

# Department of Employment

File  
PRESS NOTICE

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July 27, 1984

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STATEMENT BY TOM KING,  
SECRETARY OF STATE FOR EMPLOYMENT

Mr King said: "The Trade Union Act which is now law is a major advance for the cause of union democracy. For the first time ordinary union members will have a legal right to a secret ballot in national union elections and in deciding whether to have a political fund. And from the end of September any union that calls a strike without first obtaining the support of those concerned in a secret ballot, will lose its immunity from court action."

"All these measures have one common aim - to return the unions to their members. In the light of the present dispute I doubt that anyone can seriously question the value of that."

"The decision by Parliament that in future all strikes must be sanctioned by a secret ballot if they are to retain immunity, is particularly important. It raises, once again, the question, 'When will the National Union of Mineworkers give their members a ballot?'"

"There can be no doubt that that is now the way to end all the misery. The vast majority of miners want to return to work. It is only the intimidation that is keeping them out."

"This provision in our Act is designed to ensure that in future this sort of tragedy is not repeated, that union members have the right to a vote on issues that are of such importance to them and their families."

"The NUM leadership maintain that their followers are solidly behind them. But if they seriously think that, they should have the confidence to call a ballot and prove it. If they do not, then they have no right to keep their people out any longer."

"It is time for all the membership of the NUM at last to have their say."

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### TRADE UNION ACT 1984

The Trade Union Act 1984 has now received Royal Assent.

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#### Its main purposes are to:

provide for the members of trade union governing bodies to be directly elected by individual secret ballot of the union's members;

make trade unions' immunity for organising industrial action conditional on the holding of secret and properly conducted strike ballots;

enable members of trade unions with political funds to vote at regular intervals on whether their union should continue to spend money on party political matters.

#### Timing of implementation

The Act's provisions come into force as follows:-

provisions requiring trade unions to begin work on compiling a register of their members' names and addresses for use in union elections come into force immediately; trade unions are under a duty to complete the register by the time the remaining provisions on union elections come into force which will be towards the end of 1985 (the exact date to be determined by a commencement order this autumn);

the strike ballot provisions will come into effect on September 26, 1984 and will apply to any industrial action which is initiated by a trade union after that date;

the political fund provisions will come into effect on March 31, 1985 and will mean that all trade unions with political funds will need to hold review ballots by March 31, 1986 unless they have already balloted their members in the previous ten years.

In more detail the Act

- requires trade unions to ensure that all voting members of their executive committees are directly elected at least once every five years;
- provides that all elections for voting members of union executives must be conducted by secret postal ballot unless the trade union can be satisfied that a workplace ballot (the only permitted alternative to a postal ballot) will:-
  - be secret and free from any interference or constraint;
  - provide a convenient opportunity for members to vote during, or immediately before or after, working hours without direct cost to themselves;
  - be one in which voting is by the marking of a ballot paper and in which votes are fairly and accurately counted;
- requires trade unions to compile and maintain an accurate and up to date register of their members' names and addresses;
- makes it a condition of legal immunity that trade unions do not organise strikes or other industrial action without first ascertaining by means of a ballot held not more than four weeks before the action begins that a majority of those voting wish to take such action;
- provides that ballots on strikes and other industrial action must be conducted by post or at the workplace, must involve the marking of a ballot paper, must be secret and must be followed by an announcement of the voting figures to the members concerned;

- provides that any trade union which has adopted a political fund resolution under the Trade Union Act 1913 must pass a new resolution by means of a secret ballot of all its members at intervals of not more than ten years if it wishes to continue to spend money on party political matters;
- updates the balloting provisions of the 1913 Act by providing that the Certification Officer will not approve rules for political fund ballots unless they provide for postal or workplace ballots;
- updates and clarifies the 1913 Act's definition of the "political objects" on which a trade union may spend money only if it does so from a separate political fund;
- places a duty on employers who have "check-off" arrangements for deducting trade union subscriptions from their employees' pay not to continue to deduct the political levy from any employee who certifies that he has contracted out of paying the levy.

