

### Not a very nice Treaty

John Redwood writes on the Treaty of Nice

The draft Treaty of Nice is game, set and match for those who wish to create a centralised United States of Europe. Billed as the leftovers from Amsterdam the British government has been trying to play the whole thing down in its usual way. Yet any analysis of the significance of the draft proposals shows that the Commission, the European Court of Justice and the European Parliament are once again out to increase their power dramatically.

The Treaty designed by the Commission plans to make some fundamental breakthroughs in increasing the power and jurisdiction of the European institutions. Their first objective is to underwrite the supremacy of Community law in all respects. A series of court cases, treaty amendments and treaty interpretation has left us in a position where it is commonly thought that the European Court of Justice is the only supreme court operating in the United Kingdom. It is the one court that has the power to make or break laws passed by the British Parliament, adjudicating whether they are in line with European law or not. This treaty is designed to reinforce that position and to make sure that all British courts are subservient to the ultimate jurisdiction of the

European Court of Justice and the supremacy of European law.

The second area of major advance is in the field of taxation. The Community wishes to establish its right to tax citizens of the United States of Europe wherever they may be resident. A Commission working paper produces five major areas where it wishes to proceed to common Community taxation based on majority voting. Whilst the British government and the Commission persevere with the cover story that the most important taxation issues are subject to unanimity giving the British a right to say "No", the areas identified in the Commission working document for qualified majority voting will drive a coach and horses through much of the British veto.

The third big area of advance lies in the proposal to change qualified majority voting itself. The Commission has proposed a double simple majority system to replace the current qualified majority. If the Commission could secure a simple majority of member states and that simple majority also reflected a simple majority of the population of the EU then the measure passes. This substantially dilutes the current qualified majority voting threshold.



*John Redwood sounds the alarm for Selsdon Group members over moves by the EU Commission, Parliament and European Court to centralise power at the centre of the European Union.*

The fourth area of advance is in strengthening the powers of the European Parliament which is offered co-decision in a wider range of areas. The power of the President of the Commission is to be stronger. He would gain the power to fire individual Commissioners that he did not like.

**"It is not through the benevolence of the butcher, the brewer or the baker that we expect our dinner, but from their regard to their own interests." Adam Smith**

The fifth area is in the weakening of the link between member states and representation on the various institutions of the Community. It is quite likely that the provision that every member state has a representative judge at the European Court of Justice would be broken. It is quite likely that there will be fewer Commissioners than there are member states. Whatever happens Britain will lose one of her current two European Commissioners and could lose the second from time to time as well. The number of MEPs is to be limited to the current level of seven hundred and the preferred solution is to introduce ten per cent of the MEPs elected from trans-European lists.

It is the purpose of this pamphlet to wake the British people up to the significance of the draft Treaty of Nice. A great deal of power has already passed from Britain to the European institutions through successive treaties – the Treaty of Rome, the Single European Act, the Treaty of Maastricht once the opt-outs have been removed, the Treaty of Amsterdam and now the proposed Treaty of Nice. Each one of these treaties has been presented as a series of minor amendments that should not scare the British people. Taken together they represent a huge transfer of power. The draft Treaty of Nice is the most federal of them all, completing the process, transferring more and more power to a centralised government in Brussels and the European Parliament.

This pamphlet asks the British people whether this is what they had in mind when they voted Yes to a Common Market in 1975? It asks Is it right to transfer so much power to a group of people and institutions that have not been known either for their honest dealing or their democratic ways? It asks Should the people who have given us the Common Agricultural Policy and the Common Fisheries Policy be entrusted with a Common Economic Policy, Common Criminal Policy and much else besides? Wouldn't it be better if the European Union tried to do well in those areas where it already has wide-ranging power like agriculture and fishing before being trusted with many new responsibilities? Above all this pamphlet says that the British negotiating position should be the preservation of unanimity on tax matters and the refusal to countenance any more qualified majority voting at the expense of our veto on other issues. If we sign the Treaty of Nice we sign the death warrant of an independent democracy in Britain. If we sign the Treaty of Nice we are on a slippery slope to common taxation. If we sign the Treaty of Nice we are transferring a large number of decisions away from our democracy to their bureaucracy. The European Union has not solved the democratic deficit. The democratic deficit will be made worse if more powers are transferred away from national parliaments. The democratic deficit would be reduced if instead the Treaty of

Nice transferred some powers back to the member states that Europe has taken but not used to good effect. Many British people share my worry about losing more control over important questions in our national life.

