

Briefing Note for Full Council Meeting 22 October 2015

Notice of Motion 7e: Trade Union Bill

The Motion

This Council:

Notes with concern the Trade Union Bill which is currently being proposed by the Government and which would affect this Council's relationship with our trade unions and our workforce as a whole.

Rejects this Bill's attack on local democracy and the attack on our right to manage our own affairs.

Is clear that facility time, negotiated and agreed by us and our trade unions to suit our own specific needs, has a valuable role to play in the creation of good quality, responsive local services. Facility time should not be determined or controlled by Government in London.

Is pleased with the arrangements we currently have in place for deducting trade union membership subscriptions through our payroll. We see this as an important part of our positive industrial relations and a cheap and easy to administer system that supports our staff. This system is an administrative matter for the Council and should not be interfered with by the UK Government.

This Council therefore resolves to:

- Support the campaign against the unnecessary, antidemocratic and bureaucratic Trade Union Bill.
- To continue its own locally agreed industrial relations strategy and will take every measure possible to maintain its autonomy with regard to facility time and the continuing use of check-off.

Briefing Information on the Trade Union Bill

The Government has published a Trade Union Bill (the Bill), which sets out various reforms to the law regulating trade unions, the main ones applying to:

- industrial action ballots (including ballot participation thresholds);
- industrial action notices and the length of ballot mandates;
- picketing; and
- the contribution to political funds from union members.

The Bill also contains provisions enabling legislation to be made on facility time for trade union officials in the public sector and the powers of the Certification Officer. The Government is also consulting on various aspects of the Bill in three separate consultation documents;

- Ballot thresholds in important public services (introducing ballot thresholds in designated public services, the consultation includes which services)

<https://www.gov.uk/government/consultations/ballot-thresholds-in-important-public-services>

- Hiring agency staff during strike action (removing the prohibition on employment agencies providing agency workers during strike action).

<https://www.gov.uk/government/consultations/hiring-agency-staff-during-strike-action-reforming-regulation>

- Tackling intimidation of non-striking workers (appointing a picket supervisor, changes to the Code of Practice on picketing, intimidation and publishing picket plans).

<https://www.gov.uk/government/consultations/tackling-intimidation-of-non-striking-workers>

Industrial action ballot thresholds

At present, there is no threshold requirement for industrial action ballots. A simple majority of votes cast in favour of taking industrial action is required.

The Bill will require at least 50% of those who were entitled to vote in the ballot, to do so. In addition, where the majority of those who were entitled to vote in the ballot are normally engaged in providing important public services or activities that are ancillary to the provision of those services then at least 40% of those who were entitled to vote in the ballot must vote 'yes' to the industrial action proposed.

For example, if 100 employees are entitled to vote, and the majority of them are engaged in important public services or ancillary activities, and 50 of them vote, then 40 of those that vote, must vote yes.

The Bill provides that further regulations may only specify that important public services fall within the following categories:

- health services;
- education of those aged under 17;
- fire services;
- transport services;

- decommissioning of nuclear installations and management of radioactive waste and spent fuel; and
- border services.

Information on the ballot voting paper and Information to union members on ballot results

The Bill sets out new requirements for the ballot voting paper to include:

- where the paper concerns action short of a strike, the type or types of such industrial action proposed; and
- the period or periods within which the industrial action or, where relevant each type of industrial action, is expected to take place.
- a “reasonably detailed” indication of the matter or matters in the trade dispute to which the proposed industrial action relates;

The current requirement on ballot results is that the union has to tell all persons entitled to vote in the ballot the number of:

- votes cast in the ballot;
- individuals answering “Yes” to the question, or as the case may be, to each question;
- individuals answering “No” to the question, or, as the case may be, to each question;
- spoiled voting papers.

In addition to this requirement, the Bill will introduce a requirement that the individuals are also told:

- the number of individuals who were entitled to vote;
- whether the number of votes casts is at least 50% of those entitled to vote; and
- where the “important public services” requirements apply, whether the number of those answering ‘Yes’ to the question(s) is at least 40% of those entitled to vote.

Industrial action: notice to employers

The amount of notice the trade union has to give employers of industrial action will be increased from 7 days to 14 days.

Expiry of ballot mandate

At present the normal position is that provided the industrial action starts within four weeks of the close of the ballot (or eight weeks if the employer agrees), that ballot can be relied upon for industrial action for as long as the trade dispute that is the subject of the ballot continues. Accordingly, there is no absolute limit on the period for which such action can be taken on a continuous or discontinuous basis.

