



Balloting thresholds for 'important public services'

TUC response to the BIS Consultation on the Trade Union Bill

Introduction

The Trades Union Congress (TUC) has 52 affiliated trade unions, representing nearly 6 million members who work in a wide variety of industries and occupations across the public and private sectors.

The right to strike is a fundamental human right and a hallmark of any free and democratic society. It is safeguarded by a wide range of international treaties, including ILO Conventions, the European Social Charter (1961) and the European Convention on Human Rights.

The TUC is profoundly concerned that the right to strike is being placed at risk in the UK as a result of government proposals outlined in the Trade Union Bill and the accompanying regulations and consultations. These proposals include the introduction of a minimum 50 per cent participation rate for industrial action ballots and the requirement for a 40 per cent 'yes vote' in 'important public services'. Other measures include a requirement for 14 days' notice for industrial action, the inclusion of additional wording on ballot papers, an obligation for unions to re-ballot members where industrial action lasts for more than 4 months, and the removal of the ban on the supply of agency staff to replace striking workers. The government is also proposing tighter restrictions on picketing activities, even though pickets are already amongst the most regulated individuals in the UK.

The TUC believes that the proposed new laws represent unnecessary, unjustified and disproportionate restrictions on the right to strike. As such, they conflict with the government's international and human rights obligations. The proposed restrictions on rights to picket and protest peacefully could also seriously interfere with the civil liberties of working people, including their rights to assemble and protest and to freedom of expression.

The provisions of the Trade Union Bill will create a serious imbalance of power between employers and working people. In recent years, the introduction of employment tribunal fees has meant that ordinary working people no longer have recourse to the law to protect their rights at work. Now the government is seeking to prevent working people from relying on trade unions to protect their interests in the workplace and the quality of public services on which society relies.

Thresholds for industrial action ballots – Key TUC concerns

The TUC is firmly opposed to the introduction of thresholds for industrial action ballots. These measures are expected to have a far-reaching impact. They will make it far more difficult for millions of working people to organise collectively in defence of their jobs, their livelihoods and the quality of their working lives. As such, the legislation does not appear to comply with international law.

The TUC believes that the government's proposals for thresholds are discriminatory. We believe that the right to strike is fundamental human right which should be enjoyed equally by all working people, regardless of their job or function or whether they work in the public or private sector. The TUC is also

seriously concerned that women will be disproportionately affected by the proposed thresholds.

The government claims to be interested in increasing workforce democracy. However, it refuses to permit union members to use secure electronic voting for union statutory elections and ballots even though this change would increase participation in union democracy, particularly among younger workers. The TUC believes that the current system of postal ballots is in urgent need of reform. We call on the government to modernise balloting rules for the digital age and to permit union members to use secure online and workplace voting for union ballots and elections.

The TUC anticipates that the introduction of tighter restrictions on the right to strike will damage constructive employment relations and undermine effective negotiations between employers and unions. Trade unions play a central role in improving standards in the workplace, in developing innovative working practices and in increasing productivity levels. Joint working between management and unions delivers positive benefits for employers, employees and the wider public. These are being placed at risk by the proposed legislation. Unions also play a vital role in resolving disputes in the workplace and in avoiding the need for industrial action.

Taking industrial action is always a last resort. However, sometimes it is the only way to resolve disputes, including in those occupations and industries classified by the government as 'important public services'. Placing tighter restrictions on trade unions is likely to prolong and escalate disputes in the workplace, making them more difficult to resolve swiftly and amicably. This will increase workplace tensions, demoralise staff and reduce productivity levels. The TUC believes that rather than restricting the rights of trade unions and union members, the government should concentrate on developing policies which will improve productivity, deliver quality employment and secure the economic recovery.

The TUC is also concerned that the government is proposing wide ranging legislation without proper consultation or Parliamentary scrutiny. The current BIS consultation has lasted for just 8 weeks over the summer holiday period. This is not consistent with the government's consultation principles.¹ The limited consultation period indicates that the government is not interested in developing evidence based, considered policy.

In addition the TUC is concerned that the Trade Union Bill does not define who will be covered by the 40 per cent threshold; rather this is to be determined by secondary legislation. The TUC is seriously alarmed that Parliament will have

¹ The government Consultation Principles state that '*Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response and where the consultation spans all or part of a holiday period policy makers should consider what if any impact there may be and take appropriate mitigating action.*' The principles are available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf

very limited opportunity to scrutinise and debate future regulations which could restrict the right to strike for millions of UK citizens.

Responses to consultation questions

Questions 1 & 2:

Do you agree these are the key impacts industrial action would have in these sectors? Why/ why not?

What other impacts are there of strike action in

a) Fire services,

b) Health services,

c) Education services,

d) Transport services,

e) Border Force, or

f) Nuclear decommissioning?

If relevant, please include specific examples of your experience of strike action taken in these sectors.

The TUC is opposed to the introduction of statutory thresholds, including requirements for a minimum 50 per cent participation rate in all industrial action ballots and a 40 per cent ‘yes vote’ in ballots in ‘important public services’ or where members are engaged in ‘ancillary activities’ which support ‘important public services’. These measures are designed to make it far harder for union members, including midwives, nurses, hospital cleaners, train and bus drivers, teachers and classroom assistants, to organise collectively to defend their jobs, their livelihoods and their working conditions.

The TUC believes that the government’s proposals amount to an unnecessary, unjustified and disproportionate restriction on the right to strike in the UK. They therefore conflict with the government’s international and human rights obligations.

The TUC is also concerned that unions are required to run postal ballots for industrial action. The postal ballot system is expensive; it deters member participation and can unnecessarily extend the length of the balloting period. If the government decides to proceed with the statutory thresholds, it is essential that balloting methods are modernised and allow for the use of secure electronic and workplace voting.

The TUC does not agree with the government’s assessment of the likely effects of the new legislation. In our opinion, the BIS impact assessment is flawed and incomplete. It fails to consider the impact that new strike thresholds will have on employment relations, on staff motivation and on workplace productivity. The consultation document and impact assessment are silent on the human rights implications arising from the new legislation. We are also awaiting an equality impact assessment. Furthermore, the documents do not include an accurate

assessment of the administrative burdens and costs that unions will face if the new legislation comes into effect.

The impact assessment has attracted extensive criticism from the Regulatory Policy Committee (RPC) which concluded that the document was ‘not fit for purpose’. The RPC criticised the government’s inadequate ‘assessment of the costs and disruption caused, and its impact on the economy’. The Committee has also questioned the government’s claim that industrial action can put the provision of public services at risk, demanding ‘further evidence on the existence and likely scale of this effect’.²

The inadequacies of the impact assessment suggest that the government is not interested in developing considered or evidence-based policy. Rather they are focused on restricting the democratic rights of working people and on limiting the ability of unions to represent their members in the workplace.

