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*cc. Mrs.
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Dear Mike,

INDUSTRIAL RELATIONS LEGISLATION

You told me this morning that the Prime Minister had raised a question about whether it was necessary to make a statement on the publication of the proposals for industrial relations legislation.

I have discussed this with my Secretary of State who is convinced that a statement is essential. He believes it would be certain to cause uproar in the House if these proposals, which are of course awaited with intense interest both within the House and outside, were launched by way of written answer, especially if this were to be followed by a press conference and radio and television interviews. Further, it seems to him that there are positive advantages for the Government in giving these proposals maximum publicity. A statement would clearly help in this respect too.

As we agreed, unless you are able to let me know that the Prime Minister agrees to a statement being made, Mr Tebbit will try to have a quick word with her in the Chamber immediately after Questions this afternoon.

Finally, I am enclosing as promised a copy both of the draft statement and of the working paper.

You - ever

Richard Dykes

R T B DYKES
Principal Private Secretary

STATEMENT BY MR NORMAN TEBBIT, SECRETARY OF STATE FOR EMPLOYMENT

PROPOSALS FOR INDUSTRIAL RELATIONS LEGISLATION

With permission, Mr Speaker, I should like to make a statement on the Government's proposals for further industrial relations legislation.

These proposals have been prepared in the light of the extensive consultations on the basis of the Green Paper on Trade Union Immunities published in January of this year. These consultations have shown that there is a wide measure of agreement on the issues which need to be tackled and wide spread support for a further legislative step in this session of Parliament.

Our proposals are therefore a direct response to those consultations. I have today placed in the library copies of a document explaining the proposals in detail. They cover the closed shop, the definition of a trade dispute and the immunity for trade unions themselves.

On the closed shop we propose - first that the compensation for someone who is unfairly dismissed because he is not a member of a trade union should be increased substantially; - secondly that existing, established closed shops should be subject to a periodic ballot; and thirdly, that anyone who is unfairly dismissed in a closed shop because of trade union pressure should be able to seek compensation directly from that trade union.

We also propose that the practice of requiring contractors to employ only trade union members as a condition of seeking or obtaining a contract should be made unlawful.

We propose to tighten up the definition of a trade dispute which is now unacceptably wide. Our proposals are designed to ensure that disputes which are predominantly political or personal, and disputes which do not directly involve an employer and his own employees, are excluded from the statutory definition and therefore do not attract immunity.

Finally, we propose that the immunity of trade unions themselves should be brought into line with the immunity for individual trade union officials and their members. We do not believe that it is right or necessary for trade unions to continue to enjoy an immunity which, as the Donovan Commission pointed out, is wider than that of any other organisation or person, even the Crown.

The Government's intention is to bring forward a bill as soon as possible after the Christmas recess. In the meantime the document being published today invites comments on our proposals.

In formulating these proposals our aim has been twofold: first, to safeguard the liberty of the individual from the abuse of industrial power; and secondly, to improve the operation of the labour market by providing a balanced framework of industrial relations law. These aims are fundamental to any civilised and prosperous society. The need for further legislation to help to achieve them is clear and we believe the time is right.

PROPOSALS FOR INDUSTRIAL RELATIONS LEGISLATION

Introduction

1. The Government intend to introduce further legislation to improve the operation of the labour market by providing a fairer and more balanced framework of industrial relations law and to curb a number of continuing abuses of trade union power. The Employment Act 1980 was an important first step in this process, particularly in relation to the closed shop, secondary picketing and secondary industrial action. The Government believe that the time is now right to take a further step. Their proposals for legislation, to be introduced in this session of Parliament, are set out below.

2. The Government have drawn up their proposals after extensive consultations on the basis of the Green Paper on Trade Union Immunities (Cmnd 8128). Over 300 organisations and individuals submitted comments. These showed that there is overwhelming support in industry for a further legislative step in this Parliament. The Government have also taken into account - particularly in developing their proposals on the closed shop - the experience of the operation of the Employment Act.

The closed shop

3. The consultations on the Green Paper have shown that there remains widespread public concern about the closed shop. Closed shop agreements restrict unacceptably the freedom of individuals to choose for themselves whether or not they wish to join a trade union. In some cases their existence is a barrier to the removal of restrictive practices and to improved efficiency and competitiveness.

4. Public concern has been increased in recent months by the actions of Sandwell and Walsall Councils. Their enforcement of closed shop agreements, regardless of the wishes of their employees, and their dismissal of non-union employees regardless of their rights have reinforced the need for legislation to strengthen further the protection for individuals provided by the Employment Act.

