UK Government

ANNEXES FOR GOVERNMENT RESPONSE TO:

Making Work Pay: creating a modern framework for industrial relations

PUBLISHED: 04 MARCH 2025

Any enquiries regarding this publication should be sent to us at: enquiries@businessandtrade.gov.uk.

If you need a version of this document in a more accessible format, please email digital@businessandtrade.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.

ANNEX A – DETAILED SUMMARY OF RESPONSES

A Principles Based Approach (Q1 – Q2)

Question One

- **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?**

1. Of the 165 respondents to the consultation, 143 (87%) respondents provided an answer to this question. Of the 143 respondents, **111 (78%) agreed** with the proposed principles put forward in the consultation, 11 (8%) respondents disagreed with the principles, and 21 (15%) respondents returned a response scored 'other'.

2. Across all respondents there was a general agreement with the principles of Collaboration, Proportionality, Accountability, and Balancing the interests of workers, businesses and the wider public as set out in the consultation. Many of those who indicated support for these principles expressed interest in seeing business, employers, and unions working closely together.

3. Similarly, there were also calls for further tripartite engagement between business, government, and unions. This was raised as a positive mechanism to facilitate collaborative industrial relations.

4. There were also several cases where respondents agreed with the proposed principles 'as a starting point' but called for the principles to go further. A number of respondents wanted to see the principles expanded to explicitly include collective bargaining and negotiation as they considered these were not sufficiently captured by the principle of 'collaboration'.

5. Concerns were raised by some respondents around the principle 'Balancing the interests of workers, businesses and the wider public'. There were calls to ensure that this principle does not become a mechanism through which workers' rights are deprioritised in pursuit of other goals, such as economic growth. Alongside this point, respondents called for any industrial relations framework to be expanded to reflect and promote international standards particularly the ILO Conventions, European Social Charter and Article 11 of the European Convention on Human Rights.

6. Of those not in favour of the principles, the main concerns were that broad principles could not capture the specificity of every industry and that principles should be based on each business area to develop tailored industrial relations. Others raised the concern that the principles could apply relatively readily to the public sector, but that it may be challenging to make the principles compatible with all businesses.

Question Two

- **How can we ensure that the new framework balances the interests of workers, business and public?**

7. Of the 165 respondents to the consultation, 132 (80%) respondents provided an answer to this question. A wide range of useful suggestions and proposals were received.

8. A common suggestion from respondents was a proposal that the government develop a clear code of practice and framework that works to encourage negotiation and engagement and sets out best practice guidelines for unions and employers as to how they can engage with each other to the benefit of workers. Respondents considered that provision of such a code of practice would encourage the continual development of industrial relations with the goal of reducing and resolving disputes and avoiding an outcome of industrial action. Furthermore, a code of practice was seen as a route to help ensure clarity behind any framework for industrial relations.

9. Extending from the code of practice suggestion, many respondents were keen to see the development of a framework that ensures balance between the relevant parties. Concern was raised that any new framework may not ensure an equal ‘balance of power’ and that there is a need for the government to ensure ‘proportionality’ in any framework. Common suggestions to ensure balance included the establishment of an independent ombudsman to address industrial relations, creation of an obligatory dispute resolution mechanism prior to any industrial action being called, requiring confidentiality in industrial relation negotiations, and increasing the role of bodies like Acas (Advisory, Conciliation and Arbitration Service) to help encourage mutual agreement and dispute resolution.

10. Another common response was in relation to corporate governance systems in the UK. Respondents considered that requiring company directors to 'promote the long-term success of the company' as a primary aim, and 'ensure that all companies with 250+ staff have elected worker directors on their board' would encourage the development of business models that align with the direction of the government's employment rights reform.

11. A third common submission across respondents was that the focus of any reform to industrial relations needs to be explicit on balancing the interests of workers, businesses/organisations and the public. Respondents were clear that this includes worker choice and priorities (rather that of any third-party organisation, body or political party), whilst balancing the needs of businesses/organisations (recognising that they need to deliver – responsibly - a service/profit).

Unfair Practices during the Trade Union Recognition Process (Q3 – Q13)

Question Three

- **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.**

12. Of the 165 respondents to the consultation, 103 (62%) respondents provided an answer to this question. Of the 103 respondents, **65 (63%) agreed** with the proposal put forward in the consultation, 21 (20%) respondents disagreed with the proposal, and 17 (17%) respondents returned a response scored 'other'.

13. Respondents who agreed with the government's proposal (*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*) were consistent in their agreement that the use of unfair practices should be prohibited throughout the statutory recognition process, rather than just in the ballot phase.

14. A number of respondents agreed with the proposal but also called for the extension to go further and be extended earlier than the government proposal, so that it would apply from the point at which the union writes to an employer to request voluntary recognition. The consideration provided was that unless the extension was expanded to include this point, the scope for unfair practice would remain from the point an employer is approached for union recognition.

15. Several other respondents who supported the proposal wanted the government to ensure that any expansion of the code of practice did not inhibit an employer's ability to communicate with their employees in an open and lawful manner. There were concerns that the code of practice may become overly restrictive and calls for the code of practice to be updated by government to ensure a clear provision of guidelines to both employers and unions as to what constitutes fair and unfair practice.

16. Of those who were not in favour of the extension, most respondents considered that the existing legislation was sufficient to prevent unfair practices, and that

extending the code of practice would run counter to the principles of proportionality and balancing interests.

17. Some of those respondents scored as 'other' raised concerns that the code of practice was imbalanced and called for a greater expansion of what constitutes an unfair practice from a union. There were concerns raised that the existing code of practice contains a working assumption that employers behave "unreasonably" whilst unions behave "reasonably".

18. Similarly, respondents raised that workers already have protection under the Trade Union and Labour Relations (Consolidation) Act 1992 (the '1992 Act') and raised that most of the unfair practice duties under the 1992 Act are duties that are only placed on the employer, with only the duty under paragraph 27A of Schedule A1 to the 1992 Act (to refrain from using unfair practices) being reciprocal. Respondents also wanted to see the unfair practices applied equally to employers and to unions.

The government response to Questions Four, Five, Six, Seven, and Eight have been grouped as they address the same area of legislation and amendments to the ERB.

Question Four

- **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**

19. Of the 165 respondents to the consultation, 92 (56%) respondents provided an answer to this question. Of the 92 respondents, **78 (85%) agreed** with the proposal put forward in the consultation, 6 (7%) respondents disagreed with the proposal, and 8 (9%) respondents returned a response scored 'other'.

20. Many respondents who agreed with the government's 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*) raised the point that the provision already exists in the legislation[1] – however that there is no time frame

[1] - Paragraph 34 of Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (enacted in the Employment Relations Act 1999 and amended in the Employment Relations Act 2004)

attributed to the existing provision. Many respondents therefore considered it would 'tidy up' an administrative requirement to require unions to provide a copy simultaneously with the application being submitted to the CAC.

21. Furthermore, several respondents supporting the proposal considered that sharing the application with employers would meet the principles of accountability and balance as espoused in the consultation.

22. A number of respondents in favour of the proposal cautioned against mandating the provision of the application without wider reform to unfair practices, as they considered the potential for unfair practices may be enhanced by the sharing of this information under the current arrangements. A key concern was that employers would seek to adjust the bargaining unit upon receipt of an application as a way of attempting to defeat a recognition application. Respondents who raised this concern were clear that it would be vital that this proposal does not give a hostile employer time to start briefing its workforce against the union in a way that would undermine the proposal to extend the code of practice on access and unfair practices to the whole of the statutory recognition process. These respondents called for reform to Schedule A1 as part of any mandated application sharing, to require that any evidence of employer manipulation of a proposed bargaining unit is taken into account by the CAC in its determination of an appropriate bargaining unit.

23. Similar to the above concern, several respondents expanded their responses to this question, to call for the government to take steps to 'close the loophole which can allow an employer to enter into an agreement with a non-representative union before the date of acceptance of the first union's application to block the latter's admissibility'. Concerns were raised that under the current legislation, an employer could recognise a union with only one member in a bargaining unit to block recognition of a representative union with many members. Respondents considered that without this 'loophole' change being made, any requirement to provide a formal application to employers could lead to an increase in the aforementioned 'loophole' practice.

24. Of those who disagreed with the proposal, the majority considered that mandating the provision of the application creates a 'trip up point', or 'hurdle' for unions to navigate in the CAC process. There were also concerns that any failure to meet this requirement may be used to invalidate a recognition application.

