



Prime Minister (1)

Agree to the revised

Green Paper (Ferdie Mount

Yes so recommends and publication after in the week of 10 January?

MCS 6/12

PRIME MINISTER

GREEN PAPER ON TRADE UNION DEMOCRACY

1. I have considered carefully all the comments that have come to me on the draft I circulated on 18 November.
2. As for strike ballots, I accept your view that some of the difficulties were over-emphasised although I do believe it important to distinguish between ballots imposed by law and the evident need for ballots to be much more widely adopted. I attach drafting changes I have adopted for the key paragraphs which also meet points made by the Chancellor and the Secretary of State for Energy.
3. As for the section on union elections, I do not think we should at this stage display a preference for a particular legislative option as the Chancellor has suggested. I see considerable advantage in keeping all our options open and stimulating a debate without becoming attached to any one course of action. But with this in mind I am deleting the last sentence of paragraph 48(c).
4. The Chancellor also suggested that the Green Paper should discuss the issue of union members who might be prevented from standing for election for some discriminatory reason. I accept this point and attach new paragraphs (99-102) which focus on requirements for candidates to be members of a particular political party. I have also accepted his suggestion that paragraph 10 would better follow paragraphs 11 and 12.
5. I do however propose to retain paragraph 54. The proposal is not an alternative to statutory regulation but rather a possible option which might be contemplated as part of a statutory scheme. I see its inclusion in the Green Paper as making it much more difficult for trade unions to see to condemn outright our broad approach. I have however put it in more tentative form.



6. As you suggested, I am also shortening and modifying the concluding section.

7. I have now concluded that it would be better to publish the Green Paper in the week beginning 10 January, rather than before Christmas. In the main this is because I am issuing next week, in consultative form as I must, a revised version of the Code of Practice on the Closed Shop which needs to be amended both to reflect the changes in the law following the Employment Act 1980 and the experience of the operation of closed shop agreements since the Code was first approved in 1980. I want to ensure that this has full publicity as a further step in strengthening the protection of the individual against the closed shop. Secondly, I judge it desirable to publish the Green Paper before the Conservative Trade Unionists Conference on 15 January even though the House might not have reassembled.

8. I am copying this minute to recipients of my minute of 18 November and to the Chief Whip.

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3 December 1982

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AMENDMENTS TO THE TEXT

Para 54; fifth and sixth sentences

".... whether such arrangements could not then be accepted as a valid alternative to the specified legislative requirements. Thus it might be provided in the legislation that if a majority of the total membership of a trade union had on a vote in a secret ballot expressed support for the union's rules for elections, and periodically confirmed that support, the specific statutory requirements would not apply."

Para 62; second sentence

"It was exercised only once: in the British Rail dispute in 1972 when a official work-to-rule and overtime ban had already seriously disrupted services. On an 85% turnout"

Para 62; fifth sentence onwards

"It is argued that this experience indicates that ballots imposed externally in the course of a dispute generally become a test of solidarity and of support for the trade union leadership and policies and that the result of mandatory ballots, so far from bringing disputes to an end, may be to prolong them. On the other hand, it could also be argued that the prospect of a mandatory ballot may influence trade union leaders to be more careful to ensure that they have the backing of their members before embarking on a strike. On either view, the experience of mandatory ballots contrasts noticeably with the experience of some recent non-mandatory ballots conducted by trade unions and employers which have resulted in the decisive repudiation of strike calls and the acceptance of management pay offers, sometimes in defiance of the advice of trade union leaders".

Para 64; add at end

"Those trade unions which already hold strike ballots on the whole manage to resolve these questions, but under a system of mandatory ballots detailed legislative provisions would be needed to prevent possible abuse and to reduce the likelihood of litigation."

