INDUSTRIAL RELATIONS BILL: CONSULTATIVE DOCUMENT

Memorandum by the Secretary of State for Employment and Productivity

1. Cabinet invited me at its meeting on 20 July (CM(70) 10th Conclusions) to circulate for approval the Consultative Document on the Industrial Relations Bill. I do so now to give my colleagues as much time as possible to consider the document. It has been thoroughly examined by the Ministerial Committee on Industrial Relations and agreed subject to some paragraphs in square brackets and two issues which were left for further discussion: namely, amendment of the Conspiracy and Protection of Property Act, 1875, and the disclosure of information by employers.

2. I intend to circulate a fuller memorandum on 28 September in which I shall refer to these and one or two other points.

R C

Department of Employment and Productivity SW1

25 September 1970
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1. The Government has made clear its intention to introduce a comprehensive Industrial Relations Bill during the present session of Parliament.

2. This document sets out the principles on which the Government proposes that the Bill should be based, and the main provisions which it proposes to include. It is intended to serve as a basis for consultations with the Trades Union Congress and the Confederation of British Industry; the Government wishes to start these consultations without delay. The Government will also welcome comments from other interested organisations and individuals. Details of where to send these comments, and of how to obtain further copies of the document, will be found at the end.

3. The improvement of industrial relations is of great importance both from an economic and from a social point of view. Poor industrial relations adversely affect output, raise industrial costs, damage the balance of payments, and inhibit industrial investment. They also restrict people's opportunities of finding satisfaction in their work, and create avoidable conflicts and hostilities in the workplace and in society as a whole. They dissipate the energies of management and unions alike, which are needed for more constructive purposes.

4. Poor industrial relations are not to be equated simply with strikes. They include many other kinds of failure in human relations in employment. The remedies are primarily the responsibility of management, in whose hands rests the initiative for any improvements that the circumstances may permit.

5. Strikes are, however, often an important symptom of poor industrial relations. And they can make poor industrial relations still worse, particularly when agreed procedures for resolving disputes are ignored, or when one group's pursuit of its sectional interests leads to conflict with other employees. Unions and employees have a responsibility, as well as management, to see that their actions are directed towards securing and maintaining good industrial relations.

6. Whatever
6. Whatever changes are made, the present widespread shortcomings of industrial relations in Britain cannot be expected to disappear overnight. But they will not disappear at all unless managements, and the representatives of employees, intensify their efforts to identify and resolve the problems that arise between managements and employees. The improvement and strengthening of machinery for negotiation and consultation, for example, is crucial. Where such efforts have been forthcoming, substantial improvements in industrial relations have been secured.

7. For its part, the Government will continue to encourage progress towards better industrial relations by the example it sets as an employer and by the help and encouragement it can give through its specialist services which provide advice and conciliate in disputes.

8. But more is required. Government has a responsibility to make clear the standards to which, on behalf of the country as a whole, it expects the conduct of industrial relations to conform, to establish safeguards for the individual and the community, and to provide the means for resolving disputes over the machinery of industrial relations and the behaviour of the parties to it. The proposed Industrial Relations Act will be the Government's main instrument in achieving these objectives.

9. The Government therefore sees the proposals set out for comment in this document as complementary, and essential, to a continuing and necessarily long-term exercise in the reform and improvement of human relations in the factory, shop, and office. They are not and cannot be an immediate or self-sufficient solution to our problems of deteriorating industrial relations. Nor are the proposals framed with any wish to encourage litigation about industrial relations questions as anything but a last resort. But the Government believes that legislation has an essential and positive role to play in the improvement of industrial relations; that the clear statement of fundamental rights and obligations in this field, in what will be the first comprehensive Industrial Relations Act that this country has ever had, will itself help to persuade managements and unions towards fairer and more constructive methods of conducting their relations and resolving their differences.

10. Thus the
10. Thus the improvement of industrial relations in Britain can only be secured by collective effort on the part of Government, managements, unions and employees within a new framework of law which:

(i) sets national standards for good industrial relations;
(ii) safeguards those who conform to them;
(iii) protects individual rights in employment; and
(iv) provides new methods of resolving disputes over the conduct of industrial relations.

11. It is against this background that the proposals which follow should be seen.

II. GENERAL PRINCIPLES

12. It may be useful to set out at once the principles that the Government regards as fundamental. They are:

(i) That every individual should have a right to join a trade union and participate in trade union activities, and an equal right not to do so.
(ii) That workers, where they so wish, should have the right to negotiate collectively, through their trade union or unions, with their employer.
(iii) That the worker should be free to withdraw his labour, subject only to the requirements of his individual contract of employment.
(iv) That employers and their associations, and trade unions and their members, should have clearly defined rights and obligations towards each other, and obligations towards the general public, in the conduct of industrial relations; and that there should be clear, fair and readily available ways of securing those rights and enforcing those obligations.
III. INDUSTRIAL RELATIONS PRACTICE

13. It is proposed that the Secretary of State should be required, within a year from the passage of the legislation, to prepare and lay before Parliament a Code of Industrial Relations Practice. The objectives and the purposes of the Code would be to:

a. encourage the development of free and responsible collective bargaining, in which each party recognises and respects the legitimate rights and objects of the other;

b. encourage the establishment, within undertakings, of effective means of information and communication between management and workers at all levels so as to involve them more fully in the operations of their firms;

c. encourage and promote the development and observance of orderly and peaceful procedures for resolving differences between employers and unions, without damaging the public interest, and taking full advantage of the facilities for conciliation and advice provided by the Secretary of State and others;

d. promote the freedom and security of individual workers; and

e. develop trade unions and employers' associations as representative, responsible and effective bodies for conducting relations between employers and workers.

14. All those concerned with industrial relations would be expected to conform to the Code. It would not be directly enforceable, but in any proceedings before the proposed National Industrial Relations Court or the Industrial Tribunals (see Part IV) compliance or non-compliance with it could be adduced in support or rebuttal of the case put forward by either party. If the Court or Tribunal found that any person had complied or failed to comply with the Code, in relation to the matter at issue, it would take that into account in determining any liability or compensation.
IV. STATUTORY AGENCIES

IVa. The National Industrial Relations Court and the Industrial Tribunals:

Structure

15. The Government proposes to establish a new system of adjudication for industrial relations matters consisting of courts specially suited, by their composition and experience, to deal with such matters. This would have as its higher level a new National Industrial Relations Court (NIRC) of equivalent status to the High Court and as its lower level the present Industrial Tribunals (ITs) which would be given new functions and considerably expanded to deal with the additional work.

16. It is intended that access to the NIRC and the ITs should be easy and their proceedings relatively informal that they should include people with specialist and practical experience of industrial relations on both sides of industry, with a lawyer as chairman; and that they should be able to apply their practical experience to the matters that come before them.

17. The NIRC would thus consist of a President and other High Court judges and "lay" members with relevant industrial relations experience.

18. The NIRC would be able to sit in more than one division and in various parts of the country. Although it would probably be based in London, it would normally sit at appropriate regional and local centres if that would meet the convenience of the parties.

19. There would be a right of appeal from the NIRC on a point of law to the Court of Appeal (in Scotland to the Court of Session).

/IVb

/IVb: NIRC and ITs: Jurisdiction
IVb: NIRC and ITs: Jurisdiction

20. It is the Government's intention that generally speaking, legal cases about industrial relations matters should be heard only by the new NIRC, and on some matters the ITs. The NIRC and the ITs would therefore have jurisdiction in respect of any proceedings about:

a. the inducement of, or any threat to induce, a breach of contract in contemplation or furtherance of an industrial dispute;

b. any of the unfair industrial actions mentioned in these proposals (see next paragraph);

c. any breach of a legally enforceable collective agreement;

d. any infringement of a contract between trade unions or between a trade union and its members;

e. any infringement of rights to be secured by the legislation or any action in relation to which a remedy is expressly created by the legislation;

f. the matters for which the ITs are responsible at present.

