



**BRIEFING PAPER**

Number CBP 7882, 26 January 2017

# Trade union legislation 1979-2010

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## Summary

This note summarises the major pieces of trade union legislation introduced under the 1979 - 1997 Conservative governments, and that enacted under Labour governments between 1997 and 2010. Most of this legislation is consolidated in the *Trade Union and Labour Relations (Consolidation) Act 1992* as amended.

Both the Coalition Government (2010-2015) and the current Conservative Government (2015 - ) have made further significant amendments to trade union law, which are discussed in the Library's [briefing](#) on the *Trade Union Bill 2015-16*, now the *Trade Union Act 2016*.

# 1. Conservative trade union legislation 1979-1997

## Employment Act 1980

- Encouraged **secret ballots** both on proposed industrial action and in electing union officials by making public funds available [sections 1-2]. This was superseded by the *Trade Union Act 1984* and the *Trade Union and Employment Rights Act 1993* which required secret ballots and withdrew public funding.
- Limited the **closed shop** by protecting from dismissal workers who objected to union membership on grounds of conscience or other deeply held personal conviction [section 7]. Superseded by the *Employment Act 1988* and the *Employment Act 1990* which effectively outlawed closed shops.
- Required all new **closed shop** agreements to be approved by at least 80% of those eligible to vote in a secret ballot [section 7(3)]. Superseded by the *Employment Act 1988* and the *Employment Act 1990* which effectively outlawed closed shops altogether.
- Restricted **lawful picketing** to those attending at or near their own place of work [section 16]. A Code of Practice issued under the Act recommended that six pickets should be the normal limit.
- Removed immunity from **secondary action** (including blacking) unless it was designed to put direct pressure on the employer in dispute by interfering with his business with his suppliers or customers [section 17].
- Repealed the provisions of the *Employment Protection Act 1975* which enabled independent trade unions to secure **recognition** for the purposes of collective bargaining. The *Employment Relations Act 1999* [section 1 and Schedule 1] introduced a new statutory trade union recognition procedure which differs in many respects from that which operated under the 1975 Act. The new procedures came into force on 6 June 2000.

## Employment Act 1982

- Removed the immunity from actions in tort which had been enjoyed by trade unions since 1906.<sup>1</sup> This enabled employers to apply for **injunctions** against unions (as opposed to individual officials and members), to sue unions for **damages** and, ultimately, for Courts to **sequester the assets** of unions. For a union to be liable, the action had to be authorised or endorsed by a "responsible person" (such as the president, general secretary, principal executive committee or an employed official). Limits were imposed on the maximum damages which could be awarded (£250,000 for a union with 100,000 or more members) but there was no limit to fines for contempt of court if injunctions are ignored [sections 15 and 16]

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<sup>1</sup> *Trade Disputes Act 1906*, section 4

- Outlawed **political strikes** by limiting immunity to trade disputes which "relate wholly or mainly to" industrial matters (rather than just being "connected with" such issues) [section 18].
- Further reduced the scope for **secondary action** by limiting immunity to disputes between "workers and their employer" [section 18].
- Required approval of all **closed shop** agreements by a secret ballot held every five years. In most cases, approval was required by 80% of those eligible to vote or 85% of those voting. Increased financial compensation for unfair dismissal for non-union membership in closed shop cases [section 3-5]. Superseded by the *Employment Act 1988* and the *Employment Act 1990* which effectively outlawed closed shops altogether.
- Prohibited **union labour only** and **union recognition clauses** in commercial contracts [sections 12 and 13]. Removed immunity from industrial action designed to secure such clauses [section 14].

### Trade Union Act 1984

- Introduced **secret pre-strike ballots**. To ensure industrial action enjoyed immunity from actions in tort, a trade union could only start industrial action if the action had been approved by a simple majority in a secret ballot held not more than four weeks before [Part 2]. The *Employment Relations Act 1999* [section 4 and Schedule 3] subsequently allowed the four weeks to be extended to eight weeks if employers and unions agreed.
- Required trade unions to ensure that all voting members of their executive committees were **directly elected** by secret ballots at least once every five years [Part 1]
- Made the continuance of trade union **political funds** dependent on approval in ten-yearly ballots [sections 12 and 13].

