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The Employment Rights Act 2025 – An Overview of the Key Trade Union Changes, Including Implementation Dates

The Employment Rights Act 2025 (ERA 2025/the Act) makes a significant number of changes to trade union legislation, largely repealing the provisions in the Trade Union Act 2016 (introduced by a previous Conservative government) and introducing a number of new rights and protections for good measure. The aim is for the law to largely return to its pre-2016 position, with a few key exceptions.

All in all, employers should prepare themselves for stronger trade unions with greater rights and protections. Now would be a good time for those employers with a unionised workforce to review their current dealings with trade unions in their workplace. If your current working relationship is not as effective or as smooth as it could be, now would be an opportunity to seek to create a new partnership with your trade unions. They will clearly feel emboldened with a pro-union Labour government in power. But it is not just businesses with a trade union presence that need to be aware of these changes. Even those businesses without trade unions may be affected by some of these proposals, as the government is making it easier for trade unions to seek to recruit, etc. in your workplace and this could be significant if you do not have experience of dealing with trade unions.

According to the government, there are around 6.1 million workers who are trade union members in Great Britain, and around 10.9 million (39%) workers whose pay is determined with reference to collective bargaining.

The government is also considering whether to introduce regulations that would reduce the maximum damages that courts can award against a union in the event that a strike is found to be unlawful, reversing the increase made under the previous Conservative government.

In this "at a glance" document, we provide an overview of the key changes to trade union law that will be taking place, including implementation dates, where these are known.

The government has published guidance for employers, unions and workers to help them prepare for those provisions that are coming into force on 18 February 2026, including how to deal with cases that began under the Trade Union Act 2016 legal framework, but are still in progress when the relevant provisions of the ERA 2025 come into force.

Industrial Action			
Topic	**Current Position**	**What is Changing?**	**Anticipated Implementation Date and Potential Implications for Employers**
Industrial Action Ballots – Turnout and Support Thresholds	Industrial action requires the support of a ballot. As things currently stand, for a vote for industrial action to be valid, at least 50% of trade union members who are entitled to vote in the ballot must do so (ballot turnout threshold). Furthermore, a majority of the votes cast must be in favour of industrial action for it to succeed (support threshold). For important public services, such as education, border security and transport, an additional threshold of 40% of trade union members entitled to vote in the ballot must do so for the action to be lawful. These thresholds are important; if trade unions do not meet them then any subsequent industrial action will not be protected and they run the risk of legal action being taken against them.	These ballot turnout and support threshold provisions are being repealed, i.e. trade unions will only be required to achieve a simple majority of those voting in order for a ballot for industrial action to proceed, and there will be no requirements for any minimum level of turnout.	These changes should make it easier for trade unions to take industrial action, as they will not be thwarted by low ballot turnouts. The changes to support thresholds will come into force on 18 February 2026, but the changes to the ballot turnout threshold will be delayed to align with the introduction of e-balloting (likely April 2026). The government has issued a consultation on a code of practice for electronic and workplace balloting for statutory union ballots. The consultation closes on 28 January 2026.
Notice of Industrial Action Ballot	Trade unions must provide certain information to an employer ahead of an industrial action ballot.	The information obligations will be simplified to remove the obligation for a trade union to provide information as to the number of employees concerned in each category or workplace, and to provide an explanation of how the total number of employees concerned was determined by the union.	These changes will come into force on 18 February 2026.
Information to be Included on Voting Papers	Trade unions must include certain information on ballot voting papers, including a summary of the issues that are in dispute and the type of industrial action that amounts to action short of a strike, etc.	The information obligations will be simplified, reversing the effect of section 5 of the Trade Union Act 2016.	These changes will come into force on 18 February 2026.
Notice to Employers of Industrial Action	Trade unions are obliged to give employers 14 days' notice of any proposed industrial action (although there is scope to give seven days by agreement between the union and the employer).	The notice to be given by a trade union will change to 10 days. The government is of the view that 10 days will achieve the appropriate balance in allowing employers the ability to plan to mitigate the impact of industrial action, as well as reduce disruption and knock on impacts of strikes while respecting the right to strike.	These changes will come into force on 18 February 2026.