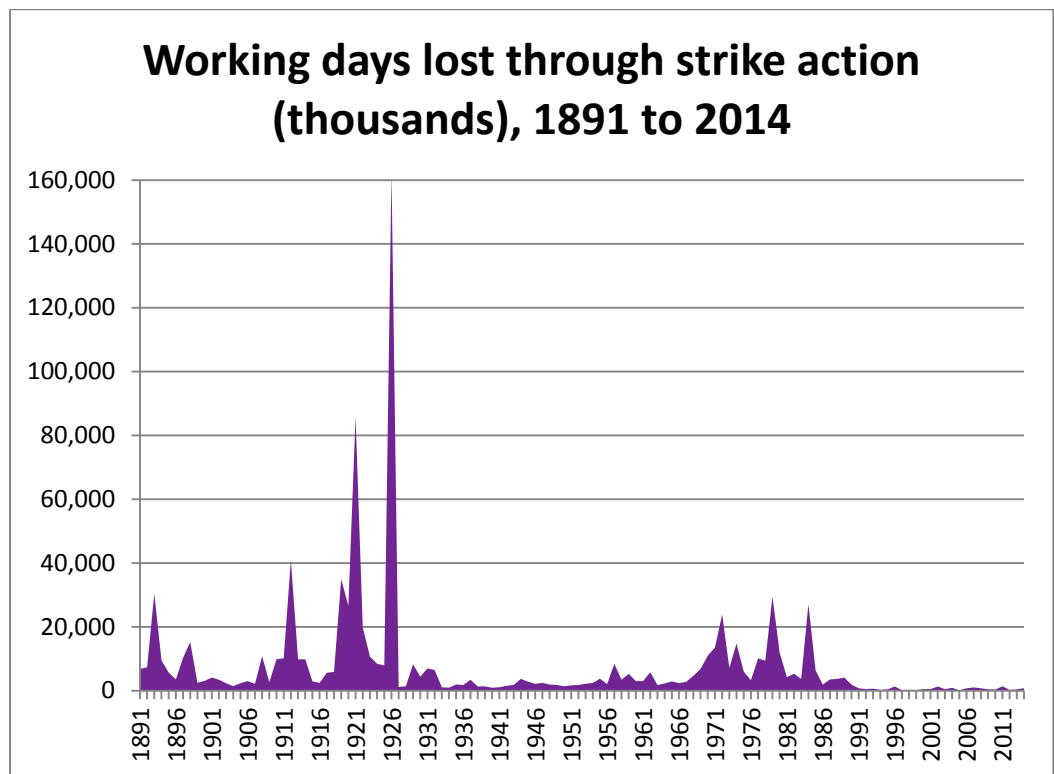
No justification for additional, wide-ranging restrictions on the right to strike

The TUC believes that the government has failed to demonstrate the case for wide-ranging restrictions on the right to strike, as set out in the Trade Union Bill.

The number of days lost to industrial action per year has fallen dramatically over the last 30 years. Since 2010, on average 647,000 days have been lost to industrial action each year, compared to 7,213,000 days lost per year in the 1980s.³

² [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454855/RPC15-BIS-2402_3010 - Ballot thresholds in important public services - IA c - opinion.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454855/RPC15-BIS-2402_3010_-_Ballot_thresholds_in_important_public_services_-_IA_c_-_opinion.pdf)

³ Office of National Statistics (ONS) on Labour Disputes



In 2014, there were only 155 stoppages as a result of industrial action, with 55 per cent of stoppages taking place in the private sector and 45 per cent in the public sector. In an economy with over 30 million people in employment, this is an extremely low level of industrial action.

Industrial action in the UK also tends to be short in duration. In 2014, 64 per cent of all stoppages lasted for only one or two days and accounted for 633,000 days lost (80 per cent) and 93 per cent of workers taking part in industrial action. As outlined below, the proposed new legislation has the potential to escalate and prolong disputes, making them more difficult to settle swiftly and amicably. This will lead to extended disruption.

The UK already has one of the most regulated systems of industrial action systems in the industrialised world. In order to organise lawful strikes, unions must comply with highly complex legislation, including onerous notice and balloting requirements. Unions are required to run postal ballots sent primarily to union members' homes. Postal ballots are very expensive and deter participation in union democracy. The complexity of the legislation means that unions are at risk of legal challenges, with employers able to gain injunctions where unions have made minor administrative errors. Union members also have very limited protection from dismissal, have no protection from victimisation⁴ and regularly experience excessive deductions from pay when exercising their fundamental human right to strike. These restrictions have been repeatedly criticised by both

⁴ *London Borough of Islington v Hutchings* EAT 34/01

the ILO Committee of Experts and the European Social Rights Committee within the Council of Europe for failing to comply with international law.

The TUC is profoundly concerned that the statutory thresholds will have a wide-ranging impact on the right to strike in the UK. BIS estimates that the 50 per cent turnout and 40 per cent 'yes vote' requirements will lead to a 65 per cent reduction in the number of days lost to industrial action in Great Britain each year. In our opinion this represents an unnecessary, unjustified and disproportionate restraint on the right to strike. As such, the measures appear to conflict with the government's obligations under international and human rights law.

The new legal requirements are also discriminatory. The 40 per cent threshold requirement will clearly disadvantage union members working in 'important public services' and in ancillary activities. As a result, the proposals may not comply with the requirements of ILO Convention 87 and the European Convention on Human Rights, Articles 11 and 14.

The TUC is also concerned that the ballot thresholds will have a greater impact on women than men. For the last decade, women have made up the majority of union members in the UK.⁵ The majority of union members covered by the 50 per cent turnout requirement will therefore also be women. TUC research also suggests that women are likely to be disproportionately affected by the introduction of a 40 per cent threshold. Initial research findings indicate that nearly three quarters (73 per cent) of the trade union members working in 'important important public services' are women. This is unsurprising given the high concentration of female employment and higher levels of union density amongst women in the public sector. For example, in the public health services, women account for 78 per cent of staff and 80 per cent of union members.

Damaging constructive employment relations

The introduction of tighter restrictions on the right to strike is likely to damage constructive employment relations in the UK and will undermine effective negotiations between employers and unions.

Negotiations between employers and unions in the UK generate extensive benefits for managers, employees and wider society.

Unionised workplaces are more likely to have family-friendly policies. According to the latest Worklife Balance Employer Survey, published by BIS in December 2014⁶:

- Seventy-seven per cent of unionised workplaces had a written policy on flexible working arrangements compared with 43 per cent of non-union workplaces.
- Union workplaces were more likely to offer a full range of flexible working

⁵ ONS data on Trade Union Membership 2014, June 2015 Table A15

⁶ BIS (2014) *Fourth Worklife Balance Employer Survey*, published in December 2014, BIS Research Paper No. 184, available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/398557/bis-14-1027-fourth-work-life-balance-employer-survey-2013.pdf

practices including job shares, term time working, compressed working weeks and annualised hours.

- Fifty-two per cent of unionised workplaces provide enhanced maternity pay compared with 35 per cent of non-unionised workplaces
- Union workplaces were also more likely to provide support for women returning to work from maternity leave. Eighty per cent of union workplaces allowed a phased return to work, and 77 per cent ran keep-in-touch schemes compared with 58 per cent of non-union workplaces. Seventy-seven per cent of unionised workplaces offered retraining for women returning to work after maternity leave, compared with 58 per cent of non-union workplaces.

Workplace agreements negotiated by trade unions provide clear benefits for those with caring responsibilities. Flexible working practices also assist managers and businesses. They have a positive effect on recruitment and retention. As a result, employers achieve savings on recruitment, induction and training costs. These policies also increase productivity. They enable employers to recruit from a wider talent pool and lead to increased loyalty amongst staff.