25. Those respondents scored as 'other' broadly called for a corresponding duty to be placed on employers to provide the number of workers in the bargaining unit at any point of application sharing. Further, these respondents wanted this 'sharing point' to be tied into a provision preventing an employer from recognising a non-representative union before the date of acceptance to block the applicant union's admissibility (as was also raised by respondents who agreed with the proposal).

Question Five

- **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.**

26. Of the 165 respondents to the consultation, 85 (52%) respondents provided an answer to this question. Of the 85 respondents, **45 (53%) agreed** with the proposal put forward in the consultation, 24 (28%) respondents disagreed with the proposal, and 16 (19%) respondents returned a response scored 'other'.

27. Respondents who agreed with the government's proposal consistently agreed that 10 days would be a suitable time period to prevent unfair practices from both unions and employers, striking a fair balance between union rights and ensuring legitimate recruitment is not disrupted. However, there were calls from a number of respondents for the CAC to have the flexibility to increase the time period in cases of complex bargaining units, or ongoing circumstances that may impact an employer's ability to provide the relevant information.

28. Others who agreed considered that the practice of 'excess recruitment' was very rare, but that this mechanism would be the most suitable route to prevent it. However, they raised the concern that in many cases unions and employers use different job titles for the same roles, and that a lack of clarity across organisations may lead to situations where it would be unclear as to who was included in a bargaining unit.

29. Further respondents in agreement considered that this would apply fairly across both unions and employers, by preventing employers from attempting to

recruit into a bargaining unit and ensuring stability in the recognition process for all parties.

30. Those who were not in favour were largely consistent in raising their opposition due to the implications of this limiting of the bargaining unit. Respondents were concerned that a central principle of the statutory recognition framework is that recognition should only be ordered where it reflects the democratic will of the workers in the bargaining unit. Concerns were raised that this restriction would remove the ability for new joiners who are employed on the date of the ballot to participate in it, while still being affected by its result. Furthermore, concerns were raised as to how this proposal could be 'policed' with the suggestion that it is not clear how the question of "purpose" would practically and fairly be adjudicated, and that any restriction of this form would require an intricate, expert analysis of business operations with a risk of satellite litigation and judicial review.

31. A number of other opposing responses raised that any prohibition on employment would be an illegitimate and unreasonable constraint on employers running their businesses, with potential disclosure requirements causing insider trading issues, impacting upon other legal requirements placed on businesses, and interfering with the principle that employment law regimes do not interfere with employer's business decisions.

32. Furthermore, other opposing views raised the points that an employer could still increase the bargaining unit within the 10-day process. Or equally, that 10 days would be an unfair restriction on business recruitment.

33. Those respondents scored as 'other' broadly raised concerns about the potential for hostile employers to use the time from when a union has submitted its statutory recognition application to start moving staff in and out of the bargaining unit and wanted to see a 5-day maximum provision instead of the proposed 10, with the 'number of workers in the proposed bargaining unit' restricted to the total number of workers on the date that the union sends its recognition request to the CAC.

Question Six – *No Expansion of Detail Provided*

Question Seven

- **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**

34. Of the 165 respondents to the consultation, 68 (41%) respondents provided an answer to this question.

35. There were a broad range of detailed suggestions provided. Due to the variation and range in suggestions and proposals, and the ambition of the government to consider these in detail ahead of any further policy development, they will not be summarised in detail here. However, a high level overview of responses is provided:

    35.1. Provide an express prohibition against employer recruitment for the purposes of influencing the number of workers in a bargaining unit during an application for statutory recognition.

    35.2. No changes are needed as the new day one unfair dismissal rights as provided in the current drafting of the ERB will protect individuals from any purported unnecessary recruitment.

    35.3. Require employers to proactively provide comprehensive information on existing workforce numbers and any imminent changes to staffing levels to the CAC at the time of the trade union's application, and require the CAC to determine whether new workers had been recruited in order to dilute the bargaining unit for the purposes of thwarting recognition.

    35.4. Adjust ballot rules so that only those workers who are in employment at the time the recognition application is accepted are permitted to vote.

    35.5. Extend any effective ‘freeze date’ on who is entitled to vote in a ballot to prevent employers from moving staff out of the bargaining unit in a way that undermines the union’s proposed bargaining unit.

    35.6. Revise paragraph 19B of Schedule A1 so that where there is any evidence of employer manipulation of a proposed bargaining unit, this is taken into account by the CAC in its determination of an appropriate bargaining unit.

Question Eight

- **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?**

36. Of the 165 respondents to the consultation, 55 (33%) respondents provided an answer to this question. Of the 55 respondents, 12 (22%) agreed with the proposal put forward in the consultation, 21 (38%) respondents disagreed with the proposal, and **22 (40%) respondents** returned a response scored 'other'.

37. Respondents who agreed with the government's proposal (*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*) largely considered that there should be a burden of proof on an employer to demonstrate any recruitment in this period was unrelated to a unionisation claim. Furthermore, there were calls for the law to set out clearly that employers would be prohibited from 'recruiting to influence the number of workers in a bargaining unit for the purpose of an application for statutory recognition.'

38. Those not in favour of the proposal were consistent in their position that any restriction on recruitment would be an unreasonable imposition on business with detrimental impacts for workers, employers, and business growth. Many identified that the current changes in the ERB will already be sufficient to prevent this practice, as by providing Day 1 rights to employees, it would be more challenging to terminate anyone employed for the purpose of expanding a bargaining unit once the 'recognition' had been 'defeated'.

39. A number of respondents called for further work to be done in this space to define the detail of how such a proposal may function. Respondents considered that there is no way to prove recruitment is solely for the purposes of influencing a recognition process - with broader concerns that this would lead to hostile relations between businesses and unions, and negative impacts on the economy.

40. Those respondents scored as 'other' largely considered that a revision to the government proposal may be suitable, with suggestions that within Schedule

A1 of the 1992 Act, a new requirement is placed on employers to not make changes to the constituency of a bargaining group once a union has submitted a recognition request, including through recruitment or moving staff within an organisation, for the purpose of thwarting union recognition. These respondents considered that the burden of proof should rest with the employer to demonstrate that any recruitment or movements were made for legitimate, non-union-related reasons rather than frustrating the work of the union and providing further onerous administrative or technical burdens to their side of the process. This proposal included a suggestion that the CAC should be mandated to consider any such changes when making determinations, including those regarding the bargaining unit and unfair practices.

The government response to Questions Nine, Ten, and Eleven have been grouped as they address the same area of legislation and amendments to the ERB.

Question Nine

- **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?**

41. Of the 165 respondents to the consultation, 78 (47%) respondents provided an answer to this question. Of the 78 respondents, **43 (55%) agreed** with the proposal put forward in the consultation, 15 (19%) respondents disagreed with the proposal, and 20 (26%) respondents returned a response scored 'other'.

42. Respondents who agreed with the government's proposal (*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*) indicated a general support for the proposal and the 20-day window suggested. Many considered that a 20-day working window would encourage both employers and unions to engage in timely and focused negotiations, potentially leading to quicker resolutions and less prolonged disputes.

43. A number of those who agreed with the proposal also considered that if an agreement cannot be reached within 20 days, then the CAC should be able to

enforce a set of default access agreements, as a way of ensuring progression in the recognition process.

44. However, among those who supported the principle of the proposal, a number of respondents raised concerns that there may be instances in which a 20-working day window is too short and a longer period could be beneficial to provide more time for an informal or amicable resolution. Similarly, there were some who agreed with the principle of introducing a deadline for unions and employers to reach a voluntary access agreement, but that 20 days would be too long and would provide opportunities to interfere with the process.

45. Of those not in favour, there were several respondents who also considered that a 20-day window would be too long and would provide the potential for hostile employers to frustrate the recognition process. These respondents wanted to see a retention of the existing 10-day process.

46. Furthermore, among those not in favour of the proposal, multiple respondents raised the concern that restricting the timescale to 20 days would be inadequate for an issue of such importance, and that mandating a short period would serve to increase the risk of a hostile or acrimonious start to any relationship of collective bargaining. Respondents raised that prescriptive deadlines risk meaningful engagement by rushing both parties into reaching a conclusion without adequate discussion. Respondents considered that a more flexible approach would be to encourage early discussions and enable tailored solutions that reflect the unique needs of each workplace.

