

THE TRADE UNION BILL

Purpose

1. To inform Members of:
 - The various reforms to the law regulating trades unions which are set out in the Government's Trades Union Bill* (the Bill) which was published on 15th July 2015;
 - The consultation undertaken by the Government on the Bill;
 - CIPD comment on the issues contained within the Bill.

*A link to the Bill is
here: http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0058/cbill_2015-20160058_en_1.htm.)

Outline Content of Bill

2. The main reforms relate to:
 - Industrial action ballots (including ballot participation thresholds);
 - Industrial action notices and the length of ballot mandates;
 - Picketing; and
 - The contribution to political funds from union members.
3. The Bill also contains provisions enabling legislation to be made limiting facility time for trades union officials in the public sector.
4. Additionally, on 6 August 2015 the Government announced its intention to include provisions within the Bill to abolish the practice of 'check off' whereby many public sector workers who are union members have their subscriptions taken directly from their salaries, administered by their employer. Further information on this intention is not yet available.

Detail of the Bill's Provisions

Industrial Action Ballots

5. At present there is no threshold requirement for industrial action ballots. The bill will change this to require at least 50% of those who were entitled to vote in the ballot to do so. Where the majority of employees eligible to vote in any ballot are normally engaged in 'providing important public services' (as will be defined in due course but proposed as being within fire, health, education, transport, border security and nuclear decommissioning and associated critical ancillary activities in each), then at least 40% of all those that do vote in the ballot must vote 'yes'.

6. Taking an example then, if 100 employees are entitled to vote, and the majority are engaged in 'providing important public services' (or ancillary activities), and 50/100 vote, then 40 of those that vote must vote yes for the action to proceed lawfully.

Industrial Action Notices and the length of ballot mandates

7. The length of notice of action to the employer to be increased from 7 to 14 days. Currently a ballot mandate can be relied upon for industrial action for as long as the relevant trade dispute continues (provided action starts within 4 weeks of the ballot). The Bill will also introduce a new four month time limit (beginning with the date the ballot closes) so that the ballot only mandates action within the four month period. After this if the dispute is not resolved the TU will have to ballot again if they wish to continue with action.

Picketing

8. There is currently a statutory *ACAS Code of Practice on Picketing* which lays down good practice in lawful peaceful picketing. It does not impose any legal obligations although its contents can be taken into account in relevant legal proceedings. The Bill will however make many of the Code's recommendations legally enforceable including a legal requirement that the trades union must appoint a union official to supervise the picket ("the picket supervisor"), and places various legal obligations on the picket supervisor in terms of written authorisation from the union, being present/readily contactable at all times and wearing an identification armband.

Contribution to political funds from union members

9. The main provision in this respect is that union members will be required to 'opt in' to any political fund by way of an opt-in notice procedure.

Trades Union Facility Time

10. The Bill includes a power under which regulations will be able to be made requiring public sector employers to publish certain information related to facility time provided to trades union officials, including learning and safety representatives. This may include numbers of union officials, total amount / % of the pay bill spent by the employer in paying for facility time, different proportions of the aggregate amount of facility time spent on different categories of activity specified under the legislation and facilities provided to union officials.
11. The bill also includes a power to make regulations that could set a limit on the amount of facility time public sector employers may provide.

The Use of Agency Workers to Cover Industrial Action

12. Currently Regulation 7 of the Conduct of Employment Agencies and Employment business Regulation 2003 prohibits employment agencies from providing agency workers to cover the duties of an employee taking part in a strike or other industrial action. The Government intends to remove that prohibition.

Consultation on the Bill

13. The government published three consultations* on aspects of the Bill, all of which closed on 9th September 2015. These were:

- The Use of Agency workers to cover Industrial Action;
- The ballot thresholds in 'important public services';
- The intimidation of non-striking workers (particularly in relation to picketing).

*A link to the closed consultations is here:

<https://www.gov.uk/government/collections/trade-union-bill>

The Use of Agency Workers to Cover Industrial Action

14. The consultation sought views on how the removal of the prohibition on Employment Agencies etc. from providing agency workers to cover striking employees might impact on employment businesses, work seekers, hirers, employees taking part in industrial action and the wider economy and society.

Ballot Thresholds in 'Important Public Services'

15. The purpose of this consultation as stated by the Government "is to help define who within the fire, health, education, transport, border security and nuclear decommissioning sectors is subject to the 40% important public services threshold". The Government states it "intends this to be focused on those most important to avoiding the adverse impacts strike action in these public services can create". The consultation does not actually seek views on whether the policy change is supported by consultees.

The Intimidation of Non-Striking Workers

16. This consultation was primarily related to the provisions in the bill concerning picketing with a stated "key aim to ensure that workers are better protected from intimidation". The government stated that it is "reforming and modernising the rules relating to picketing and associated protests to ensure they cover social media, to make sure they apply to protests linked to pickets, and to make clearer rights and remedies for non-striking workers, the public and businesses as well as picketers".

17. The consultation sought views on a requirement for unions to publish their 'picketing plans' and an annual report to the Certification Officer of picketing and associated protest activity. It also sought evidence of intimidatory behaviour experienced during picketing and protests linked to industrial disputes, and asked about on gaps and weaknesses in the framework governing these activities and how they can be remedied, including the case for a new criminal offence of intimidation on the picket line.