21. The Government proposes that a number of actions by employers, employers' associations, trade unions and others involved in industrial relations, which it considers to be seriously contrary to the standards which should be observed in the conduct of industrial relations, should be "unfair industrial actions". Each is mentioned at the appropriate place in this document. Anyone claiming he had been injured, or was threatened with injury, as a result of an unfair industrial action directed against him would be able to bring a complaint in the NIRC or ITs, which would be able to grant any of the remedies proposed in paragraph 29. Where it would be an unfair industrial action to organise a strike or lock-out for a particular purpose, it would also be an unfair action:

- to threaten a strike or lock-out for that purpose;

- to organise or threaten any other concerted industrial action for that purpose;

- to put pressure for that purpose, by industrial action or the threat of it, on an employer not himself a party to the dispute.

22. The general principle governing the distribution of functions between the ITs and the NIRC would be that issues which involved an individual would be dealt with by the ITs whilst collective issues (eg about legally enforceable
collective agreements) would be decided by the NIRC. However, there would be provision for individual cases which were expected to be long or complex, or which had important wider implications to be transferred from the ITs to the NIRC.

23. The NIRC would take over the present responsibilities of the High Court and the Court of Session in Scotland for appeals from the Industrial Tribunals on points of law - except those under the Industrial Training Act and (for the present) the Selective Employment Payments Acts.

/IVc
It is proposed that the procedure of the NIRC and ITs should be as informal and free from technicalities as possible. They would of course give reasons for their decisions, which would be in as simple a form as possible. Power would be taken to lay down rules of procedure for the NIRC by statutory instrument.

As in the Industrial Tribunals at present (and also the present Industrial Court), parties to cases would be allowed to be represented by lawyers or by other persons (e.g., trade union officers) or to represent themselves as they wished.

There would be a discretionary power to award costs, but only when the NIRC or IT considers that the party concerned has acted frivolously or vexatiously, or in appeals and comparable cases, had no reasonable grounds for bringing the case.

The NIRC and ITs would have power to require the attendance of witnesses and the disclosure of documents, and to hear evidence on oath.

The NIRC and ITs would be required to afford opportunities for conciliation between the parties before a case was heard. Information given or obtained in the course of conciliation and the positions taken by the parties during conciliation, would not be admissible as evidence in the proceedings.

The NIRC and the ITs would be able:
- to award compensation
- to determine the rights of a party
- to make speedy but temporary orders
- to make orders to refrain from unfair industrial action

The NIRC would have power to enforce any of these orders.

In the Government's view, the NIRC and ITs should never grant an interim remedy (i.e., what is at present described as an ex parte injunction) that would restrain industrial action, without giving those who would be affected an opportunity to put their case. Such a remedy would not be granted before the NIRC had given any registered trade union or employers' association that appeared to it to be directly concerned an opportunity to put its case.
31. The NIRC would have power to enforce its own decisions. Orders of the ITs would be enforced through the NIRC, rather than through the County Courts as at present. But the collection of debts arising out of cases in the NIRC and the ITs would continue to be a matter for the County Courts.

32. It is proposed that the ITs should be given a limited power to review their decision if fresh facts come to light.

/IVd
The Commission on Industrial Relations

33. The Commission on Industrial Relations (CIR) would continue as at present to be primarily concerned to assist employers and unions in the voluntary reform of industrial relations institutions and procedures. But it is proposed to give it the additional functions indicated in Parts VII and VIII of these proposals, and to put it on a statutory basis (at present it is a Royal Commission).

34. The Secretary of State would continue to be responsible for appointing the Chairman and members, and he (alone or with other Ministers) would initiate references (apart from those initiated by the NIRC under the proposals in Parts VII and VIII).

35. The CIR would be enabled to hold such inquiries as it considers necessary or desirable for the performance of its functions, to examine witnesses on oath; to hear evidence in private if this is requested and if it thinks fit; to require people to attend, or to produce documents or furnish information relevant to the inquiry; and to conduct ballots.

36. The CIR would be enabled to take any steps it thinks fit to help to remedy the defects which it finds in existing arrangements.

37. The CIR would make a report to the Secretary of State or other Ministers who had initiated a reference.

38. The CIR would be required to make an annual report to the Secretary of State on its activities. This would include a general review of the development of industrial relations during the year and would draw attention to any problems that the Commission regarded as being of special importance.
The Registrar of Trade Unions and Employers' Associations

39. Under existing law the rules and conduct of trade unions and employers' associations are, in some limited respects, subject to independent scrutiny and supervision by the Registrar of Friendly Societies. But the Government considers the existing provisions inadequate. They do not ensure that the membership can exercise reasonable democratic control of the union, or give the individual member (or applicant for membership) sufficient safeguards against unjust treatment by the union.

40. It therefore proposes to create a new office of Registrar of Trade Unions and Employers' Associations. The Registrar would take over the present responsibilities of the Registrar of Friendly Societies in relation to trade unions and employers' associations and would have the additional functions outlined in Part VI.

41. The Registrar's main responsibilities would be to ensure that trade unions observed their rules and were properly administered, in order to safeguard the public interest and to protect the rights of union members and applicants for membership. In order to carry these out effectively, he would have authority to conduct preliminary enquiries and to call for documents. He would be able to initiate enquiries, either at the request of individual members or applicants for membership, or on the basis of any information he received from elsewhere. If he felt, following enquiries, that an allegation of malpractice was justified, he would have discretion to resolve the matter himself by conciliation and by advice to the parties. In the last resort, however the member (or the Registrar after an investigation which he had initiated himself) would be able to take a case to the NIRC for adjudication. (See also Part VIId).
IVF: Arbitration Board. Courts of Inquiry

42. To avoid confusion, the existing Industrial Court would be renamed the Arbitration Board. Its present functions would remain substantially unchanged, but Section 8 of the Terms and Conditions of Employment Act 1959 would be amended so that only registered trade unions could initiate a reference under that section. The Board would in addition be responsible for arbitration in cases referred to it by a registered union authorised to do so by the NIRC under Part VII d and e of these proposals.

45. It is proposed that the Secretary of State should retain his existing powers in industrial disputes, including in particular his powers to arrange for conciliation under the Conciliation Act 1896 and to refer matters to arbitration and to commission inquiries under the Industrial Courts Act 1919.
In relation to trade union membership, non-membership or activity

In the Government's view each worker should have an unqualified right to choose whether or not to join a trade union.

The Government therefore proposes to make provision in the Industrial Relations Bill to secure the right of an individual to belong to an independent registered trade union of his choice and to take part in that trade union's activities. Equally the Bill would secure the right of an individual to choose not to belong to a trade union.

Under these provisions an individual would be able to seek redress for any action of his employer which is designed to deter him from joining a registered trade union, continuing in membership of such a union, or taking part in that union's lawful activities, or which penalises or discriminates against him for these reasons. This protection would similarly apply where an individual was penalised or discriminated against for refusing to join or continue membership of a trade union. Compensation could be awarded, if appropriate, against anyone who had put pressure on the employer, as well as the employer himself.

It is also proposed to make it an unfair industrial action to organise, or threaten to organise, a strike to put pressure on an employer to discriminate against an individual because of his membership or non-membership of a registered trade union.

There would be corresponding provisions to protect people seeking employment.

Claims about the infringement of the right to belong or not to belong to a registered trade union would be dealt with by the Industrial Tribunals.

