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INDUSTRIAL DEMOCRACY

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TUC Policy Statement, 1974;
Supplementary Evidence to the Bullock Committee of Inquiry, 1976;
Report of the Bullock Committee, 1977;
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FOREWORD

It is now six years since the General Council drew up the main part of the text of this document. Since then the conclusions, with some modification following discussion within the trade union Movement, have been endorsed by successive Congresses and the text of the most recent Congress resolution — that adopted in 1978 — is also incorporated in this latest edition.

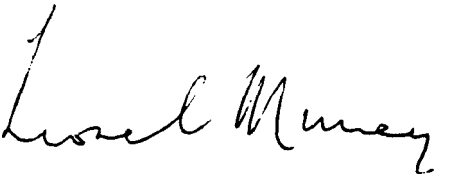
We did not expect to see our legislative proposals enacted overnight. Major changes in the practices of industry require extensive consultation. But few processes of consultation can have been as protracted as that which followed the publication of the TUC report. It was subject to detailed examination in the work of the Bullock Committee, which reported early in 1977 and was followed by the Government's White Paper of May, 1978.

There comes a time when discussion has to turn into action. Some trade unionists are now asking whether the delay implies that either the TUC or the Government doubts the importance and priority of this subject.

That is most certainly not so. The commitment has been affirmed in all the recent TUC-Government statements, including the statement *Into the Eighties*, and in the TUC-Government statement *The Economy, the Government and Trade Union Responsibilities* which also reflects the commitment contained in the Queen's Speech outlining the legislative programme for the 1978-79 session of Parliament.

The urgent often seems to displace the important, and this is perhaps understandable at the present time. But there is no doubt that the TUC attaches the highest priority to the enactment of legislation on industrial democracy.

Commentators often make the point that workers' representation on the policy boards of companies cannot be seen in isolation from other changes in industry. That is true. But recent experience — such as in the Post Office and the British Steel Corporation — demonstrates that board-level representation and developments at other levels are not only not incompatible with each other but indeed are essentially complementary. The development of industrial democracy does indeed hold the key to the significant changes of relationships which we all know are needed for the Britain of the 1980s.



TUC General Secretary

March 1, 1979

Industrial Democracy

CHAPTER 1

RECENT DEVELOPMENTS IN COLLECTIVE BARGAINING

1 Throughout their history trade unions have generated a substantial measure of industrial democracy in this country. All of their activities have served to further this objective. The term industrial democracy cannot be considered outside that context. This report recognises that collective bargaining is and will continue to be the central method of joint regulation in industry and the public services, but there are a number of specific questions of close concern to workpeople which are not being effectively subjected to joint regulation through the present processes of collective bargaining, and additional forms of joint regulation are therefore needed, particularly as capital becomes more concentrated and the central decisions of boards of directors seem increasingly remote from any impact by workpeople through their own organisations.

Changes in the Structure of Bargaining

2 The Donovan report analysed in detail the shift in the centre of gravity of trade union activity in some industries from the formal industrial agreement level to the relatively informal local "shop floor" level. There is no need to reiterate this analysis. The extent of these developments has of course varied between unions and between industries, and has applied more specifically to the private sector than to the public. Trade unions have increasingly recognised the need to integrate shop steward organisation, where this exists, within their structure. This has not been simple, in that the structure of company level bargaining is frequently multi-union, and combine-level stewards committees (whether multi-union or single union) are often difficult to fit into any geographically-based union branch and officer structure. Nevertheless, there has been a relatively recent, semi-formal extension and development of plant-level organisation, up to company and combine-level organisation, and the official structure has in most instances effectively accommodated these changes. It is important to stress the diversity of developments – in particular the distinction between developments in the public and the private sectors – but indisputably these developments do represent solid advances.

3 A feature of this process in the private sector, and also parts of the public sector, has been the increasing participation by lay members in vital negotiations. In parallel with these developments on the trade union side, the actual structure

of negotiations and substantive agreements has shifted. The National Agreement is now much less the normal "union rate", but can constitute a minimum to be improved at plant and company level. This applies not only in industries such as engineering but also in less well-organised industry such as food manufacturing. In some industries national agreements have become less important. Nor is it unique to the private sector; in parts of publicly-owned transport, for example, local arrangements are becoming increasingly important (though it is important to recognise that the bulk of the public sector is still largely tied to the central agreement as far as wages and hours are concerned). All this involves greater local and lay participation than had been the case for the previous half-century. Coupled with the extension of the areas of collective bargaining and improvement of procedures at all levels, it represents a major increase in participation in collective bargaining.

The Scope of Collective Bargaining

4 In addition to changes in organisation, the substantive scope of collective bargaining is continually being extended. Again the process varies widely from industry to industry and between firms in the same industry. The TUC's guide *Good Industrial Relations* identifies non-wage areas where in the most advanced cases unions are already in substantive negotiations with managements, but which in the great majority of industries are still regarded as outside the scope of collective agreement, and part of managerial discretion (subject in some cases to consultation). These areas included trade union facilities (organisation, check off, facilities for shop stewards) manpower planning (recruitment, training, redeployment), job and income security (guaranteed week, pensions, sick and industrial injury pay, discipline and dismissals), and disclosure of information.

Consultative Machinery

5 A somewhat separate development is also of importance, though it has taken place over a longer period: the gradual elimination of the separation of machinery for consultation from that of negotiation. During and after the war, there was widespread use of consultative committees separate from negotiating machinery. This tended to have one of two effects: either the consultative machinery acted to inhibit the development of local negotiating machinery, or at least to limit its sphere of competence, or the consultative committees themselves tended to be reduced to a formality discussing only trivia. In the public service, consultative and negotiating roles have been combined since the beginning of the Whitley Council system. In both private and nationalised industries there has been a tendency for the two channels of communication to become merged, although they are still clearly distinct in many instances.

6 There are however certain levels where there is no collective bargaining machinery, and matters of fundamental substance which may not easily lend themselves to formal negotiation, for example, the arrangements for discussions of long term planning. Only in exceptional cases, such as international companies, is there likely to be a major role for separate consultative machinery. In this special case, consultative machinery is often a logical first step in relation to the global board level of an international company's operations. It is likewise because of the exceptional circumstances of international companies that the

suggestion of European Works Councils in the proposed European Companies is seen in a different light from works council proposals more generally.

Procedural Innovations: The Status Quo

7 On the procedural side, the question of the "status quo" has been one of the most contentious issues in negotiations in the engineering industry in recent years. Essentially it has been an argument about management prerogatives. Unions have been urging that management decisions affecting workers' interests should be deferred until agreement is reached or the negotiating procedure has been exhausted. The main area of argument has concerned the identification of issues on which management would have to observe the status quo while trying to persuade the unions to accept a change, from those issues on which unions recognised that decisions were the prerogative of management. Outside engineering, there are a number of other agreements in existence on this issue. The provisions in these agreements vary and the conflict between management and unions over which issues should be subject to joint regulation or to unilateral managerial control is likely to remain a very contentious issue in the foreseeable future. The General Council themselves in *Good Industrial Relations* produced a model "status quo" clause which could be part of a procedure for many situations.

Changes in Work Organisation

8 In post-war years in the UK and in other advanced industrial countries, there is little doubt that workers have become better educated, more demanding, more aware of the power they possess, and more affluent. This trend has been accompanied by changes in the technology and structure of industry. These have included the creation of larger enterprises; the inter-dependence of production units – and the creation of jobs that require less expenditure of physical effort and less initiative in the way the work is performed, by the fragmentation and rationalisation of work in a way that treats the operator as an appendage of the machine. If a job gives a worker no opportunity to use and develop his abilities in achieving a result that has some meaning for him, then it is hardly surprising if he feels increasingly alienated from his work and regards it as something to be endured rather than as an activity providing intrinsic satisfaction. The impoverishment of work through mechanisation and mass production has been consistently identified as a social and psychological evil.

9 Futher changes in work organisation (and in patterns of working hours, e.g. shiftworking) have occurred as a result of emphasis being placed on obtaining increases in productivity and more efficient methods of working. Accompanying, and linked with these changes, have been significant alterations in the types of payments systems, e.g. measured day-work. The overall effect of these changes may be said to have reduced the ability of workers to control the pace of working and the flow of work, and to have changed the relationship between the work done and the monetary reward received.

10 There has of course been a managerial response to these changes as well. Some employers have recently become aware of the increasing tension being generated by the developing structure of work organisation, and of the limits to

the economic benefits to be achieved through further rationalisation of work. Various methods have been adopted in attempts to alleviate the situation. One approach has been to try to develop a "softer" style of managerial control, particularly at supervisory level – the so-called "human relations" school approach. A second approach has concentrated on improving the working environment as far as possible, by providing such improvements as better lighting, better welfare facilities, use of ergonomics etc. A third approach has involved attempts to re-structure and reorganise work tasks so as to avoid undue fragmentation of jobs and to inject some interest, meaning, and work-force control into the work situation. Into this category come techniques such as job enrichment, job enlargement, job rotation, cellular manufacture etc. These techniques involve allowing workers to change tasks relatively frequently and to increase the number or quality of the tasks undertaken, while generally providing more responsibility for control to work groups. The latter may be regarded by supervisors as a threat to their status.

11 A degree of joint control was also achieved through a variety of piecework and incentive working arrangements where mutuality applied. This also applied in some of the productivity bargaining exercises, which began to play an important role in the 1960s. Such forms of agreement extended collective bargaining and joint regulation to cover changes in working methods and practices, the introduction of new machinery, manning practices, work flow, etc, and the productivity bargaining approach also changed to some degree the nature of the wage bargaining process, because increases in pay were negotiated on the basis of future productivity or profitability. However, in the main, managements tended to view productivity agreements as "one-off" exercises rather than a continuous process involving an extension of joint regulation over the work organisation. It should be recognised that although productivity bargaining did extend joint control over some areas, the "buying out" of so-called restrictive practices did in many cases involve a surrender of a significant degree of unilateral trade union control of a more traditional – if negative – kind, for example control over such areas as manning levels and demarcation.

Trade Union Tactics: Sit-ins and Work-ins

12 Significance must also be attached to the adoption of new or revised forms of industrial action by trade unions, in particular in the face of managerial decisions involving closures and large-scale redundancies. The UCS work-in and the subsequent sit-ins and similar actions involved workers already employed at an establishment taking control over that establishment, with the intention of obtaining a change in management decisions. Four types of such action can be distinguished: (a) work-ins; (b) sit-ins over major managerial decisions; (c) collective bargaining sit-ins; (d) and tactical sit-ins.

13 The most significant instance of the work-in was at Upper Clyde Shipbuilders. The UCS work-in began on July 30, 1971. Its aim was the retention of all four yards, with the full eight-and-a-half thousand workforce. Its defining feature was the refusal of the employees to accept redundancy notices or to register at the employment exchange. The work-in formally ended on October 10,

1972 when the Co-ordinating Committee members returned to their trades after three yards began operating under Govan Shipbuilders and the fourth yard under Marathon Manufacturing. There have been relatively few real work-ins besides the UCS example though similar tactics have been used at Sexton's Leather Workshop in Fakenham, Norfolk, and at Briant Colour Printing.

14 "Sit-ins" against closures took place, involving workers taking complete control of the factories but not carrying on working. These occupations thus combined the characteristics of a strike with those of a factory takeover. Usually the issue over which action was taken was the closure of a relatively isolated, and relatively peripheral plant by larger combines. Four such sit-ins that were wholly or partly successful were: Plessey (Alexandria), Fisher-Bendix, Allis Chalmers, and the former B.L.M.C. Thorneycroft factory at Basingstoke. There was also a spate of sit-in strikes as part of the 1972 engineering industry dispute. In some instances, what might be called a "tactical" sit-in has been used, as part of a wider strategy rather than as the major strategy in itself. This can range from a half-hour sit-down at a production line to a sit-in of a few days, without taking over the factory completely. Quite often instances of this type of immediate action by workers at the shop-floor level go unreported. In addition, there has recently been the development by unions of other approaches for resisting projected closures. Purchase by workers' cooperatives has been one of these, and variants have been seen at the former Norton Villiers Triumph factory at Meriden, and at the former Scottish Daily Express.

CHAPTER 2

JOINT REGULATION IN THE PRIVATE SECTOR

15 This chapter examines the legal and quasi-legal rights of workers over economic and managerial decisions within the private sector of UK industry. The situation under UK company law is quite simple. The managerial decisions of the board of British companies (which in the UK company structure is a single board consisting of both full-time management and part-time outsiders) have to be made in the best interests of the shareholders, i.e. the owners of the enterprise. Moreover, directors cannot allow any other financial interest or responsibility in their capacity as directors, other than responsibility to shareholders. Hence, although there is no legal prohibition on "worker directors", this effectively rules out any worker representative of any description being on the board of a UK company under present legislation.

16 The rights of shareholders and the board's responsibility to the shareholders are in law limited only in certain specific directions: by laws on safety, hygiene, pollution for example, and by laws on redundancy provisions. There is, legally speaking, no responsibility on the part of the board to its employees collectively, or to negotiate or consult with their representatives. Collective bargaining of course provides a de facto control and involvement in management decisions but has no legal foundation in company law. Moreover, the scope of collective bargining normally excludes major managerial decisions such as future investment programmes. Indeed workers do not even have rights to information on how their enterprise is run.

Rights to Information

17 The control of information about the company's activities has been a basic aspect of the managerial prerogative that has proved extraordinarily difficult to break down. Yet the very fact of collective bargaining requires some degree of mutuality of information, and the process itself is greatly facilitated by better information to both sides. This has been recognised by more enlightened managements. But information also means potential power. The provision of information direct to workers or negotiators could provide the potential basis for a degree of de facto control over aspects of a company's activities. At present, company law only requires disclosure to shareholders, and this information is publicly available in annual accounts and returns lodged at Companies House.

18 The amount of information currently available to negotiators varies considerably according to subject. There is generally much less information on such manpower control questions as turnover and earnings, as opposed to factual questions of rates of pay. In some cases, production data may be provided in connection with the operation of incentive schemes, but associated unit and total cost data is rarely made available. Overall financial information is generally limited to the summaries required under company law to be provided to shareholders and relatively few companies pass even this limited information direct to employees.

19 While the provision of regular information as of right is still not the norm in industry, information is sometimes made available by way of a concession during the course of negotiations. There have been instances of companies agreeing to open their books to negotiators. By contrast, others provide no information whilst still trying to counter wage claims on the basis that increases cannot be afforded. It should be recognised that workers have a right to information about their conditions of employment and the factors, such as productivity, efficiency and profits, affecting their earnings, in order that they can evaluate and negotiate improvements.

20 It will be recalled that following initital discussion with the Labour Government in 1969, the General Council published in their report to Congress, and in their *Good Industrial Relations Guide* in 1971, a list of the headings of information required to facilitate informed collective bargaining. Among the topics covered in the list were manpower and financial performance data, prospects and plans and details of ownership. The information requirements of collective bargaining and the development of industrial democracy are clearly much wider and more specific than those of investors and the general public. For this reason, it has been agreed between the TUC and the Labour Party that legislation in the form of an Employment Protection Bill should lay down certain basic information rights and provide support for those negotiating improvements in information provision.