5. The Employment Act 1980 greatly increases the protection for individuals in a closed shop. It makes it unfair to dismiss an employee for non-membership of a trade union in a closed shop on three grounds:

- (a) where the employee is an existing employee of the employer concerned before the closed shop agreement came into effect and has not been a member of one of the specified trade unions since;
- (b) where the employee can show a genuine objection to trade union membership on grounds of conscience or other deeply held personal conviction; or
- (c) in the case of a new closed shop set up after the provisions of the Employment Act came into force (on 15 August 1980), where the agreement has not been approved by 80% of the employees concerned voting in a secret ballot.

The remedy for an employee who is unfairly dismissed is a complaint to an industrial tribunal which may award compensation, and, if it thinks it practicable, reinstatement.

6. The Government propose to reinforce these provisions in four ways.

(i) Increased compensation

7. The present levels of compensation available to closed shop victims do not act as a sufficient deterrent to an employer who is minded to dismiss an employee unfairly in order to enforce a closed shop agreement. Nor do they provide adequate compensation to dismissed employees, particularly low paid employees, whose dismissal involves a serious loss of livelihood. The Government, therefore, propose to increase substantially the levels of compensation available in cases of unfair dismissal in a closed shop.

8. At present compensation for unfair dismissal for an 'inadmissible reason' - eg unfair dismissal in a closed shop or for trade union membership or activities - is in three parts:

- (a) a basic award of between $\frac{1}{2}$ week's pay and $1\frac{1}{2}$ weeks' pay for each complete year of employment (depending on age) subject to a maximum of £3,900 (ie £130 x 30 weeks for a maximum of 20 years' service);
- (b) a compensatory award based on loss of earnings in the past and future, loss of pension rights, subject to a maximum of £6,250;
- (c) an additional award of 26-52 weeks' pay at the tribunal's discretion (subject to a maximum of £6,760) if the employer refuses to comply with an order for reinstatement.

The maximum award is £10,150 if no reinstatement order is made; and £16,910 if the employer does not comply with a reinstatement order.

9. In deciding whether to make an order of reinstatement the industrial tribunal must take into account three tests:

- (a) whether the complainant wishes to be reinstated;
- (b) whether it is practicable for the employer to comply with an order for reinstatement;
- (c) where the complainant caused or contributed to some extent to his dismissal, whether it would be just to order his reinstatement.

10. Under the Government's proposal an employee would be differently treated according to whether he sought reinstatement.

11. If the employee did not seek reinstatement then the following compensation would be available:

- (a) a basic award calculated as now (up to the present £3,900 maximum) but subject to a minimum of £2,000;
- (b) a compensatory award calculated as now but with the upper limit abolished.

12. If the employee sought reinstatement, the tribunal would be required, in deciding whether to make an order for reinstatement, to consider only whether it was practicable for the employer to comply with an order for reinstatement. If it decided that it was not practicable for the employer to comply, compensation would be awarded as follows:

- (a) a basic award calculated as above (ie as now but subject to a minimum of £2,000);
- (b) a compensatory award calculated as now but with the upper limit abolished;
- (c) a special award of $2\frac{1}{2}$ x annual salary subject to a minimum of £12,000.

13. If the tribunal made an order of reinstatement which was complied with, then the present rules would apply ie any loss incurred between the dismissal and reinstatement would be made good by the employer.

14. If the tribunal made an order of reinstatement which was not complied with, then the tribunal would make an additional award of 3 x the annual salary subject to a minimum of £15,000 (ie in place of the "special award" described in paragraph 12(c)).

15. This would mean that a man on average earnings (about £7,500) could expect total compensation of over £20,000 if the tribunal decided it was not practicable for the employer to reinstate and over £24,000 if the tribunal ordered reinstatement which was not complied with.

16. The Government propose that these enhanced levels of compensation should also apply to dismissal on grounds of trade union membership and activity.

(ii) Interim relief

17. At present an employee who is dismissed for trade union membership or activities can apply to an industrial tribunal for "interim relief" ie for an order requiring the employer to observe the employee's contract of employment until the full hearing of the dismissal complaint. It is proposed that interim relief should also be available to employees dismissed for non-membership of a trade union in a closed shop.

(iii) Periodic review of existing closed shops

18. The Employment Act places an obligation on an employer setting up a new closed shop agreement to test the support for that agreement in a secret ballot of his employees (see paragraph 5(c) above). The Government believe that the same principle should now be applied to all existing closed shop agreements.

19. It is proposed, therefore, that in future dismissal for non-membership of a trade union in a closed shop should be regarded as unfair if:

(a) there has been no secret ballot of the employees covered by the agreement within 12 months of the new legislation coming into effect or within a stated previous period (perhaps 3 or 5 years); or

(b) where there has been a ballot, if it has not shown overwhelming support (perhaps 80% of those covered or 85% of those voting) for the continuation of the closed shop.