The Bill will introduce a new four-month time limit, meaning a ballot will only be valid for and mandate industrial action that takes place within four months beginning with the date of the ballot (i.e. the date the ballot closes).

This change will only apply to ballots that open on or after the day the Bill comes into force so will not apply to ballots and valid industrial action commenced before that date.

Picketing

There is a separate consultation document on “tackling the intimidation of non-striking workers”, particularly in relation to picketing. The proposal is to make the current recommendation in the Code of Practice for picketing supervisors into a legal requirement, as well as the requirement that unions will have to publish their picketing plans.

The current position is that for picketing to be lawful and so not actionable in tort it must be in contemplation or furtherance of a trade dispute and consist only of peacefully obtaining or communicating information, or peacefully persuading any person to work or abstain from working. It must also take place at or near the picket's place of work and must not involve any other breach of the civil law, such as trespass or nuisance.

There is also a statutory Code of Practice on Picketing (the Code) setting out information on what constitutes lawful picketing, alongside good practice. The Code does not of itself impose any legal obligations, but its contents may be taken into account in relevant legal proceedings.

One of the recommendations in the Code is that a trade union official should always be in charge of picket lines and, amongst other factors, be readily identifiable and be familiar with the Code.

The Bill will make many of those recommendations legally enforceable through a requirement that the trade union must appoint a union official who is “familiar” with the Code to supervise the picket (“the picket supervisor”), for the union to take reasonable steps to inform the police of the supervisor's name and to issue a letter of authorisation.

Also included is the requirement that while picketing takes place, the supervisor must be present or be readily contactable by the union and the police and be able to attend at short notice. The supervisor will also have to wear a badge or armband or other item readily identifying them as being the picket supervisor.

Union political funds

The Bill contains various provisions concerning trade union political funds, the main one being a provision that will require the ‘opt-in’ of union members to any trade union political fund, by way of an opt-in notice procedure.

Trade union officials facility time

The Bill contains a power under which regulations will be able to be made requiring public sector employers to publish certain information related to facility time provided to trade union officials, including learning representatives and safety representatives.

Facility time means the various legislative rights to time off to perform union activities.

The information required may include in particular:

- how many of the employer's employees are union officials;
- the total amount spent by the employer in a specified period on paying trade union officials for facility time, and the percentage of the employer's total pay bill that amount represents;
- the percentage of the aggregate amount of facility time in a specified period that applies to the different categories of facility time that are permitted under legislation; and
- information relating to the facilities provided by the employer to the union officials.
- The Bill also includes a power to make regulations that could set a limit in public sector employers on:
 - the amount of working time that may be paid facility time, calculated on a percentage basis; and
 - the percentage of an employer's total pay bill that can be spent on paying for facility time.

An overview of the Trade Union Bill in relation to facility time:

- A requirement to publish data on trade union facility time including; number of representatives, percentage of time and information on spend
- The Bill makes way for future regulations (reserve powers) to set a cap on paid time off linked to the pay bill or the representative's working time

The anticipated steps in relation to facility time appear to be a requirement to publish data, that this published data will be reviewed, there will be an opportunity for the relevant employers to voluntarily make changes to facility time and where determined by the Government there will be limits to categories of employer rather than individual employers. There is the possibility of the application of the cap having retrospective effect but the details are not set out.

Cambridge City Council Published Data on Trade Union Facility Time

We currently publish data on trade union facility time on the Council's website. This is a requirement of the Open Data - Local Government Transparency Code. We are required to publish this data in a prescribed format, including:

- Total representatives
- Full Time Equivalent (FTE) representatives
- Total representative majority count (representatives who spend a majority of their time on trade union facility time)
- Total estimate spend (amount)
- Relative estimate spend (percentage).

<https://www.cambridge.gov.uk/sites/www.cambridge.gov.uk/files/documents/TU%20Facility%20time.pdf>

Cambridge City Council has two centrally funded Branch Secretary posts, one Unison and one GMB. Both roles are full time equivalents.

Ending of Trade Union Subscriptions via payroll deduction (public sector)

There is a Government intention to end the ability of trade union members in the public sector to pay their trade union subscription through their employers' payroll.

This is not in the draft Trade Union Bill but was stated in a Cabinet Office press release in August 2015, as the Government's intention to introduce it with the Trade Union Bill.

Cambridge City Council currently provides this facility for staff.

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October 2015

Extracts taken from:
LGA Advisory Bulletin No.627
Cabinet Office Press release 6 August 2015
Trade Union Bill 2015 and consultation papers.