TRADE UNION ACT: SECTION BY SECTION ANALYSIS

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Part 1 - Secret ballots for trade union elections

Section 1 of the Act requires the principal executive committee of a trade union to be elected by secret ballot of the union's members. The section provides that every person who has a vote or casting vote on this committee (such persons are referred to in the Act as 'voting members') must owe his position on the committee at any given time to an election fulfilling the requirements in section 2 held within the last five years. The section also provides that office holders in the union whose office gives them a vote or casting vote on the committee (such as the union's General Secretary or President) must have been similarly elected to that office. The section further provides that there can be such reasonable hand-over period as may be required, but one not exceeding six months, in which to give effect to an election result; and that any term in the contract of employment of an employee of the union (eg the General Secretary) which might prevent his being elected as required by the Act is to be disregarded.

Section 2 lays down that all elections to the principal executive committee of a trade union must comply with the following requirements:-

- (i) entitlement to vote at the election must be accorded equally to all members of the union unless they are in certain listed groups, such as newly joined or student members, which are also excluded from voting under union rules; (the Act also allows unions under their rules to restrict the electorate for particular seats on the executive to members in particular occupations, geographical areas and/or constituent sections within the union);
- (ii) voting in the election must be by the marking of a ballot paper and without interference from, or constraint imposed by, the union of any of its members, officials or employees;

(iii), so far as is reasonably practicable, every person entitled to vote must:-

- . be enabled to do so in secret;
  - . be sent a voting paper by post;
  - . be given a convenient opportunity to return it by post;  
and
  - . be enabled to vote without incurring any direct cost;
- (iv) votes cast in the election must be fairly and accurately counted (although accidental inaccuracies not affecting the outcome are to be disregarded);
- (v) no member of the union is to be unreasonably prevented from standing for election nor required to belong to a particular political party in order to do so; (however, the Bill allows unions to exclude particular classes of members from standing for election through their rules).

The requirements of the section do not apply to overseas members of a union nor in relation to uncontested elections.

Section 3 of the Act allows a union to hold a workplace rather than a postal ballot where it is satisfied that there are no reasonable grounds for believing that a workplace ballot would not meet the requirements of section 2 (other than those relating to voting by post). In those circumstances the section entitles a union to substitute in place of the requirements in section 2 that every person be sent a voting paper by post and be given a convenient opportunity to return it by post the requirements that, so far as is reasonably practicable, every person entitled to vote:

- (i) must be supplied with a ballot paper, or have one made available to him during his working hours (or immediately before or after his working hours) either at his workplace or at a place more convenient to him; and
- (ii) must be given a convenient opportunity to vote by post or an opportunity to vote during his working hours (or immediately before or after his working hours) at his workplace or at a place more convenient to him or a choice between these two methods of voting.

Section 4 places a duty on trade unions to compile and thereafter maintain, by means of a computer or otherwise, a register of the names and addresses of their members. The section provides that the register must have been compiled by the time the remaining sections of Part I of the Act come into effect (see section 22 below). It also requires a union to ensure, so far as is reasonably practicable, that the entries in its register are accurate and are kept up-to-date. The section exempts branches of unions which are trade unions in their own right from the duty to compile and maintain a register to the extent that this duty is discharged by the parent union.

Section 5 provides that a member of a union can apply to the Certification Officer or to the High Court (or, in Scotland, to the Court of Session) for a declaration that the union has failed to comply with one or more of the provisions of Part I of the Act. It further provides that where the application is made to the court and the court grants the declaration that is sought, the court is to make an order (unless it considers this inappropriate) setting out the action which the union must take as a consequence of its failure to comply with Part I of the Act. Such an order must normally specify a time limit within which the union must comply with the requirements of the order. The section further provides that where the court orders a fresh election to be held it shall order it to be conducted by postal ballot unless it considers this inappropriate. Finally, the section provides that at the end of the period given for compliance with a court order any member of the union who was also a member when the order was made can pursue enforcement proceedings if the union has failed to comply with the requirements of the order.

