



UK Government

Government response

Make Work Pay: protection from detriments for taking industrial action

22 June 2026

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Make Work Pay: protection from detriments for taking industrial action



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Executive summary

This government was elected on a pledge to rebuild our economy so that it delivers for working people.

That's why we passed the Employment Rights Act 2025 in line with the government's plan to Make Work Pay to build a Britain for all, on the firm foundations of security, respect and opportunity.

The Act fosters a new partnership of cooperation between trade unions, employers and the government. This partnership works successfully when employers are respected by trade unions and when trade unions are given space and support to effectively represent workers' collective voice.

Industrial action is one way in which workers can express their collective voice. While it should always be treated as a last resort, if and when workers do choose to take industrial action, it is important that they are treated fairly and respectfully. Properly managed industrial action supports effective industrial relations and can create the most effective pathway to a resolution that works for everyone.

To support the aim of ensuring industrial relations are conducted with integrity, fairness and mutual respect, the government consulted on '*protection from detriments for taking industrial action*'. This sought stakeholder views on whether to prohibit all detriments employers might enact on workers for taking industrial action or create a prescribed list of prohibited detriments. Stakeholders provided detailed feedback on the two options proposed in the consultation. This has been carefully considered and has proved invaluable in shaping the government's final policy decision.

Informed by the evidence collected in the consultation and summarised in this response, the government will introduce regulations that will prohibit all detriments for industrial action. We believe by ensuring fair treatment for workers and building trust on both sides, we can create a spirit of partnership that will lead to effective dispute resolution for all.

The government will continue to work closely with unions, employers, and workers to ensure successful implementation and contribute to the wider ambitions of the Plan to Make Work Pay.

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Introduction

The government's Plan to Make Work Pay is a central part of our mission to grow the economy, raise living standards across the country and create opportunities for everyone. It will make work more secure and predictable, putting more money into working people's pockets and strengthening the foundations that underpin a modern economy.

As part of this, the government is committed to updating Britain's employment protections so that they are fit for our modern economy and for the future of work. The Plan to Make Work Pay included commitments to reform trade union policy, modernising it for the 21st century. To deliver on this we passed the Employment Rights Act 2025.

The Employment Rights Act introduced Section 236A into the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA), providing protection from detriments for workers enacted for the sole or main purpose of penalising, preventing or deterring them from taking industrial action. This was in response to the 2024 Supreme Court *Mercer* Judgment¹ which found that existing legislation did not protect workers from detriments for industrial action, and so was incompatible with Article 11 of the European Convention on Human Rights, the right to free association.

The primary legislation introduced in the Employment Rights Act allows the government to introduce secondary legislation that either prohibits all detriments or creates a prescribed list of prohibited detriments. Ahead of introducing this secondary legislation, we consulted stakeholders on their views on these two options. The consultation also sought views on whether compensation awards should be capable of adjustment depending on compliance with the ACAS Code of Practice on Disciplinary and Grievance Procedures.

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.

¹ Secretary of State for Business and Trade v Mercer [2024] UKSC 12.

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Conducting the consultation

The consultation ran from the 26 February to the 23 April 2026 (inclusive). We received 72 responses, both written and through an online survey. During the consultation period, we also held roundtable meetings with businesses, trade unions and business representative organisations. They were used to discuss views on the topics and themes raised in the consultation, with attendees also invited to respond in writing via email or the online portal.

The government is grateful to all respondents to the consultation for their considered and helpful responses. This document sets out a summary of the feedback received in the consultation, the government's response, and next steps. For brevity, it does not provide a comprehensive overview of every single point made in consultation responses. 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.

Responses to consultation questions

Section 1: About you

These questions gave us information on the type of organisation the respondents were representing, their size and the number of responses. These allowed us to break down responses to other questions by organisation type and number of responses. We received 42 (59.7%) responses via an online survey¹ and 30 (40.3%) responses in writing.

The most common category of respondent was 'An employer' (37.5%), followed by 'A trade union or staff association' (23.6%). This was followed by 'An employee/worker/individual' (16.7%), 'A business representative organisation/trade body (BRO)' (15.2%), 'A legal representative' (5.6%) and 'An academic' (1.4%). The table below provides a breakdown.

