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✓ MCS
MA
BI



Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6400.....

Switchboard 01-213 3000

Willie Rickett Esq
Private Secretary
10 Downing Street
LONDON
SW1

12 July 1983

Dear Willie

PROPOSALS FOR LEGISLATION ON TRADE UNION DEMOCRACY

- ... I enclose a copy of the statement my Secretary of State will be making this afternoon.
- ... I also enclose, for information, a copy of the paper Mr Tebbit is publishing outlining his proposals for legislation.

I am sending copies of this letter to Murdo Maclean, David Beamish, David Heyhoe, Steve Godber and to the Private Secretaries to other members of E(A) and Richard Hatfield.

Yours Sincerely

Felicity Everiss

FELICITY EVERISS
Private Secretary

July 12, 1983

PROPOSALS FOR LEGISLATION ON DEMOCRACY IN TRADE UNIONS

1. The Government intend to introduce legislation in the current Session of Parliament to provide for greater democracy in trade unions in three important areas:

- elections for the governing bodies of trade unions
- ballots before strikes
- the political activities of trade unions

2. The Government have drawn up their proposals after extensive consultations on the basis of the Green Paper on "Democracy in Trade Unions" (Cmnd 8778) which was published in January 1983. More than 150 organisations and individuals submitted comments on the Green Paper. These consultations showed very wide support for legislation to safeguard the democratic rights of trade union members.

Trade Union Elections

3. The Government propose to introduce legislation which will require elections to the governing bodies of trade unions (ie their executives) to be conducted in accordance with a number of basic principles, including the following:

- voting must be secret
- voting must be by the marking of a ballot paper
- every trade union member must have an equal and unrestricted opportunity to vote
- each trade union member must be able to vote directly for members of the governing body

These principles will not make unreasonable or impracticable demands on trade unions. They will not require the use of postal ballots in all circumstances and balloting at the workplace could satisfy the tests. However, balloting at meetings held at inconvenient times or places would not do so. The principles will apply to the election of Presidents and General Secretaries only if they have a vote or casting vote on the governing body of their union, but not to elections below the level of the governing body. They will, however, exclude such practices as voting by a show of hands and the use of the block vote. They will not permit the election of governing bodies by the membership of any intermediate body, eg delegates to a national conference or members of, for instance, a regional committee. Trade unions would remain able either to have separate constituencies, eg on a geographical or occupational basis, for seats on the governing body or to provide for all members to have a vote in respect of all seats. It will be a requirement that the members of governing bodies should be elected or re-elected at least once every 5 years.

4. The statutory principles governing elections will come into effect one year after the legislation receives Royal Assent so as to allow the trade unions time to make the necessary adjustments to their rules and electoral arrangements. This will mean that trade unions will be under a statutory duty to observe the statutory principles in the first elections due to be held after this part of the legislation comes into effect.

5. The Government propose that these principles should take the form of a statutory duty owed by each trade union to each of its members. Enforcement of this statutory duty will therefore be a matter for the members of each union, acting either singly or in groups, by means of an application to the ordinary courts. The Government propose that the first step should be an application for a declaration that a trade union has failed to perform its statutory duty because a particular election has not been carried out in accordance with the principles set down in the legislation. Following such a declaration the union would be allowed 6 months within which to ensure that it complied with its statutory duty to its members. If at the end of the 6 month period it had not done so the member or members who had sought the declaration could seek enforcement of the order to compel the union to perform its

statutory duty. Defiance of such an order could lead to contempt proceedings. Except for the addition of a 6 month declaratory stage, the enforcement procedure is virtually identical with that which is already used by union members seeking to ensure that elections are carried out in accordance with union rules.

6. The availability, under the Employment Act 1980, of finance for postal ballots for trade union elections will continue.

Strike Ballots

7. The consultations on the Green Paper have confirmed that there is widespread concern about the way in which strike decisions are taken, particularly in the case of national strikes and strikes in essential services. Clear support was expressed for legislation on strike ballots provided that the practical difficulties identified in the Green Paper could be overcome.