Section 6 contains supplementary provisions concerning the situation where an application for a declaration under section 5 is made to the Certification Officer. It provides that on receipt of an application the Certification Officer is to make such enquiries as he thinks fit and, where he considers it appropriate, give the applicant and the trade union an opportunity to be heard; that where the Certification Officer makes a declaration to the effect that a union has breached one or more of the requirements of Part I of the Act he must specify any steps which the union has taken or agreed to take with a view to remedying the breach; and that the Certification Officer is to give reasons in writing for his decision to make or not to make a declaration which he may accompany by written observations on any matter relevant to his proceedings. The section further provides that the making of an application to the Certification Officer is not to prevent a subsequent application being made to the court in respect of the same matter; and that where such a subsequent application is made the court must have regard to any declaration, reasons or observations made by the Certification Officer. The section also requires the Certification Officer, so far as is reasonably practicable, to determine applications to him within six months of their being made.

Section 7 provides exemption from the requirements of Part I of the Act for:-

- trade union federations which have no individuals as members;
- trade union federations which have individuals as members but only where all of the individual members are merchant seamen and a majority of them ordinarily reside outside the UK;
- newly formed or amalgamated unions for a period of one year from their formation;
- unions to which another union has transferred its engagements, but only for a period of one year from the date of transfer and only in respect of certain members who joined the principal executive committee as a consequence of the transfer.



Section 8 provides limited exemption from Part I of the Act in respect of certain voting members of trade union executives who are within five years of retirement age and who are full-time employees of the union. The exemption is from the five year limitation on the length of time for which a person may remain a voting member of an executive without being re-elected.

Section 9 defines certain expressions used in Part I of the Act and provides a transitional provision. The effect of the latter is that, following commencement of Part I, a voting member of the principal executive committee of a trade union will not be required to have been elected in accordance with the requirements of section 2 until five years have elapsed since the date of the election by virtue of which he currently holds his seat on the committee so long as that election took place prior to commencement. Where the election has occurred after commencement it will, however, need to have been conducted in conformity with the requirements in section 2.

#### Part II: Secret Ballots Before Industrial Action

Section 10 removes immunity from legal action in cases where trade unions do not hold a ballot before authorising or endorsing a call for a strike or any other form of industrial action which breaks or interferes with the contracts of employment of those called upon to take part in it. It also makes it a condition of immunity that a majority of those voting vote in favour of the action, that the ballot is held no more than four weeks before the industrial action begins and that the ballot satisfies the requirements of section 11.

Section 11 sets out the conditions which strike ballots must satisfy. Entitlement to vote must be given to those, and only those, whom it is reasonable for the union to believe will be called upon to take or to continue to take strike or other industrial action. Immunity will be lost if any member is called on to strike after being denied entitlement to vote. The question on the ballot paper must invite a "Yes" or "No" answer and specify whether the action involves a strike or other type of industrial action involving the voter in a breach of his contract of employment. So far as is reasonably practicable, every person entitled to vote:

- (i) must be supplied with a ballot paper, or have one made available to him during his working hours (or immediately before or after his working hours) either at his workplace or at a place more convenient to him; and
- (ii) must be given a convenient opportunity to vote by post or an opportunity to vote during his working hours (or immediately before or after his working hours) at his workplace or at a place more convenient to him or a choice between these two methods of voting.

The detailed results of the ballot must also be made known to those entitled to vote.

### Part III - Political funds and objects

Section 12 provides that trade unions, which have in the past balloted their members under the provisions of the Trade Union Act 1913 to enable them to spend money on "political objects" (see note on section 17) must in future ballot their members at least every ten years if they wish to continue to do so. It means in particular that any of these trade unions which have not held a ballot in the nine years before 31 March 1985 will need to do so before 31 March 1986.

