UK Government

GOVERNMENT RESPONSE TO:

Making Work Pay: creating a modern framework for industrial relations

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EXECUTIVE SUMMARY

1. The government's plan to Make Work Pay is a central part of our mission to grow the economy, raise living standards across the country and create opportunities for everyone. It will help more people stay in work, make work more family-friendly and improve living standards, putting more money in working people's pockets.

2. In recent years, trade union legislation has presented a significant barrier to effective, positive industrial relations in the UK, and this government has committed to resetting and modernising our industrial relations framework.

3. To inform this the government ran a consultation on creating a modern framework for industrial relations. This consultation saw significant input from respondents across multiple sectors, with engagement from businesses, unions, representative bodies, members of the public, and multiple other stakeholders. We have carefully considered these responses and have explored issues in depth through multiple stakeholder roundtables. Responses have been invaluable in informing decisions and contributed to the decisions on amendments we are tabling to the Employment Rights Bill.

4. We will update the legislative framework in which trade unions operate aligning it with modern work practices, removing unnecessary restrictions on trade union activity and ensuring industrial relations are underpinned by collaboration, proportionality, accountability, and a system that balances the interests of workers, businesses and the wider public.

5. To strengthen the voice of working people, we will be bringing forward amendments to the Employment Rights Bill (ERB) in the following areas:

   5.1. We will improve the process and transparency around **trade union recognition**, including **streamlining the recognition process** and **strengthening protections against unfair practices by implementing all five measures we consulted on in relation to unfair practices. This will prevent the voice of working people being undermined in the statutory recognition process and rebalance the recognition process**.

   5.2. We will extend access provisions to cover digital access, in line with modern day workplaces. We will ensure processes are proportionate and effective by introducing a fast-track route for achieving **an access**

agreement where certain conditions are met, alongside a mechanism to ensure there are **appropriate penalties in place for non-compliance.**

5.3. As part of our efforts to remove unnecessary bureaucratic hurdles, we will **abolish the 10-year requirement for unions to ballot their members on the maintenance of a political fund**. The government, however, recognises this proposed change could reduce awareness amongst members of their right to opt-out of contributing to a political fund. We will therefore ensure that members would still be given notice of their right to opt-out every 10 years.

5.4. The government recognises the importance of striking a balance between allowing for effective strike action, while also ensuring that employers are able to reasonably prepare. We will therefore be **simplifying the current information requirements on industrial action ballots and notice to employers. and ensuring trade unions provide a 10 day notice period for industrial action**.

5.5. The government is keen to ensure that trade unions have a meaningful and up to date mandate to support relationships and negotiation with employers and deliver effective dispute resolution for workers. That is why we are committed to making balloting more accessible by **delivering e-balloting, which we anticipate will increase participation in statutory ballots and enable the demonstration of clear mandates**. It is also why we will continue to work with trade unions on different approaches to securing that mandate as e-balloting and other reforms to trade union legislation come into force.

5.6. The government will also **extend the expiry of mandate for industrial action from 6 to 12 months.** This strikes the correct balance between ensuring industrial action is based on a recent vote but also reducing the need for re-ballots.

6. Taken together, these changes will help to bring trade union law and regulation into the 21st century, strengthening the voice of working people, reflecting modern day working practices and balancing the interests of workers, businesses and the wider public. The government will continue to engage with employers and trade unions to continue building forward to a modern approach to industrial relations.

INTRODUCTION

7. The government is clear that trade union law and regulation must be brought into the twenty-first century. The Employment Rights Bill (ERB) will fix the foundations of a framework for industrial relations including through the repeal of legislation such as the great majority of the Trade Union Act 2016. However, in places this will leave us with a legal framework that is over three decades old which has not adapted to significant changes in the working world.

8. Workplaces and working practices have changed significantly over the last decade and the legislation which underpins industrial relations needs modernisation. Through this consultation, the government sought views on a number of changes to our industrial relations framework, to deliver a positive and modern framework for trade union legislation that enables productive, constructive engagement, respects the democratic mandate of unions, and works to reset our industrial relations.

9. The plan to Make Work Pay was developed through close engagement with business and trade unions and this consultation was conducted with that same spirit of partnership. We have considered and analysed detailed responses from a range of organisations including Businesses, Trade Unions, and Business Representative Organisations and we have also run two roundtables with business and trade unions.

10. This government response sets out a summary of responses to the questions asked and proposals put forward in the consultation ‘creating a modern framework for industrial relations. It also sets out next steps as to where the government will bring forward amendments to the ERB, and where policy development and analysis will continue further before any further legislative changes are brought.

11. A detailed summary of responses is included at Annex A and a list of the questions asked in the consultation are at Annex B.

CONDUCTING THE CONSULTATION

12. The consultation ran from the 21st of October 2024 to the 2nd of December 2024 (inclusive). The consultation received 165 responses from a range of stakeholders as set out below in Table One. The online submission portal saw a significant number of responses that were blank with no identifying data or completed with random text. These responses have been checked for relevant information, and where there was no response provided, discounted from the total of completed responses.

13. During the consultation period the Department for Business and Trade (DBT) also engaged with consultation stakeholders through roundtables, virtual meetings, and email.

Stakeholder	Number of Responses
Academic	5
Business	32
Charity	5
Health and Social Care	3
Business Representative Organisation	22
Think Tank	3
Member of the Public	8
Trade Unions	27
Local Government / Councils	10
HR	8
Education	31
Other	11
Total Responses	**165**

Table One – Breakdown of Responses

Methods of Analysis

14. Written consultation responses were analysed using mixed methods. Closed components of questions were analysed with standard dichotomous and

multiple-choice quantitative techniques. Open ended components of questions were analysed using qualitative techniques involving breaking the text down into categories, coding responses, and considering positive or negative sentiments to draw out common perspectives among the respondents.

15. In analysing the responses to the consultation, we have applied the following criteria to how they have been counted as part of the summary of responses:

    15.1. Responses from multiple bodies or individuals that were received within one submission are counted as a single response for the purpose of this government response.

    15.2. Where respondents answered any of the questions to the consultation, even if this was only one question, these have been counted as responses to this consultation.

