

Options assessment

Title: Detriments for taking industrial action

Type of measure: Legislation

Department or agency: Department for Business and Trade

IA number: DBT-08-26-CMRR

RPC reference number: Not applicable

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Date: 26 February 2026

1. Summary of proposal

1. Section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) currently protects workers from being subjected to detriment related to trade union membership, taking part in trade union activities, making use of trade union services or compelling them to be a trade union member.
2. However, UK legislation was found to contravene Article 11 of the European Convention on Human Rights, on the right to free assembly and association, because it did not cover detriment because of a union member's participation in industrial action¹.
3. The Employment Rights Act 2025 introduces new section 236A into TULRCA, prohibiting the use of 'detriments of a prescribed description' for the sole or main purpose of deterring, preventing or penalising a worker from taking part in official industrial action.
4. The 2025 Act enables the government to pass secondary legislation to prohibit all detriments, or to prescribe the detriments that are prohibited. Examples of detriments could include withholding promotions and training opportunities or suspending a worker. For clarity, withholding of pay does not constitute a 'detriment' as it is well established by case law that if a worker goes on strike, they will not be paid for any time spent participating in that strike.
5. The proposed policy will prohibit the use of detriments by employers on workers for taking part in industrial action. The lead option is to ban all detriments for taking industrial action. A secondary option is to construct a list of prohibited detriments.

¹ [Secretary of State for Business and Trade \(Respondent\) v Mercer \(Appellant\) - UK Supreme Court](#)

2. Strategic case for proposed regulation

What is the problem under consideration?

6. The Supreme Court Judgement in the *Secretary of State for Business and Trade v Mercer (2024)* case found that current legislation on detriments was incompatible with Article 11 of the European Convention on Human Rights (ECHR) insofar that it failed to provide any protection against detriments (broadly: sanctions, short of dismissal) for participating in lawful industrial action. For completeness, legislation already provides employees with protection against dismissal for taking protected industrial action.
7. There is concern that employers could use detriments short of dismissal to undermine unionised workers' collective bargaining power when in dispute². This could deter these workers from voting for industrial action, or from participating in protected industrial action.

Why is government intervention necessary?

8. Without intervention, the UK would remain in breach of its international obligations. The Employment Rights Act aims to fill this gap by introducing Section 236A, which empowers government to define what detriments are prohibited.
9. Employers, unions, and workers need clarity on detriments for taking industrial action. Leaving this entirely to case law may create uncertainty and inconsistent outcomes. Government intervention through secondary legislation will ensure a clear, enforceable framework that reduces litigation risk and provides predictable standards for all parties.
10. Unionised workers in collective dispute with their employer currently face a risk of having any detriment short of dismissal imposed on them for exercising their right to take lawful industrial action. Imposition of detriments (or threatened imposition) could lead to some workers being not willing to leverage their collective power. The law pre-*Mercer* was unclear and left workers taking industrial action vulnerable to having detriments imposed, particularly once the judgment made clear the lack of protection for workers, which unscrupulous employers could seek to take advantage of. The removal of employers' ability to impose detriments on workers for participating in industrial action would make the law clear as well as the government's position.

What are potential risks of non-intervention?

² The Supreme Court Judgment says 'the right of an employer to impose any sanction at all short of dismissal for participation in lawful industrial action nullifies the right to take lawful strike action' [Secretary of State for Business and Trade v Mercer - UK Supreme Court](#)

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11. Engagement with unions and employer associations indicates that the imposition of detriments for taking industrial action is not commonplace or a widespread issue that workers in dispute are facing. Rather, the *Mercer* case brought this issue into the spotlight.
12. Government intervention is therefore primarily a preventative measure, ensuring that the door is not left open for practices that undermine the right to industrial action. Without intervention, UK legislation would not reflect the Supreme Court ruling, thereby leaving workers taking industrial action vulnerable to the imposition of detriments by employers acting in bad faith.

