



Department
for Business
Innovation & Skills

TRADE UNION REFORM

Consultation on ballot thresholds
in important public services

JULY 2015

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Trade Union balloting

Summary

- **The Government is introducing a new 50% participation threshold to all trade union ballots for industrial action.**
- **The Government is also introducing a new 40% important public services threshold, meaning ballots in those sectors will need the support of at least 40% of those entitled to vote.**
- **The new 40% threshold will apply to six sectors: fire, health, education, transport, border security and nuclear decommissioning. This consultation seeks evidence on who within those sectors should be subject to that threshold.**

Reform and modernisation of trade union law

1. Trade Unions can play an important role in the work place. They have a legitimate need to represent their members' interests, and sometimes that involves balloting for industrial action. However, there is also a responsibility to ensure that industrial action is only used as a measure of last resort and where there is clear and ongoing support for doing so.
2. The Trade Union Bill which the Government introduced into Parliament in July includes provisions to ensure industrial action is always based on a clear majority of votes by a reasonable proportion of a union's members, based on up to date and audited membership lists.
3. Disruptive industrial action should not take place on the basis of low ballot turnouts. Such action does not always represent the views of all the union members and is undemocratic. The Government therefore is introducing a new minimum requirement that at least 50% of union members entitled to vote must turn out for a ballot. A simple majority (i.e. over 50% of votes cast) must be in favour in order for action to go ahead. This ensures that strikes can only take place on the basis of clear support from union members.
4. Industrial action in important public services can have far reaching effects on significant numbers of ordinary people who have no association with the dispute. People have the right to expect that services on which they and their families rely are not going to be disrupted at short notice by strikes that have the support of only a small proportion of union members. Parents want to know that they can drop their children off at school because the schools will be open, and that they can get to work on time because the buses and trains are operating normally.
5. This reflects the important public service these workers provide, and the numbers who rely on them. With regard to industrial action in these public services, the challenge is to get the balance right between the interests of union members and the interests of the majority of people who rely on the services they provide.
6. The Government therefore is introducing a law in the Trade Union Bill to make sure that industrial action in the fire, health, education, transport, border security and nuclear

decommissioning sectors will require the support of at least 40% of all those entitled to vote. This is in addition to the 50% participation threshold. The objective is to ensure that strike action in these public services, which can have an adverse impact on a wide range of third parties, is not on the basis of the support of only a small proportion of union members.

7. None of these changes are about banning strikes. The Government's policy is to encourage workplace disputes to be resolved without the need for industrial action; and to ensure where industrial action is used, it is as a last resort with clear and ongoing support for action.

How the new balloting laws would work

8. Currently, in order to take industrial action, a trade union is required to ballot all of its members affected by the dispute. A union requires a simple majority (over 50%) of the votes cast to be in favour of industrial action, for the ballot to lead to action.
9. All trade union members are able to strike. However there is an absolute ban on those in the armed services from striking, and on those members of the police and prison services who are engaged in core front line services.
10. The provision in the Trade Union Bill to introduce a new minimum requirement of 50% participation means that at least half of those balloted for industrial action need to cast a vote before the ballot is valid. This would apply to all ballots for industrial action. If the ballot was valid, then a simple majority as usual would need to vote in favour in order for the ballot to mandate industrial action. In an example where 1000 union members form part of the bargaining unit affected by the dispute, at least 500 of those members would need to vote in order for the ballot to be valid. If 500 had voted, then a simple majority of them would need to vote in favour in order for the ballot to lead to industrial action: that would be 251 members. If all 1000 had voted, 501 would need to vote in favour.
11. In the fire, health, education, transport, border security and nuclear decommissioning sectors the Government will introduce a further threshold, which means that at least 40% of those entitled to vote would need to vote in favour before industrial action was possible. Using the example above, and assuming the 50% participation threshold was met, at least 40% of the 1000 members eligible to vote would need to vote in favour to enable industrial action: that is 400 members. A simple majority is still required in all ballots, so if all 1000 members had voted, then 501 votes in favour would be required to enable industrial action.
12. Should any of these balloting rules fail to be applied properly then, as they are currently able, the employer involved in the dispute could apply to Court for an injunction preventing any strike action from taking place.

The purpose of this consultation

13. The purpose of this consultation 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 intends this to be focused on those most important to avoiding the adverse impacts strike action in these public services can create.

14. The evidence received through this consultation, and from other consultative work the Government undertakes, will be collated and assessed after which the Government will introduce secondary legislation setting out who is subject to the 40% important public services threshold.

