Consultation on the Certification Officer’s enforcement powers

Purpose of this consultation

The Government is consulting on the detail of our proposed implementation of the financial penalties regime under the Trade Union Act. We welcome views from unions, employer associations, and other interested organisations and individuals on our proposals.

The consultation and draft Regulations are available on GOV.UK

You can also complete your response online

Alternatively, you can e-mail or post the completed response form to:

Certification Officer’s enforcement powers consultation
Sponsorship and Trade Union Reform Team
Department for Business, Energy and Industrial Strategy,
3rd Floor, Abbey 1
1 Victoria Street,
London, SW1H 0ET

Email: tufinancialpenalties@beis.gov.uk

The closing date for the consultation is 21 May 2017.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see the consultation document for further information.

If you want information, including personal data, that you provide to be treated as confidential, please explain to us below why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we shall take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential ☐

Comments: Click here to enter text.
Questions

1. Name: Richard Pursand (Secretary to the BMA Trade Dispute Preparedness Group)

2. Organisation (if applicable): British Medical Association

3. Email address: rpursand@bma.org.uk

4. If you are representing an organisation, what type of organisation is it?

Please check a box from a list of options that best describes you as a respondent. This allows views to be presented by group type.

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<thead>
<tr>
<th>Respondent type</th>
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<tr>
<td>☒ Trade Union</td>
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<td>☐ Federated Trade Union</td>
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<td>☐ Employer Association</td>
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<td>☐ Federated Employer Association</td>
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<td>☐ Individual</td>
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<td>☐ Other organisation (please describe)</td>
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5. If you are a union, a federated trade union, an employer association or federated employer association, is your total membership:

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<thead>
<tr>
<th>Respondent type</th>
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<tbody>
<tr>
<td>☐ Under 1,000</td>
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<td>☐ Between 1,000 – 5,000</td>
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<td>☐ Between 50,000 – 100,000</td>
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<td>☒ 100,000 or more</td>
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</table>
Questions

6. Do you agree with the proposed approach to set the level of financial penalty by type of obligation breached?

☒ Yes
☐ No

Comment

The BMA continues to believe that the Trade Union Act 2016 risks diminishing not only the important role trade unions play in the workplace but also their legitimate right and need to represent their members’ interest, as well as undermining workers’ rights to representation and their right to express an opinion through industrial action, which is taken as a last resort.

However, the BMA, as a responsible trade union, also remains equally cognisant of the importance of operating in accordance with its statutory obligations, and believes that there is some merit in ensuring that the financial penalty for a breach of those obligations is commensurate with the seriousness of the obligation which has been breached.

While the BMA recognises that meeting all statutory obligations is a serious and important matter, we appreciate that breaching rules on political funding, or a failure to follow appropriate procedure in electing the chair of the Association are matters of the utmost seriousness and it is right and proper that such breaches be dealt with in an equally serious manner. Equally, a failure to keep the membership register up to date, while an important obligation, is perhaps not as important as the obligation to elect the chair of a trade union.

7. Are the maximum levels by type of obligation breached (levels 1, 2 and 3) appropriate?

☒ Yes
☐ No

Comment:

Notwithstanding the BMA’s above continued opposition to the Trade Union Act 2016, and the restrictions which it places on the ability of trade unions to represent their members’ interests, we believe that the proposed fines, while certainly significant, are not excessively so.

Equally, while we agree that breaching, for instance, the rules on using union funds in the furtherance of political objects, is a significant and serious matter, we find it difficult to exactly define what an appropriate level of fine would be, and find it as difficult to argue that the 3 proposed levels outlined in the consultation either are or are not appropriate.
8. Do you agree with the approach to reduce the penalty maxima by 50% for unions and employer associations whose membership size is less than 100,000?

☒ Yes
☐ No

Comment:

We believe that it is entirely reasonable that the smaller trade unions be subject to a potentially smaller fine than the larger ones.

However, we wonder why 100,000 and above has seemingly arbitrarily been chosen as the cut-off point, and ask that consideration be given to implementing a further granulated sliding scale to be used to determine the maximum amount which a union could be asked to pay.

9. Do you agree with the proposed approach not to add to this list of grounds upon which an appeal may be made?

☒ Yes
☐ No

Comment

The Act provides that penalties will be appealable on three grounds: points of law, points of fact, and on the reasonableness of the penalty imposed.

We are content that those grounds for appeal are reasonable.

10. Do you agree with the proposed approach that interest will accrue for late payment of financial penalties?

☒ Yes
☐ No

Comment

Again, notwithstanding our continued overall opposition to the 2016 Act, as a responsible trade union, the BMA believes that it is right and proper that penalties imposed for breaching its statutory obligations should be paid in a full and timely fashion.