UK Government

Making Work Pay:

Consultation on creating a modern framework for industrial relations

21 October 2024

Closing Date: 2 December 2024

Foreword

This Government was elected on a mandate to make work pay and secure a new deal for working people; one delivered in partnership with employers, workers, and trade unions.

Our Plan to Make Work Pay will close those loopholes to protect workers, making sure that good companies are not undercut by bad ones and that workers can get together and speak up to protect themselves from insecurity, inequality, discrimination or low pay. Most employers treat their staff well because they know it makes good business sense. Sadly, there will always be unscrupulous firms that take advantage of any loophole available. We are ensuring that workers are protected from exploitation by those companies who would abuse their power.

Rather than working in partnership with businesses, trade unions and workers, the previous government introduced significant restrictions on trade union action, and despite undemocratic legislation being enacted to reduce strikes, industrial action persisted.

This Government has already committed to repealing ideological, ineffective anti-union legislation, including the Trade Union Act 2016 and the Strikes (Minimum Service Levels) Act 2023. The UK lost more days to strike action in 2022 and 2023 than in any year since 1989, and the Strikes Act 2023 failed to prevent a single day of industrial action while in force.

These strikes did not happen because workers or trade unions had too much power. It was because Ministers chose to avoid grown up negotiation and failed to get around the table and bring people together to find a resolution. They chose instead to take aim at the rights of workers by imposing unnecessary red tape on trade unions, with longer notice periods and minimum service levels.

This Government wants people to have a voice at work and let them exercise control over their working lives. Whilst most employers do good by their workers, when this doesn’t happen, workers must have the ability to act collectively.

Therefore, we will update trade union legislation, so it is fit for a modern economy, removing unnecessary restrictions on trade union activity and ensuring industrial relations are based around collaboration, proportionality, accountability, and balancing the interests of workers, businesses and the wider public.

Our existing framework for industrial relations and collective bargaining is full of inefficiencies and anachronisms that work against cooperation, compromise and collaboration. We want to create a positive and modern framework for trade union legislation that delivers productive and constructive engagement, respects the

democratic mandate of unions, and works to reset our industrial relations. The changes set out in this consultation will do just that.

Introduction of the Employment Rights Bill within 100 days of taking office shows this Government's commitment to delivering the change the country voted so decisively for in July. We welcome the insights of all respondents and look forward to working with businesses, trade unions and civil society to grow our economy and raise living standards for everyone, everywhere.

That is what is in the interests of both employers and working people.

The Rt Hon Angela Rayner MP

Deputy Prime Minister and Secretary of State for Housing, Communities and Local Government

The Rt Hon Jonathan Reynolds MP

Secretary of State for Business and Trade and President of the Board of Trade

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Introduction

The Government's Plan to Make Work Pay is a central part of our mission to grow the economy, raise living standards across the country and create opportunities for everyone. The Plan will help more people to stay in work, support workers' productivity and improve our living standards. This represents the biggest upgrade and modernisation of workers' rights in a generation.

The Government is clear that economic growth is a top priority and is committed to our plan for long term national revival, ensuring the UK has the best growth in the G7 and that the economy works for businesses. This is why the Government is putting stability first, backing British businesses, getting Britain building again, kickstarting a skills revolution and making work pay.

The world of work needs an urgent upgrade to keep pace with the demands of a modern economy. In real terms, average salaries have barely increased from where they were before the 2008 financial crash, and the UK is significantly behind the average for employment protections for other countries in the OECD. This is not coincidental – poor labour protections are in part responsible for our sluggish economic growth.

By fixing the UK labour market, the Government will address head-on issues of flatlining wage growth[1], inequality of opportunity across the country, too many being stuck in insecure contracts[2], the ongoing gender pay gap and a rise in our economic inactivity, particularly post-Covid.

The Plan to Make Work Pay will tackle these issues. It will help more people stay in work, make work more family-friendly and improve living standards, putting more money in working people's pockets.

We are taking important steps to kickstart economic growth which benefits businesses, workers, and communities across the country. Upgrading workers' rights so that they are fit for modern life and our modern economy is key to making this happen.

The Plan to Make Work Pay was developed through close engagement with business and trade unions and that same spirit of partnership runs through the heart of everything this Government is doing. As we develop these proposals, we will fulfil our promise of being a pro-business and pro-worker government, where we do things with businesses and workers, not to them.

[1] Wage growth has flatlined over the last 14 years. In real terms, average salaries have barely inched north of where they were before the 2008 financial crash. If wages had continued to grow as they had under Labour, the average worker would be £11,000 better off today [Analysis of ONS, EARN 01: Average weekly earnings]

[2] The number of workers on zero hours contracts has risen significantly over the last decade to over 1 million [ONS, EMP17: People in employment on zero hours contracts], and only 1 in 6 low paid workers ever fully escapes into better paid work [D'Arcy, C. and Finch, D. (2017). The Great Escape? Low pay and progression in the UK's labour market. London: Resolution Foundation/Social Mobility Commission]

Immediate delivery for working people

This Government is clear that work should always pay. For the first time, the Low Pay Commission takes into account the cost of living. We have also announced plans to protect the self-employed from late payments, including a new Fair Payment Code and a clamping down on large companies who are being less than transparent on their payment performance.

We know there is a balancing act of putting more money in people's pockets and raising living standards, while protecting the brilliant businesses that pay these wages. Most businesses are proud to treat their staff well and know it makes good business sense. Sadly, there will always be unscrupulous firms that take advantage of any loophole available. We are ensuring that workers are protected from the exploitation of those companies who do not play by the rules, and by driving up standards our reforms will raise the floor and end the race to the bottom that saw some compete based on low pay, low standards and insecurity.

The introduction of the Employment Rights Bill marks another major milestone towards growing our economy which benefits businesses, workers and communities across the country. When people have more money in their pockets, businesses and the economy benefit. The Bill enables us to modernise our employment rights framework and a central plank of this is updating trade union legislation so that it is fit for our modern economy.

Fixing the foundations – A Modern Framework for Industrial Relations

In recent years, trade union legislation has presented a significant barrier to effective, positive industrial relations in the UK. The Trade Union Act 2016, the Strikes (Minimum Service Levels) Act 2023, and the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022 have each created bureaucratic hurdles within trade union legislation that have affected the ability of workers to organise, the ability of trade unions to organise, represent and negotiate on behalf of their workers, and the ability of workers and employers to cooperate, compromise and negotiate. In 2022 there were 2.5 million working days lost due to strikes in the UK, and in 2023 there were close to 2.7 million days lost, more than in any year since the 4.1 million in 1989.

Strike action must always be a last resort. It is costly to the worker, to the employer, and nobody wants to take industrial action. Many employers recognise the benefits trade unions bring to their business, including by helping to settle disputes swiftly and effectively, building trust amongst workers and boosting morale, ensuring workplaces are safe and reducing the costs of poor health and accidents, and helping with staff retention. However, burdens on trade union activity, and challenges in recognition and access, risk taking unions away from their core role of negotiation and dispute resolution.

This Government is committed to a new partnership approach of cooperation and collaboration that sees Government, employers and trade unions working together to

tackle the great challenges impacting on our economy. We want to create a positive and modern framework for trade union legislation that delivers productive, constructive engagement, respects the democratic mandate of unions, and works to reset our industrial relations.

Trade union law and regulation must be brought into the twenty-first century. The Employment Rights Bill will fix the foundations of a framework for industrial relations including through the repeal of legislation such as the Trade Union Act 2016. However, in places this will leave us with a legal framework that is over three decades old which has not adapted to significant changes in the working world. It is from this position the Government will build forward to a modern approach to industrial relations.

Building a new framework for industrial relations fit for a modern economy

The Government wants to develop a framework for industrial relations that will stand the test of time. This consultation is taking those first steps forward, to help us build positive, modern framework for our industrial relations. Workplaces and working practices have changed significantly over the last decade and trade union legislation which underpins industrial relations is in need of modernisation. Trade union legislation must be based on modern, democratic principles, that pave the way for constructive, proportionate, and transparent industrial relations. We are therefore seeking views on a number of changes to our industrial relations framework in this consultation, to modernise and hardwire a series of fundamental principles including collaboration, proportionality, accountability, and balancing the interests of workers, businesses and the wider public.