With the employment rate for disabled workers continuing to stand at below 50 per cent, disabled workers are more likely than non-disabled workers to be trade union members (14.2 compared to 11.9 per cent⁷). Unions are increasingly called upon to represent members facing workplace issues such as reluctance to comply with legal obligations to make reasonable adjustments, in particular adjustments to sickness procedures. The TUC Equality Audits (2014 and 2012) reported increased union attention to negotiating with employers for policies on reasonable adjustments and disability leave, redeployment and mental health. Union support for disabled workers is growing and more than half of union members now belong to a union that monitors its membership on these grounds, publishes advice and trains its representatives.⁸

Lesbian, Gay, Bisexual and Transsexual (LGBT) workers' invisibility continues to make statistical measurements unreliable. However, several surveys suggest that LGB workers are two and a half times more likely to face bullying and harassment at work⁹, which make many unwilling to be open about their sexuality or gender identity. Unions increasingly monitor their LGB (and sometimes trans) members and have historically negotiated better than the legal minimum policies with employers. Unions support LGBT members by training officers and representatives, publishing advice, organising LGBT networks and promoting equality internally and externally.

Although unemployment rates are twice as high for Black and Minority Ethnic (BME) than white workers (14 per cent BME unemployment compared to 7 per

⁷ LFS 2013

⁸ TUC Equality Audit 2014

⁹ Most recently, the large-scale 2014 Manchester Business School "*Ups and Downs of LGB Workplace experience*" <https://lgbatwork.portals.mbs.ac.uk>

cent white unemployment¹⁰), BME workers form an important part of trade union membership. The proportion of employees who were trade union members is highest in Black or Black British ethnic groups, standing at around 30 per cent in 2014 compared to the average for all employees of 25 per cent. The TUC Equality Audit¹¹ reported a number of initiatives from unions to encourage BME participation and increased union activity around negotiating positive action measures in order to increase BME representation at all levels of the workforce.

Union workplaces are safer workplaces, largely due to tens of thousands of union health and safety reps being trained each year to internationally-recognised standards. Unions raise safety concerns through health and safety committees and collective bargaining arrangements and this leads to far fewer workplace accidents.¹² According to research commissioned by the Department of Trade and Industry (DTI, now BIS) in 2007, by reducing lost time from occupational injuries and work-related illnesses, union safety reps save taxpayers between £181m and £578m (2004 prices) every year.¹³

The DTI research¹⁴ also found that unionised workplaces had lower voluntary exit rates which led to an estimated saving in recruitment costs for employers of £22-£43m per annum.

Negotiations between employers and unions can facilitate innovation and change. In a recent article a leading academic, Professor David Bailey from Aston Business School, acknowledged the important role which unions play in improving the performance and competitiveness of the UK motor industry:

“I would also add in another factor for the industry's success - the flexibility and hard work of workers and unions in pulling out all the stops to help make the UK a competitive place in which to assemble cars and source components (something the media all too often fails to recognise).”¹⁵

Trade unions also play a positive role in promoting skills and training in workplaces. The 2011 Workplace and Employment Relations Survey (WERS) found that higher training levels (at least five days) were 16 per cent more likely in workplaces where the union negotiated with management over training, and 4.2 per cent more likely in unionised workplaces with active union learning reps (ULRs). Employees that benefit from the union-derived training effect are also

¹⁰ LFS 2013.

¹¹ TUC Equality Audit 2012 and 2014.

¹² Nichols, Walters and Tasiran, *Trade Unions mediation and industrial safety*, Journal of Industrial Relations 2007

¹³ DTI (2007) *Workplace representatives: A review of their facilities and facility time*,

¹⁴ Ibid

¹⁵ www.birminghampost.co.uk/business/business-opinion/uk-car-output-up-down-9902855#ICID=sharebar_twitter

Similarly,

more likely to have higher wages and more job security than non-unionised employees.¹⁶

Where organisations face difficult economic conditions, unions work with employers to develop fair processes for managing redundancies and restructuring. Analysis of the 2011 WERS found that a large majority of lead union representatives reported working closely with management where changes were being introduced in the workplace.¹⁷ This included 66 per cent of union representatives in the public sector and 71 per cent in the private sector.

Following the economic crisis of 2008, there have been extensive examples of unions and managers engaging in constructive negotiations with a view to saving jobs and retaining skilled employment. For example:

- During the economic downturn, unions worked with employers at Jaguar Land Rover to avoid serious job losses and to protect the future of the company. Following a lengthy consultation, unions and their members agreed a one year pay freeze and a shorter working week. The unions also agreed to move labour between two plants to save jobs.
- At Bombardier, following the loss of the Thameslink contract to Siemens in 2011, the company announced mass redundancies, the closure of the Derby site and a review of their UK operations. Management met on at least a weekly basis with recognised trade unions. The consultation period provided unions and management with the opportunity to identify and win new contracts, to review shift patterns and staffing structures. The company, unions and government departments (including DWP and BIS) invited appropriate agencies to visit the site to assist in job searching. As a result of the ongoing discussions, all compulsory redundancies were avoided.
- In 2013 the Environment Agency announced a large reorganisation, with 1600 jobs being placed at risk. Following the storms and widespread flooding during the winter of 2013/14, the recognised union successfully pressed for a reduction in frontline job losses, in order to protect and safeguard the public. The union also convinced the Environment Agency to comply with the existing Managing Change Agreement and to offer voluntary redundancies and redeployment as a means of avoiding compulsory redundancies. Union officials participated in the redeployment panel which helped to reassure staff that the process was fair. After a 15 month period, the vast majority of staff was either redeployed, – some into new jobs – or accepted voluntary redundancies.

The BIS-commissioned Macleod Report,¹⁸ endorsed by Prime Minister David Cameron,¹⁹ also suggests that managers should listen to the concerns expressed by

¹⁶ Stuart, M., Valizade D., and Bessa, I. (2015) *Skills and training: the union advantage: Training, union recognition and collective bargaining*. Unionlearn Research paper 21, May 2015

¹⁷ Kim Hoque and Nick Bacon *Workplace union representation in the British public sector: Evidence from the 2011 Workplace Employment Relations Survey*. Working Paper 20 July 2015.

¹⁸ Department for Business, Innovation and Skills 2009

¹⁹ www.gov.uk/government/news/new-task-force-for-employee-engagement

employees and their representatives and concludes that addressing these concerns will increase levels of employee engagement, thereby helping to deliver sustainable economic growth. Similarly, research undertaken by the Advisory, Conciliation and Arbitration Service (ACAS)²⁰ found that union representatives play an important role in improving workforce engagement and morale, by helping to ensure employees' concerns regarding their working conditions are listened to and addressed. This in turn can improve workplace productivity, the quality of services provided, and ultimately the financial performance of organisations.

Such positive outcomes are not easily achieved. They rely on equal bargaining power between unions and employers. The ability of unions to organise lawful industrial action provides essential support for effective negotiations. It ensures that employers take the views of the workforce seriously and engage in genuine negotiations.

In most workplaces, unions will not need to resort to strike action or even threats of such action. In many disputes, unions will help to manage members' expectations and will avoid the need for industrial action by devising workable solutions around the bargaining table.

Where negotiations are unsuccessful, unions may decide to run a ballot for industrial action. Ballots serve an important purpose by concentrating employers' minds and demonstrating the strength of feeling amongst the workforce. In the majority of cases, the holding of a ballot will be sufficient to facilitate a settlement. The 2011 WERS initial findings report found that industrial action ballots had been held in just 7 per cent of workplaces in the year preceding the survey and only 4 per cent of workplaces had experienced some form of industrial action.

Taking industrial action is always a last resort for unions. However, sometimes it is the only way to resolve disputes, including in those occupations and industries classified by the government as 'important public services'.