47. Those respondents scored as ‘other’ largely considered that a revision to the government proposal may be suitable. These respondents proposed that the window should be 10 working days, but that either party should be able to apply for an extension of another ten working days where they can demonstrate that progress is being made. The consideration provided was that 20 working days would provide time for frustration of the recognition process, whereas if the time was needed, it could be agreed with the CAC.

48. A number of further responses scored as ‘other’ raised concerns that timeframes should be dependent on a range of factors, as some businesses may be seasonal and unable to respond within a set timeframe in a busy period, while some SME’s may not have the capacity to meet that time period. These respondents suggested that time periods should be dependent on these broader factors and not a ‘one size fits all’.

Question Ten

- **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?**

49. Of the 165 respondents to the consultation, 77 (47%) respondents provided an answer to this question. Of the 77 respondents, **57 (74%) agreed** with the proposal put forward in the consultation, 10 (13%) respondents disagreed with the proposal, and 10 (13%) respondents returned a response scored 'other'.

50. Respondents who agreed with the government's proposal (*require the CAC to adjudicate and set access terms by order if no agreement has been reached after 20 working days*) broadly had no comments to share and indicated support for the proposed mechanism.

51. There were a number of supportive respondents who indicated general support for the proposal but with the caveat that the CAC will require resourcing increases to ensure that they can handle the proposed changes within the set timeframes. Many raised that the CAC would need to have a range of 'template' or 'off the shelf' agreements that can be used to set out access terms suitable to a range of workplaces and employment patterns.

52. Others who supported the principle of the proposal called for greater clarity as to how the process would work in practice and the possibility of extending the timeframe with the agreement of the CAC or mutual agreement between parties where issues are complex.

53. Those not in favour of the proposal tended to be opposed to the principle of union access to the workplace, with a number of opposing positions raising their concern with the ability of the CAC to 'require access', and the interaction of any right of access with the rights under the ECHR to peaceful enjoyment of possessions.

54. Those respondents scored as 'other' largely considered that a less confrontational process was needed, with a greater level of collaboration between unions and employers to ensure engagement is positive. Respondents suggested that timelines should be agreed between parties before the CAC is involved in the process. Alongside these positions, a number of those scored 'other' raised the potential for the involvement of bodies such

as ACAS to help parties reach a mutual position, as opposed to an ordered access.

Question Eleven

- **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?**

55. Of the 165 respondents to the consultation, 7 (46%) respondents provided an answer to the first part of this question. Of the 76 respondents, **62 (82%) agreed** with the proposal put forward in the consultation, 8 (11%) respondents disagreed with the proposal, and 6 (8%) respondents returned a response scored 'other'.

56. Of the 165 respondents to the consultation, 66 (40%) respondents provided an answer to the second part of this question. Of the 66 respondents, **37 (56%) agreed** with the proposal to cap the delay to a maximum of 10 working days as put forward in the consultation, 21 (32%) respondents disagreed with the proposal, and 8 (12%) respondents returned a response scored 'other'.

57. A majority of the respondents who supported the proposal, also supported the 10-day cap. They considered 10-days should be enough to prevent potential unfair practices from both unions and employers. However, respondents were clear that this should only be used with agreement from both parties.

58. There were a range of views from those who supported the principle of the proposal. Some respondents considered that the 10-day cap was suitable and would prevent indefinite delays that would frustrate the process, others considered that there should be the potential to extend further than 10-days with joint agreement, while a number of respondents were concerned that the initial 20 days was too long a period and wanted to see a total of 20 days for the entire process including any 10 day extension.

59. Of those who disagreed with the proposal as a whole, the majority wanted to see open ended extensions to the process, with the CAC required to determine any delay by individual circumstance.

60. Some respondents scored as 'other' were generally supportive of the principle but flagged that they considered it contrary to good industrial relations practice for the CAC to be required to impose terms on the parties by Order in circumstances where they would both prefer to continue negotiating. Longer time periods were suggested to lead to more collaborative relationships and good faith discussions rather than parties being forced to accept things they don't understand or agree to because of short statutory timescales.

Question Twelve

- **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.[2]**

61. Of the 165 respondents to the consultation, 79 (48%) respondents provided an answer to this question. Of the 79 respondents, **34 (43%) agreed with Option One**. 25 (32%) respondents agreed with Option 2. 5 (6%) respondents agreed with Option 3. 8 (10%) of respondents agreed with none of the options. 7 (9%) respondents returned a response scored 'other'.

62. Respondents returned majority support for option one for similar reasons across respondents. It was seen by many as the preferred option as 'it is clear and perfectly reasonable – neither party should do anything which might influence the voter improperly'. Similarly, respondents broadly emphasised variations of the position that option one was suitable as 'there should be no materiality threshold for bringing unfair practices claim' and 'that unfair practices should be deterred regardless of their impact'. Those who indicated opposition to option one considered it may become too 'easy' to bring an unfair practice claim.

2

Option One – Removing the second test from Schedule A1 to ensure unfair practices are always addressed.
Option Two – Require the CAC 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
Option Three – Keep the second test in place but allow the CAC to accept evidence from workers that is anonymised.

63. Respondents who supported option two considered that by applying an objective standard this option would promote fairness and accountability while providing a suitable mechanism to guard against spurious claims. Other supporters of this option considered that it allowed for a clear 'objective' determination of what would constitute an unfair practice. Those who were not in favour of option two raised concern that removing the requirement to show that the practice changed or was likely to change the vote of an actual worker in the bargaining unit, and replacing this with a purposive test based on the behaviour of a hypothetical worker would introduce increased legal uncertainty and scope for disputes. Furthermore, there were concerns raised that option two would increase significantly the levels of evidence the CAC would be required to consider.

64. Respondents in favour of option three considered that this would enable workers to speak out without the concern they may see reprisals for speaking out. Respondents considered that this option would be the most pragmatic. Those who were not in favour of option three considered that 'anonymous evidence would be contrary to natural justice' and would have to be seen as hearsay in any proceedings.

65. Respondents not in favour of any option broadly considered that the existing process was suitable and should not be changed.

66. Those scored as 'other' tended to support review of the unfair practice process and raised that the entire unfair practice process required reform to ensure equal applicability to the practices of unions and employers. Some considered there should be no unfair practice process and instead the recognition process should be accelerated.

Question Thirteen

- **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?**

67. Of the 165 respondents to the consultation, 71 (43%) respondents provided an answer to this question. Of the 71 respondents, **45 (63%) agreed** with the

proposal put forward in the consultation, 17 (24%) respondents disagreed with the proposal, and 9 (13%) respondents returned a response scored 'other'.[3]

68. Responses to this question were varied and assessment provides for a challenging analysis of responses. A number of respondents indicated agreement with the question, but then disagreed with the 3-month timescale proposed. Whereas a number of other respondents indicated disagreement with the proposal on the basis of the 3 months proposed, but then suggested an alternative system with a shorter timescale. In the case of this question, those who indicated support for the principle of the question (*extend the time a complaint can be made in relation to an unfair practice*) have been scored as 'agree', while those not in favour of the principle have been scored 'oppose'.

69. In line with this approach the median and average days proposed for respondents who supported an extension have been calculated (those who agreed with the proposal and did not express a different time frame were scored at 3 months for this calculation) are:

    69.1. Average suggested timeframe – 35 Days

    69.2. Median suggested timeframe – 28 Days

70. Of those who supported the principle of extending the time a complaint can be made the majority considered that the existing 24-hour timeframe was too short to identify any unfair practices and submit a complaint. Instead, the majority of respondents wanted to see an extension to the time for unfair practice claims to be identified and raised. However, there was significant disagreement amongst those who supported the principle of extending the timeframe, with proposals varying from 48 hours to an unlimited timeframe. Those who wanted a longer timeframe considered that this would enable the discovery of any unfair practices and prevent a situation where a case cannot be heard due to a shorter time limit. Whereas those who wanted a shorter extension considered that the CAC process is designed to be rapid, and that any longer extension would prevent recognition agreements for an unreasonably long period. There was varying concern that a longer period of time may drag out the processes and lead to negative industrial relations.

[3] Note that many of the respondents who stated opposition to the question due to the 3-month timeframe, did indicate support for the principle of extending the time period in which a complaint can be made.