This consultation will run for 6 weeks, and the Government will publish a response to this consultation in due course.

The Bill and this consultation are the first steps towards modernising the legislation that underpins trade union activity and the right of workers to unionise. However, it is by no means the last step.

The Government will also consult further on modernising the trade union landscape following Royal Assent of the Employment Rights Bill, and will develop detailed policy options and launch further engagement on areas including but not limited to:

- The lowering of the admissibility requirements for the statutory trade union recognition ballot process as set out in section 47 of the Employment Rights Bill.
- Secondary legislation that delivers the commitment to ensure that union members and workers can access a union at work through a regulated and responsible route and develop through consultation a code of practice.
- Secondary legislation that delivers greater rights and protections for trade unions reps to undertake their work, strengthening protections against detriment and union members from intimidation, harassment, threats and blacklisting.

Consultation Details

Issued: 21 October 2024

Respond by: 11:59pm 2 December 2024

Enquiries and Responses to:

tradeunionpolicy@businessandtrade.gov.uk

Write to:
Trade Union Policy, Employment Rights Directorate

Department for Business and Trade
Old Admiralty Building
Admiralty Place
London
SW1A 2DY

Consultation reference: creating a modern framework for industrial relations

Audiences:

Businesses, Trade Unions, Business Groups or representatives, Consumers, Non-Governmental Organisations, Members of the Public, all other interested parties.

Territorial extent:

The measures under the Trade Union and Labour Relations (Consolidation) Act 1992 extend and apply to Great Britain except for sections 71-85 and 89-96 of Chapter VI (application of funds for political objects) of Part 1 which applies to Northern Ireland satellite offices – i.e. those located in Northern Ireland but whose head offices are located in Great Britain).

How to Respond

Respond online

or

Email to: tradeunionpolicy@businessandtrade.gov.uk

or

Write to:
Trade Union Policy, Employment Rights Directorate

Department for Business and Trade
Old Admiralty Building
Admiralty Place
London
SW1A 2DY

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our privacy policy.

We will publish a government response on GOV.UK.

Quality assurance

This consultation has been carried out in accordance with the government's consultation principles.

If you have any complaints about the way this consultation has been conducted, please email: enquiries@businessandtrade.gov.uk

A principles based approach

The Government wants to build a modern, positive industrial relations framework built around the four key principles set out below.

1. **Collaboration**– our vision for effective industrial relations is rooted in partnership between unions, businesses, and employees. Industrial relations should be based on collaboration, negotiation and engagement as central components. With this approach at the core of our modern framework, we can ensure disputes are addressed cohesively and effectively. Independent Pay Review Bodies (PRBs) already provide recommendations on pay for many public sector workforces; this framework will ensure that other workers and businesses also have a level playing field to be fairly represented throughout the negotiation process.

2. **Proportionality** – we will ensure that proportionality is at the heart of our reforms. Industrial action should always be a last resort, and we must build a framework that encourages and enables communication between unions, workers, and employers to enable the resolution of differences before the point of industrial action is reached. Effective resolution enables happier and more productive workers, as engagement resolves concerns, and constructive dialogue delivers the needs of both employers and workers. By ensuring proportionality runs through our modern framework, we can deliver benefits for all involved. Employers will have the information they need when disputes arise; employees will have the unhindered ability to join a union and have their views represented in a fair, democratic, and equitable fashion; and unions will have the ability to undertake their core role of engagement and dispute resolution uninhibited.

3. **Accountability** – Unions must remain accountable to their members, while employers must be accountable to their workers. Relationships built on trust and accountability, are key to tackling problems of insecurity, inequality, discrimination, and workplace conditions. When workers are empowered to act as a collective, and employers accountable for constructive engagement, both workers and employers can secure mutually beneficial conditions. Therefore, a modern framework for industrial relations must be underpinned by accountability to deliver the resolution of issues, to mutual success.

4. **Balancing the interests of workers, businesses and the wider public** – The interest of workers, and employers must be carefully balanced in a modern industrial relations framework. By improving this balance, we can ensure that our industries and public services continue to deliver economic growth and greater productivity as employers, workers and unions work in partnership. Greater in-work security, decent pay and conditions, and more autonomy in the workplace will improve the lives of working people. This will in turn support businesses by helping them to grow, bring substantial economic benefits, and support our public services to rebuild and deliver the world class services that they can provide.

Question 1 – Do you agree or disagree that these principles should underpin a modern industrial relations framework? Is there anything else that needs consideration in the design of this framework?

Question 2 – How can we ensure that the new framework balances interests of workers, business and public?

In reference to creating a new, modern industrial relations framework around these principles, this consultation seeks views on the following areas:

1. Unfair Practices during Trade Union Recognition Processes
2. Political Funds
3. Simplifying Industrial Action Ballots
4. Expiry of Mandate for Industrial Action
5. Updating the Law on Repudiation
6. Clarifying the Law on Prior Call
7. Rights of Access

Proposals and questions

Unfair Practices during the Trade Union Recognition Process

Background

The process for trade union recognition follows two possible routes, the voluntary route whereby a union works collaboratively with an employer to agree how to operate collective bargaining, or the statutory route, whereby a union and employer cannot agree on recognition and the recognition request is sent to the Central Arbitration Committee (CAC) to commence the statutory recognition process.

The statutory recognition process is summarised below:[3]

Step 1: The union must ask the employer in writing if the employer will agree to recognise them voluntarily. They have 30 working days, or longer if agreed with the union, to come to an agreement about which workers are in the bargaining unit, and whether the union should be recognised for collective bargaining.

Step 2: If the union and employer cannot agree, or the employer has agreed the bargaining unit but not recognised the union, the union can apply to the CAC for statutory recognition.

Step 3: If the CAC accepts the union's application for statutory recognition and the employer has not agreed on the bargaining unit with the CAC, the employer must send the CAC and the union: a list of the categories of workers who will be in the proposed bargaining unit, a list of the places where they work, and the number of workers in each category at each workplace**.**

Step 4: When the bargaining unit has been agreed or decided, the CAC will decide if there needs to be a ballot. If a majority of workers in the bargaining unit are members of the union, the CAC may issue a declaration that the union is recognised for collective bargaining without a ballot. However, this is not an automatic process. The CAC must order a ballot if it is satisfied that one of three conditions apply:

1. That it is in the interests of good industrial relations to hold a ballot
2. That a significant number of union members in the bargaining unit inform the CAC that they do not want recognition
3. That membership evidence is produced which leads the CAC to doubt whether a significant number of union members want recognition.

The CAC must order a ballot where union members do not form the majority of the proposed bargaining unit.

[3] The full trade union recognition process is set out on GOV.UK: Employers: recognise a trade union: Overview - GOV.UK (www.gov.uk)

Step 5: The union and employer will usually find out the result of the vote within 48 hours after the ballot closes. A majority of workers who vote in the ballot must support union recognition, and at least 40% of workers in the bargaining unit must be in support for the union to be recognised. The latter requirement will be removed if the Government's Employment Rights Bill is passed in its current form.

Unfair practices refer to actions taken by either the employer or the union that improperly influence the outcome of a ballot related to union recognition or derecognition. Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"), inserted by the Employment Relations Act 1999 and subsequently amended by the Employment Relations Act 2004, sets out the statutory procedure for the recognition and derecognition of trade unions for the purpose of collective bargaining.