21 Certain unions are looking to the establishment of *information agreements* through which workpeople could be provided with the data necessary to the better understanding of the relationships between pay, profits, organisation, efficiency and prospects. This would be a step toward democratisation as well as being an essential element in the collective bargaining process. There is of course the problem of the confidentiality of certain types of information. There are two problems: first, the need to maintain the privacy of trade secrets; and, second, the need not to disclose vital financial data to competitors. These problems are important but they should be put in perspective and there is clearly a danger that if too much weight is given to the confidentiality problem it can be used as an excuse for management to evade the issue of disclosure.

22 The amount of information which is currently made available direct to workpeople varies considerably. There have been some instances of companies agreeing to open their books to negotiators. Other companies circulate copies of annual accounts and reports. Yet others provide no information whilst still trying to counter wage claims on the basis that increases cannot be afforded. Because of the complex nature of collective bargaining arrangements it would be unrealistic to try to cover comprehensively, in an information agreement, all the topics on which unions might require information either for collective bargaining or for consultation or participation. Information to be disclosed would be determined by negotiators for themselves. The list set out in *Good Industrial Relations* was not comprehensive or exclusive; it indicated the range of topics on which information should be provided. This is not to say, however, that there should be no minimum levels of information provided.

Worker Participation and Joint Control

23 In recent years, from a number of groups of disparate ideological persuasion, the theme has emerged that the present UK company structure, with the responsibility of management limited to acting as agents of the shareholders, is outmoded. On the one hand, paternalistically-based schemes have been put forward for financial participation, either through employee – shareholding or profit sharing. These schemes have on the whole been a charade of participation, and given workpeople none of the substance of control which has remained firmly vested with the leading shareholders. More radical attempts to establish a different system have included small communal enterprises such as Scott Bader (based on co-operative worker ownership and a council which decides on the distribution of any surplus) and a few producer-co-operatives; plus the long standing – but not particularly instructive – example of John Lewis. But these are small and insignificant on the British industrial scene. At the same time there have been calls for statutory works councils, and proposals to alter the Companies Act so as to make workers "members" of the company equal in status with shareholders. More radical calls are being made for direct workers' control or self-management, which strike at the heart of the present ownership pattern. Again these ideas have not been put to the test for any sustained period in a significant enterprise. In short, a wide range of opinion agrees that the present Companies Act is inadequate because of its failure to provide for institutionalised worker-participation or control. The ways in which it is suggested the Act should be changed, however, vary widely.

24 The traditional British trade union attitude to schemes for "participation" in management of private industry has been one of opposition. It has been considered that the basic conflict of interest between the workers and the owners of capital and their agents prevents any meaningful participation in management decisions. The reasoning behind this opposition has varied from the claim that the trade unions' job is simply and solely to negotiate terms and conditions, and not to usurp the function of management, to the proposition that trade unions should not be collaborationists in a system of industrial power and private wealth of which they disapprove. However, the TUC's 1966 evidence to the Donovan Royal Commission took a much more flexible approach. That document referred to the extension of the scope of collective bargaining to include job content, the gradual merger of areas previously covered by joint consultation with negotiating matters and subject to negotiating machinery, and other instances of de facto participation in managerial decisions, and went on to argue that this fundamental conflict of interest was not necessarily an overriding obstacle to participation of worker-representatives on boards of management:

> ". . . a distinction needs therefore to be drawn between the negotiating function of the employer and the overall task of management. Once this distinction is established, it can be seen that it does not detract from the independence of trade unions for trade union representatives to participate in the affairs of mangement concerned with production, until the step is reached when any of the subjects became negotiable questions as between trade unions and employers".

25 The document then went on to advocate two things: first that there should be

trade union representation at several levels of an enterprise; and second, that there should be representatives at the highest level, the *board level*, and discretionary legislation to provide for worker participation.

26 The TUC's Donovan evidence recognised that there is an obvious conceptual difficulty, given existing company law, in envisaging how the appointment or election of a trade union representative to the board of the company would affect the rights of shareholders through the AGM to elect whoever they wish to the boards but concluded that "this is probably more an apparent difficulty than a real one". The document did not take any further the question of changes necessary in company law. The 1967 Labour Party Report on Industrial Democracy did not dismiss the idea of "worker directors" in the private sector, provided they had "specific statutorily established rights and responsibilities to fulfil", but it took the line that, because of the institutional difficulties and the legal and "conflict of interest" problems in the private sector, the question of worker representation in the private sector should await the completion of the other items in their proposals.

Practice in Western Europe

27 With entry into the EEC, the UK Government will need shortly to take at least a preliminary attitude to worker participation on the West European models. In these circumstances it is necessary to look at West European experience. But is also important to recognise that there is a wider range of different systems currently in force, or about to be brought into force, in W Europe, and equally wide range of trade union attitudes towards these systems.

28 In WEST GERMANY, there has been legislation since 1952, governing the establishment of works councils, and providing for one third representation on supervisory boards with separate and more advanced provisions in the coal and steel industries. The system has been substantially extended by the 1971 legislation, and increasingly, the system has been dominated by trade union activity. However, it is important to recognise that machinery for election both to works councils and to supervisory boards is separate from trade union machinery. It is also important to realise that the system depends on the "dual board" approach, with the supervisory board separated from the management board (although employee representatives on the board have control over the appointment of the labour director to the management board and an important veto over major management board decisions). Important new proposals have been made public during 1974, which will cover all firms with more than 2,000 workers (outside coal, iron and steel). A 50-50 division of the supervisory board is to be instituted, but the employees' side will have to have compulsory allocation of seats to white-collar workers, and to managerial and executive employees of more senior levels.

29 In the NETHERLANDS, works councils – in this case joint employee-management – have operated since 1950, and perform a mainly consultative function. However, recent legislative changes give the works council wide powers of veto. In addition, the employee representatives on the works council as well as the shareholders have the right to nominate and veto members of the supervisory

board, thus maintaining a degree of accountability. However, nominees may not be company employees nor fulltime union officials in negotiation with the company. In BELGIUM, there is a system of works councils (joint bodies) established in 1950, and covering all companies employing more than 150 persons. A Government decree of November 1973 required companies to reveal to works councils information on finances, operations, relations with subsidiaries and other companies, and future plans. Belgium is currently considering schemes for supervisory boards. In FRANCE, there is a legal requirement to have a works council of a consultative nature in all companies with about 50 employees, but this is frequently not observed. There is also provision for employee representatives to sit on company boards as non-voting observers. In ITALY, the legislation for participation in the Constitution has never been enacted, although works councils in a consultative role do exist under a national agreement between unions and the employees.

30 Hitherto in Scandinavia, the systems have been based on voluntarily agreed works councils, and voluntary systems of codetermination at board level (eg in Volvo). However, the 1970 Norwegian legislation and the 1973 Swedish and possible Danish legislation will substantially alter this situation. The NORWEGIAN system now requires all companies of over 200 employees to establish a "joint assembly" equivalent broadly to the supervisory board with one third of all members elected by the employees direct. The assembly elects the management, and controls its major investment decisions. The Norwegian system appears to differ from the German and Dutch models in these vital respects: it explicitly recognises trade union machinery; it allows trade unionists to be appointed to the board of management as well as the representatives board; and it has powers to overrule both the board of management and the AGM of shareholders in certain respects. The SWEDISH system, introduced only in May 1973, provides for the election of two employee representatives to the unitary board of management of the company (this is not a set proportion of the board, as numbers differ), with powers to vote on all decisions except collective agreements. Elections are solely through trade union machinery. The DANISH scheme, which went into effect at the start of 1974, is similar to the Swedish, giving employees the right to name two representatives on the board of directors. It is however discretionary rather than compulsory (the choice lying with a ballot of workers). Election is not through trade union machinery.

31 It is important to recognise that all these schemes – with the possible exception of the Norwegian – still leave the ultimate control of the company in the hands of the shareholders. This ultimate property right is not affected by participation in the decision-making process (but see Chapter 4).

Attitudes of European Unions to Codetermination

32 It is perhaps useful briefly to examine union attitudes to the practice of the various forms of codetermination, and hence also the new EEC proposals. The two main institutional aspects are: works councils, and representation on company boards. Attitudes to both these institutions vary according to the differing practices in the EEC countries, and according to the general stance of particular unions towards participation in management. On the whole, however, there is

widespread disappointment with the way in which works councils have operated.

33 In GERMANY, until recently the works council machinery was virtually an alternative to the development of trade union activity and strength at company and plant level, and to a significant degree inhibited this development. However, DGB nominees now effectively control 70 per cent of works councils (although works councils and trade union machinery and office-holding are still rigidly separated). The DGB are in favour of retaining and extending the statutory status of works councils and the areas that are statutorily laid down as being subject to agreement with them. The DGB are strongly in favour of participation on boards, and indeed are the main driving force in the incorporation of these ideas into EEC thinking. In the NETHERLANDS, the rather different statutory joint works councils, to which all major investment and closure decisions must defer, have been seen to have several advantages by the NVV, and the other Dutch unions. In FRANCE, works councils are not widespread, and their powers have been found to be very limited. The (communist) CGT are absolutely opposed to the idea of participation in management of a mixed economy, and oppose both works councils and representation on boards. Whilst supporting works councils, the (socialist) Force Ouvriere and the (former Christian) CFDT are both highly suspicious of the idea of representation on boards. In BELGIUM, the Christian trade unions are in favour of both types of involvement in managerial decisions, whilst the (socialist) FGTB are broadly against. Whilst not wishing to abolish works councils, they would completely transform their role, which in Belgium has been largely consultative, into machinery for unilateral and joint executive control by the unions with national links between works councils. The FGTB are strongly opposed also to participation on boards. In ITALY, the (communist) CGIL and the (socialist) CSIL and UIL are suspicious, but not entirely hostile to the ideas currently being debated.

34 Outside the original six member-nations of the EEC, unions are also looking at similar proposals. In DENMARK, NORWAY and SWEDEN support from the unions has been forthcoming for experiments in representation on boards, and for the new Norwegian scheme outlined above. The extension of powers of works councils (largely union-controlled in Scandinavia where they exist) is also welcomed. In AUSTRIA, the OGB have recently persuaded the socialist Government to raise the level of representation on boards of large companies to 50 per cent.

The EEC Proposals

35 There are two distinct but in some ways related proposals that are currently being put forward from the EEC itself:

(a) The proposed statute for the "European Company"

(b) The draft Fifth Directive on Company Law.

The second of these proposals is in many respects the more important. Whereas the first proposal concerns a draft which has been known of for many months, but which has a limited application, the second proposal, produced by the EEC Commission in September 1972, will potentially apply to nearly all public companies in Europe of over 500 employees. The EEC Council of Ministers is likely to consider the European Company Statute during this year. In contrast, consideration of the fifth directive is less far advanced and it is currently being examined by the European Parliament.

Proposed Statute for the European Company

36 This proposed statute is not intended as mandatory. As is stated in the preamble, the "European Company" is a new form of legal entity envisaged as a probable result of the rationalisation and merging of companies operating at Community level. There is no suggestion that any particular category of company or grouping of companies should be obliged to register as a European Company. Indeed, the general expectation is that most companies will for the foreseeable future wish to continue operating as national companies, albeit with subsidiaries or associates in other European countries, but these in turn will be registered as national companies in the country in question.

37 The introduction to the draft statute refers to the three authoritative bodies in the European Company, namely (a) the general meeting; (b) the supervisory board and (c) the board of management. The EEC document sets out clearly the function of the general meeting which is broadly equivalent to the general meeting of shareholders in the UK. It is important to note that the general meeting of shareholders remains the supreme body of the Company. The division between a supervisory and a management board, however, would mean the separation of the function of UK boards into two entities, dividing overall direction of policy from executive management. The general meeting will be responsible for the appointment of two-thirds the membership of the *supervisory board* and the employees of the company will appoint one-third. Employee representation is not to be by direct election. The "workers' representative bodies" set up under national law will vote in proportion to their constituents. This refers to the works council in the German context, but there is no obvious corresponding body in this country. The employee representatives have "the same rights and duties as other members". At first sight, this means that trade union representatives would be bound to have regard principally to the interests of shareholders and it is of course important to establish that this is not what is meant. The supervisory board will have unlimited rights of rejection and control over all company activities and will be required to "have regard for the interest of the Company and of its personnel".

38 The proposed statute asserts the right of workers to "unite in defence of their interests". It sets out the basis for a "*European Works Council*" representing the employees in each establishment of the undertaking. Although reference is made later to "the possibility of concluding collective agreements between the European Company and the unions represented within the undertaking" the rest of the relevant articles are devoted to the membership and powers of the European Works Council. The European Works' Council would be established in every European Company which had establishments in more than one member state. The statute, which was drafted before the UK became a member of the EEC, lists the bodies set up under laws of member states which constitute employee representative bodies for the purpose of this statute. Article 66 lists seven subjects on which decisions may be made by the board of management only with the agreement of the European Works Council: recruitment, promotion and dismissals; vocational training; terms of remuneration; safety and health; social facilities; hours; and holidays.

Draft Fifth Directive on Company Law

39 The second proposal concerns the fifth directive on company law which was circulated in draft by the EEC Commission at the end of September 1972. This draft directive would cover all the companies of more than 500 employees which have the status of "societes anonymes". This term has no exact equivalent in Britain but it can broadly be designated as public limited liability companies. In other words, it is understood that all companies quoted on the stock exchange would be included but the Government have yet to give some guidance as to how specifically this should apply to nationalised industries, public authorities, or large private companies in Britain.

40 The proposed directive includes a similar structure for companies to that proposed for the European Company statute with a supervisory board, management board and general meetings of sharcholders. With some minor variations, it likewise sets out the principles of workers' representation on the supervisory board. However, the directive provides two alternative systems for appointing the supervisory board. In the first system which can be roughly described as the *German system*, at least one-third of the board must be appointed by the workers. The member states have the discretion to devise different means of appointment – either by the workers, by direct election, or by their representatives (presumably this would be interpreted as works council representatives in the German context, or in the UK context perhaps recognised shop stewards or convenors or officials of recognised unions), or by recognised trade union machinery as such. Alternatively, the *Dutch system* provides for a system of cooption for the whole supervisory board including any workers' representatives. Both the workers' representatives and the general meeting of shareholders have the right to oppose the appointment of any particular candidate on grounds of incapacity (but this has to be sustained by an independent tribunal). On this system it is not laid down specifically that at least one-third of the board should consist of worker-representatives, but merely that there will be a "balance" of representatives having regard to the interests of the company, the shareholders or the workers. Nor does it make clear who in the first instance are the "worker-representatives" who have this modified power of veto. Presumably in the Dutch system they would be workers' representatives on the works council, but how this could be adapted to the UK is obscure.

