

THE EMPLOYMENT RIGHT BILL 2024

IER

NOVEMBER 2025

Overview

- Repeal the Strikes (MSL) Act 2023
- Repeal most of the TUA 2016
- Reform IA ballots, notices and the information to employers
- Protection from detriment for taking part in industrial action
- Simplifying trade union recognition
- New right for TU's to access workplaces & employers to inform workers of the right to join a TU
- New rights and protections for TU reps & Equality Reps

PART 4

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INDUSTRIAL ACTION - What will change

The current position	What will change	When enforce
Turnout at least 50%	A simple majority will be required	Expected April 2026 to coincide with the electronic balloting
40% threshold in important public services	repealed	2 months after Royal Assent
Notice of Ballot - List of the categories of workers and the workplaces - Total number of workers - Numbers of workers in each category and workplace - Explanation of how those numbers were arrived at - At least 3 days before the ballot give the employer a sample ballot paper - Appoint an independent scrutineer - Name of the independent scrutineer, the address to which it must be sent, the date by which it must be received and a consecutive number	Notice of Ballot - A list of categories of workers being balloted, - A list of workplaces where the workers work - Total number of workers concerned	2 months after Royal Assent
Information on the ballot paper - Contain a reasonable summary of the matters - Specify when IA is expected to take place - Specify who is authorised to call the action - Framed question on the ballot paper - Two separate questions if it's for both strike action and action short of a strike - Type of action must be set out where the ballot is for action short of a strike - A specified statement regarding the fact that by taking part in IA the work may be in breach of contract and the rules on unfair dismissal part in official IA	Information on the ballot paper - Specify when IA is expected to take place - Specify who is authorised to call the action - Framed question on the ballot paper - Two separate questions if it's for both strike action and action short of a strike - The type of industrial action members want to take part in is limited to strike action or action short of a strike - The specified statement taking part in IA in breach of contract	2 months after Royal Assent

INDUSTRIAL ACTION - What will change

The current position	What will change	When enforce
Notice of action 14 days before IA the Union must give notice to the employer	Notice of Action Reduced to 10 days	2 months after Royal Assent
Notice of IA • Be in writing • Specify whether the action is continuous or if it is discontinuous • A list of the categories of workers and the workplaces • The total no. of workers • The no. of each workers in each category and workplace • Explanation of how those numbers were arrived at	Notice of IA • Be in writing • Specify whether action is continuous or discontinuous • A list of the categories of workers and the workplaces • Total no. of workers have been called to take IA • The no. of employees from each workplace • Categories of employees called to take IA • Explanation of how those numbers were arrived at	2 months after Royal Assent
Ballot result Notified to employers as soon as possible after the result		
Life of the ballot Six months from the date of the ballot month	Life of the Ballot Extend the expiry of a Union's mandate for industrial action from 6 to 12 months after the date of the ballot	2 months after Royal Assent

INDUSTRIAL ACTION

Intended impact of the changes:

“This will reduce the scope for spurious legal challenges based on minor technicalities against industrial action that has the democratic support of the workplace” (“ Factsheet: Simplifying IA and Ballot Notices)

But will it?

- Reducing the information the union is required to provide in the Notice of Ballot and Notice of Action should reduce the number of challenges by employers seeking an injunction to prevent IA.
- ***Metrobus v Unite the Union [2010] ICR 173*** – concerned the obligation on the union to inform the employer of the result of the ballot “as soon as is reasonably practicable”. The CA held a delay of one day from when the union received the ballot result from the independent scrutineer meant that the union had not informed the as soon as is reasonably practicable”.
- Likewise, the requirement for the Union to take reasonable steps to ballot those it reasonably believes will be entitled to vote means that there is no let up painstaking membership data checking procedures

DETRIMENT FOR TAKING INDUSTRIAL ACTION

- A new right that a worker cannot be subject to a detriment by an employer for taking part in IA
- Detriment is to be prescribed by regulations

Impact

- Secretary of State for Business and Trade v Mercer [2024] ICR 814
- Expected October 2026 – following consultation on regulations



PROTECTION FROM DISMISSAL FOR TAKING PART IN IA

Current position	Change	In force
Workers are protected against being dismissed for taking part in protected industrial action for the first 12 weeks	Extension to the right not to be dismissed for taking part in industrial action throughout the whole period of IA	On Royal Assent
Impact		

TRADE UNION RECOGNITION

Current	change	In force
Requirement to show 10% membership of the proposed BU	Replace the 10% admissibility test with a “required percentage test” between 2% and 10%	
Requirement to show likely to obtain a majority in a recognition ballot in admissibility test	Repealed	
If there is a ballot the union must win and 40% of the bargaining unit must vote in favour of recognition.	a simple majority	
	CAC to require employers 5 working days notice to provide certain info about workers and the BU	
	Any worker who joins the BU after the application day is excluded	
	If employer voluntarily recognises a non-indep union, an indep union still able to apply for recognition	

TRADE UNION RECOGNITION

Impact

- The removal of the requirement for the union to show at the admissibility stage that it is likely there will be a majority in favour of union recognition will remove a significant hurdle for unions where the margins are close
- Employers will be prevented from flooding the bargaining unit as they will be unable to include new recruits into the bargaining unit once the union has submitted its application
- Prevents sweetheart deals from undermining a union's application for recognition.