Issues for consultation

Summary

- Those working in the fire, health, education, transport, border security and nuclear decommissioning sectors provide important public services that people rely on every day or are vital to preventing serious safety or security risks.
- This consultation seeks evidence on the adverse impacts that industrial action in these sectors can create.
- This consultation seeks evidence on the occupations and functions within each of those sectors that are essential to avoiding these adverse impacts, and which would be subject to the 40% important public services threshold.
- This consultation also seeks evidence on how ancillary staff, and those working in the private sector to deliver public services, should be treated.

What is the impact of strike action on the public?

1. The Government is collating evidence on the impact strike action in these sectors has. This will help the Government apply the proposed new threshold to important public services.
2. In the sub-sections below, some of the key functions of each of these public services are listed, with an initial assessment of what impact industrial action in these areas causes. The questions for consultation listed below seek evidence on whether these assessments are accurate, and whether there are any other impacts that should be considered.

Fire services

3. Fire and rescue professionals protect life and property in the event of fire, as well as respond to a range of serious incidents. These include responding to road traffic collisions, building collapses, natural disasters and incidents involving chemical, biological or radio-active contaminants. Fire and rescue professionals are also involved in providing emergency services to civilian and military airfields.
4. Fire authorities are required by law to have in place business continuity plans. However strike action in the fire services reduces the availability of fire engines, which can undermine the capacity and responsiveness of the fire services to perform the services described above. Mitigating the impact of strike action often depends on the on-going goodwill of non-striking professionals to provide cover.

Health services

5. The health service is a wide-ranging sector covering the commissioning and provision of services. The cancellation and re-scheduling of out-patient appointments and elective surgery can cause inconvenience and increased stress for those patients affected. The impact of strike action is most severe however in services which protect the lives and the health of the UK population in critical care situations and emergencies. In critical care cases and emergencies in which care must not be delayed, the absence of staff

can quickly risk serious harm to the public. For example, strike action among staff who provide accident and emergency care, those supplying and administering emergency medicine and surgery, and those providing secure mental health services, could be argued to risk significant harm to the public.

Education services

6. Recently there have been a number of national and regional strikes in the schools sector: two in 2011, one in 2012, three in 2013 and two in 2014. The impact of these strikes in terms of closing schools has varied, depending in part on the number of unions participating. The biggest impact resulted from the strike in November 2011 by a number of teaching and support staff unions, which fully closed around 60% of state-funded schools in England and partially closed around another 15%. Since then the percentage of schools closing has declined, and in 2014 only a minority of teachers and school support staff went on strike.
7. The impact of a strike is likely to vary between schools depending on their individual circumstances. It is for individual head teachers to decide whether or not to close their school and, while there are various steps they can take to try to keep the school open, ultimately they will need to make a judgement based on a number of factors. As well as complying with health and safety legislation, they must also comply with rules around the number and type of staff required to care for children in nursery provision, and with limits to the size of infant classes.
8. Strike action which closes schools can create significant inconvenience, and sometimes a financial burden, for parents who need to look after their child and are consequently unable to go to work. Others need to pay for additional childcare. There is also an economic burden and knock-on effects for business continuity planning for those workplaces whose staff cannot get to work. Some of these parents will work in other public services such as the police, health, fire and transport and there will be a knock-on effect on those services too. Children's education is also disrupted by school closures.

Transport services

9. The transport sector enables people to go about their daily lives and get to work, and supports business to trade and conduct economic activity. It means the sector has an impact throughout the economy. The transport network spans the operation of the road network, the rail network (including international rail), the London Underground and other Transport for London services, aviation, metro, tram and bus services outside London, ports and maritime safety functions.
10. The main impacts of strike action on economic activity in these areas are that working people are unable to commute to and from their place of work or travel for business; and that business supply chains are unable to function. For each mode of transport, there are also safety risks that emerge during strike action, which normally can only be mitigated by stopping services. Several supply chains for the health service use the transport network, and these might also be risked during industrial action.
11. The exact impact of industrial action in the transport sector depends on whether workers can utilise remote working or vary their working hours, and whether businesses and other organisations can re-organise their supply chains without incurring cost or delay. Generally, the longer the strike action, the more difficult this is to do.

Border security

12. Border Force is the organisation responsible for securing the UK border while facilitating the legitimate passage of people and goods. Industrial action in this sector has the potential to threaten national security either through a reduced presence at the border or by delaying traffic that is then liable to penetration by clandestine individuals. Delays can also cause wider pressure across national infrastructure and financial losses in the aviation and haulage sectors, among others. Disruption at the border is also inconvenient for members of the public. Border Force has contingency plans in place for industrial action, aimed at maintaining the security of the UK border. However industrial action can still impact on the responsiveness of the service.