Period After Which Industrial Action Ceases to be Effective	Industrial action ceases to have the support of a ballot after six months (beginning with the date of the ballot), but this can be extended to nine months by an agreement between the trade union and the employer.	The expiration date of a trade union's legal mandate for industrial action will be extended from six to 12 months. The government believes that 12 months should ensure the appropriate balance between reducing costs of re-balloting and allowing mandates to continue for longer where they are likely to have continued members' support, without prolonging disputes or permitting disputes to be called based on more than a year-old mandate. There will be no option for an employer and a trade union to agree to an extension of the mandate beyond the 12 months.	These changes will come into force on 18 February 2026.
Electronic Balloting	A postal vote is required for all trade union ballots and elections, including industrial action ballots. Postal votes are both expensive and time-consuming, and trade unions have been pushing for years for the introduction of electronic balloting, claiming that the current antiquated arrangements impact on turnout and hamper democratic engagement with their members.	The government says it is committed to widening the means of voting that are available in industrial action ballots.	The introduction of e-balloting is likely to make it easier for trade unions to hit the relevant thresholds for industrial action, as it should lead to more member participation. The government has issued a consultation on a code of practice for electronic and workplace balloting for statutory union ballots. The consultation closes on 28 January 2026.
Protection for Taking Industrial Action	Section 146 of TULR(C)A 1992 currently protects workers from being subjected to a detriment related to trade union membership, or taking part in trade union activities. In *Secretary of State for Business and Trade v Mercer* [2024] the Supreme Court held that an employee who had been suspended to penalise her for participating in "protected" (i.e. lawful) industrial action was not protected from being subjected to a detriment for participation in trade union activities because of the precise wording of s.146.	TULR(C)A 1992 is being amended to make it clear that workers have the right not to be subjected to a detriment of a prescribed description by any act, or any deliberate failure to act, where the act or failure to act by the employer was for the sole or main purpose of preventing or deterring the worker from taking protected industrial action or penalising the worker for doing so. The government will consult on what should be prescribed as a detriment, and this will be set out in secondary legislation. The Act also strengthens existing protection against dismissal for taking part in industrial action.	The detriment changes are expected to come into force in October 2026.
Strikes: Minimum Service Levels	Under the Strikes (Minimum Service Levels) Act 2023, the government had the ability to set minimum service levels within key sectors during industrial action; including emergency services, border security, education, passenger rail and the nuclear sector. Where minimum service levels were in force for a specified service, if the relevant trade union gave notice of strike action, employers could issue a work notice ahead of the strike, to specify the workforce required to maintain necessary and safe levels of service. This Act was repealed on 18 December 2025, i.e. on Royal Assent.		

Trade Union Recognition			
Topic	**Current Position**	**What is Changing?**	**Anticipated Implementation Date and Potential Implications for Employers**
Statutory Trade Union Recognition	If an employer refuses to recognise a trade union voluntarily, the union can apply to the Central Arbitration Committee (CAC) for statutory recognition if it satisfies certain conditions, including if it has at least 10% union membership within the proposed bargaining unit and it has evidence that a majority of the workers constituting the appropriate bargaining unit are in favour of recognition.	The Act simplifies the process for statutory recognition, as the government believes it is currently too difficult for trade unions to gain recognition. Key changes are outlined below. The Act removes the requirement at the application stage for a union to demonstrate that a majority of the workers constituting the bargaining unit are in favour of recognition. It also gives the government the power to reduce the requirement to show that at least 10% of the workers in the proposed bargaining unit are trade union members, with scope to adjust this percentage to as low as 2%. A similar test is applied at other points in the statutory recognition process. The Act changes the rules governing the final ballot that workers vote on whether to recognise a trade union (which currently requires 40% of all eligible workers in the bargaining unit to vote for recognition), so that unions only require a simple majority of the workers voting to win. The Act provides that following the submission of a recognition application to the CAC new recruits to the workforce will not be considered by the CAC for the purposes of the recognition process or entitled to vote in a recognition ballot. This is intended to prevent employers from taking on additional workers into the proposed bargaining unit to try and dilute union membership. The Act extends the prohibition on unfair practices and makes the Code of Practice on unfair practices during recognition, as well as derecognition ballots applicable during the entire recognition process from the point when the CAC accepts the union's application for statutory recognition.	The government said it would consult on the proposals for the simplification of trade union recognition in autumn 2025, with a view to the provisions being brought into effect in April 2026. These changes are likely to lead to an increase in statutory recognition requests. According to the CAC's Annual Report 2024/25, it received 63 applications for trade union recognition under Part 1 of Schedule 1 of TULR(C)A in the year ending 31 March 2025, compared with 81 the previous year and 53 in the year before that. 43% of those applications involved cases of employers with fewer than 200 workers. The average size of the bargaining unit was 93.

