

# AN IER BRIEFING

## Trade Unions Bill

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The Institute of Employment Rights is an independent charity. We exist to inform the debate around trade union rights and labour law by providing information, critical analysis, and policy ideas through our network of academics, researchers and lawyers.

This IER & Class response does not reflect the collective views of the Institute or Class, but has been approved as worthy of consideration by the labour movement.

Particular thanks to Michael Ford QC as the IER expert involved in producing the briefing.

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The Conservative Government's Queen's Speech (27 May 2015) contained details of a new Trade Unions Bill: *"My Government will bring forward legislation to reform trade unions and to protect essential public services against strikes."*

Further details were outlined in the [Background Briefing notes](#) published on the gov.uk website. The Department for Business, Innovation and Skills has yet to release further details but the Bill is likely to receive its first reading in Parliament this week.

***IER and Class will circulate updated briefings reflecting any new developments during the Bill's passage through Parliament.***

## Summary of the new proposals

The Queen's Speech included new draconian restrictions on the right to strike, with the introduction of a 50% voting threshold for union ballots turnouts and a new requirement that 40% of those entitled to vote must vote in favour of industrial action in certain essential public services including fire, education, health and transport. Few details beyond this are available at present.

Currently a strike is valid if it achieves a simple majority of those voting. Yet trade unions will still have to hold a fully postal ballot and will not be allowed to modernise their balloting of members, for example via email or phone, resulting in restrictions on trade union rights that are so extreme they would be the most oppressive in western democracy.

The government also announced they will lift a ban on use of agency staff when strike action takes place, and impose restrictions on picketing, further undermining the collective bargaining power of working people.

Currently trade unions are provided immunity from certain liabilities arising from an industrial action on condition of a meeting may extreme strict and detailed legal requirements being met – pre-ballot notice, full postal ballot, appointment of independent scrutineer, pre-action notices and the like in the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) - which have been the subject of criticism by the International Labour Organization (ILO)'s Committee of Experts and the European Committee of Social rights. The Government's new Bill changes tightens these requirements, such an extreme that the fundamental right of union members to strike in defence of their interests is reduced to vanishing point.

In addition, the Government has proposed new legislation to change union political funds from the current 'opt-out' system to an 'opt-in' system, a transparent attempt to reduce the ability of trade unions to fund not only political parties but a wide range of other non-party political activities. An "opt-in" system for trade union political funds would affect all political activities of trade unions, not just donations to the Labour Party.

These include campaigns such as opposing NHS privatisation and the closure of Sure Start centres, and the ability to campaign for better working conditions at a political level, such as implementation of the Living Wage. The proposals are an attempt to de-politicise the trade union movement and to prevent opposition to Government policy, as well as an attempt to de-fund the Labour Party.

Collective bargaining is the most effective way of protecting workplace rights and ensuring decent pay. It is clear that the Government is intent on preventing ordinary workers - particularly those in the public sector - from organising collectively to fight back against the extreme attacks on their living standards, working conditions and pay. Such a shift in the balance of power away from ordinary workers will further undermine the pay and conditions of every worker, exacerbating the growing gulf between wages and the cost of living, further increasing inequality and destroying long-established workplace rights introduced to protect employees from exploitation.

The proposed new Bill will cover legislation contained within the [Civil Contingencies Act 2004](#) and the [Trade Union and Labour Relations \(Consolidation\) Act 1992](#) and will extend to England, Wales, Scotland and Northern Ireland. The current legislation provides a framework for trade unions to engage in collective bargaining with employers and protects the employee rights of trade union members.

***Further details on the various parts of the new Bill are outlined below.***

## Background

Recent [polling by Ipsos Mori](#) found nearly 80% of the public think “trade unions are essential to protect workers interests”<sup>i</sup>, support that has been consistent for decades. Yet despite this, the Conservative Party is intent on making trade unions the number one target in their first 100 days in office. This Bill is part of a long term and ideological attack aimed at undermining the ability of trade unions to represent their members and removing vital employment protections.

Recent changes to employment laws include:

- Removing Legal aid access for personal injury claims;
- Changes to unfair dismissal - anyone who started working after 6 April 2012 will have to work for their employer for at least 2 years before they can meet the qualifying period for unfair dismissal;
- Changes to employment tribunals, restricting access to workplace justice- tribunal fees of up to £250 just to register a case have been introduced;
- Severe cut-backs to the number of workplace visits by health inspectors.

