



Association of Revenue and Customs

ARC Response To BIS Consultation on Balloting Thresholds for “Important Public Services”

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Introduction

The Association of Revenue and Customs (ARC) is both an independent trade union and the HMRC section of the FDA, the trade union for senior managers and professionals in public service.

- ARC represents around 2400 members in HMRC, at grade 7 and above, as well as trainees in grade 7 entry schemes.
- Our members are senior officials, lawyers and tax professionals, collectively taking responsibility for the collection of UK taxes, and tackling tax evasion and avoidance, at the highest and most complex level.
- We articulate the views of the professional staff working in HMRC to collect taxes from individuals and businesses operating in the UK.
- We are partners with HMRC in Consultation and Negotiation. HMRC also recognises ARC as a stakeholder on professional matters within HMRC.

- ARC is firmly committed to the principles of equality and diversity in both employment and the delivery of services.

ARC is deeply concerned at the scope and scale of measures set out in the Trade Union Bill. ARC members only embark on industrial action as a last resort. As a union with an almost 100 year history we have engaged in national industrial action only very rarely. Nevertheless it is a fundamental right for all working people to have the option to take industrial action. The current proposals will unjustifiably restrict the right of trade unions to organise in the UK by placing them under financial, operational and legal burdens which go far beyond those placed on other British campaigning organisations. By introducing yet more unwarranted legal obstacles in the way of unions organising strike action the Trade Union Bill will undermine workers' ability to organise collectively to protect their jobs, their livelihoods and the quality of their working lives.

The Association of Revenue and Customs (ARC) is opposed to the introduction of statutory thresholds, including requirements for a minimum 50% participation rate and a 40% 'yes vote' amongst those entitled to vote in ballots involving 'important public services' or ancillary activities. These measures are designed to make it far harder for union members, including lawyers, tax inspectors, schools inspectors, crown prosecutors and museum curators, to organise collectively to defend their jobs, livelihoods and their working conditions. ARC believes that the Government's proposals amount to an unnecessary, unjustified and disproportionate restriction on the right to strike in the UK. They therefore conflict with the Government's international and human rights obligations.

Consultation Questions

What is the impact of strike action on the public?

Question 1

Do you agree these are the key impacts industrial action would have in these sectors? Why / why not?

Question 2

What other impacts are there of strike action in the following sectors? (If relevant, please include specific examples of your experience of strike action taken in these sectors.)

- a) Fire services

- b) Health services**
- c) Education services**
- d) Transport services**
- e) Border Force**
- f) Nuclear decommissioning**

ARC does not agree with the government's assessment of the likely effects of the new legislation. The BIS impact assessment is flawed and incomplete. In particular it fails to consider the impact that new strike thresholds will have for employment relations, on staff motivation and on workplace production. The consultation document and impact assessment are silent on the human rights implications arising from the new legislation; we are also awaiting an equality impact assessment. The documents do not include an accurate assessment of the administrative burdens and costs that unions will face if the new legislation comes into effect.

The impact assessment has also attracted extensive criticism from the Regulatory Policy Committee (RPC) which concluded that the document was not fit for purpose. The RPC criticised the Government's inadequate 'assessment of the costs and disruption caused, and its impact on the economy'. The Committee has also questioned the Government's claim that industrial action can put the provision of public services at risk, demanding 'further evidence on the existence and likely scale of this effect'.

The Government has failed to demonstrate the case for the introduction of the wide-ranging restrictions on the right to strike set out in the Trade Union Bill. As in most workplaces, ARC does not need to resort to strike action or even the threat of such action very often. In many disputes, we avoid the need for industrial action by devising workable solutions around the bargaining table. Where negotiations are unsuccessful, our members may call for a ballot for industrial action. Although such a call is rare, ballots serve an important purpose by concentrating employers' minds and demonstrating the strength of feeling amongst the workforce. In the majority of cases the holding of a ballot is sufficient to facilitate a settlement. The 2011 Workplace Employment Relations Study (WERS) initial finding report found that industrial action ballots had been held in just 7% of workplaces in the year preceding the survey and only 4% of workplaces had experienced some form of industrial action.

Taking industrial action is always a last resort for ARC but sometimes it is the only way to resolve disputes, particularly where the employer is resistant to dialogue. It is in employers' and employees' interests for disputes to be resolved quickly and amicably. However, the proposed changes to legislation contain measures which are counter-productive and are likely to escalate and prolong disputes.