Table 1: indicate whether you are responding as:

	Count	Proportion
All respondents	72	100%
An employer	27	37.5%
A business representative organisation/trade body (BRO)	11	15.2%
An employee/worker/individual	12	16.7%
A trade union or staff association	17	23.6%
A legal representative	4	5.6%
An academic	1	1.4%

¹ This excludes cases where respondents either opened the online survey and did not respond to any questions, only responded to the questions in the 'About you' section or only responded to a maximum of one section in the main body of the consultation. See Annex A for more information.

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Other	0	0%
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For those who responded as employers, their business, organisation, or workplace size was almost always a large organisation (250 or more staff) (81% of employers). This was followed by respondents from medium organisations (51 to 250 staff) (4%), and micro-organisations (fewer than 10 staff) (4%). There were no respondents from small organisations, and 3 employers did not provide their organisation size.

Table 2: count and proportion of respondents by organisation size

	Count	Proportion
All respondents	27	100%
Micro (fewer than 10 staff)	1	4%
Small (11 to 50 staff)	0	0%
Medium (51 to 250 staff)	1	4%
Large (250 or more staff)	22	81%
No information	3	11%

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Section 2: Consultation responses

This section outlines responses and general views gathered in consultation.

Option A: Prohibiting all detriments for taking industrial action

Part 1: benefits and concerns of option A

Question 1. Do you support prohibiting all detriments for taking industrial action? [Yes/no/don't know]

Question 2. What benefits might come from prohibiting all detriments for taking industrial action?

Question 3. What concerns or challenges do you see from prohibiting all detriments for taking industrial action?

Question 1 responses	Number of responses	Yes	No	Don't know/ other
All respondents	72	41	28	3
An employee/worker/individual	12	10	2	0
A trade union or staff association	17	17	0	0
An employer	27	9	16	2
A business representative organisation/trade body (BRO)	11	1	9	1
A legal representative	4	3	1	0
An academic	1	1	0	0

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Across respondents there was majority support for option A, prohibiting all detriments for taking industrial action, with 57% being in support and 39% being opposed. However, support for this option varied across different groups. This question was responded to by all respondents.

Support for option A

Most individuals, all trade unions, and a majority of legal representatives, supported prohibiting all detriments. A minority of other groups also supported this option, including some employers and BROs.

Across these groups, the principal reasons for supporting this option were consistent with those set out in the consultation: that option A offers stronger protection for workers, is aligned with broad prohibitions on detriments in wider employment law, and provides greater clarity. Respondents also considered it an effective safeguard against employers seeking to bypass the legislation which was a concern if only a list of detriments were prohibited. They also saw this option as a route to ensuring compliance with broader standards such as Article 11 of the ECHR, the right to free association and the International Labour Organisation Convention no 98 1949 which provides protection from harmful consequence or prejudice by reason of trade union activities.

Trade unions and individuals particularly emphasised the protective effect on workers and the deterrence against unfair treatment by preventing them being subjected to any detriments for taking industrial action. They noted that detriments are used infrequently and so banning all detriments would have limited impact on most employers' behaviour. They also pointed out that the principle of "no work no pay" for strike action already prevents some employees from taking industrial action. Some trade unions highlighted the severity of impact detriments can have on employees, with reports of depression, severe anxiety and the breakdown of family lives.

Similar points were echoed by employers who supported banning all detriments. These employers stressed the value of clear rules and good employment relations, and a preference for negotiation over detriments as a punitive measure. The legal representatives were focused on the legal advantage of the broad prohibition on detriments being consistent with other areas of employment law.

Some of those that supported prohibiting all detriments nevertheless acknowledged potential drawbacks. Respondents, including individuals, supportive employers, and the supporting BRO, recognised that employers may face constraints in managing industrial action and may require clear guidance on

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which operational decisions would not be a breach of a prohibition on detriments, through explanation of the sole or main purpose test.

Trade unions also acknowledged employer concerns about routine operational decisions, including those around an employee's performance or conduct, being challenged but viewed these concerns as manageable, particularly through guidance, record keeping and reliance on the "sole or main purpose" test.

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Opposition to option A

Most employers and BROs did not support banning all detriments. One of the legal representatives and a small number of individuals also opposed banning all detriments. These respondents broadly agreed that, banning all detriments would increase worker protections and have the benefit of being consistent with other broad prohibitions on detriments in employment law but considered that these benefits were outweighed by practical risks.