3. SMART objectives for intervention

13. The aims of this policy are to:
 - Close the legal gap identified in the *Mercer* case and ensure UK law complies with Article 11 of the European Convention on Human Rights by providing some protection for workers from detriments for participating in industrial action.
 - Strike a fair balance between competing interests of striking workers and businesses.
14. The intended outcomes of the intervention are to:
 - Strengthen legal protection for workers, ensuring their right to participate in industrial action is protected.
 - Provide clarity on the scope of the prohibition on detriments for taking industrial action, reducing ambiguity for employers, unions, and tribunals.

4. Description of proposed intervention and explanation of the logical change process whereby this achieves SMART objectives

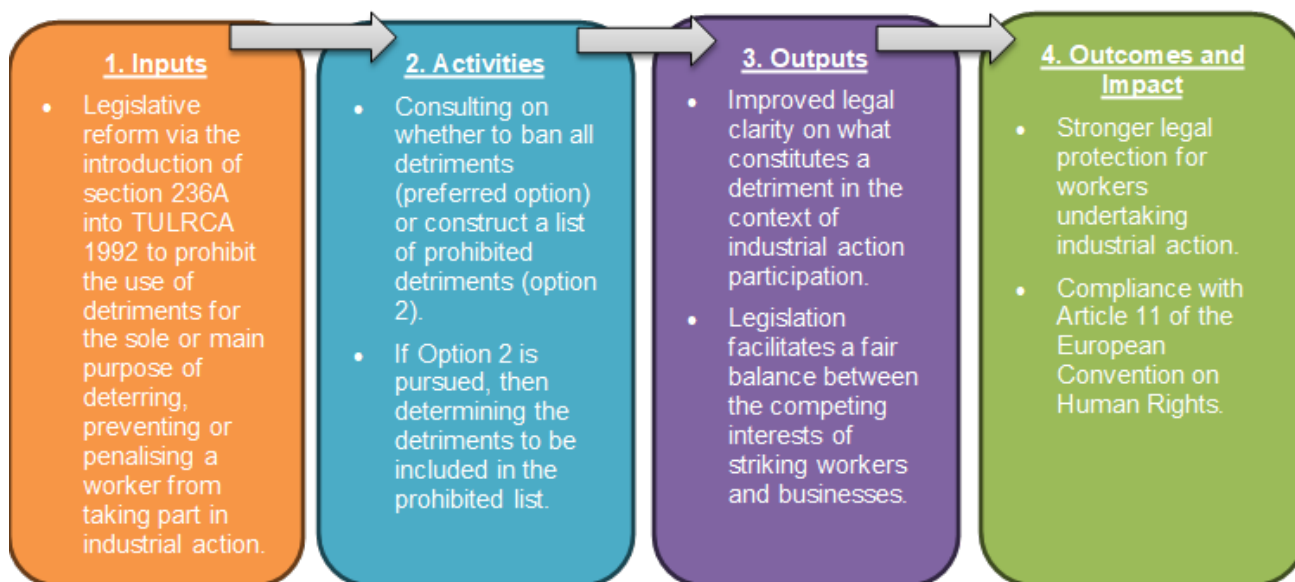
Preferred policy option

15. The preferred policy option is to prohibit all detriments imposed for the sole or main purpose of deterring, preventing or penalising workers from taking official industrial action. This provides the fullest protection for workers and aligns with existing employment law principles.
16. Current employment legislation protects against *any* detriment related to general trade union activity not including taking industrial action, so creating a list of prohibited detriments would risk inconsistency with wider employment legislation, as well as suggesting that detriments outside of the prohibited list are permissible. Prohibiting all detriments avoids employers exploiting gaps by inventing new sanctions. Workers participating in lawful industrial action would still lose their pay for when they withhold their labour.
17. Section 6 of the Human Rights Act 1998 and Article 11 ECHR strongly limit public sector employers' ability to impose sanctions. A blanket prohibition ensures equal protection for public and private sector workers and reduces risk of legal challenge.

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18. However, some employers may feel that enacting some detriments is legitimate, or even necessary for business continuity, and should be left to the discretion of employers. However, employers would still retain discretion to impose detriments, so long as they were not for the sole or main purpose of deterring, preventing or penalising workers from taking industrial action. This would be for Employment Tribunals to determine on the facts.