    15.3. Where respondents to the consultation only provided their name and/or email address and did not answer any questions posed in the consultation these have not been counted as responses.

    15.4. Where respondents to the consultation input random data in response to questions (most commonly random letters that do not form words) these responses have been discounted.

    15.5. Where respondents have submitted multiple returns to the same consultation – we have taken their latest (most recent) submission as their intended response.

16. There are many questions in this consultation where respondents chose to answer one specific area of interest and then leave the other questions relating to different topics blank. Therefore, for each question the Government Response will set out how many of the total 165 respondents to the consultation, returned a response to each question.

17. For the purpose of any percentages provided in the Government Response, where respondents have indicated support for a proposal they have been counted as ‘agree’, where respondents have indicated opposition they are counted as ‘disagree’, where respondents propose something different to the government proposal, or provide a response that is unable to be scored as supporting or opposing the question, they are marked as other. All blank responses and responses that indicate the respondent intends to provide no

position are marked as no answer and are discounted from percentage calculations.

18. Percentages may not total to 100% when added up, as percentages have been rounded to the nearest whole number.

19. This document provides a summary of the consultation responses received and the government response. It does not attempt to capture every point made in submissions to the consultation, nor does it cover comments on aspects of policy that fall outside the scope of this consultation. This document sets out the changes the government has or will make in response to the main points raised in the consultation. Where the government has not made a change, or has made a different change, the reasons are explained.

20. We have provided a high-level statistical summary of responses questions where relevant. Summaries of the positions raised in response to this consultation are not exhaustive and set out the most common and pertinent positions raised in response to the consultation questions and government proposals.

SUMMARY OF QUESTION RESPONSES AND GOVERNMENT RESPONSE

21. In the following section of this document, we review the key themes identified in consultation submissions in response to individual questions and provide the government's response in respect of the ERB and the next steps to be taken.

22. Due to the breadth of questions asked, and the detail of responses received, we provide a high-level overview of responses in this section and provide the complete government response to this overview. Further detailed summaries of responses to the consultation are provided in Annex A.

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?**

23. 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'.

24. An array of views were provided with general agreement of the principles common. Some called for the principles to go further, while those not in favour considered that the principles were too broad to be applicable to a plurality of industries.

Question Two

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

25. 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. Some respondents called for a fresh framework setting out how

unions and employers could work together, with many focusing on how we can improve balance between relevant parties.

Government Response to Question One and Two

26. The government would like to thank respondents for the ideas and input provided against questions one and two in relation to the principles for a modern industrial relations framework. There were a wide range of useful and detailed suggestions provided by respondents that are a rich resource for development. We will consider all responses further and consider how they can be used to inform ongoing policy work. As part of this, the government will explore the development of an overarching industrial relations framework that sets out the government's vision for a new approach to industrial relations. This will build on the principles outlined in the consultation and provide guidance on how trade unions, workers and employers can work together to deliver positive and effective industrial relations.

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.**

27. 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'.

28. Those in favour of the government proposal 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. Others in support also considered that the protection from unfair practices should be extended to take place from the point at which the trade union writes to an employer to request voluntary recognition. While those not in favour considered that the existing legislation was suitable. Those marked as 'other' largely considered other changes were needed to the code of practice.

Government Response to Question Three

29. The government is clear that changes to the current position are required to address scenarios where unfair practices take place earlier on during the recognition process before the ballot phase. Applying the protections from the point at which the trade union writes to the employer to request voluntary recognition would be inappropriate because there can be a significant period of time between when a union writes to the employer formally seeking voluntary recognition and the time when the union submits their application to the CAC. The government believes it is more appropriate to apply access and unfair practices provisions from the point when an application is accepted by the CAC.

30. The government will therefore amend Schedule A1 of the 1992 Act to extend the prohibition on unfair practices and enable the Code of Practice on unfair practices during recognition and derecognition ballots to be applicable during the entire recognition process from the point when the CAC accepts the union's application for statutory recognition. Schedule A1 will be amended via the ERB and the Code of Practice will be updated in due course following consultation on an updated Code. In updating the code of practice on unfair practices, HMG will keep under review the list of unfair practices to make sure it remains fit for purpose and up to date.

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**

31. 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'.

32. Those in support of the proposal considered that the proposal is welcome and valuable, but that there is no need to further codify the requirement in legislation, as existing legislation has the effect of requiring this already. Those not in favour considered the proposal may introduce a 'hurdle' to the CAC process. Those marked as 'other' broadly suggested that there would be a need for a corresponding duty on employers to provide the number of workers in the bargaining unit at the point of application sharing.

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.**

33. 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’.

34. Those in support largely agreed that 10 days would be a suitable time period, while those not in favour considered that placing limitations on the bargaining unit would prevent said unit being democratically representative. Those marked as ‘other’ raised concerns about the potential for hostile employers to manipulate a bargaining unit within the proposed 10-day period.

Question Six

- **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.**

35. Of the 165 respondents to the consultation, 75 (45%) respondents provided an answer to this question. Many respondents suggested they had no examples to provide, several respondents pointed to historical cases that have already been considered by the CAC, while a number of others raised new cases and similar examples.

36. The government will not provide a summary of responses to this question, as it would be unreasonable to name any organisation without a right of response.

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

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

38. There were a broad range of detailed suggestions provided. A high-level overview of responses is provided in Annex A.

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?**

39. 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'.

40. Those in support of the proposal considered that government should place the burden of proof on employers to demonstrate that recruitment during the recognition process is unrelated to a unionisation claim. Those not in favour considered that restrictions on recruitment would be overly burdensome on business. While those marked as 'other' considered a revised version of the proposal to reduce bargaining unit manipulation would be more appropriate.

Government Response to Questions Four, Five, Six, Seven, and Eight

41. The government would like to thank respondents for the ideas and input provided against questions four to eight. There were a wide range of useful and detailed suggestions and evidence provided.

42. The government recognises that mass recruitment into the bargaining unit with the aim to thwart a trade union recognition application is not common practice. However, due to the impact mass recruitment can have, the government

understands the concerns that have been raised and put forward a proposed approach to addressing the issue in the consultation document.

