

TRADE UNION BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Trade Union Bill as brought from the House of Lords on 25 April 2016.
- 2 These Explanatory Notes have been prepared by the Department for Business, Innovation and Skills in order to assist the reader of the Bill, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 74, the Bill as first printed for introduction in the House of Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 The second part of Lords Amendment 1 (which deals with a trade union's reasonable belief), and Lords Amendments 3 to 6, 9 to 16 and 18 to 29 were tabled in the name of the Minister.
- 6 The first part of Lords Amendment 1 (relating to ancillary workers) was tabled in the name of Lord Mendelsohn, Lord Collins of Highbury and the Minister.
- 7 Lords Amendment 2 was tabled by Lord Kerslake, Lord Stoneham of Droxford, Lord Collins of Highbury, and Lord Balfe, and was opposed by the Government.
- 8 Lords Amendments 7 and 8 were tabled by Lord Burns, Lord Tyler, Lord Cormack, and Baroness Drake, and was opposed by the Government.
- 9 Lords Amendment 17 was tabled by Lord Kerslake, Baroness Watkins of Tavistock, Baroness Hayter of Kentish Town, and Lord Stoneham of Droxford, and was opposed by the Government.
- 10 In the following Commentary, an asterisk (*) appears in the heading of any paragraph that deals with a non-Government amendment.

Commentary on Lords amendments

Lords Amendments to Clause 3: Ballots: 40% support requirement in important public services

Lords Amendment 1

- 11 The first part of Lords Amendment 1 would remove the provision that the 40% ballot threshold in important public services could apply to workers that are ancillary to the provision of important public services. It therefore would narrow the scope of the ballot threshold only to those workers who deliver an important public service specified by

Statutory Instrument. Clause 3 provides that the 40% ballot threshold only applies to ballots where the majority of eligible union members are delivering an important public service. The second part of Lords Amendment 1 would provide that unions shall have a defence to any legal challenge on the basis that they exercised their "reasonable belief" in deciding which workers were delivering an important public service.

Lords Amendment inserting a new Clause after Clause 3: Provision for electronic balloting: review and piloting scheme

Lords Amendment 2*

- 12 Lords Amendment 2 would insert a new clause into the Bill to require an independent review of electronic balloting for industrial action ballots to be commissioned within 6 months of the Bill receiving Royal Assent, and for the report of the review to be laid before both Houses of Parliament. The provision would also require the Secretary of State to consider the report and to lay before both Houses of Parliament a strategy for the rollout of secure electronic balloting.

Lords Amendment to Clause 4: Information to be included on voting paper

Lords Amendment 3

- 13 Lords Amendment 3 would require that the voting paper for an industrial action ballot must include a summary of the matter or matters in issue, to replace the provision in the Bill that requires a "reasonably detailed indication" of the matter(s) in issue.

Lords Amendments to Clause 7: Two weeks' notice to be given to employers of industrial action

Lords Amendment 4

- 14 Lords Amendment 4 would require that the union must give the employer 14 days' notice of the start of industrial action, or 7 days' notice, where there is a mutual agreement between the union and the employer.

Lords Amendment to Clause 8: Expiry of mandate for industrial action six months after date of ballot

Lords Amendment 5

- 15 Lords Amendment 5 would provide that a ballot mandate would expire six months after the date of the ballot, or up to nine months if the additional time (up to three months) is mutually agreed by the union and the union members' employer.

Lords Amendment to Clause 9: Union supervision of picketing

Lords Amendment 6

- 16 Lords Amendment 6 would require the picket supervisor, while present where picketing is taking place, to wear something that makes the picket supervisor readily identifiable.

Lords Amendments to Clause 10: Opting in by union members to contribute to political funds

Lords Amendments 7* and 8*

- 17 Lords Amendment 7 provides that, after a transition period (which is to be set out in a Statutory Instrument but is to be no shorter than 12 months), a person who joins a trade union must be asked, on a membership form (which can be in a paper or electronic form), whether they wish to contribute to the political fund. The person must also be informed that

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their decision will not affect other aspects of their membership.

- 18 After the transition period it will be unlawful for a union to require a member to contribute to the political fund if a member has opted in, either through the membership form or by giving notice.
- 19 Where a union passes a political resolution (after the transition period) to establish a political fund, then all union members would have to provide a notice saying they wish to make contributions to the political fund. Should a union member (existing or new) wish to stop contributing to a political fund, they would have to give notice to cancel the contributions. That would take effect after the period of one month. Notices to contribute to, or withdraw from, political funds would be able to be given to a union head office or branch office in person, by post, or by any authorised agent, or by electronic means.
- 20 The Certification Officer would be required to issue, within 6 months of the clause coming into effect, a code of practice setting out the minimum level of annual communication that unions with political funds must have with members contributing to the political fund to remind them of their right to cancel their contributions. The Certification Officer would be required to monitor unions' compliance with the code.
- 21 Lords Amendment 8 is consequential on Lords Amendment 7. This would delete provisions in clause 10, namely transitional arrangements which allowed a union to continue to deduct contributions from existing members who, under previous automatic opt in system were already paying into the political fund. The transitional period was 3 months. Lords Amendment 7 does not apply to existing members who are contributing to a political fund and these transitional provisions would be redundant.