Prolonging and escalating disputes

It is in employers' and employees' interests for disputes to be resolved quickly and amicably. However, the Trade Union Bill contains a number of measures which are likely to escalate and prolong disputes, making them harder to resolve swiftly and amicably. For example:

- The introduction of ballot thresholds will mean that unions will take more time in the run up to ballots, to ensure the necessary turnout. This will inevitably extend the dispute.
- The new ballot thresholds will remove the incentive on employers to seek an early resolution of a dispute. Many will decide to 'wait to see' if a union can meet the strike thresholds before making a revised offer.
- Where unions succeed in meeting the new high statutory thresholds, this is

²⁰ ACAS (2003) *Information and Consultation at Work: from challenges to good practice*. Research Paper 03/03.

likely to raise members' expectations. Unions' negotiating positions may therefore harden, making a settlement more difficult to achieve.

- The extended 14 day notice period for industrial action will needlessly delay the start of industrial action.
- Time limits for strike mandates are likely to escalate disputes. Employers may decide to 'sit out' of the dispute and refuse to negotiate in the knowledge that unions will incur excessive costs if they are required to re-ballot their members after 4 months. In contrast, unions will feel forced to bring forward any planned strike days in an attempt to secure an earlier settlement.
- Provisions in the Trade Union Bill are also likely to make it harder for ACAS to gain agreement from employers to engage in talks and to broker settlements.
- If union members feel that unions are no longer able to organise lawful industrial action, there could be a greater risk of wildcat strike action. In these cases, unions' hands would be tied as they will be expected to repudiate the action. It would therefore be more difficult for employers to get employees back to work and it would not be clear who ACAS should invite into negotiations.

It is evident that the government's proposals will undermine good employment relations. Far from encouraging the amicable and swift settlement of disputes, these measures will create unnecessary tensions between employers and unions and make disputes far harder to resolve.

Impact on motivation and productivity

The TUC anticipates that restrictions on the right to strike will have detrimental effects on employee morale and workplace productivity.

One of the principal effects of the government's proposals is that fewer workplace disputes are likely to be settled in a way which balances the interests of employers and employees. In some workplaces, disputes will simply remain unresolved. As a result, staff will feel that management is unwilling to take their views or interests into account. This will reduce job satisfaction amongst employees. Employers may therefore find it more difficult to retain skilled staff and institutional knowledge. This, in turn, will undermine organisational effectiveness and the quality of service delivery. It will also lead to lower productivity.

Loss of benefits for working people

Over the last 20 years, the gap in incomes between the rich and low paid in the UK has grown to record levels. Pay freezes and below inflation pay rises combined with rising household bills mean that many UK families continue to struggle with an unprecedented fall in living standards. The OECD and leading economists have also warned that pay inequality in the UK is likely to hold back economic growth and will place the recovery at risk.

The Conservatives claim that they are the party for working people. However, the government's proposals will remove employees' ability to achieve better working conditions and living standards.

In recent years, unions and their members have organised collectively to defend jobs and to secure better pay and working conditions. The improvements negotiated by trade unions benefit not only union members but also the wider workforce.

In some workplaces, unions were able to negotiate changes to pay and conditions following a ballot for industrial action. For example:

Tata Steel dispute: In 2015, unions balloted for industrial action at Tata Steel after the firm proposed closing the final salary scheme, which Tata claimed was facing a £2bn deficit. A proposed national strike was scheduled for 22 June. The action was suspended following talks between the unions and the employers at ACAS. The dispute subsequently ended after workers voted to accept revised changes to their pension scheme in return for it remaining open. In a statement Tata Steel said the new proposal was "a fair and balanced solution". The firm added, "The new arrangements, including the modifications to scheme benefits, will address a significant proportion of the pension scheme's projected deficit."

Taking industrial action is always a matter of last resort. But in some workplaces, it is the only way of resolving disputes. Recent outcomes from industrial action include:

The NHS dispute: In 2014, the Health Secretary for England announced that he would impose changes to the 2014/15 pay rates for NHS non-medical staff that would only involve a non consolidated 1 per cent increase for staff at the top of their pay band, thereby excluding 60 per cent of staff from any pay increase. This announcement came despite the previous recommendation from the NHS Pay Review Body that pay rates should rise by 1 per cent across the board in April 2014.

Eleven health unions, representing midwives, nurses, radiographers, hospital consultants, paramedics and ambulance crew, occupational therapists, health service managers, support and administrative staff balloted their members who voted strongly for industrial action. A period of work to rule, alongside strike action on 13 October and 24 November then took place in England and Northern Ireland. This represented the first strike action over pay among health workers in 34 years. Two further days of industrial action were then scheduled in early 2015. However these were suspended when the Health Secretary made an improved offer for 2015/16, providing a 1 per cent increase applying to all staff except the highest bands and larger rises, ranging between 5.6 per cent and 2.3 per cent, for 250,000 of the lowest-paid staff in the NHS. This offer went to a vote of members and was accepted in March 2015.

Ritzy cinema dispute: In April 2014, Bectu members took strike action at the Ritzy cinema in Brixton as part of a wider campaign to secure pay increases for cinema staff. During its campaign the union successfully secured support from cinema goers, the local community and the general public. After 13 days of strike action over a five month period the cinema workers finally won a 26 per cent pay increase. They continue to campaign for the full London Living Wage.

Hovis Bakery dispute: In 2013 the BFAWU, the Bakers' Union, successfully secured an end to the use of zero hours contracts and pay parity for agency workers, following a dispute at the Hovis factory in Wigan. The union

organised industrial action after the employer decided to bring in agency workers almost immediately after approximately 30 permanent staff had been made redundant. During its campaign the union mobilised widespread support amongst the local community and local families.

It is clear that industrial action can play an important role in improving the pay and conditions for working people. This in turn can help to secure the economic recovery in the UK, as households secure higher levels of disposable income.

The TUC believes that the government should set aside the proposals in the Trade Union Bill which will limit the ability of unions to secure improved pay and conditions for members and the wider workforce. Instead, the government should focus on policies which will drive up living standards for working people, increase productivity levels, and secure the economic recovery in the UK.

Erosion of human rights in the UK

The right to strike is a fundamental human right. It is safeguarded by ILO Convention 87 on freedom of association and the right to organise, the UN Covenant on Social and Economic Rights (Article 8), the European Social Charter (Article 6(4)) and the European Convention on Human Rights (Article 11), all of which have been ratified by the UK government.

The TUC is concerned that proposals contained in the Trade Union Bill will place unjustified restrictions on the right to strike in the UK. Research carried out at Salford Business School suggests that millions of trade union members could be prevented from taking industrial action if the thresholds come into effect.²¹ This research provides clear evidence that the introduction of strike thresholds will place excessive and unjustified restrictions on the right to strike in the UK. The TUC therefore believes that these measures are unlikely to comply with international human rights standards, including ILO Convention 87.

According to the ILO Freedom of Association Committee²²:

‘The requirement of a decision by over half of all the workers involved in order to declare a strike is excessive and could excessively hinder the possibility of carrying out a strike, particularly in large enterprises.’

The ILO has called on governments to amend their national laws where they include such provisions.²³ For example in Bulgaria trade unions complained to the ILO that legislation, which provides that industrial action is only lawful where it has the support of a majority of those eligible to vote, violates the right to strike

²¹ R Darlington and J Dobson, The Conservative Government’s Proposed Strike Ballot Thresholds: The Challenge to the Trade Unions (August 2015). For a copy of the report see www.slideshare.net/salfordbizsch/trade-union-bill-analysis-professor-ralph-darlington-report.

²² ILO (2006) Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, paragraph 556.

²³ ILO (2006) Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, paragraph 558.

as protected by ILO Convention 87. The ILO's Committee of Experts agreed and called on the government to amend the legislation.