CHAPTER 3

JOINT REGULATION IN THE PUBLIC SECTOR

NATIONALISED INDUSTRIES

The Legislative Position

41 The changes over the past twenty years in the public sector have been of equal importance to those in the private sector. Most nationalised industry boards consist of two types of director – full-time and part-time. Trade unionists have on occasion been appointed to full-time posts on nationalised boards in which case, obviously, they have severed their links with their trade union. The main area of trade union appointments, however, lies with part-time directors appointed at a salary of £1,000 per annum. Provisions for local membership in the post-war nationalisation statutes are based on the view that it was not in the best interests of the workpeople of a nationalised industry to have, as directly representative of them, members of the controlling board who would be committed to its joint decisions. They enable the responsible Minister to appoint to the board of management of the nationalised undertaking, and in some cases to area boards, trade unionists or others with special knowledge or understanding of the employees' point of view – but not as representatives. At the same time most nationalisation statutes have specifically provided that Ministers should not appoint to the boards of nationalised undertakings, anyone whose interests are likely to effect prejudicially the exercise and performance by him of his functions as a member of the board. A provision of this kind was included in the 1969 Post Office Act and in the 1967 Iron and Steel Act as well as the post-war nationalisation legislation. These provisions have in practice been taken to preclude the appointment to the board of a nationalised undertaking of a trade union lay member of official who continues to engage in trade union activities in the industry concerned. It was also the practice to avoid appointing to nationalised boards trade unionists who have been active in trade union affairs in the same industry.

42 Considerable discretion remains with the Minister in interpreting this "conflict of interest" rule, and at times it has been interpreted flexibly. The abortive Ports Bill in 1970 departed from this "conflict of interest" clause, but the change of Government prevented this reaching the statute book. On public boards the members with a trade union background are in almost all cases still from unions with no membership within the Board's employees.

EEC Regulations

43 As in the private sector, the impact of EEC regulations will necessitate a change of approach from the Government towards the principle of worker-participation on public authorities. In the first place, minor parts of publicly-owned industry (e.g. Rolls Royce, Harland & Wolff, Cable and Wireless) will be subject to the fifth directive on company law harmonisation (see Chapter 2) because they are limited companies. Secondly, specific EEC regulations relating to the public sector will eventually be promulgated. (For example, the draft directive relating to railways provides for employee representation on the board; in state-owned coal and steel enterprises, representatives of a third to a half will be required eventually.)

Development of TUC Policy

44 In the immediate post-war period, the General Council view was that the representation of the workpeople on bodies outside the collective bargaining arena should be limited to consultative bodies. There should not be representation of the workpeople of the enterprise on the board of management, or on any other executive or policy-making body. In relation to nationalised industries, the 1944 TUC document on post-war reconstruction said:-

> "It does not seem by any means certain that it would be in the best interests of the workpeople of a nationalised industry to have, as directly representative of them, members of the controlling board who would be committed to its joint decisions . . . trade unions should maintain their complete independence."

This position continued to be the basis of TUC policy into the 1960s. It meant that trade unionists appointed to boards of nationalised industries and similar bodies were appointed from "outside" the industry concerned. However, there was during this period increasing criticism about the lack of any continuing relationship between these "outsider" appointments and the workers and trade unions within the industry; these criticisms were linked to more general disillusion with the failure of the nationalised industries to evolve a form of industrial relations and industrial democracy clearly distinct from that of the private sector, despite the generally much more favourable attitude to trade unionism. This was tied in with the disillusion with joint consultative arrangements. At the same time, it was notable that the total number of trade unionists appointed to boards declined.

45 In 1966, the TUC's evidence to the Donovan Commission reviewed its experience and took a much more flexible, and positive line towards worker-participation in the public sector:

> "The experience of the last twenty years at home has stimulated new thinking on all aspects of industrial organisation and there has also been the experience of a whole variety of developments abroad. A new approach to industrial democracy in the nationalised industries can now be based on the experience of running these industries. There is now a growing recognition that at least in industries under public ownership provision should be made at each level in the management structure for trade union representatives of the workpeople employed in these industries to participate in the formulation of policy and in the day to day operation of these industries."

46 The TUC thus envisaged provisions for representatives of workpeople to be involved in both the formulation of policy and the day to day management of these industries, not only at Board level, but also "at each level in the management structure". This represented a major change in principle in the TUC's approach. The representative approach has not yet been adopted across the board by the General Council, and they have not so far sought to change the attitude of the Government in principle.

47 Developments have occured rather on an ad hoc basis, and the General Council have therefore taken a different and more flexible pragmatic attitude. The view is now taken that union members of nationalised industry boards should on occasion be appointed in a representative capacity. The General Council

urged that appointments to the nationalised undertakings set up under the 1968 Transport Act should be from unions who organised employees of the boards. In regard to the 1970 Ports Bill, they urged that the Port Boards should include representatives drawn from their own employees. In 1967, the *Worker Director Scheme* in the British Steel Corporation was agreed between the TUC Steel Committee and the BSC, though this related to appointment to divisional boards, not the main executive board of BSC. (The Worker Director Scheme is discussed in more detail below.) In March 1970 the then DEP asked the General Council for their views on the appointment of workers' representatives to the boards of both public and private enterprises. The General Council gave their preliminary views on the questions raised. In relation to nationalised industry, the General Council view was that trade unions should be able to nominate representatives from the industries concerned and these representatives should be free to continue to play a normal part in trade union activity in the industry.

48 The 1970 Congress resolution took up the theme of the Donovan evidence more directly, calling upon the Government to introduce legislation providing for trade union representatives on the management boards of all nationalised undertakings. The 1971 Congress resolution also called on the General Council to actively support the development of the principle of "direct participation by public service workers".

49 Meanwhile, other specific policy decisions were being taken by the General Council which reflected the change of approach foreshadowed by the Donovan Evidence. In 1972, the Transport Industries Committee considered the question of appointments to the boards of the new authorities in the Civil Aviation field, and have recommended the appointment of trade unionists from unions within the industry. This has not been accepted by the Government. In addition, the Health Services Committee have considered the question of trade union appointments to the new Regional Health Authorities and have advocated appointment through the TUC of trade unionists from unions within the field of operations of the NHS (although at the same time trade unionists from outside the industry should be appointed to represent the wider interests of the community on the boards). The Local Government Committee have also proposed that trade union representations on the new Regional Water Authorities should come from unions within the industry. This again has however been turned down by the Secretary of State, who instead asked the LGC for nominations of trade unionists from outside the industry. In all cases the TUC has also suggested that the responsibility for appointment be operated through the TUC and its industrial committees.

50 These ad hoc policy decisions taken together represent a major shift of TUC policy, although it is not necessarily to be supposed that the same pattern would apply to all areas of publicly-owned industry and public services; it may well be that a different pattern of representation would be more appropriate in some parts of the public sector. In no case, however, has the Government yet indicated its agreement with the TUC's approach.

Worker-Directors in Steel

51 The major innovation in worker participation in the public sector does not

in fact relate to what are normally thought of as board appointments at all. The Worker-Director Scheme of the British Steel Corporation has no legislative backing; the 1967 Iron and Steel Act did not include any stipulation for worker participation. However, in 1967 the scheme was agreed between the BSC and the TUC Steel Committee. The Scheme involved the appointment of Worker-Directors to Divisional Boards of BSC. The appointments were formerly made by the BSC from a short list presented by the TUC Steel Committee. On appointment, the Worker-Directors originally had to relinquish all trade union offices. The original objectives were (a) to enable a shop floor view and expertise to be brought to the boards; (b) to provide a symbol of a new departure in management relations, and (c) to involve employees in policy making. The initial phase of the scheme was reviewed by the BSC and the Steel Committee in early 1972. From the trade union point of view, the first stage of the scheme was inadequate in three main respects:

(i) the lack of representative character of Worker-Directors;

(ii) the lack of contact of Worker-Directors with trade union machinery whether at individual union branches, Works Council, or national level (leading to an over-reliance on the management rather than the trade union viewpoint);

(iii) the fact that the District Boards are advisory to the Divisional Managing Director; executive decisions are often taken elsewhere.

52 In March 1972, the TUC Steel Committee and the BSC Board agreed to modify the original scheme by making the following changes:

(a) The selection procedure allows for a greater involvement than before of trade union members, and the TUC Steel Committee. The final short list will be drawn up by a joint selection committee and BSC senior management, and from this list the Chairman of BSC will decide the appointments to be made. Each union will decide for itself the method to be used by its local membership in making the nominations.

(b) Links with unions were strengthened and employee directors are to be given the right to hold and continue to hold union office. There will be closer contact than before with the Steel Committee, and national and local full-time officials.

(c) Employee directors can take an active part in joint consultative meetings.

(d) Each employee director, while retaining an interest in all matters within his product division, now concentrates on those works within a "designated area" and will have an especially close working relationship with those employed in it.

It is as yet too early to say how far these changes improved the scheme. Even now the final decision on appointments still remains with the Chairman of the BSC. However, the changes ought to be a significant move in the direction of making such appointments more effectively representative.

Procedure for Appointment

53 An interrelated, but logically separable, question from the background of appointees to nationalised boards is the manner of their appointment. It has been agreed between the TUC and successive Prime Ministers that certain appointments of trade unionists shall be subject to formal consultation with the TUC,

and certain ones made entirely at the Minister's discretion. These agreements relate to appointments to all public boards made by central government.

54 In 1947 the then Prime Minister, Mr Attlee, wrote to the TUC outlining the Government's attitude to appointment of trade unionists to Government Bodies. These were defined as being of three kinds:-

(1) Official representatives of the TUC.

(2) Members of the TUC chosen in their personal capacity.

(3) Representatives of labour as a class and not as an organisation.

In the first category the TUC were asked to nominate; in the second, the General Secretary was to be consulted informally before any formal approach was made to the General Council; and in the third category only informal consultation with the TUC was thought appropriate.

55 In 1966 the General Council again raised the question of appointments with the Prime Minister, Mr Wilson, who as a result of the consultations issued a memorandum to Ministers setting out arrangements for consultation with the TUC about all public appointments. The Wilson-Woodcock correspondence divides appointments into the following categories: -

SALARIED APPOINTMENTS

Type of Appointment	*Procedure for Appointment*
National level (eg Nationalised Boards)	Entirely at Minister's discretion
Regional level (eg Area Gas Boards)	At Minister's discretion (though may seek TUC advice formally because not acquainted with potential candidates)

UNSALARIED APPOINTMENTS

Type of Appointment	*Procedure for Appointment*
Committees of Inquiry into specific industries (eg Geddes on Shipbuilding)	Government seeks formal advice from TUC, but appointments remain at Minister's discretion
Committees of Inquiry under Industrial Courts Legislation etc (eg Wilberforce on Electricity Supply	At Minister's discretion (after contact with the parties)
Other Advisory Committees (eg Errol on Licensing Laws)	Government seeks formal advice from TUC but appointments remain at Minister's discretion
Appointments as spokesman of the TUC or trade union movement (eg NEDC)	Government seeks and accepts formal nominations from TUC
Committees at regional or local level (eg REPCs)	Government seeks and accepts formal nominations from TUC.

56 This is the system that has prevailed hirtherto, though occasionally Ministers have made soundings even with respect to those appointments entirely at their own discretion.

It would therefore require a major change in the manner of appointment to allow trade union representatives on boards to be representative, even in the limited sense of nomination by the trade unions in the industry via the TUC.

LOCAL GOVERNMENT, HEALTH AND EDUCATION

57 The 1970 Congress passed a resolution calling for the amendment of those Acts of Parliament incorporating the prohibition of employees from serving

on local authorities and boards of educational establishments. In pursuit of this resolution, the TUC Local Government Committee approached the Secretary of State for the Environment in 1971 pressing the amendment of Section 59 of the 1933 Local Government Act. However, the Secretary of State refused to do so and, indeed, Section 80 of the 1972 Local Government Act, which replaces the 1933 Act, contains a similar provision. Since then the Local Government Committee has given evidence on the matter to the Committee on Local Government Rules of Conduct which, in its report published in May, did not however recommend adoption of the TUC's view.

58 There are related areas which also present anomalies. For example, the 1969 Transport (London) Act allows employees to stand, but employees of Passenger Transport Authorities elsewhere are not eligible to stand for their own metropolitan authority. Similarly, although teachers in schools are not allowed to serve on their employing local authority, all but the senior staff of technical institutions are allowed to stand because they are appointed by the technical college director, not the local authority. As the Interim Report stated, and as a number of unions pointed out in their comments to the TUC, this is a question of civic rights rather than industrial democracy. On the broader issue itself, the General Council believe that they should seek parallel arrangements in the local authority services to those in private industry and nationalised industry. These changes would include a satisfactory degree of representation on the main decision making operational bodies. These would include school and college management committees, direct works committees, and other operational bodies – such as transport authorities. Areas of particular interest to trade union representatives would be the deployment of manpower, including staffing and manning levels, organisational changes and the use of outside contractors.

59 As regards the *National Health Service*, the prohibition was not statutory, but administrative, but this has all changed as a result of the reorganisation of the Health Service, and apparently non-medical appointments to the new Regional Boards are still prohibited. The views of the TUC's Health Services Committee are referred to above.

60 With regard to *primary and infants schools*, the 1971 Congress resolution on industrial democracy included the reference to support "direct participation by public service workers such as the inclusion of non-teaching, as well as all categories of teaching staff, in the governing and managing bodies of schools and colleges." The present situation is that the constitution of the Boards of Management and Governors are decided by the local education authorities. There is a "model constitution" set out by DES, but this does not include any reference to employee representation; in any case the model is very rarely adopted by local authorities as it stands. A number of local authorities have in recent years changed the constitution of governing and managing bodies to allow the headmaster to be an ex officio member of the body, and for one representative to be elected by the teaching staff. These changes have in some cases also provided for the election of one representative of the parents. The rest of the managers and governors continue to be appointed by the local authority, as is the case where no staff representation exists. There is no representation of non-teaching staff. This

proposition would need to be considered by the Education Committee, and by consultation with the unions involved. At present the election of teaching staff in those areas where it exists is ad hoc and does not involve the teaching unions. The basic principle on which governing bodies of schools and colleges have hitherto been constituted has been that they represent – however inadequately – the community. Staff representation is in a sense a breach of this principle, but in practice the basic concept remains. It is thus also vital that trade unionists are amongst the appointments made by the local education authorities to represent the overall interests of the community.

61 As regards *Further Education establishments*, this becomes more evident. Some local authorities appoint local trade union officers and active lay members specifically to the Boards of Governors. Nominations are frequently sought through Trades Councils. The Education Committee have advocated the widespread application of this principle. The constitution of Governing Bodies of FE institutes is much more closely controlled from the centre than is the case with schools. Constitutions are at the local authority's discretion, but within a fairly tight framework laid down by successive Department of Education and Science Circulars. The latest circular lays down that there should be representation of teaching staff and students on the Governing Body, but includes no provision for non-teaching staff.

CHAPTER 4

IMPLICATIONS AND RECOMMENDATIONS

62 The whole concept of a greater degree of industrial democracy is the achievement by workpeople collectively of a greater control over their work situation. To be relevant, schemes of industrial democracy must be seen to be effective by workers at their own place of work. Yet some of the most basic aspects of the work situation, and the security of that employment, stem from decisions taken at extremely remote levels. This applies particularly to decisions on closures, redundancies, mergers and major redeployment. It is for this reason that any policy for the extension of industrial democracy must operate at *all* levels, from the shop floor to the board room, and indeed affect the process of national economic planning itself. The foregoing chapters have analysed the present situation on a whole range of developments which actually or potentially enhance the collective interests of workers through forms of joint regulation and control. This chapter attempts to spell out the policy implications for the trade union movement.

BROADENING THE COLLECTIVE BARGAINING FUNCTION

Strengthening Trade Union Organisation

63 The major way to extend collective control of workpeople over their work situation will continue to be through the strengthening of trade union organisation, and the widening of the scope of collective bargaining. It is important to recognise at the outset, however, that there are still large sectors of the economy – particularly in service and white collar jobs, but also in the Wages Council areas – where elementary rights to organisation in independent unions, to bargain collectively and to establish grievance procedures just do not exist.

