September 2015

Dear Sir/Madam

Trade Union Bill

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 154,000, which continues to grow every year.

We welcome the statement that “trade unions can play an important role in the work place” and that “they have a legitimate need to represent their members’ interests”. However, the restrictions set out within this Bill will significantly diminish trade unions’ ability to do so and should be withdrawn.

We note that there are three consultations in respect of the Trade Union Bill currently open. We will focus our initial comments to the consultation on ballot thresholds. The consultation states that the changes are intended to ensure that industrial action should only be “used as a measure of last resort”; however, this is clearly already the case. Industrial action by trade unions is now used far less frequently than it was thirty years ago when nearly five million working days a year were lost due to strike action. Chart one shows the long-run trend in industrial action over the last forty years. There are two significant spikes, firstly during the 1978-79 “winter of discontent” and five years later during the miners’ strike of 1984-85.

![Chart One: Days lost to work stoppages (thousands) 1974-2014](source: Office for National Statistics, Labour Disputes Annual Article, 2014.)

Chief executive: Keith Ward

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Registered office: BMA House, Tavistock Square, London, WC1H 9JP.
Listed as a Trade Union under the Trade Union and Labour Relations Act 1974.
There was a slight spike in 2011, largely attributable to a number of large scale public sector strikes in response to the proposed changes to public sector pension schemes. However, even taking these into account, there is a clear downward trend in the incidence of industrial action, now an extremely rare occurrence.

Furthermore, the health sector (classified as human health and social work in the data) sees some of the lowest levels of industrial action activity amongst all sectors in the economy. In the health sector only 9 working days were lost per 1,000 employees in 2014, compared to figures in the hundreds in other sectors.

What these figures show is that industrial action by trade unions is at historically low levels. The consultation describes a country heavily affected by industrial action, which is plainly not reflective of the reality today. We believe these measures are brought forward at a time when they are simply not needed; they purport to solve a problem that doesn’t exist.

There are already strict rules governing industrial action – it is already seen as the last resort during labour disputes as evidenced by the paucity of activity in recent years. For example, there are stringent timelines that must be adhered to with employers regarding ballots, and specific procedures to follow regarding the distribution of the ballot itself.

The ballot threshold levels introduced under this Bill are unnecessary, as demonstrated above, but they are also unfounded. There is no evidence as to why the forty per cent threshold in ‘important public services’ has been chosen. While the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) requires that at least forty percent of the employees in a bargaining unit must vote to recognise the union, such a threshold is inappropriate for each individual instance of industrial action once a union has secured the necessary support from the workforce for recognition by the employer. It appears to be an arbitrary figure. For industrial action to proceed, there is already a requirement for a majority of members’ votes cast to support such action. That forty percent of the entire electorate would be required to be in favour of industrial action for it to be legitimate is a punitive restriction, singling out public sector workers when there are no such participation thresholds for the election of parliamentary and other representatives.

Looking at international comparisons of industrial action regulations, those proposed appear harsh in a context of regulations that are already more restrictive than in many of the advanced economies of the world. In most countries, such as France, Greece, Italy, Norway, Spain and Germany, ballots are not 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 many other countries (Iceland and Poland for example) a simple majority of voting members is required for a strike to be lawful, as is currently the case in the UK. In Australia, half of those eligible to do so must vote before a strike is lawfully authorised. In Denmark, three-quarters of those who do vote must support the action for it to go ahead. However, these ballot thresholds are not operated in the same way as that described in the Bill proposed for the UK which is considerably stricter. For similar comparisons we must look at the Czech Republic, Bulgaria, and Slovakia.

 Strikes in the Czech Republic require the consent of at least one third of those eligible to vote, lower than the proposed forty per cent threshold. 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 here.

However in Bulgaria, the International Labour Organisation (ILO) Committee of Experts (an independent body of jurists which supervises the operation of ILO Conventions) deemed that this condition breached ILO conventions on the freedom of association and the right to organise. These conventions set out that in strike ballots ‘account should only be taken of the votes cast’, while any ‘required quorum and
majority should be fixed at a reasonable level'. Consequently, the Bulgarian government was urged to change the law 'in order to bring it into closer conformity with the principles of freedom of association'.

In parallel with this consultation, the Government is also seeking views on the removal of Regulation 7 of Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the 'Conduct Regulations'). This regulation prohibits the provision of agency workers to cover the duties normally performed by an employee taking part in industrial action. We understand that, as with the proposals relating to ballot thresholds, such a change to the law would be in contravention of the position of the ILO. Specifically, paragraph 6 of the Private Employment Agencies Recommendation, 1997 (No. 188) states that:

Private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike.

Therefore, we question the wisdom of pursuing changes to the legal framework for the regulation of employment relations which place the UK so far from the consensus on labour standards set by the international community.

The logic behind the forty per cent threshold seems questionable as it implies that the current situation leads to illegitimate industrial action. The consultation goes as far as to label it "undemocratic". When a majority of voting members must support an action (as is currently the case), the introduction of a forty per cent 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. It is the introduction of the additional forty per cent threshold that is, in fact, "undemocratic".

To conclude, the ballot thresholds set out in the Trade Union Bill are unnecessary, mistimed, inappropriate and unfounded. They are unnecessary and mistimed because trade union activity, particularly in the health sector, is already at historically low levels. They are inappropriate because they impinge on trade unions' ability to represent members' interests, a vital tool in work place relations as explicitly recognised in the consultation documents. The proposed restrictions are also unfounded in evidence: there is no reason to suggest that those who abstain would oppose action, and represent some of the tightest restrictions on collective action in the international community.

For these reasons, we strongly oppose these provisions and call on the government to withdraw them.

Yours sincerely

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