### Employment Act 1988

- Gave **union members** the right to complain to an industrial tribunal about **unjustifiable discipline** by their union (e.g. for refusing to strike) [sections 3-5].
- Gave **union members** the right to apply to a court for an order **restraining strike action** in the absence of a proper ballot [section 1].
- Removed immunity from industrial action to enforce a **closed shop** [section 10].
- Made **dismissal for refusal to join a closed shop** unfair in all circumstances [section 11].
- Required the **election** of non-voting members of union executive committees, general secretaries and presidents every five years [section 12].
- Required the use of **postal ballots** for union executives and political fund ballots. Introduced independent scrutiny of these ballots [sections 14 and 15].

- Required separate **pre-strike ballots** at each place of work or bargaining unit [section 17].
- Gave the Secretary of State power to issue **Codes of Practice** on pre-strike ballots and trade union elections. A Code of Practice on strike ballots was approved by Parliament on 23 January 1990 [HC Deb cc 840-864] and 1 February 1990 [HL Deb cc 471-481], and revised in 1991 to take account of changes made by the 1990 Act. A further Draft Code was issued on 20 October 1994, to take account of changes made by the 1993 Act.
- Established a **Commissioner for the Rights of Trade Union Members** to assist trade union members both financially and legally with certain court proceedings against their Union. These are mainly proceedings alleging that unions have not followed the proper procedures in pre-strike ballots, political fund ballots and the election of union officials [sections 19-21]. The *Employment Relations Act 1999* [section 28] abolished this Commissioner, with effect from 25 October 1999. It did, however, strengthen the powers of the Certification Officer to hear certain complaints about trade unions.

### Dock Work Act 1989

- Abolished the Dock Labour Scheme which restricted employment in scheme ports to registered dockworkers. Dock Labour Boards, consisting of equal numbers of employers' and workers' representatives decided who should be on the register.

### Employment Act 1990

- Made it unlawful to refuse a person employment either because he is or because he is not a member of a trade union. This was designed to end both the **pre-entry closed shop** and **discrimination against trade unionists** [section 1].
- Addressed **unofficial industrial action** by requiring trade unions either to repudiate unofficial action organised by their shop stewards or to adopt it and put it to a ballot. Immunity was removed from industrial action in support of dismissed unofficial strikers, and unofficial strikers, dismissed selectively, no longer had the right to take their case to a tribunal [section 9].
- Removed immunity from the remaining forms of **secondary action** still protected by law [section 4].
- Extended the law on **strike ballots** and **secondary action to self-employed trade union members** [section 5]
- Extended the powers of the **Commissioner for the Rights of Trade Union Members** to cover certain complaints about breaches of trade union rule books [sections 10-11]. The *Employment Relations Act 1999*, section 28, abolished this Commissioner, with effect from 25 October 1999. It did, however, strengthen the powers of the Certification Officer to hear certain complaints about trade unions.

## Trade Union Reform and Employment Rights Act 1993

- Extended the law on **union and political fund ballots** to give independent scrutineers a right of access to union membership registers and to require an independent person to store and distribute voting papers and to count votes cast [sections 1-3].
- Changed the law on **trade union merger ballots** so that such ballots must now be fully postal and subject to independent scrutiny. Unions may no longer send out material with the ballot paper recommending how votes be cast [section 4-5].
- Provided for the repeal of the Secretary of State's power to refund the **postal and printing costs of trade union balloting**. The Government financial support for trade union ballots was to be withdrawn by April 1996 [section 7].
- Required trade union **annual returns** to the Certification Officer to contain details of the pay and benefits of union leaders [section 8].
- Required unions to provide all members with **annual statements** of their financial affairs [section 9].
- Gave the Certification Officer new powers to examine **unions' accounting records** and appoint inspectors to investigate their financial affairs [section 10].
- Increased the penalties for offences relating to the **conduct of unions' financial affairs** [section 11].
- Allowed employers to take action which **discriminates against trade union membership** (e.g. to offer higher pay to those who accept personal contracts and give up collective bargaining rights) provided that the primary purpose of the action is to bring about a change in negotiating arrangements [section 13]. This provision (the so-called "Ullswater amendment") was introduced following a Court of Appeal ruling in *Wilson and Palmer*<sup>2</sup> that offering inducements to give up collective bargaining amounted to discrimination against trade union members. The House of Lords eventually overturned this aspect of the Court of Appeal's decision and ruled that there was a distinction between trade union membership and collective bargaining. Subsequent changes were made in the *Employment Relations Act 1999* and *Employment Relations Act 2004*.
- Gave individuals the right to join the **union of their choice** [section 14].
- Required employers to seek individual written consent to the **check off** of trade union subscriptions from pay every three years [section 15]. This provision was subsequently repealed by the *Deregulation (Deduction from Pay of Union Subscriptions) Order 1998 (SI 1998/1529)*.
- Provided that all **industrial action ballots** should be fully postal [section 17].