The first prerequisite for any widespread improvement of industrial democracy is the extension of bona fide trade union organisation, and the right to bargain collectively to all sectors and all enterprises in the economy.

64 The Labour Party's report on Industrial Democracy published in 1967 basically saw collective bargaining as the major means of developing industrial democracy and made a series of recommendations to the then Labour Government, trade unions and employers in order to facilitate its further development. Regrettably, the Conservative Government appeared to be more concerned with stifling the growth of worker influence and industrial democracy by the introduction of the Industrial Relations Act, which if successful would have hindered rather than assisted the development of joint regulation through collective bargaining. The present Government is in the process of implementing the agreed Labour Party-TUC programme on industrial relations by repealing the Industrial Relations Act and restoring basic trade union protections and then introducing an Employment Protection Act. The basic aim of this legislation would be to give increased legal safeguards for workers and promote collective bargaining. The main provisions proposed by the General Council for this Bill and for the subsequent industrial democracy legislation arising from the present report are summarised in Chapter 5. These include: the restoration of legal protection for unions engaged in trade disputes; new rights for workers with

their employer, including the right to belong to an independent trade union; improved protection against unfair dismissal and an entitlement to longer periods of notice; new rights for trade union representatives including access to members, "a statutory joint safety organisation" and the right to advance notice of any redundancies affecting other members; procedures to help unions achieve recognition; procedures to obtain information for collective bargaining from recalcitrant employers and to ensure that employers observe "recognised" terms and conditions of employment. New industrial legislation along these lines is also a prerequisite for a major extension of industrial democracy.

65 At the same time, on the more positive side, it is clear from the developments analysed in Chapter 1, that the changes over the past decade in the structure of trade unionism and of collective bargaining, although they should not be exaggerated – particularly the increased involvement of local and lay members at their work-based groupings, the increasing number of local, plant and company agreements, the development of shop steward organisations up to combine level, and the establishment of joint trade union machinery at plant and company level in multi-union situations – do provide an effective basis for the extension of collective bargaining. These developments are to be welcomed. They also provide a base from which to build other forms of industrial democracy based equally firmly on trade union machinery. In certain sectors and companies, this will also involve the establishment of effective communications on the *international level* to counter and ultimately perhaps to bargain with the managements of multinational companies, whose ability to deploy large scale resources across frontiers and potentially to play one group of employees in one country off against workers in another calls for a new kind of response from the international trade union movement.

It is essential that all ways of extending industrial democracy are based on trade union machinery, and that this should be parallel to a growing degree of participation in trade union democracy.

Extension of the Scope of Collective Bargaining

66 The main way to extend the area of joint control and limit unilateral managerial prerogatives over matters of day to day management is to use the present structure of collective bargaining machinery to bring into the field of negotiations matters which are currently outside collective agreements. Coupled with parallel improvements in procedures, this can lead to a substantial extension of joint control over the immediate work situation. There is no logical reason why the collective bargaining process should only apply to the division of resources of the enterprise in terms of money wages. Already most collective agreements cover holidays and holiday pay. Plant, site and enterprise level bargains should be extended to cover recruitment, training, deployment, manning and speed of work, work-sharing, discipline, redundancy and dismissals; plus fringe benefits and aspects of job security such as pension rights (and the control of pension funds), sick and industrial injury pay, minimum earnings guarantees and so forth. Collective bargaining can also be extended to cover many aspects of work organisation and the working environment (see below). It should be recognised that many of these issues (recruitment, deployment,

manning, speed of work etc) are ultimately based on prior decisions by management about production programming, workplace layout and the technology and design of plant and machinery – factors which are often taken as "given" in the context of pay negotiations. However, the crucial point is that deficiencies in these areas can have a substantial effect, via efficiency and costs, on pay and other basic conditions. As far as possible unions will need to bring these factors within the scope of joint regulation through collective bargaining.

Unions should continue to press for joint control over non-wage areas and work organisation through the extension of collective bargaining; as part of the approach to extending industrial democracy this is indispensable.

There are some long-standing areas and sectors subject to joint control, and in some areas unilateral workers' regulation, which should not be lightly abandoned in return for immediate financial gain.

Those areas which give workpeople a positive role in controlling the work situation should be recognised and adapted to meet the new objectives of increased industrial democracy.

Future of Consultative Machinery

67 Chapter 1 described the tendency for the separation between channels for negotiation and those for consultation to disappear. It is important, as the 1967 Labour Party document pointed out, that all improvements in industrial democracy should be based on a single channel of communications. In this context; a merger between the negotiating and consultative machinery is welcome, in that it facilitates the gradual transition of matters of substance from unilateral managerial control, through consultative procedures, and eventually to become matters for negotiation. There will nevertheless be many instances where separate but compatible consultative machinery will continue to be needed, and indeed areas where new consultative machinery should be established, for example in international companies.

In general there will not be a major role for separate consultative machinery, but there can be important exceptions to this general conclusion.

Procedures

68 A major extension of collective bargaining to matters involving work organisation would need to be accompanied by the widespread adoption of procedural arrangements which incorporate some form of mutual status quo arrangements. This restricts the ability of management to introduce changes outside negotiated or customary practice. The TUC's *Good Industrial Relations* includes the following model status quo clause: "It is agreed that in the event of any difference arising which cannot immediately be disposed of, then whatever practice or agreement existed prior to the difference shall continue to operate pending a settlement or until the agreed procedure has been exhausted."

The adoption of "status quo" provisions based on the TUC's own model clause should be considered for all disputes procedures.

Implications of Changes in Work Organisation

69 Many of the approaches and new management techniques discussed in Chapter 1 have implications for industrial democracy. The "manipulative" aspect of the management approaches described in Chapter 1 can readily be seen in the case of job enrichment. Job enrichment is introduced by management either to complement or to replace other methods for securing managerial objectives; it will be extended to the extent that the costs of introducing it do not outweigh its apparent benefits to the employer. For workers, job enrichment is desired for its own sake because it makes life at work more interesting and less tedious. Job enrichment is rarely considered at the most appropriate time for its application and introduction, which is when new, automatic, or more capital intensive machinery is being introduced. At this stage jobs can be redesigned and workers, via their unions, should be involved in discussing with management the characteristics of the tasks and jobs to be created.

70 The primary objectives of management in productivity bargaining are to raise productivity and efficiency in a plant or company by changing the utilisation of manpower. Hence, in times of high unemployment, such as has persisted over the last few years in the UK, involvement in productivity bargaining is viewed with suspicion and hostility by many trade unionists. This attitude has been amplified by the unfortunate experience of productivity bargaining gained by trade union negotiators in some instances where workers' financial benefits from productivity agreements have been too low. However, productivity bargaining has extended the issues considered in collective bargaining, eg the negotiation of changes in working methods and manning practices, of the introduction of new machinery, of detailed redundancy arrangements, etc; and the provision of information on manpower and production plans and of financial information previously not available. On the other hand in some industrial situations it may be argued that management has secured greater control than formerly existed, and that workers have "sold" valuable means of exerting control over their work situation. Paradoxically, both management and unions may gain a greater degree of control in a changed situation and thus achieve more knowledge of, and control, over costs and output. The employer's objective in productivity bargaining is to secure greater profitability for the particular plant and company involved. What is sought, at the price of greater trade union influence over decision-making, is union and worker identification with that objective. Providing the unions and workers involved do not lose sight of the broader trade union objectives this may be accepted. The changes in work organisation and management approach outlined thus offer an important means of extending joint control over new areas. A tripartite working group consisting of General Council members, representatives of the CBI, and the DE have been examining the question of changes in work organisation and have been reviewing experiments in the UK and abroad, particularly Scandinavia. The group ultimately hope to produce a set of agreed guidelines for British industry in this field.

Changes in work organisation present an opportunity to extend joint control through collective bargaining over a wide range of issues relating particularly to the working environment.

The Use of the Sit-in and Work-in

71 Chapter 1 discussed the use of the sit-in and the work-in. In most of the cases analysed there was no lasting structural change achieved in the enterprise as a result of sit-ins or work-ins. The relevance to industrial democracy of sit-ins and similar actions lies in the way in which imminent closures and similar events can be challenged at local level. They are local level defensive reactions to decisions on investment, closure and mergers taken elsewhere. Remote managements, attempting to take closure decisions that would blight the lives of workers (and often the prospects of whole areas and towns), can now be faced with the powerful bargaining counter of the seizure of all their assets concerned. The challenge to their unlimited property rights to do this that an occupation represents is an important consideration. The work-in variant has also been a powerful weapon, especially in the UCS situation, but this expression of workers control relates to a very special industrial and political situation; other attempts have not been so successful. Sit-ins have therefore often been a last desperate act of a workforce that has apparently reached the end of the line, and is unable to influence a decision taken elsewhere. At present, however, they are all technically illegal. The need for this form of defensive industrial action indicates the kinds of decisions that remain outside the collective bargaining process, and this pinpoints the limitation of collective bargaining.

The use of sit-ins and work-ins to counter redundancy and closure reflects an essentially defensive attempt to limit the right of owners and managers of capital to take decisions detrimental to large groups of workpeople. This is an appropriate trade union tactic in certain circumstances.

Disclosure of Information

72 The provision of information on the operations of the enterprise – whether public or private – to the employees and their representatives is an essential background against which extensions to industrial democracy can occur on a rational and informed basis. This applies to both public and private sectors. As is made clear in Chapter 1, the provision of more detailed information on a regular basis will largely depend on the development of the requirements of negotiators in the light of their needs in negotiating improvements to existing agreements and wider discussions and joint regulation of companies. As a first priority it will therefore be necessary for trade union negotiators to examine information needs in the light of their objectives as far as improvements in negotiated wage and non-wage benefits are concerned, and of the arrangements necessary to monitor the effects of changes. Output and total and unit cost and profit data would be particularly important to wage negotiations, for instance. Production information, together with details of bonus earnings by process and product, would be essential if the practical effect of an incentive scheme were to be monitored. Breakdowns of earnings by occupation and grade would be essential to an assessment of action to eliminate low pay. Improvements in sick pay schemes should be designed with statistics on the incidence of short and long-term sickness and occupational hazards in the establishment in mind. It is envisaged that the role of industrial relations legislation in this area would be to lay down minimum information rights for individual workers, to set out

the information which should be presumed to be the right of any group, through their workplace representatives for negotiating purposes, and to set out guidelines on the sort of information necessary if workpeople are to participate in the processes leading to management decisions. Legislative provision should also be made to enforce the provision of information to individual workers and to provide arbitration, through the proposed Conciliation and Arbitration Service on both information for negotiations and that for improving participation. *Individual workers* should be provided, as of right, with the following information:

All information circulated to shareholders, as it is sent to shareholders.

Terms and conditions of employment including wages, hours, holidays, pensions, sick pay arrangements, notice.

A job specification including responsibilities, management structure, and health and other possible job hazards.

Employment prospects, including promotion opportunities and plans to expand or contract the workforce.

Access to their personal file and to an explanation by the employer on its content.

73 Accredited *workpeoples' representatives* should be entitled to the following information (which should not be regarded as being in any way confidential):

MANPOWER: Number of employees by job description; rates of turnover; statistics on short-time working, absenteeism, sickness and accident, recruitment, training, redeployment, promotion, redundancy and dismissal and a breakdown of non-wage labour costs.

EARNINGS: Averages and distributions by appropriate occupations and work groups of earnings and hours including, where necessary, information on make-up of pay showing piecework earnings etc.

74 The above information should normally be available from management control systems and there should be a presumption that it will be made available. However, in some cases, more information might be necessary. Generally, it is envisaged that the information suggested above should be provided on a six monthly basis, but in some cases more regular data would be necessary, particularly in rapidly changing situations such as that following alterations to pay systems.

75 The provision of the above information and any other data necessary to a full understanding of the affairs of the enterprise ,including that of a financial nature, should be the subject of an information agreement.

76 The agreement should also cover the question of what information should be provided about associated enterprises. For instance, if the work unit were a division of a large company, it would be appropriate that manpower and earnings information should cover that unit. Comparable summary information should be provided for the rest of the company, together with sufficient financial information to enable workpeoples' representatives to understand the relationships between the division and the wider company and its contribution to overall per-

formance. In the case of groups of companies, information could be necessary on the wider group including, in the case of multinationals, foreign subsidiaries or holding companies. The information agreement should also set out arrangements for ensuring necessary confidentiality.

77 The following is a guide to the range of financial and associated information which could be expected to be provided by companies:

SOURCES OF REVENUE: Sales turnover by main activities, home and export sales; non-trading income including income from investments and overseas earnings; pricing policy.

COSTS: Distribution and sales costs; production costs; administrative and overhead costs; costs of materials and machinery; costs of management and supervision.

DIRECTORS' REMUNERATION: including country of payment.

PROFITS: before and after tax and taking into account Government allowance, grants and subsidies; distributions and retentions.

PERFORMANCE INDICATORS: unit costs; output per man; return on capital employed; value added, sales per square foot of selling space (in retail sectors).

WORTH OF COMPANY: details of growth and up to date value of fixed assets and stocks; growth and realisable value of trade investments.

78 The above data is indicative of that essential to a full-understanding of the working of a particular plant or company, but if participation in managment decision-making is to become a reality then it is not only necessary to have a view of the enteprise but to understand its prospects and to discuss and teach agreement on its plans. *The necessary information should include:*

Details of new enterprises and locations, prospective close-downs, mergers and takeovers.

Trading and sales plans, production plans, investment plans, including research and development.

Manpower plans, plans for recruitment, selection and training, promotion, regrading and redeployment; short-time and redundancy provisions.

79 In this context it would be necessary for trade unions to establish training programmes designed to ensure that full-time officers and shop stewards were able to understand and use effectively, in the interests of their members, the information which was made available to them; and to equip the members concerned to play an active role. The TUC education service would clearly have a significant contribution to make to this development, particularly through the training courses for full-time officers provided at the Training College and the substantial and growing number of shop steward training courses conducted in the regions. A co-ordinated scheme of studies making use of television broadcasts, postal courses and weekend and summer school courses, is now being considered by the TUC.

Legislation on Disclosure

80 Under new legislation individual workers should have an absolute right to the information set out in para 72 and for this to be restated and, where agreed, revised at regular intervals. As in many cases an inadequate statement would be a matter of misunderstanding, complaints on non-disclosure would be most appropriately dealt with by the CAS in the first instance.

81 The manpower and earnings information which should be provided to workplace representatives for negotiations on terms and conditions of employment is relatively easy to define, and cases where employers attempt to avoid disclosure should be open to clear cut decisions. It should be presumed that such information can be provided. Complaints by trade unions that employers have failed to disclose such information, and thus impeded negotiations, could be referred to an Arbitration Committee under the CAS. If the Committee were satisfied that the complaint could not be rebutted it would make a declaration that the employer should disclose the information. If the employer did not comply with this the union would be entitled to present a claim for improved terms and condition for arbitration by an Arbitration Committee. The claim would be related to the matters under negotiation when the employer had refused to disclose information. The award of the Arbitration Committee would become an implied term of the individual contracts of the employees covered by the union's claim.