In relation to unfair dismissal

At present an employee may seek damages if he is dismissed in breach of contract and the Redundancy Payments Act 1965 provides protection for the employee dismissed on account of redundancy. However an employee has no redress against his employer for unfair dismissal.

Britain
Britain is one of the few countries where dismissals are a frequent cause of strike action. It seems reasonable to link this with the fact that in this country, unlike most others, the law provides no redress for the employee who suffers unfair or arbitrary dismissal if the employer has met the terms of the contract, e.g. with regard to giving notice. Thus an employee can be dismissed without reasonable cause and though this may severely prejudice his future livelihood the law gives him no right of appeal against his dismissal. The Government considers that this situation is unsatisfactory and, both on grounds of principle and as a means of removing a significant cause of industrial disputes, it proposes to include provisions in the Industrial Relations Bill to give statutory protection against unfair dismissal.

It is proposed that employees should have a right to appeal to an Industrial Tribunal if they consider that they have been unfairly dismissed. Initially, because of limitations on the rate at which the Tribunals can be expanded for their additional functions, this right would have to be limited to employees with two or more years' service in their employment; but the intention would be to extend the right to other employees later. Remedies would be available in respect of dismissals for reasons of membership or non-membership of a registered trade union or for participation in trade union activities without the need for any such two year qualifying period.

A dismissal would be fair if the employer had acted reasonably and had dismissed the employee because, for example, of redundancy or the employee's conduct or capability. Where a Tribunal found a dismissal unfair it would be able to recommend reinstatement or, alternatively, to award compensation. Neither the employer nor the employee could be compelled to accept a Tribunal's recommendation of reinstatement, but any unreasonable refusal could be reflected in the award of compensation. Compensation would be awarded on the basis of assessment of past and probable future loss, broadly as at common law (taking account of the ordinary duty of a claimant to mitigate his loss so far as possible.)
It would be an unfair industrial action to induce, or threaten to induce, a strike to secure the unfair dismissal of an employee. The Tribunal would, where it considers it appropriate, be able to award compensation for unfair dismissal against any others who had put pressure on the employer to dismiss, as well as against the employer himself.

Some employees already have the benefit of voluntary procedures which provide them with safeguards against unfair dismissal. The Government is anxious to encourage such responsible self-government within industry and therefore proposes to provide for the exemption from the statutory machinery of voluntary procedures which provide adequate protection against unfair dismissal for the employees covered by them.

Under the Contracts of Employment Act 1963

The Contracts of Employment Act prescribes minimum periods of notice of termination for employers and employees. In the case of the employee these periods of notice vary from one to four weeks depending on his length of service.

The Government considers that the periods of notice provided by the Act should now be increased for the long service employees, by providing for a minimum of 6 weeks' notice after 10 years' service and 8 weeks' notice after 15 years' service. The period of service qualifying both employer and employee to an entitlement of a minimum of one week's notice would be reduced from 26 to 13 weeks.

The provisions of the Act under which employers are required to give their employees a written statement of their main terms of employment would be amended to ensure that employees are given adequate information about any terms and conditions affecting their proposed basic right to choose whether or not to belong to a trade union, and about the steps which they should take to bring any grievance to the notice of the employer.
VI: Conciliation

59. Wherever possible it is intended to promote the voluntary settlement of complaints about unfair dismissal or other infringements of individual rights, by conciliation. The Secretary of State would be responsible for providing a conciliation service in relation to such complaints. The Bill would provide for this service to be informed when a complaint was lodged with the Tribunals and for conciliation officers to seek to obtain a voluntary settlement between the parties before the matter came for hearing before the Tribunal. It is hoped that this would encourage the early settlement of such disputes, without the need for a case to be heard before a Tribunal.

Ve: Alleged breaches of contracts of employment

60. The Government considers that employees might often find the Industrial Tribunals, with their practical, and comparatively informal, approach to questions of employment and industrial relations, a more convenient and accessible forum for cases about alleged breach of a contract of employment than the Courts. It therefore proposes to carry out the recommendation of the Donovan Commission that provision should be made for the Industrial Tribunals to hear such cases.

61. This could not be introduced straight away, however, since the capacity of the Tribunals would first have to be expanded sufficiently to deal with the additional cases (and with the other new functions which it is proposed to give to them). The Government therefore proposes that power should be taken to extend the Tribunals' jurisdiction in this way by statutory instrument.

62. This power would not, however, extend to cases in which damages are claimed for personal injuries or death; nor would it permit any remedy other than compensation; nor would it give the Industrial Tribunals an exclusive jurisdiction in this field.

/Vf: Overlap with Race Relations Act 1968
63. Some of the proposals in this document overlap with the Race Relations Act 1968 and are more generous to the aggrieved individual than that Act eg in relation to claims that dismissal, by an employer, or discriminatory action by a trade union (whether registered or not), was due to colour, race, or ethnic or national origins. Where this is so, it is intended that the Government's proposals should take the place of the Act. It is proposed, however, that in such cases the Race Relations Act machinery should still be available for securing an assurance of no further acts of discrimination and for dealing with breaches of such assurances.

64. The legislation would make it clear that no court will have power to compel an individual worker to remain at work against his will, or to compel him, whether directly or indirectly, to refrain from working in accordance with his contract of service. Thus a worker who was on strike could not be compelled by the courts to return to work; nor could they compel a worker to take strike action.

65. It is proposed to keep in force the existing provisions protecting individuals who join together in an industrial dispute from actions for criminal or civil conspiracy (section 3 of the Conspiracy and Protection of Property Act 1875 and section 1 of the Trade Disputes Act 1906). It is also proposed to implement the recommendation of the Donovan Commission that, since it is not a tort for individual employees to go on strike in breach of their contracts of employment, any danger that an agreement between them to do so might be actionable as a tort should be removed.

66. In the present courts, those involved in industrial disputes would retain all their existing immunities from legal action, by giving the NIRC and ITs, generally speaking, an exclusive jurisdiction in civil cases arising from industrial disputes (paragraph 20). Registered trade unions
unions and other industrial relations organisations (see Part VI) would however lose their present immunity in the ordinary courts (under section 4 of the Trade Disputes Act 1906) from actions in tort not connected with an industrial dispute.

67. In addition, it is proposed to have a provision in relation to the NIRC and ITs, comparable to the second part of section 3 of the Trade Disputes Act 1906, that an act done by a person in contemplation or furtherance of an industrial dispute is not actionable on the ground only that it is an interference with the trade, business or employment of some other person, or with some other person's right to dispose of his capital or his labour.

68. Registered trade unions, and their officials and members acting with their authority, would enjoy in the NIRC and the ITs a protection comparable to that which they have at present (under sections 3 and 4 of the Trade Disputes Act 1906) from actions in tort connected with an industrial dispute - although they would not enjoy any immunity in relation to unfair industrial actions and in the other ways proposed in this document (paragraph 83 and Part VI d).

It is further intended to provide that a threat of industrial action would be regarded as unfair only if the proposed industrial action was itself unfair. There would also be an upper limit on awards of compensation against them (paragraph 85).

69. Other industrial relations organisations and individuals, however, would not enjoy any special immunity in the NIRC and ITs from actions in tort connected with industrial disputes. In particular they could be sued for inducing workers to go on strike in breach of their individual contracts of employment, or threatening to do so (paragraph 110) - thus removing (in the NIRC and ITs) the protection which they at present enjoy under the first part of section 3 of the Trade Disputes Act 1906, and under the Trades Disputes Act 1965 (which would be repealed). There would also be no upper limit on awards of compensation against unregistered associations.