71. Those not in favour of the extension of time within which a complaint can be made broadly considered that any extension would lead to an increase in vexatious claims from the party who 'lost' the ballot. Respondents considered that any unfair practices would be readily apparent within the recognition process and should be raised as soon as they become known. Some suggested that a 'cooling off' period following the closure of the ballot, but before results are announced, would provide time for unfair practice claims to be brought, but without parties knowing the outcome of the ballot, so that the opportunity for 'sour grapes' is minimised.

72. Those respondents scored as 'other' largely considered that any extension should be at the discretion of the CAC.

Political Funds (Q14 – Q16)

Question Fourteen

- **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.**

73. Of the 165 respondents to the consultation, 64 (39%) respondents provided an answer to this question. Of the 64 respondents, **34 (53%) agreed** with the proposal put forward in the consultation, 28 (44%) respondents disagreed with the proposal, and 2 (3%) respondents returned a response scored 'other'.

74. Respondents who agreed with the government's proposal (*to remove the 10-year requirement for unions to ballot their members on the maintenance of a political fund*) were broadly of the view that whether a union operates a political fund and the ends to which it is put is an internal matter for a trade union. Respondents considered that if a member does not want to contribute to their union's political fund, they will continue to be able to opt out. If members do not want their union to operate such a fund, then they can use the democratic structures of the union to make their views known and seek change. Furthermore, many respondents identified the existing requirement to ballot members as burdensome and expensive for unions to comply with.

75. Those not in favour of the proposal were consistent in their opposition with the majority raising the view that a 10-year cycle was not overly onerous to comply with, and worked as a balance to ensure unions still had the support of their members to operate political funds. Additionally, respondents considered that the 10-year ballot was important for transparency, as it ensures members of unions are aware of what their membership fees are contributing toward.

76. Further respondents suggested that members may not be aware they can opt out of political funds, and that the 10-year ballot serves as a useful reminder for those individuals.

77. Those responses scored as 'other' considered that the proposal to remove the 10-year requirement may run counter to the government's suggested principles relating to accountability (in Q1), stating that removal of the 10-year ballot would remove a mechanism that currently ensures that members can hold their union to account. Other respondents that scored as 'other' stated that there

could be a benefit from delivering the proposed change, but that there should be clear safeguards on political funds to enhance transparency to employers.

Question Fifteen

- **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.**

78. Of the 165 respondents to the consultation, 64 (39%) respondents provided an answer to this question. Of the 64 respondents, **35 (55%) agreed** with the proposal put forward in the consultation, 24 (38%) respondents disagreed with the proposal, and 5 (8%) respondents returned a response scored 'other'.

79. Respondents who agreed with the government's proposal considered that the introduction of a 10-year reminder would be a suitable mechanism to ensure that members were aware of their rights to opt in or out of political funds without being overly burdensome, while ensuring continued accountability and transparency. However, there were some respondents who raised that the government should be careful to ensure that any notification or reminder process created would not create an additional burden or cost to be implemented, and that any reminder would be easy to provide.

80. A number of respondents who agreed with the principle of the 10-year reminder suggested a shorter period of 5 years would be more suitable as a notification timeline, as this would improve accountability.

81. Those who were not in favour of the proposal fell into two broad camps: those who considered that there should be a more frequent reminder, and those who considered that there should be no reminder at all.

82. Those who opposed due to frequency largely considered that there should be an annual reminder of the right to opt out of a political fund. Concerns were raised that there would be no reminder if the 10-year notification was not required but the 10-year ballot was also removed.

83. The bulk of the respondents opposed to this proposal considered that there should be no reminder. Respondents suggested that they considered a reminder to be unnecessary, and that creating a reminder requirement would

only serve to be an additional regulatory burden on trade unions. Respondents considered that members are already aware of the opt in / out process and they do not need a reminder process. Union members can opt out at any time they want, and therefore it was suggested that a 10-year reminder would be overly burdensome.

84. Those responses scored as 'other' broadly considered that there should be an annual individual opt in reminder that is required for the maintenance of the political fund.

Question Sixteen - *No Expansion of Detail Provided*

Simplifying Industrial Action Ballots (Q17 – Q26)

Question Seventeen

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

85. Of the 165 respondents to the consultation 'creating a modern framework for industrial relations' 102 (62%) respondents provided an answer to this question.

86. There were two broad overarching positions across all respondents to this question. One, from those respondents who wanted to see the retention of the existing 40% and 50% thresholds under the 2016 Act; and Two, from those who considered that the 40% and 50% thresholds must be repealed.

87. Those in group one considered that the only way to ensure a mandate for industrial action was to retain the ballot thresholds as they currently stand. Respondents considered that any move to simple majority for ballot votes would undermine the credibility of any industrial action taken and would enable a vocal minority to commence industrial action. Respondents considered that the 50% threshold was an important indicator of mandate, with many suggesting that if 50% of members do not participate in an industrial action ballot, it should not constitute a mandate for action as that is a clear demonstration of lack of support for the action.

88. Respondents in group two raised that the thresholds are overly restrictive, and out of line with international obligations under the International Labour organisation, and the European Social Charter. Respondents saw that thresholds severely impinged upon a union's right to engage in meaningful negotiations, and that the presence of thresholds removed the ability of unions to negotiate for their members, who have in turn given that union a mandate on their behalf.

89. Respondents also raised several proposals as to how a mandate can be delivered under a new industrial relations framework:

    89.1. Make balloting more accessible by delivering e-balloting. This would be anticipated to increase participation in statutory ballots thereby demonstrating clear mandates.

89.2. Review the breadth of Trade Union legislation to improve simplicity and understanding of the underlying legislative provisions.

89.3. Introduce a pre-ballot 'conciliation' period ahead of any industrial action to enable 'last ditch' dispute resolution efforts.

89.4. Require unions to ballot members on all offers from employers to unions to ensure that decisions are made by all members.

89.5. Develop an overarching code of conduct that sets standards of behaviour and conduct for both employers and trade unions and their representatives, and provides for dispute resolution ahead of any industrial action ballots.

89.6. Review the entirety of the trade union legislation to ensure compliance with conventions of international bodies (particularly the International Labour Organisation and the European Social Charter).

Question Eighteen

- **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.**

90. Of the 165 respondents to the consultation, 94 (57%) respondents provided an answer to this question. Of the 94 respondents, 36 (38%) agreed with the proposal put forward in the consultation, **45 (48%) respondents disagreed** with the proposal, and 13 (14%) respondents returned a response scored 'other'.

91. Respondents who agreed with the government's proposal considered that the simplification would reduce the levels of bureaucracy that unions would have to comply with, without impacting upon the ability of businesses to prepare. There was a broad view that the proposed simplifications were a sensible balance between simplification and information.

92. A large number of those who agreed with the proposals raised the position that the current requirements make it too easy for valid industrial action to be

challenged on the basis of spurious claims due to minor technical mistakes under S226A. Respondents who supported the proposed changes considered that the simplification would ensure challenges were only brought in cases of real failure to meet obligations, rather than seeking injunctions against genuine mistakes.

93. There were also some who broadly supported the simplification, but called for the retention of the facility for unions to utilise the existing 'check off' formulation of information provision (providing information to enable employers to work out the detail where some employees have union subscriptions deducted from their wages), as they considered that removal of this would increase complexity rather than simplify requirements.

94. Of those who were not in favour there were three broad positions, that the concern of spurious challenge under S226A was no longer a concern following recent legislative challenge rulings by Courts, that the simplification of information was too much and would make it challenging for businesses to prepare for industrial action, or that the requirements under S226A should be removed in their entirety.

95. The majority of those opposed to the simplification considered that the current requirements were reasonable, and enabled businesses to plan to mitigate industrial action. Concerns were raised that changing these requirements would have significant impact on businesses and public sector organisations that would have reduced information with which to facilitate planning to mitigate industrial action. The central impact of this was considered to be that the reduction in information would prevent the effective delivery of business operations or services.

96. Many opposing responses also raised the concern that the European Committee of Social Rights has more than once declared that the requirement for a notice of ballot at all amounts to an excessive restraint on the right to take industrial action, given that the union must, in any event, give notice before actually taking industrial action. Therefore, these respondents disagreed with the proposed simplification as they considered the government should remove the entirety of the notice of ballot requirement.

97. Several respondents who opposed the simplification of S226A raised the point that case law established limitations as to the information requirements imposed on unions and has had the effect of removing the risk that the notice

requirements 'are used to challenge industrial action validity – and therefore opposed the proposed simplifications as they see that the existing notice requirements under S226A are helpful to employers without the risk of negatively impacting unions or leading to spurious injunction claims as might have been the case in the past.