The right to strike is a fundamental human right. It is safeguarded by International Labour Organisation (ILO) Convention 87 on freedom of association and the right to organise, the UN Covenant on Social and Economic Rights (Article 8), the European Social Charter (Article 6(4)) and the European Convention on Human Rights (Article 11 on freedom of association), all of which have been ratified by the UK Government.

ARC believes that the introduction of thresholds for industrial action ballots will place the right to strike at risk in the UK and does not comply with international human rights standards.

Research carried out at Salford Business School also suggests that millions of trade union members could be prevented from taking industrial action if the thresholds come into effect. This research provides clear evidence that the introduction of strike thresholds will place excessive and unjustified restrictions on the right to strike in the UK. The proposed measures clearly conflict with international human rights standards, including ILO Convention 87.

The ILO appears to share this view. According to the ILO Freedom of Association Committee¹:

“The requirement of a decision by over half of all the workers involved in order to declare a strike is excessive and could excessively hinder the possibility of carrying out a strike, particularly in large enterprises.”

To date the Government has failed to demonstrate how the measures contained in the Trade Union Bill comply with ILO Conventions or the European Social Charter of 1961. In its European Convention on Human Rights Memorandum on the Bill the Government has attempted to argue that the statutory thresholds will comply with Articles 11 and 14 of the Convention. The Government has cited the decision of the European Court of Human Rights in the case of *RMT v UK* to try to justify the proposed 50% turnout requirement for industrial action ballots.² However, in ARC’s opinion, this case is not relevant to the proposed strike thresholds or the wider provisions of the Trade Union Bill. This case considered the total ban on all forms of the secondary action. In its decision, the Court took regard of the fact that the ban had not been amended or removed by a succession of governments.

¹ ILO (2006) Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, paragraph 556.

² Department for Business, Innovation & Skills (2015) Trade Union Bill: European Convention on Human Rights Memorandum. July 2015, page 4 available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450316/BIS-15-466-european-convention-on-human-rights-memorandum.pdf

The absence of amendments was said to reflect a broad political consensus in support of the ban. The Court therefore concluded it was appropriate to apply a wide margin of appreciation. It is clear however that the same consensus does not apply to the Trade Union Bill, the provisions of which have been hotly contested since their announcement.

Question 3.

What are ‘important public services’ in these sectors?

What factors do you think are important in defining ‘important public services’?

- **Protection against loss of life/ serious injury**
- **Maintenance of public safety and national security**
- **Enabling economic activity across a significant area of the economy**
- **Enabling significant numbers of people to get to their place of work**
- **Others (please specify)**

ARC is firmly opposed to the introduction of arbitrary thresholds for industrial action ballots. We are committed to the principle that the right to strike is a fundamental human right which should be enjoyed equally by all workers regardless of their job or the function that they perform. The UK already has one of the most regulated systems for industrial action in the industrialised world. The current restrictions on the right to strike have been widely and repeatedly criticised for not complying with international law.

The introduction of thresholds for strike ballots will impose excessive and unjustifiable restraints on the ability of unions to organise industrial action and as a result they conflict with international law.

The Government has sought to defend³ the decision to apply a 40% threshold to a wide range of ‘important public services’ and ancillary activities by citing decisions of the European Court of Human Rights. ARC believes that it is not credible for the Government to try to rely on cases dealing with the restrictions on the rights of police officers⁴ and military personnel⁵ to justify restrictions on the rights of a wide range of public and private sector staff, including transport, teachers, cleaners, and road diggers, to strike.

³ Ibid, page 5

⁴ *Matelly v France* (Application 10609/10) European Court of Human Rights Judgement 2 October 2014.

⁵ *Junta Rectora Del Ertzainen Nazional Elkartasuna (ER.N.E.) v. Spain* (Application no. 45892/09), European Court of Human Rights Judgement 21 April 2015.

Questions 4, 5 & 6

Which occupations and functions should be subject to the 40% important public services threshold?

4. Do you agree these are occupations and functions in:

- a) Fire services,
- b) Health services,
- c) Education services,
- d) Transport services,
- e) Border security, or
- f) Nuclear decommissioning

The Government should consider when defining those subject to the 40% important public services threshold? When answering, please consider those key in avoiding the adverse impacts discussed above.