Schedule A1 places various duties and obligations on parties during the period of a recognition ballot including the following (non-exhaustive)[4]:

a) A duty on the employer to co-operate generally, in connection with the ballot, with the union and the independent person appointed to conduct the ballot;
b) A duty on the employer to give a union applying for recognition reasonable access to the workers constituting the bargaining unit;
c) A duty on the employer to refrain from making any offer to any of the bargaining unit to induce any or all of them not to attend a relevant meeting with the union, which offer is not reasonable in the circumstances;
d) A duty on the employer to refrain from taking or threatening to take any action against a worker for attending meetings between the union and the workers in the bargaining unit;
e) An obligation on both the employer and the union to refrain from using an unfair practice with a view to influencing the result of a recognition ballot.

Complaints about any such actions which contravene the above can be made to the CAC.

Proposal

Extending the Code of Practice on access and unfair practices during recognition and derecognition ballots to cover the entire recognition process

The time period in which the protections (set out in Schedule A1 and detailed in the Code of Practice on access and unfair practices during recognition and derecognition ballots) from unfair practice apply is specific to the CAC-mandated ballot period (step 4/5 of the statutory recognition process). By restricting the protections from unfair practices to this time period, there remains the potential for an employer to utilise unfair practices throughout steps 1 – 3 of the statutory recognition process. This means that

[4] For complete detail of the requirements of Schedule A1, read the relevant legislation and the Code of Practice On Access And Unfair Practices During Recognition And Derecognition Ballots

prior to the CAC ordering a ballot (step 4), there are no specific protections from unfair practices, and an employer might be able to get a head start during the earlier stages of the recognition process by attempting to influence workers away from any union engagement without breaking any rules relating to unfair practices.

There are other existing broader safeguards for unions and workers in the 1992 Act which might restrain some such conduct by employers. These include: section 145A (inducements relating to union membership or activities); section 145B (inducements relating to collective bargaining); and section 146 (detriment on grounds relating to union membership or activities). However, these are not targeted at the recognition process.

The Government is therefore proposing that the scope of the Code of Practice on unfair practices in recognition ballots should be extended to include the entire recognition process from the point when the CAC accepts the union's application for statutory recognition. This would prevent a situation in which an unscrupulous employer has a 'head start' and ensure that unfair practices can be enforced against throughout the TU recognition process, rather than just the ballot phase.

Question 3 – Do you agree or disagree with the proposal to extend the Code of Practice on access and unfair practices during recognition and derecognition ballots to cover the entire recognition process from the point when the Central Arbitration Committee (CAC) accepts the union's application for statutory recognition? Please explain your reasoning and provide any evidence on cases that support your view.

Employers required to share the number of workers in a proposed bargaining unit and prevented from altering that number

Paragraph 27A(2) of Part 1, Schedule A1 of the 1992 Act defines what is an unfair practice. An unfair practice is where a worker is offered money or some other form of inducement to affect their vote, or where a worker is, (or threatened to be) coerced, disciplined, dismissed or subjected to some other form of detriment to influence their vote. This list of unfair practices in trade union legislation focuses on how an unfair practice can affect an individual or individual workers but does not include practices that could affect the integrity of the recognition process as a whole: for example, there is no restriction under the current unfair practices definition that would prohibit altering the bargaining unit through recruitment into that unit.

This omission within the definition of unfair practices is significant. Under the current statutory recognition process, the CAC have the power to recognise a union without a ballot of members when the bargaining unit formed comprises over 50% of union members.

Therefore, an employer who is concerned that their workforce meets the 50% union membership requirement (whereby the CAC may automatically recognise a union within their workforce) could seek to expand their workforce in an attempt to dilute the

union membership in the bargaining unit. By recruiting more staff into the bargaining unit, the employer may succeed in reducing the bargaining unit's union density to below 50%. This would result in the CAC no longer being able to directly recognise a union without a ballot, and the statutory recognition process would require that the bargaining unit is balloted on whether a union should be recognised.

The Government is aware of at least one instance where there has been mass recruitment into a bargaining unit with the aim to thwart a trade union recognition application. We are unclear as to whether there have been any other instances of mass recruitment into a bargaining unit for such a purpose and would welcome views. The Government wants to prevent this happening again in future. We are therefore proposing that the union, on the date it submits its recognition application to the CAC, provides a copy of its application to the employer. We then propose requiring employers to provide the number of workers the employer reasonably believes are in a proposed bargaining unit to the CAC within 10 working days of the recognition application being submitted. For the purpose of the recognition process, this number could then not increase throughout the recognition process (it may go down through normal departures, i.e. workers leaving, retiring, etc.). An employer would be free to recruit more staff post the date when the union submits a recognition application to the CAC, but these new staff would not be eligible to count towards the number in the bargaining unit for the purposes of the recognition process and would not be entitled to vote in any subsequent recognition ballot. This would dissuade employers from engaging in significant recruitment campaigns as a means to thwart union recognition by diluting the bargaining unit of union members.

This proposal would prevent an important aspect of harmful anti-union behaviour but would somewhat complicate the recognition process and would also diminish the rights of workers recruited into the bargaining unit following the date of the union's application, quite possibly for sound organisational reasons unrelated to the recognition process. Such workers would be affected for the future by the outcome of the recognition process but would be denied their normal right to influence that outcome.

The Government is therefore willing to consider other proposals to stop the practice of mass recruitment into a bargaining unit and would welcome views suggesting alternatives. These might include placing a new obligation on employers not to recruit into a proposed bargaining unit for the purpose of seeking to prevent the union being recognised.

Question 4 – Do you agree or disagree with the proposal to introduce a requirement that, at the point the union submits its formal application for recognition to the Central Arbitration Committee (CAC), the union must provide the employer with a copy of its application? Please explain your reasoning.

Question 5 – Do you agree or disagree that the employer should then have 10 working days from that date to submit the number of workers in the proposed bargaining unit to the Central Arbitration Committee (CAC) which could not then

be increased for the purpose of the recognition process? Please explain your reasoning.

Question 6 – Can you provide any examples where there has been mass recruitment into a bargaining unit to thwart a trade union recognition claim? Please provide as much detail as you can.

Question 7 – Are there any alternative mechanisms that you consider would prevent mass recruitment into a bargaining unit for the purpose of thwarting union recognition applications? Please provide as much detail as you can.

Question 8 – Do you have any views on a possible alternative to place a new obligation on employers not to recruit into a proposed bargaining unit for the purpose of seeking to prevent a union from being recognised? How would this alternative work in practice?

Reaching a voluntary access agreement

Under the existing Code of Practice, once the CAC has notified the employer of the intent to hold a recognition ballot, there is a period of 10 working days before the CAC proceeds with the arrangements for the ballot. The Code of Practice suggests that employers and unions should make full use of this notification period to prepare for access, and that access will begin once the ballot arrangements have been made.

However, the Code does not specify a timeframe in which an access agreement must be reached. Therefore, in a situation whereby an access agreement has not been reached within 10 working days, the union is required to seek a delay to the ballot arrangements whilst access negotiations continue. By delaying the ballot arrangements, the access period is also delayed, as the CAC must complete the ballot arrangements before access can commence.

Once the delay to the ballot process has been sought, if access agreements still cannot be made, either party may ask the Advisory, Conciliation and Arbitration Service (ACAS) to conciliate. However, if the access talks remain deadlocked, then the CAC may then intervene and adjudicate and make an order. The Government considers that this process is overly drawn-out and provides time for unfair practices to occur prior to the ballot period (as addressed in this consultation, prior to the CAC ordering a ballot, there are no specific protections from unfair practices). Therefore, the Government is proposing the introduction of a 20-working day window for access negotiations to conclude, and in the case there is no agreement, the CAC will directly adjudicate after these 20-working days have expired, unless both parties request a delay to allow negotiations to conclude (this delay to be capped to 10 working days).

Question 9 – Do you agree or disagree with the proposal to introduce a 20-working day window to reach a voluntary access agreement from the point when the Central Arbitration Committee (CAC) has notified the parties of its decision to hold a trade union recognition ballot?

Question 10 – If no agreement has been reached after 20 working days, should the Central Arbitration Committee (CAC) be required to adjudicate and set out access terms by Order? If yes, how long should CAC be given to adjudicate?

