HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

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Trade Union Bill: Lords Amendments

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Inside:

Contents

Summary

The *Trade Union Bill* is due to return to the House of Commons on 27 April 2016 for consideration of amendments agreed to during its passage through the Lords.

It received its Second Reading in the Lords on 11 January 2016 and was debated in Committee between 8-25 February 2016. The first day of debate on Report took place on 16 March 2016. The second day of Report took place on 19 April 2016. Third Reading in the Lords took place on 25 April 2016.

The amendments agreed during the Lords Committee stage were relatively minor and largely supplanted by the variety of amendments agreed during Report stage and Third Reading. This paper summarises those amendments at Report and Third Reading.

Helpful documents

All the amendments that were agreed in Lords are set out in this document. They have been renumbered according to the order in which they were moved (i.e. the numbering does not reflect the numbering of the amendments as they were when debated).

Explanatory Notes published on 26 April 2016 summarise the effect of each of the amendments.

Proposed Government amendments to the Lords amendments, due to be debated in the Commons, are set out here.

For detailed background on the Bill, see the briefing produced prior to Second Reading in the House of Commons. A briefing summarising Committee stage in the Commons is available here.

The Bill's progress can be followed on the Parliament website, here.

Structure of this briefing

This briefing discusses the amendments by reference to the stage of debate during which they were agreed (Report first and second sittings, then Third Reading).

The right hand column provides the numbers of the amendments by reference to the renumbered list mentioned above. Where the Government has indicated it will oppose or amend an amendment, this is noted below the amendment number.

1. Lords Report stage – first sitting

The amendments to the Bill agreed during the first day of its Lords Report stage (16 March 2016) were as follows.

1.1 Ballots: 40% support requirement in important public services

Amendment 1

Under clause 3 a 40% threshold applies to industrial action ballots if the majority of workers are normally engaged in the provision of important public services. Following a **Government amendment**, the threshold would apply unless the union "reasonably believes" that the majority of workers are not involved in the provision of such services. The effect would be to introduce a defence of "reasonable belief" if a union mistakenly breached the 40% requirement.[1] The amendment, following a similar amendment moved in Committee, removes the initially proposed application of the provision to workers that are ancillary to the provision of important public services.

The amendment was agreed to without division.

1.2 Electronic balloting

Amendment 2

The Government proposes to amend this amendment, replacing the requirement to produce a "strategy" with a requirement for the Secretary of State to respond to the review.

[*Consideration Of Lords Amendments*, pp1-2]

Lord Kerslake (Crossbench) moved an amendment that would require the Secretary of State to commission an independent review on the delivery of secure methods of electronic balloting for the purpose of industrial action ballots. The review would be commissioned within six months of Bill's enactment. Following the review, the Secretary of State would be required to consider its report, and lay before each House of Parliament a strategy for the rollout of secure electronic balloting. Pilot schemes may be used to inform its design and implementation.

Lord Kerslake argued that if the Government wish to introduce higher thresholds it should provide unions with the best practical means of achieving full participation of their members.[2] Lord Pannick (Crossbench) argued that the amendment would make the Bill less susceptible to a legal challenge under the European Convention on Human Rights.[3] The Minister argued against the proposal on the basis that the Government would be required to press ahead with e-balloting irrespective of whether the review highlighted problems with it.

The amendment was agreed to on division by 320 votes to 181.[4]

1 HL Deb 16 March 2016 cc1853-1854
2 Ibid., c1854
3 Ibid., c1857; see also HL Deb 8 February 2016 c2007; Joint Committee on Human Rights, *Legislative Scrutiny: Trade Union Bill First Report of Session 2015–16*, HC 630, 3 February 2016
4 Ibid., c1864

1.3 Information to be included on voting paper

Clause 4 would have required ballot papers to include a "reasonably detailed indication" of the matters in issue in a trade dispute. Many commentators, and a number of their Lordships during Committee, argued that this phrase invited litigation: employers could argue that the ballot paper did not contain sufficient information to qualify as being "reasonably detailed".[5] The **Government introduced an amendment** to replace the words "reasonably detailed indication" with the word "summary". **Amendment 3**

The amendment was agreed to without division.[6]

1.4 Notice of industrial action

Clause 7 would have required a union to provide an employer with two weeks' notice of industrial action. A **Government amendment** modified this, so that the period could be reduced to seven days if the union and the employer agree. The Minister said that this could assist in negotiations, where a union might otherwise have felt it necessary to give notice of industrial action to preserve its position. **Amendment 4**

The amendment was agreed to without division.[7]

1.5 Expiry of mandate for industrial action

Clause 8 would have imposed a four-month time limit on ballot mandates; after four months a union would have to re-ballot its members if it wished to induce industrial action. During debate in both Houses Members and Peers argued that this could undermine negotiations, encouraging unions to induce industrial action to avoid having to re-ballot their members.[8] A **Government amendment** proposed to change the expiry period to six months by default, or up to nine months if agreed between the union and the employer. **Amendment 5**

