence satisfactory to the Council that, in the case of candidates for Area Representatives, they have a substantial connection with the area they seek to represent and in the case of candidates nominated to the panels of candidates seeking to represent the Members working in the particular branches of the entertainment profession listed in Rule 15, that they have a substantial connection with that branch. Evidence to the effect that a Member has worked for at least one-third of his work in the exercise of professional skill in the provision of entertainment in the 12 months preceding the nominations in the area the candidate seeks to represent or in the relevant branch of the profession, as the case may be, shall be deemed by the Council to be conclusive of such substantial connection. In determining whether a Member satisfies the foregoing requirement, the work shall be measured in days (but so that days involving work in more than one area or branch shall be treated as having been performed in whichever of such areas or branches the Member shall choose) and work shall only be treated as having been performed in such area or branch if the Member had been physicaly present for the performance of it.

(8) A list of candidates prepared as a voting paper and showing the names of the proposer and seconder of the candidate or of the nominating Area Committee and, in the case of candidates as Area or Branch Representatives, the area or branch the candidate seeks to represent, shall be issued to Members and on such list each Member shall record his votes by marking one cross opposite the name

of each candidate he desires to see elected in each panel but no more votes shall be cast in any one panel than the number of Members to be elected from it, and no Member shall give more than one vote to any one candidate.

(9) Each voting paper must be filled in and signed by the Member voting (who must be a Member in full benefit) with his name and registered number, and when received at the office of the Association shall be placed in the ballot box, which shall have been sealed by the Solicitor of the Association or some persons appointed by the Council.

(10) A voting paper on which the votes are not recorded in accordance with the instructions contained thereon, and as specified in this Rule, shall be disqualified.

(11) The Poll shall be closed at 12 noon on a Friday, being not less than ten, nor more than fifteen weeks after the date of the Annual General Meeting that precedes the election of the Council. Any voting papers arriving after that time shall be disqualified and no one but the Scrutineers shall have access to the voting papers.

(12) The result of the election shall be announced to the Council when available and as soon as practicable in the trade press and to the Members and otherwise published as the Council may think fit.

(13) Immediately the Scrutineers have presented their report to the Secretary, he shall ask for nominations from Members of the new Council for the offices of President and Vice-Presidents. All nominations must be delivered to the Secretary within seven days. A vote of the new Council shall be taken immediately and the result announced, if possible at the first meeting of the new Council.

17B. Election of Appeals Committee

(1) The Appeals Committee shall consist of five Members in full benefit, being Members who have not been Officers, Council Members or candidates for Council membership within a year prior to nomination for membership of the Appeals Committee.

(2) The Committee shall be elected by a postal ballot of the entire membership at the same time as the election of the Council (with the exception of the first Appeals Committee which shall be elected as soon as practicable after this rule comes into effect) and the provision of rule 17(A)(7), (8), (9), (10), (11) and (12) shall apply as far as practicable.

In the event of any seat in the Appeals Committee becoming vacant during the year, through any cause whatsoever, such seat shall be filled by the first on the list of unsuccessful candidates.

(3) The quorum shall be three and the Committee shall appoint its own chairman and determine its own procedure. Any Member of the Appeals Committee who signs any petition for a referendum or Special General Meeting which is referred to the Committee shall automatically be disqualified in respect of that referral.

17C. Election of Standing Orders Committee

The Standing Orders Committee shall consist of nine Members in full benefit; four shall be elected by and from the Council and five, who shall not be candidates for election to the Council, shall be elected by postal ballot of the entire membership and Rule 17(B)(2) shall apply as far as possible.

18. Election and Duties of Scrutineers

(1) At the last meeting of the Council before the Poll is closed for the election the Council shall appoint the Association's professional Accountants to act as Scrutineers for the election of the Council.

(2) It shall be the duty of the Scrutineers to examine and count the voting papers used for the election of the Council and report them.

(3) A list containing the names of the candidates for Council and the votes recorded for each candidate shall be signed by the Scrutineers before being announced.

19. Duties of the Council

(1) The quorum of the Council shall be 10.

(2) The first meeting of a new Council shall take place during the week following the election and thereafter the Council shall meet as often as the Council considers necessary.

(3) The Council shall elect the President and Vice-Presidents, and appoint the Secretary at such time as may be necessary in accordance with Rule 17.

(4) The Council shall have power to organise and maintain offices and Branches of the Association in such towns as may be decided on from time to time after rules necessary for their constitution have been approved by the Council.

(5) The Council shall constitute such Committees and Sub-Committees as may be necessary to deal with the special problems of different sections of the Members.

(6) The Council shall appoint a Solicitor or Solicitors to act for the Association.

(7) The Council shall delegate such of its powers as it thinks fit to the Executive Committee.

(8) The minutes of all meetings of the Executive Committee shall be presented to the Council. The decisions of the Executive Committee on matters not within the powers delegated to the Executive Committee by the Council, nor contained in Rule 20(2), shall be subject to ratification by the Council.

(9) The Council shall at all times act in the best interests of the Members in accordance with the Objects of the Association and shall determine anything wherein the Rules are silent but in no case shall they alter or depart from the established constitution or Rules of the Association.

(10) It shall be the duty of the Council to provide crèche facilities for Members' children at all General Meetings.

(11) The Association may be affiliated with such other societies or associations as may be deemed desirable by the Council, but will at no time affiliate itself, its Branches or any of its Committees to any political party or to any body that is itself affiliated to any political party.

(12) It shall be the duty of Councillors, other than those on the General List:

(i) to report on the activities of the Council, to the Committee or Sub-Committee for the area or the interests of those members the Councillor is elected to represent;

(ii) to report back to the Council the activities and decisions of the relevant Committee or Sub-Committee.

20. Duties of Executive Committee

(1) The Executive Committee shall be the governing body of the Association for carrying on the normal day-to-day work.

(2) They shall meet as often as is deemed necessary by the Council and shall have power:

(a) To admit or refuse membership to any applicant. All applications for membership shall be submitted to them.

(b) To investigate all complaints made by or against the Members to the Secretary, and give a decision thereon.

(c) To institute legal proceedings on behalf of the Association in all cases they deem necessary.

(d) To authorise payment of all accounts endorsed by the Treasurer.

(e) To engage or discharge any employee whose salary does not exceed £5 per week.

(f) To receive reports on the proceedings of the Committees and Sub-Committees constituted by the Council and not instructed to report direct to the Council.

(g) Take any action they deem fit on behalf of the Association and allowed by the Rules, and not expressly reserved for the decision of the Council.

(h) Be generally responsible for the working of the Association, its progress and the interests of its members.

(i) Carry on any negotiations with employers and their organisations on behalf of the Association, subject to the Council's ratification.

(j) All decisions of the Executive Committee shall be submitted to the Council for ratification.

21. Duties of President and Vice-Presidents

(1) The President shall preside at all meetings (Council meetings and general meetings) at which he is present, and shall have a casting vote only.

(2) Either of the Vice-Presidents of the Association shall act in all capacities in the absence of the President.

22. Duties of Treasurer

(1) The Treasurer shall submit the yearly balance-sheet at the Annual General Meeting, if present thereat.

(2) He shall inspect the bank books and cash books, and such other books as he may desire to see, at any time during office hours, to satisfy himself that the Rules relating to finance are being carried out.

(3) He shall assist the Auditors in the performance of their duties.

(4) He shall examine all accounts and endorse same for approval by the Council.

23. Duties of Trustees

Their duties, responsibilities and authority in respect of the funds of the Association shall be as follows:

(1) They shall from time to time invest in their joint names all money belonging to the Association as directed by the Council.

(2) They shall not dispose of, or permit the disposal of, any of the Association's money that may be deposited, or stand, or be invested in their joint names, contrary to the true meaning and intent of these Rules.

(3) They shall at any time, when required by the decision of the Council, do all necessary acts to effect the transfer of any assets of the Association standing in their joint names as Trustees in such manner as the Council shall direct.

24. Duties of General Secretary

(1) The General Secretary of the Association shall correctly record in a book kept for that purpose the Minutes of the Council, Executive Committee and/or other Association meetings.

(2) He shall keep a register of Members, and enter therein particulars of each Member's address, date of admission and official number.

(3) He shall be the custodian for the time being of all books, papers or other property of the Association appertaining to his office, and shall keep the same in the Association's office and/or such other safe custody as the Council may direct, and shall exercise due and proper care to insure the preservation of same.

(4) He shall report any complaint made by a Member against a Member or other person or persons, and lay the evidence before the Executive Committee at the earliest opportunity, and make such investigations as they may direct.

(5) He shall sign cheques issued on the funds of the Association in accordance with Rule 28, clause (3).

(6) He shall issue the decisions of the Council and the Executive Committee.

(7) He shall have power to convene a meeting of the Council and Executive Committee, or any sub-committee or

officers, when in his opinion the business of the Association requires their attention.

(8) He shall draw up the annual report on the general work of the Association and shall present the same to the Annual General Meeting.

(9) He may expend any amount up to £10 in all emergency cases, but the same shall be brought before the Executive Committee for confirmation at the ensuing meeting.

25. Assistant General Secretary, Assistant Secretary and Organisers

(1) There shall be an Assistant General Secretary and/or Assistant Secretary who shall be appointed by the Council at a salary determined by the Council. His or their agreement with the Council shall be subject to three months' notice on either side.

(2) The Assistant General Secretary and/or Assistant Secretary shall work under the directions of the General Secretary and the Executive Committee.

(3) The Council shall appoint such Organisers as shall be necessary at salaries determined by the Council. The engagement of the Organisers shall be subject to one month's notice on either side. The Organisers shall act under the directions of the General Secretary and the Executive Committee.

26. Removal of Officers and Members of the Council

(1) Should any Officer of the Association or Member of the Council be charged with neglecting his duties, violating the Rules or any grave misconduct, the charge, together with the Officer's or Member of the Council's reply thereto shall be laid before the Council in writing and an inquiry shall be held. Such Officer or Member of the Council may be suspended by a majority vote of the sitting Council during the inquiry.

(2) A copy of the statements and evidence and of the recommendations (if any) of the sitting Council in respect of the said inquiry shall be published to all the Members of the Council then in the United Kingdom. The Officer or Member of the Council against whom the charge is made may be removed from office or membership of the Council by a two-thirds majority vote of the Members of the Council then in the United Kingdom.

27. Deputies

(1) In each company on tour, theatre company, BBC group, and film unit, the Members shall, so far as practicable, elect a deputy. Where more than one deputy is elected, the deputies, together with such other Members as may be elected for the purpose, shall constitute a committee.

(2) Failing such election a deputy or deputies may be appointed by the Executive Committee with the consent of the company, group or unit concerned.

(3) Upon election or appointment as aforesaid each deputy shall be issued with a certificate of authority to act on behalf of the Association in the inspection of membership cards, the collection of subscriptions, and the maintenance of contact between the Members and the Head Office, provided that, should a deputy prove unsuitable, his authority may be withdrawn at any time by a majority vote of the company or by the Executive Committee.

(4) Each deputy who undertakes the collection of subscriptions shall be entitled to receive the sum of 5p in the pound on all subscriptions (but excluding entrance fees) actually collected by him. He shall at all times comply with the directions of the General Secretary in the collection and forwarding of subscriptions collected on behalf of the Association.

(5) **Nothing in this Rule shall be taken to authorise a deputy or deputies to negotiate direct with the employer or employers concerned; any such negotiations shall be conducted by the General Secretary or by officers specially authorised by him.**

28. Finance

(1) (a) So much of the Funds of the Association not required for immediate use or to meet the usual accruing liabilities shall, according to the directions of the Council, be invested in or upon the security of any investment for the time being authorised by law for the investment of trust funds, in the names of the Trustees of the Association.

(b) On taking a security upon any hereditaments the Trustees may, if they think fit and the Council so authorise and notwithstanding any rule or Statute limiting the amount to be advanced by Trustees, advance to a Member in full benefit to Officers of the

Association and to members of the permanent staff any sum not exceeding nine-tenths of the value of the hereditaments at the time of making such advance, such value to be ascertained by the valuation of a surveyor or valuer either appointed for the purpose by the Council or appointed generally to report on securities offered to the Trustees.

(2) All documents of title in regard to investment shall be kept at the Association's bankers.

(3) (a) Except as provided in Rule 28(3)(b) below, all cheques drawn on behalf of the Association shall be signed by the Secretary, and also by one or more other Members as may be appointed for the purpose by the Council. In the case of the General Fund of the Association, such other Members shall be Officers, Councillors or Trustees.

(b) The Council may open an Imprest Account or Accounts for administrative purposes, each limited to a balance of a sum not exceeding £100, at any time and may authorise such of its officials as it may designate to draw upon such Account or Accounts.

29. Levies

(1) A special general levy for any purpose may be approved by a majority at any General Meeting, and shall be enforced if confirmed by ballot of the entire Association.

ALL LEVIES MUST BE PAID IMMEDIATELY THEY BECOME DUE, AND THE NON-PAYMENT OF ANY LEVY ORDERED SHALL BE CHARGED AS ARREARS OF CONTRIBUTIONS.

30. Annual General Meetings

(1) The Annual General Meeting shall be held in London or any other such place as may be from time to time agreed upon and appointed by the Council in March or April. The Annual General Meeting shall last for a time to be determined by the Council but which in any event shall be no less than two consecutive days.

(2) Every Annual General Meeting must be called by publication of the place and date in at least two issues of the theatrical journals in which such announcements are usually made.

(3) (a) All motions of individual members for the Annual

General Meeting, not having been passed by the Council, must bear the signatures of 20 Members in full benefit, and be received at the head office not later than nine weeks before the date of the Annual General Meeting in each year

(b) No motion or amendment shall be included on the Annual General Meeting agenda if its subject matter is outside the objects, powers and duties of the Association in Rule 3 and the Council's decision in this respect shall be final and binding

(c) All amendments to motions for the Annual General Meeting, not having been passed by the Council, must bear the signatures of twenty members in full benefit and be received at the head office not later than ten days before the date of the Annual General Meeting in that year

(d) No motion which exceeds 250 words shall be accepted for an Annual General Meeting after 1986 and no amendment itself exceeding 250 words shall be accepted. This provision shall not apply to any motion to amend these Rules

(e) After the closing date for receipt of motions, emergency motions shall be accepted for an Annual General Meeting. An emergency motion must concern a serious matter or matters which arose after, or could not reasonably have been known about prior to, the closing date for receipt of motions. The Council shall decide on whether any motion is an emergency motion and the decision of the Council in this respect shall be final and binding. Emergency motions shall in every other respect comply with the provisions of these Rules.

(4) Only a Member who can show by production of a membership receipt or otherwise that his subscription is paid to date or is not more than thirteen weeks in arrear shall be admitted to the Annual General Meeting.

(5) One hundred Members in full benefit shall constitute a quorum at a General Meeting.

(6) Not later than eight weeks before the date fixed for the Annual General Meeting, the Council shall convene a meeting of the Standing Orders Committee which shall be elected under Rule 17(C).

The Standing Orders Committee shall arrange the

business for the Annual General Meeting which shall include a timetable of motions to be debated. Any alteration to the business or the timetable can only be made with the approval of the Standing Orders Committee.

(7) If any motion involving action by the Council is passed at the Annual General Meeting or at a Special General Meeting, the same shall be binding upon the Council. But if the Council is of opinion that the proposed course of action is contrary to the best interests of the Association, then the Council shall publish to the Members its reasons for not carrying out the resolution and subject as mentioned below shall account for its action to a Special General Meeting if called upon to do so by Members proceeding under Rule 31(2). If at such Special General Meeting a resolution is passed by a majority of not less than two-thirds of the Members present and voting on such resolution declining to accept the Council's reasons as aforesaid, the Council shall forthwith arrange for the original resolution to be submitted to a referendum of the entire membership under Rule 34. Nothing in this Rule shall prejudice the Members' or the Council's right to proceed for a referendum and if the Council decides to hold a referendum it shall not be obliged to call the Special General Meeting.

31. Special General Meetings

(1) The Council have power to call a Special General Meeting as often as the Council deem necessary.

(2) A Special General Meeting shall (subject to Rule 35) be called by the Council within two months of the receipt by the Secretary of a petition for the holding of such meeting signed by at least 40 Members in full benefit which must state the purpose for which the meeting is to be called. Such meeting shall be held at the earliest practicable date after the meeting is called. No other business except that which is stated in the petition will be permitted at such Special General Meeting.

(3) At least 14 days' clear notice shall be given of the time, place and business of a Special General Meeting.

(4) Only a Member who can show by production of a membership receipt or otherwise that his subscription is paid to date or is not more than thirteen weeks in arrear shall be admitted to a Special General Meeting.

(5) One hundred Members in full benefit shall constitute a quorum at a Special General Meeting.

(6) Ordinary motions at a Special General Meeting require a majority vote for adoption.

(7) The Council shall fix the order of business for any Special General Meeting and publish the same with the call for the meeting, but only under general heads, except where alteration of the Rules is proposed or intended, when the proposed alteration must be given in full. Or in the case of a motion for the dissolution of the Association.

(8) All motions sent in for the consideration of any Special General Meeting must be placed on the agenda under the proper heads as received, providing the same have been received before the call for the meeting was issued.

(9) All motions of individual Members for any Special General Meeting not having been passed by the Council must bear the signatures of 40 Members in full benefit.

(10) No motion shall be placed on the agenda of a Special General Meeting if its subject matter is outside the objects, powers and duties of the Association in Rule 3 and the decision of the Council in this respect shall be final and binding.

32. Ordinary Members' Meetings

Meetings of the Association may take place on any convenient day appointed by the Council in any town or city in which Members of the Association are present. No valid or binding resolutions or decisions can be made at such meetings, but all resolutions shall receive the careful consideration of the Council.

33. Rules of Debate

(1) Speakers must address the Chair and no Member shall interrupt a speaker except on a point of order or information.

(2) Subject to Clauses (7) and (9) of this Rule, the Chairman's ruling on any point whatsoever shall be binding unless it be challenged by any Member (but by at least 20 Members at General Meetings), in which case the motion 'that the Chairman's ruling be upheld' shall be immediately submitted to the vote of the meeting by the Secretary without discussion.