The Committee rejected the Bulgarian government's claim that its strike ballot threshold was 'liberal in character', and that 'any attempt to amend it may infringe its democratic approach'. Instead, the Committee confirmed that under international law, 'account should only be taken of the votes cast' in strike ballots, while any 'required quorum and majority should be fixed at a reasonable level'. The Committee urged the Bulgarian government to change the law 'in order to bring it into closer conformity with the principles of freedom of association'.²⁴

To date, the government has failed to demonstrate how the measures contained in the Trade Union Bill comply with ILO Conventions or the European Social Charter of 1961. In its European Convention on Human Rights Memorandum on the Bill the government has suggested that the statutory thresholds will comply with Articles 11 and 14 of the Convention. The government has sought to justify the proposed 50 per cent turnout requirement for industrial action ballots on the basis of the decision of the European Court of Human Rights in the case of *RMT v UK*.²⁵ However, in the TUC's opinion, this case is not relevant to the proposed strike thresholds or indeed the wider provisions of the Trade Union Bill.

The *RMT* case concerned the total ban on all forms of the secondary action. In its decision, the European Court of Human Rights took account of the fact that the ban on secondary action had not been amended or removed by a succession of UK governments. The absence of amendments was said to reflect a broad political consensus in support of the ban. The Court therefore concluded it was appropriate to apply a wide margin of appreciation. It is clear however that the same consensus does not apply to the Trade Union Bill, the provisions of which have been hotly contested since their announcement.

The government has also sought to defend²⁶ the decision to apply a 40 per cent threshold to a wide range of 'important public services' and ancillary activities by citing decisions of the European Court of Human Rights relating to cases from France and Spain. The TUC, however, believes that it is not credible for

²⁴ ILO (2008) Observation (CEACR), adopted 2007, published 97th ILC session (2008) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Bulgaria www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2276927,102576,Bulgaria,2007; ILO (2012) Observation (CEACR) - adopted 2011, published 101st ILC session (2012) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Bulgaria www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2698633,102576,Bulgaria,2011

²⁵ Department for Business, Innovation & Skills (2015) Trade Union Bill: European Convention on Human Rights Memorandum. July 2015, page 4 available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450316/BIS-15-466-european-convention-on-human-rights-memorandum.pdf

²⁶ Ibid, page 5

government to try to rely on cases dealing with the restrictions on the rights of police officers²⁷ and military personnel²⁸ to justify restrictions on the rights of a wide range of public and private sector staff, including transport, teachers, cleaners, and road diggers, to strike.

Unions as guardians of public safety

In its consultation document the government suggests that strikes in 'important public services' such as health care, fire services, nuclear decommissioning or border controls have caused harm to the public and risk public safety. As noted above, these claims have been questioned by the Regulatory Policy Committee.

Far from placing the public at risk, trade unions and their members play a vital role as guardians of public safety. Union members are committed public servants who care for service users and strive on a daily basis to protect and promote their safety and well-being. They act as advocates for service users and use their influence in the workplace to protect and improve service delivery and drive up safety standards.

For example:

- Through the Social Partnership Forum (SPF), trade unions in the NHS have worked with NHS Employers, NHS England, Health Education England (HEE) and the Department of Health to discuss and debate the development and implementation of the workforce implications of policy. Priority issues tackled by the SPF include responses to the Francis Inquiry into Mid-Staffordshire. The SPF has also advised the Care Quality Commission on the best way to incorporate and measure staff engagement as part of its inspection regime.
- In the Fire Service, the Fire Brigades Union (FBU) trains highly qualified Serious Accident Investigators (SAIs) who work with fire authorities to investigate where firefighters are killed on duty and to identify and implement service improvements which can prevent future fatalities. With 14 firefighters killed and 9,700 injured since 2004, the need for FBU representatives to assist in the investigation and subsequent report into a serious incident is crucial. The SAIs work in co-operation with our employers and other agencies (the Health and Safety Executive (HSE), for example) to compile both the official report and their own internal report which is used for membership information and discussion. The involvement of workers who do the job and are exposed to the risks day in and day out gives the investigation legitimacy. It also ensures that potential problems in training, equipment or incident management are properly addressed.

The FBU is concerned that proposals for caps on facility time proposed in the Trade Union Bill could restrict or even prevent FBU representatives from ensuring that firefighters operate in a safe working environment. This will further endanger firefighters and could mean any safety critical problems identified left unresolved.

²⁷ *Matelly v France* (Application 10609/10) European Court of Human Rights Judgement 2 October 2014.

²⁸ *Junta Rectora Del Ertzainen Nazional Elkartasuna (ER.N.E.) v. Spain* (Application no. 45892/09), European Court of Human Rights Judgement 21 April 2015.

Unions also use their influence in the workplace to drive up safety standards. For example:

- UNISON recently organised a group of cleaners working in a University. The branch was campaigning for recognition and a living wage for cleaning staff. It was brought to the attention of the branch that only a fixed number of the cleaners were being provided with adequate footwear to clean up spills of often noxious liquids. The cleaning company were expecting the cleaners to share one pair between them. Unison organised an online petition, which was circulated through social media, and also produced a flyer highlighting the footwear issue, and linking to the claim for a living wage. The University public relations team were embarrassed to find out that the University's cleaners were not even being provided the right footwear. A few days later the cleaning company not only conceded in providing the correct footwear, but also a living wage.

Where public safety is placed at risk as a result of restructuring or cost cutting exercises, trade unions and their members also provide an important line of defence. Where necessary, unions will ballot members for industrial action in order to ensure that management addresses issues of public safety.

For example:

- Over the last two years, the Society of Radiographers (SoR) has balloted members in a number of individual NHS Trusts when they have faced problems regarding on-call rotas. Notably there have not been enough radiographers to populate the rota to secure patient safety. Balloting for industrial action is the only way of ensuring members can comply with their professional obligation to protect patients at all times.

The ballots are not about pay or terms and conditions but about being able to provide a safe service. All members want out of the action is to not have to come to work exhausted. In the SoR's experience, once a ballot result is declared meetings with management that otherwise would have been denied happen, a strategy to increase numbers in the long term is agreed and short term measures such as using bank staff are also agreed while recruitment takes place.

As a matter of last resort, unions have also been willing to take industrial action in order to ensure that employers address health and safety concerns.

For example:

- In February 2015, the GMB balloted members in an East Sussex waste management company following health and safety and bullying concerns. The company recognised that bins used for glass collection created a present danger from falling glass when lifted. However the management failed to address issues raised by the union relating safety and the harassment of staff. In March 2015, the union called off the proposed strike, following movement by the company on the main issues raised by the union.

When taking industrial action, unions act responsibly and ensure that individuals' life, limb and property are not placed at risk. Whilst it is employers' responsibility to provide emergency cover, unions are willing to engage with

managers and to reach agreement to ensure that the public's safety and health is protected.

For example:

- In the health service, unions have agreed policies on industrial action and emergency cover. Although it is the employer's responsibility to arrange cover, the unions are committed to engaging with managers to reach agreement on the exemption of certain categories of staff from the strike where there would otherwise be a direct danger to the life or limb of any person such as in emergency services in the NHS.
- When midwives took strike action in October 2013, the Royal College of Midwives (RCM) and its local representatives worked with hospitals to ensure services were still available to women in need of essential care, such as those in labour. RCM members are also committed to respecting a women's right to birthplace.
- Similarly in local government there are a range of services where unions may be willing to agree life-and-limb cover, such residential homes for children and the elderly, emergency duty social work and emergency meals-on-wheels.
- In fire services, employers have a legal responsibility to put in place contingency plans in the event of industrial action. However, the FBU has agreed that during strike action union members will return to work on a voluntary basis to respond to major incidents, such as terrorist attacks or severe storms and flooding.