Question 11 – Once 20 working days have expired, should the Central Arbitration Committee (CAC) be allowed to delay its adjudication in instances where both parties agree to the delay? Should this delay be capped to a maximum of 10 working days?

Making an unfair practice claim

The current legislation (paragraph 27B (4) of Schedule A1 to the 1992 Act) requires that a complaint as to unfair practice is only well founded in the case that:

1. the party complained against used an unfair practice, **and**
2. the CAC is satisfied that the use of that practice changed or was likely to change, in the case of a worker entitled to vote in the ballot, the intent to vote or abstain, the intent to vote in a particular way, or how they voted.

Therefore, in a situation whereby a party used an unfair practice that the CAC does not view as having changed or being likely to change the voting behaviour there is currently no punishment for the use of an unfair practice. Evidence to date has shown that no union complaints in relation to alleged unfair practices have succeeded. This is because it is difficult to prove that an unfair practice has changed, or was likely to have changed, the vote of a particular individual or group of workers in the bargaining unit. It is also difficult to obtain evidence from individual workers who may be frightened to speak up when faced with an employer that is hostile to trade union recognition.

The Government believes that unfair practices should not be happening, irrespective of their effect, and that it should be sufficient to show that these have occurred without requiring a further test as to whether the unfair practice did or did not, or were or were not likely to, influence the votes of workers. The Government is therefore considering three options:

- **Option 1**: Removing the second test from Schedule A1 to ensure unfair practices are always addressed. This is the Government's preferred option.

- **Option 2:** Under this option, the second test would not be removed, but instead change how the CAC determines complaints in relation to it. The CAC could be required to take a more purposive approach to deciding on unfair practices claims by requiring the CAC to be satisfied that an objective test had been met where a reasonable worker might change his/her voting intention in the circumstances outlined in a union complaint. A purposive approach would enable the CAC to move away from its current approach that relies on evidence from individual workers, which can be hard to come by, to determining whether a reasonable worker might have changed their voting intention as a result of the alleged unfair practice. We would welcome views on how an objective test could be defined.

- **Option 3:** This option would keep the second test in place but would allow the CAC to accept evidence from workers that is anonymised.

Additionally, under the current legislation, a complaint relating to unfair practice during the balloting period must be made before the first-working day after the closure of the recognition ballot. The rationale for the current legislation is that this prevents 'sour grapes' complaints once the ballot result is known. However, if allegations of unfair practices are identified after the closure of a recognition ballot, there is currently no route through which these unfair practices can be addressed. The Government is proposing that the time period for complaints be extended to 3 months following the closure of the recognition ballot. We are also willing to consider whether a shorter time frame would be more appropriate and we welcome comments on this.

Question 12 – Which (if any) of the options provided do you agree with in terms of the tests set for making an unfair practice claim? Please explain your reasoning.

Question 13 – Should the Government extend the time a complaint can be made in relation to an unfair practice to within 3 months of the date the alleged unfair practice occurred?

Political Funds

Background

A trade union political fund is a separate financial resource that unions must establish if they wish to engage in political activities. The use of general union funds for political purposes is prohibited. Currently, all unions are required to set up a political fund if they wish to spend union money on 'political objects' as defined in Section 72 of the 1992 Act. Trade unions use their political funds to campaign on political issues that matter to their members and for some trade unions, to support political parties.

Since 1913 trade unions wishing to be involved in activity that might be deemed political, had to ballot their members on the establishment of a political fund. In 1984, the law changed to require unions to ballot their members every 10 years (known as a review ballot) to allow the political fund to continue. Today, political funds are regulated under the 1992 Act which mandates that unions must establish a separate fund specifically for political expenditure. The 1992 Act extends and applies to Great Britain except for sections 71-85 and 89-96 of Chapter VI (application of funds for political objects) of Part 1 which applies to unions with a head or main office in Great Britain and also an office located in Northern Ireland. The rules for conducting the political fund resolution must be adopted as rules of the union and approved by the Certification Officer before the ballot takes place. The procedures for conducting a review ballot are the same as those for a ballot to establish the political fund. Members contribute to the political fund by paying a political levy. The size of the levy is determined by each individual union.

Some of the rules in relation to political funds were introduced by the Trade Union Act 2016 ("the 2016 Act") and are being repealed by the Employment Rights Bill introduced to Parliament on the 10 of October 2024, Under the 2016 Act, members joining a trade union after 1 March 2018 must explicitly consent (opt-in) to pay the political levy, rather than being automatically enrolled. The opt-in notice may be withdrawn by submission of a withdrawal notice at any time and unions must notify new members on an annual basis of their right to submit a withdrawal notice. If the measures in the Employment Rights Bill are approved by Parliament without amendment, new members joining a trade union will then be automatically opted-in to contributing to a political fund (assuming there is one). In that event, the Government also intends to make transitional provision in regulations so that existing union members at the time of commencement of the Employment Rights Bill who did not opt in to the political fund when they joined the union under the 2016 Act regime will remain opted-out, unless they then choose to opt in. Existing members who are opted-in at the time of commencement of the Employment Rights Bill, either through actively opting in to political funds while the 2016 Act was in force, or through being opted-in automatically before the 2016 Act was in force, will remain opted-in unless they then choose to opt out.

Separate to the 2016 Act, the provisions related to political funds are set out in Chapter VI of the 1992 Act (as amended).

Proposal

The Government is proposing to abolish the 10-year requirement for unions to ballot their members on the maintenance of a political fund by removing this requirement in section 73(3) of the 1992 Act. This would simplify the political fund process - once a political fund has been set up and approved by members, there would be no further requirement to consult with the membership and the political fund could continue indefinitely unless closed by the trade union leadership. Approval by trade union members would only take place when a new political fund is being set up.

The Government, however, recognises this proposed change could reduce awareness amongst members of their right to opt-out of contributing to a political fund. Consequently, we are keen to hear your views on whether members should be reminded on a 10-year basis that they can opt out of the political fund. If the 10-year review ballot requirement is removed, we are proposing that members would still be given notice of their right to opt-out every 10 years. These reminders would continue to be sent to union members on a 10-year basis via their preferred method of communication as set for their wider correspondence from their trade union. If members choose to remain opted-in to the political fund, then no further action is required by the trade union. If members choose to opt-out after receiving the reminder, this can be requested and actioned in line with Section 84 of the 1992 Act.

Question 14 – Do you agree or disagree with the proposal to remove the 10-year requirement for unions to ballot their members on the maintenance of a political fund? Please provide your reasoning.

Question 15 – Should trade union members continue to be reminded on a 10-year basis that they can opt out of the political fund? Please provide your reasoning.

Question 16 – Regulations on political fund ballot requirements are applicable across Great Britain and offices in Northern Ireland belonging to trade unions with a head or main office in Great Britain. Do you foresee any implications of removing the 10-year requirement for unions to ballot their members on the maintenance of a political fund across this territorial extent?

Simplifying Industrial Action Ballots

Securing a mandate for negotiation and dispute resolution

Background

The Trade Union Act 2016 amended the 1992 Act, introducing new restrictions on trade unions and their members as to how and when they could take industrial action and conduct their duties.

Section 2 of the 2016 Act brought in a requirement that industrial action ballots must achieve a 50% turnout in order for the results to be legally valid. This means that since 1 March 2017, for an industrial action ballot to be successful, 50% of those eligible to vote must vote in the ballot. This was in addition to the requirement that a simple majority of those votes must be in favour of action. For example, if 100 members are balloted, at least 50 must vote, of which 26 or more must vote yes to achieve a valid mandate for strike action. If only 49 of the 100 balloted vote, employees cannot take industrial action even if all 49 vote in favour as they will not have reached the required 50% turnout threshold. This requirement is being repealed though the Employment Rights Bill.

Section 3 of the 2016 Act brought in a requirement to secure 40% support in strike ballots for six important public services. This means that if 100 members are balloted, at least 50 must vote and at least 40 vote yes. The important public services are education of those aged under 17, fire, health, border security, transport and nuclear decommissioning. This requirement is being repealed though the Employment Rights Bill.