70. Certain kinds of...
70. Certain kinds of "secondary" or "sympathetic" industrial action would be categorised as unfair industrial actions. Thus it would be an unfair industrial action to procure or attempt to procure the breach of any commercial contract by inducing or threatening industrial action that was in breach of individual contracts of employment. It would similarly be unfair to interfere in such a way with the performance of any commercial contract.

71. The Government has reviewed the role of the criminal law in industrial disputes. It considers that it has no place except in relation to situations involving violence or threats of it, or risk of serious injury.

72. It therefore proposes to repeal section 4 of the Conspiracy and Protection Act 1875, as amended, which makes it a criminal offence for any person employed by a gas, electricity or water undertaking maliciously and wilfully to break his contract of service, if he knows, or has reasonable cause to believe, that the probable consequence of his doing so will be to deprive inhabitants in the area concerned of supplies. The necessary safeguard against such action leading to serious harm is provided by section 5 of the same Act, which makes it a criminal offence for any person wilfully and maliciously to break a contract of service or of hiring, if he knows or has reasonable cause to believe that the consequences of his doing so will be to endanger human life or to cause serious bodily injury or to expose valuable property to destruction or serious injury. It is proposed to retain this section.

73. The Government proposes that the protection which the law gives to peaceful picketing (section 2 of the Trade Disputes Act 1906) should not apply to the picketing of a person's home.

74. The Bill would protect people who wished to exercise their rights under it from any attempt to put pressure on them not to do so. It would therefore make it an unfair industrial action to take, induce or threaten any action to prevent or hinder any person from exercising or asserting any right or performing any duty under it. It would also make void any agreement not authorised under it, which excluded or limited the operation of any right under it.
VI. TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS

VI. Registration and status

75. At present the additional rights which trade unions and employers' associations gain by registration, and the additional duties which they accept, are relatively limited. Legal status as a trade union, and many associated advantages, are available equally to registered and unregistered bodies. In the Government's view, the substantial new rights which it proposes for trade unions should only apply to those which, by registering, accept statutory minimum standards in relation to their rules and the rights of their members.

76. It therefore proposes to introduce a new system of registration which will limit legal status as a trade union or employers' association to registered organisations. The rights and privileges accorded to trade unions and employers' associations in the Bill would accordingly only be granted to those which are registered. Registration would also enable the organisation to hold property in its own name.

77. Registration as a trade union would be available only to workers' organisations, and registration as an employers' association only to employers' organisations; the test would be whether the membership was composed wholly or mainly of workers, or of employers, in each case.

78. Federations or other joint organisations of trade unions, or of employers' association, would be eligible for registration in a separate section of the register and would be granted legal status as a trade union or employers' association, as the case may be. Such federations would have to be composed wholly of registered organisations.

79. Further conditions of eligibility would be:

(i) that one of the principal objects of the organisation is the regulation of relations between employers and workers. (Organisations with other objects besides the regulation of relations, for example some professional associations, would therefore be eligible to register providing they satisfy the other conditions).
(ii) that the constitution of the organisation gives it adequate control over the determination of its objects and procedures and over the purposes for which funds may be used to be able to meet the requirements of registration. (Branches of registered trade unions or employers' associations would therefore not be eligible for separate registration; unions consisting of several autonomous parts would be eligible only for registration as federations).

(iii) if the organisation is a trade union or federation of unions, that it is not under the domination or control of an employer or employers.

80. It is proposed that it should be an unfair industrial action for an employer or a number of employers or an employers' association to dominate or seek to dominate a registered trade union, or to take any action to interfere with the formation or administration of a registered trade union which is calculated or intended to bring it under the domination or control of an employer or a number of employers or an employers' association.

81. Trade unions, employers' associations and federations which are registered as trade unions under the Trade Union Act 1871 would, if they satisfy the new conditions of eligibility, be transferred to the appropriate section of the new register. Other organisations seeking registration would have to make an application, supported by a copy of their constitution and rules and other necessary information.

82. Registered organisations would be required to make an annual report to their members.

83. Registered trade unions and employers' associations, and their officials, would continue to enjoy immunity from actions in tort in respect of acts done in contemplation or furtherance of an industrial dispute. But, as the Donovan Commission proposed, they would no longer have their present immunity in respect of other, "non-industrial" tortious acts; nor would they have any immunity before the NIRC and ITs in relation to unfair industrial actions and in the other ways proposed in this document (eg Part VI d).
84. A registered organisation would be able to avoid liability in any proceedings before the new agencies if it was able to show that it had used its best endeavours to fulfil its obligations and to prevent any continuation or repetition of the acts complained of.

85. In addition there would be upper limits on the compensation that could be awarded against a registered trade union in any proceedings before the NIRC or the ITs. Subject to this, all the funds of a union that were available to finance industrial action would be treated as available for the payment of compensation awards.

VII: Rules

86. It is proposed that registered organisations should be required to have rules which do not conflict with basic principles affecting members' rights, and which deal adequately with subjects specified in the Bill. The Registrar would have discretion to allow a reasonable period for each organisation to meet these requirements; he would also have power to waive a specific requirement in a particular case.

87. Failure to meet the requirements in the time allowed would lead to cancellation of registration. Provision would also be made for cancellation of registration if, in the Registrar's opinion, the organisation ceased to be eligible for registration under the criteria set out in paragraphs 77-79.

88. All decisions of the Registrar concerning registration, cancellation of registration, or rules requirements would be subject to appeal to the National Industrial Relations Court.

89. It is proposed that the Bill should set out the following basic principles to ensure that members of a registered trade union (and of any other organisation with similar purposes) enjoy equal rights to participate in the affairs of the organisation and to receive fair treatment in their relations with it (even if its rules provide to the contrary):

/(i) the organisation
(i) the organisation must not arbitrarily or unreasonably exclude from membership anyone who is reasonably qualified to undertake a kind of work ordinarily done by members of the union.

(ii) if a member has met his obligations (eg as to subscriptions), the organisation must not restrict his right to resign;

(iii) every member must have an equal right to hold office, to nominate candidates, to vote in elections or ballots, to attend meetings and to participate in the business of meetings - subject to reasonable rules determined by the organisation;

(iv) subject to reasonable rules, all members must have an equal right to vote in any situation where a vote is taken; they must also have a fair and reasonable opportunity to vote without interference or constraint; and where the voting is by ballot, its secrecy must be properly secured;

(v) no member of an organisation may be disciplined, suspended, expelled or have his membership terminated (other than for non-payment of subscription) unless he has been given written notice of the charge brought against him, a reasonable time to prepare his defence, a full and fair hearing and a written statement of the findings;

(vi) no organisation may limit the right of any member to institute proceedings in any court or tribunal or his right to appear as a witness in any proceedings;

(vii) no member who refuses to participate in any industrial action which is deemed unfair by the Bill may be expelled, disciplined or discriminated against by the organisation, notwithstanding anything in its rules.
90. Registered organisations would be required to have rules which deal adequately with specified matters, although the organisation would remain free to draw up its own rules on these matters. Different requirements would be laid on trade unions and employers' associations on the one hand, and federations on the other.

91. The rules of registered trade unions and employers' associations would be required to make adequate provision for a more comprehensive list of subjects than is contained in the Trade Union Act 1871. This would be based on the recommendations of the Donovan Commission that rules should deal adequately with admission, discipline, disputes between unions and their members and the procedure for elections as well as the determination of objects, method of government and the conduct of business.

92. The rules of federations would be required to deal with broadly similar matters, but excluding those relating to the interests of individual members, notably those relating to admission and discipline.