82 While it is not impossible to envisage a role for the law in compelling employers to provide financial and forward planning information to enable workpeople to understand the working of an enterprise and to participate in management decisions, it is clear that enforced disclosure is hardly likely to be followed by meaningful discussions on related decisions. For this reason it is proposed that where difficulties arise the CAS should exercise a largely conciliatory role by discussing with both unions and management the form and content of an appropriate information agreement. In cases where employers refused to meet the CAS or to implement or operate an agreement, the only sanctions proposed are those normally open to organised work people. While it is clear that in future most information for negotiators will be provided direct by the company, there will still be a need for certain data to be made publicly available under the requirements of the Companies Acts. From the viewpoint of negotiators, the information will be wanted particularly for the purposes of comparisons between companies, but it would also be important for economic planning and other purposes. Companies should disclose the following manpower information in annual accounts: the average number of persons employed in the year, aggregate and average weekly remuneration, and turnover of employment. All information should be available separately for men and women and manual and non-manual workers. The information should also be shown separately in the reports of parent companies, for the parent and for each subsidiary and separate plant, subject to a minimum size of £50,000 turnover. The information should be annexed to the accounts for examination by auditors rather than being included in the directors' report as at present. Also, as far as multinational companies are concerned, subsidiaries of foreign companies in the UK should be obliged to lodge the accounts of their parent company, set out according to UK account-

ing conventions, with the Registrar of Companies. All transactions with affiliates in other countries, on either capital or revenue account, should be separately set out in annual accounts. All companies should be obliged to set out in accounts their global employment, country by country.

Union Safety Representatives and Joint Safety Committees

83 Existing safety and health legislation requires employers to meet certain minimum safety and health requirements and the common law also imposes obligations in these fields. The *Health and Safety at Work Bill 1974*, now before Parliament, establishes a Health and Safety Commission, including representatives of the TUC, which will be responsible for administering all existing legislation and for improving safety and health standards. The Bill makes statutory provision for the appointment of safety representatives from amongst the employees at a workplace by the recognised trade unions, and the employer will be obliged to consult those representatives about arrangements to enable effective co-operation on measures to ensure health and safety at work. If the safety representatives ask for a safety committee, the employer will be obliged to set up a committee. Regulations to be made when the Bill is passed will set out the duties and functions of safety representatives and safety committees. Safety representatives will need powerful rights to enable them to perform their tasks. These should include rights of inspection, investigation of accidents, and access to relevant information, and powers to deal with dangerous situations. The General Council are pressing for at least 50 per cent trade union composition of the committees. The TUC is preparing an extensive training programme for union safety representatives to enable them to work effectively, involving the use of postal courses, day release and TUC Training College facilities.

LEGISLATION AND THE PRIVATE SECTOR

Investment Decisions and Representation on Boards

84 The above recommendations relate to improvements in industrial democracy based on the strengthening of trade union organisation and the widening of the scope of collective bargaining. This will continue to be the main way forward in extending collective control at local level. However, it is clear that this leaves a wide range of fundamental managerial decisions affecting workpeople that are beyond the control – and very largely beyond the influence – of workpeople and their trade unions.

85 Major decisions on investment, location, closures, takeovers and mergers, and product specialisation of the organisation are generally taken at levels where collective bargaining does not take place, and indeed are subject matter not readily covered by collective bargaining. New forms of control are needed. This problem is particularly acute in the private sector, where on the one hand local and plant bargaining do not affect planning and investment decisions, and, on the other, national agreements are not concerned with the management decisions of individual firms. Company or combine-level bargaining has more potential for extension into these areas, but ultimately the decisions are taken quite unilaterally

by the owners of capital, or by managements and planners who in an increasing number of cases take their decisions in a global context unfettered by national level collective bargaining. In the extreme circumstances of closure resulting from such decisions, where local level bargaining or withdrawla of labour is almost totally ineffective, less traditional local level tactics such as the sit-in and the work-in may impose a limitation on the otherwise absolute right of shareholders to dispose of their own property. These local level actions are essentially defensive, temporary and "ex post-facto" reactions to crisis situations. As such, they may in many circumstances be desirable and legitimate trade union tactics. But such seizures do not lead to control over future decisions. There therefore needs to be an examination of how workers' organisations could exert a degree of control over planning and policy-making.

Ownership and Control

86 Any method of involvement in managerial decisions will still raise the issue of who determines the disposition of capital. Ownership of capital confers on shareholders the ultimate right of withdrawal of their capital. Nor can national developments deal directly with the problem of multinational companies. Nevertheless, a large number of decisions of vital importance to workpeople are made at national managerial levels, but are not susceptible to collective bargaining. Institutional involvement in these decisions fills a gap between worker participation and control at local level and the influence of the trade union Movement as a whole which exists at the national level. Such forms of control would in most cases be an adjunct to the collective bargaining process; in a limited number of important cases such involvement could be vital.

87 Company-based schemes of co-ownership and profit-sharing are discredited. Trade union objections are threefold. First, such schemes do not in reality provide any real control over the managerial decisions. Many profit-sharing schemes do not involve any common ownership principles in the sense of ownership implying control. Even if shares with voting rights are distributed this would have to be on a fairly massive scale before any real control were vested in the workers as shareholders. The reaction of most workpeople to these types of schemes is to regard the annual profits share out as no more and no less than a useful annual bonus. Second, there is no advantage to workpeople tying up their savings in the firm that employs them since this doubles the insecurity in such situations as Rolls Royce. The third general point about such schemes, however, is that they do little or nothing to reduce the degree of inequality of wealth and they do not include the public sector of industry. There may, indeed, be a role for the development of a form of capital sharing at national level based on a national fund administered through the trade union Movement. The 1972 Congress adopted a resolution calling on the General Council to investigate this whole area. One development which the General Council will take into account in their future study will be the "Green Paper" on "Capital and Equality" produced by the Labour Party Study Group. The General Council will also take into account the overall policies of the Government on the distribution of wealth.

Representation on the Boards of Private Companies

88 It is a basic function of trade unions to obtain a degree of joint control through representation at the point at which decisions affecting workpeople are made. It has long been the case that trade unions at all levels have influenced managerial decisions, and the need for greater influence has been recognised. Logically speaking, there is not a major barrier to be broken down which prevents trade unions from participating in major decisions within the present system, because they already do so. The extension of joint control or joint regulation in any form, including collective bargaining, is a de facto sharing of the management prerogative. However, this has not extended to the point where management are formally responsible to workpeople in the same way as they are to shareholders.

89 At present, under UK company law, membership of a company board implies participation in and shared responsibility for decisions, there being no "supervisory board" level. In order to allow for a fully representative system, changes in company law are needed, allowing trade union representatives to participate in and influence decisions, whilst at the same time their primary responsibility remains to their constituents. Thus provision for employee membership of top-level boards in private industry has merit only if it is on a trade union basis, and not on a basis of "Works Councils" or similar European machinery separate from or independent of trade unions. The objective is to find a form of representation and participation in decision-making in the private sector which provides for participation in major decisions, but leaves the lines of responsibility of the workers' representatives to their constituents. The aim must be to give legal rights to workpeople of collective participation and control over decisions which the collective bargaining and consultative process have not given them. It is no use doing so and then requiring that worker-directors should behave just like any other directors. For instance, worker representatives should not be unnecessarily hampered and restricted in reporting back to their constituency by narrow requirements of confidentiality.

90 As the TUC's evidence to Donovan recognised, issues can be discussed by workers' representatives up until the point where their consequences become matters for collective bargaining. There is no necessary conflict between worker-representatives arguing the case at board level, and then pursuing it at negotiations, representing workpeople's interests at a later stage. The workers' representatives are subject to the conflict of interest to no greater degree than are shareholders' representatives. The Donovan evidence proposed discretionary legislation which would allow "experiments" of workers' participation by removal of the legal inhibitions to representatives on the board. Since that date, the impact of closures, rationalisations and redundancies has become much more widespread, and the inability of trade unions to prevent or mitigate the effects of these in most cases has been a major deficiency. The time has come when a mandatory system needs to be proposed. At the same time, it must be recognised that each industry has its own unique features, and any system has to be flexible enough to take account of these differing realities. In principle, it can be stated that

(i) the Companies Act should be altered so as to provide for some form of worker-participation at board level;

(ii) the representatives should be appointed via trade union machinery;

(iii) they may or may not be employees but must be representative of the employees in the particular company;

(iv) their appointment should not preclude continuing lay or full-time trade union work.

91 The TUC attitude to existing European experiments is that the system of two-tier boards is probably a desirable development in that the structure gives workers' representatives a degree of joint control over all the major decisions of the company: closures redundancy, major technological changes, mergers etc. But appointments to supervisory boards are acceptable and desirable only if made through trade union machinery at company level (the precise manner might vary), and retaining a representative character and links with the trade union machinery. Where there is a multi-union situation, the existing collective bargaining machinery at the appropriate level can make the decisions on the balance of representation, as it does in relation to collective bargaining bodies. The responsibility of worker representatives would be to trade union members employed in the firm rather than to the annual general assembly of shareholders. There would appear to be some merit in introducing into UK company law, the division of the present powers of the Board of Management into a Management Board and a Supervisory Board, thereby giving worker representatives on the latter a degree of trade union and social control over major management decisions. Under European systems, however, this of itself does not entail any restriction of the powers of the owners of the enterprise represented in the General Meeting of shareholders. The latter can still, arising from the right of ownership, overrule the decisions of the other organs of the enterprise. This distinction is often blurred in discussion of the European codetermination system. To alter the ultimate powers of ownership of industrial shareholding is of course not possible without altering the pattern of ownership itself through political means. But a straightforward institutional extension of the powers of the Supervisory Board to be able to overrule the AGM of shareholders on the same decisions as it can override the board of management would place a stringent limit on the collective ownership rights of shareholders at their General Meeting. The Norwegian system to a limited degree gives this right. It is therefore suggested that UK company law should extend the codetermination principle further to give rights of veto over AGM decisions as well as those of the Management Board. The proposals for representation would mean the creation of, and trade union representation on, supervisory boards of *all* companies separately incorporated under Company Law, whether or not they were wholly or partly owned subsidiaries. Such arrangements for subsidiary companies would of course of themselves provide a counter-balance to the control of the ultimate parent company. In addition, in the case of groups of companies the system of representation would need to apply to the ultimate parent company or effective controlling company in the UK – irrespective of the number of people employed by that company itself. Representation would be drawn from membership in subsidiary companies broadly in proportion to employment. The system would then have the following main features:

(i) The present Boards of companies should be divided into supervisory boards and management boards. One half of the supervisory board should be appointed by the workpeople through trade union machinery, normally at company or combine level. (This in turn will encourage the development of company and combine-level joint-union organisation). This will apply in the first instance to all companies with more than 2,000 workers. The Minister should have power in this legislation by order to extend its application at a later stage to enterprises employing over 200 workers.

(ii) The supervisory board would be the supreme body of the company and while it would take into account the interests and views expressed at the AGMs of shareholders it would not be bound by them. The supervisory board would be responsible for determining company objectives, the policies necessary for their achievement, and for monitoring and reporting progress to workpeople as well as the shareholders and, through returns to the Registrar of Companies, to the wider public. It would consider all major management decisions concerning expansion or contraction of company activities, organisation, investment, employment, training and manufacturing, and relations with other commercial bodies, in the light of agreed financial and other criteria and legal responsibilities. In the coming period, a particular responsibility in larger companies would be the formulation of planning agreements and discussion of them with the Government. The management board would be appointed by the supervisory board and would be responsible to it for the day-to-day running of the company, according to the objectives and policies laid down.

(iii) This change should be reflected by a statutory obligation on companies to have regard to the interests of its workpeople as well as its shareholders.

(iv) Workers' representatives should not be obliged to relinquish union office; they should be appointed for two years and subject to recall and re-election on the basis of their total record. They would be subjected to extra-ordinary recall during this period only in exceptional circumstances, which would need to be provided for in the election procedures. Election procedures would be devised by the unions represented at the enterprise, either individually or jointly, in consultation with the TUC.

(v) Provisions about board-level representation should only apply where there is trade union recognition; this adopts the same principle as is contained in the 1974 Health and Safety at Work Bill – see paragraph 83 above.

EEC Proposals

92 Chapter 2 outlined the two specific proposals emanating from the EEC itself which deal with industrial democracy: the draft European Company Statute (which would apply only to companies incorporated under EEC law; the statute provides for one third representation on the board and for a European Works Council), and the fifth directive on Company Law Harmonisation (which would apply to all public companies employing over 500 employees, and provides for two different forms of worker representation on the board). The General Council considered both of these proposals in January 1973, and submitted comments on them to the British Government. Whilst the two-tier

principle in itself is acceptable to the General Council, in order to be applicable to Britain and fit in with the General Council's own proposals the EEC proposals would have to provide for 50 per cent supervisory board membership, based on trade union machinery. In the specific case of European-level machinery in the suggested European Company, so far as British plants are concerned this would need to be based on trade union machinery. The aim would be to give some multinational union control over those multinational corporation decisions reserved for agreement with the European-level machinery. The General Council however stressed that this must not interfere with existing trade union collective bargaining in Britain, nor with the other means of joint regulation set out in this report.

Works Councils

93 On the other hand, Works Councils on the German pattern are clearly not appropriate to the UK. Works Councils were established in Germany and in other European nations when trade union organisation was weak and collective bargaining poorly developed. This is not the situation which exists in the UK today. In most parts of the economy both trade union and collective bargaining structures are in an advanced stage of development, but even in those sectors where traditionally there has hitherto been a limited degree of trade union organisation (and hence very little collective bargaining in the true sense) unionisation is increasing at a rapid rate.

94 It needs to be emphasised that there is no proposal from the EEC Commission for a system of Works Councils on the Continental model to be generally applied in Britain. Nor is the Government or any authoritative industrial body making any such proposal. An attempt to introduce a general system of works councils in British industry would lead to one of two things. Either they would duplicate existing structures at plant level, in which case Works Councils would clearly be superfluous; or they would displace and supersede existing trade union arrangements; this latter approach would be even more unacceptable to the trade union Movement. The tendency in the UK has been for long established Works Councils to become part of the trade union machinery.

THE PUBLIC SECTOR

The Boards of Nationalised Industries

95 There are three recent developments in trade union thinking about worker-representation on managerial bodies in the nationalised sector. Firstly, the gradual movement from the post-war philosophy that any trade union appointment to national or regional boards should be from outside the industry. Secondly, the feeling that such appointments should no longer be at Ministerial discretion. And thirdly, there is the willingness to experiment with participation by trade unionists from within the industry on lower-level management boards on the lines of the BSC Worker Director Experiment – despite the acknowledged inadequacies of the first phase of that scheme. These developments indicate that there is a widespread – but by no means universal – appreciation

in the Movement that conflict between management objectives and labour in the nationalised sector is not sufficiently overriding to prevent some forms of joint control being adopted. This is partly because of the wider objective of nationalised industry, as distinct from the mere profit motive in private industry, and partly because of the recognition that the highly developed but often spurious joint consultative machinery has been inadequate to safeguard the interests of employees in the nationalised sector. At the same time, it should be recognised that the boards of nationalised industries, and the public sector generally, have a wider role in relation to national planning. A wider form of social control is therefore needed in the public sector, as well as measures to improve the representation of public sector employees.