The TUC fears that restrictions on the right to strike will mean that unions' ability to persuade employers to address issues affecting safety and service delivery will be seriously diminished. As a result, public safety will be placed at risk. Public sector staff will be increasingly demoralised by their inability to deliver quality and safe public services. Staff turnover is therefore likely to increase whilst the below-inflation pay rises proposed by the Chancellor will mean that public services find it is increasingly difficult to recruit staff. As a result, the quality of service delivery is likely to decline and those who rely on public services will suffer.

Industrial action ballot thresholds: undemocratic and deterring participation in union democracy

The TUC believes that the government's proposals are also profoundly undemocratic.

The government is proposing to impose statutory thresholds for industrial action ballots, even though no politician is required to meet such standards before being elected to office. No thresholds will also apply in the forthcoming EU referendum.

The TUC is concerned that the proposed statutory thresholds will lead to illogical outcomes.

Take two companies each employing 1,000 employees. Unions in each company are running strike ballots. In Company A, 495 vote for action and 4 against. On the other side of the city, views amongst staff at Company B are more mixed.

They vote for action by just one vote – 251 in favour and 250 against. Experienced union negotiators will be wary of calling action at Company B due to the more limited support for industrial action. But in Company A there is a clear mandate for action.

However, under the government's proposals, a strike in Company A would be illegal because the turnout just falls short of the 50 per cent threshold needed. In contrast in Company B, despite the split vote and even though 244 fewer workers voted for action, a strike would be legal. However, if only one person who voted 'no' among Company A abstained instead, the ballot would no longer be invalid because the turnout would have been lower than 50 per cent.

The government's proposals assume that individuals who abstain from voting are opposed to the industrial action. The government's policies will also mean that abstentions will carry more weight in terms of the outcome of the dispute than those who actively participate and vote against the action. This could have the perverse effect of encouraging those who do not support the proposed industrial action to abstain rather than actively participating and demonstrating their opposition.

The TUC is also concerned that the requirement on unions to use postal ballots may lead to increased abstentions. We live in an age when a good deal of correspondence received by post is perceived a junk mail and goes straight into the recycling bin, whereas according to the latest Ofcom figures, 83 per cent of people now have access to broadband²⁹ and 66 per cent of households own a smart phone.³⁰ These figures are likely to be higher amongst those of working age and are set to rise rapidly. The TUC therefore believes that unions should no longer be required to run postal-only ballots. Instead the government should introduce legislation permitting the use of secure online and electronic voting in union ballots and elections.

The case for electronic and workplace voting

The government claims to be interested in increasing participation in union democracy. If this is the case, Ministers should permit unions to use secure electronic and online workplace voting in union statutory ballots and elections and should forget about the imposition of arbitrary thresholds for industrial action ballots.

Throughout its history the trade union movement has been firmly committed to union democracy, and to enabling union members to participate in union decision-making and elections to ensure that their views are given full effect.

The TUC believes that the existing balloting requirements are in urgent need of reform. Currently, all ballots and elections must be conducted on a fully postal basis and voting must be by the marking of a voting paper. The TUC and

²⁹ <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr12/market-context/uk-1.003>

³⁰ http://stakeholders.ofcom.org.uk/bin...MR_UK_2015.pdf

affiliated unions have repeatedly expressed concerns that these requirements impose onerous financial and administrative burdens on unions and can result in lower levels of involvement by members in key democratic decisions within unions. Fully postal ballots are expensive and can unnecessarily extend the voting period. This can be detrimental to good industrial relations, for example in cases of industrial action or statutory recognition, where faster and more efficient balloting methods can assist in the earlier resolution of disputes.

These views were supported by the Better Regulation Taskforce in its report entitled *Employment Regulation: striking a balance* published in May 2002. Here the Task Force commented that the provisions of the legislation relating to union elections and ballots 'appear to impose undue burdens on trade unions'. Following this report, the government introduced legislation (section 54 of the Employment Relations Act 2004) which provided powers permitting the introduction of electronic ballots for unions. To date, these powers have not been utilised. The TUC would call on the government to implement electronic ballot as soon as possible.

The TUC believes that the government should modernise the law and permit unions to use electronic and workplace voting systems. This would encourage increased participation in union democracy and help bring ballots into the 21st century. Different methods of voting would be welcomed by union members as offering greater flexibility, speed, convenience and ease of access.

Union members expect to use the internet and other electronic methods to undertake different transactions. In response, many unions have developed their websites as a major tool for communication with members, whether in relation to union services, employment issues or specialist areas of interest. Unions are also keen to capitalise on new technology for statutory ballots and elections. Unions also believe that the use of different voting methods could increase the efficiency of union elections and ballots and reduce the financial burdens faced by unions.

Online balloting can be safe and secure, much like online banking. Many membership organisations, including the Royal National Institution of Blind People (RNIB), the Institute of Chartered Accountants for England and Wales, the National Trust, the Magistrates' Association, the Countryside Alliance and the Royal College of Surgeons, use electronic and online balloting for elections. Political parties also use online voting for the selection of candidates. A recent Speakers' Commission for Parliament also recommended that secure online voting should be an option for all voters by 2020.

The TUC calls on the government to introduce legislation permitting the use of secure electronic and workplace ballots as a matter of urgency. The legislation should also be future-proofed, enabling unions to take advantage of existing and new forms of technology.

The statutory scheme should be light-touch and avoid onerous additional duties for trade unions. Scrutineers should be expected to oversee the balloting process and to validate whether they conform to statutory requirements, including that:

- All those entitled to vote have an opportunity to do so.

- Votes cast are secret.
- The risk of any unfairness or malpractice is minimised.

The TUC also believes it is important that union members have the opportunity to vote in the workplace. Workplace voting is likely to increase member participation in ballots. Union members associate their union membership and activities with their workplace rather than their home lives. However, it is essential that members can vote in a way which is free from interference or intimidation by their employers.

The TUC therefore believes that the government should introduce legislation which:

- Requires employers to co-operate with union ballots. For example, employers should be expected to work with unions to ensure that company's IT systems and firewalls do not block emails sent to union members by unions and balloting agencies.
- Ensures that union members can vote in the workplace free from surveillance, interference or intimidation by employers.

Excessive costs and administrative burdens for unions

In the TUC's opinion, the government has seriously underestimated the costs and administrative burdens which will be imposed on trade unions if the statutory ballot thresholds come into effect. The BIS impact assessment estimates that unions will incur costs of £535,000 as a result of the legislation, much of which is likely arise from the costs of familiarisation with the legislation. The TUC believes that this is a significant underestimate.

The impact assessment assumes that in each union only the general secretary plus four 'senior directors' will need to become familiar with what the legislation requires and how to implement it. In practice, unions will need to provide training for all union officials who have responsibility for negotiating with employers and managing collective disputes. The number of officials involved will vary according to the size of the union.

Unions will also need to provide training and briefings for union workplace reps, who will play an important role in communicating the impact of the Bill to trade union members and in managing their expectations during disputes. The TUC currently estimates there are between 130,000 and 150,000 union workplace reps in the UK. The need to provide training for union officials and workplace reps will significantly increase costs for unions, which will be exacerbated by the government's withdrawal of the fee remission arrangements for trade union education, which is due to take effect from 1st August 2016. Recent cuts to union facility time also mean that workplace reps will face significant practical difficulties in accessing union training.