93. Further details of the proposed provisions mentioned in paragraphs 91 and 92 are given in Appendix I.

\[\text{NTE: Audit of accounts}\]
Vic: Audit of accounts and investigation of superannuation schemes

94. Registered trade unions are at present required by the Trade Union Act 1871 to have their accounts audited and to submit an annual statement of accounts to the Registrar of Friendly Societies. The Donovan Commission agreed with the Registrar's recommendation that all but the smallest trade unions should be required to appoint professional auditors and to have members' superannuation schemes periodically investigated by an actuary.

95. The Government therefore proposes that registered trade unions and employers' associations should be required to maintain proper accounting records, appoint professionally qualified auditors to audit the accounts, and submit these accounts in an annual return to the Registrar of Trade Unions and Employers' Associations together with a copy of the auditor's report. Smaller unions would be exempted from the requirement to employ auditors who are professionally qualified but they would still be required to have their accounts audited and submit them to the Registrar.

96. Registered trade unions and employers' associations possessing superannuation schemes for their members would have to have them examined by a qualified actuary at stated intervals to ensure that the schemes are viable. They would be required to set up separate superannuation funds if they do not have them at present. Copies of the actuary's report would have to be sent to the Registrar and supplied to members of the union on request.

Vid: Complaints

97. In the Government's view, individuals who consider that they have grounds for complaint against a trade union about certain matters (particularly those that may affect their employment, or that concern the democratic running of the union) should in the last resort have a right to have their complaint heard by an independent body not connected with the union.

98. It therefore proposes that members of registered trade unions and employers' associations should be given access to the Registrar, and to the Industrial Tribunals and in some cases the National Industrial Relations Court, to complain about
about such matters. Access would also be available for former members and persons seeking membership. Members of other organisations with purposes akin to those of a trade union would have similar rights.

99. Complaint could be made in this way about any acts which are in breach of the basic principles set out in the Bill, or which are in breach of the rules of the organisation.

100. Tribunals (and the National Industrial Relations Court) would have power to refer a complaint from a member of a registered organisation to the Registrar of Trade Unions and Employers' Associations for investigation and conciliation. The Registrar would have power to take similar action on such complaints made direct to him by the member. He would also have power to investigate alleged breaches of the basic principles or of the rules at his own initiative if he had reason to believe that there had been serious or persistent breach of the basic principles or of its own rules by a registered organisation.

101. If the Registrar were unable to settle the matter the Tribunal (or the National Industrial Relations Court) would hear the complaint. The case would be brought by the member or, if the Registrar had initiated the investigation, by the Registrar himself. If the Tribunal or Court found the complaint justified, it would have power to order a remedy, including the award of compensation where appropriate. Compensation for loss of employment resulting from wrongful termination or exclusion from membership would be calculated on the same basis as for unfair dismissal. In the last resort, if there were serious and persistent breaches of these requirements, the union could be deregistered.

102. The Tribunals and the National Industrial Relations Court would be able to refuse to consider a complaint which is not made within a reasonable time, and to defer the hearing of a complaint until the complaint had made use of his organisation's internal appeals procedure.

103. It is proposed that the Bill should provide for employers' associations to be treated as a separate category, instead of continuing to be covered by the definition of "trade union" as under the present law. This was one of the recommendations of the Donovan Commission.
104. The requirements of the Bill about registered employers' associations would correspond generally to those about registered trade unions, except where this was clearly inappropriate.

105. The requirements about an annual report to members, an annual return to the Registrar, the submission of information to the Registrar, and audit and superannuation would apply to employers' associations as to trade unions.

106. Registered employers' associations, like registered trade unions, would be required to have rules on specified subjects and to cover particular matters on these subjects. The Registrar would have power to waive requirements about rules in a particular case if they were clearly inappropriate.

VII: Other combinations of workers

107. As explained above, it is proposed to confine the title and status of "trade union" to those organisations that register as such. However, as was recognised by the Donovan Commission (and by the House of Lords in the Harris Tweed case, 1942) there are likely to be occasions when a group of workers combine together to advance or defend their own lawful interests, in a way which, in essence, involves the regulation of relations between themselves and their employers. This might happen, for example, in the course of organising a new trade union. As explained in paragraph 65 above, the Government proposes that the members of such a combination should continue to enjoy their present protection.

108. There is, however, no reason why such a combination, which has not yet accepted the responsibilities implied in registration, should enjoy the other benefits or privileges proposed in this document for registered trade unions. An organisation of this kind would, therefore, have to register as a trade union before it acquired the right to commence proceedings or make any claim before any of the new agencies proposed in this document. Only after registration, for example, could such an organisation put a claim for recognition to the NIRC (part VII d) or operate an agency shop (part VII f). And only then would its members have the protection proposed for the right to join or take part in the activities of a trade union.
109. For the same reasons it would not be right for such a combination to be any less accountable than a registered trade union. It is proposed to provide, therefore, that such an organisation should be subject to the same liabilities as a registered trade union (for example in respect of any unfair industrial action). It is proposed to enable proceedings to be commenced and enforced against the funds of such an organisation without the necessity for bringing a representative action against some of its members. And if, before registration, the organisation operated a political fund, it would (like registered trade unions) be subject to the appropriate provisions of the Trade Union Act 1913.

110. It is proposed to provide that organisations and individuals, other than registered trade unions and employers' associations (and their officials and authorised agents) should be liable to proceedings before the NIRC or the ITs if, in the course of an industrial dispute, they induce (or threaten to induce) workers to break their contracts of employment. This change is necessary because the existing immunity in these circumstances has increasingly been abused in sudden unofficial strikes, and because a clear distinction must be drawn between the privileges of a registered organisation, which would, under these proposals, have accepted certain basic obligations, and the position of any comparable organisation that had not yet accepted such obligations.

111. Once such an organisation had registered it would, of course, secure the limitation of liability and the other advantages proposed for registered trade unions in paragraphs 83 - 85 above.
VII. COLLECTIVE BARGAINING

VIIa: Legal status of collective agreements

112. At the present time collective agreements between employers and unions have a doubtful status in law. In principle there is no reason why a collective agreement, like any other valid contract, cannot be made legally binding; but in practice the attitude of the parties to collective agreements, the lack of any clear indication that they are to be legally bound, and the form and language of agreements have encouraged the view (which has been accepted by the courts in some cases) that most collective agreements are not intended to have the force of legally binding contracts.

113. In the Government's view this is an unsatisfactory state of affairs. First, it is essential that the legal status of collective agreements should be clear and unambiguous. Secondly, it is highly desirable that agreements should be expressed in language which makes quite clear what it is the parties have agreed to. Thirdly, the parties should regard - or come to regard - the signing of agreements as a responsible act which binds them in law to honour their commitments.

114. The Government therefore proposes that the Bill should create a presumption that any written collective agreement entered into after a given date should be a legally binding and enforceable contract unless there is an express written provision to the contrary in the agreement itself. In this way, the presumption would be rebutted, as with a commercial agreement only by clear evidence that the parties did not intend to enter into legal relations. The provision in section 4(4) of the Trade Union Act 1871 which prevents the courts from enforcing directly an agreement between a trade union and an employers' association would be repealed.

115. There would be an obligation on the parties to a legally binding collective agreement to use their best endeavours to avoid or end any industrial action which was in breach of the agreement or, which, if undertaken by a party to it, would have been a breach of it.
116. Any action about the alleged breach of a legally binding collective agreement would be heard by the NIRC or the ITs.

117. It would be an unfair industrial action to induce a party to a legally enforceable collective agreement to break it.

VIIb: Selective introduction of enforceable agreements

118. Despite these provisions, there may still be no legally enforceable procedure agreements or indeed no satisfactory procedure agreements at all, in some sectors of industry for some time to come. In some cases this may be an important contributory factor to poor industrial relations. This possibility has led the Government to examine other proposals for securing the introduction of clear and legally enforceable procedural provisions.