Para 66

"Thirdly, how would the wording of the question be put and the timing of the

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ballot be decided? It is often argued that if either or both were left entirely to those who wanted the strike to take place, the purpose of the legislation might be frustrated; for example, there might be a risk that the question would be slanted or linked with extraneous issues. The experience of recent strike ballots does not suggest that the membership is invariably swayed by the wording of the question or by its linkage with extraneous issues to vote in accordance with the wishes of the leadership. None the less, any legislation would have to clarify the ground rules for mandatory strike ballots including the rules for formulating the question to be put. Should those who trigger the ballot

Para 67

"The argument for enabling an employer to "trigger" a ballot by the union (that is, to require one as a condition of immunity) is that strike ballots can be - and often are - an important tactical weapon. If the responsibility for conducting the ballot lay with the trade unions they could take steps to ensure that ballots were held in the circumstances and on the issues most likely to strengthen the hand of their leaders. There might be a danger that negotiations would become increasingly directed to setting the stage for the eventual ballots rather than finding agreement. On the other hand, where union leadership is weak, "triggered" ballots might be used by militants to force the hand of more responsible leaders and to put at risk the functioning of established collective bargaining procedures. If the initiative for the holding of ballots lay with employers these risks would be reduced."

New paras 99-102

Contributing to the Political Fund and the Election of Trade Union Officers

99 One of the basic principles which underlies the 1913 Act is that a trade union member should not suffer as far as his union membership is concerned by refraining from giving support to a political organisation if he does not wish to do so. However it may be thought that the rules about the election of trade union officers in some unions with political funds run counter to this principle. All but three unions with political funds are affiliated to a political party and the election of delegates to represent the union in that party's affairs is usually confined to contributors to the political fund. However the rules of the National Union of Railwaymen specifically require that its main office-holders are to act as the union's

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delegates. Although voting in elections to those posts involves the whole membership, candidates are disqualified if they are not constituency members of the political party which the union supports. The prescribed duties of elected office-holders in some other unions may achieve the same effect without a specific restriction being stated in their rules. Because attendance as a union delegate at conferences of the organisations to which the union is affiliated is part of the job, a member wishing to stand for election to these posts knows that, if successful, he must join the political party which his union supports.

100 It has been argued that such restrictions are reasonable and in line with the objectives of the 1913 Act. Once the decision to establish a political fund has been taken, a trade union is entitled to expect that its senior officers should invariably be closely concerned with all its political activities including the management of the political fund, the sponsorship of parliamentary candidates and the formulation of political policies. On the other hand the rules of at least one union (The Association of Professional Executive Clerical and Computer Staff) in effect recognise that while its office-holders may often support the union's political objects, non-contributors to the political fund should not be excluded. It provides that its President and General Secretary are to act as union delegates but only if they are eligible to do so.

101 The Trade Union Act 1913 already provides that a union member who is exempt from the obligation to contribute to the union's political fund shall not be placed under any disability or disadvantage as compared with other members by reason of being exempt, except in relation to the control on management of the political fund. This exception could be taken to mean that the law enabled the contracted-out member to be excluded from any office which was concerned in any way with the management or control of the political fund. However a High Court ruling* has established this not be the case in offices below national level. The position is less clear-cut at national level as no relevant cases have reached the Courts. Moreover the 1913 Act is directed towards ensuring that a union member who is exempt from contributing to the political fund does not suffer discrimination by a

* Birch v NUR [1950] 2 All E.R. 253, 260

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comparison with a member who does. If the rules of a union effectively require as a condition of office that a member must become a constituency member of the political party which the union supports, irrespective of whether he is also an affiliated member through his contribution to the political fund, then the existing protections may not apply. The restriction applies equally to all members of the union whether or not they contribute to the political fund and may be held not to involve discrimination.

102 Trade union rules which prevent or deter a member from holding office because he is opposed to his union's political objects are objectionable in principle. It may be thought that the operation of the 1913 Act should be clarified so that, apart from elections to posts concerned exclusively with managing the political fund and furthering the union's political activities, membership of the political party supported by the union is not made, either directly or indirectly, a condition for election or for holding union office.

Para 123 (para 122 being deleted)

"It is clear that the uncertain legal status of trade unions in their formative years has influenced their attitudes to the law. Its intervention in their affairs has since been seen by them as a threat to their ability to pursue what they conceive to be their own best interests and those of their members. But unions can wield great power over the lives of their members and the Government has a duty to see that union members have adequate protection against the abuse of this power. There must also be a proper balance between the interests of unions and the needs of the community; and organisations which claim and have special privileges must conduct their affairs in ways which attract public confidence and the confidence of their members. In the Government's view, while it is right in a democracy that trade unions should be free to conduct their own affairs and indeed to introduce reform at their own initiative, society, including individual trade unionists themselves, is entitled to see minimum standards established to ensure that union power is exercised more responsibly, more accountably and more in accordance with the views of their members.

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