(3) The Chairman shall not permit discussion upon any question except upon a motion. All motions shall be moved and seconded before being discussed. No "direct negative" to any motion shall be taken.

(4) The mover of an original motion but not the mover of an amendment shall have the right to reply, but he shall not introduce any fresh matter. No other Member shall speak more than once on any one motion or amendment except by special permission of the Chairman.

(5) When a mover has replied, the Chairman shall proceed to take the vote forthwith. After the vote has been taken upon any question no further discussion upon the same subject shall be allowed at that meeting.

(6) If an amendment to a motion is moved, seconded, and discussed, it shall be voted upon before the original motion, and if carried it shall then be put as the substantive motion.

(7) Any Member may move 'that the question be now put' (meaning that the matter has been sufficiently debated) or 'next business' (meaning that the meeting shall proceed to the next business and allow the matter under discussion to drop), provided that he has not previously spoken in the particular debate. A motion 'that the question be now put' or 'next business', if accepted by the Chairman whose ruling may not be challenged under (2) of this Rule, shall be put to the vote immediately and without discussion. If a motion 'that the question be now put' is carried, the mover of the original motion has the right to reply before it is put to the meeting.

(8) Any Member refusing to obey when called to order shall be named from the Chair. If he still refuses to come to order he shall be expelled from the meeting.

(9) The Chairman whose ruling may not be challenged under Clause (2) above, may at his discretion accept a motion to suspend any regulation in this Rule. The Member moving such suspension must clearly state the numbers of the regulations he desires to be suspended and the length of time (not exceeding 30 minutes) he desires such suspension to last. No suspension shall take place unless agreed to by a two-thirds majority vote of those present and voting.

(10) This Rule shall govern the conduct of all General Meetings (Rules 30 and 31), Ordinary Members' Meetings (Rule 32) or Committees of the Association except those Committees which, subject to the approval of the Council, adopt their own Standing Orders.

34. Referendum

(1) The Council has power to conduct a vote of the entire Association (in these Rules called a 'referendum') on any question, proposal or resolution whenever the Council deems it necessary.

(2) Subject to Rule 35 Members declaring their disapproval of any resolution passed at an Annual General Meeting or a Special General Meeting may, upon presentation to the Council of a petition signed by 100 Members in full benefit, demand a referendum on the resolution provided that such petition is received by the Secretary within 14 days of the conclusion of the meeting.

(3) The implementation of any resolution passed at a General Meeting shall be suspended

(i) until the expiry of the 14 day period aforesaid without a petition having been received by the Secretary and without the Council having decided to put the resolution to a referendum; or

(ii) in the event of a petition or decision of the Council as aforesaid until the result of the referendum is announced; or

(iii) in the event of a referral to the Appeals Committee of any such petition until the Appeals Committee decides against the holding of a referendum.

(4) A referendum shall be decided by a simple majority of the votes actually cast and the result thereof shall be binding in accordance with its terms. A summary of arguments for and against the question, proposal or resolution which is the subject matter of the referendum shall be included in the referendum paper circulated to the membership in such form as the General Secretary considers appropriate in accordance with the Rules of the Association.

(5) (a) Notwithstanding anything contained in Rule 31(2) individual Members shall be precluded from petitioning for a Special General Meeting if the purpose thereof would be to reverse the substance of a decision made or approved in a referendum held within two years preceding receipt by the Secretary of the petition.

(b) Any question, resolution or motion decided or passed at a referendum other than a Rule change which is governed by Rule 43 shall remain binding unless and

until it is altered or reversed by a further referendum taken in accordance with this Rule.

(6) In these Rules any reference to the time of holding of a referendum shall refer to the last date for the return of ballot papers in that referendum.

(7) The Secretary shall announce the result of the referendum at the first meeting of the Council after he shall have received the same.

35. The Appeals Committee

If the Council decides that a Special General Meeting demanded by petition under Rule 31(2) or a referendum demanded by petition under Rule 34(2) would be contrary to the best interests of the Association then it shall within three weeks of the receipt of the petition or immediately after the first Council Meeting called after receipt of the petition if sooner, inform the petitioners of its decision and refer the matter to the Appeals Committee (elected in accordance with Rule 17(B)) which shall meet within 21 days after such referral. The Appeals Committee shall hear argument from both sides and its decision (for which it shall not be obliged to give reasons) shall be final and binding. If such decision is in favour of the petitioners then the Special General Meeting or the referendum shall be called or proceeded with as soon as practicable.

36. Complaints by Members

Any Member wishing to make a complaint against an Officer or any member of the staff of the Association may address a letter to the President of the Council marking the envelope "Complaint". Such letter shall not be opened except in the presence of the Council.

37. Books and their Inspection

The books of the Association shall be kept at the office of the Association and shall contain a list of the names of all Members of the Association, and all books shall be open at all reasonable times to inspection by every Member or person interested in the Funds of the Association.

38. Members Dealing with certain Agents and Employers

(1) Any Member transacting business through any agency which has been refused a licence or against which the Association has issued warnings shall not be entitled to any

benefits of the Association in connection with any dispute with any such agency or in connection with any contracts made by or through such agency and shall be liable to disciplinary proceedings by the Executive Committee under Rule 10.

(2) Any Member transacting business with an employer against whom the Association has issued warnings shall not be entitled to any benefits of the Association in connection with any dispute with such employer or in connection with any contracts made by or through such employer and shall be liable to disciplinary proceedings by the Executive Committee under Rule 10.

39. Addresses and Notices

(1) **Every Member shall supply a permanent address and must acquaint the Secretary with changes of address at any time.**

(2) Any communication to any Member shall be deemed to have been served on such Member if sent by post to the last address supplied by him.

(3) The Association shall notify, by serving a communication in accordance with this Rule, any Member on whose behalf moneys have been received by the Association, and shall hold such moneys to the Member's order for not less than two years from the date of such communication. If the Association shall have received no instructions for the disposal of such moneys from the Member or from the Member's Personal Representative, then, provided that advertisement shall have been made in at least two issues of the Equity Letter, or similar publication, or in at least two issues of a recognised theatrical journal and that the said period of two years shall have elapsed, the Council shall have power to apply such moneys in such manner for the benefit of the Association or of the Members as the Council shall think fit. The cost of advertisements made by the Association under this Rule may be deducted from the moneys received on behalf of the Member concerned.

40. Dissolution of the Association

The dissolution of the Association shall take effect:

Whenever at a General Meeting a motion to that effect obtains a two-thirds majority, and is afterwards submitted to the vote of all Members, and obtains the consent, in writing, of two-thirds of all the Members on the membership roll. Members not voting are

not to be considered as either for or against the proposed resolution. The proposal to dissolve shall be published in at least three issues of the theatrical journals in which such notices are usually given, and a voting paper shall be sent to all Members whose addresses are known at the head office. A voting paper shall also be printed in the theatrical journals. The counting of voting papers shall not commence until four weeks after the first publication of the adoption of such motion by the General Meeting, and any vote received after the commencement of the count shall be invalid. Notice of the dissolution shall be sent to the Registrar within 14 days thereof in the prescribed form.

41. Interpretation of the Rules

(1) Throughout these Rules the masculine includes the feminine, unless otherwise stated.

(2) Words importing the singular shall include the plural unless otherwise stated.

(3) In any case arising as to the interpretation of these Rules, the decision of the Council by a two-thirds majority shall be final and binding.

42. Copies of Rules

(1) All Members on joining shall be supplied free with a copy of these Rules.

(2) A Member applying for a second copy of the Rules shall pay 10p for the same.

(3) A person other than a Member demanding to be supplied with a copy of these Rules shall pay 10p for the same.

43. Alteration of Rules

(1) Subject to the provisions of this Rule and Rule 34(5) alterations to the Rules may be made either at a General Meeting or by means of a ballot of the entire membership under Rule 34. The latter procedure shall be referred to as 'alteration by referendum' and the former 'alteration by meeting'.

(2) Alterations by meeting shall be made at an Annual General Meeting properly convened, or at a Special General Meeting at which in either case a quorum is present. Twenty-one days' clear notice shall be given by circulation to the entire membership of the proposed alterations. Any proposed alteration not having been passed by the Council must bear at least 40 signatures of Members in full benefit before it can be considered at a General Meeting. A grand

total shall be made of the votes cast for and against by all present and entitled to vote at a General Meeting. It shall require at least two-thirds majority of the grand total to carry a motion for the alteration of Rules.

(3) Notwithstanding (1) and (2) above in the case of a proposed alteration of any of the following Rules the alteration shall only be effective if made (or approved) by referendum:

Rule 3 Objects, Powers and Duties.
Rule 15 The Managing Body.
Rule 16 Qualification for Council or Office.
Rule 17 Election of Council and Officers.
Rule 19 Duties of the Council.
Rule 20 Duties of the Executive Committee.
Rule 30 Annual General Meetings.
Rule 31 Special General Meetings.
Rule 34 Referendum.
Rule 35 Appeals Committee.
Rule 43 Alteration of Rules.

(4) Notwithstanding (1) and (3) above any alteration by referendum shall not be effective unless the general subject matter of the alteration has been discussed within the period of two years prior to the holding of the referendum at an Annual or a Special General Meeting, or at two or more open meetings of Members held under Rule 32, notice of which shall have been given in the trade press and of which one at least shall have been held in London.

(5) An alteration by referendum shall come into effect at the conclusion of the meeting of the Council at which the result of the referendum is announced. An alteration by meeting shall come into effect at the conclusion of the meeting at which such alteration is made but shall be subject to suspension as provided for in Rule 34(2). An alteration by meeting which is reversed on a referendum taken under Rule 34(2), or on a referendum which the Council decides to take within 14 days of the conclusion of the meeting, shall be deemed never to have been made at all.

CONFIDENTIAL

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

11 April 1988

Dear Beverley,

EMPLOYMENT BILL

The Prime Minister was grateful for your Secretary of State's minute of 8 April. She is content for amendments to be prepared as described in the first paragraph on page 3 of your Secretary of State's minute.

I am copying this letter to the Private Secretaries to members of E(A), Alison Smith (Lord President's Office), Mike Eland (Lord Privy Seal's Office), Crispin Hain-Cole (Minister of State, Ministry of Defence), Rhodri Walters (Government Whips, House of Lords) and Trevor Woolley (Cabinet Office).

Yours,
Paul

PAUL GRAY

Ms. Beverley Evans,
Department of Employment

CONFIDENTIAL

PRIME MINISTER

EMPLOYMENT BILL

At the Lords Report stage of the Employment Bill Lord Wyatt tabled amendments to enable a member to restrain his union from organising "national industrial action" if it had not obtained majority support for the proposed action in a postal ballot. The amendment was technically defective in a number of respects and was not in line with our agreed policy. However, although the main amendment was defeated the Division was very close and a large number of Conservative peers voted with Lord Wyatt. The Government only won the Division with the support of the Opposition. Lord Wyatt has now tabled an amendment for Lords Third Reading which would require a postal ballot to satisfy the requirements of clause 1 if the industrial action concerned is not proposed by the principal executive committee of one or more trade unions.

Under present legislation and the Bill as it stands, a union can only preserve its immunity for organising industrial action and protect itself against an application to the court by a member under clause 1 of the Bill if there is majority support for the action in a proper secret ballot which satisfies the requirements of section 11 of the Trade Union Act 1984. Section 11 already provides, among other

conditions, that votes must be cast directly by individuals, in secret and without intimidation or any other constraint, and by a system convenient to the voters. It allows for non-postal voting systems to be used provided that the ballot meets the required standards. How can we check?

There appear to have been no significant claims of irregularities arising from the use of non-postal voting methods in ballots on industrial action. The Green Paper "Trade Unions and their Members", while arguing the case for properly supervised postal voting for union elections, pointed out that the postal voting method was "sometimes much less suitable for strike ballots, for which the issues can be of immediate concern, and speed of decision making of the essence".

Lord Wyatt's new amendment would impose postal ballots in precisely the kind of case where they are most inappropriate, that is local disputes. On the other hand John Belstead believes that it might be very difficult to get Lord Wyatt's amendment voted down. David Trefgarne has spoken to Lord Wyatt, and I understand that Lord Wyatt would in fact be willing to consider withdrawing his amendment if the Government was prepared to offer another to take its place.

I therefore propose to prepare amendments applying the postal voting requirement to "national industrial action" as Lord Wyatt himself defined it during the Lords Report debate, ie action "involving all its members". To satisfy the requirement a ballot would need to be subject to the same sort of controls as will in future apply to the conduct of union elections and political fund ballots, notably independent scrutiny.

We can expect severe Opposition criticism of the introduction of amendments of this nature at this late stage in the Bill's passage. I judge, however, that they will commend themselves to our supporters, including those who supported Lord Wyatt's original amendments. The requirement will apply to a limited number of ballots but they will be among the most important.

The proposed amendments will have the advantage over Lord Wyatt's original amendments of applying both to an employer's existing right of action against a union in tort and to a member's right to restrain his union under clause 1 of the Bill.

I am copying this to members of E(A), the Lord Chancellor, John Belstead, David Trefgarne, Alec Dundee, and to Sir Robin Butler.

for NF
(Approved by the Secretary of State
and signed in his absence)
8 April 1988

John BARRON
13/4

MJ2CFH

cc D/Emp.
HO.

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

A | 5 April 1988

The Prime Minister has received a request for a meeting from Mr John Barron and Mr Milton Johns, respectively the Vice President and Hon. Treasurer of the British Actors Equity Association. Messrs Barron and Johns are also active supporters of the Conservative Party. The Prime Minister is minded to agree to a meeting. I should be grateful for your advice as to whether there are any reasons known to the Department why she should not do so.

I am copying this letter to Peter Baldwinson (Department of Employment) and Nick Sanderson (Home Office).

Paul Gray

Miss Alison Brimelow
Department of Trade and Industry.

CONFIDENTIAL

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

30 March 1988

NO STRIKE AGREEMENTS

The Prime Minister understands that a number of European countries have begun to consider the scope for no-strike agreements in essential services, and that some are putting in train legislation to this effect. In particular she gathers that in Italy six Bills are currently on the stocks.

She would be most grateful if you could put together a report on these developments. I imagine the Department already has a substantial amount of information available, but it may be necessary to approach some of our European posts.

PAUL GRAY

Nicholas Wilson, Esq.,
Department of Employment

CONFIDENTIAL

PRIME MINISTER

The attached letter from Messrs. Barron and Johns rather straddles the political and policy interests. Given the pressures on your diary I suggest you invite Messrs. Barron and Johns to let you have a paper rather than agree to a meeting. I attach a letter in this sense.

I shall have to

PRCG.

PAUL GRAY
30 March 1988

P.S. I gather that Mr. Barron, at Mr. Johns, will be attending the "Stanbic" reception on 18 April; I have not referred to this in the letter.

PRCG

CONFIDENTIAL

Cde SM

ccBS

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

30 March 1988

Dear Nick,

TRADE UNION COMMISSIONER

Thank you for your letter of 28 March. The Prime Minister is content for the proposed continued examination of the options and has noted the Government amendment now tabled in the Lords.

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

Yours,
Paul

PAUL GRAY

Nicholas Wilson, Esq.,
Department of Employment

CONFIDENTIAL

SM

CONFIDENTIAL

CC

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-273.....5803.....
Switchboard 01-273 3000 GTN Code 273
Facsimile 01-273 5465 Telex 915564

Prime Minister

Content to note this response to my 23 March letter. I have written separately in my letter of 28 March about your thoughts for a future Bill.

Paul Gray Esq
10 Downing Street
London SW1

28 March 1988

RRC6
MG
29/3

Dear Paul

My Secretary of State has seen your letter of 23 March and has noted the Prime Minister's wish that further thought should be given to the means by which the Commissioner might be named in the description of any action brought by a trade union member with his support.

The Lord Chancellor's letter of 15 March indicated that the proposal in its present form gave rise to a number of difficulties. We are, of course, continuing to examine the options but at the same time steps have been taken to meet one essential point by another route. As you know, the Report on the Bill is being taken in the Lords today and a Government amendment has been tabled which will require the Commissioner to secure that any person against whom proceedings are commenced with his support is informed that he is providing assistance. The text of the amendment is attached.

I am copying this letter to the Private Secretary to the Lord Chancellor and to the recipients of yours.

Yours, Nick.

NICK WILSON
Principal Private Secretary

CONFIDENTIAL

Enc

Clause 21

BY THE LORD TREFGARNE

Page 24, line 38, at end insert—

("(1A) Where the Commissioner provides assistance under section 20 above in relation to any proceedings, it shall be his duty to do so on such terms, or to make such other arrangements, as will secure that any person against whom those proceedings have been or are commenced is informed that assistance has been or is being provided by the Commissioner in relation to the proceedings.")

IND POL legislation PTIC

SECRET

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

28 March, 1988.

FUNCTIONS OF THE TRADE UNION COMMISSIONER

I have written to you separately recording the Prime Minister's reactions to the recent exchange of letters between your Secretary of State and the Lord Chancellor.

The purpose of this letter is to set out a little more fully the Prime Minister's reactions. She recognises that for the purposes of the present Employment Bill, it has been decided that the Commissioner should not be empowered to bring actions in his own right. If, however, an amendment along these lines was to be moved in the Lords, she would want this to be accepted by the Government. She would also like further thought to be given to the possibility of giving such powers to the Commissioner in a future Employment Bill. The Prime Minister is concerned that some individual trade unionists may feel inhibited about bringing actions in their own name for fear of intimidation; and one way round this difficulty would be if their anonymity could be protected by the action coming forward in the name of the Commissioner.

Paul Gray

Ms. Beverley Evans,
Department of Employment.

SECRET

CONFIDENTIAL

RLi bcBG

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

23 March 1988

Dear Beverley,

LEGISLATION FOR TRADE UNION REFORM
- THE COMMISSIONER

The Prime Minister has seen your Secretary of State's letter of 23 February and the Lord Chancellor's response of 15 March.

The Prime Minister has noted the Lord Chancellor's doubts about allowing the Commissioner to be named in the title of an action. She does, however, feel there would be substantial presentational advantage in this, and she would be grateful if further thought could be given to the means by which this could best be secured.