The central concern, consistently expressed across these groups, was that prohibiting all detriments could significantly restrict employers' ability to make routine or necessary business decisions around the time of industrial action. Respondents argued this option could lead to increased litigation risk around these normal operational decisions, including concerns over risks of vexatious claims connected to industrial action. It was commonly believed that this would create of a "culture of fear" in which employers would feel the need to delay or avoid legitimate business, disciplinary or performance decisions. There were also concerns about the administrative burden of evidencing decision-making and the associated legal and resource costs that many felt would become necessary to manage this risk.

Some employers and BROs further emphasised their concern of the adverse operational impact resulting from the increased litigation risk. They drew attention to issues including the management of misconduct, safeguarding, performance processes, and continuity of service, especially in critical sectors such as care. Some were also concerned that banning all detriments could encourage bad-faith behaviour by workers or increase the frequency and severity of industrial action by reducing deterrents.

Some emphasised that detriments are rarely used in practice and argued that such broad protections are therefore unnecessary. The legal representative questioned whether banning all detriments is necessary considering the *Mercer* Judgment, while highlighting that current UK legislation is not compatible with Article 11, stated that total prohibition was not necessary for Article 11 compliance.

A number of respondents, particularly those related to the education sector, acknowledged the government's position that there is no intention to change the common law principle of "no work, no pay", describing the proportionate withholding of pay for time spent on industrial action. However, they also requested explicit clarification within legislation that withholding proportionate pay

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would not constitute a detriment, with some also asking for explicit clarification on action short of strike also.

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Other views

A small number of respondents did not express a clear preference regarding banning all detriments or having a prohibited list of detriments, including one employer and one BRO, who favoured maintaining the status quo over either option as they feel the status quo functions well enough and are unsure about risks that may be brought about by changes. Across groups, some respondents raised broader concerns about the legislative framework itself.

Trade unions raised concerns over the operation of the “sole or main purpose” test and bad faith employers concealing their true motive of penalising industrial action behind other publicly recorded motives.

An additional concern was that behaviours inherent to industrial action could be characterised as breaches of contract (for example, bringing an employer into disrepute). This creates a risk that employers could justify imposing detriments on the basis of penalising such breaches, which may in practice undermine workers’ right to take industrial action.

A further concern was the potential for grey areas where employer actions directed at trade unions, permissible under this legislation for not being targeted at an individual, may indirectly affect workers during industrial action.

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Part 2: Impact of option A – prohibiting all detriments

Question 4. How might prohibiting all detriments for taking industrial action influence employers' ability to manage workplace disputes and industrial action? [Positive impact/Negative impact/Both positive and negative impacts/No impact/Not sure – please explain]

Question 5. Would this option have an impact on industrial relations? [Positive impact/Negative impact/Both positive and negative impacts/No impact/Not sure – please explain]

Question 4

Positive impact

One group, particularly a majority of trade unions and several individuals, considered that prohibiting all detriments would improve employers' ability to manage disputes. These respondents argued that this would discourage adversarial practices and instead promote early, constructive engagement, cooperation, and problem-solving between employers and workers. A small number of employers and legal representatives shared similar views, suggesting it could encourage more effective preventative negotiation and support better industrial relations overall.

Negative impact (employers, BROs, a small number of individuals, and one legal respondent)

Another group, including many employers and BROs, viewed the impact as negative. Their concerns focused on the risk that legitimate management actions, such as decisions relating to performance, conduct, attendance, or operational matters could be interpreted as detriments if taken around the time of industrial action. This was seen as likely to lead employers to delay or avoid necessary decisions, act more cautiously. Even when acting cautiously there was concern of increased legal risk, including vexatious claims. Respondents also raised concerns about the implications for workplace safety, continuity of service, and the speed of operational decision-making, most particularly in critical sectors, e.g. healthcare.

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Mixed or uncertain impact (some employers, BROs, individuals, and legal respondents)

A third group identified both positive and negative effects. These respondents acknowledged that a clear prohibition of all detriments could build trust between employers and employees and encourage more constructive engagement around industrial disputes but argued this would be offset by increased administrative burdens, particularly the need to document decision-making and justify actions. They also highlighted risks of reduced flexibility, slower decision-making, and uncertainty about what actions would be permissible without clear guidance. A smaller number of respondents across all groups were unsure or did not engage with this question.