98. Of those who returned a response scored, 'other' respondents raised employment sector specific issues under S226A that we will consider further for any potential future changes.

The government response and analysis for Questions Nineteen and Twenty-Four, have been grouped as they address the same area of legislation and amendments to the ERB.

Question Nineteen and Question Twenty-Four

- **Q19 - 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?**
- **Q24 - What are your views on the degree of specificity section 234A of the 1992 Act should contain on the categories of worker?**

99. Questions Nineteen and Twenty-Four have been grouped for analysis and government response, as responses across these questions addressed the specificity of categories in broadly comparable and groupable responses.

100. For question Nineteen - of the 165 respondents to the consultation, 75 (45%) respondents provided an answer to this question.

101. For question Twenty-Four - Of the 165 respondents to the consultation,76 (46%) respondents provided an answer to this question

102. Respondents provided an array of views to both questions that cover the seven below positions (detail in Annex A):

102.1. Do nothing – there is no requirement to provide further detail as to the level of specificity of categories as following recent case law employers cannot challenge notices on spurious claims and the trade union is only required to supply information as accurately as it can from the information

that it does hold. There is no need to increase the specificity of categories beyond what exists.

102.2. Do nothing – there is no need to change the legislation – it currently works.

102.3. Increase the specificity of categories in the notification – the greater the detail of category, the more likely an amicable resolution can be met, and the easier it is for businesses to plan for industrial action. Detail is required for contingency planning.

102.4. Require unions to hold detailed records – ensure that information provided is accurate and can enable businesses and organisations to plan for the workers that will be out on industrial action. Enable businesses to easily identify those worker categories balloted.

102.5. Expand the specificity of categories to include a specific marker for workers who are in safety critical roles, or essential public services.

102.6. Reduce the specificity of categories to reduce the likelihood of legal challenges that are designed to prevent democratic strike action. Only require unions to identify broad categories that they already use according to their usual categorisation of members concerned and that general job categories should be all that are required.

102.7. Remove the requirement for any notification under S226A. Arguments are made that S226A is incompatible with Article 6 of the European Social Charter 1961.

The government response and analysis for Questions Twenty and Twenty-One, have been grouped as they address the same area of legislation and amendments to the ERB.

Question Twenty and Twenty One

- **Q20 - 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'?**

- **Q21 - What do you consider is a reasonable time requirement for unions to inform members and their employers of the outcome of the ballot?**

103. Q20 - Of the 165 respondents, 88 (53%) respondents provided an answer to this question. Of the 88 respondents, **51 (58%) agreed** with the proposal put forward in the consultation, 27 (31%) respondents disagreed with the proposal, and 10 (11%) respondents returned a response scored 'other'.

104. Respondents who agreed with the government's proposal (*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 specifying a specific timeframe*) broadly considered that it would be helpful to have a defined, realistic timeframe that reduces the need for unions to act hastily compared to the current statutory requirement, ensuring results are communicated accurately and efficiently. Respondents in favour considered the existing legislation was too vague, and that setting a clear timeframe would allow for sufficient notice ahead of any industrial action and ensure that employers were aware of ballot outcomes in a timely manner.

105. Respondents who were not in favour of the proposal viewed the current wording as fit for purpose, and did not see a need for specificity in legislation. Concerns were raised at the perceived contradiction in the stated aims of simplification of industrial action notices, against the potential complication of specifying a timeframe. Many respondents considered that specifying a timeframe or mechanism of notification would increase bureaucracy in the ballot process.

106. Those who opposed the specificity of a codified timeframe were also clear that any failure to meet a newly specified and implemented timeframe should not cause a valid democratic ballot to become invalid.

107. Respondents scored as 'other' broadly called for greater detail and guidance from government to help ensure 'reasonably practicable' is clear and defined.

108. Q21 - Of the 165 respondents to the consultation, 89 (54%) respondents provided an answer to this question. 56 respondents proposed a specific timeframe.[4]

109. Suggestions varied from 24 hours to 20 days from respondents, with the *Average suggested time:* 5 days*,* and the *Median suggested time:* 4 days*.*

110. Respondents raised a range of positions in relation to this question, with a number of respondents suggesting that there was no reason for there to be statutory requirements on this matter, and by providing a set timeframe government would provide another avenue for legal challenge to industrial action. These respondents were also clear that any specified timeframe should not have the effect of invalidating a ballot if not met.

111. Other respondents raised that setting a specified time limit provides the requisite certainty for all parties, including union members and employers, and resolves any issues on this matter without employers needing to launch costly proceedings to have the point or time limit determined by a court.

112. An alternative approach suggested by a number of respondents raised that, in practice, most ballots close with an outcome provided within 24 hours. Therefore, retaining the current position would be reasonable and proportionate, but that there should be a requirement for the unions to communicate the outcome of the ballot to employers at the same time as members.

113. As with question Twenty, concern was raised at the perceived contradiction in the stated aims of simplification of industrial action notices, against the potential complication of specifying a timeframe. Many respondents considered that specifying a timeframe or mechanism of notification would increase bureaucracy in the ballot process.

Question Twenty-Two - *No Expansion of Detail Provided*

[4] A number of responses suggested a 'reasonable time to enable communication, or that it would not be possible to propose a standard time' - these could not be counted as proposing a specific time or factored into the average / median calculations.

Question Twenty-Three

- **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.**

114. Of the 165 respondents to the consultation, 88 (53%) respondents provided an answer to this question. Of the 88 respondents, 36 (41%) agreed with the proposal put forward in the consultation, **41 (47%) respondents disagreed** with the proposal, and 11 (13%) respondents returned a response scored 'other'.

115. Respondents who agreed with the government's proposal (to simplify the amount of information that unions must provide employers in the industrial action notice – S234A of the 1992 Act) largely considered that the changes proposed will still provide employers with sufficient information to plan for any industrial action whilst removing unnecessary burdens and bureaucracy for unions. Further, respondents considered by reducing this burden and simplifying the notice requirements, we would see a reduction in legal challenges to industrial action based on minor technicalities.

116. As with the responses to the proposed simplification of S226A, there were also some who broadly supported the simplification, but called for the retention of the facility for unions to utilise the existing 'check off' formulation of information provision (providing information to enable employers to work out the detail where some employees have union subscriptions deducted from their wages), as they considered that removal of this would increase complexity rather than simplify requirements.

117. Those not in favour of the proposal largely considered that there should be no change to the existing requirements. Respondents saw that the information provided was important to enable employers to understand which employees the union is calling out on industrial action, which in turn assists employers' contingency planning and to provide relevant employees with information in order to enable them to make an informed decision on whether to participate in the action.

118. A large proportion of opposing respondents were concerned that the simplification of these notices would impact on their ability to mitigate and plan for industrial action. They saw that the existing legislation provides the crucial

information that enables employers to focus on the specific aspects of service delivery required for managing industrial action without enduring economic penalties or contract breaches when such action is authorised. Concerns were raised that employers need comprehensive, accurate information to enable planning activities to be completed and ensure that the correct skill mix is available at places of employment to continue to provide services through industrial action.

119. A proportion of respondents scored as 'other' considered that approaches should be varied based on business size and occupation, with greater detail for certain industries or businesses. While other respondents suggested that there should be no requirement for a notice of industrial action, and that employers would already have a reasonable idea of the scope of a union's membership in a workplace.

Question Twenty-Five

- **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.**

120. Of the 165 respondents to the consultation, 98 (59%) respondents provided an answer to this question. Of the 98 respondents, 15 (15%) agreed with the proposal put forward in the consultation (extending the mandate to 12 months), **65 (66%) respondents disagreed** with the proposal (thereby wanting to retain the existing 6 month mandate), and 18 (18%) respondents returned a response scored 'other' (indicating a desire to see a mandate longer than 12 months).

121. Respondents who agreed with the government's proposal (*to extend the expiration date of a trade union's legal mandate for industrial action from 6 to 12 months*) broadly considered that the existing 6 month limit was too short, and that the 12 month proposal would reduce the logistical and cost burdens placed on unions and workers taking industrial action, and ensure that there was an effective right of workers to take industrial action. 12 months was considered by those in favour as required to allow for complex meaningful negotiations to take place ahead of any industrial action, with concerns raised

that the current timescale of 6 months was short enough to have the perverse effect of undermining effective dispute resolution.