119. The Government therefore proposes that an employer or a recognized registered trade union (or the Secretary of State) should be able to apply to the NIRC for a reference to the CIR to review existing procedures, or the absence of procedures, with a view to producing new or improved procedural provisions which could, if necessary be made legally binding. If the Court were satisfied, on the evidence brought before it and in accordance with specified criteria, that the development or maintenance of orderly industrial relations in the undertaking concerned had been seriously impeded by recourse to industrial action in breach of the procedure agreement, or in the absence of any effective agreement, it would refer the matter for investigation by the CIR.

120. The CIR would then have the task of examining any existing procedural provisions and:

a. indicating which (if any) of these provisions could form part of a clear, effective and suitable procedure agreement;

b. insofar as it considered any existing procedure agreement was deficient, or found that there was no procedure agreement, promoting discussion between the parties with a view to their agreeing to suitable provisions to make good the deficiency;
c. if suitable provisions could not be agreed by the parties, recommending provisions which should be incorporated in the agreement.

121. The CIR would report to the Court, indicating what it considered to be suitable and effective procedure provisions - and whether or not these were incorporated in an existing agreement or had been agreed in discussions between the parties.

122. Any of the parties concerned would have the right to apply to have the CIR's recommendations made legally binding by order of the NIRC. When such an application was made, the NIRC would have to notify all the other parties (and the Secretary of State) and would conduct a hearing if any of the parties so requested.

123. At such a hearing, any party could ask for the application to be turned down on the ground that it was not necessary, in order to establish orderly industrial relations and secure the observance of procedure agreements, to make the provisions legally enforceable.

124. Any party could also argue that the provisions were insufficiently clear to be made legally enforceable. If the NIRC agreed, it could seek the agreement of the parties to clearer provisions and, if they did not agree, could refer the matter back to the CIR for further consideration.

125. Unless the NIRC rejected the application or referred it back to the CIR, it would make an order declaring the provisions legally enforceable against the specified parties.

126. There would be appropriate provisions for the modification of provisions made legally enforceable by such an order, and for application to have the order revoked when no longer needed.

VIIc: Notification of procedure agreements and arrangements

127. The Government proposes to continue the existing scheme for the voluntary notification of procedure agreements and arrangements to the DEP. The intention is to use the information obtained by notification to identify...
areas where procedures can be improved. It is proposed to take reserve powers to make this notification a statutory obligation. It is hoped that, as in the past, the vast majority of employers will continue to co-operate on a voluntary basis without any use of these powers.

128. The proposed reserve powers would enable the Secretary of State, after consulting the CBI and TUC, to make regulations requiring employers to notify the DEP of procedure agreements and arrangements at plant and company level and to inform the DEP of any national or industry-wide procedure agreements or arrangements which they observe. The regulations would have to allow at least six months for this information to be supplied. Employers who had already supplied the information on a voluntary basis could be exempted.

VIIId: Recognition and bargaining rights

129. It is of first importance to satisfactory collective bargaining and healthy industrial relations to establish a stable and effective bargaining structure. This implies, on the one hand, a readiness on the part of employers to negotiate seriously and responsibly with unions which represent and enjoy the support of a substantial body of employees; and, on the other hand, workable and dependable arrangements and machinery through which employers and employee representatives can communicate, negotiate and resolve their disputes.

130. In the Government's view disputes about bargaining rights and bargaining structure can be most satisfactorily resolved by the parties themselves (where necessary with help of conciliation) who will generally recognise their joint interest in achieving a good working relationship with one another. There are, however, situations where - because of the unwillingness of the employer to concede recognition to one or more unions, or because of disputes between unions over the right to represent particular groups of employees or because of the fragmentation of bargaining - the strain
on industrial relations becomes excessive and the parties are entirely unable to compose their differences or to contemplate a fundamental change in the bargaining structure. It is in these situations that the Government believes that the possibility of recourse to independent investigation may prevent destructive conflict and a breakdown in industrial relations. It is to prevent such an outcome that the proposals in this section are directed.

131. The Government proposed to provide that any registered trade union, any employer or registered employers' association, a substantial proportion of the employees concerned, or the Secretary of State, could make a claim to the NIRC to have any dispute over a trade union's claim for recognition, or over bargaining structure, examined by the CIR. It would be an unfair industrial action to call a strike (or lock-out) over any question of recognition or bargaining rights while it was before the NIRC or the CIR and for a period after the CIR reported. The NIRC would refer the matter to the CIR if it were satisfied that no further progress could be made by discussions between the parties and/or conciliation, and that such a reference would help the development or maintenance of stable and effective bargaining arrangements.

132. The CIR would then investigate the problem and recommend
   i. an appropriate bargaining unit or units;
   ii. a bargaining agent for each unit;
   iii. any conditions which should be satisfied before recognition was granted to the bargaining agent.

133. The "bargaining unit" would mean the employees, or a group of the employees, of a single employer or group of associated employers, whose terms and conditions of employment should, in the view of the CIR, be determined in the same negotiations.

134. The "bargaining agent" would be the registered union or the joint negotiating panel which should have sole negotiating rights for all employees within a bargaining unit. The CIR would not be able to recommend more than one bargaining agent for a bargaining unit.
The terms "bargaining unit" and "bargaining agent" have, for convenience, been borrowed from United States law and practice. The Government proposes that these concepts should be applied only in the specific situations described in this document, where this is necessary, to promote the development of stable and effective collective bargaining, and does not envisage that they should be generally applied as in the United States.

A joint negotiating panel would be a body in which a number of registered unions had vested appropriate authority to enter into collective agreements on their behalf and whose entry into such an agreement would commit each of the constituent unions as if it were a direct party to the agreement. The CIR would be able to recommend, and to assist with, the creation of a joint negotiating panel. It would specify, in its recommendations, which unions should belong to the panel - though obviously, in doing so, it would take account of any successful existing arrangements, and the readiness of unions to work together.

In considering whether a union or joint negotiating panel should be a bargaining agent, the CIR would take account of the extent to which the union or joint panel:

i. has the support (not necessarily membership) of a substantial proportion of employees affected; and

ii. has the resources and organisation that would enable it effectively to represent the employees.

The CIR would be able to recommend that no bargaining agent should be recognised if the union or unions concerned, or any feasible joint negotiating panel, did not (or would not) have substantial support from employees or had not (or would not have) the resources and organisation to enable it to represent employees effectively.

The CIR could, where appropriate, specify conditions which must be fulfilled by the union or joint panel before statutory bargaining rights could be granted. Such conditions might, for example, relate to making sufficient trained officials and shop stewards available to participate in negotiations; or to an agreement not to pursue a claim for negotiating rights elsewhere in the undertaking.
140. The purpose of the CIR's examination would be to try to produce a durable solution to the dispute which gave rise to the reference. In general, if the CIR found that settled recognition arrangements were working well, it would be unlikely to disturb them.

141. The CIR would prepare a document embodying its recommendations and would send it to the NIRC, with copies to the Secretary of State, the employer, and the unions concerned in the reference.

142. The employer or the recommended bargaining agent could then apply to have the CIR's recommendations made enforceable; and the NIRC would enforce the recommendations if a majority of the employees concerned, voting in a secret ballot, endorsed the CIR's recommendations.

143. After the NIRC had made an order making the CIR's recommendations enforceable, the employer would be obliged to negotiate seriously with the bargaining agent. It would be an unfair industrial action for him to fail to do so, or to negotiate with anyone else in respect of the bargaining unit or any part of it; and for anyone else to threaten industrial action, or to induce the employees to take industrial action, to disrupt in any way the statutory bargaining structure. If the NIRC found that an employer had failed to negotiate seriously, it could give the union a right unilaterally to refer a claim for improved terms and conditions of employment for the employees concerned to the Arbitration Board, whose award would be binding.

