

Ballot thresholds in important public services

Department for Business, Innovation and Skills

RPC rating: not fit for purpose

Description of proposal

The Government propose to introduce a law in the Trade Union Bill to ensure that, for industrial action to proceed legally in the fire, health, education, transport, border security and nuclear decommissioning sectors, it must be supported by at least 40% of all those entitled to vote. In addition, under a separate proposal, the Government are introducing a requirement in all sectors that at least 50% of union members must participate in the vote, if strike action is to proceed legally.

Impacts of proposal

The Department estimates that the proposals will reduce the number of working days lost due to strike action by 65% in important public services covered by the above sectors. The Department estimates that this will reduce the number of working hours lost by around 1.8 million, of which around 340,000 will be in the private sector. The Department estimates benefits of £3 million each year to private sector businesses. This appears to be a direct benefit to business.

The Department explains that the proposals will require all 166 unions to incur transition costs of £535,000. These include staff time spent becoming familiar with what is required and deciding how they will implement the approval threshold. Unions will also incur legal fees, as the Department assumes unions will need to take legal advice.

Quality of submission

The RPC's view is that the IA is not fit for purpose for the reasons set out below.

Description of the problem

- The RPC considers that, in line with the Better Regulation Framework Manual guidance on consultation impact assessments, in this instance the Department must:
 - provide a discussion of options for alternatives to a threshold;
 - assess whether the objectives could be met using a different percentage threshold; and
 - examine the impact of including different occupations and sectors.

- The IA does not explain and present the rationale for the proposals in a straightforward and logical way. As such, the RPC does not believe that, in its current form, the IA provides a clear enough basis for consultation. The Department's description of the problem is extremely limited (paragraphs 9-10) and essentially relies on the statement that "important public services can have far reaching effects on significant numbers of ordinary people". While that is clearly the case, the RPC expected more evidence/discussion on this point for a measure of this kind e.g. better assessment of the costs and disruption caused, and its impact on the economy.
- The Department says that industrial action can raise serious equity considerations and put the provision of public services at risk. The Department needs to provide further evidence on the existence and likely scale of this effect.

Analysis

- The IA does not provide sufficient evidence of the likely impact of the proposals to support the consultation. The IA lacks evidence to support many of the quoted figures. In particular, the critical assumption provided for the percentage reduction in strikes of 65% seems to be based entirely on previous voting behaviour i.e. we understood that the analysis assumes there will be no change in voting patterns (paragraph 78) following implementation of the proposals. However, the IA seems to contradict this by stating that the impact of the 40% threshold would be "...that turnout levels are likely to rise..." (paragraph 80). The Department needs either to provide further evidence to support the use of the 65% assumption, or estimate to what extent this number is likely to fall.
- The IA, throughout, refers both to the requirement of the 40% support threshold and application of the 50% participation threshold, and takes the view that the impact needs to be considered together. The RPC considers that the impact of the 40% and 50% thresholds must also be examined separately, and explored in consultation.
- The IA does not discuss the potential impact of the proposal on any action that would fall short of strikes, such as whether an increase in non-strike disruption would be likely.

The Department must address these issues within the final stage IA. The RPC notes that the IA has already been published for use in a public consultation, without prior scrutiny by the RPC.

In addition to the above points, the IA would benefit from addressing the points set out below.

- Further analysis on strike duration should be undertaken, discussing the cost to employers of short and one-off strikes, where notice has been given and which allows both employers and employees to adapt during the strike period.
- The RPC considers that a longer time series would have been useful context for the recent increase in strikes, and some discussion of the approach to these problems in other countries would have improved the quality of the presentation.
- Further evidence should be provided to support the estimate of familiarisation costs. In addition, the Department should provide evidence to support its assumption that communicating with members to keep them well informed and encouraging them to vote is not considered as a direct cost to unions (paragraph 71).
- Further analysis would be useful of how the restriction of strikes might affect the distribution of income between workers and employers, industrial relations generally and employee motivation in the longer term.
- The IA explains, at table 9, the proportion of union members who are private sector employees primarily within both the education (9.9%) and health and social work (19.1%) sectors. The Department should also clarify whether the provision of public services covered by this proposal is considered in scope of the business impact target.

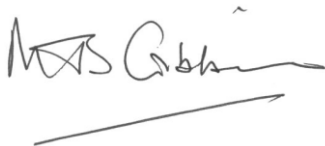
Finally, although the SaMBA appears reasonable for this stage, the analysis could be improved. Smaller unions would not be exempt from the proposal but the Department provides evidence that doing so would undermine the policy objective. In particular, the IA explains that unions with 10,000 or fewer members represent around 75% of all listed and scheduled unions. In addition, the Department estimates that 24% of unions with more than 10,000 members have fewer than 50 employees. However, this does not provide evidence of the extent to which larger unions are responsible for the most costly strikes. As such, at final stage, the Department should provide further analysis of the impact of excluding the smaller unions on delivering the policy objective. This should include providing an assessment of the proportion of the policy objective that would be achieved by exempting smaller unions and how the impact might be mitigated.

Initial departmental assessment

Classification	In scope
Equivalent annual net cost to business (EANCB)	Not provided – will be provided in overarching IA
Business net present value	£26.19 million
Societal net present value	£117.98 million

RPC assessment

Classification	In scope
Small and micro-business assessment	Sufficient at this stage



Michael Gibbons CBE, Chairman