

The UK Government has confirmed today that the key provisions of the Trade Union Act 2016 – which received Royal Assent in May 2016 – will come into force on 1 March 2017. The provisions include:

- **New ballot thresholds for industrial action** – Currently the Trade Union and Labour Relations (Consolidation) Act 1992 requires a simple majority for a ballot conducted by a trade union for industrial action to be successful. There are no requirements for any minimum level of turnout. The new Act introduces an additional requirement that in all ballots for industrial action at least 50% of those trade union members who are eligible to vote in the ballot must do so for the ballot to be valid. So, for example, if there are 1,000 union members in the bargaining unit affected by the dispute, at least 500 of them would need to vote in order for the ballot to be valid. Whether or not the ballot is successful will remain unaffected, i.e. a simple majority of the votes cast must be in favour of industrial action. Taking the example above, this would mean that if 500 union members voted then 251 would need to vote in favour of industrial action for the ballot to be successful.
- There will be an additional requirement in certain **“important public services”** (the education, border security, transport, health and “fire” sectors). In these sectors at least 40% of those entitled to vote in the ballot must vote in favour of industrial action. So, for example, if there are 1,000 union members in the bargaining unit affected by the dispute, at least 500 members would need to vote. In addition, at least 40% (400) of the 1,000 members entitled to vote would need to vote in favour to enable industrial action. A simple majority will still be required so if all 1,000 members voted, 501 members would have to vote in favour to enable action.
- **Information requirements relating to industrial action** – The 1992 Act sets out the information that a union must include on a ballot paper. The new Act introduces a requirement to include additional information on the ballot paper, including a reasonably detailed indication of the matters in issue in the dispute to which the proposed industrial action relates. The Act also requires more detailed information to be provided to trade union members about the result of the ballot, including how many members were entitled to vote, whether the new minimum thresholds have been met, etc.

- **Timing and duration of industrial action** – Employers will have to be given 14 days’ notice (instead of the current seven) of any proposed industrial action. Seven days’ notice can still be given by agreement. Furthermore, legal protection for industrial action that is regarded as having the support of a ballot will expire six months after the date of the ballot (nine months by agreement) if no such action is taken within that period.
- **Union supervision of picketing** – Trade unions will have to comply with additional requirements when picketing, including a responsibility to appoint a picket supervisor.

The Government has also consulted on removing the restriction on hiring agency staff during industrial action. The Conduct of Employment Agencies and Employment Business Regulations 2003 currently prevent an employment business from supplying an employer with temporary workers to perform the duties normally performed by a worker who is on strike or taking industrial action, or the duties normally performed by any other worker who has, in turn, been assigned to cover the striking worker. The Government’s consultation closed on 6 September 2015 and we understand that it has yet to decide if, and how, it may take this issue forward.

Impact on Employers

The Trade Union Act 2016 introduces significant changes in this area and they are likely to be welcomed by employers.

The law currently protects trade unions and their members from claims by employers, provided they comply with certain requirements on balloting and notification of industrial action, etc. This new piece of legislation places more onerous requirements on trade unions and will make the prospect of industrial action (especially in the public sector) less likely. It may, however, mean that there will be changes to the way in which industrial disputes are conducted in the future with the unions finding other ways to express their discontent.

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