96 If the proposals put forward above for a form of worker representation on the boards of private industry were adopted, then it would obviously be desirable if similar forms of representation could be established within the nationalised sector. The 1973 Congress affirmed the importance of this principle. However, the present boards of the nationalised industries already include outside appointments representing wider interests, including trade union appointments from outside the industry. In this sense, the existing nationalised boards already perform a function not dissimilar to a supervisory board; indeed, in certain nationalised industries there is also an executive or operating board subordinate to the main board. It is proposed that this system – which is in effect a two-tier system – is retained, but that 50 per cent trade union representation should be provided for on the first-tier board (i.e. that concerned with overall policy-making). This top-tier board would not be the operative body so far as wage negotiations were concerned. The representation should be direct, without involving the Minister, but based on the trade union machinery in the nationalised industry so as to represent the workers employed in the industry. The TUC's role in this would only relate to determining respective unions' interests where necessary. The other 50 per cent of the board should be appointed by the Minister, but there is scope for further discussion about the composition of this 50 per cent. There must therefore be a commitment to a new set of statutes for the nationalised industries.

97 As well as extending the board level representation, it is necessary for the nationalised industries to play a leading role in the extension of industrial democracy at lower levels of managerial authority. Joint control can largely be extended through collective bargaining, and through the absorption of subjects for consultative machinery into the collective bargaining structure. At the same time direct involvement in managerial boards at lower levels (e.g. regional) should be provided for. It is important that there should be representatives of workpeople at the point where decisions are really taken, which in the public sector is often at sub-committees of the main board.

Experiments on arrangements below board level in relation to the characteristics of the particular industry should be set up, giving the representatives clear responsibilities and areas of competence. The selection process should be similar to that for national boards, where possible being made on the basis of joint-union machinery at each level.

Public Boards: Method of Appointment

98 In future trade union representatives on standing executive public boards (e.g. the new Regional Industrial Development Boards) or advising on consultative committees (e.g. NEDC; EDC's; ITB's; REPC's) should be made through the trade union Movement, not at the discretion of the Minister. As is already the case in most instances, nominations should be sought through the TUC, which would seek nominations from appropriate unions or RAC's (including industrial committees where relevant). There should be no exclusion of representatives on grounds of their employment or trade union interest. This should arguably apply to salaried posts, such as the Monopolies Commission and the Potato Marketing Board, as well as non-salaried posts. Ad hoc Committees of Inquiry are a rather different matter, and an element of Minister's discretion should perhaps be retained.

99 The General Council have been disturbed by the way in which several of their nominees to various bodies have not been appointed and trade unionists appointed purely in a 'personal' capacity without any consultation, until after the event, with the TUC. Changes in procedure are necessary. These changes in the procedure for appointment would require substantial changes in the understanding reached between the General Council and the Government in 1967. Following the categories set out in that letter, the changes would need to be as follows:

SALARIED APPOINTMENTS

Type of Appointment	*Proposed Procedure*
Nationalised Boards at national and regional level	These will now have new statutes involving 50 per cent direct trade union representation, as set out in paragraph 96
Other Boards, eg Monopolies Commission	Government to seek nominations from TUC General Council

UNSALARIED APPOINTMENTS

Type of Appointment	*Proposed Procedure*
Committee of Inquiry dealing with individual industries	Government to consult the TUC formally but nomination at discretion (as now)
Committee of Inquiry into Industrial Courts Legislation	Appointment at Minister's discretion with agreement of parties (as now)
Other advisory committees	Appointment at Minister's discretion (as now)
Appointments as spokesman for the trade union Movement	TUC to nominate (as now, but this should apply to all such appointments)
Committees at regional or board level	TUC to nominate (as now)

Industrial Democracy in the Public Services

100 Industrial democracy in the public services (Civil Service, local government and education etc) presents special problems because of the role of Parliament and the Local Authorities as representatives of the electorate. Nevertheless,

workers in the public services should not be totally excluded from the decision-making process in their area of operations in a situation where workers in the private sector and in nationalised industries were able to take part in the formulation of major policies. Indeed, there are many circumstances in which they should be involved at the formative stage of policy-making. At present it is possible for Ministers to advocate policies which could produce redundancy, dispersal, hiving-off, radical technological change, chronic overtime, without the staff who will be affected being able to contribute their point of view early enough to influence the crucial decisions. There is no justification at all for trade unions representing civil servants or other workers in the public services being deprived of the means of bringing their experience to bear as one of the elements which should enter into the formulation of public policy. The machinery may need to be different but in principle the case for giving public services trade unions due and timely opportunities to contribute the views of their constituents is as valid as the case for a greater measure of industrial democracy for the rest of the working community.

101 In local government legislative changes need to be made to remove the prohibitions on employees standing for office in their employing authority. This is however mainly a question of civic rights. On the broader issue of industrial democracy, the General Council believe that they should seek parallel arrangements in the local authority services to those in private industry and nationalised industry. These changes would include a satisfactory degree of representation on the main decision making operational bodies. These would include school and college management committees, direct works committees, and other operational bodies – such as transport authorities. Areas of particular interest to trade union representatives would be the deployment of manpower, including staffing and manning levels, organisational changes and the use of outside contractors.

102 In the health services, arrangements should be made so that half of the members of Regional and Area Health Authorities should be trade unionists, drawn from all sections of the movement. There should be no ban on the nomination of full-time officers working in the Health Service, who should not be required, if appointed, to relinquish their trade union posts. The General Council have noted the publication in June of the Consultative Document on Democracy in the National Health Service, and are considering it in the light of their overall policy on industrial democracy.

CHAPTER 5

PROPOSALS REQUIRING LEGISLATION

103 This report has emphasised that the extension of industrial democracy must continue to be based on the extension of trade union influence and the development of collective bargaining. Much of this does not require legislative action. This final chapter draws together the specifically legislative steps which are proposed.

104 The Labour Government has already begun the process of enacting legislation which will promote trade union organisation and also give workers new legal rights at work. The *Trade Union and Labour Relations Bill* repeals the Industrial Relations Act and restores basic trade union protection. This will quickly be followed at the second stage by the *Employment Protection Bill* which will define rights for workers and trade union organisation, and at the third stage by industrial democracy legislation which will entail a new *Companies Act*, new statutes for the *nationalised industries* and developments in the *public services*.

EMPLOYMENT PROTECTION BILL

105 Many of the Report's recommendations on "Broadening the Collective Bargaining Function" (paras 63–68) do not need legislative action; others will need legislation which will form part of the Employment Protection Bill:

(*a*) Trade union organisation will be assisted by giving greater protection for workers against dismissal or discrimination because of trade union membership or activity; a union will be able to apply to the CAS for an arbitration award if an employer refuses recognition (paras 63–65);

(*b*) to facilitate the extension of the scope of collective bargaining the Employment Protection Bill will define trade union rights in respect of such matters as the management of occupational pension schemes; and advance notice of redundancies; (para 66);

(*c*) provision of information to workpeople on the activities of the enterprise will be made mandatory (paras 72 and 80);

(*d*) a union will have the right unilaterally to apply to CAS for an arbitration award when an employer is refusing to disclose information for collective bargaining purposes (paras 73 and 81);

In addition to these provisions, which the General Council hope will be given legislative form in the Employment Protection Bill, the Report's proposal for statutory trade union representatives on joint safety committees (para 83) is included in the Safety and Health at Work Bill currently before Parliament.

INDUSTRIAL DEMOCRACY LEGISLATION

106 The industrial democracy legislation as outlined in Chapter 4 of the report covers:

(i) a new Companies Act (private industry) (paras 90 and 91);

(ii) new statutes for the nationalised industries (paras 95–97);

(iii) new arrangements in the public services (paras 100–102);

(i) *A New Companies Act*

(*a*) There should be a new Companies Act, to be introduced by stages, at first in enterprises employing more than 2,000 workers: such companies would have a two-tier board structure with Supervisory Boards, responsible for determining company objectives, which would appoint Management Boards.

(*b*) This change should be reflected by a statutory obligation of companies to have regard to the interests of workpeople as well as shareholders.

(*c*) One half of the Supervisory Board should be elected through trade union machinery, normally at company or combine level.

(*d*) Provisions about supervisory boards in the new Companies Act would only become operative where there is trade union recognition, and representation of workers could only be through bona fide trade unions choosing to exercise this right.

(*e*) The Minister should have the power in this legislation to extend its application by order at a later stage to enterprises employing over 200 workers.

(ii) *Nationalised Industries' Statutes*

(*a*) There will need to be a new set of statutes for the nationalised industries.

(*b*) These would provide for 50 per cent direct trade union representation on the policy-making boards of nationalised industries.

(*c*) The other 50 per cent of the board should be appointed by the Minister; there will need to be further discussion about the composition of this half of the board.

(*d*) The statutes should allow for a variety of arrangements and experiments below board level, according to the characteristics of the particular nationalised industry.

(iii) *Public Services*

(*a*) There should be provision for a satisfactory degree of trade union representation on decision-making operational bodies in the public services such as school and college management committees, direct works departments, transport departments, and other local government operational bodies.

(*b*) This would require amendments to a number of statutes and changes in arrangements affecting such services as local government and education, the civil service, and Regional and Area Health Authorities.

CHAPTER 6

THE BULLOCK COMMITTEE OF INQUIRY AND TUC SUPPLEMENTARY EVIDENCE

107 The establishment of a Committee of Inquiry on Industrial Democracy under the chairmanship of Lord Bullock was announced in August 1975 with the following terms of reference:

> "Accepting the need for a radical extension of industrial democracy in the control of companies by means of representation on boards of directors, and accepting the essential role of trade union organisations in this process, to consider how such extensions can best be achieved, taking into account in particular the proposals of the Trades Union Congress Report on 'Industrial Democracy' as well as experience in Britain, the EEC and other countries. Having regard to the interests of the national economy, employees, investors and consumers, to analyse the implications of such representation for the efficient management of companies and for company law."

The Committee included three trade union members, Mr Jack Jones, Mr Clive Jenkins and Mr David Lea.

108 In March 1976 the General Council approved the following supplementary note of evidence in elucidation of the TUC Report and related questions being considered by the Bullock Committee. The evidence was subsequently endorsed by the 1976 Trades Union Congress.

SUPPLEMENTARY NOTE OF EVIDENCE BY THE TUC GENERAL COUNCIL TO THE BULLOCK COMMITTEE

Questions and Answers to the TUC Statement, 1974

The TUC Report says that their proposals for a revision of the Companies Act are only part of a total approach. What importance do they attach within this total approach to the structure of company boards?

109 Major developments in industrial democracy clearly can take place, and indeed are taking place without any legislative back-up, as the scope of collective bargaining is gradually extended to cover a wide range of issues which were previously regarded as managerial prerogatives. Nevertheless the company law aspect is still important because company law at present precludes certain developments in the area of industrial democracy. For example, company law at present precludes a board's directors from having direct regard to the interests of workpeople as well as shareholders (though no doubt many boards do this in practice) and it also precludes the election of directors by any group other than shareholders. The type of parity representation advocated by the TUC, which we feel would be of great value to industry, will be impossible without changes in companies' legislation.

110 It is increasingly evident that the major issues determined by boards of directors are of close interest to workpeople. As is argued in the TUC Report and elsewhere, these include the appointment of top management, disposition of resources, mergers and the acquisition or disposal of assets. Workpeople should have a right to a say in such decisions, at present reserved to the shareholders. The present law does not correspond to industrial reality, and some people argue that the Companies Act is

therefore irrelevant. The TUC believes, on the contrary, that it is very important to establish the essentially joint interest of labour and capital in the enterprise, and that the management function is carried out within a framework of policy making in which workpeople, using the machinery of their trade unions, can formulate and express their interests in the direction of a company's affairs.

111 It can of course be argued that any change in the Companies Act can in one respect be contrasted with the "natural" development of arrangements in industry. The TUC believes that there is no incompatibility between the two: indeed, a change in board structure can act as a catalyst to developments at other levels in the enterprise.

The approach by the TUC represents a major change from the traditional trade union attitude to which the TUC Report makes reference. Why have the traditional misgivings now been set aside?

112 The traditional trade union misgivings about board level representation derived from a concern that such new forms of representation might conflict with, and indeed be incompatible with, collective bargaining machinery. At the same time it has become increasingly clear to trade unionists that it is at board level that most of the crucial decisions on company planning, the allocation of resources, top managerial appointments and so on are made and that, in the absence of board-level representation, trade unionists find it very difficult to influence such key decisions.

113 Board-level representation is certainly in no way a substitute for collective bargaining. Trade union organisation is now strong enough in Britain to reduce to the minimum the fear that trade union strength might be weakened. But it is in fact nevertheless of vital importance that board-level representation is based on trade union machinery and that workers' representatives must be seen to be in touch with the feelings of their fellow workers.

Can the TUC envisage any situation where board-level representation might come into conflict with collective bargaining processes?

114 The first point in answer to this again entails reference to trade union machinery. This will reduce to the minimum any problem of "demarcation" between the two. Many hypothetical problems will be soluble in practice by common sense. In practice, the distinction will be partly by reference to subject, and partly by reference to timing. On subject matter such as top appointments or drawing up the annual report the question hardly arises. On others, such as the report on research and development or the corporate plan, it would be natural to treat these as to some extent confidential to the board, but the general strategy would then have to be translated into firmer decisions which would entail collective bargaining treatment in respect of manpower, redeployment, pay, new methods of work and so on. On the narrower issue of pay, there would be no change from the present arrangements, but there would clearly be a number of interactions between the workers' representatives on the board, the pay negotiators, the policy of trade unions, the financial position of the enterprise, and other factors.

Does the TUC have any specific proposals as to how workers' representatives should be elected?

115 The machinery of the trade union Movement would be used. The TUC and joint negotiating bodies in the various industries have long been accustomed to reaching

accommodation between the various interests. This is the case within such bodies as EDCs, ITBs and so on. Recognised and certified unions with an interest would meet and agree how, for example, the six seats would be allocated, then the unions would make their internal arrangements. Where, as for example in BLMC, a national structure already existed between all the unions, that national structure would be the appropriate body. It would not be for the Companies Act however to specify how particular plants or skills were to be represented: that would have to be left to the organisation, typically a shop stewards' organisation, to discuss.

The TUC emphasis on trade union representation would appear to exclude the non-unionists from any extension to industrial democracy. How does the TUC justify this?

116 Everyone would have the opportunity to be represented. There is no desire to exclude anyone. But clearly collective representation must relate to collective institutions for reasons already given. In the large firms with which the TUC proposals are concerned, the majority of those people who seek to influence policy making have already sought collective representation through trade unions, and unionisation is increasingly extending into the ranks of middle management. It is therefore unlikely that the number of non-unionists involved will be high. It should also be stressed that there is already a high level of agreement between employers, workpeople and Government, agreement reflected in current employment legislation and in the terms of reference of the Bullock Committee, that relations between workpeople and employers are most effectively regulated on the basis of collective representation which, on the employee side, takes the form of representation by independent trade unions who would be recognised and certified. It would thus seem only logical for extensions to industrial democracy to build on this.

Could the TUC elaborate on why they attach such importance to parity representation?

