

Trade Union Act 2016

A TUC guide for union reps

Contents

Section one	
Introduction	3

Section two	
New industrial action rules	4

Section three	
Electronic voting	6

Section four	
Picketing	8

Section five	
Political funds	9

Section six	
Facility time	11

Section seven	
Check-off	14

Section eight	
The Certification Officer	16

Section nine	
Moving forward	17

Section one

Introduction

The Trade Union Act became law on 4 May 2016 and many – but not all - the new rules are now in force. The Act represents the most serious attack on the rights of trade unions and their members in a generation.

As soon as the Bill was introduced, unions joined together to campaign to defeat the proposals and where this was not possible, to damage, dilute and delay them.

In response to union campaigning nationwide, the government made several concessions, including:

- An independent review on e-voting in industrial action ballots.
- Removing ancillary workers from the 40 per cent threshold.
- Limiting new political fund 'opt-in' rules to new members.
- Delaying any cap on facilities for union reps for at least three years.
- Scrapping the public sector 'check-off' ban, where unions cover the costs.

Whilst the union movement made significant progress in many areas, the TU Act is still damaging and divisive. It includes serious and unnecessary restrictions on unions and their members, including:

- Arbitrary thresholds in industrial action ballots.
- Complicated new balloting and notice rules designed to make industrial action more difficult for unions to organise.

- New restrictions on pickets.
- New restrictions on union campaigning, with extra duties to report on campaigns and wider causes supported from unions' political funds.
- Wide-ranging powers for the Certification Officer, who regulates unions.
- An expensive levy paid by unions for the costs of being regulated.

The government is also still considering ending the ban on agency workers replacing strikers.

From the start, the government's aim was to further restrict the ability of union members to organise collectively in defence of their jobs and livelihoods. But unions will work together to make sure our movement gets stronger, continuing to represent people at work, tackling inequality and campaigning and negotiating for decent pay, safe workplaces and good employment conditions.

■ A GUIDE FOR REPS

Unions have their own policies which reps should follow. This document is not formal legal guidance, but it summarises the Act and provides some tips for reps.

Section two

New industrial action rules

Taking industrial action is always a matter of last resort. But sometimes the only way unions can ensure employers take members' concerns seriously is to ballot for – and where necessary take – industrial action.

Ballot thresholds

'Turnout threshold'

For industrial action to go ahead, the TU Act requires **50 per cent** of those entitled to vote to turn out and a majority to vote in favour. This means that if 1,000 members are balloted, at least 500 must turn out and at least 251 must vote 'yes' before any industrial action – including strikes and action short of a strike – can go ahead.

'Support threshold'

As well as meeting the 50 per cent threshold, in 'important public services' **40 per cent** of those entitled to vote must *support* industrial action for it to go ahead. This means that if 1,000 members are balloted, at least 500 members must vote and 400 (80 per cent) would have to vote 'yes' for industrial action for it to take place.

The government has introduced regulations that list which jobs in the six sectors (see box) are treated as 'important public services' and are therefore covered by the additional 40 per cent threshold.

▣ IMPORTANT PUBLIC SERVICES

*The TU Act says 'important public services' can fall within six sectors: **health, education of those aged 5 to 16, fire services, transport, nuclear decommissioning and management of radioactive waste and spent fuel*, and border security.***

*The government is still deciding if nuclear decommissioning should be included.

The 40 per cent threshold only applies to a ballot if the **majority** of members entitled to vote are **normally engaged** in delivering an 'important public service'.

Industrial action rules

The TU Act also introduces strict new rules on industrial action ballots and notices. As well as complying with existing legal conditions for industrial action, unions must:

- Include extra information on voting papers which summarises the dispute, lists the types of action short of a strike

unions may take, and sets out the likely timetable for all types of action.

- Provide 14 days' notice of industrial action (double the previous requirement). This can be reduced to 7 days where the employer agrees.
- Re-ballot members after 6 months if industrial action is to continue (or 9 months if the employer agrees).
- Report extra information about ballot results to members and employers.
- Report annually to the CO on any industrial action taken.