I am copying this letter to the Private Secretaries to members of E(A), the Attorney General, the Minister of State, Privy Council Office, and Sir Robin Butler.

Yours,
Paul

PAUL GRAY

Ms. Beverley Evans
Department of Employment

CONFIDENTIAL

EU

14 WESTMORELAND TERRACE
LONDON SWIV 4AL
01-828 3352

23rd. March 1988.

R24

Dear Prime Minister.

We write to you, in our personal capacities, as long-standing and active members of the Conservative Party who have both had the pleasure and excitement of appearing on the platform at your three pre-election Wembley rallies.

We are, respectively, the Vice President (and past President) and Hon. Treasurer of British Actors Equity Association, a union whose moderate and democratic constitution we have continuously to protect from socialist assault. Equity's procedures, in force for decades, seem to be well in line with, if not ahead of, government guidelines, particularly our secret postal ballot of all members for all elections and on all questions of importance.

We are aware (as a result of your Downing Street meeting last autumn on the future of broadcasting) of a considerable volume of publicity directed against Equity.

We ask for a meeting with you, however brief.

We believe that you may have been wrongly informed about the part it may be thought that Equity plays in the pattern of restrictive practices bedevilling the future of television. We believe that, as actors, we could explain to you the truth of the performers' contribution to what should be an efficient and prosperous British industry.

Yours sincerely.

John Barron.

Milton Johns.

The Right Hon. Margaret Thatcher, M.P.,
10 Downing Street,
S.W.1.

CONFIDENTIAL

file ECL
cc BG

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

21 March 1988

Dear Beverley,

EMPLOYMENT BILL - TRADE UNION AMALGAMATIONS

The Prime Minister was grateful for your Secretary of State's minute of 17 March. Subject to the views of colleagues, she is content for the proposed Government amendment to be put down at the Lords Report stage of the Employment Bill.

I am copying this letter to the Private Secretaries to members of E(A), to Lord Trefgarne and the Earl of Dundee, and to Sir Robin Butler.

Yours,

Paul

PAUL GRAY

Ms. Beverley Evans,
Department of Employment.

CONFIDENTIAL

PRIME MINISTER

LEGISLATION FOR TRADE UNION REFORM - THE COMMISSIONER

I am sorry to come back to you on this for the third time, but your comments on the note you saw over the weekend would involve a major change from policy as presently announced and before Parliament in the Employment Bill. Before I minute out on this I think you ought to be aware of some of the earlier exchanges.

Your request last year for further consideration to be given to the possibility of changing the rules of the Supreme Court was recorded in David Norgrove's letter of 12 October - Flag A. This followed the note by Norman Blackwell of 9 October - Flag B. Norman's comments then were based on acceptance of the fact that any action initiated by a union member would publicise that member's name; the point at issue was the extent to which the member should be assisted by the Commissioner.

In an earlier letter of 25 September - Flag C - Norman Fowler had argued that the Commissioner would have to reveal the name of any person on whose behalf he was acting. (I have highlighted the relevant passage.)

Your suggestion that the individual trade unionists should now have the benefit of anonymity would therefore represent a major change. There are, I think, three options:

(i) to ask Norman Fowler to undertake a major reconsideration of the terms of the legislation to provide for anonymity of individual trade unionists bringing actions. Since Report stage of the Bill in the Lords is on 28 March time is now very short;

(ii) to continue to press the idea of including the Commissioner's name in the description of any action via a change in the Rules of the Supreme Court;

(iii) to drop the idea of including the Commissioner in the description, but press the Department of Employment to ensure that adequate publicity is given to the Commissioner's behind-the-scenes role.

Which of these options would you like to pursue?

(ii).

PRCG.

Paul Gray

21 March 1988

Mark. Looks ok.

(i) is not possible this time - unless we can accept an amendment moved by one of their backbenchers. But I am sure it would be right for the Commissioner to take the action. We will have to consider for a future Bill, not

CONFIDENTIAL

PRIME MINISTER

LEGISLATION FOR TRADE UNION REFORM - THE COMMISSIONER

You raised various queries on the recent exchange between Mr. Fowler and the Lord Chancellor.

To answer your last point first, the legislation does not provide for the Commissioner to bring actions in his own name. The purpose of the legislation is to provide for individual trade unionists to bring actions, relating to their individual grievances, but with the backing of support from the Commissioner. This renders the trade unionist liable to intimidation not only of himself, but of his wife & family. He should NOT be put in that position. The Commissioner's name only should appear in the Code. Whether or not including the name of the Commissioner ~~to be included~~ in the 'description' of any action would significantly affect the willingness of individual trade unionists to pursue their grievances in the courts is a matter of judgement. In practice, what probably matters most is that trade unionists should be aware that the Commissioner is there to help them - and that the trades unions should also be aware of it. No - they need anonymity.

I understand from the Department of Employment that it is planned to introduce a Government amendment at Report stage ~~and~~ making it a requirement for trades unions to be notified if the Commissioner was involved in assisting an action brought by an individual trade union member. That should help.

The necessary complement to this is action/publicity to ensure that individual trade union members are fully aware of the help the Commissioner can give them in bringing actions.

Content to drop the idea of including the Commissioner's name in the 'description' of any action, while pressing the Department of Employment to ensure that adequate publicity is given to the Commissioner's behind-the-scenes role?

RRCB.

PAUL GRAY
18 March 1988

NO — We need through the Code strike and the intimidation Does remain. We must give the consumer some protection not

LO4ASZ

Price Marks' Content?

RACG 18/3

PRIME MINISTER

Yes ml

EMPLOYMENT BILL - TRADE UNION AMALGAMATIONS

An amendment was moved by Opposition peers at Lords Committee stage of the Employment Bill to ease the election requirements for new trade unions formed by amalgamation. We undertook to consider this. I am sympathetic to what is proposed and subject to the views of colleagues I am minded to accept the proposal.

When trade unions amalgamate, the resultant new union is exempt from the election requirements for one year from its formation. The unions point out that this can have the effect that new elections for the executive committee are required before the new union has 'bedded down'. Members may vote according to their 'old union' loyalties and the executive members from the smaller of the old unions may be swamped. The fear of this could deter amalgamations. The proposal is that, alternatively, 'old union' executive members should be allowed to serve out their terms on the executive of the new union, up to the legislation's limit of five years from the date of their election.

Where mergers take place not by amalgamation but by transfer of engagements - ie a smaller union transfers its membership (in effect, merges itself) into a larger one - the election requirements apply only to the transferor union and would be changed in the same way as for amalgamations.

I think these proposals are sensible. We do not want unnecessary obstacles to mergers; there are still far too many unions and the multi-union environment is an obstacle to

industrial efficiency. The main proponents of a change are the GMB and APEX, which are planning to merge next year, and the EETPU who are considering the possibility of merging with the AEU. These plans deserve support.

The change would not of course affect mergers which have already taken place.

I therefore propose that we should put down a Government amendment at Lords Report stage of the Employment Bill. If colleagues have any comments I must ask to have them by Monday 21 March.

I am sending copies of this to members of E(A), to David Trefgarne and Alec Dundee, and to Sir Robin Butler.

N F
March 1988

PRIME MINISTER

LEGISLATION FOR TRADE UNION REFORM -

THE COMMISSIONER

You asked last year (following comments from the Policy Unit) for further consideration to be given to the possibility of changing the Rules of the Supreme Court to allow the new Commissioner to be included in the "description" of any action in which he is assisting a complainant.

In his letter of 23 February, Mr. Fowler raises no objection to this possibility. But the Lord Chancellor in his letter of 15 March now argues it would not be appropriate to pursue the suggestion.

Content to let this idea drop?

Does that expose the T.U. member also to bringing the action too much? In practice would it mean that he did not bring action. Could the Commissioner bring it himself? not

RRCB.

(PAUL GRAY)

16 March 1988

CC/BG.

HOUSE OF LORDS.
LONDON SW1A 0PW

Your Ref HK-CON-63
Our Ref L62/74/02

15 March 1988

Dear Norman,

LEGISLATION FOR TRADE UNION FORM - THE COMMISSIONER

FILE WITH PC.

Thank you for your letter of ~~23~~rd February, referring to the Attorney General's letter to you of ~~5~~th October. In his letter, the Attorney General mentioned the possibility of the Rules of the Supreme Court being amended to permit the Commissioner for Trade Union Affairs to be included in the "description" of any action in which he is giving assistance under the provisions of the Bill. You asked whether I proposed to pursue this with the Supreme Court Rule Committee.

A rule allowing the Commissioner to be named in the title of an action would be highly unusual. There are of course precedents for the provision of the sort of help the Commissioner will be giving, but the Commission for Racial Equality, the Equal Opportunities Commission and the Secretary of State acting under the right-to-buy legislation are not in any way named in litigation which they may be supporting. Since it is agreed that the Commissioner cannot be a party in these proceedings, I cannot see in what capacity he could properly be named in connection with them. Even if he could, I doubt whether there would be any presentational advantage in doing so.

For these reasons, I do not think it would be appropriate to pursue the suggestion and I do not propose to raise it with the Rule Committee.

Copies of this letter go to the recipients of yours and to the Lord Advocate.

Yours ever,
James

The Right Honourable
The Secretary of State for Employment
Department of Employment
Caxton House
Torthill Street
London SW1 9NF

IND POL: Negotiation PT14

dti

the department for Enterprise

RESTRICTED

The Rt. Hon. Kenneth Clarke QC MP
Chancellor of the Duchy of Lancaster and
Minister of Trade and Industry

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

Department of Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5147
Our ref
Your ref
Date 2 March 1988

EMPLOYMENT BILL

Thank you for copying to me your minute of 19 February to the Prime Minister on the above subject.

I am content with the amendment you propose, which is consistent with our overall approach of extending the rights of individual trade union members to be consulted prior to industrial action.

I am copying this to the Prime Minister, the Lord Chancellor, members of E(A), John Belstead, the Attorney-General, Bertie Denham, David Waddington, David Trefgarne, Alec Dundee and Sir Robin Butler.

KENNETH CLARKE

MA2AAP

2ND Pol: Relations

B 14

CONFIDENTIAL

GCL

cbG

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

1 March 1988

Dear Peter,

EMPLOYMENT BILL

The Prime Minister has seen your Secretary of State's minute of 25 February concerning the proposed concessions on the Bill.

She has two comments on the proposals. First, in relation to the second paragraph of your Secretary of State's minute, she would be grateful for some further explanation of why your Secretary of State feels that the Commissioner for the Rights of Trade Union Members goes as far as is reasonably practicable.

Second, on the proposal for an independent scrutineer, the Prime Minister has noted that Lord Wyatt's proposal might induce a determined fraudster to shift his attention to another stage in the balloting process, but she wonders whether further steps could be taken to avoid fraud in those stages as well.

I am copying this letter to the Private Secretaries to members of E(A), the Lord Chancellor, the Attorney General, to David Trefgarne and Alec Dundee, and to Sir Robin Butler.

Yours,
Paul

PAUL GRAY

Peter Baldwinson, Esq.,
Department of Employment.

CONFIDENTIAL

1. PRCC.

To see. The PM has seen this. I do not think a reply is called for.

2. pa. (CF). MAR 1/3

URGENT
BY HAND

PERSONAL

The Rt.Hon. Margaret Thatcher, PC, MP,
Prime Minister

The enclosed copy of my speech in the Lords on 22 February has marks for the five amendments needed. I am seeing Norman Fowler and John Cope on Thursday, 3 March. I am preparing the necessary amendments which I hope it will not be necessary to move if the government accepts them in advance. All the more important after the recent rigged workplace ballots in the T&GW.

The Committee stage in the Lords is 7, 8 and 14 March so it is all quite urgent.

L.L.

29th February 1988

should be glad if the noble Earl would answer that question when he replies.

Almost every organisation of employers advised against the introduction of this clause largely because it will undermine the balloting process. What justification have the Government for considering that they know better than those employers who will be most affected by the clause? Is there not a great danger that another consequence of the provision will be to undermine the authority of union officials, who have the responsibility of ensure that their members comply with collective agreements, and to prevent unofficial action? To put it at its lowest, the Government are surely unwise in this respect to flout the advice of almost all those who have to handle industrial relations in the front line.

It will be plain from what I said earlier that we shall support the Government's tardy acceptance under Clauses 13 and 14 of the Bill of the need for trade unions in every case to use postal voting procedures under independent supervision for the election of members of principal executive committees, and for these procedures to extend to the distribution, receipt and counting of ballot papers.

Clause 16 is a very different matter. Even in the form in which it was amended at Report stage in another place, I find it very difficult to understand. It is significant that its content was not even mentioned in the Green Paper that we debated last year. If it had been, at least the Government might have benefited from the advice of the people who will have to put the provisions into practice. It is surely highly undesirable that we should pass legislation couched in language so obscure that it may not be comprehensible to those who will be affected by it.

The purpose of the clause appears to be to ensure that in conducting ballots prior to industrial action, trade unions cannot achieve a particular result by creating artificial electoral constituencies. However, as the Institute of Personnel Management has pointed out, from the point of view of employers, this provision seems to be a double-edged weapon. It says:

"There are some corporate organisations that have always in the past managed to submerge the votes of a few notoriously militant sites in the overall results of a normally acquiescent workforce. This will no longer be possible and there is the danger that the militant sites concerned will take approved industrial action of their own. . .The employer, unlike the union, has no control over the choice of local or central ballots and indeed there appears to be nothing in the clause to prevent the union first balloting company-wide and then locally if the necessary majority is not achieved; or vice versa".

The institute goes further and says that it would be more helpful from an employer's point of view if Clause 16 were omitted altogether from the Bill. At first sight I think that it is right.

Clauses 18 to 20 set out the conditions under which the Commissioner for the Rights of Trade Union Members can assist trade unionists taking legal action against their union. We see no need for the appointment of such a controversial figure. As the CBI has pointed out, it is on the principle of improving democratic procedures within trade unions that the Government should build. That principle may be prejudiced by the introduction of such an external agency.

I turn only briefly to Part II of the Bill because my noble friend Lady Seear will deal with it in more detail. In Committee we shall question the Government closely over the very extensive powers that are to be accorded to the Secretary of State in making arrangements for training and employment, specifying the status of people affected by those arrangements and making payments to them. To us these provisions appear to be yet another example of the Government's reluctance to consult, of their distaste for consensus and their excessive centralisation of decision-making.

In its recent report the Manpower Services Commission was unanimous in recommending that to assure commitment to the new training scheme for the long-term unemployed, people must want to take part in it. In his Statement last week in another place the Secretary of State insisted that the scheme would be voluntary, but we know that under the Social Security Bill YTS is being made compulsory. Therefore, we are all the more apprehensive about the use to be made of Clause 26 relating to the conditions under which people who refuse to take part in training approved by the Secretary of State can be disqualified from receiving unemployment benefit.

We are concerned also that, unlike other forms of income support, payment of the bridging allowance to be made to young people waiting to take up employment and training facilities is apparently under Clause 24 to be determined by the Secretary of State alone without reference to Parliament. I ask the Minister to tell us what justification there is for such payments not being made subject to affirmative resolution by Parliament. Those are just two of the points that trouble us about this part of the Bill.

In conclusion, it will be apparent that on these Benches we have serious misgivings about many of the provisions of the Bill as a whole and we shall give further expression to those misgivings in Committee.

3.53 p.m.

Lord Wyatt of Weeford: My Lords, this is the best trade union reform Bill so far; but it is still short of ensuring complete democracy for trade union members. Despite what the noble Baroness, Lady Turner, said, union members very much like the amount of democracy which they have, and they would like some more. The noble Baroness probably thinks that a majority of trade union members still obediently vote Labour on the instructions of their union officials, but those days have long gone. They have left the old reactionaries of the trade union movement miles apart and far adrift from their union members and I am afraid that the noble Baroness is even out of touch with her own members.

I am not a union basher. I believe in unions which are strong because they accurately represent their members' views. The recent Ford strike does not mean that the improvements in the law so far have failed. It shows that they have been a success. Previously strikes on a show of hands at massed meetings could be and were manipulated by intimidation from bully boys. Now, the pre-strike ballot reveals what the members' feelings really are. That helps management and the union negotiators.

[LORD WYATT OF WEEFORD.]

Whether the final form of settlement was wise or foolish, it was arrived at on a democratic basis. Likewise, the strikes at Land Rover and Vauxhall are decisions of the members alone. They may regret their decisions—that is part of the learning process in democracy—but they are their own decisions.

This Bill extends democracy further in the unions by requiring a compulsory secret postal ballot for the election of union executives. This is of great importance. The workforce ballots previously allowed were too easily manipulated. They often were and still are. That is why there have been so many doubts about the validity of recent Transport and General Workers' Union elections and those in the Civil and Public Services' Association. The electricians' and plumbers' union (much disliked by other members of the TUC because it is so democratic) uses an independent body to send out ballot papers by post to its members which must be returned to that same body for counting. That is the only safe system.

However, this Bill only requires the ballot papers to be returned to an independent scrutineer. It does not require that independent scrutineer to be responsible for sending out the ballot papers. Unless the Bill does that, there will be many fiddles and the election results will not always be as the members intended. It is too easy for union officials, particularly at branch level, to issue extra ballot papers and to write bogus votes on them, or have them attributed to people who are not even members or to members who have not voted.

In the great ETU case in the High Court in 1961 it was established that bogus ballot papers were put into envelopes and posted in different parts of the country, addressed to where the votes were to be counted. It was a technique which enabled the Communists to rig the ballots and corruptly hold power in that union for 15 years.

I am surprised that there are still members who are connected with trade unions who support that kind of activity. The independent scrutineer who receives the votes for counting must also be the person who sends out those ballot papers; otherwise we will never be sure that the votes he counts are genuine. I hope to move an amendment in Committee to rectify this defect, and I hope that the Government will accept it.

The importance of the compulsory secret postal ballot was emphasised in January when the presidential election took place in the National Union of Mineworkers. It was a workplace and pit-head ballot. The ballot boxes were not locked and sealed for delivery to the Electoral Reform Society to be opened only by that society. They were emptied straight out of the ballot boxes by branch officials on the spot who then shuffled them into envelopes. Your Lordships may have seen on television the numerous and many-sized envelopes which were then delivered to the place of counting. It was easy for votes for Mr. Scargill to be added and genuine votes for Mr. Walsh, the so-called defeated candidate, to be subtracted.

