The British Medical Association (BMA) is an apolitical professional association and independent trade union, representing doctors and medical students from all branches of medicine across the UK and supporting them to deliver the highest standards of patient care. We have a membership of over 160,000, which continues to grow each year.

This briefing highlights the BMA’s views on a number of the proposed measures included in the Trade Union Bill, including the introduction of ballot thresholds for industrial action.

Introduction
The BMA does not have a political fund and is not affiliated to any political party or to the Trades Union Congress.

Industrial action is not a step that doctors take lightly. On 19 November 2015, the BMA announced that junior doctors had overwhelmingly voted in favour of industrial action following the Government’s threat to impose a new junior doctor contract from August 2016. Following a ballot of more than 37,000 junior doctors in England, which achieved a turnout of over 76 per cent, more than 99 per cent voted in favour of industrial action short of a strike and 98 per cent for full strike action, demonstrating the strength of feeling amongst the profession. The size of the mandate shows the scale of the breakdown of trust that has occurred between junior doctors and the Government.

While the BMA regrets the inevitable disruption industrial action will cause, junior doctors have clearly been left with no alternative due to the Government’s continued threat to impose a contract that is unsafe for patients and unfair for doctors.

The BMA is against this Bill in its entirety and calls for it to be withdrawn or voted against.

Executive summary
- The BMA believes that the Trade Union Bill risks diminishing not only the important role trade unions play in the work place, but also their legitimate right and need to represent their members’ interests. The imposition of tighter restrictions on trade unions may have the inadvertent effect of prolonging workplace disputes, thereby making it more difficult to resolve disputes amicably.
- The Bill undermines workers’ rights to representation and their right to express an opinion through industrial action, which is taken as a last resort. The BMA would always prefer to negotiate for a solution that is fair to both employees and employers.
- Industrial action by trade unions, particularly in the health sector, is at historically low levels.
The introduction of ballot thresholds (Clauses 2 and 3) are arbitrary, unnecessary and place punitive restrictions on workers employed in specified public services. Despite the Government’s claim that these measures are ‘not an attempt to ban industrial action’, the purpose of the ‘double threshold’ appears simply to be to make it more difficult for all unions to organise industrial action.¹

New powers for the Certification Officer threaten to intrude into union activities and affairs and presents a potential invasion of trade union members’ rights to privacy.

The Secretary of State for Business, Innovation and Skills has stated that ‘this Bill is not a declaration of war on the trade union movement’.² However, this Bill, alongside the measures introduced by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, appears to be another ideological attempt by the Government to curtail the legitimate activities of trade unions.

The Trade Union Bill
The Bill introduces a number of amendments to Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) including:

- A requirement for a minimum threshold of a 50% turnout in all industrial action ballots (Clause 2)
- A requirement for 40% support in favour of industrial action for specified important public services, including health (Clause 3)
- Requirements for information to be given to the Certification Officer following a ballot and new investigatory powers and sanctions available to the Certification Officer and arrangements for funding the Certification Office (Clauses 6, 14, 15, 16, 17, Schedule 1, Schedule 2)
- A requirement on public sector employers to publish data on the number of union officials they employ and the amount spent paying union officials for facilities time (Clause 12)
- New powers for the Secretary of State to introduce and/or amend caps on the amount of facilities time at a future date (Clause 13)

The BMA’s concerns

Ballots: 50% turnout requirement (Clause 2) and 40% support requirement in important public services (Clause 3)

Clause 2 of the Trade Union Bill seeks to amend TULRCA by introducing a requirement for a minimum threshold of a 50% turnout in all industrial action ballots. Clause 3 introduces an additional higher level of support of 40% of the eligible membership in favour of industrial action for specified important public services, including health, for any subsequent action taken to be legal. Therefore, if a union achieved a 50% response rate to its ballot, then 80% (40% of the entire eligible membership) of those respondents would need to vote in favour of strike action for it to be legal.

The BMA believes that the ballot threshold levels introduced under this Bill are arbitrary, unnecessary and inappropriate. We have seen no evidence as to why an additional 40% threshold in ‘important public services’ has been chosen; the purpose of this double threshold appears only to be to make it more difficult for unions to organise legitimate industrial action.