Question 5

Positive impact on industrial relations (all trade unions, some individuals, and a small number of employers and legal respondents)

A substantial proportion of respondents felt that prohibiting all detriments would improve industrial relations by rebalancing the relationship between employers and employees and fostering trust. This view was most strongly held among trade unions, all 16 of whom believed the measure would have a positive effect. They emphasised that removing the threat of detriment would enable workers to participate in industrial action without fear, encourage earlier dispute resolution, and strengthen trust through clearer protections.

This position was also reflected, though less uniformly, among other groups, including some individuals and employers, and one legal representative. Respondents in these groups similarly highlighted fairness, clearer boundaries, and the role of strong protections in supporting constructive engagement between parties.

Negative impact on industrial relations (employers, BROs, a small number of individuals, and one legal respondent)

Other respondents considered that the proposal could worsen industrial relations by shifting the balance too far in favour of employees and trade unions, and by increasing conflict. This view was most common among employers and BROs, with a smaller number of individuals also expressing this perspective. These respondents frequently pointed to concerns about an anticipated rise in vexatious claims regarding detriments and the potential for such claims to exacerbate tensions.

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BROs and some employers additionally framed their concerns within the broader legislative context, suggesting that the measure could contribute to a cumulative effect of strengthening unions' position at the expense of employers, potentially undermining cooperative relations.

Mixed impacts on industrial relations (some employers, legal representatives and a small number of BROs and individuals)

A significant number of respondents recognised both potential benefits and drawbacks, reflecting a more balanced or uncertain assessment. This view was expressed most consistently by employers, legal representatives with a small number of BROs and individuals also. These respondents commonly agreed with other respondents that greater protection and clarity could build trust and therefore lead to employees engaging in early resolution, while also raising concerns that the same protections might embolden more frequent or prolonged industrial action or create operational and legal challenges for employers.

In particular, respondents noted the potential difficulty for employers in evidencing that any decisions around performance or discipline around the period of industrial action were not done for the “sole or main purpose” of deterring employees from taking industrial action. A number of respondents across groups were unsure or did not engage with this question.

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Option B: Creating a prescribed list of prohibited detriments

Part 3: Benefits and concerns of option B – creating a prescribed list of prohibited detriments

Question 6. Do you support creating a specific list of detriments that employers would be prohibited from imposing on workers for taking industrial action?

[Yes/No/Don't Know]

Question 7. What benefits might come from creating a specific list of detriments that employers would be prohibited from imposing on workers for taking industrial action?

Question 8. What concerns or challenges do you see from creating a specific list of detriments that employers would be prohibited from imposing on workers for taking industrial action?

Question 6 responses	Count of responses	Yes	No	Don't know/ other
All respondents	72	26	39	7
An employee/worker/individual	12	2	8	2
A trade union or staff association	17	0	17	0
An employer	27	14	9	4
A business representative organisation/trade body	11	9	1	1
A legal representative	4	1	3	0
An academic	1	0	1	0

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Across respondents there was opposition to creating a prescribed list of prohibited detriments, with 54% being opposed and 36% being in support.

Support for creating a prescribed list of prohibited detriments (many employers and BROs, and a small number of individuals)

Support for creating a list of banned detriments was concentrated among employers and BROs, with a small number of individuals also in favour. Across these groups, the clarity a prescribed list would provide was commonly identified. Respondents felt this would help employers understand what actions to avoid when managing industrial action and give workers clearer expectations of what constitutes a prohibited detriment.

This was also seen as a way to reduce the scope of detriments for which vexatious or speculative claims could be made, overall reducing the litigation risk and ‘culture of fear’ described in part one. There was also general belief that this option was more consistent with the *Mercer Judgment*’s stipulation that not all detriments need to be prohibited in order for UK legislation to be compatible with Article 11.

Supporters nonetheless recognised limitations with this option, including the risk that a list could become outdated, require regular revision, and be exploited by employers seeking to circumvent the rules.

Opposition to creating a prescribed list of prohibited detriments (trade unions, some employers, most individuals, most legal representatives)

Opposition was led by all trade unions, as well as most individuals and legal representatives. A minority of employers also opposed having a list of banned detriments. These respondents largely saw little or no benefit in creating a prohibited list, beyond limited acknowledgement that it might provide some clarity on what detriments are.

