Opinion: enactment stage IA
Origin: domestic
RPC reference number: RPC-3002(4)-BEIS
Date of implementation: various

Trade Union Act 2016

Department for Business, Energy and Industrial Strategy

RPC rating: fit for purpose

Description of proposal

The Department's enactment impact assessment (IA) updates the final stage IA on the Trade Union Bill to take account of changes made during its parliamentary passage. The Bill IA received a fit for purpose opinion from the RPC on 13 January 2016. The Department has also taken the opportunity to incorporate further evidence submitted by stakeholders and latest statistical data. As previously, the present IA addresses five measures:

(a) Introduce a 50 per cent turnout threshold for a ballot to provide a legal mandate for industrial action, and in six specific sectors (mainly key public services) an additional threshold of 40 per cent of those entitled to vote to be in favour. The latter will be implemented through secondary legislation, the impacts of which will be assessed in a separate IA.

(b) Introduce a six-month (or up to nine months by mutual agreement) time limit to the validity of a ballot mandate, move to a 14-day (or 7 days by mutual agreement) notice of industrial action, require unions to provide more information on the ballot paper, remove the requirement to take action within four to eight weeks, and report details of industrial action.

(c) Turn section F of the code of practice on picketing into a statutory obligation. This is aimed at tackling intimidation of non-striking workers.

(d) Require trade unions to have a notice from new members (joining after a transition period) that they are willing to contribute to a political fund, in order to take contributions to the fund from them. Trade unions must also inform members annually of their right to opt out. The Act also requires additional reporting of political fund expenditure to the Certification Officer.

(e) Widen the Certification Officer's powers of investigation and introduce a financial sanctions regime. This will include the power to introduce a levy on trade unions to partially recover the costs of running the Certification Office. The levy itself will be implemented through secondary legislation supported by a separate IA.

Date of issue: 21 December 2016

The most significant change is in respect of (d) above. Most notably, the requirement to opt into a political fund now applies only to members joining after a transition period, rather than to all existing members. There are also some changes to (b); in particular, the previous proposal was for a four-month time limit to the validity of a ballot mandate. The IA now also takes account of the Government's proposal for a 12-month transition period – the minimum permitted under the Act – in relation to the political fund reforms (d).

Impacts of proposal

Benefits

The main monetised benefit of the policy package comes from proposal (a). Business and society will benefit as a result of fewer days being lost to strike action. The Department has analysed 75 ballots for industrial action in the important public services, 69 ballots in other sectors and data on working days lost due to industrial action. From this, it estimates that the 50 per cent threshold will reduce working days lost by 35 per cent in the important public services and by 29 per cent in other sectors. The benefit to businesses and public sector employers is estimated at £12.6 million each year. This has increased from £11.8 million in the Bill IA. This is mainly the result of the use of more disaggregated data on labour disputes from the Labour Disputes Survey, enabling a closer match with industrial output data. The overall benefit of the proposals is £108.4 million over ten years in present value terms.

Costs

The cost of the proposals will fall primarily on trade unions. All 158 trade unions will be affected by proposals (a), (b), (c) and (e). The 24 trade unions that have political funds will be affected by proposal (d).

The Department estimates that:

- proposals (a) to (e) will involve familiarisation and other one-off costs to trade unions of £5.3 million. This has increased from £2.3 million in the Bill IA. The increase consists mainly of some unions needing to hold a special conference for rule book changes, the cost of adjusting IT systems and additional administrative expenditure under proposal (d).This reflects evidence provided by trade unions during the parliamentary passage of the Bill and informal consultation on the impacts of a 12-month transition period;

- widening the activities of the Certification Officer under proposal (e) will cost an additional £1.0 million each year, initially falling on the Exchequer; and

- reporting political expenditure under proposal (d) will cost trade unions around £0.1 million each year.

The Department estimates that, overall, the proposals will cost around £14.3 million over ten years in present value terms. This is lower than the £19.6 million in the Bill IA. The additional one-off costs referred to above are more than outweighed by a reduction in ongoing costs in relation to proposal (d), from the previous annual average of £0.9 million. This reflects the change in the proposal from one where a trade union is required to obtain a written notice from all employees and to repeat this process every five years, to one where this applies only to new members, can be done electronically and does not need to be repeated.

The assessment of the costs and benefits to business and voluntary or community bodies (including trade unions) involves two main adjustments to the above figures. First, it excludes the benefits from proposal (a) that will affect only public sector employers. Second, it excludes the costs to the Exchequer of widening the activities of the Certification Officer under proposal (e). This results in a business net present value of £23.69 million, giving an equivalent annual net direct cost to business (EANDCB) of -£2.6 million in 2014 prices.

Quality of submission

The Department's EANDCB figure represents an increase, in absolute terms, from the -£1.4 million figure in the Bill IA. This is largely accounted for by two adjustments described in the section above. These are a reduction in the recurring costs of proposal (d), reflecting a change to the policy, and an increase in the benefit of proposal (a), reflecting the use of more accurate data. These more than offset the increased one-off upfront costs in relation to proposal (d) outlined above. The Department's revisions to the analysis appear to be reasonable. The RPC can validate the EANDCB figure of -£2.6 million. This will be a qualifying regulatory provision that will be accounted for under the business impact target.

There are some areas where the IA could be improved.

Ongoing costs

Other than the cost of reporting political expenditure to the Certification Officer, the Department does not include any ongoing costs in relation to proposal (d). This is explained in the IA (page 64). For example, this states that the Certification Officer guidance will provide a model notice for union members about their right to opt out and that unions will be able to include this in their existing publications. That this could involve some additional administrative cost is acknowledged in the risks section (page 71). The IA would benefit from discussing whether unions provided evidence of possible ongoing costs in this area.

Transition period

The Government propose a 12-month transition period for the political fund reforms. The Department states that "*Seven of the unions responding to the consultation demonstrated that they would not be able to make the rule book changes under their normal democratic processes under a twelve month transition period, and would require a special conference to approve the changes*" (page 60). The IA proceeds to estimate a one-off cost of £1.7 million to these seven unions to hold such a conference. The IA would benefit from further discussion of whether a one year, rather than two year, transition period could result in other increased costs to trade unions, such as in adapting IT systems. The IA would also benefit from further discussion of the benefits of the shorter transition period and how this compares to the additional costs.

Impact of the 40 per cent threshold in important public services

As noted above, the impact of this measure will be covered in a subsequent IA. However, the Department includes a box on its potential impact (page 32). This indicates a net annual benefit "*in the region of £0.7 million*". Since this is significantly lower than that presented in the Bill IA, the present IA would benefit from an explanation of how this figure was calculated and, in particular, what drives this change.

Departmental assessment

Classification	Qualifying regulatory provision (OUT)
Equivalent annual net direct cost to business (EANDCB)	-£2.6 million
Business net present value	£23.69 million
Societal net present value	£93.91 million

RPC assessment

Classification	Qualifying regulatory provision (OUT)
EANDCB – RPC validated	-£2.6 million
Small and micro-business assessment	Sufficient

Michael Gibbons CBE, Chairman