Lord Murray of Epping Forest: My Lords, while I hold no brief for the victor in that election, is the noble Lord alleging that there was deception and fraud in that ballot? If so, will he let us have the evidence?

Lord Wyatt of Weeford: My Lords, I am alleging that there was fraud in the recent election for the presidency of the NUM on 22nd January. Perhaps noble Lords would care to read today's *Yorkshire Post*. It is headlined:

"Scargill ballot was rigged says study".

The article continues with a long analysis and survey showing that 118 per cent. voted compared with 100 per cent. available to vote.

At an earlier election when Mr. Heathfield narrowly became general secretary of the National Union of Mineworkers, there were grave doubts as to whether the true votes of the members were counted by the Electoral Reform Society on 22nd January. It is likely that Mr. Walsh actually defeated Mr. Scargill. Mr. Scargill's supporters, for many hours before the count, were proclaiming Mr. Scargill the victor. How did they know if they had not already examined the voting papers delivered to the Electoral Reform Society? Mr. Scargill, doubtless unintentionally, profited by numerous irregularities in the handling of the ballot papers. I am surprised at the Electoral Reform Society conniving at this farce and pretending that the election was conducted properly. I recommend that your Lordships look at the *Yorkshire Post* today.

It is very interesting that the election for Mr. Scargill's presidency took place although it was quite unnecessary. Mr. Scargill is not at present a voting member of the NUM executive and he was not obliged to stand for re-election. He made those arrangements when the last trade union Act would have otherwise compelled him to stand. Mr. Scargill acted before this Bill could take effect extending compulsory secret postal ballots for the election of non-voting members of the executive.

He also employed another cunning device. At the end of five years from 22nd January 1988 he will be within five years of the NUM retirement age if that is altered to 60 years of age as it certainly will be. Accordingly, his election on 22nd January was aimed to give him a tenure of 10 years short of 11 days before he reaches his 60th birthday.

Mr. Scargill has now announced that he will take the Government to the European Court to overturn the law for compulsory secret postal ballots. His being so afraid of the results of them is the strongest possible evidence of their desirability. To put all doubt aside, this Bill should be amended to require any person holding a position which will now require his election to it by compulsory postal ballot, to stand again in such a ballot within one year of the passing of this Act. That will make Mr. Scargill, for the first time, contest a properly conducted secret ballot. Then all union members will know that there is no doubt about the validity of their elected executive officers. I propose to move an amendment to this effect at Committee stage. I hope that will be accepted otherwise poor Mr. Kinnock will be saddled with Mr. Scargill for another 10 years, and he will not like that one little bit.

Another item of great importance is that when voting papers are sent out by post each candidate

should send with them a personal manifesto in which he must state his policies and beliefs. Otherwise most members, who usually know nothing at all about a candidate, may be deceived into voting for somebody they would never have voted for if they had known what it was that he stood for.

In another place there was an amendment to that effect which was not carried at the time. The Minister, Mr. Cope, said that he was sympathetic to the idea being included in the Bill. Perhaps the noble Lord, Lord Trefgarne, will confirm that this is the intention of the Government. If it is not, I shall have to move an amendment in Committee to that purpose.

The Bill provides for a commissioner to take up a grievance or grievances of union members provided the grievance or grievances seem well-founded. That is intended to be helpful to union members, but it ignores the reality in unions particularly those with a strong extremist element. Many union members are terrified of persecution if they step forward to bring actions against their own unions. That is one reason why a union known to the noble Baroness, Lady Turner, the communist-dominated TASS, never complied with the declaration of the certification officer that it should hold secret ballots for the election of its executive in accordance with the 1984 Act.

It is too much to ask a nervous and inarticulate union member to go through such a mighty and exposed procedure by himself to obtain redress. He will have to do so if the Bill is not amended. It should be possible for union complainants to have their identities protected if the certification officer or commissioner is satisfied that the complaint is genuine. I hope that the Government will make the necessary amendments themselves otherwise I must put down amendments at Committee stage to that effect to try to give proper protection to union members.

I should also like to put down an amendment to require the certification officer to ensure that all unions are complying and will comply, with the electoral rules laid down in the 1984 Act and with any amendments which may be made to this present employment Bill. It is not sensible to suppose that timid union members have the resources, the strength of character or the time to devote or the willingness to put up with the intimidation involved to ensure that their union complies with the law on elections. In particular, this applies if the union is dominated by some very tough and nasty people – and there are nasty people in the unions, as the noble Baroness said. There are some very tough and nasty people, like some members of TASS for example. There general secretary is so Stalinist that he was expelled even from the British Communist Party.

Baroness Turner of Camden: My Lords, would the noble Lord mind indicating to the House what relevance that has to the Bill before your Lordships' House?

Lord Wyatt of Weeford: My Lords, I thought from what she was saying that the noble Baroness had made some attempt to read the Bill. The relevance is clear. The union to which I have just referred has recently merged with her own. I hope that she and her union will now see that the communists who have been dominating TASS will now be obliged to comply with the 1984 Act on union elections and any amendments to it in this Bill.

If this Bill is tidied up in the way I suggest it should be the last time that Parliament has to concern itself with democracy in the unions. The process has been slow but good and educative. Despite what out-of-touch leaders like the noble Baroness, Lady Turner, say, union members like to have union officials as their servants and not as their masters. The hysterical objections of the TUC and the Labour Party to full democracy in the unions seemed to have subsided recently and I hope that is still true. I hope that the unions and the Labour Party see that the added respect which is now coming to union leaders and unions because of their democratic forms of election, is raising the regard among the public for the unions and hence for the Labour Party. I do not know why on earth members of the Labour Party are opposed to it. They should be duly grateful to the Government for making it more likely, through these reforms, that a Labour Government will one day be elected again.

Baroness Turner of Camden: My Lords, before the noble Lord sits down, is he prepared to repeat outside the House the allegations that he has made about the NUM election?

Lord Wyatt of Weeford: My Lords, I am so sorry. I thought that perhaps the noble Baroness had read my articles in the *News of the World*. I have already stated them.

Lord Graham of Edmonton: My Lords, what about doing it in a newspaper?

4.10 p.m.

Lord Basnett: My Lords, I hope to speak about the Employment Bill! Perhaps I may first of all apologise to the House and express my regret that because of a long-standing engagement I may not be able to stay for the whole of this debate.

Before I speak about the Bill in general terms, and in particular about Clause 3, I should like to raise one issue which I hope is not controversial. Part II of the Employment Bill will establish a training commission with responsibility to provide vocational training for the post-school population. There is no direct requirement in the Bill for the training commission to provide any special services to disabled people. In the past, disabled people have missed out on opportunities because special schemes such as the YTS have been introduced without wider arrangements for the particular needs of this disadvantaged group.

We must be concerned to ensure that similar omissions will not occur under the training commission and that disabled people will not continue to be inadvertently discriminated against by policy planners failing to make arrangements to meet their special needs. The Employment Bill must be amended so that disabled persons' needs are considered when new schemes are planned and when existing provisions are reviewed.

SF/Con/18 CONFIDENTIAL cc PS cc BG

Prime Minister
Content?
See comments 26/2

PRIME MINISTER

EMPLOYMENT BILL

The Employment Bill has been given its Second Reading in the Lords, and is to be considered in Committee on 7, 8 and probably 14 March. It will be helpful for David Trefgarne and Alec Dundee to be able to make one or two concessions, particularly where these have the effect of strengthening the Bill.

As you know, I intend to meet the wishes of Caroline Cox and others by making provision for the distribution of election addresses by candidates in union elections. This point was again raised by Woodrow Wyatt in the Lords Second Reading debate, who announced his intention of tabling a number of other amendments. We have already considered and rejected the possibility, which would have the same effect as one of his suggestions, that the Commissioner for the Rights of Trade Union Members should take proceedings in his own name, and that the Certification Officer should be responsible for ensuring union compliance with the statutory requirements on elections. The Commissioner for the Rights of Trade Union Members goes as far as is reasonably practicable in this area.

Why? G

I see some merit, however, in his suggestion that the independent scrutineer who is to oversee the conduct of statutory ballots for elections and political funds should be the person who sends out the ballot papers. This is already the practice of some unions and the Bill allows for it but does not impose an obligation. Instead it requires the scrutineer to satisfy himself that the arrangements for the handling of ballot papers include security arrangements to

minimise the risk of unfairness or malpractice (clause 14(5)(e) and (6)(b). It can be argued that Lord Wyatt's proposal will induce any determined fraudster to shift his attention to another stage in the balloting process, and that a scrutineer who is not involved in the actual process can, like an auditor, provide a more effective check. The arguments are finely balanced and I propose to await the Committee discussion before finally resolving the issue but may well wish thereafter to amend the Bill accordingly.

Lord Wyatt also wants the Bill to require that Arthur Scargill should stand for re-election by postal ballot within one year of the passing of the Act. My view, and I believe that of Cecil Parkinson with whom I discussed this question a little while ago, is that there are dangers here. It is possible that Mr Scargill might win and the fact that the election would have been forced on the NUM by Government legislation could reinforce his support. More to the point the further term of office he would secure would take him beyond age 55, with the result that if he got the NUM to lower the retirement age for his post to 60, he would be able under the Bill's retirement exception to stay in office until that age, ie until 1998. Also, such a change would catch a number of other general secretaries and force them for no good reason to submit themselves to earlier re-election.

We do however need to ensure that those to whom the Bill extends the election requirement can benefit from the retirement exception only if their previous election was postal. This was the intention, but I am advised that it is

not clear that the Bill as it stands achieves it. I propose that an amendment to ensure this should be put down in the Lords.

I am copying this to members of E(A), the Lord Chancellor, the Attorney General, to David Trefgarne and Alec Dundee, and to Sir Robin Butler.

Peter Ballard
Private Secretary
for NORMAN FOWLER
25th February 1988
(Approved by the Secretary of State
and signed in his absence)

Caxton House Tothill Street London SW1 9NF
5817
Telephone Direct Line 01-213.....
Switchboard 01-213 3000

The Rt Hon the Lord Mackay of Clashfern
The Lord Chancellor
House of Lords
LONDON
SW1A OPW

Dear Lord

LEGISLATION FOR TRADE UNION REFORM: THE COMMISSIONER

You will be aware of the proposal to change the rules of the Supreme Court to allow the new Commissioner for the Rights of Trade Union members, who we are setting up under the Employment Bill, to be included in the description of any action in which he is assisting a complainant. The Prime Minister's view that such a change would be worth considering was recorded in a letter of 12 October from her Private Secretary to mine and copied to your Office.

The Attorney General's letter of 5 October pointed out that the process of making a change to these rules would involve making a recommendation to the Supreme Court Rules Committee. The question of whether, and when, to make any such recommendation would of course be a matter for you to consider.

On the merits of the change to the rules of the Supreme Court, we are agreed that it would not affect the operation of the Commissioner as currently proposed in the Employment Bill. Whether or not the Commissioner is included in the description of an action the union against which the complaint was brought, and indeed others, would be likely to know that the Commissioner was assisting the complainant in relevant cases. I can see that if the Commissioner was named in the title of the action that might give some added reassurance to some trade unionists, but whether that added reassurance would be justified could be another matter.

I see no objection, however, to the change in the rules of the Supreme Court being recommended to the Rules Committee if you are content to do so. If you contemplate making such a recommendation it would be useful for me to know, and to know when it might be made. That would help me deal with any queries that might be raised on the matter during the passage of the Bill through Parliament. If there is any prospect of the change being made to the Supreme Court rules I would, of course, also need to take this into account when making arrangements for appointing the Commissioner and setting up his office.

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

Yours sincerely

NORMAN FOWLER

IND POLICY: IND RELATIONS LEGISLATION

pt 14

RESTRICTED

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

23 February 1988

Dear Nick,

CLAUSE 1 OF THE EMPLOYMENT BILL

The Prime Minister has seen your Secretary of State's minute of 19 February concerning his proposal to table amendments at Committee stage in the Lords to extend Clause 1 to cover inducement to take any industrial action. Subject to the views of colleagues, the Prime Minister is content with this proposal.

I am sending copies of this letter to the Private Secretaries to members of E(A), Paul Stockton (Lord Chancellor's Office), Steve Watts (Department of the Environment), Michael Saunders (Law Officers' Department), Murdo Maclean (Chief Whip's Office), Crispin Hain-Cole (Ministry of Defence), Trevor Woolley (Cabinet Office), and to Lord Denham and Lord Dundee.

Yours,
Paul

(PAUL GRAY)

Nicholas Wilson, Esq.,
Department of Employment.

RESTRICTED

Prime Minister
Content subject to views of colleagues?

PRIME MINISTER

As you know, the Employment Bill provides a new right for any trade union member to restrain his union from organising industrial action which involves him without holding a secret ballot. This will complement the right made available by the Trade Union Act 1984 to employers and others and successfully used on many occasions. I now intend to clarify the scope of the new right, in a way which involves some extension, and to improve the presentation of the statutory questions.

Clause 1 of the Bill draws on the terminology of the 1984 Act and incorporates some of its provisions. It is, of course, essential to allow a single ballot to protect the union against legal actions brought under either provision. Discussion in Commons Committee, however, has highlighted the fact that the Bill as drafted places increased weight upon the concept of interference with the performance of a contract of employment by extending the area within which legal actions may be based on it, and this is likely to come under severe scrutiny in the Lords. It was necessary to cover in the 1984 Act the possible tort of interference, but there is no judicial authority in this area and it is impossible to define precisely. It is not a sound basis on which to build the new right given by the clause.

I intend, therefore, to table amendments at Committee stage in the Lords which will extend Clause 1 to cover inducement to take any industrial action instead of inducement to take action which would breach or interfere with a contract of employment. Industrial Action is a more robust and practical term, with which unions and employers, as well as lawyers, are

familiar. It is also slightly wider than breach or interference as it puts it beyond doubt that ballots are required for such things as "working to rule" where a contract is not broken or interfered with. On the other hand, as we pointed out in Committee, an employee runs the risk of dismissal, generally with no right to claim unfair dismissal, for taking part in any industrial action and he should have a corresponding right to be consulted.

It will be necessary also to change the requirement of the 1984 Act which at present requires that the questions which appear on the ballot paper should refer exclusively to breach of the employment contract. Instead, each ballot paper will be required to carry a warning in standard form to the effect that industrial action may involve a breach of the employment contract. The questions themselves can then be simplified to cover the wider range of situations brought into scope by the Bill.

These changes do not depart significantly from agreed policy. You and other colleagues, however, will wish to be aware of the changes because they may be controversial. The small extension of the scope of Clause 1 will be criticised by our opponents, and some employers as well as unions may be unhappy at any change in the familiar ballot paper requirements. The changes are not only highly desirable, however, on technical grounds but should avoid some difficulties in the Lords.

I am copying this to the Lord Chancellor, members of E(A), John Belstead, the Attorney General, Bertie Denham, David Waddington, David Trefgarne, Alec Dundee and Sir Robin Butler.

NF
19 February 1988
RESTRICTED

MR WYBREW

SCARGILL AND THE NUM RE-ELECTION

The Prime Minister saw your note of 15 January over the weekend. She has not given any specific reactions.

Paul Gray

18 January 1988

Loophole in law for Scargill

EXCLUSIVE by TERRY PATTINSON

MINERS' leader Arthur Scargill could be set for another ten years as NUM president due to a loophole in the law.

If he beats off moderate John Walsh's challenge next Friday, he will in theory have to face another election in five years' time.

But by then he will be just over 55 looking possibly for retirement at 60.

And the law exempts officials from standing again if they have less than five years before retirement.

PRIME MINISTER 15 January 1988

SCARGILL AND THE NUM RE-ELECTION

Today Bob Haslam and his colleagues told us something of the electoral abuses which will return Scargill to the Presidency of the NUM with a big majority.

The roll of NUM members being used for the election dates from 1986. In consequence there are some 20,000 surplus 'wild' voting slips in existence. That apart, the reality of the 'work place balloting' is that many miners coming off a shift will be confronted by hard-line NUM officials and expected openly to register their votes.

This sham is a far cry from the considered postal balloting which the present Employment Bill aims to introduce for the election of union officials. The Green Paper foreshadowing this legislation made it clear that Scargill and the NUM were prime targets. After all, Scargill had neatly sidestepped the 1984 Employment Act by making himself the non-voting Life President of the NUM.

Now he is set to cock a snook at the Government for the second time as today's Mirror points out - and other newspapers may echo more strongly:

This analysis is correct. Scargill turned 50 on Monday. By obtaining re-election as NUM President under the 1984 Act he will get exemption from re-election, by properly administered postal ballot, until January 1993. By then he will be within five years of retirement (assuming that meanwhile the retirement age for the President is reduced from 65 to 60) which, with the Employment Bill in its present form, would give him another five years unhindered.

Bob Haslam and his team are appalled at the disheartening effect that this would have on the moderates in the NUM. They have urged Norman Fowler and Cecil Parkinson to modify the new legislation to prevent Scargill getting away with a further 10 year-run.

We understand that so far Norman Fowler and Cecil Parkinson have taken the view that to announce an amendment to achieve this before the NUM election would reinforce the image of 'Our Arthur' pitted against the Government and would strengthen his appeal. Against this, it might be argued that the electoral abuses will ensure that Scargill returns anyway, and knowledge of these abuses and the prospect of a further 10 years of Scargill will so dishearten would-be Walsh supporters as to discourage them from voting at all.

Conclusion

Norman and Cecil's judgement is probably right as regards acting before next Friday's NUM election. Nonetheless, we must amend the legislation to thwart Scargill.

JOHN WYBREW

CONFIDENTIAL

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

15 December 1987

Dear Nicholas,

EMPLOYMENT BILL

The Prime Minister has seen your Secretary of State's minute of 14 December about three amendments to the Employment Bill tabled by Graham Riddick, and is content with the way he proposes to handle them, subject to the views of colleagues.