Issues

18. There is a clear and well-documented commitment in local government in Wales to supporting trades union membership and continuing to work in partnership with

our trades unions as far as practicable on all relevant matters at both the local and at a Wales level. For example the Joint Council for Wales has fully acknowledged the value of proportionate facility time and has written twice to Central Government in to explain the benefits.

19. In terms of the recently announced ban on the 'check off' system in the public sector it is interesting to note that Danny Alexander, former Lib Dem Chief Secretary to the Treasury, wrote all Whitehall departments just over a year ago, to suggest that trying to abolish check-off is not only unjustified, but also likely to backfire. He stated:

"Departments should be aware that there is no fiscal case for doing this, as the Unions have offered to pay any costs associated with check-off, which are in any case minimal. In addition, the experience of DCLG suggests that any attempt may ultimately fail as a result of legal action being brought by the unions, at considerable cost to the public purse."

"I am therefore writing to Secretaries of State and Permanent Secretaries in their role as Accounting Officers to make it clear that there is no public policy case to do this in any department across Whitehall. As such I want to make it clear that any department that pursues this policy is doing so at their own legal risk..."

20. The WLGA did not respond to the consultations due to the difficulty in obtaining consensus across local authorities in Wales within the timescale on many of the issues and changes in the law and their probable impact as detailed within the Bill.
21. However, if members wish to consider taking a general stance on the issues, the views submitted by the CIPD (Chartered Institute of Personnel and Development - the Professional body for the Human Resource and Training professionals) in their response to the consultations would seem apposite, as outlined in their associated press release (attached at Appendix 1).

Recommendations

22. That members:

- i. Note the content of the report
- ii. Consider if they wish to generally endorse the views of the CIPD on the issues

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Proposals on strike laws are a response to yesterday's problems, says CIPD

Plans to raise the bar for strike action divert attention from building better, more engaged workforces

The Government's proposals on strike laws are an outdated response to industrial relations issues currently facing UK employers and could prove counter-productive, according to the CIPD, the professional body for HR and people development.

In its submission to the Government consultation on the proposals, which closes today (September 9), the CIPD highlights that proposals are an outdated response to the challenges of the modern workplace. It says that the number of working days lost through industrial action today stands at less than a tenth of what it was in the 1980s, dropping from seven million days per year in the 1980s to an average of 670,000 per year between 1990 and 2014.

CIPD surveys of employers and consultation with members indicate that relationships with their trade unions are generally good. Instead of focusing on ballot thresholds, the CIPD is urging the Government and organisations to build a better dialogue with their workforce, improve employee engagement and consider alternative methods of protecting the public from the impact of strike action, such as 'no-strike agreements'.

Peter Cheese, chief executive of the CIPD, comments: "Government proposals seem to be targeting yesterday's problem instead of addressing the reality of modern workplaces. The number of days lost to strike action has dropped by over 90% in the last twenty years and industrial action today increasingly takes the form of protest action rather than all-out strikes making the legislation even less warranted.

"It's time to start talking about prevention rather than cure when it comes to strike action and the public sector's workforce challenges in particular. Taxpayers' interests are best served by an efficient, engaged and productive public sector workforce. We need to see more consultation and ongoing dialogue, and engagement with, the workforce, rather than the introduction of mechanisms that reflect the industrial relations challenges of the 1980s. To jump straight to legislating strike activity without considering this seems to be a significant step back.

"These proposals could also have unintended consequences, for example, by creating more division and encouraging trade unions to plan for more localised industrial action to maximise support and make it more likely that the proposed statutory threshold for membership turnout will be met. They may also lead to an increase in unofficial action, which can be hard for employers, trade unions or Acas to resolve."

On the threshold proposals, Mike Emmott, employee relations adviser at the CIPD, said: "The new proposals won't make it impossible for trade unions to call lawful strikes. They will, however, harden

attitudes and encourage trade unions to plan smaller, more localised protests to maximise support and make it more likely that the proposed statutory threshold for membership turnout will be met.”

Commenting on the proposals to tackle intimidation of non-striking workers, Mike Emmott said:

“Intimidation in the course of industrial disputes, including on the picket lines or as part of a wider protest action, is completely unacceptable. Workers and their families should never be subjected to the kind of harassment that we saw at Grangemouth in 2013. However, we don't believe that a new criminal offence needs to be created for this purpose. As the limits on lawful strike action become tighter, we can expect intimidation to become a more frequent occurrence in relation to industrial disputes. However, we believe that problems in relation to intimidation in the context of protest action should not, in general, be a matter for trade union law. The law on protest action should apply equally to trade unions and to other organisations undertaking protest action.

“There are a number of existing public order offences, including assault, harassment and trespass, which may be relevant in these situations. The key issue is enforcement, and this is a matter for the police. The CIPD does, however, support the proposal to strengthen the *Picketing Code* so that a number of key aspects, including the appointment of a picketing supervisor, should be legally enforceable.”

Commenting on the proposal to repeal the ban on using agency workers to cover for striking workers, Mike Emmott said:

“There is nothing in existing legislation to stop employers from recruiting replacement staff, providing they hire them directly and not through an employment agency, but we have little evidence that employers take this option. Some employers might be interested in recruiting temporary agency workers to maintain operations during industrial action. However, in most cases they would find it difficult to recruit suitably qualified workers, and few employment agencies will want to get involved in industrial disputes.”

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