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P.01324

PRIME MINISTER

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The Trade Union Bill:

E(A)(84)35

BACKGROUND

Flag A —

At their meeting on 12 June (E(A)(84)13th Meeting) the Sub-Committee agreed that Parliament should be invited to amend the Trade Union Bill so as to provide:

(i) that individual trade union members should be given the right, on request, to a postal vote in particular elections to union executives or, if they wished, on a permanent basis for all such elections; and

(ii) that in a case where a complaint had been made to the Court that election procedures had been in breach of the requirements in the Bill, there should be a power for the Court at its discretion to require a postal ballot.

The hope was that these amendments would satisfy those in the House of Lords who wanted compulsory postal ballots in all trade union elections.

2. This hope has been dashed. An amendment has been carried during Committee Stage in the House of Lords by 85 votes to 65 requiring postal ballots in all cases, and surveillance of elections by an independent body.

Flag B —

3. The memorandum by the Secretary of State for Employment (E(A)(84)35) discusses what should now be done.





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It is clear that the Lords amendment is technically defective, omitting much essential detail, and could not be accepted as it stands. Mr King says that he would prefer to hold to the Sub-Committee's previous decision. However, he recognises that this might create serious problems in the House of Lords. He therefore puts forward alternative possibilities for consideration:

- (a) Mandatory semi-postal ballots: ballot papers could be delivered either by post or at the work-place; but members would vote at home and return voting papers by post.
- (b) Mandatory postal ballots subject to
- provision for exemption of some trade unions;
  - provision for independent surveillance (which could also be incorporated in (a)).

4. Regarding the provision for exemption, Mr King argues for setting criteria in the Bill, rather than giving powers of decision to either a Minister or the Certification Officer. Regarding independent surveillance, Mr King argues for requiring that a solicitor or accountant must certify that a union has accurately recorded the number of voting papers sent out, the number returned, the number spoilt and the number of votes cast for each candidate. Without such certification, the ballot would be exposed to challenge, presumably by an aggrieved member of the trade union.

#### MAIN ISSUES

5. The main issues before the Sub-Committee are as follows.

Branch  
Workplace  
Postal Ballot.





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(i) Do Ministers wish to stand firm on the decisions taken at E(A)(84)13th Meeting?

If they do, the remaining proposals in the paper will not need to be discussed. If Ministers take a different view, however, it will presumably be because they regard the Parliamentary difficulties as too severe. It will therefore not be possible to take final decisions until soundings have been taken in the House of Lords. The question for the Sub-Committee tomorrow will then be:

(ii) which of the alternative approaches discussed in paragraph 5 to 15 of E(A)(84)35 do they regard as most promising?

Stand firm

6. The Sub-Committee took their decisions on 12 June after full discussion and consideration of the alternatives. Even if it were technically satisfactory, the amendment passed in Committee by the House of Lords would both be impractical and require the setting up of a 'Quango' which Ministers and trade unions alike would find highly objectionable. For the Government to acquiesce in the imposition of impractical requirements at the insistence of the House of Lords could give the trade unions a much better rallying call than they have so far had during the passage of successive trade union measures. These are good arguments of substance for standing firm.

7. On the other hand, it is clear that to try to insist on the amendments previously agreed by the Sub-Committee is unlikely to be regarded as a satisfactory response by relevant opinion in the House of Lords. There could be serious implications for the timetable not only of the Bill itself but also of other parts of the Government's legislative programme.





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Alternative approaches

8. Several possibilities and combinations are discussed in E(A)(84)35; the Sub-Committee will wish to measure them against the underlying objectives of the legislation. These are:

(a) to maximise the chances of a representative ballot;

(b) to minimise the chances of malpractice, intimidation and the like; while                     

(c) avoiding imposing clearly unreasonable or impractical requirements on the trade unions.

Semi-postal ballots

9. The presentation of this option in paragraphs 8 to 10 of E(A)(84)35 is a little unexpected. It is suggested that semi-postal ballots would help maintain the high level of turnout associated with ballots at the work-place, while not meeting fears about intimidation and malpractice at the work-place. But it seems more plausible that it is because in a work-place ballot voting is conducted at a convenient place in or around working hours that turnout tends to be high; and the distribution of voting papers at work, to be completed and returned by post, may well not do much to improve the low turnout associated with postal ballots. Against this, it is not clear why, if the actual voting takes place at home, there should be intimidation and malpractice in a semi-postal ballot.

10. These points apart, semi-postal ballots seem to go a long way towards meeting one of the main practical objections to mandatory postal ballots - the difficulty of distributing papers. It does not meet one of the





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other main objections (that many trade unions have out of date records); but most members of the Sub-Committee are likely to regard this objection as having little force, so long as unions are given a reasonable time in which to improve their records.

Independence surveillance

11. The Sub-Committee may well agree that it would not be right to go further than Mr King proposes towards independent supervision of elections. But it is not clear that going as far as he proposes would have much advantage. It is not obvious that most solicitors or accountants would have great expertise in detecting malpractice in trade union elections: in practice, they would probably have little alternative to accepting figures provided for them by officers of the trade union. The figures which it is proposed that they would certify would have no bearing on the important question of intimidation. Any independent check on the conduct of a semi-postal ballot (which would allow distribution of papers at many scattered work-places) could well prove to be either impractical or prohibitively expensive.

Exemptions

12. It seems clear that if full postal ballots were made mandatory there would have to be provision for exemptions. The Sub-Committee are likely to accept readily enough that decisions on requests for exemption should not be taken by a Minister. It is less clear why the job should not be given to the Certification Officer, especially as it would presumably be possible to lay down criteria to guide him, whether in statute, statutory instrument, or a formal code of practice.





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13. One point which the Sub-Committee may wish to clarify is whether Mr King's actual proposal - establishing criteria in the Bill - would allow a trade union to secure exemption in advance. This seems desirable, since otherwise a union would face the risk of having an election, conducted in good faith, subsequently over-turned. Would it be possible, say, for a union to apply to the Court for a declaration, in advance of an election, that it satisfied the criteria?

HANDLING

14. You will wish to invite the Secretary of State for Employment to open the discussion. The Minister of State, Privy Council Office (Lord Gowrie), who is responsible for the Bill in the House of Lords, will be able to give an assessment of sentiment in the Lords. The Lord Chancellor will also be able to comment on this, and to deal with any legal points.

CONCLUSIONS

15. You will wish the Sub-Committee to reach conclusions on the following.

(i) Should the Government stand firm on the amendments agreed by the Sub-Committee at their meeting on 12 June and invite Parliament to reject the amendment passed during Committee Stage in the House of Lords?

(ii) If not, which of the approaches discussed in paragraphs 5 to 15 of E(A)(84)35 seems most promising?

(a) Semi-mandatory postal ballots (allowing distribution of papers at the work-place, but requiring actual voting to be by post); or

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- (b) Mandatory postal ballots?
- (iii) Should the favoured approach be coupled with a requirement for independent surveillance by an accountant or solicitor on the basis outlined in paragraph 15 of the memorandum?
- (iv) If the Sub-Committee favour mandatory postal ballots, would any necessary exemptions be granted by
- a Secretary of State;
  - the Certification Officer;
  - criteria in the Bill?

Unless the Sub-Committee favour standing firm on their previous decision it will be necessary to invite the Secretary of State for Employment to report again in the light of his soundings of opinion.

*PLG*

P L GREGSON  
Cabinet Office.

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