Further ballots would be required at regular intervals (perhaps every 3 or 5 years) if liability for dismissal was to be avoided. Anyone dismissed for non-membership in these circumstances would qualify for the proposed increased rates of compensation and be able to apply for interim relief as described in paragraph 17.

(iv) Trade union contribution to compensation

20. In many cases of closed shop dismissals it is pressure (eg the threat of industrial action) from a trade union which leads to the dismissal and which may prevent an employer agreeing to reinstatement. The Government believe that where such pressure is exercised the trade union should be more readily accountable and liable to pay a share of any compensation which the tribunal awards.

21. The Employment Act has made it possible for an employer who has dismissed a non-union employee as a result of pressure from a trade union to "join" the union as a party to the proceedings, but he can do so only at the beginning of the proceedings. The tribunal may then order the union to reimburse the employer for some or all of the compensation awarded to the dismissed person.

22. The Government propose that in addition the dismissed employee should be able to "join" the trade union in the proceedings on the grounds that it has contributed to his dismissal by exerting pressure on the employer. Where a trade union, following joinder by either employer or employee, was found to have acted to enforce dismissal in this way, an award for compensation against it would be directly recoverable by the employee from the union, instead of, as now with employer joinder, from the employer. The compensation due would be obtained through the normal process for the recovery of debt.

23. It is also proposed that joinder should be possible at any stage in the proceedings.

Union labour only requirements

24. The consultations on the Green Paper have shown that there is particular concern about the practice of requiring contractors to use only union labour. Such practices have become more prevalent in recent years, not least among local authorities and some nationalised industries.

25. The Government regard such practices as unacceptable. They are a means of conscripting into unions employees who have no interest in being union members.

In some cases a small non-union firm may have no choice but to submit to the union labour only requirements and put pressure on its employees to join a union in order to avoid being put out of business.

26. The problem is often seen as being no more than the insistence on union labour only clauses in contracts. But some local authorities have also invited tenders from, or included on a list of recognised contractors, only those firms which have a closed shop or are prepared to guarantee to use only union labour. The Government, therefore, propose that:

- (a) any clause in a contract requiring the employment only of persons who are or who are not members of a union should be void (ie unenforceable at law); and
- (b) discrimination in inviting tenders for, offering, placing, or making contracts for the provision of goods or services on the grounds that anyone employed in connection with the performance of the contract should or should not be a member of a trade union should be unlawful.

27. In addition the Government propose to remove the statutory immunity from being sued in tort from any person who organises or threatens industrial action to put pressure on an employer to put a union labour only clause in a contract or to discriminate unlawfully.

28. A wider but connected question is that of industrial action with the objective of preventing an employer with a contract from fulfilling it because not all his employees are members of a trade union. The refusal of union members to work alongside non-union employees is deep-rooted in some industries and is often tolerated by employers. It has also to be accepted that it is not possible to eradicate this practice simply by changes in the law. It is nevertheless arguable that the Government's proposals on union labour only requirements would be incomplete if it continued to be lawful for a person to organise industrial action to prevent non-union employees fulfilling a contract which had been lawfully awarded. The Government are therefore considering whether to propose that the immunity for industrial action which interferes with the performance of a contract primarily on the grounds that those employed to perform that contract are or are not union members should be removed.

Trade union immunities

29. Trade unions enjoy a much wider legal immunity than their individual officials or members. Under section 14 of the Trade Union and Labour Relations Act 1974 trade

unions as such have virtually unlimited immunity from actions in tort, even where they organise industrial action outside a trade dispute. This means that trade unions cannot be sued for their unlawful acts or for unlawful acts done on their behalf by their officials.

30. The Government do not accept that the breadth of the immunities is any longer necessary in modern conditions to enable trade unions to represent their members effectively. It is unfair and anomalous that while trade union officials may be sued for organising unlawful industrial action on behalf of a trade union, the union itself can escape liability altogether. In these circumstances there is a lack of incentive for trade unions to ensure that their officials operate within the law and that industrial action is restricted to legitimate trade disputes and is otherwise lawful.

31. The consultations on the Green Paper show that there is substantial support for a reduction of the immunities for trade unions. The Government, therefore, propose that the immunities for trade unions should be brought in line with those for individuals in section 13 of the 1974 Act (as amended). The main effect of this would be to make trade unions themselves liable to be sued in tort when they are responsible:

(a) for unlawful acts which are not "in contemplation or furtherance of a trade dispute"; and

(b) for action which is unlawful for individuals by virtue of the limitations to section 13 made by the Employment Act 1980 (ie secondary picketing, indiscriminate secondary action and industrial action to compel union membership) and any amendments which may be made as a result of other proposals relating to immunities in this paper.

