



10 DOWNING STREET

Prime Minister <sup>(2)</sup>

You are holding a meeting  
to discuss whether there  
should be a symmetrical  
provision for political  
contributions by companies.  
There is no paper making  
proposals, but the attached  
sets out the background

AF

28/10



CONFIDENTIAL

## POLITICAL EXPENDITURE BY COMPANIES AND TRADE UNIONS

A. COMPANIES

## PRESENT POSITION

1. Any donation by a company, whether for political or other purposes, must, in the view of the courts, be

- incidental to the objects of the company's business (ie not ultra vires)
- for the benefit of the company
- bona fide in the interests of the company.

In practice, neither of these considerations appear to have materially constrained the giving of political donations, at least as to the principle. Whether or not breaches of either consideration have occurred would fall to be determined by civil action by shareholders.

2. Under Section 19 of the Companies Act 1967 a company (other than a 100% subsidiary of a GB holding company) which gives more than £200 for political and charitable purposes taken together must disclose in the directors' report

- the amount of any money given for political purposes in the year covered by the report;
- the name of, and amount given to, any recipient of a political donation exceeding £200;
- the name of any political party to which more than £200 has been given or subscribed, and the amount of money given to it.



3. In the case of parent companies, this information must be given in respect of the group.

4. A company is considered to give money for political purposes if, directly or indirectly,

- it gives a donation or subscription to a political party of the UK or any part thereof, or
- it gives a donation or subscription to a person whom it knows to be carrying on, or proposing to carry on, activities which can reasonably be regarded as likely to affect public support for such a political party.

#### PROPOSALS FOR CHANGE

5. The Guardian of 8 August reported the possibility of legislation.

- "to define the right of companies to subscribe to political parties"
- "giving shareholders the right to vote on the wisdom of making [political] contributions".

6. Mr Wigglesworth MP has written to the Secretary of State for Employment saying that the SDP would support legislation

- to ensure that political donations have the prior, specific agreement of shareholders;
- to prevent the delegation of decisions on political contributions to the board of directors;
- to encourage institutional shareholders to consult members on whether they should vote for political donations.



7. At Commons Committee Stage on the Companies Act 1980 the Labour Opposition put forward proposals under which political donations would have to be made out of a political fund which could only be established if approved by ordinary resolution in general meeting. The political fund was to be financed out of distributable profits, and shareholders who voted against its establishment or who informed the company were to be entitled to a proportionate supplement to their dividend in respect of donations made from the fund.

#### CONSIDERATIONS RELATING TO POSSIBLE LEGISLATION

8. Primary legislation would be required to ensure shareholder approval of political donations. If this were not to be achieved by a Companies Act, the long title of any other legislation would have to be sufficiently wide in scope.

9. It would be for consideration whether any such legislation should:

- apply to all companies, or just public or large companies. A limited scope would offer potential for avoidance;
- cover all political donations or only those (in aggregate or severally) over a de minimis amount (c.f. £200 for disclosure at present);
- provide for shareholder approval for specific, quantified donations to named recipients, or authorise the directors to make political donations at their (perhaps qualified) discretion;
- introduce an upper limit on donations;
- on the assumption that approval is to be by resolution at a general meeting in advance of a donation, require approval by ordinary or special (75% majority required) resolution;



- provide for any return to be made to CRO after a donation has been made or simply maintain present ex post facto annual disclosure arrangements;
- make special provision for groups of companies (difficult in so far as authorisation is concerned);
- retain the 1967 Act definition of political purposes;
- make provision for donations to be made out of political funds only;
- make provision for dissenting shareholders to be compensated.

10. It is conceivable that in the event of legislation being brought forward there would be some pressure for similar arrangements for charitable donations, or for contracts of service etc. for directors (which have been the subject of controversy).

11. There are sufficient significant issues involved to justify consultation and consideration of the matter over a reasonable timescale. If there is any possibility of legislating this Session, work should be set in hand straightaway.

## B. TRADE UNIONS

### PRESENT POSITION

12. The Trade Union Act 1913 lays down a set of conditions which a union must observe if it wishes to finance the pursuit of the political objects specified in Section 3(3) of the Act - reproduced at annex - which are essentially party-political objects.