I am copying this letter to the Private Secretaries to members of E(A), to Peter Brooke and to Sir Robert Armstrong.

Yours,
David

DAVID NORGROVE

Nicholas Wilson, Esq.,
Department of Employment

CONFIDENTIAL

LS-CON-7 **CONFIDENTIAL**

CCB/A

Prime Minister's Content?

PRIME MINISTER

Yes not 14/12

You will be aware that three amendments to the Employment Bill have been tabled by Graham Riddick, who is a member of the Standing Committee. In view of the sensitivity of the issues raised you will wish to know how I propose to handle them.

The least contentious proposal stands in the name of Tim Janman as well as Graham Riddick. It is to provide for candidates in union executive elections, which in future will be conducted by post, to be entitled to circulate short manifesto statements with the voting papers. This point has been pressed hard by Caroline Cox and Edward Leigh and their colleagues in Policy Research Associates; you may recall that Edward Leigh wrote to you about it on 12 July. Baroness Cox wrote to me again on 20 November and you will have seen EDM no 270. I see no objection of principle, although there are some practical aspects which need careful attention. I propose to say in Committee that this is well worth looking at as a candidate for inclusion in the Bill in due course, and to concede the point in the Lords.

Mr Riddick also proposes a new clause to make it "unlawful to maintain a union membership agreement (closed shop)" and this is supported by some of our supporters via an EDM. I share the widespread dislike of the closed shop on both economic and libertarian grounds, but I do not believe that Graham Riddick's broad declaratory approach would work or could be effectively enforced. It fails to focus specifically on the only target which will remain once the Bill is through, namely the "pre-entry closed shop". That could be tackled only by tying the hands of employers when it comes to recruitment. Some employers may wish to take union membership or (more often) non-membership into account when selecting staff. If we were to introduce the law into this area, we would be pressed - to say nothing of our international obligations - to outlaw discrimination on grounds of union membership as well as non-membership. This would create a significant burden on

employers who would have to argue in court about why they had not hired particular applicants.

The Bill goes a very long way on the closed shop and neuters the approved closed shop which we created in our 1982 Act. It provides that no employee can in future be dismissed on grounds of non-membership of a union without substantial compensation and any strike or other action in favour of a closed shop could be the subject of an action for damages. Where employers only take on union labour a "pre-entry" closed shop could continue, but it will no longer be open to unions to coerce employers into acquiescing in its continuation. This is the course we judged to be appropriate, and I see no reason to depart from it at least in this Bill.

The third suggestion is to move to "contracting-in" for unions' political funds. Here too I have great sympathy for the principle, but I do not believe that we should make this change now. Our 1984 Act introduced important safeguards against the oppressive or undemocratic operation of political funds, and the Bill will require future ballots on them to be conducted by post.

I am copying this to members of E(A), to Peter Brooke and to Sir Robert Armstrong. If you and other colleagues see no objection I shall ensure that our line as described above is reflected in Committee.

NF

14 December 1987

file SH CCBG

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

12 October 1987

Dear John.

LEGISLATION FOR TRADE UNION REFORM: THE COMMISSIONER

The Prime Minister has seen the correspondence on the role of the Commissioner which now rests with the Attorney General's letter to your Secretary of State of 5 October. She has noted in particular the possibility mentioned by the Attorney General that the Supreme Court Rules Committee could be recommended to make a rule permitting the Commissioner to be included in the 'description' of any action in which he is rendering assistance under the provisions of the Act. The Prime Minister believes that a rule of this kind would indeed be worth considering, on the grounds that it would provide added reassurance to the trade unionist bringing an action and it would also give notice to the union concerned that this was an action in which the Commissioner was standing behind the complainant.

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

Yours,
David.

DAVID NORGROVE

John Turner, Esq.,
Department of Employment

SH

Prime Minister!
Agree that a change in the Supreme Court rules should be considered?
DCW 9/10.

PRIME MINISTER

9 October 1987

Y/ES

TRADE UNION REFORM: ROLE OF THE COMMISSIONER

Following correspondence with the Attorney General, the Department of Employment are now drafting legislation which drops the option for the Commissioner to take action in his own name. The action would always be in the name of the Trade Union member, with the Commissioner providing advice and financial support.

Two other options are open to us:

1 We could keep the original intent that the Commissioner takes action in his own name when requested by a union member with a valid case. The Attorney General, however, points out that once the action has begun the Commissioner - as a party - would have to have full discretion over whether to continue - ie he could not be required to stop by the initial complainant. Department of Employment officials object to this because it brings the State directly into action against the Trade Union for the first time in our legislation.

Not only Police.

2 The Supreme Court rules could be amended to allow the Commissioner to be included in the "description" of any action - effectively as a friend of the complainant - although the action would still be in the name of the individual union member.

The Attorney mentioned this possibility

The lawyers assure us that there would be no substantive distinction between these options so far as the union member was concerned in terms of the assistance and financial protection he was given in pursuing the case. However, I believe the perception of the union member to taking action may nevertheless be very different in a situation where he is required to take action in his name alone - albeit with

the reassurance of financial reimbursement - as against a situation where the Commissioner is explicitly included in the action with him.

Recommendation

At this stage in the drafting it would be difficult to insist on option (1) over Department of Employment objections. However, we do believe it is worth taking the second option of specifying that he is included in the description of the action and amending the Supreme Court rules accordingly. Although the lawyers may say it is cosmetic, it would provide added reassurance. It would also have the advantage of giving fair notice to the union that this was an action in which the Commissioner was standing behind the complainant.

NRB.

NORMAN BLACKWELL

CC(87)G

NBPR at this stage.

5 October 1987

Dear Norman,

LEGISLATION FOR TRADE UNION REFORM: THE COMMISSIONER

I have now had an opportunity to see the Department's instructions to Counsel, and to discuss the matter with him. The difficulty he faces is that his instructions require him to provide for the Commissioner being a party to an action brought by a trade union member, but then require him to provide that the Commissioner shall be deprived of all the normal incidents of being a party to an action, most notably the power to decide independently whether to continue or discontinue an action already begun. This is in order to fulfil what I understand is regarded as an essential policy requirement, that control over any action shall rest exclusively in the union member.

In effect, all that would be achieved would be the inclusion of the Commissioner in the "description" of the action. This, I see, would be a transparency that would in no way conceal the fact that the Commissioner's function was really to provide funding and assistance to the union member.

In the light of this, and of the acceptance by colleagues of your proposal in your letter of 25 September, I withdraw my reservations. It is for consideration whether the Supreme Court Rules Committee should be recommended to make a rule permitting the Commissioner to be included in the "description" of any action in which he is rendering assistance under the provisions of this Act.

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

Yours,

Patrick

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

CONFIDENTIAL

1. PM to see
2. Mr Gasson
3. Miss Finlay

OC Ba

111811

NBBS

2nd October 1987

Dear Secretary of State,

LEGISLATION FOR TRADE UNION REFORM: THE COMMISSIONER

FILE WITH DN

Thank you for copying to me your letter of 25 September to the Lord Chancellor. Because of his illness, Michael Havers will not be able to reply for a week or so and I have therefore discussed the matter with his officials before replying.

You suggest that we should drop the option, inserted as a result of the discussion at E(A) on 29 January 1987, 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 a complainant's behalf. The Commissioner's support would be confined to reimbursing relevant legal and associated costs or arranging and directly paying for legal assistance and representation.

This is effectively a return to the original proposals before the discussion at E(A) on 29th January. These amount to the establishment of preferential legal aid, without a means test, for union members. It was because colleagues recognised the difficulties of these that we agreed at E(A) to insert the option of the Commissioner "taking over" the case.

.../cont.

The Right Honourable
Norman Fowler MP
Secretary of state for Employment
Caxton House
Tothill Street
London SW1H 9NF

CONFIDENTIAL

The participation of the Commissioner, either jointly or in his own name, would usefully draw a clear qualitative distinction between his role, which would be essentially the assistance and support of complainants, and the function of the legal aid scheme which is primarily concerned with the funding of legal advice, assistance and representation.

Contrary to what you suggest, I believe that the scope for misunderstanding and misrepresentation of the Commissioner's role will be much greater if he is seen as primarily the provider of a separate and more generous scheme of legal funding for politically sensitive legal actions, especially if his role is in fact additionally to assist and guide the complainant.

For these reasons, I think, that it would be preferable to retain the option which you propose to drop. Lord Hailsham strongly preferred this approach, and I think it more than likely that the Lord Chancellor would take the same view.

I am bound to say that I am not altogether persuaded of the difficulties envisaged by Parliamentary Counsel in the drafting of the necessary provision for the Commissioner to be a party in the legal actions. I accept that the Rules of the Supreme Court would not allow this; but I cannot immediately see any reason why this should not be done in the primary legislation.

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

Yours sincerely,

Sir Patrick Mayhew

(Approved by the Attorney General and signed in his absence)

IND POL : Legislation PTS.

PART 13 ends:-

N. BLACKWELL TO PM 29.9.87

PART 14 begins:-

ATTORNEY GENERAL TO SS/EMP 2.10.87

PROPOSALS FOR FURTHER REFORM OF INDUSTRIAL RELATIONS AND TRADE UNION LAW

The enlosed notes describe in more detail proposals mentioned in the Secretary of State's minute to the Prime Minister.

The material is presented two Sections, each of which is flagged.

Category A: Proposals to be included in a Green Paper with a view to legislation

Category B: Proposals which have been considered, but which should not feature in a Green Paper or legislation

10 February 1989

CATEGORY A

PROPOSALS FOR INCLUSION IN A GREEN PAPER WITH VIEW TO LEGISLATION

IR1

PROPOSAL: **Provide a right of complaint for individuals where an employer refuses to employ them on the ground of non-membership of a trade union (and, if even-handed, also on the ground of membership of a trade union).**

POSSIBLE GREEN PAPER CHAPTER: CLOSED SHOP

EFFECT ON: Ability of unions and/or employers to maintain pre-entry closed shops.

SUPPORT LIKELY FROM

Conservative back-bench MPs, Freedom Association, non-trade unionist members of the general public. The pre-entry closed shop is widely seen as impinging upon individual freedom of choice and is one of the remaining examples of restrictive employment practices.

COMMENT

Section 11 of the 1988 Act provides that dismissal of an employee for not being a member of a trade union, or action short of dismissal to compel an employee to be a union member, is unfair in all circumstances. An employee who believes that he has been unfairly dismissed, or has suffered action short of dismissal, may complain to an industrial tribunal. The remedies available if the complaint is upheld are reinstatement or re-engagement, or compensation.

The proposal would extend the area of complaint to include refusal to employ an individual on the ground of non-membership of a trade union. The favoured option would be to have complaints made to industrial tribunals, following to some extent the existing model of sex/race discrimination legislation, with compensation available for an individual who is still not taken into employment after a declaration in his favour. Alternatively, it would be possible to establish a right of complaint to the High Court. Detailed proposals would need to cover the situation where an individual fails to obtain employment because a trade union refuses to put his name forward to an employer (i.e. the union is acting as an agent of an employer who may not himself refuse to employ the individual).

ADVANTAGES

(a) Increased freedom of choice for the individual.

(b) Increased productivity and competitiveness of employers who would no longer need to be bound by restrictive agreements.

(c) Could remove danger of possible future difficulties with ECHR and/or ILO.

DISADVANTAGES

(a) Would constrain an employer's ability to employ or not employ whoever he chooses.

(b) An employer could be wrongly accused of refusing to employ an individual on the ground of non-membership of a trade union when in fact the reason was some other good one.

(c) If not even-handed, will be viewed as unfair and almost certainly give rise to complaint to ECHR and/or ILO; with strong likelihood that UK will be found in breach of international treaty obligations.

(d) Since an individual would in no circumstances have to be a member of a trade union in order to gain employment, public sympathy for statutory control of trade union's internal affairs might diminish.

ISSUES FOR CONSIDERATION

(a) Should the provision be even-handed (i.e. cover exclusion from employment on the ground of union membership as well as non-membership) or not?

(b) Should non-membership of a trade union be taken to refer to an individual who is not a member of any trade union or to an individual who is not a member of a particular trade union (or one of a number of particular trade unions)?

(c) Should any non-member of a union be free to make a complaint concerning an employer who required prospective employees to be union members and, in theory, obtain compensation, even if he himself had not been denied employment?

(d) Should there be exceptions for "genuine occupational qualifications" (e.g. a union's own employees) or where unions are also professional organisations?

POSSIBLE VARIATION

The 1982 Act prohibits companies, local authorities and others from imposing on contractors requirements which seek to make it a condition of (i) getting onto a tender list for a contract, or (ii) obtaining a contract, that the contractor employs only trade union members or recognises, negotiates or consults with trade unions. It might be possible to amend these existing provisions to cover contracts of employment and, therefore, job offers, so that individuals would be able to take complaints about non-engagement to the High Court.

Enf1

PROPOSAL: Enable Commissioner's name to appear in the title of assisted proceedings.

CLASS: ENFORCEMENT

EFFECT ON: Volume of litigation against trade unions etc.

SUPPORT LIKELY FROM

Applicants, and potential applicants, for assistance who feel this would give them more assurance that the Commissioner stood behind them in proceedings. The Commissioner is unlikely to object, and may welcome the extra publicity that might be given to the office.

The Lord Chancellor wrote in 1987 expressing his preference for making this change by legislation rather than by other means (such as seeking to alter the rules of the Supreme Court).

COMMENT

Provisions might need to be framed in such a way as to help determine the circumstances in which the Commissioner would appear in the title of an action (eg at request of one or more assisted individuals) unless the inclusion was to be a mandatory condition of the provision of assistance.

Enf2

PROPOSAL: **Extend proceedings in scope of the Commissioner's assistance.**

POSSIBLE GREEN PAPER CHAPTER: ENFORCEMENT

EFFECT ON: Volume of litigation against trade unions etc.

SUPPORT LIKELY FROM

Variable depending on which proceedings brought into scope of Commissioner's assistance. Likely to include Freedom Association, CTU, though no specific suggestions from any institution.

COMMENT

The 1988 Act enables extension of proceedings in scope of the Commissioner's assistance. The practical effect of the extensions suggested in the attached note would, of course, be influenced by any additional changes to the operation of the Commissioner (eg giving him ability to take proceedings in his own name and/or at his own volition). There would be expenditure implications in all cases.

It would be undesirable to extend the scope of the Commissioner's assistance to any proceedings which would be: (i) taken at first instance before an industrial tribunal (at least as long as legal aid is not available for such proceedings), or (ii) taken against anyone other than a member's union, or an official or trustee of his union (eg an employer).

Two particular proposals are described in the attached note. Primary legislation would not be needed for proposal A, which could be achieved by order (subject to affirmative resolution of each House of Parliament). Unless political fund matters are dealt with elsewhere in the Green Paper, however, the case for mentioning this particular proposal at that stage may be weak; doing so in those circumstances might simply provoke suggestions that legislation should deal with other political fund matters.

Proposal B, which would almost certainly require primary legislation, would amount to a very significant extension of the Commissioner's present powers. At present the Commissioner's assistance (with one exception*) is available only in relation to the exercise by a union member claiming "quasi-public rights". The proposal might risk breach of this principle, and could accordingly lead to significant overlap between the Commissioner's assistance and legal aid.

---

* Proceedings brought by a member to gain access to his entry on the union's membership register.

POSSIBLE PROCEEDINGS TO BE BROUGHT IN SCOPE OF COMMISSIONER'S ASSISTANCE

Proposal A: Court proceedings brought by a member that relate to a breach of any union duty arising from the 1913 Act or Part III of the 1984 Act.

At present the Commissioner's assistance is confined to proceedings brought by virtue of section 3(1) and 4(1) of that Act). Provisions which could be brought in scope of assistance are identified in the attached Annex.

Proposal B: Any (High Court) proceedings against a trade union, a union official or trustees which the Commissioner determined involved "a matter of substantial public interest".

Unless there was a precise definition of what constituted such a matter the Commissioner would almost certainly come under pressure to justify any particular decision to offer assistance on the basis of such a criterion. It would in any case be desirable to make it clear that "a matter of substantial public interest" included any matter which (in the Commissioner's view) concerned a "significant breach of a union's rules", and that any such breach did not relate to a failure by a union to represent or protect a member's interests as against his employer's.

	SECTION	PROVISION	SOURCE OF REMEDY	SPECIFIED OR NOT SPECIFIED	REMEDY	FURTHER LEGAL STAGES
TRADE UNION ACT 1913	5(1)	Notice to members of right to contract out	HIGH COURT	NS	At court's discretion (Probably an order to fulfil the requirement)	Court of Appeal
TRADE UNION ACT 1984	12(2)	Political fund resolutions to cease to have effect after 10 years	HIGH COURT	NS	At court's discretion (Probably an order prohibiting expenditure on political objects unless valid ballot held)	Court of Appeal
	14(1)	Only appropriate sums to be added to political fund	HIGH COURT	NS	At court's discretion (Probably an order forbidding an intended transaction or requiring a previous transaction to be reversed)	Court of Appeal
	14(2)	When no resolution in force no property to be added to political fund other than that generated by the fund	HIGH COURT	NS	At court's discretion (Probably an order forbidding an intended transaction or requiring a previous transaction to be reversed	Court of Appeal
	14(3)	No political fund liability to be discharged from any other fund of the union	HIGH COURT	NS	At court's discretion (Probably an order forbidding an intended transaction or requiring a previous transaction to be reversed)	Court of Appeal
	15(3)	Actions required of unions following a negative review ballot: (i) take steps to ensure collection of the political levy ceases	HIGH COURT	S	Declaration and, at court's discretion, an order requiring union to take necessary steps to remedy position	Court of Appeal
	15(4)	(ii) refund political levy contributions collected in the meantime to union members, if so requested	HIGH COURT	S	At court's discretion	Court of Appeal
	15(8)	When no resolution in force members previously contracted out not to be discriminated against	HIGH COURT	NS	At court's discretion (Probably an order requiring discrimination to cease in respect of the plaintiff only)	Court of Appeal
	15(9)	When new resolution passed following an interval since previous resolution lapsed, no existing funds other than any retained in the political fund in the interval to be put into the political fund	HIGH COURT	NS	At court's discretion (Probably an order forbidding an intended transaction or requiring a previous transaction to be reversed)	Court of Appeal

Im1

PROPOSAL: Remove immunity from organisation of any secondary industrial action.