Unions will need to invest more resources into workplaces facing disputes before and during the balloting period, in order to secure the necessary turnouts and support levels. As a result, scarce union resources may need to be diverted from other union activities and forms of representation. Union officials will also have

less time to devote to finding a settlement for the dispute. The greater need for unions to campaign ahead of the ballot could also increase the expectations and determination of the workforce. This is likely to make it more difficult to secure an early resolution.

Unions which fail to meet the statutory thresholds on a first ballot may face pressure from members to re-run ballots. This is particularly likely where a clear majority of members support industrial action, but the ballot narrowly fails to secure a 50 per cent turnout. Re-running the ballot will be very expensive. Unions estimate that it can cost at least a £1 per member to run an industrial action ballot. The costs could therefore range from £100s to £100,000s.

The response to question 14 below details other costs and administrative burdens for unions arising from the introduction of ballot thresholds.

Question 3:

What factors do you think are important in defining 'important public services'?

- Protection against loss of life/ serious injury**
- Maintenance of public safety and national security**
- Enabling economic activity across a significant area of the economy**
- Enabling significant numbers of people to get to their place of work**
- Others (please specify)**

The TUC is committed to the principle that the right to strike is a fundamental human right which should be enjoyed equally by all workers regardless of their job or the function that they perform. We are therefore firmly opposed to proposals for a 40 per cent threshold.

The UK already has one of the most regulated systems for industrial action in the industrialised world. The current restrictions on the right to strike have been widely and repeatedly criticised for not complying with international law. The TUC believes that the proposed thresholds for strike ballots will impose further excessive and unjustifiable restraints on the ability of unions to organise industrial action.

The TUC believes it is not legitimate for the government to attempt to justify restrictions on the right to strike on the basis of any of the factors listed above.

Far from placing the public at risk, trade unions and their members play a vital role as guardians of public safety and well-being. Unions are often the last line of defence for public safety (see the response to question 1 for more detail).

Taking industrial action is always a matter of last resort. Where strikes go ahead, it is the responsibility of employers to ensure that emergency cover is in place. However, union members are committed to ensuring that individuals' life, limb

and property are not placed at risk. Unions are therefore willing to engage with managers and to reach agreement to ensure that the public's safety and health is protected.

It is also deeply inconsistent for the government to attempt to justify restrictions on the right to strike on the grounds that it will protect public safety, when at the same time they want to permit employers to use agency workers to replace striking workers. Using agency workers to undertake work normally performed by permanent staff will raise serious concerns about safety in the workplace and for the wider public. Agency workers will be recruited at short notice to cover for those participating in industrial action. They are, therefore, less likely to have received health and safety training needed to do the job safely. It is clear that the main focus of government policy is not the protection of public safety but rather the undermining of effective industrial action.

The TUC also believes it would not be legitimate for the government to restrict the right to strike on the grounds that industrial action restricts economic activity or causes disruption for the wider public.

In order to be effective, industrial action must cause some disruption. This is necessary to ensure that the union is able to make its point effectively and that employers return to genuine negotiations. UK unions act responsibly when deciding whether to strike. Industrial action will always be a matter of last resort. Unions will always be mindful of the financial cost to members of taking any form of action.

The government's impact assessment confirms that the level of disruption caused by industrial action in the UK each year is very limited. The government estimates that the proposed thresholds will lead to increased output of just £13.7m. Findings from the 2011 WERS also confirm that the level of disruption caused to employers by strikes is very low. Despite an increase in public sector strikes, only 3 per cent of managers reported experiencing any disruption as a result of strikes in another workplace.³¹ It is difficult for the government to justify a wide ranging restriction on the fundamental right to strike on such limited evidence.

The TUC also believes that government's approach is not consistent with international law and human rights standards. According to the ILO's Committee on Freedom of Association, it is not legitimate for governments to restrict the right to strike on the grounds that industrial action will impair wider economic activity.

'By linking restrictions on strike action to interference with trade and commerce, a broad range of legitimate strike action could be impeded. While the economic impact of industrial action and its effect on trade and commerce may be regrettable, such consequences in and of themselves do not render a service "essential", and thus the right to strike should be

³¹ WERS report, Initial Findings, p. 26.

*maintained.*³²

Questions 4, 5 & 6:

Do you agree these are occupations and functions in

- a) Fire services,**
- b) Health services,**
- c) Education services,**
- d) Transport services,**
- e) Border security, or**
- f) Nuclear decommissioning**

the Government should consider when defining those subject to the 40% important public services threshold? When answering, please consider those key in avoiding the adverse impacts discussed above.

What other occupations and functions should the Government consider within these six sectors?

(If relevant) Please explain why the additional occupation or function should be covered.

The TUC is firmly opposed to the government's proposals for a 50 per cent turnout requirement in industrial action ballots and measures requiring 40 per cent of union members to vote in support in order for industrial action to be lawful in 'important public services'. We do not agree that the 40 per cent threshold should apply to any of the sectors, occupations or functions specified in the Bill and the consultation document (or indeed any other sectors, occupations or functions). In our opinion, the 40 per cent threshold does not comply with international and human rights standards. See the response to questions 1 and 2 for more detail.

The TUC believes that the right to strike is a fundamental human right which should be enjoyed equally by all workers regardless of their job or the function that they perform. The TUC is concerned that the government's proposals are discriminatory and will significantly disadvantage public sector workers. The proposals will also have a disproportionate effect on women, due to the high concentration of unionised female employment in public services, including education and healthcare.

Restrictions on the right to strike will undermine constructive employment relations and the work of joint consultation committees and collective bargaining arrangements in these sectors. The proposals will mean that more disputes will remain unresolved or will not be resolved to the satisfaction of both managers

³² ILO (2006) Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, paragraph 592.

and the workforce. This will demoralise employees and increase staff turnover, creating additional recruitment, induction and training costs for public sector managers. This, in turn, will reduce workforce productivity and undermine the quality of services provided to the public.

The TUC also believes that the government's proposals will prove unworkable in practice. The complexity of the legislation will generate endless satellite litigation over the type of work an individual does and whether their job or functions fall within a statutory list or are covered by the definition of 'important public services'. The lack of clarity within the legislation will increase legal costs not only for unions, but also employers.

Any increased use of litigation by employers is likely to raise tensions between management and their workforce. This will make it more difficult for unions to negotiate amicable settlements resolving the dispute.

The government has decided that the question of which workers are covered by the 40 per cent threshold will be determined in secondary legislation. The TUC is seriously concerned that Parliament will therefore have very limited opportunity to scrutinise and debate future restrictions on the right to strike which will erode the human rights of millions of UK citizens.

We are also concerned that the government has not committed to a public consultation on the future regulations. As a result, trades unions may not have the opportunity to scrutinise and press for amendments to legislation which will have serious ramifications for their members.

Questions 7, 8 & 9:

Do you agree with the Government's proposed approach to ancillary workers? Why/ why not?

Please give examples of ancillary workers in the six sectors discussed that you think should be subject to the 40% important public services threshold.

(If relevant) Please explain why the ancillary worker(s) you have cited should be covered.

The TUC does not agree with the government's approach to ancillary workers. In our opinion, the government's proposals lack clarity and transparency. We are seriously concerned that the provisions of the Bill and accompanying regulations could mean that millions of workers in the private services sector will be covered by the 40 per cent threshold. This suggests the government is attempting to restrict the right to strike in the UK 'by the back door', without proper consultation or public debate.