5. What other occupations and functions should the Government consider within these six sectors?

6. (If relevant) please explain why the additional occupation or function should be covered.

ARC is opposed to the Government's proposals for statutory thresholds for industrial action, including the additional restrictions on ballots in important public services. We do not agree that the 40% threshold should apply to any of the specified sectors, occupations or functions (or indeed any other sectors, occupations or functions). In our opinion, the right to strike is fundamental human right which should be enjoyed equally by all workers regardless of their job or the function that they perform.

Restrictions on the right to strike will undermine constructive employment relations and the work of joint consultation committees and collective bargaining arrangements in these sectors. It will demoralise employees and increase staff turnover creating additional recruitment, induction and training costs for public service managers. This will lead to reduced workforce productivity and will ultimately undermine the quality of services provided to the public.

The Government's proposals will prove unworkable and will generate endless legal disputes and satellite litigation over the type of work an individual does and whether their job or functions is covered by the statutory list.

Furthermore, the Government has announced that the question of which workers are covered by the 40% threshold will be determined in secondary legislation.

ARC is very concerned that this will mean Parliament will have limited opportunity to scrutinise and debate future restrictions on the right to strike which will erode the human rights of millions of UK citizens. To date, the Government has not made a commitment to consult publicly on the drafting of the Regulations.

Questions 7, 8 & 9

Support staff in ancillary roles

7. Do you agree with the Government's proposed approach to ancillary workers? Why/ why not?

8. Please give examples of ancillary workers in the six sectors discussed that you think should be subject to the 40% important public services threshold.

9. (If relevant) please explain why the ancillary worker(s) you have cited should be covered.

No, ARC does not agree with the Government's approach to ancillary workers.

The inclusion of ancillary workers for strike thresholds will create onerous administrative burdens for unions and employers. For example, ARC would need to gather detailed information from members about the nature of their jobs and the exact work they are undertaking at the point of ballot (which may change on a regular basis). Many union members may not be able to answer such questions accurately. As a result compliance with the legislation will be extremely difficult.

Question 10

Do you agree with the Government's proposed approach to private sector workers? Why / Why not?

No. ARC does not agree with the Government's approach to private sector workers.

The right to strike is a fundamental human right which should be enjoyed equally by all workers, regardless of whether they work for a public sector or private sector employer.

The Government's proposed approach is inconsistent and incoherent. It will lead to anomalous outcomes. For example, the government has not provided a clear rationale for why drivers working for private sector bus companies should be subject to a 40% 'yes vote' requirement whilst teachers working in private sector schools will not.

Questions 11 & 12

11. How common are disputes involving some workers who would fall within scope of the 40% important public services threshold, and others who would not?

- Frequent
- Infrequent
- Never
- Not sure

12. Please give examples of a dispute that has or could include only a small proportion of workers undertaking “important public services” (using the definition used in this consultation).

It is difficult for ARC to respond to this question as the Government has not yet published draft regulations which define or specify to which occupations and functions the 40% threshold will apply. Similarly, it is not clear which workers will be treated as being normally engaged in activities which are ancillary to important public services. ARC is seriously concerned trade unions will often not be certain whether the 40% threshold will apply when they run a ballot.

Question 13

Do you agree that the Government should require a ballot to be run under the 40% important public services threshold if a majority of workers involved in the dispute are subject to the 40% threshold? Why / Why not?

No. ARC strongly disagrees that any industrial action should be subject to the 40% threshold. The right to strike is a fundamental human right which should apply equally to all workers.

Requiring unions to assess whether the majority of workers are engaged in the provision of ‘important public services’ or in ‘ancillary activities’ will place onerous and excessively complicated burdens on unions. It will expose unions to the risk of legal challenge.

ARC do not believe that this problem would be best resolved by amendments to the Bill stating the 40% thresholds should apply to any ballot involving any workers engaged in the provision of ‘important public services’ or ‘ancillary services’. This would unjustifiably extend the 40% threshold and the associated restrictions on workers’ rights. Instead the Government should abandon the 40% threshold altogether on the basis that it will be unworkable and will generate anomalous

outcomes. Failing this, the Government amend the Bill to remove any reference to ‘ancillary activities.’