43. The government carefully considered alternative suggestions to address this issue. These included suggestions to require the CAC to determine whether new workers had been recruited in order to dilute the bargaining unit for the purposes of thwarting recognition. Whilst there would be clear benefits to this approach, we do not consider it workable because it would be difficult for the CAC to establish a sufficient level of proof to determine the purpose for why workers had been recruited into a bargaining unit. Furthermore, we consider that a new obligation on business to demonstrate their recruitment intent would be a disproportionate and unfair burden and could result in employers having to divulge commercially sensitive information.

44. The government considers the best approach to dealing with this issue is the one proposed in the consultation document, i.e. that at the point the CAC receives the application from the union, the number in the proposed bargaining unit provided to the CAC by the employer could not be increased for the purposes of the recognition process (it may go down through normal departures, for example, workers leaving, retiring, etc.) and will be amending the ERB to deliver this. In view of responses from some respondents, the Government has concluded that there is no need to amend our trade union legislation to require the union to copy their application to the employer and to require the employer to submit the number of workers within 10 working days, as this is already provided for under Schedule A1 of the 1992 Act.

45. An employer would be free to recruit more staff post the date when the CAC receives the union’s recognition application, but these new staff would not be eligible to count towards the number in the bargaining unit for the purposes of the recognition process and would not be entitled to vote in any subsequent recognition ballot.

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?**

46. 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'.

47. Those in support of the proposal considered that it would encourage both employers and unions to engage in timely and focussed negotiations. Those not in favour considered that the timescale should be adjusted to be shorter and reduce potential time for recognition frustration, while others who were not in favour considered the time should be longer to allow for extended engagement. Those marked as 'other' largely considered that a 10-day period would be more appropriate, with a potential extension following agreement from both parties.

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?**

48. 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'.

49. Those who supported the proposal considered that it would be an effective mechanism. Those not in favour called for greater clarity as to how the process would work in practice and tended to voice opposition to the principle of union access to the workplace. While those marked as 'other' considered that an improvement to the process would be to make it more collaborative.

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?**

50. Of the 165 respondents to the consultation, 76 (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'.

51. 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'.

52. Those who supported the proposal also broadly supported the 10 day cap but were clear that any delay must require both parties agreement. Those not in favour wanted to see open ended extensions to the process. While those marked as 'other' considered that it would be contrary to positive industrial relations for the CAC to be required to impose terms.

Government Response to Questions Nine, Ten, and Eleven

53. The government would like to thank respondents for the ideas and input provided against questions Nine, Ten, and Eleven. There were a wide range of useful and detailed suggestions and evidence provided.

54. The government remains of the view that setting a clear timetable for access will be beneficial to the recognition and de-recognition process. Bringing that timetable to the beginning of the recognition process will also enable unions to have access earlier in the process, instead of only during the ballot phase as at present.

55. Having considered respondents' views, the government has decided to introduce a 20-working day negotiation period on access and run this in parallel with the 20-working day negotiation period in relation to agreeing the

bargaining unit. This will be done by including an amendment to Schedule A1 in the ERB. The 20-working day period will start from the point the CAC accepts a recognition application. By taking this approach, this will limit delays to the recognition process while negotiations on access take place.

56. The 20 working days timeframe to reach a voluntary access agreement is to be broken down as follows:

56.1. 5 working days (starting with the day after that on which the CAC gives the union notice of acceptance of the application) for the union to notify the CAC and the employer it wishes to have access to the workers. This will be the union's only opportunity during the application process to request an access agreement / arrangement and trigger the following steps.

56.2. 15 working days for the parties to negotiate an access agreement from the date the union notifies the employer (for a total of 20 working days).

56.3. Permission for the 15 working days to be extended by the CAC where both parties agree to this.

56.4. If there is no agreement on access at the end of the 15 working days (or extended period for further negotiations where both parties agree), the CAC would then have 10 working days (extendable by the CAC notifying the parties) to adjudicate and issue a decision setting out any access terms that must be abided by the employer and the union.

56.5. The voluntary access agreement or the access arrangements ordered by the CAC are to last the duration of the recognition process until the result of the ballot.

56.6. If at any time after the access agreement / arrangement is in place, the employer fails to comply with it, the union or the employer (respectively) will be able to bring a claim before the CAC for remedy.

57. Where a union wants a Suitable Independent Person (SIP) to manage communication of union materials to the workforce, this will continue to be available in addition to the access provisions above. Where a union would like a SIP to be appointed, they will be required to indicate this during the 5 working day period.

Question Twelve

- **Which (if any) of the options[1] provided do you agree with in terms of the tests set for making an unfair practice claim? Please explain your reasoning.**

58. 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'.

Government Response to Question Twelve

59. The government's preferred option remains Option 1 (the response with majority support) as set out in the consultation, that is to delete the second test which requires said practice to have been likely to change a workers vote. Requiring a second test can make it difficult for unions to satisfy the CAC that an unfair practice has occurred. Our view is that irrespective of the impact on voting behaviour of an unfair practice, the unfair practice should not be occurring. The government will bring forward an amendment to the ERB deleting the second test in relation to CAC consideration as to whether an unfair practice has occurred.

[1]

Option One – Removing the second test (that the use of that practice changed or was likely to change, in the case of a worker entitled to vote in the ballot, the intent to vote or abstain, the intent to vote in a particular way, or how they voted) 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.

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?**

60. 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'.[2]

61. Responses to this question were varied and assessment provides for a challenging analysis of responses, detail of the approach taken is in Annex A.

62. Those who agreed with the proposal largely considered the existing 24-hour period was too short, and that the time frame for complaining about unfair practices should increase. Those who were not in favour considered an increased time frame may lead to increases in vexatious complaints. While those scored as 'other' thought that any extension in time frame for complaints to be made should be at the discretion of the CAC.

Government Response to Question Thirteen

63. We recognise the difficulties of having too long a timeframe for unfair practice complaints to be made which would add significant delays to the recognition and de-recognition process. We also noted carefully points made by some respondents that allowing complaints to be made once the ballot result was known could lead to a number of tactical complaints by parties who were not happy with the recognition ballot outcome.