The dominant concern was that a prescribed list could quickly become outdated and risk implying that all detriments not included are permissible, potentially encouraging their use. Respondents also raised concerns about legal inconsistency with wider employment law and the likelihood that disputes would arise over whether specific actions fall within the listed detriments, thereby undermining the intended clarity. Trade unions in particular warned of the dangers of this approach weakening protections by narrowing the scope of what is prohibited and shifting uncertainty on to workers and the courts.

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Part 4: What should be included in a prescribed list?

Question 9. Which types of detriments do you believe should be included in the prohibited list? Please explain why.

Question 10. Which types of detriments do you believe should not be included in the prohibited list? Please explain why.

Responses to the two questions on what should and should not be included in a list of prescribed detriments showed a strong degree of consistency on some core principles, most notably that the proportionate withholding of pay should not be a detriment, in line with common law. Respondents also felt that what should or should not be on a list should depend on whether the detriment is punitive or part of normal business process. There was some divergence about how this second principle applies in practice.

Detriments that should be included in a prescribed list

Across responder groups that engaged with this question (notably some employers, BROs, and legal representatives), there was a general principle that detriments that should be on the list were ones that were clearly punitive, deterring or retaliatory in their nature and that might have lasting impacts on workers' careers. BROs and legal respondents in particular emphasised that the list should capture detriments that "strike at the core" of trade union activity.

Examples of detriments that were most commonly identified as those that should be prohibited were:

- *dismissal and disciplinary action*, linked to participation in industrial action
- *demotion or reductions in pay or grade*, excluding lawful strike pay deductions
- *denial of opportunities*, including promotion, training, or career progression
- *removal or reduction of benefits*, particularly where contractually guaranteed
- *bullying, harassment, victimisation, or blacklisting*,
- *unfavourable changes to working arrangements*, such as shifts, hours, duties, or role.

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Detriments that should not be included in a prescribed list

There was generally stronger consensus across all responder groups to this question on what should be excluded, with several areas of near-universal agreement. Most commonly was that the withholding of pay for strike participation or, less frequently but emphasised strongly for relevant sectors, partial performance should not be a detriment.

The other point of agreement was around the central principle that those not on the list should be legitimate employer actions, not punitive detriments.

The most commonly provided examples of detriments that should not be in a prescribed list were:

- *disciplinary action for genuine misconduct*, where unrelated to participation itself
- *business-as-usual processes*, including performance management, promotion decisions, restructures, and pay setting, unless targeted
- *operational and business continuity measures*, such as reallocating duties, adjusting shifts, redeploying staff, or using temporary cover
- *denial of discretionary or non-contractual benefits*, including bonuses or overtime opportunities

Themes across both questions

A theme that arose in answers across both questions was common agreement that 'punitive' detriments should be prohibited and 'legitimate' detriments allowed. However, understanding of these appeared to be subjective, with inconsistency between respondents in whether they interpreted certain detriments as punitive or legitimate. For example, some employers who were supportive of having a prohibited list felt that removing promotion opportunities and unfavourable shift changes were unnecessarily punitive, while others, supportive of the same option, felt these were ordinary business decisions, which would need to be excluded to avoid litigation risks.

Many respondents emphasised that any list would need clear drafting and supporting guidance, including examples, to avoid confusion or inconsistent interpretation.

Trade unions and many individuals largely rejected the premise of a list altogether, arguing again that all detriments should be prohibited. Where they did respond to this question, they favoured a list take a broad and expansive approach.

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Part 5: Impact of option B – creating a prescribed list of prohibited detriments

Question 11. Would this option have an impact on workers' willingness to participate in industrial action? [Positive impact/Negative impact/Both positive and negative impacts/No impact/Not sure – Please Explain]

Question 12. Would this option impact employers' ability to manage disputes and industrial action? [Positive impact/Negative impact/Both positive and negative impacts/No impact/Not sure – Please Explain]

Question 11

Negative impact (trade unions and some legal respondents)

A substantial group, formed of trade unions with small support from individuals and employers, considered that having a list of banned detriments would reduce workers' willingness to take industrial action. These respondents argued that a prescribed list could create uncertainty and fear around the fact that some detriments would not be prohibited, which may act as a deterrent. They also raised concerns that such a list could embolden employers by clarifying what remains permissible, such as, anything not on the prohibited list, thereby shifting the balance of power in the workplace which might generally discourage worker participation in industrial action.

Positive impact (some individuals, employers, and legal respondents)

A smaller group, including some individuals, employers, and one legal respondent, believed creating a prohibited list would increase willingness to take industrial action. They attributed this to the clarity and reassurance a list would provide, enabling workers to better understand the limits of employer action and creating confidence through clear perception risks of what detriments they may receive.