Nuclear decommissioning

13. The sector covering decommissioning of nuclear installations, management of spent fuel and nuclear waste management is important to both the economy and to public safety. Nuclear licensed sites are necessarily strictly regulated with regards to the safety of the site and even when operating at minimum safety manning levels, a number of functions need to be continually in place. Disruption to this sector caused by industrial action would also lead to a serious impact on the UK economy.

Questions for consultation

1. *Do you agree these are the key impacts industrial action would have in these sectors? Why/ why not?*

2. *What other impacts are there of strike action in*

a) *Fire services,*

b) *Health services,*

c) *Education services,*

d) *Transport services,*

e) *Border Force, or*

f) *Nuclear decommissioning?*

If relevant, please include specific examples of your experience of strike action taken in these sectors.

What are 'important public services' in these sectors?

14. Following Royal Assent of the Trade Union Bill, the Government will introduce secondary legislation defining the occupations and/ or functions in each of these six sectors that would be subject to the 40% important public services threshold.

15. The Government's rationale for selecting these occupations and functions will be based upon the occupation or function being essential to avoiding the adverse impacts discussed above. Occupations or functions not essential to avoiding these adverse impacts will not be listed.
16. For example, a public service occupation and/ or function could be considered 'important' and relevant for the 40% threshold when strike action in that area could:
- Risk loss of life or serious injury
 - Risk public safety or national security
 - Seriously impair economic activity
 - Prevent significant numbers of people from getting to their place of work

Questions for consultation

3. *What factors do you think are important in defining 'important public services'?*

- Protection against loss of life/ serious injury*
- Maintenance of public safety and national security*
- Enabling economic activity across a significant area of the economy*
- Enabling significant numbers of people to get to their place of work*
- Others (please specify)*

Which occupations and functions should be subject to the 40% important public services threshold?

17. As explained above, the Government will list in secondary legislation the occupations and functions in the fire, health, education, transport, border security and nuclear decommissioning sectors that are most important in avoiding the risks and adverse impacts identified by this consultation. The occupations and functions set out in the list would be subject to the 40% important public services threshold. When balloting for industrial action, it would be the responsibility of the trade union to identify workers who may be subject to the 40% threshold, to apply the correct balloting and threshold rules, and to demonstrate this had been done if industrial action was called.
18. We have collated an initial list of roles and functions within each sector that the Government will consider. Responses to this consultation will help us to define these roles and functions in more detail in the secondary legislation. The final list proposed by the Government will be subject to Parliamentary scrutiny and approval.

Public service	Proposed occupations for consideration
Fire	<ul style="list-style-type: none"> • Firefighters • Fire control personnel required for dealing with calls for help and for summoning personnel to emergencies • Airport firefighters • Ministry of Defence firefighters
Health	<ul style="list-style-type: none"> • NHS and foundation trust staff including ambulance trust staff • Emergency call centre handlers
Education	<ul style="list-style-type: none"> • Staff working in state funded provision covering statutory school age pupils (5 to 16 year-olds: i.e. reception class to Year 11)
Transport: roads	<ul style="list-style-type: none"> • Traffic Officer Staff and Regional Control Centre Staff (highways management) • Local bus services • Road gritting staff
Transport: rail	<p>Those working for: -</p> <ul style="list-style-type: none"> • Railway infrastructure operators and managers, including signals and control room staff • Passenger and freight train operating company staff including drivers, guards and conductors <p>Those working in equivalent roles for: -</p> <ul style="list-style-type: none"> • Light rail operations outside of London • The Channel Tunnel Concessionaire • International Rail Passenger Operators
Transport: aviation	<ul style="list-style-type: none"> • Air traffic controllers • Staff performing certain security functions at airports • Airport rescue and emergency service providers
Transport: London	<ul style="list-style-type: none"> • London Underground, Overground and Docklands Light Railway drivers, infrastructure operators, managers, maintenance and depot staff, including signals control staff • Operators of the London bus network
Transport: maritime	<ul style="list-style-type: none"> • Tug crews • Pilots

Public service	Proposed occupations for consideration
	<ul style="list-style-type: none"> • Crane operators • Coastguard Maritime, Coastal and Aeronautical Staff
Border security	<ul style="list-style-type: none"> • Border Force staff working at the border • Border Force staff providing essential support and services to those at the border, such as managing border security systems and maintaining other critical infrastructure
Nuclear decommissioning	<ul style="list-style-type: none"> • Workers involved in the decommissioning of nuclear installations, management of spent fuel and nuclear waste

Questions for consultation

4. Do you agree these are occupations and functions in

- a) Fire services,
- b) Health services,
- c) Education services,
- d) Transport services,
- e) Border security, or
- f) Nuclear decommissioning

the Government should consider when defining those subject to the 40% important public services threshold? When answering, please consider those key in avoiding the adverse impacts discussed above.

