

# Details of the new Trade Union Bill

## A guide for members



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## Details of the new Trade Union Bill

### The proposals contained in the Trade Union Bill

#### In brief:

- Strikes would be unlawful unless 50 per cent of those being asked to take action vote in the ballot
- In key public services (education, health, fire, transport, border security and energy) there must be a 50 per cent turnout and 40 per cent of all those eligible to vote must back the strike
- Unlawful picketing would become a criminal offence
- Unions would have to renew any strike mandate within four months of the first ballot
- The rules banning employers from hiring strike-breaking agency staff would be repealed
- Unions to give employers at least a fortnight's notice before the start of any action
- New limits on the amount of time any public sector workers can spend on trade union activities
- Union members would have to opt-in to paying a union's political fund.

#### 1. The ability of trade unions to strike

##### Introduction of a turnout threshold:

*“Introduction of a 50% voting threshold for union ballots turnouts (and retain the requirement for there to be a simple majority of votes in favour).”*

Britain already has among the toughest strike laws in the EU. Rules about ballots are so complex that it's easy for employers to take out injunctions for small infringements. Under these proposals, abstainers or members the union cannot contact (e.g. because of a wrong address) are effectively 'no' voters. Old fashioned postal ballots already tend to result in low turnouts. Trade unions have long been keen to modernise voting and work with government to introduce online and phone voting, already permissible under s.54 of the Employment Act 2004 but never introduced. No good reasons have been given for rejecting these suggestions, exposing the government's real strategy: its sole purpose is to stop strikes and the proposals have nothing to do with industrial democracy. Under the European Convention on Human Rights, restrictions on the right to strike must pursue a legitimate aim and be necessary in a democratic society.

These restrictions, which will be hard to meet for many unions, are disproportionate.

**Introduction of a 40% support threshold (essential Public Services):**

*“In addition to the 50% minimum voting turnout threshold, introduction of a requirement that 40% of those entitled to vote must vote in favour of industrial action in certain essential public services (health, education, fire and transport).”*

The real agenda behind these changes is stopping public sector workers from opposing the extreme cuts and pay freezes expected in George Osborne’s budget. The changes will apply to employees of private companies providing public services but also to completely privatised industries such as rail and other transport workers.

They go far beyond the restrictions which the ILO says are acceptable restrictions on the right to strike under ILO Conventions: teachers and railway workers, for example, are not within the category of those State employees whose right to strike can be prohibited. For the purpose of restricting the right to strike in essential services, the ILO restricts this to services “the interruption of which would endanger the life, personal safety or health of the whole or part of the population” (General Survey 1994).

Transport services, public transport, public education, port authorities, postal services and others all fall outside this category (General Survey on Fundamental Conventions (2012) Para. 134). So far as the IER is aware there is no other legal duty on voting which applies this threshold. Unions, then, are targeted for

**Time Limit Changes:**

*“Introduction of time limits on a mandate following a ballot for industrial action.”*

The Conservative Party manifesto outlined changes including:

- Doubling the current requirement of 7 days’ notice of strike action to 14 days
- Limiting the validity of strike mandates to three months

This too is a naked attempt to restrict the right of workers to withdraw their labour. Strike ballots are extremely expensive to run, especially for large unions and in light of the requirement to hold a fully postal ballot. At present, provided a strike is called within four weeks of the ballot later continuous action can take place (s.234 TULRCA). The law already prohibits action which is not part of the same industrial action as the balloted action.

The proposals will require re-balloting frequently in a long-running dispute. They will also interfere with proper collective negotiations to settle a dispute because if

a union calls off a strike, it will have to re-ballot in the future, giving it an incentive to carry on striking. No empirical work has been done to see the effect of these proposals. Once more, this is policy on the back of an envelope.

### **Agency worker changes:**

The Conservative Manifesto says that the Tories will repeal the “nonsensical restrictions banning employers from hiring agency staff” to provide cover in strikes.

Under regulation 7 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 it is an offence for an employment business to supply agency workers to perform the duties performed by strikers (though no prosecution has ever been brought).

The replacement of striking workers by other workers has been criticised by the (ILO) International Labour Organisation Committee of Experts, and regulation 7 presumably is intended to ensure that the right to strike is not completely illusory (an employer can already, under UK law, deduct wages for each day’s strike). No justification is given for this change.

### **Intimidation of non-striking workers**

The Bill also includes the phrase:

*“Tackling intimidation of non-striking workers during a strike.”*

The Government’s published proposals include new restrictions and limits on picketing, limiting the number of pickets allowed and introducing limitations on where they can be held. The Government claim this is intended to prevent intimidation of non-striking workers but have provided no evidence of such claims or basis for this change.

### **Picketing**

The law already imposes strict conditions on picketing - it is only lawful for pickets to picket at or near their own place of work for the purposes of “peacefully obtaining or communicating information or peacefully persuading any person to work or refrain from working (TULRCA s220), and the Code of Practice on Picketing seeks to restrict the number of pickets at each entrance to six. No justification is given for imposing further restrictions. Once formulated properly, it is almost certain that they will amount to an illegitimate interference with the right of peaceful assembly and protest enshrined in Article 10 of the European Convention.