13. The first of these is that the union must hold a secret ballot, under rules to be approved by the Certification Officer, on whether the union should adopt political objects and political fund rules. The union must obtain a majority of those voting in favour of this.



14. The essential purpose of the political fund rules, which also have to be approved by the Certification Officer, is to safeguard the right of individual members not to contribute towards their union's political expenditure where the union has adopted political objects. The Act requires that the rules should -

- provide for a separate political fund out of which any expenditure on political objects must be made;
- permit an individual member to "contract out" of contributing to the political fund;
- provide that no member who contracts out will be discriminated against within the union because he refuses to contribute to the political fund.

#### THE TRADE UNION BILL

15. Part III of the forthcoming Bill will

- provide that the continued operation of a trade union's political fund must be submitted to the test of an affirmative ballot of the whole membership of the union (under the procedure laid down in the 1913 Act) every 10 years;
- bring up to date the definition of political objects in Section 3(3) of the 1913 Act.

#### THE POLITICAL LEVY

16. The Conservative manifesto stated that:

"Consultations on the Green Paper have confirmed that there is widespread disquiet about how the right of individual trade union members not to pay the political levy operates in practice, through the system of contracting-out. We intend to invite the TUC to discuss the steps which the trade unions themselves can take to ensure that individual members



are freely and effectively able to decide for themselves whether or not to pay the political levy. In the event that the trade unions are not willing to take such steps, the Government will be prepared to introduce measures to guarantee the free and effective right of choice".

17. The TUC has accepted the Government's invitation to discussions and a meeting will take place on 19 October.

18. Areas of concern include the ignorance of many new and existing members about their right to contract out; delays in refunds where a political contribution has been collected from exempt members (particularly under the check-off system - the system whereby employers collect union subscriptions directly from employees' wages and whereby the political levy element is often collected from those who have contracted out, obliging them to seek refunds); and the paucity of information available to members about their unions' political expenditure (unions do not have to list individual donations and their published accounts do not make clear that investment income is correctly apportioned between general and political funds).



ANNEX

(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 connection 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.



October 26, 1983

TRADE UNION BILL

Speaking Note for Ministers

26/10

1. The Trade Union Bill delivers the Government's promise to give trade unions back to their members.
2. It aims to ensure that Britain's 12 million trade unionists:
  - can elect their leaders by secret ballots
  - are consulted in a secret ballot before being called out on strike. No ballot means no immunity.
  - can vote on whether their union should continue to spend on political activities.
3. The Government hoped the trade union movement would have made these fairly basic democratic reforms by itself. But they have refused even to take advantage of the offer of Government money made under the 1980 Act to fund secret ballots about pay and union elections.
4. Every test of public opinion before, during, and after June 9 shows strong public support. The latest poll shows 88% support for secret ballots to elect leaders and 83% for strike ballots. Even among trade unionists - those claimed to have most to fear - the election showed 60% support for reform.
5. There is widespread unease about the way many trade unions push through decisions that would never have been agreed to in a full, fair, free and secret ballot of their members. Many unions have not held a vote about their political fund within living memory.
6. The Bill achieves these improvements not by forcing unions to submit the conduct of their affairs to the judgement of the Government or an 'independent' agency. It will do so by putting effective control of the union into the hands of its own members.
7. It follows the 1980 and 1982 Employment Acts which restrained secondary



picketing, encouraged secret ballots, curtailed the closed shop and made trade unions accountable at law for any unlawful acts.

8. It would be much better if trade unions had responded constructively to public clamour for reform, leaving Government free to concentrate on more positive things in the employment field such as training schemes for the young, schemes to help unemployed people and ways of improving productivity. The economy cannot be restored unless trade unions do what their members want and dedicate themselves to restoring industrial and commercial success to the companies that employ them.

9. The Bill is a further step in the Government's programme to ensure that Britain has a modern and effective framework of union law which is accepted in the country as fair and balanced. Trade unionists should seize the chance it offers them to reform any outdated and undemocratic practices in their union and to see that it does adjust to industrial realities. If they do, they will be helping the country to stage a strong and lasting recovery, and the trade union movement to recover its credibility.

10. The Bill does not as yet deal with the issue of safeguarding union members' freedom of choice as to whether to pay the political levy. In line with our previous commitment the TUC has been asked to come forward before the end of the year with their own proposals for ensuring a free, fair and informed choice.