Lords Amendments to Clause 11: Union's annual return to include details of political expenditure

Lords Amendment 9, 10 and 11

- 22 Lords Amendment 9, 10 and 11 would require that where a union's annual spend from its political fund exceeds £2000 in total, then the union's annual return to the Certification Officer must give the total expenditure to each political party or organisation or candidate (as applicable) within each category of expenditure on political objects in section 72(1)(a) to (f) in the 1992 Act.
- 23 For expenditure falling within section 72(1) (a), (b) and (e) the required information would be the total amount given to each named political party. For section 72(1) (c), the required information would be the election to which the money was expended, the name of each political party or organization to which money was paid and the total amount to each one.
- 24 If money is not given to a party or organisation but to a candidate, then the name of the candidate should be provided. Where money is expended in relation to candidates in general of a particular party (for example in a General Election), then the name of the political party alone should be given. The total amount of all other expenditure, not already dealt with, should also be provided.
- 25 For the category of spending under section 72(1) (d), the required information would be the total amount given to each named holder of a political office. For expenditure falling within category 72(1)(f), the required information would be the name of each organisation to which money was paid and the total amount to each; and the name of each political party or candidate whose election the expenditure was designed to support or oppose and the total paid to each one.

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- 26 For expenditure from the political fund not falling with section 72(1), the union would have to provide information in the annual return on the nature of each cause or campaign for which money was spent, the name of each organisation to which money was paid other than for a cause or campaign, and the total amount of all other money spent. Lords Amendment 11 would provide that the definitions of "candidate", "electors" and "political office" have the same meaning as section 72 of the 1992 Act.
- 27 Lords Amendment 10 would provide that the annual threshold figure of expenditure from the political fund, above which the union must give the specified information in the annual return, may, by regulations be increased above £2000. In those circumstances the regulations are subject to the negative procedure. Where the figure substituted figure is increased above £2,000 and then lowered again to a figure not lower than £2,000, therefore becoming more onerous, the regulations must be subject to the affirmative procedure.

Lords Amendments to Clause 12: Facility Time: publication requirements

Lords Amendment 12 to 16

- 28 Lords Amendment 13 would introduce a provision that the regulations made under the clause for the purposes of facility time publication requirements would either specify the public authority, or would specify a description of a public authority (for example allowing it to be a category of public authority and not all listed by name). Lords Amendment 12 would require that all regulations to apply the publication requirements must be made by statutory instrument, and Lords Amendment 16 would require that where those regulations apply to a body that is not a public authority that those regulations should be subject to the affirmative procedure. Lords Amendment 15 would provide that where a body to be subject to regulations imposing reporting requirements is not a public authority, the body must be funded mainly from public funds.

Lords Amendments to Clause 13: Facility Time: Reserve Powers

Lords Amendment 17*

- 29 Lords amendment 17 would delete clause 13, thus removing the reserve power for the Secretary of State to make Regulations to cap facility time in those public sector employers subject to the publication requirements under Clause 12.

Lords Amendments to Clause 14: Prohibition on deduction of union subscriptions from wages in public sector

Lords Amendment 18, 19 and 20

- 30 Lords Amendment 18 would provide that relevant public sector employers may make deductions of trade union subscriptions from its workers' wages ("check off") where the worker has a choice as to the method of paying subscriptions and the union makes reasonable payments (substantially equivalent to the total costs to public funds of making the deductions) to the employer for deducting the subscriptions. Lords Amendment 20 would define trade union subscriptions.
- 31 Lords Amendment 19 would provide that regulations made to list employers subject to the provisions of this clause that are not a public authority, must be funded mainly from public funds.

Lords Amendments before clause 15: Certification Officer not

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subject to ministerial direction

Lords Amendment 21

- 32 Lords Amendment 21 would provide that the Certification Officer (who is appointed by the Secretary of State) is not to be subject to directions from Ministers as to the manner in which the Certification Officer is to exercise the functions of that office.

Lords Amendments to Clause 18: Power to impose levy

Lords Amendments 22, 23, and 24

- 33 Lords Amendments 22, 23 and 24 would ensure that, for the purposes of determining the amount of the levy payable by relevant organisations, regulations would enable federated trade unions to be charged a different rate to trade unions. This would mirror the arrangements in Clause 18 for federated employers' associations to be charged a different rate of levy to employers' associations.

Lords Amendment after clause 18: Rights of appeal not limited to questions of law

Lords Amendment 25

- 34 Lords Amendment 25 would enable a union or employers' association to appeal a decision of the Certification Officer (under the statutory provisions specified) to an Employment Appeal Tribunal whether the appeal was based on points fact or points of law.

Lords Amendment to Schedule 1: Certification Officer: Investigatory Powers

Lords Amendment 26

- 35 Lords Amendment 26 would require the Certification Officer to have reasonable grounds to suspect that a union has breached statutory obligations before he could appoint an inspector (be it a member of his staff or an external inspector) to conduct an investigation.

Lords Amendment to Schedule 4: Minor and Consequential Amendments

Lords Amendment 27, 28 and 29

- 36 Lords Amendment 28 would add section references to enable the Certification Officer to regulate procedure in relation to his investigations carried out without a complaint from a union member in the same way he currently can for investigations arising from a complaint.
- 37 Lords amendments 27 and 29 provide necessary consequential amendments. The Bill consolidates the Certification Officer's investigatory powers, superseding the powers in relation to trade union membership registers to be introduced into the 1992 Act by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 ("the Transparency of Lobbying Act 2014"). The Bill was originally drafted to revoke the Transparency of Lobbying Act 2014 provisions as a consequence. The Transparency of Lobbying Act 2014 provisions are due to take effect on 1 June 2016, and therefore Lords Amendments 27 to 29 are necessary to ensure consequential amendments are made to the 1992 Act directly, instead of amending the Transparency of Lobbying Act 2014.

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