Government concessions

Following union campaigns, the government made important concessions on the industrial action rules. These include:

- Removing hundreds of thousands of ancillary workers in the private service sector from the 40 per cent threshold.
- Extending the new ballot mandate period from 4 to 6 months (or 9 where employers agree). After this unions must re-ballot before taking further action.

Timetable

All of the new industrial action rules came into effect on **1 March 2017**.

The new duty to report to the CO has also come into effect, with first reports being due **in June 2018** for any industrial action taken during 2017.

Tips for reps

It is important that reps:

- Alert regional or national officials as soon as possible if there is likely to be a trade dispute in the workplace.

Follow their union's policies on industrial action.

Update membership records.

Agency workers

The government is still considering lifting the ban on the use of agency workers during strike action. This ban has been in place since 1973.

This would seriously undermine the right to strike, and would upset the power balance between workers and employers. It would put agency workers in the invidious position of having to choose whether to cross a picket line.

There may also be health and safety concerns about inexperienced replacement workers taking on the roles of the permanent workforce. Similarly it could raise questions over quality of services.

The TUC and unions are firmly opposed to lifting the ban. The REC (the main employers' organisation for agencies) and the Scottish and Welsh governments have also spoken out against the plans, whilst the ILO Committee of Experts concluded they would breach international standards.

Timetable

The government is still considering responses to the agency workers [consultation](#) launched in 2015. The TUC and unions will run high profile campaigns to oppose any lifting of the ban.

Section three

Electronic voting

Independent review

Following union campaigns, the government agreed to commission an independent review into electronic voting in statutory industrial action ballots.

The review started on 3 November 2016.

The case for electronic voting

The review offers unions the opportunity to bring ballots into the 21st century. **Unions are the only organisations in the UK that must run postal-only ballots.** But postal ballots can lead to lower turnouts, are more expensive, and risk extending voting periods. Ballot papers often end up in the recycling bin, as we live in an age when a good deal of post is perceived as junk mail.

Electronic voting could resolve disputes more quickly and would likely **increase participation in union democracy.**

In the UK:

- ✓ [81 per cent](#) of adults can access broadband and [75 per cent](#) use smartphones.
- ✓ [82 per cent](#) of people use the internet 'every day or 'nearly every day'.
- ✓ [Millions of people](#) have registered to vote in local and general elections and referenda online.
- ✓ [85 per cent](#) of tax returns are filed online.

Much like online banking, electronic voting can be safe and secure. Politicians and organisations across the UK are joining unions in calling for it to be rolled-out in statutory industrial action ballots.

Employers' organisations have shown support for union demands. For example:

"There is no reason why – in return for asking for a higher level of legitimacy – the union movement should not be allowed to embrace technological advances to increase participation"

- [The Institute of Directors](#)

Non-statutory ballots

Although unions currently must run statutory industrial action ballots by post, **non-statutory ballots can be run electronically.**

Electronic non-statutory ballots offer unions a quick and affordable way to consult members on important issues. It is also a great way to boost workplace democracy. Examples of non-statutory ballots include workplace consultations (e.g. on pay offers) and rep or union conference delegate elections.

▣ E-VOTING IS WIDELY USED

Thousands of online ballots are run every year by charities, membership organisations, building societies and other businesses.

In 2015, even the Conservative Party used online balloting to select their candidate for London Mayor – safely registering 90,000 votes. The Party had also [planned](#) to use online voting to elect its new leader – and the UK's Prime Minister.

Timetable

The review was [announced](#) on 3 November 2016 and is expected to run throughout 2017. After the review has reported, the government must publish a response.

Throughout the review, the TUC will press the government to act quickly to permit the roll-out of electronic voting in statutory ballots.

Tips for reps

It would be helpful for reps to:

- Gather examples of the benefits from electronic voting in **non-statutory ballots** to help make the case for a full roll-out of electronic voting and send to your union.