Section 13 updates the existing provisions in the 1913 Act which require the approval of the Certification Officer for political fund ballot rules. It provides in particular that the Certification Officer must satisfy himself that the rules provide for ballots either by post or at the workplace. The section also makes clear that ballot rules must be approved by the Certification Officer before each ballot and enables trade unions to adopt ballot rules by a decision of their principal executive committee in the case of the first review ballots to be held under the provisions of the Act (before 31 March 1986).

Section 14 deals with the assets and liabilities of the separate political funds which, under the 1913 Act, trade unions must have if they wish to spend on political objects. In cases where a union has lost its authority to spend on political objects, the section provides that only contributions to the political fund received before the loss of the authority may be added to the political fund, it prevents union members from being required to contribute to the fund, and it enables unions to transfer assets of their fund to another fund of the union without being in breach of trust or of their rules. The section also provides explicit statutory clarification that no political fund deficits may be paid off from union funds other than the political fund and that unions must not at any time transfer into their political funds money not appropriate to those funds.

Section 15 deals with the situation where a trade union no longer has the authority to spend on political objects. It provides that trade unions must immediately take steps to ensure that collection of the political levy ceases as soon as is practicable, and that any levy contributions which are received in the meantime may be paid into another fund of the union but must be refunded to union members on request. In cases where a union has held a ballot under the provisions of the Act and a new political fund resolution has not been passed, the section enables the union to continue to spend on political objects for not more than six months from the date of the ballot. It provides for union rules made to comply with the Trade Union Act 1913 to lapse and protects members previously contracted out of the levy from possible discrimination. It also provides that where unions have lost but subsequently re-established their authority to spend on political objects, they may not transfer into a political fund money received before the new authority was established but not held in the political fund on that date.

Section 16 gives a trade union member the right to apply to the High Court (Court of Session in Scotland) for a declaration that the union has failed to take the steps required by section 15 to ensure that collection of the political levy ceases. Where the court decides that the union has failed to do so, the section provides that it may make an order specifying the steps which the union must take and the timescale within which they must be taken. The section also makes provision for the enforcement of an order by members of the union.

Section 17 contains an updated definition of the aspects ("political objects") on which, under the 1913 Act, trade unions are only allowed to spend money if they have authority from their members to do so. The section deems any references to the old definition in trade union rules to be to the new definition and repeals section 1(2) of the Trade Union Act 1913 (definition of statutory objects) in consequence of the redefinition of political objects.

Section 18 places a duty on employers who have "check-off" arrangements for deducting trade union subscriptions from their employees' pay to vary the level of check-off deductions by the amount of the political levy if they are informed by a trade union member in writing that he is exempt from paying the levy or has put in a request to be exempt to his union.

Section 19 defines certain terms used in Part III of the Act and applies it with any necessary modifications to employers' associations.

#### Part IV - Supplementary

Section 20 enables the Secretary of State for Employment to make certain changes to the scheme, set up under section 1 of the Employment Act 1980 and subsequent regulations, which provides for payments out of public funds to be made by the Certification Officer towards the cost of postal ballots held by trade unions in respect of certain matters specified in the 1980 Act. The section extends the matters provided for in the 1980 Act so that, in respect of ballots conducted by post, the scheme will, once the necessary regulations are made, cover all election ballots required by Part I of the Act and political fund review ballots required by Part III (but not ballots on the establishment of a political fund). The scheme is already wide enough to cover ballots required by Part II of the Act where these are held by post.

Section 21 provides for any additional expenditure which may arise under the scheme established under section 1 of the Employment Act 1980 (funds for trade union ballots) as a consequence of the provisions of the Act.

Section 22 provides for commencement. Apart from section 4 of the Act, which comes into effect on Royal Assent, the provisions of Part I will come into effect on a day to be appointed by order. Part II will come into effect two months after Royal Assent. Part III will come into effect on 31 March 1985. The section further provides that Parts I and II and sections 18 and 20 of the Act do not extend to Northern Ireland and that the remainder of Part III does not apply to any trade union based in Northern Ireland.