5. What other occupations and functions should the Government consider within these six sectors?

6. (If relevant) Please explain why the additional occupation or function should be covered.

Support staff in ancillary roles

19. In each of the sectors under consideration, there is a wide range of staff in ancillary roles. These staff play an important role supporting front-line staff deliver public services. Examples of ancillary roles would be managers, administrators or cleaners: any role that supports others to deliver important public services.

20. When that support is critical, and its absence – even if over a short period of strike action – would have an adverse impact on the delivery of the service, the Government intends to apply the 40% important public services threshold. These roles will be included in the secondary legislation defining the occupations and functions subject to the 40% threshold.

21. On the other hand, ancillary staff whose absence during strike action would not have an adverse impact on the delivery of the service would not be subject to that threshold.

Questions for consultation

7. *Do you agree with the Government's proposed approach to ancillary workers? Why/ why not?*

8. *Please give examples of ancillary workers in the six sectors discussed that you think should be subject to the 40% important public services threshold.*

9. *(If relevant) Please explain why the ancillary worker(s) you have cited should be covered.*

Private sector delivery of public services

22. Many public services in the UK are performed by private sector organisations and the staff working for them. This is particularly the case in the transport sector.

23. Existing employment and trade union law generally applies equally to both public and private sectors. The Government is proposing to maintain this equality of approach when legislating for the new balloting laws under consideration in this consultation.

24. This would mean that the 40% important public services threshold would apply to both public and private sector staff, so long as their occupations and/ or functions were listed in the secondary legislation.

Questions for consultation

10. *Do you agree with the Government's proposed approach to private sector workers? Why / why not?*

Disputes which involve workers subject to the 40% threshold and also other workers exempt from it

25. When balloting for industrial action the trade union must ensure their ballot reaches the 50% participation threshold, and identify whether the 40% important public services threshold applies.

26. It is possible that some disputes will involve some workers who fall within scope of the 40% important public services threshold, and others who do not. It is unclear how often these circumstances would apply. Through the Trade Union Bill the Government is also introducing rules which require trade unions to include greater detail on ballot papers about the nature of the dispute. This may have the effect of concentrating industrial action ballots to particular occupations or functions, rather than entire workforces that include a variety of occupations some of which within and others outside the 40% threshold.
27. The Government is proposing in the Trade Union Bill that when a *majority* of workers involved in a dispute are subject to the 40% important public services threshold, then the ballot must be held under the 40% threshold rules. If fewer workers subject to the 40% threshold were involved, then that threshold would not apply to the ballot.
28. This would require trade unions to assess the status of workers involved in the strike, and to calculate what proportion were subject to the 40% threshold. It may be administratively difficult for trade unions to make this calculation, or to demonstrate evidence backing their calculation in the event of a Court challenge.
29. The alternative approach is to require that when *any* workers involved in a dispute are subject to the 40% important public services threshold, then the ballot is held under the 40% threshold rules. Doing so risks being disproportionate if a small proportion of workers in a dispute cause a much larger proportion, who do not undertake “important public services”, to be subject to the 40% threshold too.

Questions for consultation

11. *How common are disputes involving some workers who would fall within scope of the 40% important public services threshold, and others who would not?*

- Frequent*
- Infrequent*
- Never*
- Not sure*

12. *Please give examples of a dispute that has or could include only a small proportion of workers undertaking “important public services” (using the definition used in this consultation).*

13. *Do you agree that the Government should require a ballot to be run under the 40% important public services threshold if a majority of workers involved in the dispute are subject to the 40% threshold? Why/ why not?*

14. *What are the practical and administrative considerations a trade union would have to make to calculate whether a ballot ought to be conducted under the 40% important public services threshold?*

How to respond

This consultation was issued on 15 July 2015. Please respond by 9 September 2015. Please send any enquiries to: labourmarket.consultations@bis.gsi.gov.uk.

You can reply to this consultation through an online survey available at: <https://bisgovuk.citizenspace.com/lm/40-consultation>.

Alternatively, a consultation response form is available electronically here: <https://www.gov.uk> (until the consultation closes). That form can be submitted by email or by letter to:

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When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

We would welcome suggestions of others who may wish to be involved in this consultation process.

Confidentiality & Data Protection

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

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