Question 14

What are the practical and administrative considerations a trade union would have to make to calculate whether a ballot ought to be conducted under the 40% important public services threshold?

Trade unions will incur excessive costs and onerous administrative burdens as a result of the introduction of a 40% threshold of industrial action in ‘important public services’.

It is important also to consider the impact of the new thresholds in conjunction with other provisions in the Trade Union Bill and wider government proposals which will also impose excessive costs and administrative burdens on unions. Those costs are magnified for smaller unions like ARC who have few staff and a limited capacity to undertake the extra bureaucratic burdens this legislation will impose. Compliance will cost ARC proportionately more than larger unions, a point unaddressed in the Government’s impact assessment.

Do you have any other comments that might aid the consultation process as a whole?

The right to strike is a fundamental human right and a hallmark of any free and democratic society. It is safeguarded by a wide range of international treaties, including ILO Conventions, the European Social Charter (1961) and the European Convention on Human Rights.

ARC is profoundly concerned that in the UK the right to strike is being placed at risk by the Government’s proposals outlined in the Trade Union Bill, accompanying regulations and consultation documents. These proposals include; the introduction of thresholds for industrial action ballots, the requirement for a 40% ‘yes vote’ in important public services, 14 days’ notice for industrial action, an obligation for unions to re-ballot members and the removal of the ban on the supply of agency staff to replace striking workers. The Government is also proposing tighter restrictions on picketing activities, even though pickets are already amongst the most regulated individuals in the UK.

ARC believes that the proposed new laws represent unnecessary, unjustified and disproportionate restrictions on the right to strike in the UK. As such, they conflict with the Government’s international and human rights obligations. The proposed restrictions on rights to picket and protest peacefully would seriously interfere

with the civil liberties of working people in the UK, including their rights to assemble and to freedom of expression. The provisions of the Trade Union Bill will create a serious imbalance of power between employers and working people. In recent years, the introduction of employment tribunal fees has meant that ordinary working people no longer have recourse to the law to protect their rights at work. Now the Government is seeking to prevent working people from relying on trade unions to protect their interests in the workplace and to protect the quality of public services on which society relies.

ARC is opposed to the introduction of thresholds for industrial action ballots. These measures will make it far more difficult for millions of working people including midwives, classroom assistants, hospital cleaners, and train drivers from organising collectively in defence of their jobs, their livelihoods and the quality of their working lives. The introduction of thresholds for strike ballots is expected to have a wide-ranging impact and will impose excessive and unjustified restraints on the ability of unions to organise lawful industrial action. As such the legislation does not appear to comply with international law.

The Government claims to be interested in increasing workforce democracy. However, it refuses to permit the use of electronic and online balloting in union elections and ballots which have the potential to increase participation in union democracy particularly among younger workers.

The Government's proposals are discriminatory and will particularly restrict the rights of public sector staff. ARC believes that the right to strike is fundamental human right which should be enjoyed equally by all working people regardless of their job or function, or whether they work in the public or private sector.

ARC anticipates that the introduction of tighter restrictions on the right to strike will damage constructive employment relations and undermine effective negotiations between employers and unions. Trade unions play a central role in resolving disputes in the workplace and in avoiding the need for industrial action. Taking industrial action is always a last resort. However, sometimes it is the only way to resolve disputes, including in those occupations and industries classified by the Government as 'important public services'.

Placing tighter restrictions on trade unions is likely to prolong and escalate disputes in the workplace, making them more difficult to resolve swiftly and amicably. This will increase workplace tensions, demoralise staff and reduce productivity levels. ARC believes that rather than restricting trade union and workers' rights, the Government should concentrate on developing policies which will improve productivity and secure the recovery.

ARC is concerned that the Government is planning legislation which will significantly restrict the right to strike without proper consultation or Parliamentary scrutiny. The current BIS consultation has lasted for just eight weeks over the summer holiday period. This is not consistent with the Government's consultation principles⁶ and suggests that the Government is not interested in developing evidence based, considered policy. We are also concerned that the Trade Union Bill does not define who will be covered by the 40% threshold in the Bill itself. This is to be left to secondary legislation which Parliament will have limited opportunity to scrutinise, debate or amend.

⁶ The government Consultation Principles state that '*Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response and where the consultation spans all or part of a holiday period policy makers should consider what if any impact there may be and take appropriate mitigating action.*'
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf