

Employment

The Trade Union Act 2016 – what you need to know

The Government introduced the Trade Union Act (the Act) to reduce the number of days lost to strike action, particularly in public services such as health and transport. Most of its provisions came into force on 1 March 2017. This factsheet looks at the main changes made by the Act.

Background

There have been a number of high profile industrial disputes in recent years including train and Tube strikes, the junior doctors' dispute and threatened action by prison officers.

According to the Government, the new rules will reduce industrial action in important public services by 35%; 1.5 million working hours a year will be saved from strike action and this will provide a £100 million boost to the UK economy over 10 years. The Act introduces changes to strike ballots and picketing, and also contains a number of miscellaneous provisions.

Strike ballots

There is a new minimum turnout threshold of 50% of the electorate, which means that at least 50% of members entitled to vote in a ballot on industrial action must do so.

For the ballot to approve the industrial action, a simple majority must vote in favour of the industrial action.

To give an example: if 100 members are balloted, at least 50 must vote and at least 26 must vote in favour in order for the industrial action to be lawful.

In 'important public services', there is an additional threshold of 40% of support from all members eligible to vote. This means 50% or more of those who can vote must vote and 40% of those who can vote must support the action. There is still a simple majority requirement for the industrial action to be approved.

'Important public services' are health, education of those aged under 17, fire, transport, border security and nuclear decommissioning.

To continue our example: if 100 members are balloted, at least 50 must vote and, as well as a majority being in favour of endorsing the industrial action, at least 40 must vote yes. This additional requirement applies where the majority of those entitled to vote are normally engaged in the provision of these services. It does not include ancillary workers.

If the voting thresholds are not met the industrial action will be unlawful and will not be protected by law, meaning that it can be stopped by obtaining an injunction.

Other important changes have been made in relation to ballots. Voting papers must include a summary of the dispute, the period within which action is expected to take place and the type of action proposed, if this is action short of a strike.

After the ballot, detailed information about the results must be given to those entitled to vote and the employer. The minimum notice of strike action is now two weeks (doubled from one week) or seven days if both sides agree.

The requirement for some industrial action to take place within four weeks of the ballot has been repealed where the ballot opened on or after 1 March

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2017. Instead, the ballot mandate expires after six months (or nine months if both parties agree). Once the six month limit has expired, a new ballot will be needed.

The Code of Practice on Industrial Action Ballots and Notice to Employers was amended to take account of the Act and came into force on 1 March 2017.

Picketing

A number of the existing provisions of the Code of Practice on Picketing have now been given statutory force. For picketing to be lawful, these conditions must be met:

- The union must appoint a picket supervisor, who is a union member or official;
- The supervisor must be identifiable at the picketing location (eg by wearing a badge or armband);
- The union must give the supervisor a letter stating that the picketing is approved by the union;
- The supervisor must be familiar with the Code of Practice on Picketing;
- The union or supervisor must take reasonable steps to give the police his name, contact details and the picketing location; and
- During the picketing, the supervisor must be present or readily contactable and able to attend at short notice.

A failure to comply with these conditions will mean that a trade union and its members will not be protected from legal action on the grounds that it has, or they have, induced someone to breach their contract of employment.

The Code of Practice on Picketing was amended to take account of the Act and the new version came into force on 1 March 2017.

Miscellaneous provisions

Changes to union political funds came into force on 1 March 2017 but had a transitional period of 12 months so came into effect on 1 March 2018. Previously, members who did not want to contribute to the union's political fund through their membership fees had to actively opt out. Now, members who want to contribute will have to opt in.

The Act contains the power to make Regulations to require unions to make a reasonable payment to employers for the operation of a check-off system (ie where union membership payments are deducted from members' salaries by their employer and paid over to a union). Affected workers must have the option to pay their subscriptions by other means. This came into force on 10 March 2018.

The Government has made Regulations requiring public sector employers with trade union

representatives to record and publish information relating to time off taken by those representatives for trade union duties and activities. In the future, the Government may limit paid time off.

The Act includes a provision that would allow employers to use agency workers to cover striking employees (which is currently banned). A consultation was carried out on this proposal but the Government has not published its response and the provision is not yet in force.

The Act contains a provision requiring the Government to commission an independent review on the delivery of secure methods of electronic balloting for strike action. The Knight review reported in December 2017 and the Government's response is expected.

Impact on employers

The Act creates a number of grounds on which employers could seek to challenge the lawfulness of industrial action and we expect to see more applications for injunctions in the future.

However, unions may ballot less and deploy alternative tactics – such as organising protests or using social media – to achieve their aims.

Key contacts:



Tim Woodward
Partner

T: +44 (0)117 989 6756
E: tim.woodward@wbd-uk.com



Charlotte Bloomfield
Managing Associate

T: +44 (0)2380 20 8216
E: charlotte.bloomfield@wbd-uk.com



Karen Plumbley-Jones
Managing Associate
(Practice Development Lawyer)

T: +44 (0)1752 67 7903
E: karen.plumbley-jones@wbd-uk.com

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