POSSIBLE GREEN PAPER CHAPTER: INDUSTRIAL ACTION

EFFECT ON: Scope for lawful organisation of industrial action.

SUPPORT LIKELY FROM

IoD/IEA, Employers generally; Sir John Egan (Jaguar) and HM Treasury officials known to favour the proposal.

COMMENT

Public perception is that inducement of any "secondary" action is already unlawful, and the proposal would secure this. Where "secondary" action of any kind was involved, the immunity which section 13 of TULRA might otherwise provide would be unavailable; it would not matter whether the tortious inducement involved breach of commercial contracts or not. Immunity would remain for organisation of "sympathy" action by employees of the employer involved in the "primary" dispute, and employees of any "associated employer" (as the term is defined in TULRA).

Arguable that it is unreasonable that any employer not party to a primary "trade dispute" should be subjected to inducement of his employees to breach or interfere with their contracts of employment. Acceptance would, however, depend on belief that it is no longer appropriate to allow the targeting of industrial action on particular commercial contracts which exist between the "secondary" employer and the employer involved in the "primary" dispute. Legislation would almost certainly result in complaints to the ILO.

Im2

PROPOSAL: Establish a "wide" definition of contract for the purposes of section 10 of the 1984 Act and section 1 of the 1988 Act, so as to require a union to ballot before inducing members to breach contracts "for services".

POSSIBLE GREEN PAPER CHAPTER: INDUSTRIAL ACTION

EFFECT ON: Scope for inducement of unballoted "industrial action".

SUPPORT LIKELY FROM

Businesses whose labour is obtained under contracts other than contracts "of employment", notably those contracting with members of "talent" unions such as performing artists. ITV Companies Association has expressed support.

COMMENT

"Self-employed", or "freelance" work arrangements are now more significant than in the past. As long as immunity is available for inducing breach of contracts "for services" (section 13 of TULRA), it would seem logical to impose the balloting requirements of section 10 of the 1984 Act and section 1 of the 1988 Act on a union's inducement of members to break or interfere with the performance of contracts "for services".

POSSIBLE VARIATIONS

(i) Apply similar extension to terms of section 17(2) of the 1980 Act so as to ensure that the inducement of indiscriminate secondary action by members working under contracts "for services" was to be unlawful in same way as inducement of such action by members working under contracts "of employment". Seems a logical step to take if proposal described above was adopted. Might not be necessary, however, if proposal Im1 was accepted, since the organisation of any secondary action would be deprived of immunity.

(ii) Construct definition of contract "for services" that would be apt for application to those engaged on Government-funded training programmes such as YTS and ET. No evidence of need, but might be useful precautionary measure.

B

CATEGORY B

PROPOSALS WHICH HAVE BEEN CONSIDERED BUT SHOULD NOT FEATURE IN A GREEN PAPER OR LEGISLATION

PF1

PROPOSAL: **Substitute contracting-out of trade union political funds by contracting-in.**

EFFECT ON: Contributions to political funds, and possibly the number of such funds.

SUPPORT LIKELY FROM

CTU, Government Backbenchers.

COMMENT

The Trade Union Act 1913 gives union members whose union operates a political fund the right to contract-out of the fund if they wish. Those members who do not actually take this action have the political levy deducted from them automatically. Contracting-in would involve trade unions members having to make a positive request to contribute to the fund. Legislative model may be found in Northern Ireland legislation, where "contracting-in" already applies.

Arguable that unions have not taken steps to make their members aware of their right to contract-out, and/or make it sufficiently easy for them to do so. Some members may feel pressurised into paying the political levy; they may also misunderstand the purposes to which such a levy is applied/can be applied.

To avoid accusations of party political bias, proposal could take the form of "sunsetting" the present "contracting-out" requirements. For example, "contracting-in" might be made to apply from, say, 1995; there could, however, be exceptions whereby the change to the law would be applicable earlier, eg: (i) where a union balloted and set up a political fund for the first time; and (ii) where a union with an existing political fund held a "review ballot" between commencement of new legislation and 1995. 1995 would, of course, be after the next general election, and would coincide with the time when the great majority of political fund review ballots would need to be held (ie 10 years after Part III of the 1984 Act came into effect).

Substitution of "contracting-out" by "contracting-in" might actually have the effect of increasing the number of unions operating such funds, and would almost certainly mean that review ballots of existing political funds would result in majority votes for their continuance.

Im2

PROPOSAL: **Extend potential union liability for "unofficial" industrial action.**

EFFECT ON: Scope for legal action against trade unions.

SUPPORT LIKELY FROM

British Coal and General Council of British Shipping. Sir Robert Haslam has written to express his concern about the NUM avoiding liability for the actions of its members and officials, and suggesting a change in the law along these lines; Sir John Egan (Jaguar) also known to favour making unions repudiate unofficial action.

COMMENT

Section 15 of the 1982 Act lays down when a trade union is to be held responsible for acts for which there is no immunity, and these conditions are also applied to determine whether a union has authorised or endorsed industrial action for the purposes of section 1 of the 1988 Act.

A union will be held liable for any act which is authorised or endorsed by its Executive Committee, General Secretary or President, or any other person given power under the union's own rules to do the act. In addition, the union will be held liable for any act which is authorised or endorsed by any official employed by the union, or any committee to which one of these officials regularly reports, except where: (i) the official or committee who authorised or endorsed the act was forbidden to do so by the union's own rules; or (ii) the act is "repudiated" by the Executive Committee, the General Secretary or the President (various conditions are set down and would be applied to determine whether an act has in fact been "repudiated").

The proposal would involve requiring a union to repudiate any act of any of its members, officials or employees which included encouraging, assisting or taking part in industrial action, as soon as practicable after that act was drawn to its attention if the union was not to assume liability for it. While not essential, it might be found desirable to state what form "repudiation" should take, perhaps adding to the present formulation of delivery in writing and as quickly as possible so as to require, for example, individual notification to all members of the union who might be induced by the act concerned.

POSSIBLE VARIATION

(i) Remove the possibility that a union might avoid liability for the acts of its officials or members unless it took "active steps" to discourage them from the action concerned. Intent might be to

force a union to impose disciplinary sanctions on members/ officials as a means of demonstrating "repudiation" of the act concerned. This would be much more draconian than the proposition described above, and would be portrayed as an attempt to force unions to "police" their own members. Major risk of breaching ILO Convention on Freedom of Association.

Im3

PROPOSAL: Require those organising industrial action in essential services to:-

(i) give adequate "notice" of any such action to any employer of members who would be induced to take part in the action; and/or

(ii) ensure that, as far as practicable, a minimum level of service is maintained during the industrial action.

The minimum level of service could be determined on a case-by-case basis by an independent body established for all industries and services concerned, or an appropriate independent body with responsibilities for the particular industry or service concerned.

Failure to give the specified period of notice, and/or ensure the minimum level of service was maintained, would result in loss of immunity for the action.

EFFECT ON: "Official" action in essential industries and services.

SUPPORT LIKELY FROM:

IoD/IEA

COMMENT

As mentioned in minute of 29 August to the Prime Minister, some minimum period of strike notice and a requirement that for certain services a minimum level of staffing must be maintained during industrial action appears in French, Greek, Italian, Portuguese and Spanish legislation.

Penalty for failure to observe the relevant requirements in these countries is, however, different from the proposed withdrawal of immunity. Any legislation would have to be carefully constructed so as to make it clear that a union could not be forced to make its members work, but only required to couch any inducement to take industrial action in terms that were consistent with the continued provision of "minimum service". In the UK context - and in the absence of anything like the suspension of contracts during "lawful" industrial action - proposal might be seen as placing us in breach of ILO Conventions.

A requirement for a specified period of notice might be of significance if the period was set with reference to the need to enable the employer(s) to make alternative arrangements to ensure that the consequences of industrial action were minimised. That period could vary to take account of the different circumstances of particular "essential industries and services".
Alternatively, a set period of notice might be seen as a useful

opportunity for "cooling off", and for exploring alternative methods of resolving the dispute.

A list of "essential industries and services" to be subject to specified requirements would be needed.

Consequences in terms of industrial relations within industries and services made subject to new requirements difficult to anticipate. Danger of encouraging industrial action up to the "lawful limit".

Proposal to apply new requirements to particular industries and services would need to be discussed and considered with those Departments having policy responsibilities for them before being put forward for public consultation.

Enf3

PROPOSAL: **Give the Commissioner for the Rights of Trade Union Members the power to take proceedings in own name.**

EFFECT ON: Volume of litigation against trade unions etc.

SUPPORT LIKELY FROM

Those (eg. Freedom Association, CTU, Lord Wyatt etc.) who feel that union members may be subject to (and in fear of) intimidation if they take proceedings against their union in their own name.

COMMENT

Would be a major development of the Commissioner's role. Commissioner's office would need extra resources to conduct investigatory work to establish basis for setting proceedings (or work relating to proceedings) in train.

Would easily be portrayed as interference in trade union affairs by a "State institution", and as breaching principle consistently applied to reform of industrial relations and trade union law since 1979 that proceedings should be taken only by those directly affected by unlawful action.

POSSIBLE VARIATIONS

(i) Enable Commissioner to take proceedings in his own name if doing so on behalf of a member of the union who would be eligible to bring complaint in his own right. Commissioner to be given power to determine the locus of the member; Commissioner's determination of this would be conclusive and not subject to challenge in or by a court. Without giving Commissioner the power to determine locus in this way the variation would be of no practical use, since a union against which the Commissioner took proceedings would otherwise always challenge whether there was in fact a member eligible and willing to see the proceedings taken. Giving the Commissioner the power to determine locus would, however, be highly controversial, extremely difficult to proof against the possibility of judicial review, and akin to turning the Commissioner into a judicial body.

(ii) Restrict ability of Commissioner to act in this way to certain proceedings only (ie not the totality of proceedings in scope of assistance), or proceedings held to satisfy some defined criteria (eg "matter of substantial public interest"). Would make such proceedings a case of "the State versus the union", and give rise to judicial review of decisions made on this criterion.

IAB1

PROPOSAL: **Alter the time period allowed between the date of a ballot and the start of industrial action.**

EFFECT ON: Timing of ballots and/or industrial action

SUPPORT LIKELY FROM:

Employers concerned about this feature of the present requirements. Sir John Egan (Jaguar) known to favour reduction from present four week period to two weeks; others might press for time allowed to be longer.

COMMENT

At present the date of a ballot (ie the last day on which votes may be cast) may not be more than four weeks before the start of industrial action.

If the four week period was reduced (say to two weeks), that might force a union to ballot its members on industrial action at a later stage of negotiations than might otherwise be the case. On the other hand, a union might feel it was more obliged to commence its inducement to take industrial action following a ballot producing a majority "Yes" vote than otherwise.

If the four week period was increased (say to six weeks), that might allow more time for steps to be taken to resolve a dispute without the need to have recourse to industrial action. On the other hand, the "threat" of official industrial action would hang over the employer for a longer period, and the employer's bargaining position might thereby be weakened.

POSSIBLE VARIATION

(i) Requirement could be expressed as obligation on union to induce all members who would at any time be called on within the four week (or other specified period) to take (or continue) the action; inducements to others after that period would deprive the union of immunity etc. This would make it difficult for a union to organise "rolling", or "escalating" industrial action by calling on only some members to take (some) action within the four week period, but on others to join in the action after that time. It could be seen as provoking more significant industrial action, taken earlier, than might otherwise happen, but might be attractive if the time period was to be reduced from four weeks to some shorter span of time.

IAB2

PROPOSAL: Translation of recommendations in Code of Practice, "Trade Union Ballots on Industrial Action", into primary legislation.

EFFECT ON: Conduct of industrial action balloting.

SUPPORT LIKELY FROM

Various sources, depending on nature of recommendations so translated.

COMMENTS

Attached note indicates possibilities.

Assuming, however, that a statutory code of practice is published for Parliamentary approval around Easter 1989, it would be too soon to come forward with proposals that amounted to turning certain of its recommendations about "good practice" into requirements of primary legislation.

RECOMMENDATIONS IN CODE THAT MIGHT BE TRANSLATED TO PRIMARY LEGISLATION

A. Strengthen the mandatory statement which must appear on voting papers, so as to include, for example, something about the union's obligations in respect of the conduct of the ballot and/or an indication that taking industrial action might result in loss of right to claim unfair dismissal.

B. Require union to provide any employer whose employees included one or more members given entitlement to vote with copy of voting paper (and any material to be associated with the voting paper?) to be used.

C. Require union to notify details of ballot result to employer of any member given entitlement to vote in the same way as applies to notification of details to any such member.

D. Require minimum period of notification by a union of its intention to (i) hold an industrial action ballot, and/or (ii) induce "official" industrial action to any employer whose employees would be given entitlement to vote in the ballot or so induced.

IAB3

PROPOSAL: "Time-limit" the immunity (etc.?) which can be preserved by a properly-conducted secret ballot on industrial action , so as, in effect, to require re-balloting if "official" industrial action continues beyond a certain period of time.

EFFECT ON: Duration of "official" industrial action.

SUPPORT LIKELY FROM

CTU - though proposals may be seen as alternative to limitation of power of union to discipline members who refuse to take industrial action after a ballot indicates majority support for it as achieved through sections 3-5 of the 1988 Act (which protect a union member from discipline by his union if, for example, he chooses not to take or continue to take industrial action).

COMMENT

Difficult to judge practical effect of proposal. Might actually (i) encourage voting in favour of industrial action in the initial ballot, in knowledge that there would have to be a re-ballot to continue any official action beyond a certain time, and/or (ii) delay any spontaneous return to work by those participating in industrial action pending the re-ballot.

Views would need to be sought as part of public consultation about: (i) appropriate duration of time before re-balloting was required to preserve immunity etc., and (ii) from what point the time period concerned would start (eg from the date of the initial ballot; the first "official" union inducement to take industrial action; the announcement of the result of the initial ballot etc.).

It would be necessary to establish clearly the appropriate "balloting constituency" for any re-ballot - eg.(i) automatic entitlement to those given such entitlement in the original ballot, or (ii) restriction to those who had taken the "official" industrial action at some point in time, or (iii) restriction to those taking or continuing "official" industrial action at the time of the re-ballot.

POSSIBLE VARIATIONS

(i) Terms of section 1 of the 1988 Act (ie member's right to restrain union from inducing unballoted industrial action) could be left unchanged, so the right to restrain in the absence of a re-ballot in favour of continuing the action would not apply. If duration of immunity alone was limited, only an employer, or customer or supplier of an employer, could take proceedings against the union if it failed to re-ballot as required; to confine it completely to an affected employer, it would be necessary to exclude the possibility that a customer or supplier of an "affected" employer could insist on a re-ballot. Might be

difficult to operate with guarantee of satisfactory results in, for example, a case where the industrial action involved employees of more than one employer.

(ii) Alternatively the activation of the re-balloting requirement could depend on (a) an employer or customer or supplier (any "affected" employer? any customer or supplier of such an employer?), and/or (b) a specified percentage of union members (involved?) giving notice that a re-ballot was required. Problems arising from (a) include the effect that such notice might have on opinion among those taking the action; from (b) those which could follow if a group of "militants" sought to insist on a re-ballot to prevent the union agreeing a settlement of the dispute with the employer(s) concerned. Variant (b) would also give rise to problems in connection with the identification of the locus of members who sought a re-ballot, the time when they would have to do so, and the possibility that some of those concerned might later change their minds about the request they had made.

Pk1

PROPOSAL: Remove immunity from an act done in the course of picketing where the number of pickets exceeds six at any entrance to a workplace.

EFFECT ON: Conduct of picketing.

SUPPORT LIKELY FROM

Employers generally - though no known proposal from employers.

COMMENT

The statutory Code of Practice on picketing states that "...pickets and their organisers should ensure that in general the number of pickets does not exceed six at any entrance to a workplace; frequently a smaller number will be appropriate". The courts have accepted this particular provision of the Code as evidence and have taken it into account in proceedings concerning picketing (eg P&O European Ferries (Dover) Ltd V NUS and others).

Public already perceives six pickets to be the "legal limit".

Since the courts already apply the relevant law as if the limit on picket numbers was part of primary legislation, however, there may be little need in practice to make the change.

docs/EssServRep

REPORT ON ARRANGEMENTS TO LIMIT INDUSTRIAL ACTION IN "ESSENTIAL SERVICES" IN EC COUNTRIES

Department of Employment
13 July 1988

INDEX TO CONTENTS

CHAPTER 1.

INTRODUCTION

1.1. This Report describes arrangements in EC member states for limiting industrial action in "essential" industries and services, including "no strike agreements".

1.2. The Report consists of separate chapters on each country covered. Emphasis is given to describing current or recent initiatives to review or reform statutory provisions relevant to industrial action in "essential" industries and services. Basic information about the background (legislative and non-legislative factors) is also included where relevant.

1.3. The main sources were:-

(a) Information contained in issues of "European Industrial Relations Review" January 1987-June 1988;

(b) Information obtained from labour attaches and labour reporting officers in May and June 1988 (a copy of the first letter requesting information is attached as **Annex A**).

1.4. The chapter on the United Kingdom was produced by the Department of Employment Industrial Relations Division (IRB) from material available in its own records and supplied by the Northern Ireland Office. It describes the relevant law and provides a brief comment on "no strike agreements" as the term is used in the UK.

DE IRB
13 July 1988

CHAPTER 2.

BELGIUM

Background

2.1. Laws of 1945 and 1948 give the government the right to requisition workers needed for national security in peacetime. In the private sector (which includes electricity and gas) this power is uncontroversial, but in the public sector its use has always been contested vigorously by the unions (who claim it does not apply to them).

2.2. The laws concerned were used four times in the 1970s, and twice in the 1980s, to end public sector strikes. These strikes involved Antwerp harbour service, its tugs, staff of the inland waterways, staff of the Water Board, and (in February 1988) air traffic controllers.