122. Furthermore, respondents in favour considered that the majority of industrial action takes the form of non-continuous industrial action with negotiations continuing through these periods. Extending the expiration date of a mandate was therefore considered to not increase the amount of strike action but would allow for meaningful negotiations to take place, at a pace likely to achieve agreement. Whereas respondents considered that at present the focus on achieving a negotiated settlement begins to be lost after a few months as unions are forced to prepare for a fresh ballot.

123. Respondents not in favour of the proposal (who wanted a retention of the existing 6-month timeframe) considered that current 6-month date should remain in place. Respondents were concerned that an extension of the ballot mandate from 6 to 12-months would not help resolve disputes and could lead to increased periods of greater uncertainty for workers or employers with the likely effect of deteriorating industrial relations rather than improving them. A number of respondents were concerned that over a 6-month period the economic landscape and the interests of workers can change significantly, and retaining a mandate of 6-months would therefore be critical to ensuring that the potential for workers to have changed their minds is accounted for, and to ensuring that long running dispute is not normalised.

124. Furthermore, concerns were raised that a 12-month mandate would not be a democratic method of assessing workers' views. Respondents were concerned that a mandate secured 12 months earlier would not still reflect union members views, would go against the principle of proportionality, and therefore considered that the 6 month timeframe was required to act as a check on member support and ensure that negotiations were time-bound with realistic and clear timeframes.

125. Another concern was that extension to a 12-month mandate would lead to a cycle of industrial action ballots where, in the case of an annual pay review process, unions could ballot for industrial action to keep employers in a perpetual cycle of potential industrial action. Respondents considered that in this situation, businesses would have to maintain contingency plans for the duration of a mandate, even if no industrial action occurs and that by extending this period to 12 months, businesses could see increased costs and risks,

creating inefficiencies in operations that could impact the economy and reduce investment and growth.

126. Respondents scored as 'other' largely considered that there should be no limit to the mandate for industrial action provided the action was in furtherance of the same trade dispute. Respondents reflected that the introduction of a 6-month limit by the 2016 Trade Union Act, even with the possibility of extension to 9 months by agreement with the employer, imposed an arbitrary, expensive, and unnecessary administrative restriction on unions, making it harder to sustain pressure in long-running disputes. Concerns were raised that a limit on industrial action encourages employers to 'hold out' for the time limit to finish as a negotiation tactic as opposed to engaging on the substance of the dispute.

127. Respondents also considered that if union members are still taking industrial action after 6 months (or 12 months), this suggests that a dispute has not been resolved and employers need to return urgently to the bargaining table to find a solution to workers' concerns. Respondents raised that an unlimited mandate would ensure that worker concerns would be addressed properly, as it would ensure that workers could take industrial action until a dispute is resolved without having to be re-balloted multiple times. It was suggested that under an unlimited mandate it would be clear when there is no longer worker support for any industrial action, as this would be obvious from member non-participation.

Question Twenty-Six

- **What time period for notice of industrial action is appropriate? Please explain your reasoning**

128. Of the 165 respondents to the consultation, 74 (45%) respondents provided an answer to this question. Of the 74 respondents, **43 (58%) wanted retention** of the existing 14 days requirement for notice of industrial action, 26 (35%) wanted to see a reduction to 7 days as set out in the 1992 TULRCA legislation

before the Trade Union Act 2016, and 5 (7%) wanted to see an increased time period of 21 days +.[5]

129. Respondents who wanted retention of 14 days broadly considered that the existing time frame was the most suitable and consistent with the principle of balancing the interests of workers, businesses and the wider public, by allowing businesses and the wider public to prepare for the disruption caused by industrial action by workers. Respondents considered that employers would need as much time as possible to plan for the impacts of industrial action and that a 14-day notice period ensures that employers can implement necessary measures to mitigate disruptions while still respecting the union's right to organise timely industrial action. Concerns were raised that any shortening of the notice period, particularly in areas like healthcare, transport, or education would create significant risks due to the reduction in time for mitigation planning and may have knock on impacts to the broader economy. Furthermore, there were several responses that raised opposition to any extension under the basis that strike action should always be a last resort, and that a short notice period would make action more likely.

130. Respondents who wanted a reduction to 7 days largely considered that employers would be aware of the potential for industrial action long before it occurs and considered that given the cumulative impact of the preceding timescales to the industrial action notice, there was no requirement for a drawn out 14-day notice period. Instead, these respondents called for a reduction to 7 days as they considered this timeframe provides sufficient opportunity for employers and unions to negotiate or implement necessary mitigations, without causing undue delays that undermine the effectiveness of industrial action and the fundamental freedom to strike. Additionally, respondents considered a return to 7 days as set out previously in the 1992 Act would enable unions to place pressure on employers to come to an agreement on disputes that may have been long running, but also provide a sensible balance between disproportionate burdens on employers or unfair delay to union members being able to take strike action.

131. Respondents who wanted to see an increased time-period of 21 days + considered that even the existing 14 day period placed strain on employers to

[5] 9 respondents to this question suggested 6 months as a suitable time period for notice of industrial action. As the existing time period for notice of industrial action is 14 days, we have treated these 9 responses suggesting 6 months as intended responses to the question immediately preceding (Question 25) which referenced and sought input to the current industrial action mandate length which is 6 months.

prepare to mitigate industrial action, and wanted to see an increased notice period to ensure that complex industries have time to prepare, and to provide an extended ‘last point’ for negotiations to head off industrial action.

Updating the Law on Repudiation of Industrial Action (Questions Twenty-Seven, Twenty-Eight, and Twenty-Nine)

The government response to Questions Twenty-Seven, Twenty-Eight, and Twenty-Nine have been grouped as they address the same area of legislation.

Question Twenty-Seven

- **Which (if any) of the options provided do you agree with in terms of modifying the law on repudiation? Please explain your reasoning.**[6]

132. Of the 165 respondents to the consultation, 74 (45%) respondents provided an answer to this question. Of the 74 respondents, 7 (9%) agreed with Option One. 13 (18%) respondents agreed with Option 2. 11 (15%) respondents agreed with Option 3. **23 (31%) of respondents wanted there to be no change to the legislation in this space.** 20 (27%) respondents returned a response scored 'other'.

133. Respondents who supported Option One (*require a union to show that it had made "reasonable endeavours" in terms of giving the notice of repudiation to members and their employers*) considered that requiring unions to show that they had made 'reasonable endeavours' was a suitable balance and practical modification to the law on repudiation. Those not in favour of Option One considered that a requirement to make reasonable endeavours would be unclear and could lead to legal challenges and satellite litigation. Others considered that reasonable endeavours under this option may lead to inadvertent negative impacts on union members who are unable to be contacted / not made aware that action may impact their unfair dismissal rights. Many respondents called for greater specification as to what would constitute 'reasonable endeavours'.

134. Respondents who supported Option Two (*require a union to show that it had issued a general notice of repudiation, posted on its website, and notified the*

6

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

officials and employers involved, instead of having to write to every member that could be involved in the unofficial action) considered it struck a reasonable balance by removing any requirement for a burdensome individual notification to all union members but ensuring that the union was clear when any action was repudiated. Further responses considered this would be the most reasonable way of dealing with the issue. It gives the union the opportunity to publicly refute the unofficial action but without having to investigate who amongst the membership was involved. Those not in favour of Option Two considered that a post on a website would be too vague, as there would be no way to ensure that those members taking unprotected action would see the notice.

135. Respondents who supported 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*) considered that it would keep accountability with the union to oversee action, and the requirement to 'act without delay' was too vague, therefore by adding a specified time frame this option would help ensure certainty for employers. Those not in favour of Option Three were concerned that this option would inadvertently extend the time in which unofficial action could continue to 3 days. From an employer's perspective, the damage or harm done in three working days could be significant and irreversible, particularly in a public services environment.

136. Respondents who supported no change to the legislation considered that the existing legislation was robust and suitable, and that the current provisions around repudiation would prevent disruptive behaviours. Many respondents stated that they considered the existing law on repudiation to be fit for purpose, proportionate and providing an appropriate balance between the interests of workers, businesses and the wider public.

