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Department of Employment  
Caxton House Tothill Street London SW1H 9N&F  
Telephone Direct Line 01-213 5574  
Switchboard 01-213 3000

P L Gregson Esq  
Cabinet Office  
70 Whitehall  
LONDON SW1

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5 July 1984

Dear Peter,

TRADE UNION BILL

When we spoke yesterday I told you that it was highly unlikely that my Secretary of State would be able to circulate any paper before the Ministerial meeting this evening. It is now entirely clear that he will not be able to do so. A series of meetings is still continuing and will do so throughout this afternoon. It cannot yet be certain that a firm conclusion will be reached.

2. However, I thought you might find it helpful to have the enclosed note of the ideas now being discussed, the objective being to substitute this package for the offending amendment. In effect, unions would remain free to hold workplace and semi-postal ballots, always providing that the tests of secrecy, etc were met whilst a further push would be given towards full postal balloting. A new investigatory role would be given to the Certification Officer.

3. It is of course possible that the package will be modified or more drastically changed in the course of the day. Agreement may prove impossible.

Yours sincerely,  
Douglas.

D B SMITH

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POSTAL BALLOTS

THE SECRETARY OF STATE'S PROPOSALS TO PUT TO THE PEERS

1. The Secretary of State's proposals are

(i) to recast the basic provisions of Clause 2 so there is a presumption that ballots will be postal unless the union is satisfied that workplace ballots are equally or more likely (in the circumstances of that particular union) to meet the requirements of secrecy, convenience, freedom from interference or constraint etc in the legislation.

(ii) to put an entirely new statutory duty on all trade unions to compile and keep up to date a register of their members names and addresses; and a second duty to report to the Certification Officer on the arrangements they have made to carry out this duty.

(iii) to reinforce the power for the High Court to order the holding of a postal ballot (in amendment 42 at Committee Stage): the Court would be required to order the holding of a postal ballot (unless it considered this wholly impracticable) in every case where a workplace ballot had fallen short of the Bill's requirements and the Court ordered the election to be rerun (amendment 42 gave the Court only a discretionary power to order a postal ballot).

(iv) an entirely new statutory right for a union member to complain to the Certification Officer (CO) - without cost or the need to prepare a case with legal formality - that an election has not been conducted in accordance with the Act; and a duty on the CO to investigate the complaint and a power for him to make a legal declaration if he finds that there has been a breach. The declaration would not be enforceable in itself but, if the union ignored it, the High Court would have to take it into account in considering any subsequent application for an enforceable order. (This right would run in parallel with the right of/ complaint directly

to the High Court already in the Bill, so that anyone wishing to go directly to the High Court could still do so).

(v) removal of the 6 month delay in obtaining an enforceable order from the High Court (now in Clause 3(8)).

2. The proposals represent an interlocking package of measures. In the first place, a presumption that ballots will be postal (i) together with the requirement for the High Court to order a postal ballot (where a workplace ballot has been found defective) (iii) will bring the Bill close to the Peers' demand that postal ballots should be the "norm" but that there should be a potentially quite wide scope for exempting workplace ballots where these are unavoidable or justifiable. Furthermore, the power for the High Court to order a postal ballot would operate as a form of "exemption in reverse" ie unions would know that if they were still using non-postal methods, they would have to get it right first time or face being compelled to re-run the election with a postal ballot.

3. Secondly, the register of names and addresses (ii) would remove the most significant argument of practicality which can be advanced against postal ballots, and in particular it would ensure that where a court ordered the holding of a postal ballot it would be possible for the union to do this in a short time (iii).

4. Finally, the new right of complaint to the Certification Officer (iv) will provide an informal and inexpensive means of seeking redress and, in effect, drawing public attention to breaches of the Act without putting the operation of

Part I of the Bill at risk of a union boycott (ie the route of complaint directly to the High Court will still be open and only the High Court will be able to make enforceable orders). The removal of the 6 month delay in the enforceability of High Court orders (v) will mean that a union will know that it will be at risk of early contempt proceedings if it makes no effort to remedy a breach of Part I of the legislation and will not simply be able to delay taking any action until the next election is anyway due.