Mixed or no clear impact (many employers, BROs, and some respondents across groups)

A third group took a more nuanced or neutral view. Many employers, and a small number of BROs, trade unions and legal respondents suggested the impact would be mixed. Noting the positive and negative impacts outlined by the above

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groups, that while clarity around certain prohibited detriments may reassure workers, this could be offset by concerns about those not included. Others emphasised that workers' decisions to take industrial action are typically driven more by the underlying dispute and the loss of pay, unchanged by these regulations, than by the use of detriments. A number of respondents were unsure or did not express a clear view.

Question 12

Positive impact (some employers, BROs, individuals, and legal respondents)

A number of respondents, particularly some employers, BROs, individuals and legal representatives, considered that a prohibited list would have a positive impact on employers' ability to manage industrial action. These respondents emphasised the clarity and certainty a prescribed list would provide, enabling employers to better plan, act with confidence, and reduce the scope of detriments for which vexatious or speculative claims could be made. They also noted that the ability to take actions not included on the list would preserve flexibility, while encouraging earlier and more structured responses to disputes.

Negative impact (trade unions and some employers, individuals, and legal respondents)

Another group, led by trade unions, viewed the impact as negative. These respondents argued that allowing detriments not included on the list could undermine trust and industrial relations, making disputes harder to resolve and therefore being against employers' interests.

Mixed or uncertain impact (many employers, BROs, and individuals)

A third group identified both positive and negative effects. These respondents acknowledged that clarity on what is a detriment could aid decision-making on industrial action for employees, but argued this would depend heavily on how comprehensive and up to date the list is. They warned that an incomplete or outdated list could instead create uncertainty over interpretation, reducing its intended benefits. A number of respondents were unsure or did not express a clear view.

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Schedule A2: Adjusting awards where there has been unreasonable failure to follow the Acas Code of Practice on Disciplinary and Grievance Procedures

Part 6: Should claims made under Section 236A be added to Schedule A2?

Question 13. Should claims made under Section 236A of TULRCA be added to Schedule A2, meaning that an employment tribunal can adjust an award by up to 25% where the employer or employee unreasonably failed to follow the Acas Code of Practice on Disciplinary and Grievance Procedures? [Yes/No/Don't Know – Please Explain]

Question 13 responses	Count of responses	Yes	No	Don't know/ did not answer
All respondents	72	42	13	17
An employee/worker/individual	12	7	2	3
A trade union or staff association	17	17	0	0
An employer	27	12	9	6
A business representative organisation/trade body (BRO)	11	1	2	8
A legal representative	4	4	0	0
An academic	1	1	0	0

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Support for adding section 236A to Schedule A2 (trade unions, all legal representatives, many employers, and most supporting individuals)

A majority of respondents who engaged with this question, supported adding section 236A to schedule A2 (58%), including all trade unions, all legal representatives, many employers (44%), and most individuals who expressed a view. Across these groups, the main rationale was that doing so would promote fairness and consistency, particularly by aligning with existing provisions such as claims made under section 146 of the Trade Union Labour Relations (Consolidation) Act 1992 (TULRCA) regarding detriments for trade union membership, activity or use of trade union services. Respondents emphasised that linking the provision to the Acas Code would encourage both employers and workers to follow proper procedures and engage constructively, thereby improving behaviour on both sides.

Opposition to adding section 236A to Schedule A2 (some employers, individuals, and a small number of BROs)

A smaller group (18%), including some employers, a minority of individuals, and a small number of BROs, opposed the proposal. These respondents questioned whether following the Acas code is appropriate for industrial relations matters, arguing it is better suited to individual employment issues. They also raised concerns that applying it in this context could increase claims, driven in part by the potential for higher financial awards, and place disproportionate obligations on employers. Some suggested that clearer guidance, rather than legislative change, would be preferable.

Limited or no view (many BROs and some respondents across groups)

A number of respondents (24%), particularly BROs and some employers and individuals, did not express a clear view on this question or did not engage with it.

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Anything else to consider

Part 7: is there anything else for the government to consider?

Question 14. Is there anything else on this subject that the government should consider?

While some respondents used this option to reiterate points made throughout responses to earlier questions, others addressed concerns that go beyond the current policy proposals but that they felt government should consider.