---

## A Nice rollercoaster to common taxation

The Commission paper on taxation and social security measures is complicated and understated. It is all part of creating a superstate by stealth. The Commission sets out a series of areas where qualified majority voting should be introduced. The first of these is to co-ordinate provisions intended to remove direct obstacles to the exercise of the four freedoms, the freedom of movement of people, capital, goods and services. This is a very wide ranging exemption from unanimity although the Commission is careful to try to play down its significance.

Draft Article 93 "measures for the co-ordination of provisions laid down by law, regulation or administrative action in Member States in order to remove direct obstacles to the free movement of goods, persons, services or capital arising from tax provisions and in particular to prevent discrimination and double taxation."

Secondly, the Commission recommends QMV for measures which modernise and simplify the Community rules in the direct tax area in order to eliminate evasion and fraud.

"measures for the co-ordination of provisions laid down by law, regulation or administrative action in Member States concerning direct taxation in order to prevent fraud, evasion or tax avoidance."

Thirdly, QMV is to be introduced for measures which ensure a uniform application of existing indirect taxation rules and guarantees a simple and transparent application of such rules.

"measures concerning value added tax, excise duty and capital duty which modernise or simplify existing Community rules or ensure a uniform application of such rules, other than those which fix the rates of tax or bring about a general change in the system of taxation."

Fourthly, unanimity is out for taxation measures which have as their principal objective the protection of the environment and have a direct and significant effect on the environment.

"taxation measures which have as their principal objective the pursuit of the environmental objectives of the Treaty such as laid down in particular in Article 174, and have a direct and significant effect on the environment."

Fifthly, provisions aimed at prevent fraud, evasion or tax avoidance in order to eliminate cases of double non-taxation in cross-border situations and to prevent circumvention of existing provisions particularly in the VAT field are also to be decided on majority votes.

"measures concerning indirect taxation in order to prevent fraud, evasion or tax avoidance and to prevent circumvention of existing provisions."

These five provisions would allow the EU to impose taxes in Britain even where we had lost the vote on them. The immediate targets the Commission have in mind are the Sulphur Levy and the savings or withholding tax. The Commission explicitly states that the savings or withholding tax is a measure which could go through on QMV under its intended treaty changes concerning the prevention of fraud or double non-taxation. The Climate Change Levy would be a natural choice under the enhanced environmental tax provisions, along with possible taxes on landfill, planning applications and other matters mentioned by the Commission in its document. Whilst the Commission rules out an immediate move towards a common VAT levied as the first Europe-wide tax on the basis of a qualified majority vote, it does intend to use qualified majority voting under this draft treaty to change the VAT rules and to change the incidence of VAT. It cites the kind of problem it wishes to sort out as being the imposition of VAT on letters charged by private mail carriers, alongside the exemption from VAT of public mail monopolies and the exemption from VAT of certain electronic commerce transactions.

Britain has already given in over certain Community tax measures. VAT was introduced at the request of the European Economic Community when Britain joined. There have been endless skirmishes as the original British rate was well below the preferred band for VAT set by the European Community. Britain has also wished to maintain zero-rating on a range of sensitive items, including newspapers, books and children's clothing which the Community would prefer to see taxed. Britain opposed a tax on the art market but lost and has now suffered this imposition on the very successful London based auction houses. As a result some business has diverted to untaxed markets outside the European Union altogether.

The idea behind the Treaty of Nice is to extend the European Union's powers of taxation substantially. Trying to stop fraud or tax evasion will give the Community a platform for doing almost anything it likes. Trying to create a harmonised market place throughout the single market area will give it another pretext for dramatic tax changes over the year. Of course the European Union will play down the significance of the move in the run up to signing the treaty. It always has done so in the past. Once the

treaty is signed then European Union officials will make clear what the member states have done. They will begin with some modest proposals along the lines they have originally set out, but will soon move on to more dramatic manifestations of their new tax-creating powers. The European Union does wish to create a harmonised system of company taxation, a harmonised system of taxation on savings and investment, and a series of Europe-wide environmental and energy taxes. It wishes to deliver VAT as the first truly European tax imposed by the Union where the money is redistributed to the member states as the Union sees fit. The Treaty of Nice would be a very big stepping stone on the way to this end result. In due course they will wish to have influence or control over aspects of income tax as well. Once the principle of taxing savings is established, the rest of income is likely to follow.