Section four

Picketing

Workers have the right to picket peacefully at or near their place of work. Unions must abide by criminal law, including public order rules, when organising pickets. Unions are also expected to follow advice contained in the Code of Practice on Picketing. The TU Act adds new restrictions. In particular, unions must **appoint picket supervisors**.

■ PICKET SUPERVISORS

Unions (or the supervisors) must tell the police where a picket will be held, the name of the supervisor and how they can be contacted.

Picket supervisors must:

- *Be a union official or member.*
- *Be familiar with the Code of Practice on Picketing.*
- *Carry a letter which confirms the union approves the picket.*
- *Show the letter to the employer or their representative (e.g. managers or security staff) if asked.*
- *Remain at the picket or be able to return at short notice.*
- *Be easily contactable.*
- *Wear something that identifies them (e.g. a hi-vis jacket).*

Picket supervisors can be responsible for more than one picket line, provided they can attend any of them at short notice. If more than one union is involved in the picket, each union must appoint a supervisor. Failure to comply with the new rules could mean an employer can get an injunction stopping the picket.

Government U-turns

Following union campaigns and heavy criticism by human rights groups, the government backtracked on plans to:

- Restrict unions' free speech by regulating use of social media.
- Create new criminal offences.
- Make picket supervisors wear armbands.

Nevertheless, the new restrictions raise concerns over blacklisting and are a serious and unjustified attack on working people's fundamental rights to protest.

Timetable

The new rules on picketing came into effect on **1 March 2017**, along with an updated [Code of Practice on Picketing](#).

Tips for reps

- As always, reps should follow guidance issued by their union on picketing.

Section five

Political funds

One of the aims of the TU Bill was to limit unions' ability to campaign through extra regulations of political funds.

The Act is however substantially different to the government's original proposals, which would have meant that within just three months of the new law coming into effect and every five years thereafter, **all** members of unions with political funds would have had to opt-in if they wanted to contribute to the political fund.

■ HOUSE OF LORDS SELECT COMMITTEE

In January 2016 the House of Lords voted to set up a special [Select Committee](#) to examine the controversial proposals. It was widely agreed that the government's plans were partisan and would severely restrict unions' ability to campaign.

The government eventually agreed to amend the Bill in line with the Committee proposals.

The Act now requires only **new** members to opt-in to contributing towards a political fund.

Opt-ins (or opt-outs) can be done online, and do not have to be renewed every five years.

Unions must also remind members annually about their right to opt-out and that they will not lose out if they decide to do so.

Red tape

Unions must already comply with the Political Parties, Elections and Referendums Act when campaigning or making political donations.

The TU Act ties unions up in even more red tape. This means **unions will be subject to more scrutiny than any other civil society group**.

Unions must report annually to the CO about spending from the political fund on:

- Political party donations, including funding for any events or meetings.
- Publicity designed to influence people to vote a certain way.
- Non-political campaigns.
- Donations to charities and campaign groups.

Unions will need to gather the information from branches, and regional and national offices.

Failure to comply could mean unions could face financial penalties imposed by the CO.

Timetable

The new opt-in rules for new members will come into effect on **1 March 2018**.

The new CO reporting rules have now come into effect, with first reports being due in **June 2018** for political fund expenditure in 2017.

Section six

Facility time

There is clear evidence that union reps make a real difference in workplaces across the UK, benefitting employees, employers and the wider community:

- ✓ **Union workplaces are safer**, with union safety reps reducing serious workplace injuries by [50 per cent](#).
- ✓ **Union workplaces have better family friendly policies**, with [52 per cent](#) of unionised workplaces providing enhanced maternity pay compared with 35 per cent of non-unionised workplaces.
- ✓ **Unionised workplaces are more likely to offer better workplace benefits**, including enhanced sick pay, holiday entitlements and occupational pensions.
- ✓ Union reps [promote training and skills](#).
- ✓ Every £1 invested from the [Union Learning Fund](#) generates a total economic return of £12.30.

