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P.01007

PRIME MINISTER

Outcome of consultations on Green Paper on
'Democracy in Trade Unions' and proposals
for legislation.

E(83)9

BACKGROUND

FLAG A.

Following discussions in the Committee in October 1982 (E(82)21st Meeting, Item 1) the Government issued a Green Paper 'Democracy in Trade Unions' discussing the election of trade union leaders; mandatory strike ballots; and the provisions of the Trade Union Act 1913 regarding contracting out of the political levy, and the definition of the 'political objects' of trade unions. Consultation on the Green Paper is now complete, although the Trades Union Congress and its affiliated unions refused to submit comments. In his memorandum E(83)9 the Secretary of State for Employment advances proposals on two of the main topics discussed in the Green Paper.

FLAG B.

(i) Trade union elections

The Secretary of State proposes legislation making it a requirement that trade union governing bodies (and certain senior officers) should be elected by secret ballot giving all union members an equal and satisfactory opportunity to vote. Elections would have to take place not less than once every five years. It would be forbidden to place unreasonable restrictions on candidature or to withdraw the right to vote as a disciplinary measure for refusing to strike. Unions would not be able to opt out of these requirements by a referendum of their members. Although postal ballots would, of course, be possible, they would not be mandatory: other methods of balloting (in practice this would usually mean balloting at the work-place) would also be acceptable. The statutory requirements would be enforceable by individual union members through the courts, and would come into effect two years after the legislation received Royal Assent.



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Removing immunity from strikes called without a ballot

(ii) Strike ballots

Trade unions would not be required to hold a ballot before taking industrial action. But if any union authorised or endorsed such action without a ballot, there would be no immunity for inducing breach of contract in furtherance of the relevant trade dispute, as there is under the existing law. Those suffering or threatened with loss would be able to sue for an injunction or for damages.

2. E(83)9 does not discuss the third group of topics considered by the Committee in October 1982 (contracting out and the definition of 'political objects'), but promises an oral report. It also promises an oral report on the matter of strikes in essential services.

FLAG C

3. In accordance with the Cabinet's decision on the legislative programme for 1983-84 (CC(83)12th Conclusions, Minute 4), the Secretary of State proposes that if the 1983-84 Session is of normal length, there should be a Bill containing all his proposals; but that if the Session is curtailed, legislation should extend only to trade union elections. He proposes to publish a document setting out detailed proposals as soon as possible.

MAIN ISSUES

4. The main issues raised by E(83)9 are as follows.

(i) Does the Committee agree with the substance of the proposals on

- trade union elections;
- strike ballots?

(ii) How should the Government decisions be made known?

Depending on the content of the promised oral reports, some discussion may also arise on:



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(iii) changes to the Trade Union Act 1913; and

(iv) strikes in essential services.

*remove minority
for all votes in
essential services.
- Patients don't
have contractual
right to*

Trade union elections

5. The Committee is likely to be broadly sympathetic to the proposals in E(83)9; but you may wish it to consider a number of points.

*Some
procedural
elements
essential*

(a) Nature of ballots

Some members of the Committee may suggest that the Government should do more to encourage postal ballots, on the grounds that the main alternative (ballotting at the work-place) is undesirably exposed to undue influence, and that there is evidence that postal ballots encourage the membership to participate in elections. In some industries, such as those mentioned in paragraph 4 of E(83)9, it may well be impracticable to require a postal ballot; but this point might be dealt with by empowering the Secretary of State to make orders exempting certain trades from a general requirement to hold elections by postal ballot. The objection that membership records are out of date is clearly of more general application; but it seems odd to regard inefficiency as a valid excuse for failing to adopt the best procedures.

*Can bodies
not gen. K.S.*

(b) Timetable

Obviously unions must be given a reasonable period in which to bring their rule books into line with any new statutory requirements; but the Committee may wish to ask whether it is necessary to allow as much as two years after Royal Assent - which might mean as much as three years after the Government had given clear notice of its intention to proceed.

(c) Restrictions on candidature

Paragraph 3 of Annex I to E(83)9 is not specific on what would be regarded as unreasonable restrictions on candidature, or on whether detailed requirements would be laid down in statute or left for the



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courts to decide. You may wish to ask the Secretary of State for a fuller description of his thinking.

Strike ballots

6. In his previous memorandum (E(82)64) the Secretary of State for Employment argued against mandatory strike ballots (even as a necessary condition of legal immunity for industrial action - the precise proposal now before the Committee), on the grounds that they would be likely to be turned into a 'vote of confidence' in the union, could impede the resolution of disputes, and might hamper the holding of ballots by management. The latter point carried considerable weight with the Committee.

7. The Green Paper also contained a number of further arguments against mandatory strike ballots: that they might encourage unofficial industrial action and action which, though damaging, was not in breach of any contract of employment.

8. You will wish to ask the Secretary of State why he now takes a different view of the balance of argument. The Committee may also wish to discuss the merits of the alternative approach of providing a statutory right for a defined proportion of the union membership to 'trigger' a ballot before a strike. The relevant arguments seem to be clearly set out in E(83)9.

Changes in the Trade Union Act 1913

9. We do not know what the Secretary of State for Employment intends to include in his promised oral report. The issues ('contracting out' or 'contracting in' to the political levy and the definition of 'political objects') are well known to the Committee.

Strikes in essential services

10. Again, we have no clear indication of what the Secretary of State is likely to say. We understand that his present thinking, which is still only tentative, is that, at least for the time being, the Government should rely on the proposed provisions regarding union elections and strike ballots.

FLAG D
Check the...
"Strike ballots"



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11. If the Secretary of State indicates that he wishes to make specific proposals in either of these areas, it would be appropriate to invite him to circulate a memorandum to the Committee.

Announcement of decisions

12. The Secretary of State seeks authority to publish a document setting out his proposals for legislation as soon as possible. The Committee may wish to consider this carefully against the background of their earlier decisions. If they are not ready to announce decisions on "contracting out" and "political objects", the position is more difficult. A document confined to two of the three areas discussed in the Green Paper is bound to stimulate questions about the Government's views on the third. The timing, manner and content of publication may also depend on whether there is to be a summer election.

HANDLING

13. You will wish to ask the Secretary of State for Employment to introduce his memorandum. All members of the Committee are likely to wish to contribute. The Lord Chancellor and the Law Officers have been invited to attend the meeting in case any legal questions should arise.

CONCLUSIONS

14. You will wish the Committee to reach conclusions on the following:

- i. Is the substance of the proposals in E(83)9 on trade union elections and strike ballots accepted?
- ii. Are there any other matters which should be dealt with in legislation in the 1983-84 Session (if that is of normal length)? (If so, you will no doubt wish to invite the Secretary of State for Employment to submit proposals to the Committee).
- iii. Should the Government set out its proposals in advance of legislation, and, if so, how and when?

Pq

P L GREGSON

26 April 1983