64. The government has decided therefore to allow for an appropriate extension to the timeframe for complaints to be made, from 1 day after the ballot has closed to 5 working days after the close of the ballot. The recognition ballot outcome would not be notified to the parties until after the 5 working days period has expired.

[2] 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.

65. By taking this approach, this will allow the parties more time to submit a complaint after the ballot has closed but would safeguard against vexatious tactical complaints as the 5 working days deadline will fall before the recognition ballot outcome is made known by the CAC to the parties. We also decided on 5 working days to avoid more significant delays to the declaration of the recognition ballot outcome.

66. Where no ballot takes place as part of the recognition or de-recognition process, an unfair practice claim can be brought up until the date that the CAC makes a decision on the recognition or de-recognition application.

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.**

67. 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’.

68. Those who agreed with the proposal broadly considered the operation of a political fund to be an internal matter for trade unions, whereas those not in favour considered that a 10-year cycle of ballot requirement was not overly onerous. Those marked as ‘other’ broadly considered that removal of the ballot requirement would remove a mechanism of accountability.

Government Response to Question Fourteen

69. The government acknowledges that the majority of respondents that answered this question agreed with the proposal. This proposal was put forward as a means of simplifying the political funds process, as once a political fund has been set up and approved by members, there would be no further requirement to consult with the membership and the political fund could continue indefinitely unless closed by the trade union leadership in line with its stated internal procedures.

70. The government considers that the costs on unions from balloting their members are an unnecessary administrative burden given that there have been no instances of members choosing not to maintain the political fund through this 10-year re-balloting system. Some respondents reported costs of tens of thousands of pounds to administer these ballots. In addition to the direct costs, the ballots are complex to set up and require the involvement of an independent scrutineer.

71. The government will address concerns about union members’ awareness of political funds in its response to Question 15 of this consultation, which asked

whether trade union members should be reminded on a 10-year basis of their right to opt out of a political fund if the 10-year ballot requirement is removed.

72. The government has stated its ambition for constructive, proportionate, and transparent industrial relations. Having considered the balance of these consultation responses, the government has concluded that the statutory 10-year ballot requirement is an unnecessarily burdensome administrative cost on trade unions. The government will therefore take forward this proposal and table an amendment to the ERB to remove the 10-year ballot requirement.

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.**

73. 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’.

74. Those who agreed considered that a 10-year reminder would provide suitable accountability, while reducing burdens on unions. Whereas those not in favour 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. Respondents marked as ‘other’ largely called for an annual reminder.

Government Response to Question Fifteen

75. The government recognises that the majority of respondents to this question agreed with the proposal that trade union members should be reminded on a 10-year basis from when the political fund was set up that they can opt out of the political fund. This was proposed as the government acknowledges that the proposed removal of the 10-year requirement for unions to ballot their members on the maintenance of a political fund (Question Fourteen) could

reduce awareness amongst members of their right to opt-out of contributing to a political fund.

76. The government does not intend to place undue burden on unions and believes that a 10-year interval between reminders is proportionate and consistent with the current arrangement of holding 10-yearly ballots. The government also notes that reminders will be less resource intensive for unions to implement than a member ballot.

77. Having considered the balance of these consultation responses, the government believes that requiring unions to remind members of their opt-out right every 10 years strikes the appropriate balance between maintaining awareness amongst members of their right to opt-out of contributing to a political fund, whilst minimising the administrative and cost burdens on unions of providing such a notification. The government will therefore take forward this proposal and look to table an amendment to the ERB. The opt-out reminder notification will need to be provided to members within 8-weeks following the 10-year reminder date.

Question Sixteen

- **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?**

78. Of the 165 respondents to the consultation ‘creating a modern framework for industrial relations’ 62 (38%) respondents provided an answer to this question.

79. Respondents largely saw no legislative or practical issues with the removal of the 10-year requirement across the raised territorial extent.

Government Response to Question Sixteen

80. The government thanks respondents for their input to this question. As no significant issues have been identified, there is no detailed response to this question.

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?**

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

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

Government Response to Question Seventeen

83. The government is committed to reforming trade union legislation to bring it into the 21st century. We want to create an industrial relations framework fit for a modern economy and workplace.

84. As part of this we want to ensure that trade unions are able to focus on their core role of supporting workers, negotiation and dispute resolution.

85. That is why we are creating a right of access to workplaces to allow trade unions to recruit and organise, as well as reforming the statutory recognition process and making sure that they have enough time to represent their members. It is also why we want to ensure that trade union legislation is proportionate, effective and does not create unnecessary bureaucratic hurdles. As part of this ambition, we will repeal the strikes (Minimum Service Levels) Act 2023, and the 40% support threshold in the Trade Union Act 2016.

86. Moreover, the government wants to ensure that trade unions have a meaningful mandate to support relationships with employers and deliver effective dispute resolution. That is why we are committed to making balloting

more accessible by delivering e-balloting, which we anticipate will increase participation in statutory ballots and therefore demonstrate clear mandates.

87. We are committed to working with businesses and trade unions as we take these reforms forward including by launching working groups on e-balloting in the coming months.

88. Whilst we continue to engage on how to ensure that trade unions are able to secure a meaningful mandate for industrial action, and as the other reforms to trade union legislation come into force, the government will table an amendment to the ERB specifying that the repeal of the 50% industrial action ballot turnout threshold will be subject to commencement on a date to be specified in regulations. The intention behind this approach is to align as closely as possible the removal of thresholds with the introduction of e-balloting as an option for trade unions. We hope that this will ensure that industrial action mandates will have demonstrably broad support. Alongside this, we will start work imminently on e-balloting by launching a working group with trade unions and business.

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.**

89. 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’.

90. Those in support largely considered that the proposals would reduce the bureaucracy unions are required to meet, and prevent spurious challenges of legitimate industrial action. Those not in favour viewed that the existing requirements were reasonable, and that they enabled businesses to plan for

industrial action. Respondents marked as ‘other’ largely raised sector specific concerns.