2.3. Legislation specific to them makes it illegal for the army or gendarmerie to strike. There is no recognised right to strike for the civil service, but neither are strikes by civil servants illegal.

2.4. No information is available on the extent to which "no strike" provisions appear in collective agreements covering "essential services".

Developments

2.5. Some ten years ago a (Socialist) Minister of Labour put forward a proposal (in combination with a plan to ratify the European Social Charter) to enshrine in law a definition of the categories of workers who were not allowed to strike. In the face of union opposition it was dropped.

2.6. There is now speculation within the Home Affairs Ministry (and the unions) that the issue may be raised again, since the agreement on which the new government coalition is based returns to the subject of ratification of the European Social Charter. It is thought that the government will again seek to reserve its position on the right to strike of certain public service workers it wishes to exclude from the Charter's application; the unions' are likely to remain opposed.

2.7. There is no indication that the government intends to take any particular steps to promote "no strike" agreements in "essential" industries or services.

CHAPTER 3.

DENMARK

Background

3.1. There is no special legislation on "essential services" as such. Restrictions on the activities of senior civil servants, however, apply under The Consolidated Act No 671 of 2 October 1986 on Public Servants in Government, Education and the Danish Church. This Act states that "Public servants shall conscientiously observe the regulations which apply to their service". These regulations contain no formal right to take collective industrial action; if public servants take industrial action to influence the terms of their employment, or obstruct work from being carried out, they are in breach of their official duties. Such breaches can be dealt with by a Civil Service Tribunal (a judicial, not an administrative body) which is empowered to fine public servants about £17-50 in respect of each working day affected. The first day of action is not taken into account, and the fines are varied according to the severity of the offence and the rank of the individual concerned. This legislation has not been used to date.

3.2. Under general industrial relations arrangements "Main Agreements" are concluded every two years between the DA (the Danish equivalent of the CBI) and the LO (the Danish equivalent of the TUC). Neither party may take industrial action during their negotiation. They cover matters such as the right to organise, no stoppages during the currency of a collective agreement, rules about employer prerogatives etc. During the currency of the agreement "disputes of interest" in the field covered by it are to be settled by means of negotiations and arbitration, but not work stoppages. The DA/LO agreements are, to that extent, "no strike agreements" during their currency.

3.3. Collective agreements are also concluded between employee organisations and employers' organisation/individual employer(s). The (independent) public conciliation service has the function of assisting the parties to arrive at an agreement. If these efforts fail, the conciliation service steps back and industrial action may then be taken.

3.4. Breaches of agreements do not normally justify work stoppages, but must be settled through negotiations and the Industrial Court. The Industrial Court consists of judges elected by both sides of industry, with a Supreme Court judge as president. The Industrial Court may impose on the organisation or members acting in breach of an agreement a "penalty" (ie an amount of money which is to serve as a "punishment" as well as compensation to the injured party).

3.5. Parliament is entitled to legislate to adjust wages and working conditions for a two year period if agreement is not reached between the DA and LO in any set of negotiations. This means that the duty to keep the industrial peace is reintroduced, and that continued work stoppages will be in breach of the (imposed) agreements. If such legislation came into effect during a dispute the employees would be required to return to work, and employers too re-engage without retaliatory measures.

3.6. Agreements reached by the DA and LO are voted on by members of these organisations. If there is a majority of votes against on either side, legal strikes and lockouts may lawfully take place.

Developments

3.7. There is no information which indicates that the government is contemplating changes to the system described above.

CHAPTER 4.

FRANCE

Background

4.1. The "right to strike" is recognised in the Constitution. All public sector workers are required to give notice of their intention to strike, and "disruptive selective action" is unlawful. If a strike poses a grave threat to the national interest the Council of Ministers has the power to requisition striking workers to return to work.

4.2. In addition the law limits the right of certain groups to strike as follows*:

- certain public servants, including military personnel, magistrates, Ministry of Interior employees responsible for the operation and maintenance of communications equipment, armed forces, police, and prison officers have had their (constitutional) right to strike withdrawn by law; air traffic controllers have a limited right to strike;

- certain other civil servants in positions or responsibility (for example senior officials in the prefectures who represent central government in the regions) are considered to participate in the actions of the government and have had their right to strike withdrawn by administrative decision;

- other public servants have had their right to strike withdrawn or restricted by administrative decision

---

* The relevant law or administrative order dates from before 1980 unless otherwise stated.

because their work is considered essential for the safety of persons, or for the conservation of equipment or operation of services necessary for the action of government. They include:-

(i) agents whose work is essential to air safety;

(ii) certain railway guards;

(iii) certain clerical workers whose services are essential for the courts;

- certain categories of public servant who have the right to strike must nevertheless ensure that a minimum service is provided. They include:-

(i) air traffic controllers (law 31 December 1984);

(ii) electricity supply workers;

(iii) radio and television.

4.3. The law also provides that civil servants who strike lose a whole day's pay, even if the stoppage lasts only an hour or so (see para 4.7 below).

4.4. Health care and social workers are also required to ensure that a minimum service is provided, but in their case the details of minimum service are negotiated in each establishment. There is no other available information about the use of "no strike" provisions in agreements covering "essential" industries or services.

4.5. Despite the legal prohibitions, however, there have been strikes, for example, of prison officers and teachers. Schools have been closed during strike action even though the relevant law requires teachers to ensure that children are kept on school premises under school supervision during normal teaching hours when the schools are on strike.

4.6. The procedure for requisitioning striking workers has not been used since 1963 when an attempt to requisition miners failed.

Developments

4.7. The law concerning loss of pay (see para 4.3 above) was removed by the Socialist administration of 1981-86, but re-introduced by its successor in 1987. An attempt to extend it to public services more generally was overturned by the Constitutional Council. The civil service Minister in the new Socialist administration has announced his intention to repeal the law (again) during the next Parliamentary session.

4.8. In late 1987 there was debate about the lawfulness of strike action in the private sector and the role of the courts. In the context of that debate (which was not inherently connected with "essential services" issues) the then Minister of Labour speculated on whether there might be "a need to lay down rules of civil responsibility concerning collective labour disputes and introduce measures to promote the speediest possible negotiations" (quoted in EIRR December 1987). This aroused a great deal of controversy.

4.9. The new Government has given little clue to their legislative

intentions in this area, but it seems (to quote the labour attache's report) "very unlikely they will incur unpopularity by tampering with the right to strike". Nor is it likely that the Government will take any particular steps to promote "no strike" provisions in agreements affecting "essential" industries or services.

CHAPTER 5.

GERMANY

Background

5.1. In practice workers in "essential services" do not go on strike. This is for two main reasons:-

- Many employees in sectors which would be candidates for categorisation as "essential services" are "Beamte" (ie crown servants) who have security of tenure and in return for that do not strike. This applies to teachers, policemen and some civil servants in key jobs.

- The "Basic Law", backed up by case law, also provides for no strikes in essential services and state of emergency situations.

5.2. "No strike agreements", as such, are unheard of. However, a union planning a strike in an "essential service" has to notify the DGB (the German equivalent of the TUC) beforehand and provide details of emergency measures necessary to maintain any such service which may be affected.

Developments

5.3. Although the threat of industrial action in sectors which might be regarded as "essential" is not unknown - for example the public sector union warned of action to affect postal and transport services during a dispute about pay earlier this year - the Federal Government is not contemplating any relevant legislation or initiatives.

CHAPTER 6.

GREECE

Background

6.1. In the private sector the legal right to strike exists provided that 24 hours notice is given to the employer. The union is obliged to maintain a "skeleton staff", and the employer may not hire strike-breakers, dismiss strikers or lock-out those involved.

6.2. In the public sector the right to strike extends to all employees with the exception only of the armed forces and the police. The Government retains the option of "civil mobilisation", which it is used against air traffic controllers during the dispute which took place in the summer of 1988.

Developments

6.3. Recent discussions about changes to the "skeleton staff" requirement (see para 6.1 above), so as to increase this to a commitment to provide "realistic" levels of staffing during a strike, met with fierce trade union resistance.

6.4. As far as the public sector is concerned, the Government has no need to seek "no strike" agreements as long as it retains its "civil mobilisation" powers (see para 6.2 above) - despite the potentially heavy political cost of using those powers.

CHAPTER 7.

ITALY

Background

7.1. Under the Constitution workers have the right to strike, within the terms of law controlling that right. No such law has ever been passed, however, and the only sanction available against strikers is that the Prefect of a city or region can use his power of "precettazione" to direct them to return to work. This power has been used very sparingly, (and not at all during the recent wave of industrial action - see paras 7.6 and 7.7 below).

7.2. There are three major union confederations - CGIL, CISL, UIL - which have section or sector organisations within them covering particular industries such as "transport". There are a number of small autonomous unions covering particular groups of workers, such as airline pilots, train drivers, teachers; and militant splinter groups known as "Comitati di Base" (COBAS).

7.3. There is general acceptance (under a non-statutory code of self-regulation) that there should be industrial peace over holiday periods. Despite the bitterness of the series of disputes affecting transport and other public services (see paras 7.6 and 7.7 below) this was scrupulously observed at both Christmas 1987 and Easter 1988.

7.4. Italian industrial disputes take a different form from those in the UK. It is rare for a group of workers to remain on strike for any length of time; they normally state in advance that there will be a strike affecting a particular group of workers for a certain duration of time, but anything over 24 hours is unusual. The phenomenon of "rolling" industrial action is far more common in Italy than the UK, and involves devices such as stoppages

lasting for the first 4 hours of a shift, or action to paralyse the railways by stopping work at key junctions one after another.

7.5. It is important to take account of Italian Parliamentary procedure in considering reports that "Bills" have been produced. It is quite normal to have several "Proposte di legge" (proposals for laws) on one topic under consideration at the same time, but by a Standing Committee. These proposals are not Bills in the sense that we understand the term in the UK. That stage is reached when the Committee has reached agreement on the text and returned it with their report to one of the two Chambers of Parliament. A note on this procedure is attached as Annex B to this Report.

Developments

7.6. Since September 1987 there has been a series of disputes, almost exclusively in the public sector, which has continued intermittently ever since. With the exception of the Christmas and Easter periods there have been very few days when there has not been some industrial action in some part of the transport sector. In the airlines the problem has been made even worse by the growing maintenance back-log of aircraft belonging to Alitalia and ATI. The education sector has also been hit by industrial action.

7.7. Another feature of this wave of unrest has been the role of splinter groups (COBAS - see para 7.2 above) and local union sections organising what amounts to "unofficial" action. This has undermined the code of self-regulation and the authority of established unions.

7.8. Public impatience with this kind of industrial action has grown, and during 1987 there were repeated calls for legislation

to control strikes. At no stage, however, has it ever been suggested that the right to strike should be withdrawn, even in the case of "essential public services".

7.9. The sequence of legislation-related events since October has included the following:-

October 1987

The Socialist senator and President of the Labour Commission in the Senate tabled proposals, and UIL (the smallest of the union confederations) proposed a law which stipulated legal sanctions in case of violation.

Subsequently the then Prime Minister presented a draft decree to Cabinet which would have: (i) required labour organisations to give 10 days written notice of forthcoming strike action in any vital public service (viz. health, transportation, schools, customs and civil protection); (ii) changed the method of giving notice of "precettazione" (see para 7.1 above) to strikers from the present requirements for individual notification to a general notice posted in the workplace; (iii) required employers to inform the public about the timetabling of strikes; and (iv) provided for the use of injunctions in cases of failure to respect the law.

The Prime Minister's proposals were rejected by Socialists and Social Democrats, and also by the three trade union confederations, particularly the CGIL.

January/February 1988

The then Minister of Labour put forward proposals for a Bill which would: (i) define the scope of essential services; (ii) establish the minimum level of services

to be provided during strike action; (iii) define eligibility for the right to strike; (iv) lay down notice period and procedures for calling industrial action; (v) introduce a system of arbitration; and (vi) fix sanctions in cases of violation (they would also have applied to employers since lock-outs are formally prohibited under Italian law).

The three union confederations then also put forward their own proposals to the Labour Affairs Committees of both Houses of Parliament. The then Minister of Labour supported them but employers criticised them as too weak. The confederations' proposals mixed self-regulation, collective bargaining procedures and legislative measures:-

- employment contracts would specify the provision of minimum services in each sector and fix periods of notice necessary for strike action; the relevant clauses would be incorporated into each company's statute and thus be binding on all workers;

- essential services would be defined in law, and it was suggested should be health, transport, telecommunications and schools; the law would fix the period of advance notice of strikes which would apply wherever employment contracts did not cover the matter;

- codes of "self-regulation" would be revised to provide for "coherent" behaviour in the conduct of industrial action (eg to forbid it at certain times of the year, and to stop strikes called to cover a whole sector such as transport);

- the President of each Regional Council would be able to issue an order that those on strike should return to work.

There was, however, dispute between the confederations about whether their proposals should be put to a referendum of all (or some) workers.

Summary of developments

7.10. In December 1987 there were four draft "Bills" under consideration in Parliament (one related only to the protection of ferry services to the islands, the other three are described in para 7.9 above). Several further proposals were brought forward in the first quarter of 1988, others were dropped, and by the end of April there were (again) four draft "Bills". There was a change of Government, and the new administration's programme contained a commitment to legislate. In May it was announced that agreement had been reached between the Christian Democrats, Communists, Socialists and Republicans on a "Bill" which all could endorse (and which also took account of the proposals by the union confederations).

Present Bill

7.11. The "agreed" Bill on control of strikes which emerged is now before the Italian Senate. Its main proposals are as follows:-

- Definition of the scope and extent of the law, which is directed to the following essential public services: health, public transport, traffic police, gas, water and electricity, civil protection. Other services to be defined as "essential" in particular circumstances.

- Requirement for strike notice of 15 days to both the employer and to the authorities (the Mayor, President of the Region, President of the Council of Ministers); duty on the employer to inform users of the affected service(s).

- Minimum standards for self-regulation codes, including: guarantees of minimum services; exclusion of the right to strike at certain periods; banning of "articulated" strikes; means of resolving disputes; guarantees of safety for property and persons; referenda on the "more important" decisions.

- Ban on public transport sector strike action in more than one sector at a time.

- Rules for attempts to resolve disputes at national level. These can be launched by the President of the Council, and are to be handled by three experts nominated by the National Council on the Economy and Labour. Strike action is to be suspended for 15 days to allow these experts to seek a solution. If the attempt to resolve the dispute fails, the experts are to publish their own proposals and evaluation of the situation.

- Direction to return to work no longer the sole prerogative of the Prefect, but extends to the Mayor, the President of the Region, or the President of the Council.

- Sanctions are introduced against unlawful strikes.

- Employers in both the public and private sectors must

produce codes of conduct to ensure correct trade union relations and prompt application of contractual obligations. There is to be a sanction in a case where failure to observe these rules leads to legitimate strike action.

CHAPTER 8.

LUXEMBOURG

Background

8.1. A 1979 law bans a number of categories of workers from striking. These include the army, police, prison officers, senior members of the home civil service and diplomatic service, head teachers and "those required for the maintenance of national security". The last of these categories has been interpreted to include air traffic controllers (**see para 8.3 below**).

8.2. There is no available information about the extent of "no-strike" provisions in agreements for "essential" industries and services.

Developments

8.3. Under the terms of the law mentioned above air traffic controllers were "requisitioned" in 1986 during a long-running industrial dispute.

8.4. There is no available information about any government plans to promote "no strike agreements" for, or to develop relevant law concerning, "essential" industries or services.

CHAPTER 9.

NETHERLANDS

Background

9.1. There is de facto recognition of the right to strike for government employees through custom and case law. It is thereby established that strikes are allowed when all of the following three conditions are fulfilled:-

- there is a conflict of interest;

- a strike is the only action left, other avenues having been tried and failed;

- the damage caused by the strike (including damage to third parties such as the public) will not be disproportionate.

9.2. Strikes can be forbidden by the courts according to their interpretation of these conditions; potentially disproportionate "damage" can be particularly relevant for strikes in "essential" services. But courts in different parts of the Netherlands place very different interpretations upon the case law.

9.3. If the government disagrees with the decision of a court about the legitimacy of a strike it does not have the power to ban the action but it can call in the army to carry out the strikers' work.

9.4. In 1980 the Government ratified the European Social Charter but expressed reservations about the application to the civil service of the provisions in the Charter relating to the right to strike.

9.5. There is no available information about the extent of "no strike" provisions in agreements affecting "essential" industries or services.

Developments

9.6. The government originally intended to pass a law which would make its reservations relating to ratification of the European Social Charter (see para 9.4 above) binding. Despite several attempts, in the face of union and Labour Party opposition, it failed to do so, and there is no longer any intention to bring forward such legislation.

9.7. There is no available information to indicate that the government is taking any particular steps to promote "no strike" provisions in "essential" industries or services.

CHAPTER 10.

PORTUGAL

Background

10.1. The right to strike is enshrined in the Constitution and applies to all employees in the public and private sectors. This right was, however, limited by the revision of the Constitution in 1982 to provide for "civil requisition". Requisition enables the government to order the workers of a given organisation to provide a defined minimum service if the national interest is threatened or "in exceptional circumstances". Once invoked the requisition remains valid for a month, and workers who refuse to return to work may be open to disciplinary measures, including dismissal (see para 10.4 below).

10.2. There is no available information about the use of "no strike" provisions in agreements affecting "essential" industries or services.

Developments

10.3. A series of public sector strikes has characterised industrial relations in 1988 (most relate to pay claims); doctors have started a series of one-day stoppages in protest at alleged under-funding of the health service and the ending of the guarantee of jobs for all graduating medical students.

10.4. The "civil requisition" provision in the Constitution was used for the first time in February 1988 - with significant effect - during a strike of workers on the Lisbon transport network; it has since been used again. There has, however, been considerable controversy about the government's interpretation of "exceptional circumstances", and there are arguments about what a "minimum service" should be. In the case of the transport

workers it was defined as 100% of normal services during the rush hours, and 50% during the rest of the day.

10.5. The question remains topical in the context of the discussions about reform of the Constitution (due to be voted on in the next Parliamentary session). Since the government needs the support of the Socialist Party to get the necessary majority, it is likely that there would be changes to both the right to strike and the government's powers.