The proposed changes mean a trade union will need a simple majority of trade union members who responded to the ballot to vote in favour of the action. For example, if 100 members are balloted, of whom 25 vote in favour of industrial action and 15 against, then the trade union would secure a legal mandate for action.

Proposal

The Government wants to hardwire engagement and accountability into our industrial relations framework. We recognise that reverting to legislation which is nearly 30 years old may not reflect the requirements of a modern economy and the Government must consider how it will interact with its other plans to introduce e-balloting. Industrial action is expensive, disruptive, and always a last resort, so that is why we are committed to building a modern, collaborative, framework for industrial relations that will stand the test of time based on cooperation and collaboration. In light of our wider commitments to deliver e-balloting, and the wider repeal of the 2016 Act, the Government is keen to fully understand how we can ensure that trade unions have a meaningful mandate to support negotiations with employers and deliver effective dispute resolution.

Question 17 – How should Government ensure that our modern framework for industrial relations successfully delivers trade unions a meaningful mandate to support negotiation and dispute resolution?

Industrial Action Ballot Provisions

Background

The Government intends to simplify the current requirements on industrial action ballots and notice to employers.

The current requirements for trade unions are contained in the following sections of the 1992 Act:

- Section 226A – Notice of ballot and sample voting paper for employers (this refers in part to the voting paper to be sent under section 229);
- Section 231 – Information as to result of ballot (this concerns notification to members but is referred to in section 231A);
- Section 231A – Employers to be informed of ballot result;
- Section 234A – Notice to employers of industrial action.

Sections 229 and 231 were amended by the 2016 Act to increase the amount of information about the ballot paper unions are required to provide to employers ahead of a ballot and the information unions are required to give to members and employers on the result of the ballot. These amendments are proposed to be repealed under the Employment Rights Bill as introduced to Parliament. They will significantly reduce the amount of information required to be contained in the voting paper and the amount of information required to be provided to the employer about the ballot result.

The complexity of information required can expose trade unions to excessive legal action when disagreements arise over whether the information provided meets the complex requirements of the 2016 Act. The risk of such legal action occurring has been significantly reduced by case law. Nonetheless, legal action has been used in an attempt to prevent industrial action taking place over these disagreements.

The Government intends to simplify the requirements on industrial action ballots and notice to employers to: help ensure that both employer and union resources are devoted to resolving disputes, reduce pressure on the court system and reduce the scope for employers to challenge on a technicality industrial action that has democratic workplace support, more evenly distribute power in an industrial dispute and protect individual union members from identification. The existing information provision requirements can lead to a situation whereby in smaller companies, or narrowly defined bargaining units, employers have the potential to identify individual union members. By reducing the level of information required, workers who are members of trade unions will be additionally protected from individual identification.

The Government will also be updating the Code of Practice on Industrial Action Ballots and Notice to Employers following Royal Assent of the Employment Rights Bill to recommend that email is used instead of first-class post, where possible. Furthermore, as part of our plan to modernise the frameworks of industrial relations we will also be hosting roundtables on delivering modern, secure electronic balloting for union ballots. These will proceed this coming winter with cyber security experts, unions and other interested parties invited.

Section 226A (Notice of ballot and sample voting paper for employers)

Under section 226A of the 1992 Act the union must take such steps as are reasonably necessary to ensure the employer receives written notice of an industrial action ballot no later than seven days before the opening day of the ballot (i.e. the first day on which a voting paper is sent to any person entitled to vote).

The notice must state that the union intends to hold the ballot and specify the opening date of the ballot.

The notice must contain:

- a list of the categories of workers being balloted,
- a list of the workplaces in which the workers work,
- the total number of workers concerned,
- the total number of workers in each of the categories of workers being balloted,
- the number of workers concerned at each workplace
- an explanation of how these figures were arrived at

Where some or all of the workers have their union subscriptions deducted from their wages, the notice must contain the information listed above or such information as will enable the employer to readily deduce the total number of workers concerned; the categories of workers and the numbers in each of those categories; and the workplaces at which the workers work and the number of employees at each workplace.

Unions must also provide a sample ballot paper to employers no later than the third day before the opening of the ballot.

The union is also required to allow sufficient time for delivery of the ballot notice to the employer. The Code of Practice on Industrial Action Ballots and Notice to Employers currently recommends the use first-class post, courier, fax, email or hand delivery and to consider obtaining confirmation that the employer has received the notice, by using recorded delivery or otherwise. The Government will be updating the Code of Practice following Royal Assent of the Employment Rights Bill to recommend that email is used instead of first-class post, where possible.

Proposal

The Government proposes to amend section 226A of the 1992 Act to simplify the amount of information that unions are required to provide to employers in the notice of ballot. The proposed changes are:

- Remove the requirement for unions to provide the employer with:
    - the total number of employees in each of the categories of workers being balloted;
    - the number of workers concerned at each workplace;
    - an explanation of how these figures were arrived at;

- Remove the information requirements for workers who have their subscriptions deducted from their wages, namely:
    - the total number of employees in each of the categories of workers being balloted;
    - the number of workers concerned at each workplace; OR
    - such information to enable the employer to readily deduce the numbers of employees in each of the categories of employees; and the number of employees at each workplace.

As a result of the proposed changes, unions would be required for all employees, irrespective of how they make their union subscription payments to:

- Provide a notice of ballot to employers no later than 7 days before the opening day of the ballot.
- The notice must:
    - State that the union intends to hold the ballot and specify the opening date of the ballot;
    - Contain a list of the categories of workers being balloted;
    - Contain a list of the workplaces in which the workers work;
    - Contain the total number of workers concerned.

The union must also provide a sample voting paper no later than three days before the ballot.

In addition, under section 226A unions are currently required to provide a list of the categories of worker to be balloted. The general starting point is for trade unions to provide general job categories however there may be circumstances where greater specificity may be beneficial in order to assist the employer in their planning for potential industrial action. However, there have been situations where valid industrial action has been challenged by employers in the courts, due to disagreements about the specificity of category. The Government is therefore seeking views on whether greater specificity in section 226A of the 1992 Act on the categories of worker to be balloted would be helpful as part of the notice to employers of ballot under section 226A.

Question 18 – Do you agree or disagree with the proposed changes to section 226A of the 1992 Act to simplify the information that unions are required to provide employers in the notice of ballot? Please explain your reasoning.

Question 19 – Do you have any views on the level of specificity section 226A of the 1992 Act should contain on the categories of worker to be balloted?

Section 231 (Information as to result of ballot) and 231A (Employers to be informed of ballot result)

Following an industrial action ballot, the union must, as soon as is reasonably practicable, take steps to inform all those entitled to vote (section 231 of the 1992 Act) and their employers (section 231A of the 1992 Act) of:

- the number of individuals entitled to vote in the ballot;
- the number of votes cast;
- the number of individuals voting yes or no;
- the number of spoiled papers;
- whether the votes cast are at least 50% of the number of individuals entitled to vote; and
- in important public services[5], whether the responses stating 'yes' account for at least 40% of eligible voters.

Where separate workplace ballots are required, these details must be notified separately for each such workplace.

Note that, following the repeal of the 2016 Act, unions will no longer be required to state:

- the number of individuals entitled to vote in the ballot;
- whether the votes cast are at least 50% of the number of individuals entitled to vote; and
- in important public services, whether the responses stating 'yes' account for at least 40% of eligible voters.

Under section 231A, the union must provide the ballot result to the employer as soon as reasonably practicable after the holding of the ballot, and therefore before giving 14-days' notice (or seven days where agreed between the employer and the union) of industrial action, if it has secured a ballot mandate. If this information is not provided, any industrial action organised will not have the support of a ballot and will not be protected industrial action.