Guidance

A particularly prominent concern was the need for clear statutory guidance and definitions. Many emphasised that the effectiveness of any new regime will depend heavily on how clearly “detriment” is defined in practice. Respondents repeatedly call for detailed guidance on the “sole or main purpose” test, including worked examples of what would and would not fall within scope.

Pay deductions

There was a second major theme, having also been raised throughout the consultation: the treatment of pay deductions during industrial action. A significant number of respondents, most notably employers and BROs, stress that it is essential for the legislation to explicitly confirm that deductions for strike action or action short of a strike do not constitute a detriment. This point was made repeatedly and often in strong terms. The concern is that, if the legislation is not explicit, it could open the door to legal challenges.

However, unions in sectors where action short of strike is prevalent, such as higher education, raised concerns that disproportionately large deductions in pay are taking place following action short of strike and that workers are being subjected to 'double deductions' for refusal to repeat duties missed during strike action.

Stronger enforcement

A further major theme, particularly among trade union respondents, is the need to strengthen enforcement and remedies beyond what is currently being proposed. Many argue that the current system, under which only individual workers can

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bring tribunal claims and where remedies are largely limited to compensation, is insufficient. They propose expanding enforcement mechanisms to allow trade unions to bring claims on behalf of workers or groups of workers and introducing stronger remedies, such as injunctions, annulment of unlawful detriments, and financial penalties, with some European jurisdictions as models.

Fair balance

Many respondents used this question to stress points, made throughout the questions in the consultation, that anything implemented by government should strike an appropriate balance between protecting workers and allowing employers to manage their businesses effectively. Some referred to the *Mercer* Judgment, which included recommendations to policy makers to strike this balance. Similarly to this point, some suggested that reducing the perceived risks of participation in industrial action, that could result from either option, could lead to more frequent or prolonged disputes. There were also familiar suggestions that any reforms will increase legal uncertainty and lead to more litigation.

Operational impact

Related to this, there was considerable focus on the operational impact on essential and regulated sectors, including social care, healthcare, and other safety-critical industries. Respondents from these sectors highlight the need to maintain continuity of service, manage risk, and meet safeguarding obligations. They emphasise that any framework must allow employers sufficient flexibility to ensure effective service delivery. There are calls for sector-specific guidance and tailored implementation support, particularly for smaller providers without specialist industrial relations expertise.

Individual concerns

Alongside these main themes, a range of more specific points are raised by individual respondents. These include suggestions to introduce personal liability for managers responsible for detriment, concerns about the broader influence or conduct of trade unions, criticism of perceived government behaviour during industrial disputes and request to remove the 'sole or main purpose test' entirely.

A trade union from the education sector highlighted how informal and discretionary decision making can have long term impacts on career progression, while a legal representative raised the question of whether current legislation protects workers from breach of contract claims when taking industrial action.

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Make Work Pay: protection from detriments for taking industrial action

Government response

We have carefully considered all responses to this consultation and would like to again thank respondents for their views. We appreciate the points made by respondents both in support of prohibiting all detriments and creating a prescribed list of prohibited detriments. Those in support of banning all detriments focused on the protection this would offer workers, as well as the risks of the list becoming outdated, being exploited by bad faith employers and being inconsistent with other broad prohibitions of detriment in employment law. Those in support of a prescribed list of detriments favoured it for the clarity of on prohibited employer behaviour around industrial action that it offers employers and workers and the reduced scope it gave for claims being made in relation to normal operational decisions.

Policy outcome

The government is committed to ensuring workers get full protection against detriment when they take industrial action, so they can exercise their right to take industrial action without fear of repercussions. We believe that full protection against detriment will enable trust and stronger relations to be built between employers and workers.

Responses to this consultation have shown that, of the two options, respondents feel that prohibiting all detriments and removing fear of any unfair or punitive measure is the most effective way to offer protection and build trust.

We note respondents' concerns over protections being undermined if a list of prohibited detriments was created, as it would allow bad faith employers to exploit any detriment not prohibited by the list and might become outdated as working environments change.

The government has also considered respondents' views that banning all detriments will be beneficial in creating more legal certainty as this approach is consistent with other areas of employment law that also prohibit all detriments, in particular section 146 TULRCA (detriment on grounds related to union membership or activities), as well as for whistleblowing or absence for jury duty.