137. Respondents who returned a response scored 'Other' were largely opposed to the presence of any legislation on repudiation and considered that the legislation should be repealed in full. Respondents raised that trade unions should not be liable for any unofficial action and considered that the existing provisions require a number of burdensome steps for trade unions to take to discharge any liability for unofficial action. Respondents considered the extension of liability for unofficial action to the union to be an unreasonable requirement in legislation and considered that the existing legislation operates as an impermissible interference in trade union autonomy and internal affairs

which breaches the unions' and members' freedom of association protected by Article 11 ECHR.

138. However, there were some respondents scored as 'other' who suggested that the legislation on repudiation should be tightened up to consider technological progress, with views that there was no reason why unions should need more than 24 hours to repudiate unofficial action after it comes to the attention of senior union officers.

Question Twenty-Eight

- **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?**

139. Of the 165 respondents to the consultation, 71 (43%) respondents provided an answer to this question. Of the 71 respondents, 23 (32%) wanted to see change to the notice, **44 (62%) respondents disagreed** and want the notice as prescribed by legislation to remain unchanged, and 4 (6%) respondents returned a response scored 'other'.

140. Of those who wanted change there were a range of proposed routes.

140.1. Some wanted tighter restrictions and a mandated confirmed repudiation within 24 hours.

140.2. While several suggested the current legislation should remain but with changes to remove the individual notice requirement.

140.3. Alternatively, a number of respondents considered interplay with options from the previous question and raised a range of proposed routes considered to simplify the notice.

140.4. Others proposed a simplified template for repudiation notification to be provided from government to ensure compliance and clear understanding.

140.5. Furthermore, some respondents suggested that government allow unions greater flexibility in how they communicate repudiation while maintaining the requirement for clarity and transparency.

140.6. There was also concern raised by some respondents that the last sentence of the existing notice omits the grace period before which the right is lost, and thereby misrepresents the legal effect.

140.7. Finally, there were those who continued the call for the complete repeal of repudiation legislation from the previous question.

141. Those respondents who wanted the notice to remain unchanged largely considered the existing requirements to be suitable and effective. With a majority of those calling for no change suggesting that the current prescription provides clarity and consistency, which is essential for managing the complexities of industrial relations. Therefore, the existing standardised notice ensures that content is unambiguous and uniformly understood by all parties which is particularly important in situations where unofficial action has occurred, as any confusion or lack of clarity could exacerbate tensions and prolong disruptions. By retaining the current prescribed language, the notice serves as a clear and enforceable tool for resolving such situations effectively.

142. Of the respondents scored as 'other' there were concerns of the implications of any change leading to members 'not realising' their action was repudiated, while some considered that the word "repudiate" is not an everyday word and may not be understood by workers whose first language is not English.

Question Twenty-Nine

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

143. Of the 165 respondents to the consultation, 73 (44%) respondents provided an answer to this question. Of the 73 respondents, 30 (41%) wanted the legislation to be changed, **33 (45%) respondents wanted the legislation to be left unchanged**, and 10 (14%) respondents returned a response scored 'other'.

144. Those who considered the legislation should change largely considered that the legislation should set a clear timeframe on repudiation and require repudiation to take place within 24 hours. Others proposed more minor changes as to how the notice could / should be delivered in a modern society with a combination of email, and posts on website suggested as the most

suitable. There were also a large proportion of respondents who suggested that the legislation should be repealed in full and viewed the legislation on repudiation as designed to seek to create a division between unions and their membership, suggesting that the legislation and its requirements are unnecessary and unjustified.

145. Respondents who wanted the legislation left unchanged were almost unanimous in the position that the existing legislation works, and there was no need to change what was working. A number of respondents raised the point that unofficial industrial action can cause immediate and significant harm to an employer's operation and therefore it is right that the union should be obliged to repudiate it as soon as possible, to prevent that harm and protect the reputation of collective bargaining as a whole. Concerns were raised that any changes may lead to increased industrial action.

146. Of those respondents scored as 'other' there were a mix of positions with calls for a review of the legislation to assess efficacy from some respondents, while others considered that the union should have to take responsibility for resolving any repudiation issue, even if it creates some burden for them.

Clarifying the Law on Prior Call (Questions Thirty, Thirty-One, and Thirty-Two)

The government response to Questions Thirty, Thirty-One, and Thirty-Two have been grouped as they address the same area of legislation.

Question Thirty

- **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**

147. Of the 165 respondents to the consultation, 66 (40%) respondents provided an answer to this question. Of the 66 respondents, **38 (58%) agreed** with the proposal put forward in the consultation, 24 (36%) respondents disagreed with the proposal, and 4 (6%) respondents returned a response scored 'other'.

148. Respondents who agreed with the government's proposal largely considered that there should be the ability for individuals to take industrial action, even in the case of Prior Call, where there has been an emergency situation. Respondents raised safety concerns as a specific area of concern that was considered to merit post prior call balloting. Many considered that this change ensures that unions are not unfairly penalised for responding to emergency situation circumstances and allows unions to subsequently conduct a lawful ballot to address the underlying issues. However other respondents, who agreed with the principle of the proposal, raised that they did not consider the laws on prior call would arise in relation to emergency situations under the existing legislation, as there would be no breach of contract by workers refusing to work in such an emergency scenario.

149. Respondents who were not in favour raised concerns that 'emergency situation' was too vague, and there would need to be further guidance on what would be considered as a safety risk justifying immediate industrial action. Many considered that the existing legislation was suitable, as emergency protections are already covered under sections 44 and 100 of the Employment Relations Act 1996 and wider whistleblowing legislation, and therefore the change is not required. Furthermore, a number of opposing respondents considered that the proposal was too 'narrowly drawn' as it would only allow for ballots in the case where action covered the emergency situation, not any walk out. These respondents wanted to see the prior call legislation repealed as a

whole as they considered that, at the moment, the law is so widely drawn that it can prevent a union from balloting for industrial action in any way connected with the action arising out of the 'prior call'.

150. Of those scored as 'other', concerns were raised that any change in this space that is ill-defined would lead to an increase in litigation to define 'emergency situation'. Respondents considered that the legislation should be reviewed fully in slower time, and then a decision made on whether it is fit for purpose.

Question Thirty-One - ***No Expansion of Detail Provided***

Question Thirty-Two - ***No Expansion of Detail Provided***

Right of Access (Q33 – Q36)

Question Thirty-Three

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

151. Of the 165 respondents to the consultation, 78 (47%) respondents provided an answer to this question. Of the 78 respondents, **32 (41%) agreed** with the proposal put forward in the consultation, 24 (31%) respondents disagreed with the proposal, and 22 (28%) respondents returned a response scored 'other'.

152. Respondents who agreed with the government's proposal largely considered that the governments approach would be proportionate and would ensure that access agreements were effective. However, many wanted to see greater clarity provided as to the required steps to take for access agreements. Additionally, the majority of those who agreed with the proposed approach concurred that the CAC would be the correct body to deal with enforcement for right of access, but that there would need to be an assessment of CAC resourcing to ensure that its resourcing capacity does not become a bottleneck that slows down access applications or dispute resolution. There were also several respondents who called for the approach to be expanded to include digital access.

153. Of those who disagreed with the proposed approach there were three broad camps - one that considered the right of access to be inappropriate as a policy outcome, a second who considered that further information is required before an informed decision could be made, and finally a group that considered that the process was too drawn out and would make for a difficult enforcement process.

154. Those who were not in favour based on 'appropriateness' considered that a right for unions to negotiate the right to access a workplace is a significant reform and the practical and operational implications need to be carefully considered. Responses considered that if not implemented well it could have a detrimental impact on relations between employers and unions. These respondents raised that the ERB requires that staff will be provided with a written statement outlining their right to join a union and that with the existing reforms to union legislation in the ERB, many employees will have some awareness of trade unions, thus negating the need for unions to have access

to workplaces to carry out union-related activities. Furthermore, many of these respondents considered that 'right of access' could undermine the employer's rights and would introduce numerous legal, administrative, and practical challenges. It was considered by these submissions that employers would effectively be compelled to grant access creating significant risks for workplace operations and industrial relations.

155. The second group were concerned that the rules for rights of access as drafted are complex and prone to misinterpretation. Therefore, in the first instance, these respondents would support a code of practice for agreeing access with employers, rather than a legalistic approach which may be counterproductive to reaching agreement, especially to those employers who are unfamiliar with engaging with trade unions. These respondents were concerned that there may not be a practicable version of this policy as they considered that many details relating to the implementation of right of access are to be left unresolved until after the ERB has passed.

