



2 ops  
2

PRIME MINISTER

PRIME MINISTER

ms  
Comments from John  
Horskyar (and the codes  
themselves) attached.

CODES OF PRACTICE ON THE CLOSED SHOP AND PICKETING

I have now completed my consideration of the comments I have received on the draft Codes. The attached note summarises the main comments and indicates how I intend to deal with them. I also attach the revised texts of the Codes as I propose to put them to Parliament for approval (changes since the published drafts are side-lined). MS 29/10

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

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

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

#### Press Freedom

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



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

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

JP  
12 OCTOBER 1980

## CODES OF PRACTICE ON THE CLOSED SHOP AND PICKETING

## OUTCOME OF CONSULTATIONS

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

## GENERAL

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

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

## CODE ON THE CLOSED SHOP

Periodic Review (paragraphs 42-46)

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

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

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

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

#### Union Disciplinary Action (paragraph 54)

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

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

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

#### CODE ON PICKETING

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

#### Guidance to employers

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

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

- presentational: employers are not "responsible" for picketing: they are normally its victims: why then should the Code put any obligations on them?
- legal: the inclusion of guidance to employers might be misconstrued as placing obligations on them, and, if they failed to observe them, might make it more difficult to obtain injunctions against unlawful pickets (eg pickets might claim in defence that the employer had not consulted them or had failed to give them information which would have enabled them to avoid acting unlawfully).
- practical: the items suggested by the IPM indicate the difficulty of drawing up any sensible guidance for employers; some would provoke derision (eg the provision of cups of tea).

#### The limit of 6 pickets

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

CONFIDENTIAL

MS



file

cc: D/T  
 MAFF  
 LPO  
 D/Ind  
 HMT  
 FCO  
 CO  
 Ch. Sec. HMT  
 D/En.  
 HO  
 LCO  
 27 October 1980

Att. Gen.  
 Ld. Adv.  
 CDL  
 Ch. Whip  
 bcc:  
 Mr. Hoskyns  
 Mr. Ingham

10 DOWNING STREET

From the Private Secretary

*Dear Richard,*

Codes of Practice on the Closed Shop and Picketing

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

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

*Richard Dykes*

*The Labour*

Richard Dykes Esq  
 Department of Employment.

CONFIDENTIAL

BK