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<sup>2</sup> *Associated British Ports v Palmer and Others* [1994] I.C.R. 97

- Required unions to give employers at least **seven days' notice** of their intention to ballot on industrial action and to provide them with sample ballot papers [section 18]. The *Employment Relations Act 1999*, section 4 and Schedule 3, made a relatively minor amendment to this provision, so that trade unions cannot be required to disclose the names of the members they intend to ballot or call out on industrial action.
- Required unions to **notify employers of ballot result** [section 19].
- Required industrial action **ballots** involving 50 or more members to be subject to **independent scrutiny** [section 20].
- Required unions to provide at least **seven days' notice of industrial action** [section 21].
- Gave individuals a "**citizen's right**" to bring proceedings to halt unlawful industrial action which deprives them of goods and services [section 22].
- Created a **Commissioner for Protection Against Unlawful Industrial Action** to help individuals exercise this citizen's right [section 22]. The *Employment Relations Act 1999*, section 28, abolished this Commissioner, with effect from 25 October 1999.

## 2. Labour trade union legislation 1997-2010

Labour's manifesto for the May 1997 General Election promised that the "key elements" of the Conservative Government's trade union reforms would stay:

There must be minimum standards for the individual at work, including a minimum wage, within a flexible labour market. We need a sensible balance in industrial relations law - rights and duties go together.

The key elements of the trade union legislation of the 1980s will stay - on ballots, picketing and industrial action. People should be free to join or not to join a union. Where they do decide to join, and where a majority of the relevant workforce vote in a ballot for the union to represent them, the union should be recognised. This promotes stable and orderly industrial relations. There will be full consultation on the most effective means of implementing this proposal.<sup>3</sup>

The Labour Government's White Paper, *Fairness at Work*, published in May 1998, similarly emphasised that, for the most part, the Conservative Government's trade union laws would remain:

There will be no going back. The days of strikes without ballots, mass picketing, closed shops and secondary action are over. Even after the changes we propose, Britain will have the most lightly regulated labour market of any leading economy in the world. But it cannot be right to deny British citizens basic canons of fairness - rights to claim unfair dismissal, rights against discrimination for making a free choice of being a union member, rights to unpaid parental leave - that are a matter of course elsewhere.<sup>4</sup>

The following is a summary of the main trade union related measures contained in various pieces of legislation enacted in the period 1997-2010.

### Deregulation (Deduction from Pay of Union Subscriptions) Order 1998

- The *Deregulation (Deduction from Pay of Union Subscriptions) Order 1998 (SI 1998/1529)* ended the requirement that employers must seek employees' consent to having their trade union subscriptions deducted directly from pay (the "**check off**") every three years. The Order came into force on 23 June 1998.

### Employment Relations Act 1999

- Introduced statutory procedures for **trade union recognition** in firms with more than 20 employees where a majority of the relevant workforce wanted it [section 1 and Schedule 1].
- Gave employees the right to be accompanied by a **trade union representative** or fellow employee during disciplinary and grievance procedures [section 10].

