

PRIME MINISTER

TRADE UNION LEGISLATION: THE NEXT STEP

1. Jim Prior will put proposals to E in mid September. You planned to discuss his ideas in advance with him, Francis Pym and the Chief Whip, but this has been postponed to September. By then he may be almost ready with proposals for colleagues. We think this will be a minimalist package with only limited economic and political impact.
2. The attached paper discusses the purposes of further measures of reform, then describes and assesses the options as we see them - within the framework of the step-by-step approach to which the Party is committed.
3. Geoffrey wrote to Jim on 30 July encouraging him to think radically, but his letter did not attempt to say what steps should have first priority during the present Parliament.
4. Since you were unable to discuss the subject with Jim before the holidays, we think Tim or I should send this paper to the Department of Employment - and preferably to other E colleagues to remind them what is at stake. We also think you might find it useful to expand your early September meeting slightly to include colleagues with a direct interest, like Geoffrey and Keith (or Norman Tebbit) and a neutral but hard-headed figure like Patrick Jenkin - who is also a large employer.
5. If required for reference, we have a convenient summary of the main responses to the Green Paper, prepared by the Institute of Directors research staff. We have sent this to Geoffrey.

Agree?  
TJ  
..

JOHN HOSKYNs

David Austin

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

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

TJ

TRADE UNION REFORM: THE NEXT STEP1. PURPOSES

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

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

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

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

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

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

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

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

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- (b) demonstrating that some of the more difficult but necessary reforms can be made to stick, and so heading off the charge that the Manifesto contains unworkable, confrontational policies;
- (c) heading off a more radical approach by the SDP; there is already some evidence of their moving to the right on the unions and the social market economy;
- (d) enabling us to explain and defend our economic measures coherently - putting much of the blame for unemployment on unions - and pointing to action taken (not just promises) to avoid a repetition of stagnation and high unemployment.

## 2. THE NEED FOR A PLAN

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

2.2 Different measures have different characteristics, for example:

- (a) Those which are readily comprehensible and politically saleable - "you know it makes sense" - but which have limited real impact on the bargaining balance.
- (b) Those with significant impact on the balance in the private sector.
- (c) Those which curtail the monopoly bargaining power in the public sector.

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

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

## 3. MEASURES AVAILABLE

### 3.1 Closed shop

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

### 3.2 Making trade unions liable to civil action

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

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

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

3.4 Secret ballots

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

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

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- 3.4.3 Although unions object strongly to interference in their own procedures, we believe the most straightforward way of making this reform is to declare that in future whatever Section 13 and 14 immunities are available, these are only available to trade unions - and their officers and members - which have adopted secret ballots for both elections and strike decisions as part of their own rules. In addition, it would be necessary for the strike decision to have actually been taken by secret ballot to qualify for immunity.
- 3.4.4 Most respondents have not advocated trying to affect union elections, concentrating on strike decisions. Even on strike decisions, many have argued against compulsory secret ballots. But making all immunity conditional on a secret ballot is not compulsion: it merely defines minimum procedures necessary to obtain a privilege. Strikers who did not comply would take the chance that others (their employers, other workers, aggrieved third parties) might seek a civil remedy.
- 3.4.5 A halfway house suggested by many companies (which received widespread back-bench support last year) is to legislate to provide for the right of a group of workers affected by a proposed strike to petition for a ballot. Again, the sanction could be loss of all immunities.
- 3.4.6 Another measure proposed by some is that immunity for secondary action should be conditional on a secret ballot having taken place. We think this is objectionable in principle: if we conclude that secondary action is unfair, then it must always be unfair; the right to injure third parties should not simply depend on a vote.
- 3.5 Restraining public sector bargaining power
- 3.5.1 In our view, the root problems in the public sector are connected with their monopoly or near-monopoly status. Our first priority should be to introduce an element of competition wherever possible. Legal changes in the status of trade unions can only have a limited impact. The Green Paper discussed a variety of proposals for "protecting the community". In the end, most of these fall down on the problem of enforcement. Few respondents have suggested that strikes should be made unlawful in essential services, though that could come one day, once we have established the means to enforcement. Some (including EEF) favour a power to order a cooling-off period.

- 3.5.2 Many companies have suggested that the best answer to public sector bargaining power is no-strike agreements. With the present imbalance in bargaining power, the cost of these would often be too high, but in any event they do not constitute a legislative change. (Once the power of the strike threat is reduced, the cost would lower.)
- 3.5.3 However, there is one suggestion which would have a real impact on bargaining power in the public sector, especially on heading off the growing power of the selective strike. This is the EEF's proposal for enabling firms to lay off white collar workers without pay when their normal work is disrupted by the action of others within the company. The EEF have also suggested a still more radical proposal: that companies should be free to lay off all workers during disruption of essential services. The former idea is overdue and may even gain some support from manual workers, who at present enjoy a less privileged position. Memories of the use of selective action against the taxpayer by the Civil Service are still fresh. But the second idea would be stigmatised as an interference in employment contracts which affected the status of all employees in a fundamental way. It has attractions, but would be very hard to sell.

### 3.6 Unfair dismissal

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

## 4. THE RIGHT KIND OF PACKAGE

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

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

- (a) an essentially cosmetic package of minor changes; or
- (b) a comprehensive package whose workability would be very hard to establish in the lifetime of this Government.

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

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

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

plus

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

plus

- (c) one of the following:
  - (i) making trade union funds liable, by aligning Section 14 immunities with Section 13;
- or
  - (ii) making all Section 13 and 14 immunities conditional upon a union requiring secret ballots for strike decisions and elections, and ballots actually taking place;
- or
  - (iii) giving, say, 15% of workers affected by a dispute the right to call for a ballot first - with the loss of all Section 13 and 14 immunities where their wishes were denied.

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

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

5. CONCLUSION

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

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