8. The Government have therefore decided to bring forward legislation on the following lines. In the case of industrial action which is "authorised or endorsed" by a trade union (in accordance with the provisions of Section 15 of the Employment Act 1982 - see Annex) immunity in tort will be conditional on the support of the union members concerned being tested in a secret ballot. In other words when a trade union calls or endorses a strike it will either have to ballot those of its members who are being called on strike* to retain immunity** or, on the other hand, accept that calling or endorsing a strike without a ballot forfeits immunity. Without immunity the trade union would be at risk of being sued for an injunction and its funds would be at risk of an action for damages. The Government believe that this approach is the best means of providing unions with a powerful and direct inducement to hold ballots before calling strikes and that it is therefore the most effective means of extending union members' democratic rights in this area, while at the same time reducing the likelihood of irresponsible industrial action.

* Here and elsewhere in this paragraph, by "strike" is meant any industrial action in breach of contract.

** Assuming that it is not unlawful on other grounds (eg that it is not unlawful secondary action).

9. Again, the legislation will not impose unreasonable or impractical obligations on trade unions. It will not require trade unions to hold ballots before unofficial or spontaneous strikes which it has not endorsed and which may be shortlived and involve only small numbers of strikers. Nor will it inhibit trade union officials from attempting to bring unofficial action to an end; on the contrary, only if the action is made "official" will any question of loss of immunity arise. The legislation will not make immunity conditional on the result of the ballot. The Government do not believe that any trade union would persist with a strike call if it had been shown not to have the support of a majority of those directly involved. However, a ballot will ensure immunity only if all those who are being called on to take the industrial action have had an equal and unrestricted right to vote in a secret ballot on the specific question whether they wish to strike or take other action in breach of their contracts of employment.

10. It is intended that the provisions relating to strike ballots should come into force shortly after Royal Assent.

THE POLITICAL ACTIVITIES OF TRADE UNIONS

11. In the Green Paper the Government made clear its commitment to the principles of the Trade Union Act 1913:

- (i) that trade unions should, if they so choose, be able to pursue their members' interests through political organisations and to give financial support to such organisations;
- (ii) that no trade union member should be obliged to support financially any political organisation if he does not want to, and that he should not suffer so far as his union membership is concerned by refraining from giving such support.

The responses to the Green Paper have confirmed the Government's view that these principles are no longer adequately safeguarded.

12. Under the 1913 Act unions are required to hold an affirmative ballot of their members only in order to authorise the setting up of a political fund. There is no statutory requirement ever to hold a further ballot on the issue (unless a union amalgamates with another which has no political fund). The Government believe it to be indefensible that political funds should be operated on the basis of decisions taken up to 70 years ago. They propose to provide that the continued operation of a political fund must be submitted to the test of an affirmative ballot of the whole membership of a union (in accordance with the procedure laid down in the 1913 Act) every 10 years. The Government believe that this step is necessary to safeguard the right of successive generations of trade union members to determine whether or not their union has a political fund and engages in political activities.

13. It is also intended that the definition of "political objects" in Section 3(3) (see Annex) of the Trade Union Act 1913 should be brought up to date so as to cover expenditure on television, radio and other forms of publicity, on elections to the European Parliament and the printing of political literature.

14. In respect of the second principle referred to in paragraph 11, the consultations on the Green Paper have confirmed that there is a widespread disquiet about the way in which the right of individual members not to pay the political levy operates in practice through the system of "contracting out". The Secretary of State for Employment is therefore inviting the TUC to discuss the steps the trade unions themselves can take to ensure that their members are freely and effectively able to decide for themselves whether or not they pay the political levy.

Conclusion

15. The Government intend to introduce a Bill to give effect to these proposals when Parliament reassembles in the autumn. They would welcome comments on the proposals by the end of September. Any comments should be sent to the Department of Employment, Caxton House, Tothill Street, London SW1H 9NF.

TRADE UNION LIABILITY (paragraph 8 of paper)

1 Section 15 of the Employment Act 1982 lays down when a trade union is to be held liable for the unlawful acts of its officials and members.

2 The union will be held liable for any unlawful act authorised or endorsed by:

- . its Executive Committee;
- . its General Secretary or President;
- . any other person given power under the union's own rules to call industrial action.