Trade unions must already gain a vote of support of 40% of its members under the rulings of TULRCA in order for its representation as a bargaining unit and legitimise the union’s right to
represent them. The BMA believes that introducing such a threshold for each instance of industrial action, which are at historically low levels anyway, is completely unnecessary.

Industrial action already requires a majority of members’ votes cast to be in favour to proceed; an additional 40% support requirement in ‘important public services’ appears to place particularly punitive restrictions on workers in these unions. It implies that the current situation leads to illegitimate industrial action; the government’s consultation on ‘Ballot thresholds in important public services’ goes as far as to label it “undemocratic”. The introduction of a ‘40% threshold’ of all members assumes that all those who abstain from voting, would vote ‘no’. There is no basis for such an assumption. In fact, there is no evidence to suggest that those who vote are unrepresentative of the membership body as a whole.

International comparisons of industrial action regulations show the thresholds proposed in the Trade Union Bill are excessive. In France, Greece, Italy, Norway, Spain and Germany, ballots are not even required if the action decided by the trade union body is deemed “reasonable” or “generally acceptable” in line with a number of key principles that vary by country. In order to find comparisons to the restrictions proposed by the government, it is necessary to look to former communist-ruled eastern Europe.

Strikes in the Czech Republic require the consent of at least one third of those eligible to vote: even this is lower than the forty per cent threshold proposed in the Trade Union Bill. In Bulgaria, Slovakia and Romania, industrial action is only lawful if a majority of the entire electorate i.e. more than 50 percent vote in favour of industrial action. Latvia and Lithuania require various forms of three-quarters majority for strike action to go ahead. These are the only countries we are aware of that operate higher thresholds than those proposed in the government’s Trade Union Bill.

New powers for the Certification Officer (Clause 6, Clause 14, Schedule 1, Clause 16, Schedule 3, Clause 17)

The Trade Union Bill introduces a range of new requirements and powers for the Certification Officer and for the Certification Office. Clause 6 requires a trade union to provide a range of information to the Certification Officer in its annual return, including whether any industrial action has taken place, the nature of the disputes, any action taken as well as the turnout and ballot results. Clause 14 grants the Certification Officer new investigatory and enforcement powers: the Certification Officer will be able to initiate investigations or act on intelligence received by a third party, such as an employer or a member of the public.

Clause 14, Schedule 1, inserts new Schedule A3 into TULRCA. Paragraphs 3 and 5 of the new Schedule outline circumstances where disclosures of a member’s name or address is permitted and proposals for enforcement orders, which will place requirements on a union or person to produce documents, supply information or to co-operate with inspectors.

The BMA is deeply concerned by this development: not only is this an intrusion into union activities and affairs, these new powers present a potential invasion of trade union members’ rights to privacy. In addition to the administrative and bureaucratic burden this will place on trade unions, the BMA is also questioning why this suite of data is required to be collected at all by the Certification Officer.
Clause 17 enforces a levy on trade unions to cover the potentially significant running costs of the Certification Officer and the extensive new powers the Certification Officer will be granted. The BMA notes that the Government is consulting at what level the levy should be set but would insist that any costs are proportionate if this legislation is passed in its current form. Furthermore, any additional costs introduced by this Bill will be incurred alongside the costs imposed on trade unions the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, to appoint an ‘assurer’ to validate a trade union’s process of maintaining membership records.

Restrictions on paid time off for trade union activities (Clause 12 and 13)
Clause 12 inserts a new section 172A into TULRCA which gives the Government the power to require all public sector employers to publish data on activities undertaken by trade union officials. Clause 13 also gives the Government the power to impose a cap on the proportion of working time spent by a public sector worker on trade union activities.

While it has been suggested that this new provision is designed to ‘promote transparency and public scrutiny of facility time, the BMA is deeply concerned that could be used by the Government to restrict the ability of unions to represent their members on a range of issues, such as health and safety and workplace representation. This is another unnecessary and unfair intrusion into the activities of trade unions that are legitimately representing the rights of their members.

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1 The Secretary of State for Business, Innovation and Skills (Sajid Javid), Trade Union Bill, Second Reading, 14th September 2015: http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150914/debtext/150914-0001.htm#150914600001
2 The Secretary of State for Business, Innovation and Skills (Sajid Javid), Trade Union Bill, Second Reading, 14th September 2015: http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150914/debtext/150914-0001.htm#150914600001