Government Response to Question Eighteen

91. The government proposal for this question was driven by a concern that the complexity of information required in ballot notices can create disagreements between unions and employers over whether the requirements are met by trade unions. This could result in increased litigation and create increased risk over the lawfulness of industrial action where the alleged breach is relatively technical and insignificant. Such risks have been significantly reduced by case law, as respondents have pointed out, but we recognise that these situations can still arise.

92. The government understands the position raised by those who consider that any reduction in information provision under S226A may somewhat impact planning utility. However, with the proposed simplification of information requirement on ballot notices, the government aims to address the overly burdensome and convoluted existing requirements under S226A, while ensuring businesses have the information they need to plan. Simplification of these requirements will therefore help ensure both employers and unions are able to focus their attention and resources on resolving disputes, thereby reducing the risk of spurious challenges to democratic industrial action.

93. Therefore, the government will be introducing a new clause in the ERB to reduce the information required in ballot notices under Section 226A. As outlined in the consultation, this will remove the requirements for a trade union to provide information as to the number of employees concerned in each category or workplace and to provide an explanation of how the total number of employees concerned was determined by the union.

94. Additionally, in circumstances where some or all of the employees concerned pay their union subscription by check-off (whereby the employer makes deductions representing payments to the unions), we are retaining the existing ability for the union to choose to provide the employer with information to enable the employer to readily calculate the total number of affected employees, categories and workplaces itself. We recognise that this can be a helpful tool for unions in adhering to information requirements.

95. A table of proposed changes to S226A is in Annex C.

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?**

96. 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.

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

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

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

- Do nothing
- Increase the specificity of categories in the notification.
- Require unions to hold detailed category records.
- Expand the specificity of categories to include a specific marker for workers who are in safety critical roles, or essential public services.
- Reduce the specificity of categories to reduce the likelihood of legal challenges
- Remove the requirement for any notification under S226A.

Government Response to Question Nineteen and Question Twenty-Four

100. Responses to the consultation revealed a range of opinions. We acknowledge the value of providing this information for employers, as well as the benefits that enhanced clarity regarding the categories of workers could bring in preparing for industrial action.

101. The government will not be amending the degree of specificity required regarding "categories" of employees concerned that unions are mandated to disclose in ballot and industrial action notices to employers. The Code of Practice on Industrial Action Ballots and Notice to Employers currently advises unions to adopt categorisation relating to employers' work or the categories the employers already use in their interactions with unions. We believe that a change to this would provide minimal value overall and contradict the commitment to simplify notices for industrial action and industrial action ballots.

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?**

102. 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'.

103. Respondents in support of the proposals considered a specific timeframe would be helpful, whereas those in opposition largely considered the existing

wording to be fit for purpose. Those responses marked ‘other’ broadly called for greater detail as to what ‘reasonably practicable’ should mean.

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

105. 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. Whereas others considered a time limit would provide certainty.

Government Response to Question Twenty and Twenty-One

106. The government has carefully considered the consultation responses on this proposal. Following analysis of responses, we consider that legislating for a specific timeframe offers limited value, as unions are already required to inform employers and members of the outcome of an industrial action ballot before submitting a notice for industrial action. This requirement inherently incentivises unions to return the ballot outcome “as soon as reasonably practicable.” While we acknowledge that a specific time limit could provide greater clarity, this benefit is outweighed by the additional bureaucracy it would introduce, contradicting the proposal’s intent to simplify notices, and increase the risk of spurious legal challenges against unions.

107. Therefore, the government will not be specifying a set time limit for trade unions to notify employers and its members of the outcome of an industrial action ballot.

Question Twenty-Two

- **What do you consider are suitable methods to inform employers and members of the ballot outcome?**

108. Of the 165 respondents to the consultation, 87 (53%) respondents provided an answer to this question.[3]

109. Respondents proposed:

Number of Respondents Proposed	Mechanism
42	Email
18	Public website post
15	Postal system / Letter
3	'Electronic means'
6	Let individual unions determine method
1	In person
10	Agree between Union and Employer in advance.
4	'Secure mechanism' with proof of delivery

110. Several respondents emphasised that any mechanism specified would need to have a method of 'proof of delivery' to prevent disputes over the receipt of any results.

111. Respondents also emphasised that if a specified timeframe were to be introduced, a failure to provide the results of a ballot within a particular timeframe should not invalidate the ballot result as this was seen to be a disproportionate sanction, and a 'barrier' to democratic action.

Government Response to Question Twenty-Two

112. The government would like to thank respondents for the ideas and input provided against this question. There were a wide range of useful and detailed suggestions and evidence provided.

[3] Noting that respondents can suggest more than one mechanism and the total suggestions will exceed the total respondents.

113. This proposal does not require an amendment to primary legislation. Therefore, we will not need to put forward an amendment to the ERB.

114. The Code of Practice on Industrial Action Ballots and Notice to Employers currently recommends the use of first-class post, courier, fax, email or hand delivery and to consider obtaining confirmation that the employer has received the notice, by using recorded delivery or otherwise.

115. Responses to this question suggest that there is scope to streamline the process of notifying employers and members of the ballot outcome. The results indicate that email is the preferred mechanism for this. Therefore, the government will be updating the Code of Practice following Royal Assent of the ERB to recommend that email is used instead of first-class post, where possible.

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.**

116. 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’.

117. Respondents who agreed with the government’s proposal 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. Those not in favour considered that there should be no change to the existing requirements and saw that the information provided was important to enable employers to plan. Those marked as ‘other’ considered that approaches should be varied based on business size and occupation, or that there should be no requirements.

Government Response to Question Twenty-Three

118. The government acknowledges the calls to reduce the information required in industrial action notices, we also agree with many respondents to the consultation who underlined the importance for employers to have sufficient information ahead of industrial action, particularly in sectors related to emergency services.

119. The government will be bringing forward an amendment to the ERB to reduce the information unions are required to provide employers in notices of industrial action. This will remove the requirement for a trade union to disclose the number of employees in each category that are expected to take part in the action, but will not remove all the information requirements that were suggested in the initial proposal.

120. This will create a divergence in information requirements for ballot (Section 226A) and industrial action (Section 234A) notices. The continued requirement for certain information (such as the number of employees concerned in each workplace) under section 234A is considered to be justified by the greater importance of more detailed information to the employer at the point when industrial action is being called, as opposed to merely being a potential outcome of a ballot.