The application of the 40 per cent 'yes vote' requirement to ancillary workers will also create onerous administrative burdens for unions. Unions may need to gather detailed information from members working in the service sector about the nature of their jobs. Unions may need to ask members whether any public services benefit from their work and how much of their working time is allocated

to public sector contracts. This will involve much officer time which could otherwise be used to find a resolution to the dispute.

Whilst employers will have the relevant information to hand, many union members may not be able to answer such questions accurately. As a result, unions will find it very difficult to comply with the legislation. Unions will face huge uncertainty when trying to determine whether the 40 per cent threshold will apply to a ballot or not. They may only become aware of the type of work done by its members if an employer decides to challenge the ballot in the courts. This situation is unreasonable. The TUC believes that legislation provides the employer with a clear and unfair advantage.

Question 10:

Do you agree with the Government's proposed approach to private sector workers? Why / why not?

No. The TUC does not agree with the government's approach to private sector workers.

The TUC believes that the right to strike is a fundamental human right which should be enjoyed equally by all workers, regardless of whether they work for a public sector or private sector employer.

The government's proposed approach is inconsistent and incoherent. It will lead to anomalous outcomes. For example, the government has not provided a clear rationale explaining why drivers working for private sector bus companies should be required to meet the 40 per cent 'yes vote' requirement whilst teachers working in private sector schools will not.

Questions 11 & 12:

How common are disputes involving some workers who would fall within scope of the 40% important public services threshold, and others who would not?

Frequent

Please give examples of a dispute that has or could include only a small proportion of workers undertaking "important public services" (using the definition used in this consultation).

It is difficult for the TUC to respond to this question accurately as the government has not yet published draft regulations which define or specify to which occupations and functions the 40 per cent threshold will apply. Similarly, it is not clear from the provisions of the Bill which workers will be treated as being normally engaged in activities which are ancillary to important public services.

The TUC is seriously concerned that in many disputes trade unions will not be certain whether the 40 per cent threshold will apply before they run a ballot.

It will be difficult for education unions to ascertain whether the 40 per cent 'yes vote' requirement will apply in schools with 'sixth forms'. Unions will find it difficult to assess whether staff who teach both pupils aged under 17 and those in years 12 and 13 are 'normally engaged' in 'providing important public services.'

This will be particularly problematic where teachers work schedules vary during the course of the academic year.

In many workplaces, unions will also find it very difficult to determine whether workers are ‘normally engaged’ in ‘ancillary activities which support important public services’. For example, it will be difficult for unions to discern whether call centre staff who sometimes handle 999 calls for the emergency services will be covered by the 40 per cent yes vote requirement. Similarly, if a courier firm sometimes deliver medical supplies to the health service, will their staff be covered by the 40 per cent threshold?

The TUC believes that the government’s approach will create huge uncertainty for unions. Unions are also likely to be exposed to increased threats of legal action by employers. This will significantly increase the unions’ legal costs.

The response to Question 14 below provides more detail on the legal uncertainties and administrative costs and burdens which unions will incur as a result of the government’s policies.

Question 13:

Do you agree that the Government should require a ballot to be run under the 40% important public services threshold if a majority of workers involved in the dispute are subject to the 40% threshold? Why/ why not?

No. The TUC strongly disagrees that any industrial action should be subject to the 40 per cent threshold. The right to strike is a fundamental human right which should apply equally to all workers.

The 40 per cent threshold is discriminatory and will place public sector workers at a significant disadvantage at work, including midwives, nurses, cleaners, school care-takers, classroom assistants, border staff and those working in nuclear decommissioning. Such workers will find it increasingly difficult to defend their jobs and staffing levels and to negotiate decent improvements in pay and working conditions.

Requiring unions to assess whether the majority of workers are engaged in the provision of ‘important public services’ or in ‘ancillary activities’ will place onerous and excessively complicated burdens on unions. It will also expose unions to an increased risk of legal challenge.

However, the TUC does not agree that this problem would be best resolved by amendments to the Bill stating the 40 per cent threshold will apply to any ballot which involves any workers engaged in the provision of ‘important public services’ or ‘ancillary services’. This approach would unjustifiably extend the 40 per cent threshold and the associated restrictions on workers’ rights. The TUC believes the government should abandon the 40 per threshold altogether on the basis that it will be unworkable and will generate anomalous outcomes.

Failing this, the government should amend the Bill so that the 40 per cent threshold only applies where 100 per cent of the balloted workforce is employed

in important public services. The 40 per cent threshold should not apply to those normally engaged in 'ancillary activities'.

Question 14:

What are the practical and administrative considerations a trade union would have to make to calculate whether a ballot ought to be conducted under the 40% important public services threshold?

Trade unions will incur excessive costs and onerous administrative burdens as a result of the introduction of a 40 per cent threshold of industrial action in 'important public services'.

Some of the practical difficulties and associated costs for unions are listed below.

- Unions will need to gather additional detailed information from members relating to their jobs and functions. This will place onerous new administrative burdens on unions and will divert union officials and union workplace representatives away from the day-to-day representation of members. It will also mean that union officials have less time to devote to finding an amicable settlement to disputes.
- Unions will find it difficult to gather sufficient accurate information from members who work in the service sector who might, as part of their job, provide ancillary services to public services and therefore be caught by the 40 per cent threshold. This information will be known to the employer. However, unions will only be made aware when legal challenges to the industrial action are mounted. The TUC believes the legislation provides employers with an unfair advantage.
- It is unfair that employers will be able to reorganise staff, who are to be balloted, making it impossible for the union to determine whether the 40 per cent turnout applies.
- Employers currently have no duty to co-operate with unions or to respond to requests for information before industrial action ballots. If the government proceeds with the legislation, the TUC believes, as a minimum, employers should be required to co-operate with unions and to provide unions with relevant information. Such duties would ensure that the new laws are more even-handed and do not unfairly disadvantage trade unions.
- Unions will face a significantly increased risk of legal challenges if the legislation is introduced. Unions will therefore incur higher legal costs.
- The new ballot thresholds are likely to generate endless satellite litigation. For example, the TUC anticipates that the legislation will lead to 'TUPE-style' litigation examining whether individuals were 'normally engaged' in the 'provision of important public services' or 'ancillary activities'. Such litigation will create excessive legal costs for unions and employers alike.
- The costs generated by the Trade Union Bill will disproportionately affect smaller unions.

It is important not to consider the impact of the new thresholds in isolation from other provisions in the Trade Union Bill which will also create additional costs and administrative burdens for unions:

- Unions will be required to re-ballot members if industrial action will last for more than 4 months. This will impose excessive and unjustifiable costs on unions, including the costs related to the preparation of additional ballot and industrial action notices for employers, scrutineers' fees, postage costs, legal fees, and officer time overseeing the ballot. Unions estimate that it costs at least £1 per member when running a ballot. Depending on the number of members being balloted and number of workplaces involved, the additional costs incurred by unions will range from several hundred pounds up to millions of pounds.
- Every year, unions will be required to gather and submit information to the Certification Officer relating to industrial action and political fund expenditure. This will create significant additional administration costs for unions.
- Unions may be required to prepare detailed notices setting out plans for any pickets or protests associated with industrial disputes.
- The proposed cap on facility time in the public sector will limit the ability of unions effectively to represent members in the workplace. Union members and employers will be the principal losers from these measures. The proposals will also increase the workload undertaken by full-time union officers.
- New provisions prohibiting the use of 'check-off' facilities in the public sector will mean that many unions will need to make substantial organisational changes to facilitate the increased use of direct debits to pay union subscriptions.