10.6. There is no available information about government initiatives designed to promote "no strike" provisions in agreements affecting "essential" industries or services.

CHAPTER 11.

REPUBLIC OF IRELAND

Background

11.1. There is no special legislation on "essential services" as such. All workers and their unions are subject to the general law concerning industrial relations matters.

11.2. Collective agreements have the same (non-legally binding) status as those made in the UK, and the law of employment contracts also operates in a similar way. There is no available information about the extent of negotiated "no strike" agreements covering "essential" industries or services.

11.3. "Emergency powers" are available to the government in similar circumstances, and with similar potential effects, as in the UK.

Developments

11.4. Although the present government has put forward proposals for various reforms of Irish industrial relations and trade union law and practices, none refer specifically to "essential" services. Following further discussion this summer the intention is to publish a Bill for passage through the Dail in the autumn.

11.5. Two points, however, have some relevance. First, there is a proposal that there should be a minimum period of one week's notice of strike action (this for general application). Secondly, there is a proposal for the inclusion within the statutory framework, but not as legally binding, of a code of practice for certain sectors regarding levels of service, which would embrace "essential" services.

CHAPTER 12.

SPAIN

Background

12.1. The current law is a product of legislation developed during and immediately after the transition to democracy in Spain in the late 1970s. This legislation is widely respected; minimum public services are provided during strikes, although there is some debate about the level at which required minimum services have been set by the government (**see para 12.7 below**).

12.2. The right to strike is recognised by the Constitution. During a legal strike the employment contract is suspended, not breached. Negotiation is obligatory during any strike.

12.3. By virtue of legislation which came into effect during 1977 (reaffirmed in a 1980 statute), strikes are illegal when they:-

- are for political or other motives not related to the professional interests of the labour force involved;

- are intended to alter the terms of a collective agreement still in force (which means that, to a certain extent, all collective agreements are implicitly "no strike agreements" during their currency).

12.4. The legislation also provides that to be legal 5 days notice of a strike must be given to the employer and the labour authorities. In the case of public service (**see para 12.5 below**) strikes this period is longer - 10 days.

12.5. Although certain strikes are thus "illegal", those intended either to influence negotiations for a forthcoming agreement, or about conditions not governed by an existing agreement, are possible. Sanctions are directed to the individual, not at the level of the union. Refusal by a worker to fulfil a task which the company is legally entitled to ask of him is grounds for dismissal. More comprehensive and explicit "no strike" clauses are allowed by Spanish law, but those few which have in fact been signed have simply required arbitration before a strike. There are no known examples of an agreement prohibiting all strikes.

12.6. The government can require a minimum service to be provided during strikes affecting "public services", which are taken to encompass those services which affect a public right provided by the constitution. Thus the constitutional right to life implies that health services are a "public service"; the constitutional right to free circulation within Spain implies that the transport industry is a "public service".

Developments

12.7. A 1987 Bill to allow unions and companies to fix the level of minimum service to be provided during a strike was withdrawn because of Government/union conflicts.

CHAPTER 13.

UNITED KINGDOM

13.1. Pre-1979 legislation directly inhibits industrial action, or industrial action with certain intentions or effects, by particular groups of workers. The police, armed forces, merchant seamen, postal workers and telecommunication workers are so affected. In addition, section 5 of the Conspiracy and Protection of Property Act 1875 makes it an offence "wilfully and maliciously" to break "a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of..doing so...will be to endanger human life or cause serious bodily injury, or expose valuable property...to destruction or serious injury". Breach of provisions of the Health and Safety at Work etc. Act 1974 (in Northern Ireland the Health and Safety at Work (Northern Ireland) Order 1978), which could occur if, for example, employees refused to do essential safety work, could also give rise to criminal offences.

13.2. Legislation also exists which mitigates the effects of industrial action in essential services. The Emergency Powers Act 1920 (in Northern Ireland the Emergency Powers Act (Northern Ireland) 1926) enables a proclamation of emergency to be issued if it appears to Her Majesty that events have occurred, or may occur, which deprive the community (or any substantial portion of the community) of the essentials of life by interfering with the supply and distribution of food, water, fuel, light or transport. Regulations could then be made giving powers necessary to preserve such services. A state of emergency has been proclaimed under the 1920 Act on twelve separate occasions, all industrial disputes, nine of which happened since 1945 and the last of which was in 1973. The equivalent Northern Ireland legislation was last used in 1979.

13.3. The Emergency Powers Act 1964 enables servicemen to be temporarily employed in agricultural or other work of urgent national importance whether or not a state of emergency has been declared. In recent years, for example, the Act was invoked in the industrial action taken in 1987 by the West Glamorgan firemen.

13.4. There are also provisions in the Energy Act 1976 which enable exceptional powers to be taken in an actual or threatened emergency affecting fuel or electricity supplies. In Northern Ireland a local oil or electricity emergency could lead to local legislation (such as regulations under the 1926 Act) being invoked, and section 4 of the Conspiracy and Protection of Property Act 1875 still applies so as to make certain industrial action by electricity, gas or water workers a criminal offence.

13.5. In addition: (i) from time to time governments have introduced legislation in response to particular crises outside the scope of the Emergency Powers Act 1920 or the Energy Act 1976, such as the Imprisonment (Temporary Provisions) Act 1980 which was enacted after industrial action by prison officers; and (ii) action taken in respect of GCHQ involved making use of provisions in existing legislation to deal with a particular problem.

13.6. General industrial relations law applies to workers in "essential services" in the same way as to others. That law defines what is to be regarded as a "trade dispute" for the purposes of preserving immunity for organising industrial action; immunity is only preserved for industrial action about terms and conditions relevant to the employer(s) and workers concerned and where a majority of union members have indicated in a properly conducted secret ballot that they are prepared to take the action.

13.7. If immunity is not available an employer (or customer or supplier) who suffers damage because of any unlawful industrial action can get: (i) an injunction against its organisers (including, where appropriate, a trade union) which requires them

to cease to organise the unlawful action; and/or (ii) damages from them. If a court order (such as an injunction) is ignored, the organisers (including a trade union) can face penalties for contempt of court (such as unlimited fines, sequestration etc.).

13.8. Provisions in the Employment Act 1988 give all union members the right to restrain their union from inducing them to take any industrial action without support for that action from a properly conducted secret ballot. That Act also gives them the right not to be unjustifiably disciplined by their union if, for example, they choose to go to work or cross a picket line rather than support any strike or other industrial action. Other provisions in the Bill are designed to encourage and improve democratic practices in trade union affairs. Similar legislation is being prepared for Northern Ireland.

13.9. Collective agreements are not legally binding. Agreements which have been called "no strike agreements" are, in fact, agreements which provide for certain set procedures to be followed (often including arbitration in a specified form) either before industrial action may be organised by either party or as the final means of resolving a dispute. But breach of the terms of such agreements would not create any legal liability on the part of any party to them. A non-legally binding agreement made by a union cannot control its members behaviour, though it might discipline (or even perhaps expel) them if they acted in a way that ran contrary to the terms of an agreement signed by the union on their behalf. But such union disciplinary action is very rare in practice.

13.10. There is no concept of a "lawful strike" in British law. Any employee who breaches the terms of his employment contract (or interferes with its performance) risks dismissal without remedy. Dismissal while taking industrial action can remove the right which the dismissed employee might otherwise have to take a complaint of unfair dismissal to an industrial tribunal.

CONFIDENTIAL

268/85
Annex A

DEPARTMENT OF EMPLOYMENT
Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-273 5138
Switchboard 01-273 3000 Telex 915564
GTN Code 273 Facsimile 01-273 5124

To Labour Attachés:
Paris, Bonn, Brussels & Rome;
Labour Reporting Officers:
Oslo, Lisbon, Madrid, Dublin,
Athens, Copenhagen.

Your reference

Our reference 4/OS/141/84

27 April 1988

NO STRIKE AGREEMENTS IN ESSENTIAL SERVICES

In response to the enclosed letter from the Prime Minister's private secretary the Secretary of State has agreed to prepare a report on developments in Europe with respect to no-strike agreements in essential services.

Our industrial relations branch (IRB) has done some preliminary work and the results of their scan of published material are enclosed. Annex A contains information obtained from news items in issues of the European Industrial Relations Review since January 1987; Annex B contains material from the 1981 Green Paper "Trade Union Immunities" describing industrial relations law in other countries; supplementary information from a 1986 publication "Employment Regulations in Europe" is attached as Annex C.

Preliminary advice, drawing on this information, has already been given to the Prime Minister (a copy of the relevant letter is attached at Annex D). This points out that other countries have traditions and industrial relations practices very different from our own - for example, during industrial disputes the employment contract may be suspended rather than, as in Britain, breached. In addition, legislative solutions must be set against different industrial relations backgrounds; for example, consideration in Italy of no-strike agreements, in which the Prime Minister has expressed particular interest, has undoubtedly been prompted by industrial unrest in several sectors over recent months.

To help with the preparation of the more considered report for the Prime Minister I would be grateful if, in respect of the countries which you cover, you could let me have any further background information which might be relevant to the Secretary of State's report, and correct/update the material in the Annexes. Mr McGuffog will note that the Prime Minister has expressed particular interest in Italian developments, so a full report on these would be very useful.

It will be important to co-ordinate your responses. Could you please aim to cover the situation as at 13 May, and send in your report etc. to arrive no later than the end of that month (earlier if possible). Supplementary reports dealing with developments after 13 May would also be welcome.

RAW

Sgd R A WELCH

ANNEX B

the regions of common law which came into operation a few years ago with the actuation of the regional system.

The right of action of the National Council of Economy and Labour is, as will be seen in greater detail later, limited exclusively to the subjects which come within its specific sphere of influence.

As to the *People's action*, it comes under the institutions of direct democracy which the Constitution has founded to ensure the active and immediate participation of the people in drafting the laws. Italian citizens can take the initiative directly in lawmaking, through the proposal, by at least 50,000 electors, of a law drawn up in articles and which is submitted to the Speaker's office of one or other of the Chambers.

The other institution of direct democracy is the *referendum*, namely a direct appeal to the electorate to ascertain whether or not they wish a certain law to be applied.

The referendum may be of two kinds: abrogative, aiming at the repeal of a law in force; suspensive, aiming at preventing the coming into force of a constitutional law approved by the Chambers, but not yet promulgated. In both cases, a referendum is only possible where certain prerequisites laid down by the Constitution (Art. 75) are present, and the proposal of the referendum is approved if the majority of the votes validly cast has been reached, as long as (in the case of an abrogative referendum) the majority of the electors have taking part in the voting.

For an abrogative referendum an application by at least 500,000 electors must be made or that of five regional councils. It is not possible to apply to obtain the repeal of laws relating to taxation or to the budget, to amnesty or pardon, and to authorization to ratify international treaties.

It was not possible for more than twenty years to hold a *referendum*, because there was no law governing the matter, which was referred to in Article 75 of the Italian Constitution. The regulations for both people's action and for the referendum were given in Law No. 325 of May 25, 1970. The first referendum held in Italy was for the repeal of Law No. 898 of December 1, 1970, which introduced Italian legislation on divorce.

DRAFTING THE LAWS.

The way in which the Chambers come to debate and to vote on a bill (or draft law), is only in part governed by the Constitution, so that

there remains considerable freedom for each Chamber to act under its own internal regulations. The few Constitutional norms are aimed at ensuring that two opposite, but fundamental, requirements are met: on the one hand that decisions in such an important matter as legislative questions are thoroughly considered, avoiding to rapid procedures which do not offer adequate guarantees; on the other that all useless long-drawn-out procedure be eliminated so as not to burden the Chambers with work and thus prevent them acting with the promptness required.

Article 72 lays down the stages a draft law must pass through before being approved.

The draft law, once it has reached the Speaker's office of one of the Chambers, is sent on to the standing committee competent in the matter, which, after discussing it, draws up a report. The draft law, together with the report, is distributed to the members of the Chamber prior to the sitting on whose agenda it has been entered. In this case it is said that the committee is working as a *reference body*.

The draft law is next debated in the Chamber, first in general and then in relation to the individual articles, each member of the Chamber having the right to propose amendments and additional articles. The voting stage is then reached and the proposed law is approved if it receives a majority of the votes.

When a draft law has been approved by one of the Chambers, it is sent on to the other, where it undergoes the same procedure. If the draft law is approved by this second Chamber with amendments, it must be sent back to the Assembly which first approved it, which usually will then only debate the amendments introduced. The draft law is approved only when agreement has been reached on an identical text by both the Chamber and Senate.

At certain times, however, either for reasons of urgency, or for technical purposes, the proposal may be examined and approved by committee. In this case, it is working as a *decisional body* (but a decision of the Chamber is always necessary for this type of shortened procedure). This procedure cannot be followed, however, in the case of constitutional or electoral affairs, delegation of legislative powers to the organs of executive power, authorization to ratify international agreements, and the approval of estimated and definitive budgets. Nevertheless, the Assembly is always sovereign, in the sense that at any time it can recall to itself the draft law submitted to the committee's deliberations, for normal debate and approval in the Chamber, it suffices that a tenth of the members of the Chamber or one fifth of the committee — or also

the Government -- apply for the intervention of the plenary Assembly for discussion and voting or alternatively for final approval only.

With the approval by the two Chambers, the procedure for the drafting of the law is completed. But for the law to become executive, suitable that is to produce its effects, it must be promulgated by the President of the Republic; this is a formal act of fundamental importance, which takes practical form with the law being added to the *Official Register of the Laws and Decrees of the President of the Republic* as well as in the obligation to observe it and to see that it is observed as the law of the land.

The promulgation of the new law is, for the President, a necessary act and must be performed within one month from approval of the law. However, this period may be suspended if, as already stated when dealing with the powers of the Head of State, he returns it for a new decision to the Chambers setting out the reasons for this. This means that the Chambers have to re-examine the question.

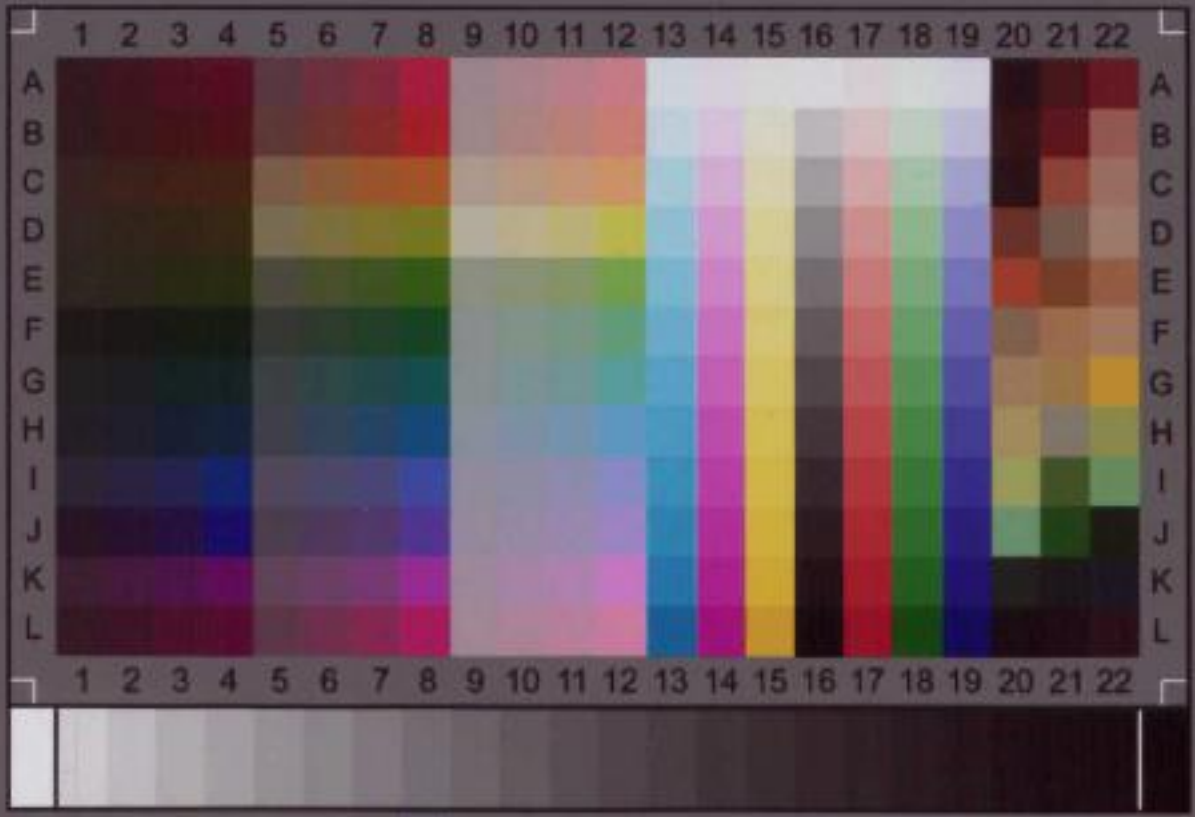
If these approve the law a second time, promulgation cannot be further delayed. The promulgation is followed by the authorizing signature and by the affixing of the State seal by the Minister of Mercy and Justice, the insertion of the original document in the *Official Register of Laws and Decrees* and, finally, its publication in the *Official Gazette of the Republic*, so that it may be brought to the notice of all the citizens. On the fifteenth day following the publication of the law, this will come into force, unless the law itself lays down a different period.

This applies to the so-called ordinary laws. An altogether special procedure has been laid down for constitutional laws, i. e. for those laws to which is reserved the power to modify the Constitution and, in any case, to regulate constitutional questions.

The revision of the constitution can be promoted by the Government or by the Chambers; but the modifying law requires for its promulgation double approval by both parliamentary assemblies. In fact such laws must be approved by an absolute majority of votes and in two successive debates, at an interval of at least three months between the first and the second ballot. This will also be dealt with in the part on the Constitutional Court.

Delegation of power to the Government.

The case is by no means rare in which Parliament, faced with the need of a legislative reform of a particularly complex nature, or of a


1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22
A B C D E F G H I J K L
IT8.7/2-1993
2009:02
Image Access
IT-8 Target
Printed on Kodak Professional Paper
Charge: R090212