The 1992 Act does not currently specify a mechanism for delivery of the ballot result notice, and many unions deliver the notice by recorded postal delivery or email. However, the volume of notifications delivered to workers and employers can be

[5] Important Public Services were introduced under the Trade Union Act 2016. It introduced a 40% threshold of support that must be satisfied in ballots for industrial action in important public services. These were specified as health, education, fire, transport and border security sectors.

significant and potentially present a burden. Therefore, the government will seek input as to whether there is scope to streamline this process by suggesting a mechanism for the delivery of the ballot result, and if so, what that mechanism should be.

Proposal

The Government is considering amending the requirement for unions to provide the results of the ballot to those entitled to vote and their employers 'as soon as reasonably practicable' and considering whether to specify a specific timeframe for providing the results of the ballot.

Question 20 – What are your views on the proposal to amend the requirement that unions should provide information on the results of the ballot to those entitled to vote and their employers 'as soon as reasonably practicable'?

Question 21 – What do you consider is a reasonable time requirement for unions to inform members and their employers of the outcome of the ballot?

Question 22 – What do you consider are suitable methods to inform employers and members of the ballot outcome? Should a specific mechanism be specified?

Section 234A (Notice to employers of industrial action)

Following a successful ballot for industrial action, if the union decides to authorise or endorse industrial action, it must take such steps as are reasonably necessary to ensure that any employer who the union believes employs workers who will be called upon to take industrial action receives no less than 14 days (or seven days if agreed by the union and the employer) written notice specifying:

- a list of the categories of worker to which the relevant affected workers belong,
- a list of the workplaces at which said workers work,
- the total number of affected workers,
- the number of affected workers in each category listed,
- the numbers of affected workers who work at the listed workplaces,
- and an explanation of how these figures were arrived at.

OR

where some or all of the workers have their union subscriptions deducted from their wages:

- either the list and figures mentioned above, OR
- information that will enable the employer to deduce the total number of the affected workers, the categories of worker to which the affected workers belong and the number of the affected workers in each of those categories, and the

workplaces at which the affected workers work and the number of them who work at each of those workplaces.

The notice should also state:

- whether the action is to be continuous (and if continuous, the intended date for action to begin) or discontinuous (and if discontinuous stipulate the intended dates of action),
- whether the industrial action is a strike if it relates to the provision of a relevant service.[6]

For industrial action to be protected, the union must provide an employer with a notice of industrial action.

Proposal

The Government is proposing to amend section 234A to simplify the amount of information that unions are required to provide in the notice to employers of industrial action.

The proposed changes are:

- Remove the requirement to provide the number of affected workers in each category listed;
- Remove the requirement to provide an explanation of how these figures were arrived at;
- Remove the requirement to provide the information stipulated above where some or all of the workers have their union subscriptions deducted from their wages.

As a result of the proposed changes, unions would be required to take such steps as are reasonably necessary to ensure that any employer who the union believes employs workers (irrespective of subscription payment method) who will be called upon to take industrial action receives no less than 14 days (or seven days if agreed by the union and the employer) written notice specifying:

- The numbers of affected workers who work at the listed workplaces;
- a list of the categories of worker to which the relevant affected workers belong;
- a list of the workplaces at which said workers work;
- the total number of affected workers.

In addition, under section 234A unions are currently required to provide a list of the categories of worker to which the relevant affected workers belong. The general starting point is for trade unions to provide general job categories; however, there may be circumstances where greater specificity may be beneficial in order to assist the

[6] The requirement to specify whether the industrial action is a strike if it relates to the provision of a relevant service will be removed by the repeal of the Strikes Act 2023 - Public services "back on track" as Strikes Act to be repealed - GOV.UK (www.gov.uk)

employer in their planning for industrial action. The Government is therefore seeking views on whether greater specificity in section 234A of the 1992 Act on the categories of worker to which the relevant affected workers belong would be helpful as part of the notice to employers of industrial action under section 234A.

Question 23 – Do you agree or disagree with the proposal to simplify the amount of information that unions must provide employers in the industrial action notice? Please explain your reasoning.

Question 24 – What are your views on the degree of specificity section 234A of the 1992 Act should contain on the categories of worker?

Timing and Duration of Industrial Action

Background

Section 234 of the 1992 Act, as amended by the Trade Union Act 2016, stipulates that the members' support for a union's proposed industrial action will automatically expire six months after the date of the ballot, or up to 9 months after the date of the ballot where the longer period is agreed between the union and the members' employer. Once this expiration date has been reached, the trade union must hold a new ballot to take industrial action.

After securing a ballot mandate, trade unions must give employers notice before any industrial action takes place. This is required by section 234A of the 1992 Act. The 2016 Act amended the 1992 Act to increase the notice period from 7 to 14 days, unless a shorter period is agreed by the employer (section 8).

The Employment Rights Bill introduced to Parliament on 10 October includes provision to repeal the amendment made by the 2016 Act to section 234A of the 1992 Act thereby reverting to a 7-day notice period.

The Government, however, recognises the importance of striking a balance between allowing for effective strike action, while also ensuring that employers are able to reasonably prepare. This is especially important in public services such as the NHS where managers need adequate time to plan for periods of industrial action, including ensuring adequate time to agree patient safety mitigations with unions. In addition, restricted time to effectively plan to cover shifts and to reschedule and cover appointments is likely to increase the number of rescheduled or cancelled appointments, therefore increasing the overall NHS waiting lists further, which runs contrary to our commitment to drive waiting lists down.

The 2016 Act removed the requirement from the 1992 Act that there must be some industrial action commenced within a period of 4 weeks (or 8 weeks following agreement between the trade union and the employer) following a ballot in order for the mandate to remain valid. We do not intend to bring back the requirement that there must be some industrial action within a period of 4 to 8 weeks following a ballot in order for the mandate to remain valid.

The Employment Rights Bill introduced to Parliament does not repeal the changes made by section 9 of the 2016 Act to section 234 of the 1992 Act.

Proposal

Recognising the importance of striking a balance between enabling effective industrial action and ensuring employers are able to reasonably prepare for such action, the Government is seeking views on what notice period is suitable for modern working patterns and practices.

The Government is also proposing amending section 234 of the 1992 Act to extend the expiry of mandate for industrial action from 6 to 12 months. Negotiations between trade unions and employers can sometimes last longer, or other resolution of the underlying industrial dispute take longer, than the existing 6 months expiration date, resulting in trade unions having to re-ballot their members which can be costly and time-consuming. The Government believes a 12-month mandate expiry date would strike the correct balance between ensuring industrial action is based on a recent vote, but also reducing the need for re-ballots. The majority of industrial action disputes conclude within 1 year, and therefore extending the mandate expiration date will ensure that only a limited number of disputes need to re-ballot.

We do not propose retaining the option to extend following agreement between the employer and the trade union.

Question 25 – Do you agree or disagree with the proposal to extend the expiration date of a trade union's legal mandate for industrial action from 6 to 12 months? Please explain your reasoning and provide any information to support your position.

Question 26 – What time period for notice of industrial action is appropriate? Please explain your reasoning.

Updating the law on repudiation of industrial action

Background

Current trade union legislation provides that a union is only protected from damages claims by an employer if it follows the statutory provisions in relation to industrial action. This includes giving notice to employers, holding an industrial action ballot supervised by a scrutineer and obtaining a majority in that ballot for action as well as (under the current legislation) meeting the industrial action thresholds. The industrial action must also be in furtherance of a trade dispute and must be authorised by the proper official(s) or committee of the union (General Secretary or committee or official(s) given power by the union to authorise industrial action).

Where industrial action does not follow the above requirements (e.g. a 'wildcat strike' where members have not been properly balloted in advance or where a call for industrial action has been made by an official of the union who is not authorised to do so), then that action is classed as 'unofficial action'. Unofficial action is unprotected – the trade union members who take part in that action can be summarily dismissed by the employer or sued for damages. The union is also liable to damages claims where unofficial action has occurred, unless it repudiates the action.