121. Additionally, in circumstances where some or all of the employees concerned pay their union subscription by check-off (whereby the employer makes deductions representing payments to the unions), the government will retain the ability for unions to choose to provide the employer with information that would enable them to readily workout the total number of affected employees, categories and workplaces and number of affected employees in the workplaces itself. This can be a useful tool for unions to provide employers with the required information.

122. A table of changes to S234A is in Annex C.

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.**

123. 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).

124. Those who agreed with the proposal considered that 6 months was too short, and that 12 months was a more suitable time frame. Whereas those not in favour largely considered that the 6 month period should remain in place. Those marked as 'other' 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.

Government Response to Question Twenty Five

125. The government has carefully considered responses that set out the potential issues that an unlimited expiration date for a trade union's legal mandate for industrial action could cause. This could result in strike action being called on the basis of industrial action ballots conducted several years before and risk the scenario where the ballot no longer represented the views of members. It would also create significant uncertainty for employers and could undermine the legitimacy of trade union mandates more generally. The government therefore does not support an unlimited expiration date for a trade union's legal mandate.

126. The balance of interest between the employer, the trade union and third parties affected by the industrial action suggests there should be a point at which it is reasonable to expect the union to refresh its mandate which may prove to be a useful impetus to resolving a dispute that has lasted for significant period.

127. The government has decided to extend the 6-month expiration date to 12 months. This will ensure the appropriate balance between reducing costs of re-balloting, and allowing mandates to continue for longer where they are likely to have continued members' support, without prolonging disputes or permitting disputes to be called based on more than a year-old mandate. Available evidence shows that the vast majority of industrial action concludes within 12 months.[4]

128. The government will bring forward an amendment to the ERB to extend the validity of a trade union's legal mandate for industrial action to 12 months. For clarity, there will not be any option for an employer and trade union to agree to an extension of the mandate beyond the 12 months.

Question Twenty-Six

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

129. 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]

130. Those who wanted retention of 14 days broadly considered the existing timeframe to be most suitable. Those wanting a reduction largely raised that employers would be aware of potential industrial action long before any action

[4] Data from the Labour Disputes Survey for 2022 and 2023 suggested that most disputes with strike action (90%) have action in six months or less. However, a further 10% have action of over six months (with just a few extending beyond 12 months). Labour Disputes Inquiry, UK: 2022 and 2023 - Office for National Statistics. DBT analysis of the Labour Disputes Survey data for Q2 2015 to Q3 2019, a period of less strike action, indicates similar proportions of disputes - with strike action lasting no longer than six months and between seven and twelve months (for disputes commencing before the commencement of the 2016 Act).

[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.

is called, and therefore 7 days would be sufficient. Some respondents wanted an increased notice period of 21 days + to enable employers to have greater time to mitigate industrial action.

Government Response to Question Twenty-Six

131. The government has listened carefully to concerns from respondents that a 7 day notice period would not be enough time to prepare for industrial action in some important sectors such as transport, healthcare (where there are complex rostering arrangements in place) and education, with potential knock-on impacts on other services. We agree that employers should be given sufficient time to mitigate against the most severe effects of industrial action and acknowledge responses to the consultation which argued that 7 days' notice of industrial action is an insufficient timeframe.

132. Given that employers would have had the time when the ballot was being carried out to put in place more general planning, the government also considers that a 14 day period goes further than is necessary. A period of 21 days would go even further in restricting a trade unions right to organise timely and effective industrial action.

133. The government is of the view that 10 days would achieve the appropriate balance in allowing employers the ability to plan to mitigate the impact of industrial action and reduce disruption and knock on impacts of strikes while respecting the right to strike. The government intends to bring forward a 10 day notice period for industrial action through an amendment to the ERB.

Updating the Law on Repudiation of Industrial Action (Q27 – Q29)

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]**

134. 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’.

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?**

135. 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’.

136. Those who wanted to see change proposed a variety of routes that are detailed in Annex A. While those not in favour considered that the notice should remain

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[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

unchanged and that the current prescription provides clarity and consistency. Those marked as ‘other’ were largely concerned with the implications of any change leading to members not realising an action was repudiated.

Question Twenty-Nine

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

137. 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’.

138. Those who wanted the legislation changed broadly considered that a clear timeframe was needed on repudiation, with some suggestions on a modernisation of delivery mechanism. Respondents not in favour considered that the existing legislation was suitable and there was no need to change it. Respondents marked as ‘other’ provided a range of views from a review of the legislation, to changing the burden requirements in repudiation legislation.

Government Response to Updating the Law on Repudiation of Industrial Action - Questions Twenty-Seven, Twenty-Eight, and Twenty-Nine

139. The government would like to thank respondents for the responses and input provided against questions Twenty-Seven, Twenty-Eight, and Twenty-Nine in relation to the proposals on updating the law on repudiation of industrial action. There were a wide range of useful and detailed responses provided by respondents that are a rich resource for further policy development.

140. The government notes the mixed responses to these questions. It acknowledges the significant concerns raised in consultation responses, particularly from employers, that this is a complex area of law which has been unchanged for many years. We also note the points made by those not in favour to this area of law, that it should be reviewed or repealed entirely rather than amended.

141. As such, the government will not be taking forward any changes to the legislation around repudiation at this time. We will continue to engage with stakeholders on this area and consider the merit of any reforms in the longer-term.

Clarifying the Law on Prior Call (Q30 – 32)

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**

142. 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'.

143. Respondents in favour of the proposal largely raised safety concerns as reasons for support. Those who were not in favour considered that the proposed 'emergency situation' was too vague and required further detail on how the change may function. Respondents marked as 'other' considered that any chance in this space would lead to an increase in litigation.

Question Thirty-One

- **What are your views on what should be meant by an "emergency situation"?**

144. Of the 165 respondents to the consultation, 65 (39%) respondents provided an answer to this question.

145. There were a broad range of detailed suggestions provided. Due to the variation and range in suggestions and proposals across a plurality of sectors of employment, and the ambition of the government to consider these in detail ahead of any further policy development, they will not be analysed here. However, a high-level summary of grouped positions is provided.