117 The TUC advocates parity trade union/shareholder representation at board level in order to avoid a situation of trade union representatives being given responsibility without a real share in decision making. It is the TUC view that it is unrealistic to expect "equal responsibility" without "equal representation". Nothing could be more damaging than having to accept responsibility if the shareholders' representatives had an entrenched majority. Only with a system of parity representation can trade union representatives be expected to feel any sense of collective responsibility for board decisions.

118 At the same time it should also be stressed that "equal responsibility" does not necessarily mean "identical responsibility". The Report "Industrial Democracy" stresses that the primary responsibility of trade union members would be to their constituents; they would indeed be "workers' representatives on the board" rather than simply "worker directors" responsible only to themselves. It should be made clear that in making this proposal the TUC is not demanding that trade unionists be given power without responsibility. They would maintain however that both groups should have a responsibility to report back to their constituents, which in the case of worker representatives would be trade union members, in the case of shareholder representatives, the annual general meeting of the company. Both groups therefore would have parallel and analogous (rather than identical) responsibilities. This representational element at board level is in fact nothing new; shareholders'

representatives have been quite able to look after the interests of shareholders and the interests of the enterprise. There is no reason why workers cannot carry out the same dual responsibility to workers and the enterprise; this is partly a question of legal drafting.

How does the TUC reconcile its stress on report-back and accountability with the question of confidentiality?

119 It is not only with legislation on board-level trade union representation that the problem of confidentiality arises. Existing legislation on disclosure of information in the Employment Protection Act and the Industry Act has already had to deal with this problem. There is no reason to believe that this question should cause insuperable problems in the case of industrial democracy legislation. While stressing that trade union representatives should not be unnecessarily hampered and restricted in reporting back to their constituents by narrow requirements of confidentiality, the TUC recognises that there will be some information that cannot, in the interests of the company and its workers, be made known publicly. It should be emphasised that many trade union representatives have been party to confidential information in the past and have been able to express a representative trade union view without making the information public.

Does not parity representation raise the problem of deadlock and does the TUC have any views on how deadlock situations might be resolved?

120 The Report "Industrial Democracy" put forward no proposals here, but there are various options which might be considered. There is the possibility of rotating the chairmanship year by year, of calling in an outsider, of the joint co-option of a chairman, or of an independent chairman with a casting vote. Of course it can also be argued that deadlock is *not* all that likely — (in Germany it has not been usual for trade union and shareholder representatives always to vote "en bloc") — and that when deadlock does occur the aim should be to find a bargained compromise acceptable to both groups.

How does the TUC see the arguments for two-tier rather than one-tier boards?

121 The essence of the TUC's argument is that workers should be represented through trade union machinery on the supreme policy-making organ of a company. It is not the TUC view that workers' representatives at board level should become involved in detail in the execution and implementation of these policies. There are arguments for a two-tier board and others favouring a unitary board. One possible advantage of the two-tier board system is that it "separates out" two distinct functions of company management — the setting of corporate policy and objectives (the responsibility of the policy-making board) and the implementation of corporate policy (the function of the management board). In such a two-tier system where trade union representatives sit on the policy-making board only, these union representatives do not become assimilated with the existing executive management structure which becomes the second-tier or management board. The two-tier board system also makes possible a clearer distinction between the functions of existing collective bargaining machinery and the functions of new representative institutions. Trade union representatives on the policy-making board would be involved in the process of setting corporate policy; the executive managers on the management board are then responsible for the implementation of these policies and any conflict over this implementation could be dealt with between trade unions and the management board through existing collective

bargaining machinery. Furthermore, since the policy-making board would meet much less frequently than the management board, trade union representatives would not become too distant from the shopfloor.

122 In favour of the unitary board is the fear that the number one board in a two-tier approach might become remote from the real decisions of management. Unions naturally have apprehensions about this. On this argument, the presence of the executive managers would therefore be helpful to all interests. Whether such executive managers would be directors with voting rights would depend on how the shareholders' side of the parity approach was comprised and whether the top board was to be the supreme body of the company, with the responsibility inter alia of appointing top management. While trade union representation is not impossible on a unitary board, it does raise certain difficulties, particularly as regards the relation between the responsibilities and accountability of executive managers, who are not there in any "representative" capacity, and those of the representative groupings. There are clear problems in making a unitary board, consisting of worker representatives, shareholder representatives, and executive managers, the supreme body of a company, since the non-elected executive managers would in effect become a self-appointing group. This is not to argue however that there might not be ways of overcoming such problems — for example by specifying that executive managers would only sit on this unitary board in a non-voting capacity.

In "Industrial Democracy" the TUC proposes that trade union representation on the board should only become operative where this is the wish of the trade unions involved. How does the TUC envisage that this should be encompassed in any new legislation?

123 There are two possible approaches here. Firstly there is the approach adopted in the Radice "Industrial Democracy Bill" which stipulated that an obligation on companies above a certain size to have a two-tier board with 50 per cent trade union representation on the policy-making board should only be "triggered" into effect by a demand by the appropriate trade union for board-level representation. The second approach would be to specify in the legislation that trade unions had a statutory right to claim 50 per cent representation on the policy-making board if they so wished. Where the majority of the trade union side did not wish to avail themselves of this right, the seats could remain unfilled. The TUC is of the opinion that the second option might well be legislatively the simpler, so long as the legislation clearly stipulated that trade unions were under no obligation to take up 50 per cent of the seats on the policy-making board.

Does the TUC envisage that the type of proposals set out in "Industrial Democracy" should apply to organisations in the service sector?

124 It is the TUC view that since those aspects of their industrial democracy proposals relating to board-level worker representation would be brought into effect through amendments made to the Companies Act, they would therefore apply to all organisations operating under the Companies Act, in whatever sector they might be located.

How would two-tier boards work in relation to groups of companies in Britain and to multinational groups?

125 There will need to be some provision that the trade unions involved in the various sections making up a group are represented on the board of the dominant undertaking of a group. This is the kind of approach adopted by the ETUC to company groups. As regards multinational companies, representation in UK subsidiaries of either British-owned or foreign-owned multinationals can clearly be provided for in domestic legislation. An adequate approach to board-level employee representation in the dominant undertakings of multinational groups clearly requires co-ordinated legislation on a trans-national basis, and it is for this reason that the TUC has taken an active part in ETUC deliberations on European legislation for trade union representation in company groups which are multinational in nature. This would be in addition to the need for a flow of information on the activities of MNCs as provided for in the OECD Code and elsewhere.

What is the TUC view on consumer representation?

126 It is hard to see how consumers as a group could be effectively represented at board level since consumers have no organised base or definable constituency to which representatives would be accountable. A system of one-third representation, where the last third are "independent" members co-opted by shareholders and employees jointly, is sometimes advocated as the best way of effectively safeguarding consumer interests. However, the TUC sees considerable problems in such an approach in that it confuses the clear-cut representational structure of the 50-50 model where members of the policy-making board represent the two major groups *directly* implicated in the enterprise, namely labour and capital. There are strong grounds for arguing that the interests of groups like consumers who have only an *indirect* interest in the enterprise are better protected by other methods, notably by consumer protection and monopolies legislation.

What effect does the TUC feel 50 per cent trade union representation at board level would have on company efficiency and the raising of capital?

127 We believe that though this could not be apparent overnight, the companies with workers' representatives on the board would over a period of time be in a better position to respond to the changing industrial environment and be more efficient than those without. The same would apply to the raising of finance if the first hypothesis is correct. This point cannot be proved, but in the view of the TUC the major gain in efficiency would derive from the creation of a new approach to policy-making in companies, particularly in relation to new products and new methods of work. The fact that the whole financial aspect of a company's affairs would be monitored, and assessments made of this, by workers' representatives as well as by those traditionally involved would have implications for the presentation of reports and the drawing up of corporate plans. In sum, the TUC's belief is that a major extra contribution to a company's affairs would be generated, and although initially the length of time taken to consider future policy might be extended, the acceptance and implementation would in general undoubtedly be assisted, given the greater confidence in the work of the policy board and the systematic reporting back to established stewards' and office committees of the board's work.

Should companies have the right to refuse to adopt the new structure?

128 Existing company boards might understandably be reluctant to make the major change involved unless other companies were doing the same. The same problem or apprehension might apply in relation to the raising of finance if a company were

thought to be going outside the traditional company structure. These are among the reasons why the TUC believes that there should, by a certain date, be a general change in board structure for companies above a certain size, providing for parity of workers' representation. It would be for the trade unionists, as outlined earlier, to decide company by company whether they wished to participate in the new system. But the question would not arise of the existing board then fighting a rearguard action. The TUC believes that in a very substantial number of companies workers' representatives would be appointed very quickly. In others there might be an initial preference to wait and see, but this would not create any problem of companies feeling they were going out on a limb by adopting the new structure as would be likely with fairly permissive legislation.

CHAPTER 7

THE REPORT OF THE BULLOCK COMMITTEE

129 The report of the Bullock Committee was published in January 1977. The majority report, the signatories of which, apart from the Chairman and three trade union members, included Professor G. Bain and Professor K. W. Wedderburn, recommended that workers should have equal rights with shareholders to representation on the boards of private companies employing 2,000 or more people, and that this representation should take place through trade union machinery. Where a company was part of a group of companies which employed in total 2,000 or more people in the UK, the unions would have a right to representation on the board of the holding company itself also (where the group was British owned) or on the board of the UK holding company (where the group was foreign owned).

130 The report reached this conclusion after a discussion of the main proposals put before the committee, including those from the TUC and the CBI, and a review of some of the objections and difficulties raised by evidence in relation to board level representation. It argued that the joint formulation of policy by representatives of both capital and labour would help establish a new basis of consent in industry and would have beneficial effects in terms of efficiency, industrial innovation and confidence. The majority report took the view that a major argument in favour of legislation establishing a right to worker representation on boards was that it would simultaneously strengthen existing forms of industrial democracy below board level and extend these structures to the highest levels of decision-making within the company. The committee did not believe that the proposals put forward by the CBI would lead to anything like the same result.

131 The majority report described their legislative proposals as a halfway house between universally mandatory legislation (as in Germany) and purely enabling legislation. In this respect the recommendations followed what might be termed the Scandinavian approach of giving a statutory right of representation to a company's employees; the process of implementing this right to board representation could be triggered only by recognised trade unions, and would subsequently be subject to a ballot of the whole workforce. Following an affirmative ballot it would be up to the unions involved to arrive at an agreed procedure for electing worker representatives. Worker representatives would normally be employees of the company.

132 The report recommended the establishment of joint union committees (Joint Representation Committees) at company level to organise this process of election and form a link between board representation and collective bargaining machinery. The majority report stressed that in their view equal representation was essential if worker representatives were to be expected to accept equal responsibility. The report advocated, however, that in addition to the equal numbers of directly elected worker and shareholder representatives, there should also be a third smaller group on the board.

133 This group would consist of an odd number, more than one, of co-opted directors jointly agreed by the other two groups. This is the "2x + y" formula. The "y" element would both safeguard against deadlock and help ensure that company policy was

viewed in a wider context. The exact size of the "x" and "y" elements would be a matter for agreement between the unions and the existing board.

134 The majority report took the view that it would be both impractical and undesirable to introduce into the UK the kind of two-tier board system adopted in some European countries. European experience suggested that a two-tier board system tends in practice to limit the power of worker representatives in relation to the management board, giving them only a negative power of veto over decisions already taken. The Committee concluded that representation should therefore be on the existing company board.

135 The board would have reserved to it by law the main powers of initiative in company policy. This would mean limiting current shareholder rights to initiate action in certain key areas, and would also ensure that senior management could not introduce new policies in strategic areas without reference to the board. In contrast, the minority report, signed by three members of the committee, advocated that if a statutory right were to be accorded it should entail minority employee representation only on a supervisory board which would have no powers of initiative in terms of policy making.

Government Response

136 In a statement to the House on the day the Bullock Report was published Mr. Edmund Dell, Secretary of State for Trade, indicated that the Government would enter into consultations on the general basis of the recommendations contained in the majority report, with a view to bringing forward legislative proposals during the 1977 session. The Government remained committed, he said, to a radical extension of industrial democracy by representation of the workforce on company boards and to the essential role of trade unions in this process. He said that this was an essential ingredient of the Social Contract. It was made clear that although the terms of reference of the Bullock Committee were confined to private sector companies, the Government's legislative proposals would cover companies in which the Government has a shareholding and the nationalised industries as well, giving parallel rights to workers in this sector. Investigations into the scope for developing industrial democracy in central and local government would continue.

Nationalised Industries — TUC Consideration

137 At a meeting in March 1977, the Nationalised Industries Committee considered a document which discussed the situation in the nationalised industries in relation to the submissions received from unions. Agreement was reached on six basic principles that in the view of the Committee should be the legislative rights for organised workers in the nationalised industries.

(i) Unions to have the right to initiate the process of board representation;

(ii) Parity: if on the "2x + y" basis, the "y" element to be jointly approved by the other two sections;

(iii) Representation to entail reconstitution of the existing boards;

(iv) This option to be available in all nationalised industries under the Industrial Democracy (Companies and Nationalised Industries) Bill;

(v) Joint machinery of the recognised unions to select the workers' representatives;

(vi) The trade union board membership to report back through the above machinery.

The points were endorsed by the General Council and communicated to the Government.

Public Services

138 In February 1977, a joint statement on industrial democracy was published by the TUC Local Government Committee and the Local Government sub-committee of the Labour Party. It is proposed that the law should be changed to enable representatives of local authority employees to become non-voting members of council committees. However, the existing position of teachers co-opted, with voting rights, on to Education committees should be maintained. Such employee representatives could be drawn from the staff sides of the various local joint consultative committees. Where council committees only cover one department (for example, education committees), employee representatives should be drawn from and elected by members of recognised trade unions employed in that department, but employees should also be represented on other committees such as Policy and Resources which cover more than one department. Such representatives should be elected by trade unionists in the whole local authority. As far as numbers are concerned, employee representatives should constitute no more than 20 per cent of each committee, but there should be a minimum of two representatives. It is not proposed that employee representatives should have voting rights; their role would be to bring the special knowledge of local authority employees as a whole to bear upon committee decisions. Similarly, there should be provision for employees to be represented with voting rights on lower level bodies such as the managing and governing bodies of schools, colleges, etc. Such employee representatives should be drawn from and elected by members of recognised trade unions representing teaching and non-teaching staff. Discussions on these proposals and on the whole question of staff involvement in the management of local government departments are continuing with central government and local authority associations.

139 In the national health service, it was reported that discussions on industrial democracy had continued since the 1976 Congress. The matter was taken up at a TUC meeting with Ministers but no agreement had been reached on the way in which staff representatives on health authorities should be selected. In its evidence to the Royal Commission on the NHS, the TUC reaffirmed its position of participation by staff in the decision-making processes and consultation with staff at all levels in the NHS. It said that current proposals for an additional two staff representatives would not be adequate to cover the very many different categories of workers employed within the service and that, in line with TUC policy, representatives must be members of organisations affiliated to the TUC. The General Council subsequently reached the view in 1978 that four-fifths of the trade union representation on Regional and Area Health Authoriteis should be from bona fide trade unions in the National Health Service.

Meetings with Ministers

140 Following the consultations with unions on industrial democracy initiated in April 1977, the Economic Committee discussed the issues raised with Ministers in June.

141 Ministers reaffirmed the Government's commitment to legislation establishing the right to representation on boards and recognising the essential trade union role in this process.