Theory of Change



19. Inputs

- Legislative reform via the introduction of section 236A into TULRCA 1992 to prohibit the use of detriments for the sole or main purpose of deterring, preventing or penalising a worker from taking part in industrial action.

20. Activities

- Consulting on whether to ban all detriments (preferred option) or construct a list of prohibited detriments (option 2).
- If Option 2 is pursued, then determining the detriments to be included in the prohibited list.

21. Outputs

- Improved legal clarity on what constitutes a detriment in the context of industrial action participation.
- Legislation facilitates a fair balance between the competing interests of striking workers and businesses.

22. Outcomes and impact

- Stronger legal protection for workers undertaking industrial action.
- Compliance with Article 11 of the European Convention on Human Rights.

5. Summary of long-list and alternatives

23. The preferred policy option is set out in Section 4. A secondary option specifically included in the consultation document is set out in Section 6. An additional method for addressing detriments was considered but dismissed during pre-consultation, as it did not align with the policy goals of this proposed legislation:

- Listing permitted detriments – Policy considered taking the opposite approach to the secondary option by listing the permissible detriments for taking industrial action, with all other detriments prohibited. However, this would appear to stakeholders as if government was endorsing the use of certain detriments, which would not be the policy intention. Furthermore, the Act's power does not allow for this approach, as it expressly allows government to list the detriments that the worker is protected against.

Small, micro and medium businesses in scope

24. Small businesses are generally less likely to have union members in their workforce and have recognised unions. They are therefore less likely to be affected by the proposed changes considered in this impact assessment.

25. Medium sized employers account for around 20% of the UK workforce and have a much higher level of existing union presence; over a quarter of employers with between 50 to 99 workers, close to half of employers with between 100 and 249 workers, and over 70% of employers with 250 to 499 workers³. Employers of this size are well within the scope of this policy's impacts.

26. Most trade unions are medium, small or micro businesses, and would potentially benefit from having reduced risks to their members' collective bargaining power, especially when in dispute.

27. Employers without union presence in their workplace(s) would be unlikely to be affected. Business and union stakeholders have indicated that detriments for taking part in industrial action are rarely applied. As stated above (paragraph 18), public sector employers are already strongly limited in their legal ability to impose such detriments. Therefore, the proposed changes are likely to have minimal impact on industrial action, especially in public services.

³ DBT analysis of the Management and Wellbeing Practices Survey 2018 [Management and Wellbeing Practices Survey - NIESR](#)

6. Description of shortlisted policy options carried forward

Secondary option carried forward into the consultation

28. An alternative policy option is to introduce into legislation a list of prohibited detriments. There are various options for constructing a list of prohibited detriments:
- a) A simple list of detriments, e.g.: being rejected for promotion / suffering demotion; disciplinary action such as being suspended; being excluded from opportunities to train; being offered fewer or no shifts or overtime shifts; failure to provide a reference.
 - b) Categories of detriments, e.g.: not being offered additional shifts/overtime; opportunities for career progression.
 - c) Detriments based on the level of severity of their impact on an individual worker.
29. The *Mercer* judgement was clear that the ECHR would permit some detriments to be applied to workers for taking industrial action so long as a fair balance is struck between the competing interests of employers and workers. However, as set out above (paragraph 17), it is likely that public sector employers cannot impose any detriments for taking industrial action if they are to remain compatible with the ECHR and UK law.
30. Listing prohibited detriments could give government the flexibility to ban the most egregious detriments, while allowing some lesser detriments to be permitted. However, this would be complex and difficult to future-proof and would therefore come with significant risk of unintended consequences and/or require frequent updating of the legislation.
31. An unintended consequence may also be that if legislation enables some detriment to fall outside the prohibition – it could be seen as ‘encouraging’ employers to impose such detriments or at least highlighting that such detriments are possible. This could lead to an increased use of detriments by employers and undermine unionised workers’ bargaining power.
32. It also may create legal confusion and inconsistency with other definitions of detriments and disparities between public and private sector employers.