- Any specification of emergency situation should remain confined to the cases of serious risk to health and safety.

- Definition of emergency situation should be developed in reference to 44(1A)(a) and 100(1)(d) ERA 1996, with reference to “circumstance of serious and imminent danger at the workplace”

- Emergency situation must be defined as to provide protection in extraordinary circumstances where a risk or threat cannot be mitigated. Careful consideration needs to be given to ensure only emergencies are addressed that are outside the scope of ‘normal risk’.

- The appropriate threshold for an ‘emergency situation’ should be ‘circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety’ (section 44(1)(c) Employment Rights Act 1996.

- That this should not be a ‘new definition’ and that the existing legislation is suitable for emergencies.

- Sector specific suggestions that relate to individual workplaces.

Question Thirty-Two

- **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.**

146. Of the 165 respondents to the consultation, 65 (39%) respondents provided an answer to this question.

147. 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:

147.1. There would be no risks – and that the existing prior call legislation would prevent misuse of the ‘emergency situation’.

147.2. There is no risk as workers only take industrial action as a last resort.

147.3. That there was a significant risk unofficial industrial action would increase and impact business productivity and investment by causing increased disruption.

147.4. That there was a risk that without a definition of ‘emergency situation’ the legislative changes would cause issues and increase unofficial action.

Government Response to Clarifying the Law on Prior Call - Questions Thirty, Thirty-One, and Thirty-Two

148. The government would like to thank respondents for the responses and input provided against questions Thirty, Thirty-One, and Thirty-Two in relation to the proposals on clarifying the law on prior call. There were a wide range of useful and detailed responses provided by respondents that are a rich resource for further policy development.

149. Respondents returned a significant range of responses to the proposals on prior call and identified a number of areas for further policy development and analysis. A key challenge identified is determining what constitutes a safety risk that justifies immediate industrial action under the proposed prior call changes. The government is of the view that wider changes in relation to Prior Call legislation at this time would have the potential to increase disruption and litigation in relation to industrial relations. The government therefore does not intend to take forward any amendments to the ERB in relation to Prior Call.

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.**

150. 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'.

151. Those who supported the proposal broadly considered that it was proportionate and would ensure that access agreements were effective. 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. While those marked as 'other' largely called for greater clarity on the proposal before an answer can be provided.

Government Response to Question Thirty-Three

152. The government appreciates the feedback received on the proposed enforcement mechanism for trade unions' right of access into workplaces and would like to thank respondents for the ideas and input provided against this question. There were a wide range of useful and detailed suggestions and evidence provided.

153. We have carefully considered these responses and are bringing forward several amendments to the ERB in light of these. The Government also commits to a future review following implementation of the right of access framework as a whole to ensure that it is working effectively.

154. Firstly, employers and businesses expressed concerns that this policy could grant trade unions an "unfettered" right of access to workplaces. This is not correct. The core objective of this policy is to ensure access occurs in a regulated and responsible manner. To achieve this, the clause establishes a

framework under which trade unions and employers can negotiate access arrangements. If an agreement cannot be reached, then the Central Arbitration Committee (CAC) can impose an agreement, provided that agreement is consistent with various criteria that we will prescribe in secondary legislation following consultation.

155. The clause will also introduce a robust dispute resolution process and swift enforcement mechanism led by the CAC to facilitate negotiation between the parties and provide a means for combatting non-compliance, and provide a mechanism for dispute resolution once an agreement has been put in place.

156. The government recognises the issues raised regarding the length of the process from the stage of applying for access, through to access being granted. Additionally, we recognise there are questions regarding the CAC's resource capacity to make determinations on access cases, as well as provide dispute resolution. We have been working with the CAC throughout the policy development process to ensure that they are adequately resourced to implement this policy. However, to further address both concerns around CAC resourcing and concerns on the potential length of the process overall, we are amending ERB to enable an expedited route for access agreements that meet certain criteria at the application stage.

157. In situations where an access agreement contains specific terms (which will be prescribed by the Secretary of State), the CAC will not be required to convene as a tripartite panel as they normally would - unless it deems it necessary - and instead, a single person within the CAC will make the determination. We expect this to make the application process move more quickly. The terms of a "model agreement" and how the 'single person' is determined will be detailed in secondary legislation following further consultation.

158. Respondents also frequently called for trade unions' right of access to expand to the digital space, which would allow unions the ability to, for example, have union-related updates posted on an employer's intranet page. The government is keen to deliver on its commitment to modernise working practices and move away from a reliance on ad-hoc access arrangements. Therefore, we are amending the ERB to provide for this digital right of access in addition to the physical access that the Bill already provided. The scope and precise details of digital access will be defined in secondary legislation, following further consultation.

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

Question Thirty-Four

- **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?**

159. Of the 165 respondents to the consultation, 51 (31%) respondents provided an answer to this question.

160. 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:

- There should be different levels of fines, tiered by the number of times a party has been taken to a successful complaint.
- There should be a clear fine system that applies to both unions and businesses, that sets out how fines are calculated and that either party can be fined.
- That respondents will wait for a future consultation on this issue to raise their views once they have more information.
- That fines should be scaled in proportion to the severity of any breach and be calculated against the resources / turnover of the offending party.
- That fines should follow the GDPR model and be based on turnover.

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.**

161. 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'.

162. Those in favour of the proposal largely considered a penalty fine system to be proportionate and effective. Those not in favour however raised a desire to see restrictions on access and wanted to avoid an overly punitive penalty system. Respondents marked as 'other' raised a number of different views detailed in Annex A.

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?**

163. 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'.

164. Those who supported reliance as a court order largely considered that it would be an effective mechanism to ensure compliance with a right of access enforcement. Those not in favour reiterated the concern addressed by respondents throughout this section, that access agreements relate to access to employers' private property, and respondents have concerns that taking an approach of CAC- mandated access would be an unjustified interference with the right to private property. Those marked as 'other' largely called for a shorter timeframe in the enforcement process.

