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NON-PARLIAMENTARY INDUSTRIAL LEGISLATION.

LEGISLATION is so usually associated with Parliament, and with Parliament alone, that it may not be generally realised that, taking into consideration quantity only, and disregarding importance, it is probably true to say that the larger part of existing enactments regarding labour have not been directly passed by Parliament, but are the creation of inferior bodies to whom law-making powers have been delegated.

There is good reason for this course. Industrial legislation in many instances can only hope to be successful on condition that complicated details are patiently investigated, and interested persons listened to. Parliament, it is true, has some machinery for work of this kind, but on the whole it is too cumbrous a body, too busy with larger issues, and too intermittent in its activities to be able to transact much business on these lines. It has of late years become more and more content to settle principles and to leave detailed decisions and the working out of extensions to "other bodies," reserving to itself a varying amount of ultimate control.

The amount and directness of this control is probably the best criterion for classification. This legislation by inferior law-making bodies takes several forms:—

(a) *Provisional Orders*.—These are Orders made by a Government Department and actually confirmed by Parliament, and can be used for extending or curtailing existing Acts of Parliament. They have no legal operation until so confirmed by Parliament.

(b) *Statutory Orders*.—These are Orders made by a Government Department, and have to be laid before Parliament for varying periods. They take effect without confirmation, and Parliament must actively interfere within a limited period, if it wishes to disallow them. These Orders have in some cases an important scope by way of extension, curtailment, or modification of existing legislation, while in other cases they deal with points of detail omitted in the actual Act of Parliament. Sometimes a "public inquiry" is an indispensable preliminary. The

nomenclature, viz., "Regulations" and "Special Orders," adopted by different Acts is unfortunately very confusing, as Regulations under one Act may mean very much the same as Special Orders under another, and *vice versâ*.

(c) *Determinations*.—This term covers the legislation of Trade Boards and Wages Boards dealing with the wages to be paid in specified trades, and ancillary matters arising out of minimum wage legislation.

(d) *Bye-laws*.—Bye-laws are made by local authorities in exercise of permissive powers bestowed on them by Act of Parliament. Parliament has not reserved itself any direct powers over determinations and bye-laws, but in some cases a Government Department has powers of delay, or rejection. Further particulars with actual examples of these modes of legislation are as follows :—

(A) LEGISLATION BY PROVISIONAL ORDER.

A Provisional Order is an Order made by a Government Department, and has the force of law, provided that it is expressly sanctioned by Parliament. These Orders are the machinery by which Section 8 of the Workmen's Compensation Act, 1906, which relates to the application of the Act to certain industrial diseases, can be applied to other diseases and other processes, and to injuries due to the nature of any employment specified in the Order not being injuries by accident. The same machinery is designated in the Trade Boards Act, 1909, for the extension or curtailment of the scope of the Act. In the Workmen's Compensation Act a Secretary of State (in practice the Home Secretary) is given a general power to make these Provisional Orders, subject to the conditions (a) that no such Order is to have effect unless and until it is confirmed by Parliament, and (b) that if, while the confirming Bill is pending in either House of Parliament, a petition is presented against the Order, the Bill may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose, as in the case of Private Bills. These Select Committees act as a judicial tribunal, before whom witnesses are examined and counsel appear. The Home Secretary has made Provisional Orders under this power scheduling about twenty fresh diseases.