Costs and benefits of the policy options

33. We consider the cost and benefit implications of the preferred option against a no change baseline as well as looking at the secondary option and how its impacts may diverge from the preferred option.
34. The compensation that an employee who has had a detriment imposed on them might win from a tribunal case depends on the circumstances, which will vary from case to case. There are also limitations in the available data; we do not have quantitative data on disputes where detriments have been imposed, and limited

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examples of where detriments may have been imposed. Therefore, it has not been feasible to quantify the potential monetary impact of the proposed policy changes to detriments. However, we have utilised the information available to provide a qualitative assessment of their likely effects.

35. Banning detriments for taking industrial action improves protections for workers and reduces the ability of employers to undermine unionised workers' bargaining power. However, industrial action is generally a last resort for workers in collective dispute; they will lose wages for work not done due to participation in industrial action, and workers would prefer (all other things being equal) to be contributing to their normal work activity. Additionally, some business stakeholders have indicated that detriments are seldom applied since they are likely to damage employee relations, which is contrary to business interests. Consequently, the economic impact is expected to be minimal, whether government bans all detriments or prescribes a subset.
36. It is unclear what the risk is of additional employment tribunal claims arising due to imposition of detriments related to but not primarily for participating in industrial action. Evidence provided to the Department for Business & Trade from the Ministry of Justice suggests there have been generally few claims in recent years involving jurisdictions related to trade union membership or activity, or to industrial action.

Frequency of detriments

37. There is no available data for the frequency at which employers are imposing detriments on workers who take part in industrial action. Employment Tribunal complaint data indicates that there were very few claims relating to unfair dismissal related to industrial action in the years to 2021/22. Other claims involving complaints for detriments being imposed relating to trade union membership (under Section 146 of TULRCA) are more frequent, sometimes rising to over 1,000 claims a year (though these are likely to be primarily claims grouped into multiple claim cases).
38. Jurisdictional Complaints Outcomes with the jurisdiction related to trade union membership suggest less than 10% of complaints reach a tribunal hearing. There have been two cases in recent years relating to detriments for industrial action participation – *Mercer*, and *Morais v Ryanair*⁴. There was also a notable pay negotiation dispute between RMT and Network Rail in which Network Rail stated that they would not pay bonuses to those staff that took part in strikes over the preceding year. Assuming a similar complaint-to-hearing ratio as detriments for trade union membership (20 since 2020), it is possible that occurrences of detriments for industrial action may be very low.
39. In most recent years, strike action is predominantly carried out by workers in the public sector, where detriments for taking industrial action are already unlikely to be imposed by employers. The opportunity for public sector employers to impose detriments is minimal, meaning the difference of financial impact between the two

⁴ [Morais and others v Ryanair DAC](#) [2025] EWCA Civ 19

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options would likely be minor. Labour disputes data indicates that since 2022, around 70% of workers involved in disputes are public sector workers and around 80% of stoppages occur in the public sector. Around half of the total working days lost in this time frame have come from the public sector, with lost days from the private sector making up the rest.

40. ONS data on Labour Disputes indicates few stoppages occur due to disputes between workers and employers, and that there are few workers involved in such disputes. From 2017 to 2019, there were on average fewer than ten disputes per month, and in each of these years (as well as in 2024) the estimated number of workers involved in strike action remained below 50,000. However, the figures rose in 2022 and 2023, a trend likely attributable to increased living costs and the economic challenges following the COVID-19 pandemic. Overall, the data suggests that the number of workers taking part in strike action is generally low, so any policy change in this area is unlikely to have a significant effect on households.