Under section 21 of the 1992 Act, a trade union can protect itself from liability and damages claims where unofficial action has occurred provided that it has "repudiated" the unofficial action as soon as possible. The repudiation must be done by the trade union President, General Secretary or principal committee of the union (usually the union's national executive committee) and the union must supply the committee or official who gave the 'authorisation' with written notice of the repudiation without delay and, as far as possible, to every member it believes could be involved in the 'unofficial action'. In addition, the union must also inform the employer(s) of every member involved. The notice to members must contain the following statement:

"*Your union has repudiated the call (or calls) for industrial action to which this notice relates and will give no support to unofficial industrial action taken in response to it (or them). If you are dismissed while taking unofficial industrial action, you will have no right to complain of unfair dismissal.*"

Once the action has been repudiated, the trade union must continue to act in a manner that is consistent with the repudiation. A failure to do so will render the repudiation invalid and the union may become liable for the action.

Where proper repudiation is given, the action becomes unofficial at the end of the next working day after the repudiation takes place. This gives those taking the action a day to decide whether to continue. Participants who decide to continue with the industrial action will have no right to claim unfair dismissal if their employer selectively dismisses them.

Proposal

The Government believes that the law on repudiation needs review. We are therefore considering several options to modify our trade union legislation in this area.

The requirements in the 1992 Act in relation to repudiation require a union to:

- "do its best" to give notice of repudiation to every member the union believes could be involved in the unofficial action and to their employers (section 21(2)
- give individual written notice to every union member the union has reason to believe is taking part (section 21(2)
- act "without delay" (section 21(2)
- give a notice which in language prescribed by legislation (section 21(3)

Option One: to only require a union to show that it had made "reasonable endeavours" in terms of giving the notice of repudiation to members and their employers.

Option Two: to only require a union to show that it had issued a general notice of repudiation, posted on its website, and notified the officials and employers involved, instead of having to write to every member that could be involved in the unofficial action.

Option Three: the requirement to 'act without delay' could be changed to requiring the notice of repudiation to take place within a set time frame, say within 3 working days.

Question 27 – Which (if any) of the options provided do you agree with in terms of the tests set for making an unfair practice claim? Please explain your reasoning.

Question 28 – Currently the notice by the union is prescribed by legislation. Do you think that prescription of the notice should remain unchanged? If not, what changes do you propose?

Question 29 – Do you agree or disagree that the current legislation on repudiation should be left unchanged? Please explain your reasoning

Clarifying the law on 'prior call'

Background

Under our trade union legislation, a union, if it wants to benefit from the statutory protections against damages claims, cannot call its members to take industrial action before the last date of the statutory industrial action ballot (i.e. the last date where votes can be cast before the ballot closes) (section 233 of the 1992 Act). A 'prior call' may refer to unofficial action that has been called prior to this date, usually by an official of the union who is not authorised to do so, but it could also be a call by the executive or authorised officials. Under our trade union legislation, a union cannot rectify a prior unofficial call to take industrial action by repudiating that call and then seeking to conduct a proper ballot.

Proposal

The Government believes that this area needs review. The current legislation barring a union from taking lawful (official protected) industrial action where a prior call has taken place is unfair in circumstances where union members walked out as a result of a genuine fear for their safety. Our proposal is to amend the legislation in relation to 'prior call', so that where trade union members have walked out in emergency situations in fear of their safety, their union would not subsequently be prevented from taking official protected industrial action having conducted a statutory industrial action ballot covering these issues.

Under our proposal, employees walking out in emergency situations because they reasonably fear they are in serious or imminent danger would continue to benefit from the protections in sections 44 and 100 of the Employment Relations Act 1996 (these sections ensure that employees are protected from dismissal or detriment in such emergency situations). However, unions would now be able to subsequently ballot to take official protected industrial action, so long as that action covered the issues in the emergency situation that led to the walkout in the 'prior call'. Note that it would be important to be clear what is meant by an emergency situation.

Under our proposal, the union would not forfeit its protection against liability for damages even if the later ballot did not approve the industrial action.

It is important to note that the Government is not proposing to abolish the current bar on the union taking official protected industrial action where a 'prior call' has taken place in non-emergency situations. This will ensure that union executives, as well as union officials and members, are strongly encouraged to take official protected action following a statutory industrial ballot, instead of unofficial unprotected action. The Government is concerned that by abolishing the law on 'prior call' completely, this may lead to a significant increase in instances of unofficial action.

Question 30 – Do you agree or disagree with the Government's proposal to amend the law on 'prior call' to allow unions to ballot for official protected action where a 'prior call' has taken place in an emergency situation? Please explain your reasoning.

Question 31 – What are your views on what should be meant by an "emergency situation"?

Question 32 – Are there any risks to the proposed approach? For example increased incidences of unofficial action or of official action which does not have the support of a ballot and is taken without the usual notice to employers? Please explain your reasoning and provide any information to support your position.

Right of Access

Background

Under the existing legislative framework, unions do not have an independent right of access to workplaces and can only exercise their functions through individual members in the workplace. In situations where membership is limited, there is limited scope for exercising functions. Furthermore, there is the potential for individuals to be harassed or isolated by a hostile employer, thus making recruitment and expansion of the union challenging.

By formally providing the right of access to trade unions through the Employment Rights Bill, the Government is seeking to modernise outdated ad-hoc arrangements and align them with modern working practices. Where an access agreement with an employer is reached, trade union officials would be able to enter workplaces with the agreement of the employer, for purposes such as to represent, recruit or organise members, and to facilitate effective collective bargaining.

The Employment Rights Bill provides a framework for how a listed union may provide an employer with a request for access to a workplace. This request will need to include details as to the terms on which access is requested and be provided in a prescribed format. Once an employer receives the notice of access from a union, the employer can respond to the notice to either agree access, or object to the access and provide alternatives. If both parties can align on an access agreement, they would then notify the Central Arbitration Committee (CAC) to record the terms of the access agreement and proceed with the access as agreed. If no agreement can be reached within a set timeframe (to be consulted on) the union or employer can refer the case to the CAC for adjudication and determination on whether access should be granted under the terms requested.

Proposal

The Government is proposing an enforcement framework managed by the CAC for Right of Access agreements established through the framework provided for in the Employment Rights Bill. The enforcement mechanism is proposed to deliver a balance between employer and union interests operates as follows:

- **Step 1**: A party complains to the CAC that the other party has breached the access agreement, or that a third party has taken steps to prevent access/prevented access.
- **Step 2:** The CAC can then vary the agreement, make a declaration that the complaint is well-founded or not, and, if it is well founded, issue an order requiring specified steps to be taken in order to ensure that the agreement is complied with.
- **Step 3**: If the CAC makes a declaration that the complaint is well founded, a further complaint can be made within 12 months that the other party has carried

out the conduct complained of again (e.g. breaching agreement); or has breached the order requiring specified steps to be taken.
    - The CAC can then make a further declaration that the complaint is well-founded or not.
    - If it is well-founded, then the CAC can (if it wishes) make an order requiring a penalty to be paid to CAC, who then pay it to the Consolidated Fund.
    - The penalty would subject to a maximum to be set in secondary legislation, which will be consulted on.
    - A declaration or order requiring the party to pay a penalty may be relied on (and enforced by the CAC or a party to the access agreement) as if it were a declaration or order made by the court.
- **Step 4**: The Bill makes provision for an appeal route to the Employment Appeal Tribunal (EAT) on any question of law arising from any CAC determination, declaration, or order requiring payment of a penalty. The Government intends to seek input in a future consultation after Royal Assent of the Employment Rights Bill on specific details of this enforcement framework (including the penalty amounts, the maximum penalty that can be issued offending party), which will be provided for in secondary legislation.

Question 33 – Do you agree or disagree with the proposed approach for the CAC to enforce access agreements? Please explain your reasoning.

Question 34 – Do you have any initial views on how the penalty fine system should work in practice? For example, do you have any views on how different levels of penalty fines could be set?

Question 35 – Do you think the proposal for a penalty fine system is proportionate or not, and would it be effective? Please explain why.

Question 36 – Do you consider there to be any alternative enforcement approaches the government should consider? For example, should a Central Arbitration Committee (CAC) order requiring specific steps to be taken (Step 2 above) be able to be relied upon as if it were a court order? What other approaches would be suitable?