Under the Trade Boards Act the Board of Trade may make a Provisional Order applying the Act to any specified trade to which it does not at the time apply, if it is satisfied that the rate

of wages prevailing in any branch of the trade is exceptionally low, as compared with that in other employments, and that the other circumstances of the trade are such as to render the application of the Act to the trade expedient; also if at any time the Board of Trade considers that the conditions of employment in any trade to which the Act applies have been so altered as to render the application of the Act to the trade unnecessary, it may make a Provisional Order that the Act shall cease to apply to that trade. The conditions mentioned above as to confirmation by Parliament, and as to reference to a Select Committee in the event of the presentation of a petition against the Order, apply with this exception, that the Order may be referred either to a Select Committee, or to a joint Committee of both Houses. The Board of Trade has already made one Provisional Order under the Trade Boards Act, and scheduled five additional trades, including part of the trade of carrying on a laundry. Certain employers in the laundry trade petitioned against the Order, and at the hearing before a Select Committee of the House of Commons they made good their objection that the definition of the section proposed to be included was not workable, and the Select Committee thereupon omitted laundries from the Order. The other four trades were not petitioned against, and after evidence had been submitted on behalf of the Board of Trade, the Select Committee passed so much of the Order as applied to them, and in due course the Order as amended was confirmed.

(B) LEGISLATION BY STATUTORY ORDERS (INCLUDING REGULATIONS AND SPECIAL ORDERS).

I. *Statutory Orders made without public inquiry.*—Statutory Orders were first introduced in 1867, when the Factory Extension Act and the Workshop Regulation Act were passed. The division of work between Parliament and a Secretary of State which then ensued has varied from time to time,¹ and is now to be found, so far as regards factory legislation, in section 126 of the Factory Act, 1901. Much the same arrangements have been adopted in other pieces of industrial legislation.

As regards factory legislation, the main provisions as to Orders known as Special Orders are as follows :—

(a) The Order is made by a Secretary of State (in practice the Home Secretary), and is published in such manner as he thinks best adapted for the information of all persons concerned,

¹ See Appendix A to Hutchins' and Harrison's *History of Factory Legislation*.

and comes into operation at the date of its publication or at any later date mentioned in the Order. It is usual to allow a few weeks between the date of publication and the date at which the Order is to take effect.

(b) The Order is to be laid as soon as may be before both Houses of Parliament, and if either House of Parliament, within the next forty days after the Order has been so laid before that House, resolves that the Order ought to be annulled, it has after the date of the resolution no effect, but without prejudice to the validity of anything done in the meantime under the Order.

(c) The Order is to apply as if it formed part of the enactment which provides for the making of the Order.

The power to make Orders is relevant to forty-five sections of the Factory Act, and has been exercised in regard to thirty-three of those sections. They are of varying importance. The Order extending the Particulars Clause (section 116) is a good example of the wide effect of some of these Orders.

Under the Truck Act, 1896, section 9, a Secretary of State may by Order grant exemptions from the provisions of the Act. Provision (b), given above, applies to these Orders. This power has only once been exercised, namely, in respect of persons engaged in the weaving of cotton in certain counties. The Notice of Accidents Act, 1906, contains a power of extension by Order of a Secretary of State, and this has been used to add three fresh classes of accidents.

Both parts of the National Insurance Act, 1911, rely very largely on power to make Statutory Orders.

For instance, in Part I. of the Act section 66 provides that the Insurance Commissioners may make "Regulations." These Regulations follow closely, but not exactly, the provisions as to "Special Orders" laid down in the Factory Act. Unfortunately, in the Factory Act the term "Regulations" is used for a Statutory Order made after a preliminary public inquiry, which falls into our second class. Section 66 provides that the Insurance Commissioners may make regulations for any of the purposes for which regulations may be made under Part I. of the Act or the schedules therein referred to, or for prescribing anything which under Part I. or the schedules is to be prescribed, and generally for carrying Part I. into effect, and any Regulations so made are to be laid before both Houses of Parliament as soon as may be after they are made and shall have effect as if enacted in the Act, provided that, if an address is presented to his Majesty by either House of Parliament within the next subsequent *twenty-one* days

after any such regulation is laid before it, praying that the regulation may be annulled, his Majesty in Council *may* annul the regulation, and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder. This language is substantially different from that employed in the Factory Act, and apparently the intention is to give a Liberal Government the power to disregard an address of the House of Lords.