7. Regulatory scorecard for preferred option

Part A: Overall and stakeholder impacts

(1) Overall impacts on total welfare		Directional rating
Description of overall expected impact	<p>The overall impact of this policy on social welfare is expected to be fairly limited due to the low frequency of existing cases of detriments. It is possible that increased legal protection for workers who participate in industrial action may encourage increased participation, but there is limited evidence to support this.</p> <p>Any increase in strike activity could indirectly affect households through service disruptions (transport, education), creating externalities that raise household costs.</p> <p>Stronger legal protections for workers may reduce perceived risk of career penalties (e.g., missed promotions, training), which supports long-term earning potential and household stability, with uninterrupted skill development enhancing lifetime income.</p> <p>Engagement with stakeholders suggests that employers tend to prefer not to employ detriments against strikers since it can sour employee relations further during a period that is already tense between the two parties.</p> <p>For businesses, improved legal clarity can assist their ability to manage the impacts of industrial action, since employers can know with certainty if they are operating within the law. Conversely, it is possible that businesses may consider detriments (whether a prohibited list or a</p>	Neutral Based on all impacts (incl. non-monetised)

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	<p>blanket ban) to be too restrictive on their ability to respond to strikes.</p> <p>The aforementioned low incidence of detriment cases means the size of any impact will be minimal.</p>	
Monetised impacts	We have not been able to monetise the costs or benefits of the policy.	Uncertain Based on likely £NPSV
Non-monetised impacts	<p>As set out in the first row of this table, the policy impacts are likely to be limited. There may be potential benefits for workers who may see strengthened protections when considering taking part in industrial action.</p> <p>There may be negative financial impacts for businesses that may be restricted in their ability to manage industrial action.</p> <p>Both parties, along with trade unions and the employment tribunal will likely benefit from increased legal clarity on employers' ability to impose detriments for taking industrial action.</p>	Neutral
Any significant or adverse distributional impacts?	We do not expect this policy to have any significant or adverse distributional impacts.	Neutral

(2) Expected impacts on businesses

Description of overall business impact	<p>Employers may feel constrained in their ability to respond and manage industrial action, as they would not be able to impose any sanctions that would deter participation in strikes. This could limit their ability to maintain operational continuity during disputes.</p> <p>Employers may worry that banning all detriments could obstruct normal disciplinary processes for misconduct unrelated to industrial action, if workers claim sanctions are linked to their strike participation.</p> <p>This policy could provide legal clarity and consistency for businesses, as it would create a clear and uniform standard, reducing litigation risk for employers. It aligns with existing interpretations of "detriment" in other employment contexts, which could simplify compliance.</p>	Neutral
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	Although employers may have less discretion to impose detriments, in practice it was something that is rarely used - so the expected impact will be small.	
Monetised impacts	We have not monetised any potential impacts for businesses.	Uncertain Based on likely business £NPV
Non-monetised impacts	All the business impacts are non-monetised and are discussed briefly in row 1 of this table and in the Overall Impacts table.	Negative
Any significant or adverse distributional impacts?	We expect only a low proportion of employers to be affected each year, though we do not know which business sectors or nations and regions these employers will operate in. It is not expected that there will be significant short term distributional impacts.	Uncertain

(3) Expected impacts on households

Description of overall household impact	We do not expect significant impacts on families. We do not have the data to monetise household benefits, nor is there clear data to monetise how the prevention of detriments would impact workers more generally. The proposed policy in theory makes the decision for a worker to participate in industrial action more desirable, since the opportunity cost of taking part (i.e. not suffering a detriment from the employer) will be lower.	Neutral
Monetised impacts	We have not monetised any potential impacts for households.	Uncertain Based on likely household £NPV
Non-monetised impacts	All the household impacts are non-monetised and are discussed briefly in row 1 of this table and in the Overall Impacts table.	Neutral
Any significant or adverse distributional impacts?	No. In line with the requirements of the Equalities Act, we have considered the potential impact of this policy on individuals with protected characteristics. The policy is unlikely to have any equality impacts. Though union members are more likely to be disabled, older (35 plus), women, of Black or White ethnicity than employees overall, there is no indication that these types of workers are more or less likely to take part in industrial action, nor any indication that they are more likely to have a detriment imposed on them.	Neutral