In spite of these benefits, the government plans to squeeze the amount of facility time union reps have to represent members by introducing new reporting requirements for all public sector employers (and some private and voluntary sector employers which perform public functions and are mainly funded by the taxpayer).

Ministers will also be able to cap facilities – although this power cannot be used for **at least 3 years**.

Reporting on facility time in the public sector

The government has introduced [regulations](#) which specify when, how and what **public sector employers** will have to publish about facility time.

What must be reported?

Public sector employers will be required to report on:

- **The total number of union reps** employed including all health and safety reps, union learning reps and shop stewards
- The number of **full-time equivalent reps**
- The **total amount spent on paid facility time**
- **The percentage of the total pay bill** used on union facilities
- What proportion of facility time is used for **union activities**.
- The number of reps who spend 0 per cent, 1-50 per cent, 51-99 per cent and 100 per cent of their work time on paid facility time.

Costings for facility time will be based on reps' pay before tax, employers' pensions contributions and employer National Insurance Contributions.

Who will have to report?

The reporting duties will apply to more than 2,000 public sector employers across **England and Scotland** who employ 50+ employees and at least one union rep.

But the new rules will **not** apply to most public sector employers in **Wales**.

The regulations list the employers who are covered. They include

- Government departments and local authorities, including:
 - Fire and rescue authorities
 - Transport for London
- NHS employers
- Schools, academies, FE colleges and universities
- Police staff
- More than 140 government agencies and other named organisations, including the BBC, the British Museum and the English and Scottish Sports Councils.

To date, the government has decided **not** to extend the reporting duties to **private and voluntary organisations** – such as housing associations and residential care homes – which perform public functions and receive more than half of their income from public funds.

How often must they report?

Public sector employers must report annually about spending on paid union facility time. Reports will cover each financial year (1 April – 31 March) and must be published by 31 July:

- On the employer's website
- In any annual reports

Power to cap facility time

The Act gives the government the power to introduce regulations capping facility time in the public sector.

■ GOVERNMENT CONCESSIONS

Following union campaigns and strong criticism from public sector employers and devolved administrations in Scotland and Wales, the government has watered down the power to cap facility time.

*Any cap will be delayed by at least **three years** after reporting rules come into effect.*

Before setting a cap, ministers must:

- *Review facility time data published by the employer*
- *Consider any factors which explain the extra facilities (e.g. the type of services provided or a major restructuring exercise is taking place)*
- *Set out concerns in writing*
- *Listen to representations from the employer*
- *Give the employer a year to adjust their practices.*

Thanks to these changes, the power to cap facilities may not be used in practice. But unions will need to remain alert and be ready to run effective campaigns opposing any cuts to facility time.

If ministers decide to act, any cap is likely to apply to a single public sector body, rather than a blanket cap across the sector.

NB it will be difficult, if not impossible, for the government to cap time off which is protected by EU law including time spent:

- Performing health and safety duties or on health and safety training
- On collective redundancy and TUPE consultations

- Health and safety issues
- Promoting skills and training opportunities
- Consultations on restructuring
- Resolving disputes through workplace procedures

Timetable

The new reporting requirements on union facilities are due to come into effect on **1 April 2017**. The first reports should be published by **31 July 2018** covering any spending on paid facility time between 1 April 2017 to 31 March 2018.

The earliest any cap on facility time could be imposed would be **1 April 2020**.

Tips for reps

Where possible, reps should:

- Make sure agreements on facility time are in place with employers.
- Seek agreement from the employer to consult the union before preparing facility reports
- Work closely with employers to present the benefits of facility time, including for example highlighting the gain to managers, employees and the wider public of the time spent by union reps on:

Section seven

Check-off

Unions mounted a very successful campaign to retain check-off (the deduction of union subscriptions from wages) in the public sector.