While these ideological restrictions were being implemented, new and emerging types of underemployment and insecure work increased dramatically:

- Almost 60% of new jobs created under the Coalition Government were in low-paid sectors of the economy;
- Around 1-in-5 employees (around 4.9 million people) earn less than the Living Wage;
- There are at least 1.4 million workers on zero-hours contracts (and potentially 1.3 million more not included in official figures).

Further information can be found in Class: [What's at stake for work, pay and unions \(2015\)](#)

Trade unions are the largest voluntary organisations in Britain with 6.5 million members. If it wasn't for trade unions, collective bargaining and the right to strike there would be no barrier to moving millions more workers - including public-sector workers - on to minimum-wage, zero-hour contracts.

However, the coverage of collective bargaining now stands at below 25% in the UK, down from 82% in 1979. This decline has been shaped by anti-trade union laws over the last 30 years which inhibit trade union recruitment, activity, and bargaining power.<sup>ii</sup> Analysis of the UK economy over the past 30 years by both [Onaran \(2014\)](#) and [Wilkinson & Pickett \(2014\)](#) shows how the decline of collective bargaining coverage has coincided with the dramatic decrease in the proportion of GDP that goes to workers' pay, and the equally dramatic rise of profits and executive pay.

## Details of the new Trade Unions Bill announced in the Queen's Speech

There are two main aspects of the Government's new legislation - the attempt to undermine the ability of trade unions to strike, particularly in public services, and the attempt to limit trade union involvement in politics, from non-party political campaigning to party-political funding.

### 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 tends 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: see *Hrvatksi Lijecnicki v Croatia*, Final Judgment 27 February 2015). 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, 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, para 159). 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 Government has not published further details following the Queen's Speech, but 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 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 outlined in the Queen’s Speech 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.

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 – ‘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.

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.

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 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.

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**Further reading**

***Trade Unions***

The importance of the labour movement in tackling inequality (Wilkinson & Pickett, 2014)

<http://classonline.org.uk/pubs/item/the-importance-of-the-labour-movement-in-tackling-inequality>

Trade Unions and economic inequality: <http://www.ier.org.uk/publications/trade-unions-and-economic-inequality>

What's at stake for work, pay and unions? <http://classonline.org.uk/pubs/item/election-2015-whats-at-stake-for-work-pay-and-unions1>

State Intervention for wage-led development (Onaran, 2014):

<http://classonline.org.uk/pubs/item/state-intervention-for-wage-led-development>

Class briefing on the check-off system for union fees: <http://classonline.org.uk/pubs/item/the-check-off-system-for-union-fees>

IER/Class Manifesto for collective bargaining: <http://classonline.org.uk/pubs/item/reconstruction-after-the-crisis-a-manifesto-for-collective-bargaining>

### **Queen's Speech**

Class press release: Queen's Speech 2015: <http://classonline.org.uk/news/press/centre-for-labour-and-social-studies-class-condemns-government-reforms-to-t>

Class Briefing on the Queen's Speech: <http://classonline.org.uk/pubs/item/briefing-the-queens-speech-2015>

Responses to the Queen's Speech on the Class blog including from Frances O'Grady:

<http://classonline.org.uk/blog/item/the-queens-speech-our-panels-reaction>

IER blog on the new Trade Unions Bill: <http://www.ier.org.uk/blog/trade-union-bill>

A manifesto for collective bargaining (Hendy & Ewing, 2014)

<http://www.ier.org.uk/publications/reconstruction-after-crisis-manifesto-collective-bargaining>

In April 2006, the TUC General Council published proposals for a Trade Union Freedom Bill. [Read the summary of the main proposals here](#). The text of the Bill was prepared with the advice of John Hendy QC. [View the full text here](#) (brief [explanatory notes](#) on the Bill here)

### **More information:**

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the Institute of Employment Rights website [www.ier.org.uk](http://www.ier.org.uk)

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i Ipsos Mori <https://www.ipsos-mori.com/researchpublications/researcharchive/3236/Trade-Unions-Poll.aspx>

ii Department for Business Innovation and Skills (2013) Trade Union Membership 2012, Statistical Bulletin BIS/13/P77