Over one hundred matters are specifically left to be dealt with by Regulations. The National Insurance Act, 1913, adds considerably to the list. As examples of the use of these very wide powers may be mentioned the new provisions as to contributors in arrears, which have been substituted for the 5th Schedule to the Act of 1911, and the adoption of a unit of work for out-workers in the place of a weekly wage as the basis of contributions.

Part II. of the National Insurance Act, 1911, adopts a similar procedure, but follows the Factory Act. Under section 91 the Board of Trade has power to make "Regulations" for the administration of the unemployment part of the Act. These regulations must be presented to Parliament, and are liable to be disannulled in the same way as Special Orders under the Factory Act. Some twenty pages of Regulations have been made by the Board of Trade under the Act of 1911, and about two pages under the Amending Act of 1914.

II. *Statutory Orders made after Public Inquiry.*—Under the Factory Act, 1901, these Statutory Orders are called "Regulations," and they are confined to legislation in regard to "dangerous trades." The first step in the making of these Regulations is for a Secretary of State (in practice the Home Secretary) to certify that the manufacture, machinery, plant, process, or description of manual labour proposed to be regulated is dangerous. He then proceeds to prepare draft regulations and to publish notice of his proposal to make regulations. He must allow at least twenty-one days within which persons affected may get copies of the draft regulations, and may lodge objections. If any substantial objections are lodged the Secretary of State must either amend the draft regulations or direct an inquiry to be held by some competent person, who shall report to him thereon. In other words, he must either obtain the consent of the objector to a new form of regulation, or he must direct an inquiry to be held. This inquiry is to be held in public and may be attended by the chief factory inspector, objectors, and other affected

persons. After the Secretary of State receives the report of the inquiry he can then make regulations, which take effect as Statutory Orders, that is, they must be laid before both Houses of Parliament, and either House can within forty days by resolution disannul all or any of the regulations. These regulations have considerable scope, as they may, among other things, prohibit the employment of, or modify or limit the period of employment of, all persons or any class of persons in the dangerous trade, or may prohibit, limit, or control the use of any material or process. Thus in Regulations made in 1907 for the manufacture of paints and colours, the third regulation prohibits any woman, young person, or child from being employed in manipulating lead colour. For the most part these regulations are concerned with the means whereby the "danger" may be either eliminated altogether or substantially reduced, *e.g.*, by air-space, ventilation, exhaust drafts, use of overalls, lavatories, &c., &c.

The only other Act which adopts the process of inquiry as part of the machinery of making a Statutory Order is the National Insurance Act, 1911. The Orders so made are called in the Act "Special Orders." Section 113 of the Insurance Act incorporates for this purpose sections 80 and 81 of the Factory Act (which regulate the holding of inquiries), with certain adaptations, which are shown in the 9th Schedule to the Insurance Act. The only variation in substance is the requirement that the person to hold the inquiry shall be "impartial" as well as "competent."

These Special Orders do not, however, come into force as soon as made or from an appointed date. Before a Special Order under the Insurance Act comes into force it must be laid before each House of Parliament for a period of not less than *thirty* days, during which the House is sitting, and if either of these Houses before the expiration of those thirty days presents an address to his Majesty against the Order, no further proceedings can be taken thereon. As examples of what can be done by Special Order under Part I. of the Insurance Act, there may be mentioned a power given to the Insurance Commissioners to exclude certain persons from the category of outworkers, and to vary contributions in seasonal trades.

Under Part II. of the Insurance Act the Board of Trade may, after seven years and with the sanction of the Treasury, by Special Order revise the rates of contribution.

The Board of Trade may also, on certain conditions, extend the provisions of Part II. to trades other than those scheduled. In this case no such Order is to be made if the person holding

the inquiry in relation to the Order reports that the Order should not be made. Thus an "impartial and competent person" may have an absolute veto over the wishes of the Board of Trade. Then again the Board of Trade may by Special Order exclude certain employments. But in this case the Special Order takes effect, so far as Parliamentary interference is concerned, as if it were a Regulation and not a Special Order.