3 In addition the union will be held liable for any unlawful act authorised or endorsed by:

- . any official employed by the union;
- . any committee to which one of these officials regularly reports; except where
- . the official or committee who authorised or endorsed the act was forbidden to do so by the union's own rules; or
- . the authorisation or endorsement is disowned by the Executive Committee, the General Secretary or the President. This 'repudiation' must be delivered in writing and as quickly as is practicable. It will not be regarded as repudiation if the Executive Committee, General Secretary or President subsequently behave in a manner which is inconsistent with having disowned the unlawful action.

"POLITICAL OBJECTS" OF TRADE UNIONS (paragraph 13 of paper)

4 Section 3(3) of the Trade Union Act 1913 reads

- (3) The political objects to which this section applies are the expenditure of money -
- (a) on the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connexion with his candidature or election; or
 - (b) on the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or
 - (c) on the maintenance of any person who is a member of Parliament or who holds a public office; or
 - (d) in connection with the registration of electors or the selection of a candidate for Parliament or any public office; or
 - (e) on the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distribution of the literature or documents is the furtherance of statutory objects within the meaning of this Act.

The expression "public office" in this section means the office of member of any county, county borough, district, or parish council, or board of guardians, or of any public body who have power to raise money, either directly or indirectly, by means of a rate.

Caxton House Tothill Street London SW1H 9NA
Telephone : Direct Line 01-213 7439 (24 hour answering service)
Exchange 01-213 3000 Telex 915564 DEPEMP

July 12, 1983

PROPOSALS FOR LEGISLATION ON DEMOCRACY IN TRADE UNIONS

Statement by Norman Tebbit, Secretary of State for Employment, in the House of Commons today:

"I am now able to announce the Government's conclusions following the consultations on the Green Paper "Democracy in Trade Unions" and to outline the legislative proposals I propose to lay before Parliament when the House reassembles in the autumn. I am publishing today a paper explaining these proposals and providing an opportunity for consultations on them.

"Numerous detailed and thoughtful responses to the Green Paper were received from employers, employers organisations and individual trade unions, including some affiliated to the TUC.

"These confirmed that there is widespread concern about shortcomings in trade union procedures for elections and for consulting their members on major issues, particularly on strike decisions. There is undoubtedly widespread support for legislation to safeguard the rights of members in relation to their unions.

"As foreshadowed in our election Manifesto the legislation will cover three main issues: trade union elections, strikes and the political activities of trade unions.

"First, elections. The legislation will require elections to the governing bodies of trade unions to comply with the following principles:

- voting must be secret and by ballot paper
- there must be an equal and unrestricted opportunity to vote
- every union member should be able to cast his vote directly.

"These principles are not a legal strait-jacket. They are the minimum necessary to ensure free, fair and democratic elections. Within them, trade unions will be free to constitute their governing bodies in the way they judge will best serve their members' interests and to decide on the form of ballots.

"Secondly, strikes. The consultations have shown continuing concern about the way in which strike decisions are taken. Accordingly I propose that if a trade union orders or endorses industrial action by its members in breach of their contracts of employment without first consulting those members in a secret ballot, that trade union should lose immunity from the normal civil law consequences of its action. This will give the community more protection against irresponsible industrial action and provide new safeguards for trade union members themselves against being required to strike without their consent.

"I also expect in due course to consult on the need for industrial relations in specified essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity.

"Thirdly, the political activities of trade unions. The Government accepts that a trade union should be able to adopt political objectives and to set up a political fund. However, I believe that the authorisation of a political fund should be subject to review by a periodic ballot of the membership. The present members of trades unions should not be bound forever by a ballot that may well have been taken before any of them were born. I propose that the 1913 Act should be amended to require that political objectives and funds should be submitted to ballot at least every 10 years.

"For some years there has been disquiet over the operation of the system for contracting out of the political levy. I therefore intend to invite the TUC to discuss the arrangements which trade unions themselves might take to ensure that their members are fully aware of their statutory rights and able to exercise them freely and effectively. I hope that the trade unions will be

willing to take such steps. If that hope is disappointed I would be ready to introduce measures, as we made clear in our Manifesto, to guarantee a free and effective right of choice.

"Mr Speaker, the events of recent weeks have made it abundantly clear that trade unionists are now insistent that they should have a greater democratic voice in the affairs of their unions and the Bill which I shall bring forward will respond to that demand."