▣ ORIGINAL PROPOSALS

In a move that could have damaged union membership, targeted union finances, and reduced unions' capacity to represent people at work, the government originally planned to ban check-off in the public sector.

The government was widely criticised for the proposals which would have cut across collective check-off agreements between unions and employers. The plans would have undermined industrial relations in thousands of organisations across the UK, overriding the wishes of employees choosing to pay this way.

In response to this pressure, the government climbed down and agreed that check-off could be retained.

Check-off arrangements in the public sector can remain as long as **unions cover the administrative costs and members have**

the option to pay by other means (e.g. using check-off or direct debit).

Public sector employers will need to agree that any payments are 'reasonable' – i.e. the combined payments from all unions is *substantially equivalent* to the costs of running check-off.

Where these conditions are not met, then a ban on check-off will apply.

Which employers are covered?

The government has introduced [regulations](#) which list the **public sector employers in England and Scotland** covered by for the new rules. These include:

- Government departments and local authorities (including fire and rescue services, national parks and Transport for London)
- NHS employers
- Schools, academies, FE colleges and universities
- Police staff
- More than 140 government agencies and other named organisations, including the BBC, the British Museum and English and Scottish Sports Councils.

NB the check-off rules do not apply to most public sector employers in Wales.

To date, the government has decided not to extend the check-off restrictions to **private and voluntary organisations** – such as residential care homes and housing associations - which perform public functions and which receive more than half of their income from the taxpayer.

Unions can avoid the ban by agreeing to cover the administrative costs.

Timetable

The new restrictions on check-off are due to come into effect on **10 March 2018**.

Unions will therefore have 12 months to negotiate agreements with employers on check-off arrangements.

Tips for reps

- Reps should always seek advice from their unions on the issue of check-off.

Section eight

The Certification Officer

The Act expands the powers of the Certification Officer (CO), who regulates unions and employers' associations.

The CO will be able to:

- Launch investigations into union affairs even if no member has complained.
- Act on evidence from third parties, including employers.
- Hire inspectors to carry out investigations.
- Demand access to union documents, from branch to national level.
- Impose financial penalties if a breach of statutory rules is identified.
- Charge unions a levy to cover the costs of being regulated. The levy is expected to be in the region of £1.5m per year. Unions will not have to cover the costs of the extra inspectors.

Timetable

Regulations are required for the new financial penalty and levy rules. The government should consult bodies including the CO, TUC, ACAS and unions before the regulations are finalised. Parliament must also debate and vote on the regulations.

Once the regulations are in place, it is likely the CO's new enforcement powers will come into **effect later in 2017**.

Tips for reps

- ☑ Reps should inform their national offices immediately if they are contacted by the CO or any inspectors, or if any union documents are requested.

Section nine

Moving forward

The government must still pass regulations on the following issues before the remaining sections of the Act can come into effect:

- Check-off ban (already introduced in Parliament)
- Public sector facility time reporting (already introduced in Parliament)
- Any future cap on facility time
- The CO: financial penalties and the levy

The independent electronic voting review will also be completed by the end of 2017, giving union members the long-overdue chance to bring ballots into the 21st century.

The TUC and trade unions will continue to campaign and lobby the government on all of these issues. We will also keep fighting any moves by the government to repeal the ban on the supply of agency workers to break strikes.

We will continue to reach out to new members in all sectors – making sure our movement grows from strength to strength. In this light, the TUC will soon launch a major nationwide campaign to recruit more young workers to trade unions.

On all of these issues, as always, the energy and support from reps will help us make a strong case as possible in defence of the rights of working people to organise collectively in defence of their jobs, working conditions and livelihoods.

“The solidarity and shared values upon which the trade union movement is built hold true and our ranks are resilient.

“That gives us a strong foundation on which to win – not just for our members but for our wider communities too”.

- [Frances O’Grady](#)
TUC General Secretary

Find out more

For more information about the campaign, go to:

tuc.org.uk/tubill

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