Government Response to Questions Thirty-Four, Thirty-Five, and Thirty-Six

165. The Government would like to thank respondents for their input provided against Questions 34, 35 and 36. There were a wide range of useful and detailed suggestions and evidence provided.

166. When safeguarding against non-compliance, it is important for the process to be fair and proportionate for both employers and unions. The government wishes to ensure that penalty fines provide an effective deterrent to breaching the terms of an access agreement. Following careful consideration of the feedback received in this consultation, the government is therefore bringing forward an amendment that will provide a power for the government to set a more detailed framework for fines to be issued by the CAC to prevent non compliance with an access agreement. The government will consult on this framework before bringing it forward via secondary legislation. As part of this, the CAC's declaration that a party must pay a fine may be relied upon as if it were a declaration or order made by the court.

167. The government is committed to implementing an access framework that fosters meaningful and productive access agreements between employers and unions. We appreciate the thoughtful contributions and feedback that have informed the amendments necessary to achieve this aim.

Going Further and Next Steps (Q37)

Question Thirty-Seven

- **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.**

168. Of the 165 respondents to the consultation 'creating a modern framework for industrial relations' 69 (42%) respondents provided an answer to this question.

169. There were a wide range of suggestions and proposals provided and these will not be summarised.

Government Response to Question Thirty-Seven

170. The government would like to thank respondents for the ideas and input provided against question thirty-seven in relation to any wider modernising reforms relating to trade union legislation.

171. In response to concerns raised by some respondents, the Government will amend the ERB to ensure that an independent trade union can still apply for recognition (notwithstanding paragraph 35 of Schedule A1 to the 1992 Act) where an employer has agreed a voluntary recognition agreement with a non-independent trade union after receiving a request for recognition from that independent trade union.

172. There were a wide range of other useful and detailed suggestions provided by respondents that are a rich resource for development. We will consider all responses further and consider how they can be used to inform ongoing policy work as the government builds a modern, positive industrial relations framework.

CONCLUSION & NEXT STEPS

173. The government would like to thank all respondents for their submissions to this consultation. Your input has been invaluable and has informed the following amendments to the ERB.

174. The government will bring forward the following amendments to the ERB at Report Stage.

175. Amendments to the Employment Rights Bill

Policy Area	**Description**
Right of Access	1. This amendment will permit a 'single person' in the CAC to make a decision on whether access should take place, where a proposed access agreement fulfils prescribed terms. This provides a quicker route for achieving an access agreement. Specific details, such as the prescribed terms that access agreements are required to meet, will be outlined in secondary legislation, subject to consultation. The CAC panel would sit in its normal tripartite manner as per Section 263A of 1992 Act if these prescribed terms are not met).
Right of Access	1. Applying section 264(1) of the 1992 Act to the right of access clause. Section 264(1) allows for corrections to decision making if clerical errors are made. 2. Penalty: An amendment to enable SoS to make provision in secondary legislation for how the CAC is to determine the level of penalty (e.g. minimum penalty, link the fine to a certain metric). 3. Digital Access: An amendment to allow access agreements to also cover virtual access. Making it possible to agree an access agreement covering solely digital access, and ensuring there is no requirement for an access agreement to cover physical access. Further detail on what virtual access entails, such as its definition and the functions it would cover will be set out in secondary legislation.
Right of Access	1. Explicitly adding "supporting a trade union member with an employment-related matter" as an access purpose/principle.

Simplifying Industrial Action Notices	1. Simplification of Industrial Action notices. Two amendments to the 1992 Act - section 226A, 234A. These amendments will reduce how much information unions are required to include in ballot and industrial action notices.
Industrial Action Mandate	1. Industrial action mandate - extending the industrial action mandate expiration to 12 months, from the current 6 months.
Industrial Action Mandate – Threshold	1. Amendment that makes the repeal of the 50% industrial action ballot turnout threshold subject to commencement on a date to be specified via SI.
Notice to Employers	1. Notice to employers of industrial action – amending the clause to provide for a 10-day notice period rather than 7 days.
Political Funds	1. Removal of the 10-year ballot requirement for political funds and including a requirement for trade union members to be reminded on a 10-year basis that they can opt out of the political fund.
Recognition Process – Unfair Practices	1. Extending the application of provisions and the Code of Practice on access and unfair practices during recognition and derecognition ballots to cover the entire recognition process. 2. Requiring employers to share within 10 working days of the statutory application being submitted the number of workers in a proposed bargaining unit. Employers would then be prevented from altering that number in relation to statutory recognition applications. 3. Setting a maximum of 20 working days for an access agreement to be agreed and bring this forward to the point where the CAC accepts the union's recognition application. If no agreement, the CAC to adjudicate and issue an order requiring access to the workforce. 4. Changing legislation to make it easier for unions to win cases where an unfair practice has occurred (i.e. unions would only need to show to the CAC that the unfair practice

	has occurred, and no longer be required to show how it influenced workers' votes) 5. Extending the time limit when a complaint against an unfair practice can be made after the closure of the ballot. Unfair practices claims would continue not to be able to be made once the ballot outcome is known by the parties. 6. Enable independent unions to apply for recognition where an employer has voluntarily recognised a non-independent union following receipt of a formal request for voluntary recognition by the independent union.

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

176.1. The lowering of the admissibility requirements for the statutory trade union recognition ballot process as set out in clause [47] of the ERB.

176.2. Secondary legislation that delivers the commitment to ensure that union members and workers can access a union at work through a regulated and responsible route and develop through consultation a code of practice.

176.3. Secondary legislation that delivers greater rights and protections for trade unions reps to undertake their work, strengthening protections against detriment and union members from intimidation, harassment, threats and blacklisting.

176.4. The delivery of e-balloting and workplace balloting for trade union ballots.

177. The government can also commit that we will review the efficacy of the Right of Access penalty system at a suitable time following the implementation of the Right of Access mechanism.

178. Finally, following Royal Assent of the ERB, we will consider whether to bring forward secondary legislation to revoke the increases in maximum tort damages as established in The Liability of Trade Unions in Proceedings in Tort (Increase of Limits on Damages) Order 2022, to return the damages levels to those as originally set out in Section 22 of the Trade Union and Labour Relations (Consolidation) Act 1992.

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