The European Union also wishes to harmonise and to gain greater powers over social security. The draft Treaty of Nice proposes co-ordination of social security schemes to facilitate the free movement of people and seeks qualified majority voting over measures providing for minimum requirements which are necessary to allow for the effective exercise of the free movement of people and to prevent distortions of competition through the artificial lowering of social protection standards.

It has long been a bugbear of the European Union that some member states pay rather lower social security benefits than others. They know they will never be able to sort this problem out all the time vetoes remain in place and so the Treaty of Nice proposes removing two of these crucial vetoes to speed up the process of harmonisation. Europe's answer to measures which destroy jobs in some countries is always to export these measures to others rather than removing them from the countries which are badly affected by them.

Draft Article 137 adds to the list of areas where the EU is to proceed with new laws acting by majority vote: "Social security and social protection of workers; protection of workers where their employment contract is terminated; representation and collective defence of the interests of workers and employers, including co-determination, subject to para. 6; conditions of employment for third country nationals legally residing in Community territory; financial contributions for promotion of employment and job creation, without prejudice to the provisions relating to the Social Fund."

The UK has already surrendered much of its right to independent social and employment policies. The Labour government gave away our veto over Social Chapter proposals. The UK has lost an important court case at the ECJ, requiring us to implement the Working Time Directive even though the British government opposed it and thought it

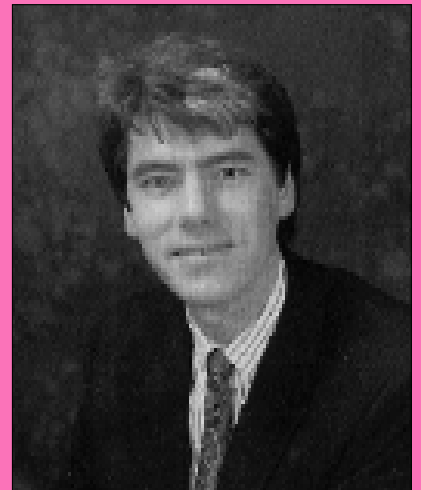
was a matter requiring our consent. This draft Treaty will open up the possibility of many employment measures affecting labour relations in Britain, as well as some social security matters, now being settled in Brussels rather than London. The Treaty is especially keen to extend higher payments from one country to another and increase the costs of employment EU-wide.

## Reform of Community Courts

Such is the confidence of the European Union that the reform of the Community courts is designed to give more cases under European law to the national courts than they currently enjoy. The European Union justice system has been swamped by its own territorial acquisitiveness. It is taking twenty-one months for a case to come to judgment in the European Court of Justice and thirty months in the Court of First Instance, the court set up by the treaty of Amsterdam to speed the whole process up. More and more cases are having to come to the European courts because European jurisdiction is so much more intrusive. National courts are more and more reluctant to opine on European matters for fear of the European Court taking a different view.

The European Union now feels so sure that it has established its supremacy over national courts that it wishes to trust them rather more and to prevent so many appeals from national courts to the European Court of Justice over the interpretation of European law. A centralised system has now been created. The idea is a pyramid with the European Court of Justice at the top dealing with new points and fundamental issues.

The Court of First Instance will take all cases that need a Europe wide court including cases involving the European institutions and the member states themselves which were previously preserved to the sole jurisdiction of the European Court of Justice. Most cases will now proceed through the national courts who are under a strict treaty obligation under the treaty of Nice to enforce the European law. The new Article 234 of the treaty will state in a new Clause 1, "*Subject to the provisions of this Article the Courts and Tribunals of the member states shall rule on questions of Community law which they encounter in exercise of their national jurisdiction.*" The ECJ is still there to interpret the treaty and to act as the ultimate source of all authority. Appeals will be rarer and requests for a ruling from the ECJ will be reduced. In future where a national court wishes to have an ECJ ruling it will have to specify why the validity or the interpretation of the rule of Community law raises difficulties in the case it is examining.



### Note from the Chairman

The Selsdon Group is proud to publish this important analysis of the implications of the proposed Nice Treaty by the Conservative Member of Parliament for Wokingham, John Redwood MP.