142 On the question of board structure, the Government were moving towards the idea of a two-tier board structure, but the upper-tier would have greater powers than in West Germany. There would be a lower-tier management board with statutory responsibility for the day-to-day running of the business. The powers of the upper board would probably include:

(i) appointment and remuneration of management;

(ii) the setting of objectives and the approval of strategic plans;

(iii) monitoring the performance of the management board and approving its decisions in specified areas;

(iv) monitoring financial strategy;

(v) responsibility for putting recommendations on takeovers and mergers to the shareholders' meeting; and

(vi) setting guidelines for employment and personnel policies.

143 On parity, the Secretary of State for Trade indicated that this was an agreed objective, but the Government favoured a "phased" movement to this target.

CHAPTER 8

THE GOVERNMENT'S LEGISLATIVE PROPOSALS: THE 1978 WHITE PAPER

144 In 1977, Congress carried a composite resolution on industrial democracy welcoming the analysis of the Bullock Report and reaffirming its belief in legislative action in this field. Side by side with the extension of voluntary collective bargaining Congress called on the General Council to press the Labour Government to provide for statutory backing to all unions wishing to establish joint control of strategic planning decisions via trade union machinery. This legislation would include the option of parity representation on the board, but would also link up with more flexible forms of joint regulation more clearly based on collective bargaining. Congress further believed that the objective of making the public sector of industry serve social purposes would be strengthened by effective worker participation on management boards and urged immediate steps to implement the proposals of the Nationalised Industries Committee for parity trade union representation on the boards of nationalised industries where it is the wish of the members. The resolution was the basis of a series of meetings between members of the Economic Committee and Ministers, leading to the publication of a White Paper in May 1978.

145 The White Paper covered two principal issues; the right to discussion of company strategy and the right to board level representation.

Discussion of Company Strategy

146 Employers in companies employing more than 500 people in the United Kingdom would be under an obligation to discuss with the representatives of workers all major proposals affecting them before decisions are made. Further guidance on the subjects to be covered by consultations might be given in a Code of Practice akin to the ACAS code on the disclosure of information for collective bargaining purposes. An Industrial Democracy Commission (IDC) or ACAS might be invited to draw this up.

147 It would not be practicable for companies to consult each recognised trade union separately on their corporate plans. The Bullock Committee had proposed that for purposes related to board level representation the unions in each company should set up a Joint Representation Committee (JRC), to which all the independent recognised trade unions in the enterprise would be entitled to belong. The Government believes the formation of JRCs would be a positive stimulus to the voluntary development of the joint discussion of company strategy. To provide for cases where procedures were not set up voluntarily there should be a statutory fallback right. This would be initiated by a request from the JRC and it would be this body which would take part in consultation with the company. There would be no statutory obligation on companies to discuss with non-organised employees but where it was agreed between the parties, nominees of non-organised employees could be admitted to the discussions with the JRC.

148 The Government believes that it will only be in a minority of cases that the statutory obligations will be invoked. There are two possible ways of dealing with cases where unions are dissatisfied because the company fails to comply with its obligation. One would be for the Joint Representation Committee (JRC) to have the right to refer the matter to the IDC/ACAS for investigation. Another would be for the JRC to have the right of appeal to the Central Arbitration Committee (CAC).

149 Arrangements for safeguarding the confidentiality of information disclosed through these procedures is an important matter, but it is felt that this could normally be dealt with by arrangements agreed between the company and the unions. Companies should be free not to disclose information of particular sensitivity but as a safeguard the JRC should be able to refer such cases to the IDC/CAC for investigation. It would then be for that body to advise whether the company was justified in not entering into discussions.

150 In groups of companies it will be necessary for discussions to take place between representatives of employees and companies both at subsidiary and holding company levels, and perhaps at intermediate company levels too. Since the structure of many groups is complex and the levels at which decisions are taken are not always easy to define, further consultation will be undertaken before deciding on the detail of the legislation. The same requirements will apply to all companies incorporated in the UK including those controlled by a company abroad. The legislation will not apply to companies outside the jurisdiction of the UK but the Government hopes that overseas companies with subsidiaries in this country will seek to operate within the spirit of its proposals.

Representation on the Board

151 Where voluntary agreement cannot be reached on this, employees in companies employing 2,000 or more in the UK should be able to claim a statutory right to board representation. This statutory right would be initiated by a request from the JRC which would require the company to organise a ballot of all the company's employees to decide whether they wanted to be represented on the board. If the result of the ballot was in favour the company would be obliged to admit workers' representatives to the board. Thus appointed they will sit on the policy board in the new two-tier system, or, where this is mutually agreed, on the existing unitary board. The White Paper proposes that there should be a period of three to four years from the date of establishment of the Joint Representation Committee before the statutory right to board level representation becomes operative.

152 All directors on the policy board, however appointed, will share the same legal duties and responsibilities, and will abide by the existing company law which prohibits the mandating of directors. However, arrangements will be necessary in each company to ensure that employee representatives maintain close touch with the opinions of those they represent.

153 The White Paper states that there are conflicting arguments on the question of whether shareholders and workers should be equally represented on the board or whether worker representatives should be in the minority. While seeking to resolve these arguments, the Government believes that a "reasonable first step" would be to give employees the right to appoint up to one-third of the members of the policy board in the proposed two-tier structure. After a period of experience there might be further statutory changes which would be subject to whatever conditions seemed appropriate in the light of that experience.

154 Once the JRC has sought a ballot, and the vote is an affirmative one, the White Paper states that one approach for the method of selecting employee representatives

might be for this to be determined in the first instance by the JRC, as proposed by the Bullock majority, but with a right of appeal to the IDC/ACAS by a minority trade union which considered that its interests would not be adequately represented under the system proposed. A "further possibility" then mentioned is to extend a similar right of appeal to any "substantial homogeneous group of employees". The legislation could set out the criteria by which appeals to the IDC/ACAS would be judged, and in the event of a successful appeal there could also be a requirement for elections to the board "based on nominations of candidates by trade unions or by groups of at least 100 employees whether or not they are members of trade unions".

155 Further discussion will be needed on the detailed arrangements for groups and multinationals, but on the question of British-owned multinationals the Government is clear that they could not accept any system whereby substantial numbers of employees in large firms in Britain would be deprived of the right of representation which will be extended to others.

156 While the Government wishes to avoid exemptions of particular industries since this would be to deny certain groups of employees rights otherwise extended generally throughout industry and commerce, it is ready to examine the arguments in the few cases where special consideration may be thought to apply which might justify exemption from the requirements of the legislation on board representation. But the Government does not consider it likely that there would be any exemption from the right to discuss company strategy.

Nationalised Industries

157 The Government believes industrial democracy to be of special importance for the nationalised industries. Substantial progress has been made already in many cases. The Government has asked the Chairmen of the nationalised industries to put forward their proposals for further developments in consultative and participative procedures by August 1978. When legislation is introduced on industrial democracy this will give employees in the nationalised industries a right to representation on main boards. This right will have to take account of the special responsibility of the nationalised industries to Ministers, and through them to Parliament.

Education and Training

158 The increase in worker participation envisaged in the White Paper will give rise to new training needs. The details will need to be considered by those most directly concerned, particularly the TUC. The Government accepts the Bullock recommendation that Government money will be needed and again this will be discussed with the TUC.

Institutions

159 The Bullock Committee recommended the establishment of an Industrial Democracy Commission (IDC) to provide advice and conciliation, to give rulings on disputes and to monitor and evaluate the operation of the legislation. These functions overlap substantially with those of ACAS, which together with the CAC would be competent to undertake the advisory and other functions connected with the discussion of company strategy. But the Bullock Committee thought the duties

envisaged for an IDC in relation to board level representation different in kind from those of ACAS, and inappropriate for that body. The Government are disposed to accept the Bullock Committee's recommendation, but are consulting further with those concerned.

GENERAL COUNCIL CONSIDERATION OF THE WHITE PAPER

160 The General Council considered the White Paper in June. They noted that the Government described the proposals as a "first step". Whilst acknowledging this, the General Council considered that the Government were proposing a very protracted timetable for the attainment of the modest objectives set out in the White Paper.

161 It was noted that progress in the nationalised industries was due to be discussed shortly between the Nationalised Industries Committee and the Nationalised Industries Chairmen's Group, and that developments in the public services were being considered in other ways such as through the TUC Local Government and Health Services Committees, and through the Civil Service National Whitley Council, but the General Council believe that the Government should be giving a much more specific lead in all these fields.

162 Whilst the General Council welcomed the reaffirmation of the proposal for statutory fall-back rights through the trade unions, the White Paper needed considerable strengthening and clarification, including the precise scope of the right of involvement in company planning. More detailed discussions would be needed to give greater precision to this point.

163 Whilst the General Council welcomed the statement made by the Prime Minister on the day of the publication of the White Paper, that he would like to see the legislation enacted in the 1978-79 session of Parliament, they expressed concern at the "three or four year" pause before board representation would be provided for, and the further, unspecified, period before parity representation would become a possibility. They urged that the timetable should not extend beyond 1982 if the initial step were to be confirmed as one-third representation.

164 Second, the White Paper describes the waiting period of three or four years before board representation can be sought as being "from the date of establishment of the JRC". The General Council believe that any waiting period should not be from the date of establishment of the JRC but from the date of enactment of the legislation: in cases where progress on consultation was made on a voluntary basis it would be quite wrong for this to constitute a penalty on early moves to board representation; indeed it would be likely to destabilise existing satisfactory arrangements. The General Council concluded that only if it could be satisfactorily provided in the statute that existing informal joint working arrangements between unions could be deemed retrospectively to constitute a JRC would they accept such an approach.

165 In this connection the General Council made it clear that the statute should provide only the minimum form of words necessary to describe a JRC, and leave it to

the IDC to draw up any necessary criteria for the balance of representation, which could be developed in the light of experience. The General Council accepted that in the event of a disagreement which the TUC was unable to resolve, any recognised union would have the opportunity to appeal to the IDC about the composition of the JRC or about the decision of the JRC with respect to the selection of board representatives though, as is made clear in the White Paper, without the IDC being able to impose a solution. They noted that the Bullock Committee had made the stipulation that if all the unions were affiliated to the TUC, the IDC would follow the usual procedure for inter-union disputes and call upon the TUC to conciliate. If this proved unsuccessful, or if one or more of the unions were not affiliated to the TUC and did not want the TUC to conciliate, the IDC would investigate the issue itself and make a recommendation.

166 The General Council took a very critical view of the "further possibility" of a similar right of appeal being extended to "any substantial homogeneous group of employees", whereby in the event of a successful appeal there could also be a requirement for elections based on nomination of candidates by trade unions and by groups of at least 100 employees whether or not they were members of trade unions. The General Council concluded that any imposed system of elections would not only cut across established machinery, and thereby undermine its effectiveness rather than improve it, it would also open up the likelihood of "lists" of candidates which could be very divisive, taking on ideological overtones and be counter-productive to stable industrial relations.

167 The General Council noted that neither in the case of the JRC nor of the board would statutory provision be made for full-time union officials but for employees, i.e., lay members. It should be made clear that such a stipulation in no way precludes contact with full-time officials or the agreement in practice on close co-operation with them in the work of the JRC.

168 Among other points made strongly was the need to ensure that the policy board did take all the major decisions, including decisions on all capital projects. The formula whereby Table A of the Companies Act would determine the responsibility of the second-tier management board, except for specified items, should therefore be challenged.

169 Another specific question raised was whether the White Paper spelt out the principle that company boards would not be responsible to shareholders only, but also to those working in the enterprise. The White Paper does not cover this point, but it is set out in the recent White Paper on the Conduct of Company Directors. All members of policy boards would have the same legal status.

170 On the question of institutions, the General Council concluded that there was a clear cut case in favour of all the questions being handled by an Industrial Democracy Commission, as opposed to ACAS or some division between the two. The main consideration on this would be that the IDC should be able to see all the problems, whether arising in the voluntary or the statutory approach or at board level or below board level, as a whole.

171 The Government were informed of the General Council's conclusions in July.

TUC-LABOUR PARTY LIAISON COMMITTEE

172 In July 1978 the TUC-Labour Party Liaison Committee in the statement "Into the Eighties — An Agreement", which was also adopted by Congress, included the following section on industrial democracy.

"At the level of the individual enterprise there is need for an effective forum involving workers' representatives in the strategic decisions of the enterprise, including all the questions under consideration at sector level. This will include such matters as investment plans, mergers, takeovers, expansion or contraction of establishments and major organisational changes and any other questions under consideration at sector level. We believe that this key priority cannot be met without the statutory fall-back rights set out in the White Paper on Industrial Democracy. In this connection we emphasise the key role of the Joint Representation Committee of all the recognised unions because we believe it is essential to build on established structures, ie, the trade unions, in which workpeople have placed their confidence and which provide the independent organisation through which the workers' representatives can report back.

"We welcome the promise of legislation in the coming session of Parliament so that we can build on the proposals contained in the White Paper. First, there will be a statutory right for the Joint Representation Committee to discuss company plans before their implementation. Second, there will be the right to determine one third of the policy board through a system agreed by the Joint Representation Committee. This should become fully operative during the lifetime of the next Parliament. We note the White Paper's statement that the Government does not exclude parity as an ultimate outcome. We wish to restate that this is certainly still our objective. The Policy Board must be seen as the key body in the enterprise, and part of its remit will be the negotiation of planning agreements with the Government. Action is being taken this year in the nationalised industries prior to the general legislation outlined above and we shall seek to promote new rights for workers in the public services such as local authorities, the health service and education."

1978 TUC CONGRESS

173 The 1978 Congress adopted the following resolution on industrial strategy and industrial democracy:

"This Congress believes that the next stage of the Industrial Strategy depends critically on full trade union involvement in decisions at company and plant level.

Congress recognises that the publication of the Government's White Paper on Industrial Democracy moves in some respects towards the TUC position, whilst also recognising that the proposals need to go further in order to establish genuine joint control of strategic decisions. Congress notes that the White Paper has little to say on the public services and nothing at all to say on the civil service. Congress looks forward to early legislation, which should provide, in trade union terms, no less favourably for the public sector than for the private sector, to establish joint control of industrial decision making at all levels.

Congress emphasises that workers' representation must be fully based on trade union structures, so that representatives can report back through properly accredited channels.

Congress welcomes the proposed statutory rights to full involvement in the drawing up of company plans and to the right to representation on the policy board of the

enterprise, which should also assume a major responsibility for drawing up planning agreements with the Government.

Congress calls for an example to be set in the public services by developing effective systems of industrial democracy in co-operation with the appropriate recognised trade unions. Congress further calls upon all affiliated unions, not least of all in the public services, to continue vigorously to demand from employers those facilities and that information that will equip unions to fulfil their task of protecting their members' jobs and conditions of service."

174 The General Council sent the resolution to the Prime Minister who indicated that legislation would be introduced and that talks were also taking place in respect of the civil service.

THE GOVERNMENT'S LEGISLATIVE PLANS

175 In November 1978 in the Queen's Speech the Government stated that following further consultation on the proposals in the White Paper on Industrial Democracy, legislation would be introduced to ensure that employees and unions were able to participate in discussions of corporate strategy, and to provide in due course for employee representation on company boards. The General Council welcomed this statement and looked forward to early legislation.