

Industrial Action

Version 02 - 30th June 2026

Introduction

Labour's Plan to Make Work Pay: Delivering A New Deal for Working People (2024) made a commitment 'to repealing anti-trade union legislation... in order to remove unnecessary restrictions on trade union activity'. The *New Deal for Working People* (2021) had stated that 'the laws regulating industrial action should ensure that UK law complies in every respect with the international obligations ratified by the UK, including those of the International Labour Organization and the European Social Charter' but this was omitted from *Labour's Plan*.

What does the Act do?

The Employment Rights Act repeals the worst aspects of Conservative restrictions of the right to strike but does not change the fundamental architecture of the anti-strike legislation introduced from 1980 onwards.

- Sections 68 to 73 of the Act address the law relating to industrial action ballots. Section 68 purports to remove the requirement that at least 50% of the trade union members entitled to vote in an industrial action ballot must do so. Section 69 repeals the requirement that trade unions obtain the support of at least 40% of those voting in industrial action ballots concerning designated 'important public services'. Section 70 reduces requirements concerning the content of notices to employers, amending s.226A of the Trade Union and Labour Relations (Consolidation) Act (TULRCA) 1992.
- Section 71 removes requirements regarding the information to be included on the voting paper. Most significant is the change to the period after which the industrial action ballot ceases to be effect, which is now 12 months. Further provision is made in section 73 for exploration of the possibilities of 'electronic balloting'.
- Under section 74, the period of notice to employers of industrial action is reduced from 14 to 10 days.
- Requirements for union supervision of picketing are relaxed under section 75.
- The Supreme Court judgment in *Secretary of State for Business and Trade v Mercer* [2024] UKSC 12 (17 April 2024) is amended by section 76, which introduces the potential for new protection from detriment for taking official and protected industrial action (under new sections 236A - D of TULRCA 1992). The Government has since confirmed that its intention is that, apart from proportionate deduction of wages, no detriment is acceptable.
- In addition, protection from dismissal for taking official and protected industrial action is no longer restricted to a 12 week period. Due to section 77, this protection will apply irrespective of the length of the strike action.

- The Act also repeals the discredited Strikes (Minimum Service Levels) Act 2023 (in section 78). And it removes the requirement to include in trade union annual returns details of strike action taken during the reporting period.

What are the defects?

Contrary to Labour's commitment to repeal most of the Trade Union Act 2016, the Act provides for repeal of the highly controversial requirement for a 50% turnout threshold in pre-strike ballots but then defers that repeal indefinitely (see section 159(5)). As things stand, it is unclear whether repeal of the 50% turnout threshold will ever be given effect.

In breach of the commitment in the *New Deal*, the Act leaves in place nearly all of the anti-union legislation passed between 1982-1992, which has so disempowered unions. In particular, it fails to make the changes necessary to comply with the UK's international obligations set out in findings against the UK by the ILO supervisory bodies and the Council of Europe's Social Rights Committee, which have been pointed out repeatedly over three decades. The government was reminded of these obligations by the Social Rights Committee in March 2023 when it concluded that the United Kingdom was in breach of the European Social Charter 1961, art 6(4) (on the right to strike) for the following reasons:

- the scope for workers to defend their interests through lawful collective action was excessively circumscribed; lawful collective action was limited to disputes between workers and their employer, thus preventing a union from taking action against a de facto employer if this was not the immediate employer;
- the requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking action, was excessive;
- the protection of workers against dismissal when taking industrial action was insufficient.

The government was reminded of these obligations again later in 2023 by the report of the ILO Freedom of Association Committee on the P&O Ferries case, where the Committee requested the British government 'to engage with the social partners to overcome challenges regarding the legislative prohibition on sympathy strikes, in conformity with freedom of association'. This request was repeated again by the ILO Committee of Experts in its 2026 annual review.

Earlier this year too, the Social Rights Committee added to the list of UK violations by condemning the ban on prison officers taking strike action (which only applies in England and Wales and not in Scotland). The government has refused to reverse this ban.

continued overleaf...



For further details, and up to date information once consultations conclude and regulations are published, see IER's new *Working Life Podcast*, or scan this QR code.

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What needs to be done?

The repeal of the requirement for a 50% turnout threshold in pre-strike ballots should be given effect without further delay.

Additionally, the Act should be amended to ensure the UK's compliance with ILO and Council of Europe treaties. This was the demand of the *New Deal* and seemed inherent in the commitment in the pre-election Labour Party publication which said: 'Labour will update trade union legislation so it is fit for a modern economy, removing unnecessary restrictions on trade union activity and ensuring industrial relations are based around good faith negotiation and bargaining. This will end the Conservatives' scorched-earth approach to industrial relations'.

With this in mind, amendments are necessary to remove:

- *the restriction of lawful industrial action to a dispute which relates 'wholly or mainly' to a trade dispute rather than being merely 'connected with' a trade dispute (the former wording);*
- *the prohibition of political strikes because 'trade unions ought to have the possibility of recourse to protest strikes, in particular where aimed at criticising a government's economic and social policies';*
- *the limitation on industrial action in support of matters outside the UK except where UK workers are likely be affected by the outcome of the dispute.*
- *the total bar on solidarity action, i.e. action against an employer not the employer of the workers in dispute; in particular: (a) where solidarity action 'relates directly to the social and economic interests of the workers involved in either or both of the original dispute and the secondary action, and where the original dispute and the solidarity action are not unlawful in themselves'; (b) because workers should be able to take such action provided the initial strike they are supporting is itself lawful; AND (c) where the bar 'could make it impossible for unions to take effective action in situations where the "real" employer with whom they were in dispute was able to take refuge behind one or more subsidiary companies who were technically the "employer" of the workers concerned';*
- *the prohibition on taking industrial action in support of workers dismissed for taking unofficial industrial action;*
- *the requirement to give notice to an employer of an intention to hold an industrial action ballot*
- *the restrictions on 'unjustifiable discipline' which prevent unions from disciplining of members for not participating in lawful industrial action;*
- *the limitation of pickets to their own place of work;*
- *the 'volume and complexity of the legislative change since 1980' where 'the cumulative effect of legislative changes..., by virtue of their complexity and extent, constitute an incursion upon the rights guaranteed by [the ILO]';*
- *repealing the ban on prison officers in England and Wales striking.*



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