This is an fascinating, informed and powerfully argued, paper that sets out clearly the results that we can expect to flow from the formalisation of the supremacy of the European Court, proposals for EU wide taxation, and majority voting at the Council of Ministers in place of the current qualified majority.

In short, the paper both highlights and sounds the alarm about these moves by the EU Commission, Parliament and European Court to centralise power at the EU centre.

The Selsdon Group encourages and supports free thinking within the Conservative Party, but publication by us does not imply endorsement. This publication continues the tradition of the Selsdon Group for insightful analyses of key issues and I commend it to you.

I would like to thank John Redwood for this excellent contribution to the debate

Robert Marr  
Chairman  
7 June 2000

The intention is to make justice speedier but it may not make it fairer. The Commission and the European Court are thinking of setting up a series of tribunals for dealing with things like patents with limited rights of appeal to the European Court. They are faced with the conundrum of how to get speedier justice without injustice. Their intention is clear: a strong Community-wide based law where the national courts are subservient to the European Court and where European law covers most of the important issues at stake. The scope for national differentiation and national law making in democratic fora will be greatly reduced if this reform is introduced in full.

The idea is to bring EU law into line with EU and ECJ wishes. As the Commission state in their proposal, "In an enlarged Union it will be necessary to safeguard the effectiveness of the Community's judicial system and the consistency of its case law, factors which are essential if Community law is to be applied uniformly in an increasingly diverse Europe. Enlargement will entail an increase in the volume of litigation, not only in quantitative terms but also in qualitative terms as the courts of the new Member States will have to become familiar with Community law."

The Commission is once again being honest in telling us that there will be a big expansion in the amount of EU law, and that all states will have to implement it. Member states' courts will be more tightly controlled, doing more of the work with less and less scope to make their own decisions about the impact of EU law in their country.

An example of the dangers to the UK can be seen in the proposals to govern take-overs at EU level. We may find ourselves in a situation where the UK system based on a Code and the Panel is superseded by an EU system where a Tribunal or even the courts interfere. This could damage the market for corporate control quite substantially.

## Diluting the qualified majority

Under the current system a measure going through under qualified majority requires 62 votes cast in favour. Looked at from the negative point of view it takes 26 votes to block a proposal which the Commission is recommending. There is a total of 87 votes given to the fifteen member states. The large states, Germany, France, Italy and the United Kingdom, each have ten votes. The smallest state, Luxembourg, has two and the others are ranged between those two figures. The introduction of Poland, the Czech Republic, the Slovak Republic, Hungary, Slovenia, Romania, Bulgaria, Lithuania, Latvia, Estonia, Malta, Cyprus and Turkey, all

potential entrants to the European Union, will entail a rapid expansion of the total number of votes and in the number of votes required both to carry an issue or to block it. Clearly the accession of new

Present Member States		
Member	Population (m)	Weighted votes
Belgium	10.2	5
Denmark	5.3	3
Germany	82.0	10
Greece	10.5	5
Spain	39.4	8
France	59.0	10
Ireland	3.7	3
Italy	57.6	10
Luxembourg	0.4	2
Netherlands	15.8	5
Austria	8.1	4
Portugal	10.0	5
Finland	5.2	3
Sweden	8.9	4
UK	59.4	10
	375.5	87
Qualified Majority		62
Blocking Minority		26

[Source: House of Commons Library]

states does require rethinking the basis of member state voting and the nature of the qualified majority. However, as always, the Commission has latched upon the widening or expansion of the Community as an excuse to deepen and strengthen the centralising tendencies.

Its proposed solution of double simple majority dilutes the number of votes that would be required to carry any measure. They propose that instead of needing to collect all the votes required under the present qualified majority, as long as those voting represented a majority of the member states and a majority of the population, the matter would carry. This is a significant dilution on certain permutations of votes of the current requirement of the qualified majority. There are currently over seventy treaty articles and sub-articles in the main treaties requiring unanimous voting in the Council of Ministers. The idea of the new treaty of Nice is to reduce this to five only covering constitutional matters. In the modern European Union proposals coming forward under qualified majority voting are normally secured. Only the Commission has the right to bring forward such measures. No member state can make its own proposal. If a member

states no longer able to block proposals on its own it has lost its one remaining important power to influence events.