Miscellaneous			
Topic	**Current Position**	**What is Changing?**	**Anticipated Implementation Date and Potential Implications for Employers**
Trade Union Workplace Representatives	Employees who are officials of an independent trade union recognised by their employer have a statutory right to take paid time off during their working hours to carry out various trade union duties and to undergo training in relation to their role. The amount of time that can be taken off, the purpose for taking the time off and any conditions attached to it are subject to what is reasonable in all the circumstances having regard to the Advisory, Conciliation and Arbitration Service (Acas) Code of Practice. There is currently no statutory provision for such union representatives to be provided with access to facilities in relation to that time off.	Employers will, where requested, be required to provide trade union officials and union learning representatives with such accommodation and other facilities for carrying out their duties or undergoing their training as is reasonable in all the circumstances, having regard to any provisions of an Acas Code of Practice, e.g. access to office and meeting space and access to the internet/intranet. If an employee brings a complaint that their employer failed to permit them to take time off, the burden of proof will also now be on the employer to show that the amount of time off that the employee proposed to take was not a reasonable amount of time off. Trade union equality representatives will also now have a statutory right to take "reasonable" paid time off during their working hours to carry out various activities, etc. relating to equality in the workplace, as well as the right to be provided, on request, with access to accommodation and other facilities. This new right only applies if the trade union has given the employer notice in writing that the employee is an equality representative of the union and has complied with various conditions re: training.	According to the government's timetable, Acas will consult on the new rights and protections for trade union representatives in autumn 2025, but this has not yet happened. These new protections are expected to come into force in October 2026.
Right to Statement of Trade Union Rights	No existing obligation to provide workers with details of their right to join a trade union.	Employers will be required to give workers a written statement that they have a right to join a trade union. The information must be given at the same time as the s.1 statement under the Employment Rights Act 1996 and at other times thereafter. Further details on this new right will be set out in separate regulations, including the information that must be included in such a statement. On 23 October, the government published a consultation in relation these proposals. See our previous alert.	Consultation closed on 18 December 2025. The government's intention is for this new duty on employers to start by October 2026.

Right of Trade Unions to Access Workplaces	Trade unions do not currently have a statutory right to access workplaces.	The Act gives trade union officials new statutory rights to physically access workplaces or communicate with workers (or both) under "access agreements" entered into between employers and "qualifying trade unions", namely those with a certificate of independence. Such agreements will give them rights to meet, support, represent, recruit or organise workers (whether or not they are members of a trade union) and to facilitate collective bargaining. These new rights will not cover organising industrial action. Trade unions will have the right to make a request for access and employers will then have a period of time within which to respond. Disputes between the parties will be dealt with by the CAC. On 23 October, the government issued a consultation in relation to these proposals. See our previous alert for further details.	Consultation closed on 18 December 2025. This new right is expected to come into force in October 2026. Employers currently in non-unionised workplaces should consider reviewing their current arrangements/practices, e.g. employee forums, etc. If employees feel they have a voice in the business, they are less likely to be interested in trade unions representing them. One sector that may well be affected by these changes is the gig economy.
Blacklisting	Blacklisting refers to the unlawful practice of listing trade union members or activists by an employer for the purposes of making recruitment or employment decisions about them. The Employment Relations Act 1999 (Blacklists) Regulations 2010 were introduced back in March 2010, following the consulting association scandal in the construction sector, which blacklisted thousands of trade union members. The regulations made it unlawful for employers, employment agencies and others to compile, supply or use a blacklist of trade union members or activists for discriminatory purposes such as employment vetting.	As the blacklisting rules have not been updated in a long time, the Act gives the government new powers to make regulations in relation to blacklisting. This will include making it clear that blacklisting prohibitions extend to lists created by predictive technology.	The government expects to issue a consultation on these proposed measures in winter 2025/early 2026, with a view to introducing them in 2027.

This note sets out the position in England and Wales. Changes in Scotland and Northern Ireland may differ.

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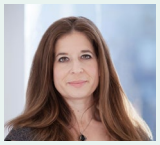

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