TRADE UNION ACCESS

TRADE UNION ACCESS

Current position

- Voluntary access agreements only.
- TUs have no independent right of access to workplaces where the union is not recognised

Change

- Right for one or more officials of an independent trade union to enter into an “access agreements” with employers
- “Access” means physical entry to the workplace and communicate (including providing information to workers) directly or indirectly for “access purposes”
- “**access purposes**” are to meet, support, represent, recruit or organize workers (whether or not they are a member of a trade union) and to facilitate collective bargaining
- How the right of access will work is subject to [consultation](#) which was launched on 23 October 2025 :

TRADE UNION ACCESS

- The Consultation proposes a short fixed period to see if an access agreement can be reached before the Union can apply to the CAC this involves
 - One or more TU officials make a written request to the employer in a prescribed form
 - Employer has 5 working days to respond to the union's access request.
 - If the employer agrees, the employer and union will enter a negotiation period suggested to be 15 working days to agree the access terms.
 - If terms are not reached, the Union can submit an initial request to make an application to the CAC within 25 days from their initial request make an initial request to the CAC who can decide whether or not access is granted
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TRADE UNION ACCESS

Voluntary access

If the employer does not agree to the unions written request for access, the union can apply to the CAC for determination as to whether or not access be granted (this should be within 25 days of the day the access request was made).

Determination by the CAC

- The CAC must make its decision on access in a manner consistent with the access principles.
- The access principles are
 - That officials of a trade union should be able to access a workplace for any of the access purposes in any manner which does not unreasonably interfere with an employer's business.
 - An employer should take reasonable steps to facilitate access by officials of a listed trade union.
 - Access should only be refused where it is reasonable in all the circumstances to do so
- The consultation suggests that business with fewer than 21 employees will be exempt
- If the employer already recognises a union in the workplace this does not block another union from being able to secure access
- While employers will need to take responsible steps to facilitate union access, the consultation propose is that employers should not be required to allocate more recourse than is required. (E.g. Construct new meeting places or implement new IT systems)

TRADE UNION ACCESS

Enforcement

- Access agreement can only be enforced by means of complaint to the CAC which is not legal enforceable as a contract
- A complaint can be made to the CAC on the basis that the other party has breached the agreement or a non-party has taken or is taking steps to prevent access
- The complaint must be lodged within 3 months, beginning with the day on which the matter of complaint of its alleged of occurred, the CAC may make reasonable request to provide information or document which are relevant to the application, including access to any person who has a proper interest in the complaint to be heard

Power of the CAC

- To vary the access agreement
- Make a declaration that the complaint is or is not well-founded

If the complaint is well-founded, the CAC can order the steps to be taken to ensure access takes place in accordance with the agreement

If the CAC makes a declaration that a complaint is well-founded, then a party can apply to the CAC if there has been another breach within the last 12 months

CAC can then make a declaration that the complaint is or is not well-founded

- If it makes a declaration the complaint is well-founded, then it can order a person to pay a fine
- An appeal can be made to the EAT on a question of a law arising from any CAC determination, declaration, or order requiring payment of a penalty.

TRADE UNION ACCESS

- Impact ???

Right to Written Statement

Duty to inform workers of the right to join a union

- All workers will be entitled to receive a written statement of their right to join a trade union
 - To be given when/before the worker begins employment
 - Provision for the statement to be given at any other time to be prescribed by regulations
 - No standalone right to bring a claim if a worker is not provided with a written statement
 - A right to an additional compensation where a claim was brought into an ET subject to the claim succeeding
 - Government consultation launched 23 October 2025 proposes that the statement include
 - a brief overview of the functions of the trade union,
 - a summary of the statutory right in relation to union membership,
 - a list of all the trade unions the employer recognises (if any)
 - A signpost to Gov.UK with a list of TU's
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Blacklisting

Blacklisting

- The current regulations (The Employment Relations Act 1999 (Blacklists) Regulations 2010) make it unlawful to compile, sell, supply or use a “prohibited list”.
- A prohibited list is one that contains details of trade union members or of persons who have taken part in trade union activities and is compiled with a view to being used for the purposes of discrimination.
- One potential loophole in the existing provisions is that the regulations may not be breached where the list is not compiled for the purposes of discrimination but is subsequently used for that purpose.
- The Bill enables regulations to be made **to prohibit lists that are not prepared for the purpose of discrimination but which are subsequently used for that purpose** and to make provision in relation to third party use of blacklists (i.e not just employers and employment agencies)
- **Due to come into force two months after Royal Assent**

Facilities for Trade Union Representatives

TRADE UNION FACILITIES

Current law

- An official of an independent trade union recognised by the employer is entitled to take paid time off during their working hours for the purpose of carrying out trade union duties (section 168, TULRCA 1992).
- A member of an independent trade union recognised by the employer who is a trade union learning representative is entitled to take paid time off during their working hours for various purposes (section 168A, TULRCA 1992).

New provision

- An employer who permits an employee to take time off to carry out TU duties will be required to provide accommodation and other facilities for carrying out the duties or undergoing the training for which the employee takes time off as is reasonable in all the circumstances,

TRADE UNION FACILITIES

New right for equality reps to take time off during working hours to undertake or prepare to undertake the following:

- Carrying out activities for the purpose of promoting the value of equality in the workplace.
- Arranging learning or training on matters relating to equality in the workplace.
- Providing information, advice or support to qualifying members of the trade union in relation to matters relating to equality in the workplace.
- Consulting with the employer on matters relating to equality in the workplace.
- Obtaining and analysing information relating to equality in the workplace.
- Only apply if the TU has given the employer notice in writing that the employee is an equality rep; and
- The employee has undergone or will be undergoing (in the next 6 months) sufficient training to enable them to carry on the above activities

TRADE UNION LABOUR REFORMS

- Reversal of requirement to opt in to Political Fund.
- Repeal restrictions on arrangements for check-off in public sector.
- Repeal of regulations introduced by TU Act 2016 that currently allow Ministers to make regulations requiring public sector employers to report the time taken off for trade union duties and trade union activities.
- Removal of obligations to report to CO on recent industrial action & political expenditure.

What next?