As Germany, France and Italy together constitute more than half the population of the EU, they can combine with any five other countries under the new system to push a measure through. Under the present system France, Germany and Italy would need at least six other countries to win a vote, and might need as many as eight other countries depending on which countries are in their alliance. I have assumed in each case that the UK wishes to block the measure. It shows how much more difficult it will prove for the UK to stop things going through. Instead of having to ally with as few as three other countries, the UK would need to find six others hostile to the measure where France and Germany were acting in concert with Italy. This is a very usual position. Electing MEPs

Perhaps the most radical proposal of all in the document is the proposal on the European Parliament itself. The Commission wishes to have the right to block parties standing for election that the European Union doesn't like.

Whilst this is couched in terms of wishing to prevent racism and Nazism reappearing in Europe, it would be most important to make sure that it did not transpose into an antipathy to anti-European Union parties who might be expressing a legitimate democratic view which was neither racist nor fascist. In addition, the Commission and the European Parliament wish to see ten per cent of the MEPs in the first instance elected from trans-European lists. This immediately makes it difficult or impossible for national based parties to put forward candidates and win seats whilst proposing a distinctively British or French or German point of view.

If the existing national parties wish to participate in this contest they are likely to have to form strong alliances on a cross-border basis leading to the construction of a common party platform for the European elections. This is clearly designed to prevent independent national initiative or the expression of different national views on European matters.

There is a strong feeling in parts of the Brussels political establishment that so-called "Euroscepticism" is not a legitimate political view. If anyone queries the long march to a European superstate, or disagrees with the powers and decisions of the Brussels government, they are portrayed as being outside the pale of decent European opinion. Many of us cannot be happy with a series of self-serving institutions that think they should be immune to criticism. The proposals for the European Parliament are designed to



deflect the views of those who are against more European government. The scheme would make it very difficult for good Europeans against more Brussels government to be elected to the European Parliament.

---

## Reforming the other institutions

Two possibilities open up for reforming the Commission in a world of many more member states. The first is that each member state should have its own Commissioner. The second is that the number of Commissioners should be limited so that a member state even as big as the United Kingdom would not necessarily have a Commissioner. The absence or presence of a national Commissioner would be organised on a rota basis with each member state having a turn.

Similarly, it is likely that the number of judges in the European Court of Justice will be limited to thirteen, thereby entailing a break in the link between member states and the European Court of Justice in some cases. There will be similar changes to the Economic and Social Committee.

---

## Conclusion

The whole draft Treaty of Nice is about the creation of a United States of Europe with a centralised government based on Brussels. Whilst it does give some limited increased power to the European Parliament it is mainly a massive increase in the power of the European Court of Justice and the European Commission. Under the proposals the European Commission President would have the power to sack individual Commissioners. Collective responsibility and unified view would be a necessary prerequisite of holding office and maintaining office. In every area national interest and national sentiment are to be snuffed out. In every area bar a few constitutional items the veto is to be removed.

Parallel to the work of the Treaty of Nice is work towards an army, navy and airforce of the European Union and the strengthening of a common foreign policy. Under the Treaty of Amsterdam Britain is already pledged to loyalty to the common foreign policy and is under a moral obligation to try and help form such a policy. Under the proposals now being discussed things will move rapidly towards the assertion that foreign policy is the prerogative of the European Union rather than the member states and that that foreign policy will be backed up by some kind of military force or presence.

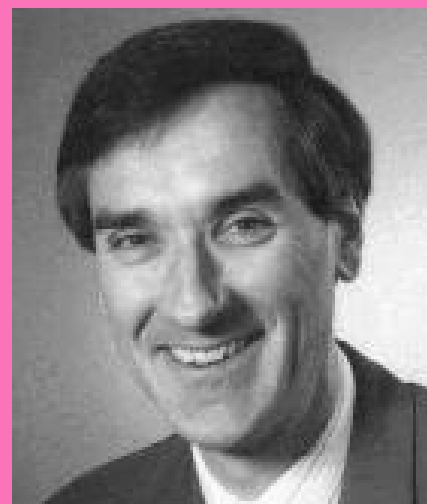
The draft Treaty itself would allow member states wishing to make more rapid progress towards ultimate unity to do so using the powers, the money and the institutions of the European Union itself. The European Union is not merely impatient with Britain preventing agreement on a number of matters creating a more centralised state, but it now wishes to sweep away the reservations of some of the other states apart from Britain by allowing a central core led by France and Germany to charge ahead to ultimate union.