144. There would be appropriate provisions for recognition orders to be modified or revoked when necessary. In particular, if, after a suitable minimum period, a large proportion of the employees were dissatisfied with the bargaining agent, they would be able to reopen the matter and secure a further ballot on whether its position as bargaining agent should be ended or transferred to another union.
VII: Disclosure of information by employers

145. The Government considers that it is an essential part of the successful conduct of collective bargaining that the employer should not unnecessarily withhold information about his undertaking that the trade union representatives need in the course of negotiations.

146. It therefore proposes that the Code of Industrial Relations Practice (which the Secretary of State would have to prepare, as explained in Part III) should contain a statement of the principles and practice to be applied by employers in relation to the disclosure of information about their undertakings to trade union representatives with whom they negotiate. This part of the Code would provide guidance about the disclosure of information without which trade union representatives would be impeded in their conduct of negotiations.

147. If an employer failed in the course of negotiations to disclose information in accordance with the code to representatives of a registered trade union that he recognised, the union could complain to the National Industrial Relations Court. If its complaint were upheld, the Court could grant the union the right unilaterally to refer a claim for improved terms and conditions of employment for the employees concerned for arbitration by the Arbitration Board, whose award would be binding.

148. In the Government's view, the employees of the larger employers should be entitled to some basic information about the undertaking, just as shareholders are in the case of public companies. The provision of this information to employees would recognise the interest which they have in the progress of the undertaking for which they work, and would acknowledge its obligations towards them.

149. It is therefore
149. It is therefore proposed that the Secretary of State should have power to require employers of a certain size or type, by regulations which would be subject to the approval of Parliament, to disclose specified information to their employees at stated intervals.

150. Appropriate provisions would be made for the protection of confidential personal information and information the disclosure of which would be seriously prejudicial to the interests of the employer's undertaking.

VIII: The "closed shop" and the "agency shop"

151. The Government is opposed to the "pre-entry closed shop" which can exclude an individual from entering certain employments if he is not a member of any or of a particular trade union. It considers that an employer should be free to employ anyone who has the necessary skills. It proposes that the Industrial Relations Bill should contain provisions making any "pre-entry closed shop" agreement or arrangement void, and that any strike action (or threat of strike action) to enforce the continuation of, or to induce an employer to enter into, such an agreement should be an unfair industrial action.

152. On the other hand the Government believes there is much to commend "agency shop" agreements, whereby a registered trade union represents all the employees in a particular undertaking or establishment or in part of it, and is supported financially by all of them. It considers, however, that employees should have a right to choose whether or not such an arrangement should govern their own place of employment or continue to do so, and that the individual should have a right, while paying for the services the union provides, to choose not to be a member of the union.

153. It is proposed
It is proposed to provide that the introduction or continued operation of an "agency shop" should be subject to the right of the employer or a registered trade union or 20% of the employees covered by the arrangement to request a secret ballot whether the employees are in favour of such an arrangement. It would not be permissible to introduce or continue an "agency shop" arrangement unless the ballot showed that a majority of the employees eligible to vote were in favour of the arrangement. If the ballot showed that a majority of those eligible to vote were in favour of the introduction of an "agency shop" the employer would be obliged to enter into an agreement with the appropriate registered trade union to introduce the "agency shop" and if he failed to do so the trade union concerned would be able to seek an order from the National Industrial Relations Court requiring him to do so. Only a registered trade union would be entitled to secure an agency shop agreement.

Applications for agency shop ballots would be dealt with by the National Industrial Relations Court and, where an application is approved by the Court, the Commission on Industrial Relations would be responsible for supervising or arranging the ballot.

Where an employer entered into an agency shop agreement with a registered trade union he could require the employees concerned, after an interval of time, to join that trade union or to pay a regular contribution in lieu of the union's membership subscription. Anyone who did not follow either course would be liable to dismissal. The appropriate contribution would be in respect of the services provided by the trade union, and would be comparable to the subscription which the ordinary member of the union would be required to pay, less any optional elements. The payment of this contribution would not, however, entitle the employee as of right to all the benefits of membership of the trade union and it would not constitute a contract of membership. Where an individual had an objection...
objection on conscientious grounds both to belonging to a trade union and to paying any contribution to its funds there would be provision to allow him to contribute the appropriate amount to an appropriate charity.

156. Disputes about the level of the appropriate contribution to be paid by a non-member, about whether an employee has a genuine conscientious objection to contributing to a trade union's funds, and about what is an "appropriate charity", would be for determination by an Industrial Tribunal.

VII. Wages Councils

157. The Government believes that greater progress can now be made in promoting the growth of voluntary arrangements for collective bargaining in Wages Councils industries, and accelerating the abolition of councils which have outlived their usefulness, by amending the Wages Councils Act, 1959, and the Terms and Conditions of Employment Act, 1959, broadly on the lines recommended by the Donovan Commission.

158. As recommended by the Donovan Commission it is proposed to amend the Wages Councils Act to provide that trade unions should be able to apply unilaterally for the abolition of a council, provided that the union or unions are representative of a substantial proportion of the workers in the trade or industry concerned. (The Secretary of State would retain his present power to take the initiative in proposing the abolition of a Council despite the absence of any application).

159. It is proposed that the Act should be amended to provide that the only condition to be satisfied before a wages council can be abolished should be that the council is no longer necessary to maintain reasonable standards of remuneration among the workers within its scope.

160. Under present legislation, questions concerning the establishment, abolition or variation of the field of operation of a wages council are resolved by reference to ad hoc commissions of inquiry consisting of independent members and representatives of employers and workers. The establishment of the CIR now makes it unnecessary to set up ad hoc bodies to decide these questions.
It is proposed therefore that the Act should be amended to provide that the CIR should have power to perform all the functions at present undertaken by ad hoc commissions of inquiry.

161. The present legislation specifies in detail the criteria, concerning the extent and adequacy of existing negotiating machinery, to be applied by ad hoc commissions of inquiry. With the change in the grounds for abolition and the substitution of the CIR for ad hoc commissions of inquiry, these provisions would no longer be relevant and it is proposed to remove them from the Act.

162. It is proposed that the employers' side and the wages council concerned as a whole (ie including the independent members) should be consulted before action is taken to abolish a council. In cases of doubt or dispute the issue would be referred to the CIR.

163. Section 8 of the Terms and Conditions of Employment Act, 1959, which provides for the adjudication of the present Industrial Court - the future Arbitration Board - on a claim that an employer is not observing "recognised" terms and conditions of employment, denies access to the Court if the claim concerns workers whose remuneration, or minimum remuneration, is fixed by or under any other enactment. It is proposed to remove this exclusion so far as workers covered by wages councils are concerned.

164. However, only registered trade unions would in future have the right (in wages councils industries as elsewhere) to put claims under Section 8 to the Arbitration Board.
VIII NATIONAL EMERGENCIES AND STRIKE BALLOTS

165. Disputes sometimes arise where - whatever the merits and demerits of the case - the Government's prime duty and responsibility is to protect the public interest. At present, this can be done only by proclaiming a State of Emergency and, in the last resort, calling upon the armed services to secure essential supplies and services. The value of this safeguard is limited by the fact that the Emergency Powers Act 1920 cannot be invoked solely on the ground that the national economy is endangered.

166. The Government regards this situation as unsatisfactory and proposes that the Secretary of State should have additional powers to intervene in disputes which may seriously threaten the national health, safety, or economy and/or the livelihood of a substantial portion of the community. He would, however, have to act through the NIRC; he would have no new power to intervene directly. The present provisions of the Emergency Powers Act would remain.