The Board of Trade has made two Special Orders extending Part II. of the Insurance Act. These have brought in (a) workmen in the trade of saw-milling, whether carried on in connection with any other insured trade or not, and (b) workmen in the trade of repairing works of construction other than roads and the permanent way of railways. These are, of course, both comparatively unimportant extensions.

(C) LEGISLATION BY WAGES TRIBUNALS.

When the Trade Boards Act, 1909, was passing through Parliament, it was not suggested that Parliament should take any direct part in fixing wages. When the Miners (Minimum Wage) Act, 1911, was under discussion two attempts were made to saddle Parliament with this responsibility. One was a proposal to insert an elaborate schedule of wages, and the other to insert 5s. a day and 2s. a day as the wages for men and boys on day work. Parliament rejected both proposals. It may therefore be inferred that the determination of wages by law is regarded as likely to be more efficiently carried out by some subordinate body. What Parliament did concern itself with, was that masters and workmen should have an equal voice in the legislation, and that there should be ample preliminary discussion.

The wages tribunals set up by the Trade Boards Act and the Minimum Wage (Miners) Act consist of three sections: (a) representatives of employers, (b) representatives of workers, and (c) a neutral and impartial element called in the former Act "appointed members" and in the latter Act the chairmen. (The first two classes are equal in number.) The usual number of appointed members of a Trade Board is three, though on the Tailoring Trade Board there are five. The chairman under the Miners Act is usually a sole chairman, but in a few districts the chairmanship was constituted by three persons of equal authority. As elements (a) and (b) are rendered equal in voting strength, the real decisions on any matters on which the two sides do not agree rest with the impartial element.

In the case of the Miners (Minimum Wage) Act the trade was split up geographically into twenty-two sections, with independent wages boards, so that local feeling and local variations have had full play.

In the case of the Trade Boards under the Trade Boards Act the material provisions for publicity and discussion are as follows :

A proposed determination as to rates of wages must pass through a proposal stage of three months, during which it is exhibited in every known place of work where its provisions are to take effect. During this period objections may be lodged by any interested person, and these objections must be considered by the Trade Board before the rate is adopted.

In the case of Boards covering the whole of England and Scotland district committees have been appointed, and these must be consulted before a rate is adopted.

Even when a rate is adopted it comes into limited operation for a period of six months, and this six months may be extended by the Board of Trade, who have also other powers of delay.

The fixing of a minimum wage for a trade may be a very simple or a very complex matter according to circumstances, but it usually involves legislating on ancillary matters, so that the "determinations" of a Trade Board, or of a Joint Board under the Miners Act, may be lengthy and elaborate pieces of legislation.

In the case of Trade Boards provision has had to be made for persons in the course of learning the trade, and this has involved special scales of wages for learners at different periods of learner-ship, and some simple precautions for ensuring that persons receiving less than the standard adult rate were really in fact as well as in name "learners." Under the Miners Act the Boards have power to lay down conditions, on the observance of which the right to the minimum wage depends. In some districts these conditions are most elaborate.

(D) LEGISLATION BY LOCAL BYE-LAWS.

The Employment of Children Act, 1903, gives local authorities considerable powers of legislation by bye-law in respect of children under 14. Thus the clause in the Act restricting night work for children may be varied by a local bye-law. Further, local authorities have power to make bye-laws as to the general employment of children, and the London County Council and other local authorities have availed themselves of this power. In the matter

of street-trading the power of local authorities to legislate extends to children under 16 years of age. This power is conveniently given to local authorities in regard to children, as the local authority is also the education authority.

The position with regard to Provisional Orders, determinations, and bye-laws is not open to serious criticism. With regard to Statutory Orders the position is different, as the present nomenclature is most confusing, and some standard form of Parliamentary control could surely be adopted.

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