The biggest weakness of this structure is in its contempt for the democratic process and for national sentiment. Many of us share an antipathy towards crude aggressive nationalism of the kind we saw rampant in Europe in the 1930s. Most of us are reassured there is nothing like this on offer at the moment. Nonetheless, people do still feel French or Italian or British or German and their politicians have not yet persuaded them to replace this primary loyalty with a prime loyalty to Europe. If at the same time the politicians are busily taking powers away from democratic institutions and elected representatives and giving them to unelected officials deliberating in secret around the Brussels conference table, they are creating potentially dangerous precedents.

The very substance of democratic life depends on the consent of the people governed for the institutions and manner of government. The British state has been so stable over three hundred years because there has been that consent to the system.

Those who lost the last election still believe in the system that replaces one government with another and know that they have the opportunity to work through the press and the ballot box to seek to overturn the government they do not like. Citizens of the new Europe have no such luxury. They see no direct means of changing the government of Europe which is the Commission. They have absolutely no authority or control over the European Court of Justice which has become the prime mover in creating centralised government on the continent administered through a common law code.

The danger of the treaty of Nice is that it will allow the frustrations to boil over. Democratic politicians in the member states should not sign this treaty. The United Kingdom should raise the alarm bells immediately. The treaty of Nice is a couple of treaties too far. The European peoples are not ready for it. The method of government is not democratic. There will be no consent.



## The Author

Rt Hon John Redwood MP for Wokingham

Born in 1951, John Redwood was educated at Kent College, Canterbury, and Magdalen College, Oxford. He is married with two children. He enjoys cricket and water sports and is an amateur gardener.

His business career has included being an Executive Director of N M Rothschild, non-executive Chairman of Norcros, a quoted industrial company, and director of a new financial service company.

He was first elected MP in 1987 for the Wokingham constituency and was re-elected in 1992 and 1997.

In the early 1970s he was an Oxfordshire County Councillor and Committee Chairman. He was DTI Minister for Corporate Affairs 1989-92 and Minister of Inner Cities from 1992 to May 1993.

In May 1993 he was appointed Secretary of State for Wales and was made a Privy Counsellor.

From June 1997 to June 1999 he was Shadow Secretary of State for Trade and Industry. Mr. Redwood was Shadow Secretary of State for the Environment, Transport and the Regions from June 1999 to February 2000.

He has written several books on free enterprise and democracy. The most recent are "Our Currency, Our Country", on the Euro, published by *Penguin* and "The Death of Britain?" published by Macmillan in 1999.

## Declaration

- We believe that individual enterprise is the source of all progress in economics, the sciences and the arts and that the task of politics is to create a framework within which the individual can flourish.*
- We believe that every individual should be judged by his actions and not according to arbitrary criteria of race, creed or colour.*
- We believe that economic freedom is vital to political freedom because power is then diffused among many different enterprises instead of being concentrated on the State.*
- We oppose the view that the State should have a monopoly in health, housing, education and welfare.*
- We uphold the right of the individual to cater for his own preferences in the market, believing that the State provision should supplement, rather than replace, private provision.*
- We see our primary role as to influence the Conservative Party, so that it embraces economic and social policies which extend the boundaries of personal choice.*

## Application for membership

Name

Statement: *I wish to apply for membership of The Selsdon group and fully support the philosophy of the Group, as laid down in the Selsdon Declaration (see left).*

Title

Age

Signed

Job

Company

Date

College

*\*All membership applications are subject to the approval of the Executive Committee.*

Tel (H)

Email

Constituency/Length of Party Membership

Membership of other Groups?

Address

Postcode

## Standing Order

Please complete this form and send it along with your application to the the address below. Any queries should be addressed to the Secretary, who can also be contacted on the Group's email address: [selsdon\\_group@hotmail.com](mailto:selsdon_group@hotmail.com)

The Manager

(Bank Name)

Branch

Address

Postcode

Account No.

Sort Code

Signed

Date

Please pay the sum of £25/£15\* to Lloyds Bank, Butler Place, Caxton Street, London, SW1H 0PR, sort code 30-98-97 for The Selsdon Group, account number 0298707 immediately and thereafter on the 1st January each year until further notice.

\* £25 for London residents, £15 outside London - delete as appropriate. Larger donations welcome.

Please return to: The Secretary, The Selsdon Group, 35 Brompton Road, Knightsbridge, London, SW3 1DE