Going further and next steps

This consultation will close on 2nd December. Following the closure of this consultation we will analyse the responses and consider any views expressed and representations made before publishing a government response.

Where evidenced, responses to this consultation may inform amendments to the Employment Rights Bill.

The responses provided will help to ensure that our trade union legislation is fit for a modern economy and removes any unnecessary restrictions on trade union activity. Through this work, we will ensure that industrial relations are based around collaboration, proportionality, accountability, and balancing the interests of workers, businesses and the wider public.

As set out in the introduction, this consultation is one element of our commitment to consult fully with unions, businesses, workers and civil society on how to put our plans for trade union reform and modernisation into practice. The Government will consult further on modernising the trade union landscape following Royal Assent of the Employment Rights Bill.

We will develop policy options and launch further engagement on areas including but not limited to:

- Lowering the admissibility threshold for the statutory recognition ballot process.
- Delivering the commitment to ensure that union members and workers can access a union at work through a regulated and responsible route.
- Delivering the commitment to introduce rights for trade unions to access workplaces in a regulated and responsible manner, for recruitment and organising purposes, and develop through consultation a code of practice.
- Delivering greater rights and protections for trade unions reps to undertake their work, strengthening protections for trade union representatives against unfair dismissal and union members from intimidation, harassment, threats and blacklisting.
- Introducing statutory rights for trade union equality reps in order to strengthen equality at work for all.

As part of our commitment to maintain high standards of engagement and participation throughout the statutory ballot process, the government will also be hosting roundtables on delivering modern, secure electronic balloting for union ballots. These will proceed this coming winter with cyber security experts, unions and other interested parties invited.

Question 37 – Are there any wider modernising reforms relating to trade union legislation that you would like to see brought forward by the government? If yes, please state these and why.

Summary of consultation questions

A Principles Based Approach

Question 1 – Do you agree or disagree that these principles should underpin a modern industrial relations framework? Is there anything else that needs consideration in the design of this framework?

Question 2 – How can we ensure that the new framework balances interests of workers, business and public?

Unfair Practices during the Trade Union Recognition Process

Question 3 – Do you agree or disagree with the proposal to extend the Code of Practice on access and unfair practices during recognition and derecognition ballots to cover the entire recognition process from the point when the Central Arbitration Committee (CAC) accepts the union's application for statutory recognition? Please explain your reasoning and provide any evidence on cases that support your view.

Question 4 – Do you agree or disagree with the proposal to introduce a requirement that, at the point the union submits its formal application for recognition to the Central Arbitration Committee (CAC), the union must provide the employer with a copy of its application? Please explain your reasoning.

Question 5 – Do you agree or disagree that the employer should then have 10 working days from that date to submit the number of workers in the proposed bargaining unit to the Central Arbitration Committee (CAC) which could not then be increased for the purpose of the recognition process? Please explain your reasoning.

Question 6 – Can you provide any examples where there has been mass recruitment into a bargaining unit to thwart a trade union recognition claim? Please provide as much detail as you can.

Question 7 – Are there any alternative mechanisms that you consider would prevent mass recruitment into a bargaining unit for the purpose of thwarting union recognition applications? Please provide as much detail as you can.

Question 8 – Do you have any views on a possible alternative to place a new obligation on employers not to recruit into a proposed bargaining unit for the purpose of seeking to prevent a union from being recognised? How would this alternative work in practice?

Question 9 – Do you agree or disagree with the proposal to introduce a 20-working day window to reach a voluntary access agreement from the point when

the Central Arbitration Committee (CAC) has notified the parties of its decision to hold a trade union recognition ballot?

Question 10 – If no agreement has been reached after 20 working days, should the Central Arbitration Committee (CAC) be required to adjudicate and set out access terms by Order? If yes, how long should CAC be given to adjudicate?

Question 11 – Once 20 working days have expired, should the Central Arbitration Committee (CAC) be allowed to delay its adjudication in instances where both parties agree to the delay? Should this delay be capped to a maximum of 10 working days?

Question 12 – Which (if any) of the options provided do you agree with in terms of the tests set for making an unfair practice claim? Please explain your reasoning?

Question 13 – Should the Government extend the time a complaint can be made in relation to an unfair practice to within 3 months of the date the alleged unfair practice occurred?

Political Funds

Question 14 – Do you agree or disagree with the proposal to remove the 10-year requirement for unions to ballot their members on the maintenance of a political fund? Please provide your reasoning.

Question 15 – Should trade union members continue to be reminded on a 10-year basis that they can opt out of the political fund? Please provide your reasoning.

Question 16 – Regulations on political fund ballot requirements are applicable across Great Britain and offices in Northern Ireland belonging to trade unions with a head or main office in Great Britain. Do you foresee any implications of removing the 10-year requirement for unions to ballot their members on the maintenance of a political fund across this territorial extent?

Simplifying Industrial Action Ballots

Question 17 – How should Government ensure that our modern framework for industrial relations successfully delivers trade unions a meaningful mandate to support negotiation and dispute resolution?

Question 18 – Do you agree or disagree with the proposed changes to section 226A of the 1992 Act to simplify the information that unions are required to provide employers in the notice of ballot? Please explain your reasoning.

Question 19 – Do you have any views on the level of specificity section 226A of the 1992 Act should contain on the categories of worker to be balloted?

Question 20 – What are your views on the proposal to amend the requirement that unions should provide information on the results of the ballot to those entitled to vote and their employers 'as soon as reasonably practicable'?

Question 21 – What do you consider is a reasonable time requirement for unions to inform members and their employers of the outcome of the ballot?

Question 22 – What do you consider are suitable methods to inform employers and members of the ballot outcome? Should a specific mechanism be specified?

Question 23 – Do you agree or disagree with the proposal to simplify the amount of information that unions must provide employers in the industrial action notice? Please explain your reasoning.

Question 24 – What are your views on the degree of specificity section 234A of the 1992 Act should contain on the categories of worker?

Question 25 – Do you agree or disagree with the proposal to extend the expiration date of a trade union's legal mandate for industrial action from 6 to 12 months? Please explain your reasoning and provide any information to support your position.

Question 26 – What time period for notice of industrial action is appropriate? Please explain your reasoning.

Updating the Law on Repudiation of Industrial Action

Question 27 – Which (if any) of the options provided do you agree with in terms of the tests set for making an unfair practice claim? Please explain your reasoning.

Question 28 – Currently the notice by the union is prescribed by legislation. Do you think that prescription of the notice should remain unchanged? If not, what changes do you propose?

Question 29 – Do you agree or disagree that the current legislation on repudiation should be left unchanged? Please explain your reasoning

Clarifying the Law on Prior Call

Question 30 – Do you agree or disagree with the Government's proposal to amend the law on 'prior call' to allow unions to ballot for official protected action

where a 'prior call' has taken place in an emergency situation? Please explain your reasoning.

Question 31 – What are your views on what should be meant by an "emergency situation"?

Question 32 – Are there any risks to the proposed approach? For example increased incidences of unofficial action or of official action which does not have the support of a ballot and is taken without the usual notice to employers? Please explain your reasoning and provide any information to support your position.

Right of Access

Question 33 – Do you agree or disagree with the proposed approach for the CAC to enforce access agreements? Please explain your reasoning.

Question 34 – Do you have any initial views on how the penalty fine system should work in practice? For example, do you have any views on how different levels of penalty fines could be set?

Question 35 – Do you think the proposal for a penalty fine system is proportionate or not, and would it be effective? Please explain why.

Question 36 – Do you consider there to be any alternative enforcement approaches the government should consider? For example, should a Central Arbitration Committee (CAC) order requiring specific steps to be taken (Step 2 above) be able to be relied upon as if it were a court order? What other approaches would be suitable?

Going Further and Next Steps

Question 37 – Are there any wider modernising reforms relating to trade union legislation that you would like to see brought forward by the government? If yes, please state these and why.