VIIIa: National Emergencies

167. The Government proposes that where industrial action has begun, or is likely to take place, which would deprive the community of the essentials of life or seriously endanger the national health, security, or economy, the Secretary of State should be able to apply to the NIRC for a restraining order against any union, employer, or employers' association, or any other person.

168. Before applying for such an order the Secretary of State should take account of the extent to which agreed or customary procedures for settling disputes had been adequately applied and would have to give those concerned opportunity to make representations.
169. Unless the Court, after considering the application in relation to
the criteria, were not satisfied that there were grounds for the application,
it would make an order restraining the named organisations and/or persons
from taking steps to call, induce, or finance the industrial action. Any
strike calls already issued would be required to be withdrawn.

170. The order would be effective for a period of up to 60 days - during
which the Court would be able to make appropriate orders (expiring at the
same time as the original order) against other organisations or persons
who were found to be instigating action relating to the same dispute.
While the orders were in force all appropriate action would be taken to
affect a settlement. The order could be renewed within the limit of 60 days
if the initial order were for a shorter period, but could not be extended
beyond, or renewed at or after, the end of the period.

171. The order would not compel individuals to return to, or to remain
at work. There would be no sanctions against any individual solely on the
ground that he participated in industrial action. This conforms to the
general principles set out in Part II.

VIIIb: Strike Ballots

172. There are sometimes cases where industrial action would deprive the
community, or a substantial part of it, of the essentials of life, or
seriously endanger the national health, security or economy or the safety or
livelihood of a substantial portion of the community, but where there is
doubt whether such industrial action has the support of the majority of
employees affected. In such circumstances the Government propose that the
Secretary of State, after giving any organisation concerned in the dispute
an opportunity to make representations, should be able to apply to the
NIRC for an order for a secret ballot to be held.
The NIRC after considering the application in relation to the criteria, would make such an order unless it were not satisfied that there were grounds for it. Before making the order, the NIRC would be able to consult the CIR about its terms. It would then require the CIR to arrange the ballot, after consulting the union(s) and employer(s) concerned. The order would prohibit calling or inducing industrial action over the matter at issue till the ballot was held. Once again, however, the order would not compel individual employees to return to or remain at work.

The CIR may conduct the ballot itself or arrange for it to be conducted, according to specified rules, by the union concerned. The issue to be decided would be whether or not a majority of the employees concerned were in favour of industrial action on the matters and in the circumstances specified in the NIRC's order. The order would also make clear who was to be balloted.

The ballot result would be notified to the CIR, the National Industrial Relations Court, and the Secretary of State, and would be published.

The result of the ballot would not be binding and the NIRC's order would lapse once the ballot had been held.

In general it is proposed to exclude from the scope of the proposals in this document:

(i) workers ordinarily employed outside Britain, except when they are in Britain (but merchant seamen employed on British ships and ordinarily resident in Britain will be covered);
(ii) the armed forces and the police.
It is also proposed to exclude from certain of the proposals (eg those on unfair dismissals):

(i) part-time workers employed less than 21 hours a week;
(ii) employees in small establishments (whose definition might vary for different parts of the provisions);
(iii) workers employed by their husband or wife or a close relative;
(iv) share fishermen wholly remunerated by a share of the catch.

178. In general it is proposed that the provisions should apply to persons employed under a contract personally to do work (ie certain sorts of self-employed people) in the same way as to those employed under a contract of employment, except where (eg in relation to unfair dismissal) this is clearly inappropriate.

179. The Government is consulting with the Government of Northern Ireland about how far (if at all) the proposed legislation should apply to Northern Ireland.

Department of Employment and Productivity

25 September 1970
ANNEX (to Consultative Document)

REQUIREMENTS ON THE RULES OF REGISTERED TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS

1. The consultative document records the Government's intention to require organisations registered with the Registrar of Trade Unions and Employers' Associations to have rules, which they have framed themselves on specified matters.

2. In addition to the requirement that rules should not conflict with basic principles affecting members' rights, the following are the specific requirements proposed for

(a) a registered trade union or employers' association;

(b) a registered federation of trade unions or employers' associations.

Rules of Trade Unions and Employers' Associations

3. The rules of trade unions and employers' associations would be required to make provision for the following matters:

(i) Name of organisation and address of registered office

(ii) The objects for which the organisation is established

(iii) Branch organisation (if any):- covering the manner in which the constitution and structure of branches is determined and the authority or responsibilities vested in branches.

(iv) Appointment and removal of officers and governing body and of workplace representatives:-- providing for the election of a governing body and its re-election at reasonable intervals; the manner of appointment and removal of a secretary and other principal officers; and the terms of office and the responsibility and authority vested in each office. The authority which has power to instruct members to take industrial action (eg strike or lock-out) must be clearly identified. The rules should specify the manner of appointing or electing workplace representatives (where appropriate to the organisation), prescribe the authority charged with, and the manner of, issue and withdrawal of their credentials; and identify the authority responsible for determining their functions.
(v) Finance: stating the rate or rates of subscription payable by members and the consequences of non-payment of the subscription; the purposes for which the funds of the organisation shall be applicable; the conditions under which any person may become entitled to benefits provided under the rules. The rules should also specify what provision is made for the investment of funds and provide for the maintenance of proper financial records and preparation of properly audited accounts (which are not to be incompatible with statutory requirements on the appointment of qualified auditors); for a right of inspection of the books and register of members of the organisation by any member or other person having an interest in the funds; and for the distribution of funds on dissolution.

(vi) Admission to membership: The rules should state clearly the persons or classes of person who are eligible for admission to the organisation or any part of it; the procedure for dealing with applications for admission; the body or bodies having power to determine whether an applicant for membership shall be admitted; the procedure for appeal against non-admission and the body having power to review the decision on appeal. If the trade union charges admission or re-admission fees the rules should state the level of these fees.

(vii) Discipline and termination of membership: The rules should define the offences for which a member may be disciplined, and set out the procedures for hearing disciplinary cases and for making and hearing appeals against the decisions reached and indicating the body having power to review the decisions on appeal; the rules should set out the penalties which may be imposed for each offence and the consequences of non-payment of any fine; they should also specify the circumstances under which membership may be terminated (either by the member or by the union) or suspended.

(viii) Disputes between members and the organisation: The rules should set out a procedure whereby a member may challenge an act of the organisation or its officers which he considers to be against the rules or the constitution.

(ix) Meetings: The rules should specify the formalities of the manner of conducting the business of the union at all levels of the organisation.

(x) Making of rules: The rules should set out the manner of making, altering or rescinding the constitution and rules.
(xi) **Election procedure and balloting.** The rules should prescribe procedures for the holding of a ballot whether for elections or other purposes, covering the issue of ballot papers; the method of voting and its supervision; eligibility to vote; the counting and scrutiny of votes and the declaration and notification of results; and the designation of the officer(s) responsible for the conduct of the ballot. Where the ballot is for an election the rules should additionally cover the notification of vacancies and qualifications of candidates; the making of nominations; canvassing and the content of election addresses where permitted.

(xii) **Dissolution.** The rules should state the manner of dissolution.

**Rules of Federations of Trade Unions and Employers' Associations**

4. The rules of federations would be required to provide for the same matters as trade unions in respect of the name of the federation and its registered office; the objects for which the federation is established; the procedure for the making, amending or rescinding of the constitution and rules; procedure for elections; and the manner of dissolution. The rules would also be required to prescribe the way in which the governing body is constituted, the formalities for transacting business, and the circumstances, if any, in which the federation has authority to bind its members.