For these reasons, the government will be introducing regulations that will prohibit all detriments imposed for the sole or main purpose of penalising, preventing or deterring a worker from taking industrial action.

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Other issues raised by stakeholders

The government notes the issues raised by respondents about prohibiting all detriments. This included concerns that opting for a broad prohibition would increase the scope of detriments for which vexatious or speculative claims could be made (and the potential administrative and legal costs involved in preventing or responding to these claims) and the lack of clarity they felt prohibiting all detriments might give over what actions are permitted around industrial action and that what should be ordinary business decisions might be now prohibited.

Respondents were aware that the prohibition only applies to detriments imposed for the sole or main purpose of penalising, preventing or deterring industrial action, thereby not prohibiting decisions made where the sole or main purpose is related to ordinary business processes, not industrial action. However, many respondents were concerned about how to apply this 'sole or main purpose test'.

It is worth noting that the sole or main purpose test currently exists in section 146, which offers protection from detriments for the sole or main purpose of penalising trade union membership, trade union activity or use of trade union services. Many employers will already be familiar with applying the test in this similar context, without any impediments to their ordinary business decisions. As employers will also be applying the sole or main purpose test around industrial action, they will be able to use their previous experience of section 146 to inform their decisions. Gov.uk advice pages on protections from detriments for businesses and workers will also be updated to reflect the new protections and how they will work in practice.

Withholding of pay

Another point made by respondents was regarding the withholding of pay during industrial action, many respondents made it very clear that the proportionate deduction of pay should be expressly said to not be a detriment in the regulations, as is currently the case in common law. Others also said that it should be made clear that proportionate pay deductions can be made in respect to Action Short of Strike, as is also currently the case in common law.

It has long been established, as a matter of common law, that a worker who declines to work (including by way of strike or other industrial action) is not entitled to be paid. Consistently with that position, in *Mercer*, the Supreme Court commented that there is no entitlement to pay where the worker performs no work and added that a deduction of pay in such circumstances would not be a "detriment". The government does not intend, through its regulations on detriment

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for industrial action, to affect that common law position, to prevent an employer from acting in accordance with the common law to deduct pay from a worker who takes strike or other industrial action, or to subject an employer to a complaint for detriment under section 236A for making such a deduction.

Adjustment of claims

Regulations will also add claims made under section 236A to the list of claims in Schedule A2 to TULRCA, meaning that compensation awards can be increased or decreased by 25% following an employer or employee's failure to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures. This is due to the fair treatment it is expected to promote in both employers and employees, as well as the fact it would encourage constructive and timely resolutions allowing for a faster return to business as usual. It also provides legal clarity by keeping consistency with section 146 of TULRCA (detriment on grounds related to union membership or activities).

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Next steps

The government would again like to thank the respondents for their engagement. Following the publication of this response, the government will be laying the regulations in parliament in due course. We expect regulations to come into force in October 2026.

Annex A: further methodological detail

There were 104 Qualtrics responses in total; however, only 43 of these were used in the eventual analysis. The other 61 were incomplete responses that did not engage with any of the questions beyond Q1. There were a small number of responses that were included in the analysis which did not have totally complete responses but did provide a meaningful response, defined by having engaged with two or more questions.

Analysis for this consultation involved quantitative analysis for the multiple-choice questions. Those were questions 1 and 6, asking whether respondents supported either option 1 or 2, as well as question 13, asking whether people supported adding section 236A to schedule A2. For these questions percentages were calculated as a proportion of all respondents included in analysis of the consultation. The analysis also included a counting up of responses to questions 4,5,11 and 12 and percentage calculations of those within a respondent group that responded with each multiple-choice option relative to the number of overall respondents in that group.

The remainder of the analysis for the free-text questions and the sections asking respondents to explain their multiple-choice answers was qualitative. The process undertaken here was to compile the responses to each question by respondent group. AI was used here in the compilation of questions 9 and 10 to highlight the detriments most commonly mentioned as ones that should or should not be included in any prohibited list. A quality control check was done to ensure that the AI compilation was accurate and that the detriments it had highlighted as the most commonly raised were correct.

Following the summarisation of each respondent group's response to each question, AI was then used to group the different respondent group's themes and key issues together to be presented in this government response. Human supervision compared the summaries made for each respondent group and the AI generated compilation based on these and made all necessary edits to ensure that the final response accurately reflected all of the key points that respondents had made.

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