Part B: Impacts on wider government priorities

Category	Description of impact	Directional rating
Business environment: Does the measure impact on the ease of doing business in the UK?	<p>The scale of impact on the UK business environment is likely to be minimal, as detriment cases are uncommon and most employers already avoid punitive measures during strikes. Therefore, the overall attractiveness of the UK business environment is unlikely to change significantly.</p> <p>However, the improvement to legal certainty may provide a positive boost for business confidence; clear rules on detriments reduce ambiguity and litigation risk, which can improve the predictability of employment law.</p> <p>There is a possibility that a perceived rigidity could make the UK marginally less attractive for businesses that value managerial discretion. If all detriments are banned, some employers may view this as reducing flexibility in managing industrial action.</p>	Neutral
International Considerations: Does the measure support international trade and investment?	<p>The proposed policy does not impact international trade as it is compliant with international obligations and does not have any implications for trade partners or foreign businesses operating in the UK. Furthermore, the preferred option will not introduce requirements on foreign-owned companies that go above and beyond those which are UK-owned.</p>	Neutral
Natural capital and Decarbonisation: Does the measure support commitments to improve the environment and decarbonise?	<p>We expect that there is no or negligible impact on the environment, natural capital, and decarbonisation as a result of these proposed reforms. The regulation does not directly relate to environmental or decarbonisation goals.</p>	Neutral

8. Monitoring and evaluation of preferred option

41. There will be a post implementation review five years after the policy has been commenced, in line with standard practice.

42. This will aim to evaluate the policy against the outcomes and impacts from the Theory of Change model in section 4:

- **Legal Protection:** Indicated by the number of tribunal cases citing Section 236A and outcomes, using Employment Tribunal Service and case law databases.
- **Compliance with ECHR:** Indicated by any adverse judgments from UK or European courts post-implementation.
- **Legal Clarity:** Indicated by stakeholder surveys (employers, unions, HR professionals) on clarity and confidence in applying the law.

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- **Balance of Interests:** Indicated by employer feedback on ability to maintain business continuity vs. worker protection.

43. To evaluate the policy effectively, both quantitative and qualitative data will be collected. Quantitative data will include tribunal caseload trends, such as the volume of cases, success rates, and compensation awarded, alongside the frequency of detriment-related disputes before and after implementation.
44. Qualitative data will be gathered through stakeholder interviews with employers, unions, and legal experts, as well as surveys of workers to assess perceived protection and willingness to strike. External factors such as industrial action trends from ONS data and broader economic conditions influencing strike activity will also be monitored to contextualise findings.
45. We will engage with stakeholders – employers, unions, tribunals – to assess perceived protection and changes to willingness to strike and whether the policy has reduced uncertainty and litigation risk for employers.
46. We will monitor for unintended consequences, assessing whether the policy has inadvertently increased tribunal caseloads or created compliance burdens for businesses, as well as identifying employer strategies that attempt to circumvent the ban.

9. Minimising administrative and compliance costs for preferred option

47. As discussed above, the policy is expected to affect only a small number of businesses and employees each year. The majority of employers are not imposing detriments for participation in industrial action, and so likely do not need to familiarise themselves with the new legislation.
48. For those that would seek to impose a deterrent to industrial action, the policy intervention intends to provide clarity on where a detriment cannot be imposed. This clarity would likely reduce familiarisation time and administrative burden.

Declaration

Department: Department for Business and Trade

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Minister: Minister for Employment Rights, Competition and Markets - Kate Dearden MP

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I have read the Options Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed: *Kate Decker.*

Date: 11/02/2026

Summary: Analysis and evidence

Price base year:

PV base year:

This table may be reformatted provided the side-by-side comparison of options is retained	1. Business as usual (baseline)	3. Preferred way forward – blanket ban on all detriments	5. Less ambitious preferred way forward – prescribed list of banned detriments
Net present social value (with brief description, including ranges, of individual costs and benefits)	N/A	N/A	N/A
Public sector financial costs (with brief description, including ranges)	N/A	N/A	N/A
Significant un-quantified benefits and costs (description, with scale where possible)		<p>Costs and benefits have not been monetised. We expect any impacts to be minimal due to the low frequency at which detriments are imposed on workers taking part in industrial action.</p> <p>The main benefit will be the improved legal clarity on what constitutes a detriment.</p>	As with the preferred option.
Key risks (and risk costs, and optimism bias, where relevant)			
Results of sensitivity analysis	N/A	N/A	N/A