32. The Government believe that it is desirable to provide guidance in legislation as to when trade unions are to be held vicariously liable for unlawful acts committed by their officials. Such guidance would help unions and employers to establish more clearly the limits of immunity and liability.

33. The Government believe that any guidance on vicarious liability should be based on the common law principles which the House of Lords adopted in such cases as Heatons Transport (St Helens) Ltd v. TGWU (1972) and General Aviation Services (UK) Ltd v. TGWU (1976). It is therefore proposed that legislation should provide that where torts were committed by trade union officials the trade union would be held vicariously liable only if:

(a) the national executive of the union had specifically authorised or ratified the action complained of; or

(b) the subordinate body or official of the union whose action was complained of had authority for the action under the rules of the union or was acting on instructions from a body or officials who had such authority and its or his action had not been repudiated by a more senior authoritative body or official of the union.

34. This may not, however, be sufficient in situations where the trade union rules are ambiguous or unclear about whether a particular official or body has the authority to call industrial action. The Government are therefore considering proposing in addition that where the union rules do not clearly establish whether an official or body is acting within the authority of the trade union, the trade union should be liable unless a more senior authoritative body or official has repudiated the action.

35. Trade unions which were found liable for unlawful action could be sued for both injunctions and damages. The Government propose to limit the damages which could be awarded against a trade union in any one case according to the size of the union involved as follows:

fewer than 5000 members	£12,500
5,000 - 24,999	£62,000
25,000 - 100,000	£125,000
more than 100,000	£250,000

It is further proposed that a union's provident and political funds should be protected from liability in the event of an award for damages.

Definition of a trade dispute

36. The Government also propose to amend the present statutory definition of trade dispute, which as a result of the last Government's legislation and recent court decisions is unacceptably wide. Since the immunities for individuals (and, as proposed, trade unions) apply only to "acts done in contemplation or furtherance of a trade dispute", this will restrict further the immunities for those who organise industrial action.

37. Four amendments are proposed to the definition of a trade dispute in section 29 of the Trade Union and Labour Relations Act 1974:

(a) to require that trade disputes should relate wholly or mainly to the matters listed in section 29(1), rather than, as now, be simply "connected with" those matters. This is necessary in particular in the light of the House of Lords judgement in NWL Ltd v. Nelson and Woods (1979). It would ensure that disputes which were mainly political or personal in character and had only a slight connection with the subject of a trade dispute fell outside the trade dispute definition;

(b) to exclude disputes between "workers and workers";

(c) to exclude disputes relating solely to matters occurring outside Great Britain;

(d) to restrict trade disputes to disputes between an employer and his own employees. This would make disputes between an employer and a trade union where the employer had no dispute with his own employees unlawful. It would thereby remove immunity from secondary action which was directed at an employer whose employees were not taking industrial action themselves and were entirely content with their terms and conditions of employment. It would be necessary to ensure that an employer could not avoid being in legitimate dispute with his own employees simply by sacking those with whom he was in dispute.

Selective dismissal in a strike

38. Section 62 of the Employment Protection (Consolidation) Act 1978 removes from the industrial tribunal jurisdiction to hear complaints of unfair dismissal made by employees involved in a strike where the employer has dismissed all those participating in the industrial action. The tribunals retain jurisdiction, however, to hear complaints from employees on strike where the employer has discriminated by dismissing some but not all of the relevant employees. In 1978 the House of Lords ruled that participation in the industrial action refers to all the employees who have taken part in the industrial action, not merely those on strike at the time of the dismissal. Where, therefore, some employees have returned to work, an employer runs the risk of unfair dismissal complaints if he dismisses those remaining on strike.

39. This is clearly anomalous. It is therefore proposed to amend section 62 so that the tribunals have jurisdiction only where an employer discriminates by dismissing some but not all of those of his employees actually on strike at the

time of the dismissal. An employer would need to give postal or other effective notice (perhaps four working days) to all employees on strike of his intention to dismiss any who had not returned by the end of the notice period.

Ballots

40. Under section 1 of the Employment Act 1980 public funds are available for secret ballots for trade union elections and votes on certain other issues, including the calling and ending of strikes. It is proposed that the list of issues for which funds are available should be extended to cover votes on wage offers. This would be done by affirmative resolution, as provided for by the Employment Act.

Conclusion

41. The Government intend to introduce a Bill to give effect to these proposals early in the New Year. They would, therefore, welcome comments on the proposals by the end of the year. Comments should be sent to the Department of Employment, Caxton House, Tothill Street, London SW1H 9NF.