These proposed changes will undermine the collective bargaining power of organised labour and intentionally provocative, pitting workers against one another instead of putting pressure on employers to improve pay and conditions.

## **2. Changes to trade union political funds**

*“From opt out to opt in”*

The Government has proposed new legislation to change union political funds from the current ‘opt-out’ system to an ‘opt-in’ system: “Introduction of a transparent opt-in process for the political fund element of trade unions subscriptions.” This is a transparent attempt to de-fund the Labour Party and de-politicise the trade union movement, limiting the ability of millions of ordinary people to be heard politically.

The restriction on access to politics appears to be a clear goal of this government and part of a wider set of changes in legislation. The Lobbying Act of the last Parliament restricted the campaigning rights of civil society organisations, introducing financial and geographical restrictions in particular. At the same time, the Conservative-led Government developed increasingly restrictive views on the political campaigning of charities and other non-party political organisations, limiting what is considered acceptable political campaigning.

*“The changes to trade union political funds are a continuation of this ideological attack”*

### **Political fund**

Currently trade unions who want to spend money on party political activities must set-up a separate political fund.

The political fund (or levy) is the small part of a trade union member’s membership subscriptions which is paid into a separate political fund, the uses of which are regulated tightly by law.

Unions have to secure the continued assent of their members to maintain a political fund in a secret ballot once every 10 years. Currently unions must offer their members an opportunity to “opt out” of paying into the political fund and provide the relevant materials to do so on request. Should the member not choose to ‘opt out’ the payment to the political fund is made automatically.

Changing the current system to an ‘opt in’ as the new Bill sets out - and as the Conservative government did in 1927 as an act of revenge for the General Strike - would deplete a union’s political fund, inhibit its ability to campaign on a range of political issues and constitute a further interference in the right of trade unions to regulate their own affairs as democratically accountable to their members.

### **Will only apply to trade unions**

Significantly these restrictions will only apply to trade unions. There are no restrictions on political contributions by employer organisations and any private

company that wants to fund political campaigns will continue to be free to do so without any new limitations, let alone the regulation that is desperately required to make our political system democratic and fair.

### **Hedge funds and banks exempt from Bill**

Hedge funds and investment banks will continue to be allowed to fund political parties and individual politicians without requiring an 'opt-in' from their employees. In addition, individuals will still be able to spend as much as they want donating to political parties, as long as this is within the very weak regulations set out in the Lobbying Act.

Like the Lobbying Act, this is a clear and ideologically driven attempt to undermine the ability of the trade union movement to engage in politics and represent its members in the political arena.

### **Impact on political Party funding:**

Trade unions are the biggest funders of the Labour Party, with union donations contributing more than £50m over the past five years. This represents around half of Labour's income.

A similar reform in the 1927 Trade Union Act- the Conservative Party's retaliatory response to the General Strike- resulted in a fall in the number of political levy payers from 3.5 million to 2 million, and a drop in Labour Party income of 20%.

### **Impact on non-party political campaigning:**

Any union campaign that can in any way be judged as political will have its funding restricted by law. This will have massive implications for any future trade union campaigns for a living wage, or against exploitative contracts and discrimination.

### **Why this Bill must be opposed**

Paul Kenny, our GMB general secretary, warned the reforms would poison industrial relations in the UK since they removed all incentives for employers to heed their own workers and settle disputes. He said:

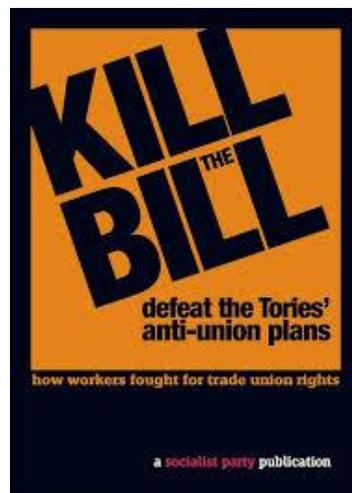
*“When workers jump through draconian hurdles for their vote for strike action to be lawful, the employers can then ignore the will of their own workers. Workers will have to give employers 14 days’ notice of strike action. That is more than enough time for employers to legally hire another workforce to break the strike.”*

Tim Roache GMB Yorkshire and North Derbyshire Regional Secretary said:

*“We will oppose these draconian proposals. The Bill proves that the government is not on the side of working people. This country has a Long and proud tradition of liberty and democracy.*

*The GMB and other trade unions that are able to function are central to that. These unfair changes will make it much harder for council workers, teaching assistants and other public sector workers to ever strike for a pay rise or challenge the behaviour of bad employers.*

*This year, as we mark the 800th anniversary of Magna Carta, that heritage is as important as ever. Our aim is clear: to stop this unfair, ideological and unnecessary legislation getting onto the statute books”*



Source: Class, TUC, Labour and Trade Union Movement and TULO