

PRIME MINISTER

Green Paper on Trade Union Immunities

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

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

Or

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

Or

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

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

PL

28 November 1980

I think John should decide which are most important. Then draft a memo to send to Dept of Employment^x himself. He could discuss his points with them before E.

Copied to ~~Chancellor~~

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W Whitmore
28 November 1980
Policy Unit

Lead Pol

HW
28/11

PRIME MINISTER

GREEN PAPER ON TRADE UNION IMMUNITIES

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

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

3. If you do decide to raise some issues with Jim Prior now, some of our comments are subsidiary ones. The main points we think you should take up are:
 - (1) Timing.
 - (2) Our four general points on tone and content. (We could make specific points to officials.)
 - (3) The treatment of the vicarious responsibility problem. It is not necessarily an obstacle.
 - (4) The omission of secret ballots for union elections.
 - (5) The treatment of strikes in essential services.

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

John Hoskyns

JOHN HOSKYNs

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COMMENTS ON DRAFT GREEN PAPER ON TRADE UNION IMMUNITIES1. OBJECTIVES: THE CASE FOR TRADE UNION REFORMS

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

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

2. GOVERNMENT MUST LEAD THE WAY

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

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- (a) A shift in the balance of bargaining power towards management.
- (b) An incentive for unions to stick to agreements once made.
- (c) Greater democracy within unions, limiting the power of militant minorities.
- (d) Pressure on unions to perform a positive role.

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

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

3. TIMING

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

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

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

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

4. TONE AND CONTENT: GENERAL POINTS

- 4.1 Of course a consultative paper needs to avoid prejudging the issues on which comment is invited. Large parts of the present draft present the issues fairly and do not, in our view, require amendment. But we have four main criticisms:
- 4.1.1 The opening paragraphs do not set the scene properly. They do not describe an economy which has performed very badly by comparison with other industrial countries. They need to convey more strongly our need to find a system that works better if we are to regain some of the lost ground. Productivity is not mentioned. A reference to West German living standards compared with our own, and the West German system that we compete with, is needed. Ideally, the whole propaganda debate should be conducted by contrasting the German system - and its results, under both parties - with ours. The objective is an industrial system that works better, for everyone's benefit (workers, managers, the unemployed, sick, pensioners, etc).
- 4.1.2 There are several places where the draft is too studiously neutral. It is commendably clear on the Government's views of the closed shop and of the value of legally enforceable agreements. But elsewhere, it appears indifferent between the arguments for change versus the argument that change would be resisted and would therefore be too difficult.
- 4.1.3 It makes heavy weather of the deep attachment that trade unions have to the status quo. By repeating this on several occasions, it gives an added respectability to this factor. Of course we need to take it into account, but we do not need to make the Opposition's case for them. In particular, references to a system

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

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

5. COMMENTS ON EACH CHAPTER

5.1 Chapter 1: Introduction

5.1.1 Opening paragraphs - see comments at 4.1.1 above.

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

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

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Chapter 2: History and Development of Immunities

- 5.2.1 This seems a very fair and useful account of the development of trade union law. We have only two comments.
- 5.2.2 It draws insufficient attention to the way in which the law has put increasing responsibilities on employers, while the general trend has been for union power to grow stronger under a regime of immunity. Employers have now accumulated a large range of obligations towards their employees, eg restrictions on the circumstances in which they can be dismissed, redundancy provisions, safety requirements. So the law has entered the field. The whole picture is not a voluntary one.
- 5.2.3 There should be some cross-reference in this chapter (at least in the final paragraph) to the annexes on the alternative systems in other countries.

5.3 Chapter 3: Possible Changes

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

5.4 Section A: Trade Union Immunities

- 5.4.1 We think that exposure of trade union funds is the key to making these organisations behave more responsibly - it is therefore crucial to the bargaining imbalance. At present a strike costs a company a great deal of money; it can cost a union nothing. Our decisions on deeming did not alter this much. The result is not just the strikes, but the way in which companies time and again give in to pay demands, restrictive practices and thus low productivity, rather than face a strike when the odds are so stacked against them. This point, that it is the strike threat that does the damage (just as it is the nuclear deterrent that keeps the peace) is overlooked again and again.
- 5.4.2 Paragraph 17 makes very heavy weather of the problem of vicarious responsibility. It should be possible to give a fairly clear definition of the "best endeavours" that a union is required to exert. The last line of paragraph 14 suggests one obvious route:

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

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

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

5.5 Section E: Secret Ballots

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

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

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6 Section G: Picketing

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

5.7 Section H: Protecting the Community

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

5.8 Chapter 5: Conclusion

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

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

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OTHER OMISSIONS

6.1 Political Levy

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

6.2 Section 17 of the 1974 Act

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

7. CONCLUSION

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

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

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

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