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<sup>3</sup> *New Labour because Britain deserves better*, April 1997, p 17

<sup>4</sup> *Fairness at Work*, Cm 3968, May 1998, foreword by Tony Blair

- Protected people **taking part in lawful industrial action against dismissal** during the first eight weeks of a strike [section 16 and Schedule 5].
- Made it unlawful to discriminate by omission on grounds of **trade union membership**, non-membership or activity [section 2 and Schedule 2].
- Provided for regulations to prohibit **blacklisting** of trade unionists [section 3]. The *Employment Relations Act 1999 (Blacklists) Regulations 2010 (SI 2010/493)* came into force on 2 March 2010.
- Amended the law on **strike ballots** so that, for example, trade unions are not required to give the names of all workers they are balloting to employers; and the validity of a strike ballot can be extended for a further four weeks by agreement between unions and employers [section 4 and Schedule 3].
- Abolished the **Commissioners for the Rights of Trade Union Members and Protection against Unlawful Industrial Action** [section 28].

### Employment Act 2002

- Put **Union Learning Representatives** on a statutory footing and gave them the right to paid time off work to pursue their duties [section 43].

### Employment Relations Act 2004

Following the Labour Government's review of the *Employment Relations Act 1999* it was concluded that the Act had been a "resounding success",<sup>5</sup> but the Government nevertheless proposed some limited changes, which were made by the 2004 Act:

- On **statutory union recognition procedures**, minor changes were made concerning top up recognition; Central Arbitration Committee checks on union membership; ACAS's role in non-statutory recognition; definition of union membership; petitions; disclosure of information to unions; time limits; detriment and dismissal; union access; determining of bargaining units; Central Arbitration Committee ballots; core issues for collective bargaining; change of employer identity; and associated employers. [Part 1]
- On **discrimination on grounds of trade union membership or non-membership**, in order to comply with the ruling of the European Court of Human Rights in July 2002 in the *Wilson and Palmer* cases, the Act repealed section 146(3) of the *Trade Union and Labour Relations (Consolidation) Act 1992* (the so-called "Ullswater Amendment"); established a clear positive right for union members to use their union's services; amended the law to specify that entering individualised contracts would not constitute unlawful discrimination against those union members not offered them provided there is no pre-condition in the contract to relinquish union representation; and repealed section 17 of the *Employment Relations Act 1999*. [Part 3]

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<sup>5</sup> DTI, [Review of the Employment Relations Act 1999](#), February 2003, p5

- On **industrial action ballots and notices**, it simplified the law on notices and extends the ability of Courts to disregard small accidental failures to follow the rules in the conduct and organisation of ballots. [Part 2]
- On the **dismissal of striking workers**, it provided that lock-out days should not count towards the period during which strikers are protected from dismissal. This period was extended from 8 to 12 weeks. [section 26]
- On the **right to be accompanied at disciplinary and grievance hearings**, it clarified the law setting out the circumstances in which the companion (a work colleague or trade union representative) is allowed to address the hearing. [37]
- It gave the **Certification Officer** additional powers to dispose of weaker cases more efficiently. [Part 5]
- Following recommendations by the Better Regulation Task Force, it removed various restrictions on **trade union elections and ballots**. Among other things, the Secretary of State was given a power to change the balloting method by order. This could, for example, allow electronic voting. [section 54]
- Amendments were made in standing committee providing for a **trade union modernisation fund** [section 55] and allowing the **expulsion of racist or extremist members from trade unions** in light of cases at the time where the BNP had infiltrated unions in order to provoke expulsion, followed by claims for compensation in a tribunal [section 33]. Amendments were also made at report and third reading aimed at tackling **unfair practices and intimidation** in trade union ballots [section 10].

## Employment Act 2008

- The *Employment Act 2008* amended trade union membership law in light of the European Court of Human Rights judgment in *Aslef v UK* so that trade unions can expel members on the basis of their membership of a political party. [section 19]

## Employment Relations Act 1999 (Blacklists) Regulations 2010

- On 2 March 2010 blacklisting became subject to express statutory prohibition, by way of the *Employment Relations Act 1999 (Blacklists) Regulations 2010 (SI 2010/493)*. The Regulations prohibit the compilation, use, sale or supply of trade union blacklists. Blacklists are termed “prohibited lists”, defined in regulation 3(2). Prohibited lists are those that contain details of persons who are/have been members of trade unions or who are taking part/have taken part in the activities of trade unions, which are compiled with a view to being used by employers or employment agencies to discriminate in relation to recruitment or treatment.<sup>6</sup>

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<sup>6</sup> For further information, see [Trade unions: blacklisting](#), Commons Briefing papers SN06819, 15 June 2016

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