156. Finally, the third group largely considered that while right of access is an important measure to increase workers' opportunities to benefit from union representation, the detailed process for access involving the CAC set out in the ERB may provide opportunities for employers to frustrate or delay union access. These respondents were concerned with the four-stage process, with different consequences depending on the stage reached, and considered that it will make the enforcement of access unnecessarily long and cumbersome. Many respondents who took this position thought that step two (where, after an initial complaint has been raised, the CAC can vary the access agreement, declare whether the complaint is well-founded or not, and - if the former - issue an order requiring specific steps to be taken to ensure the access agreement is complied with) should be the point at which the CAC could order a penalty to be paid. A number of these respondents also called for implementation of a '*right* of access', which would grant unions general access to the workplace without a negotiation process or CAC involvement, rather than what they saw as a framework to agree access.

157. Those respondents scored as 'other' called for greater clarity before an answer could be provided to the question and raised a number of specific situations in which they sought clarity before an answer could be provided. Several other respondents raised the concern that the proposal of establishing a system where access can be mandated would result in a breach of the Human Rights Act 1998 and the ECHR (Article One of the First Protocol– interference with the

right to peaceful enjoyment of possessions), which would give rise to judicial review applications and satellite litigation rather than deliver the aim that the government is seeking.

Question Thirty-Four - *No Expansion of Detail Provided*

Question Thirty-Five

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

158. Of the 165 respondents to the consultation, 55 (33%) respondents provided an answer to the first part of this question. Of the 55 respondents, **28 (51%) considered the fine system proportionate as put forward in the consultation**, 13 (24%) respondents disagreed with the proposal, and 14 (25%) respondents returned a response scored 'other'.

159. Across those respondents who agreed, or were scored as 'other' there was a consistent position raised by many respondents to ensure that there was no way for a penalty fine to be 'priced in', as there was concern raised that this would become a cost of business, rather than introduce the change the government sought.

160. Respondents who agreed with the government's proposal considered that a penalty fine system would be a proportionate method of enforcing the proposed access framework for trade unions. However, there were a mixed number of responses who considered that they needed further details as to the system to assess efficacy. Many wanted to see a further consultation on the detail of how right of access will work in practice, as they considered that the effectiveness of the system will depend on the clarity of the guidelines and the consistency of their application. If implemented correctly, respondents considered that the penalty fine system can serve as a strong deterrent against breaches and encourage adherence to access agreements.

161. Respondents not in favour largely considered that right of access should not be unfettered and that there needs to be restrictions on access. There were concerns that a penalty system may be overly punitive and could have a

detrimental impact on relations between employers and trade unions, ultimately making it more difficult to resolve disputes constructively. Respondents were critical that the introduction of such penalties could undermine the principle of proportionality outlined in the consultation, which calls for a balanced and fair approach to industrial relations. Many who were opposed to the principle suggested focus should be on creating a framework that respects employers' rights, provides clear safeguards for managing third-party access, and ensures is proportionate.

162. Of those respondents scored 'other' a number of submissions raised that they wanted to see an expansion of any enforcement mechanisms to include something that moves beyond fines and ensures that a right of access is also provided for. There were concerns that by only having a fine system, employers may 'price in' the cost of not complying with the right of access, and therefore there should also be a mechanism to ensure access following any fines. Furthermore, there were calls from several respondents to develop broader compliance processes for right of access, as given that agreeing an access agreement could be new employment relations territory for many employers, an enforcement approach based too strongly on deterrence and facing potential financial penalties was argued to need to be balanced with a firm emphasis on encouraging compliance and good practice. Finally a number of respondents raised the question as to whether the fine system would apply to both parties, or just to employers.

163. Those scored as 'other' also raised several differing proposals, due to the variation and range in suggestions and proposals, and the ambition of the government to consider these in detail ahead of any further policy development, they will not be broken down in detail. Instead, a high-level summary of grouped positions is provided. Respondents largely considered the following:

    163.1. There should be a process whereby any enforcement is linked to informal resolution processes first, to encourage mediation and engagement.

    163.2. A CAC order should be made publicly as a mechanism to ensure general awareness of any breach to deter non-compliance.

    163.3. The CAC should be able to impose multiple fines dependent on steps taken as a way of ensuring compliance with an order.

163.4. Enforcement needs to be balanced with investment in strategies to prepare employers for the new right of access and encourage compliance through robust information, advice and guidance to employers

Question Thirty-Six

- **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 be able to be relied upon as if it were a court order? What other approaches would be suitable?**

164. Of the 165 respondents to the consultation, 45 (27%) respondents provided an answer to this question. Of the 45 respondents, **19 (42%) considered that a CAC order should be relied upon as a court order**, 11 (24%) respondents disagreed with the suggestion of a court order reliance, and 15 (33%) respondents returned a response scored 'other'.

165. Those respondents to this question who supported a CAC order that could be relied upon as a court order largely considered that it would be an effective mechanism to ensure compliance with a right of access enforcement. Respondents considered that by requiring employers to follow steps as ordered by the CAC, this would streamline enforcement and reduce the need for additional legal proceedings, making the process more efficient.

166. Those not in favour of the suggestion of a court order reiterated the concern addressed by respondents throughout this section - that access agreements relate to access to employers' private property, and respondents would have concerns that taking an approach of CAC-mandated access would be an unjustified interference with the right to private property. These respondents considered that access agreements should be voluntary, not what they considered to be forced. Similarly, those in opposition to the right of access enforcement raised that they considered a need to see a clear position of shared accountability across any enforcement mechanisms to ensure both unions and employers are held responsible for their actions. Respondents argued that unions should face penalties for breaches, such as unauthorised access or misuse of access rights, just as employers should face enforcement in cases of clear and deliberate obstruction.

Going Further and Next Steps (Q37)

Question Thirty-Seven - *No Expansion of Detail Provided*

ANNEX B – LIST OF 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 modifying the law on repudiation? 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.

ANNEX C – S226A AND S234A PROPOSED CHANGES

Overview of changes to S226A following proposed amendments

Section of 1992 TULRCA	Current Requirements	Requirements Following Amendment
226A Notice of ballot and sample voting paper for employers	Unions must 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. The notice must contain: • a list of the categories of employees being balloted, • a list of the workplaces in which the employees work, • the total number of employees concerned, • the total number of employees in each of the categories of employees being balloted, • the number of employees concerned at each workplace • an explanation of how these figures were arrived at OR • where some or all of the employees 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 employees concerned; the categories of employees and the numbers in each of those categories; and the workplaces at which the employees work and the number of employees at each workplace.	Unions must 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. The notice must contain: • a list of the categories of employees being balloted, • a list of the workplaces in which the employees work, • the total number of employees concerned OR • where some or all of the employees 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 employees concerned; the categories of employees; and the workplaces at which the employees work. Unions must also provide a sample ballot paper to employers no later than the third day before the opening of the ballot.

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

Overview of changes to S234A following proposed amendments

Section of 1992 TULRCA	Current Requirements	Requirements Following Amendment
234A *Notice to employers of industrial action*	For industrial action to be protected, the union must provide an employer with a notice of industrial action The notice must contain; - a list of the categories of employee to which the relevant affected employees belong, - a list of the workplaces at which said employees work, - the total number of affected employees, - the number of affected employees in each category listed, - the numbers of affected employees who work at the listed workplaces, - and an explanation of how these figures were arrived at. OR where some or all of the employees 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 employees, the categories of employee to which the affected employees belong and the number of the affected employees in each of those categories, and the workplaces at which the affected employees	For industrial action to be protected, the union must provide an employer with a notice of industrial action The notice must contain; - a list of the categories of employee to which the relevant affected employees belong, - a list of the workplaces at which said employees work, - the total number of affected employees, - the numbers of affected employees who work at the listed workplaces, - and an explanation of how these figures were arrived at. OR where some or all of the employees 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 employees, the categories of employee to which the affected employees belong , and the workplaces at which the affected employees work and the number of them who work at each of those workplaces. The notice should also state: - whether the action is continuous (and if continuous, the intended

	work and the number of them who work at each of those workplaces. The notice should also state: - whether the action is 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	date for action to begin) or discontinuous (and if discontinuous stipulate the intended dates of action). The requirement to specify whether the industrial action is a strike will be removed by the repeal of the Strikes (Minimum Service Levels) Act 2023.