The amendment was agreed to without division.[9]

1.6 Union supervision of picketing

Clause 9 would have required that a "picket supervisor must wear a badge, armband or other item that readily identifies the picket supervisor as such". Following a **Government amendment**, agreed to without debate, this now reads a "picket supervisor must wear something that readily identifies the picket supervisor as such".[10] **Amendment 6**

5 See HL Deb 10 February 2016 c2248
6 Ibid., c1868
7 Ibid., c1869
8 HL Deb 10 February 2016 c2270
9 Ibid., c1870
10 Ibid., c1871

1.7 Opting in by union members to contribute to political funds

At present, a portion of a union members' union subscription payment may contribute towards a political fund, subject to the members' ability to opt out from this. Clause 10 would have changed this to an opt-in arrangement, with members having to renew their opt-in every five years. The requirement would have affected all new members and, in relation to existing members, take effect after three months, following which it would be unlawful to make a deduction from a non-opted-in member. Clause 11 would impose a related requirement for unions to include in their annual returns details of their political expenditure.

The proposal was heavily criticised during Lords Second Reading due largely to its potential impact on party funding. On 20 January 2016 their Lordships approved a motion (by 327 votes to 234) to set up a Select Committee to investigate the proposal, particularly as it might affect the resources of the Labour Party.[11]

The Select Committee reported on 29 February 2016.[12] It recommended that: the Bill retain the principle of opting in; subject to a 12-month transition period allowing unions to adapt their rules; and that there should be no requirement for members to renew their opt-in notices. The Committee did not agree on whether opting-in should apply to existing members.[13]

Lord Burns (Crossbench) moved an amendment which was broadly in line with the Committee's recommendations, save that it sought to disapply the opt-in requirement to existing union members. His Lordship described the amendment as follows:

> Amendment 9 sets out in subsections (1) and (2) that opt-in should be applied to new members after a transition period of at least 12 months, which will allow trade unions to make the required changes to their rule books. Subsections (10) and (12) specify that the exact length of the transition period shall be set by affirmative instrument after the Secretary of State has consulted the unions and the Certification Officer.
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> …
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> subsection (3) in Amendment 9 specifies that a union which at present does not have a political fund, but which votes to introduce such a fund after a transition period, will have to seek an active opt in by all its members. Subsections (4) and (5) allow any member who contributes to a political fund to cease contributing to it by giving appropriate notice. Subsection (6) sets out how members may opt in and opt out, and allows them to do so by electronic means. Subsection (7) provides for all contributors to political funds, both new members who have opted in and existing members who have not opted out, to be told each year by the union that they have the right to cease contributing to the political fund. Subsection (8) requires the Certification Officer to monitor the unions' compliance with this duty. The Committee

Amendments 7-8

The Government opposes these amendments and has proposed detailed replacements.

[*Consideration Of Lords Amendments*, pp3-5]

11 HL Deb 20 January 2016 c782
12 *Select Committee on Trade Union Political Funds and Political Party Funding Report of Session 2015–16*
13 Ibid., p34

> agreed that requiring unions to send annual reminders about the right to opt out was more proportionate than requiring contributors to renew their opt-in decision at five year intervals, as is suggested in the existing clause.[14]

The amendment attracted substantial debate although there was consensus that the principle of opting in should be retained and that the originally proposed three-month transition period was too short. However, members were divided on the application of the requirement to existing members. A number of Conservative Peers and the Minister, Baroness Neville-Rolfe, argued that existing as well as new members should be covered. The Minister said:

> Principally, the Select Committee accepted that members should be asked to make an active choice when contributing to a union's political fund. In looking to achieve wider consensus, the Select Committee has looked for a middle ground. I appreciate these efforts, but I believe that when it comes to the treatment of existing union members the proposals have not gone far enough. The amendment in the name of the noble Lord, Lord Burns, for which I thank him warmly, would not extend opt-in to existing members, only to new members. My noble friend Lord Sherbourne of Didsbury, one of the hardworking members of the committee, put it well when he talked about this being a wrecking amendment in that respect.
>
> …
>
> If noble Lords are prepared to accept my wider arguments on the case for opt-in applying to existing members, I would like to bring back for consideration before the Bill leaves this House provisions on a more generous transition period, as proposed by my noble friend Lord Hailsham and others, and on electronic communications. The Bill will, we believe, secure consistency and equity across all members of unions with political funds. The default position will be that all members will be able to exercise a positive choice. This will improve transparency, choice and debate within a union of how political funds are spent. I therefore ask the noble Lord to withdraw his amendment. [15]

Their Lordships agreed to the amendment by 320 votes to 172.

1.8 Facility time – reserve powers

Clause 12 would create a power whereby a Minister may impose publication requirements on public sector employers in relation to union facility time (working time during which union representatives undertake union duties or activities). Clause 13 would have created a reserve power enabling a Minister by regulations to restrict the use of facility time, by imposing a cap on the percentage of an employer's pay bill that might fund this, or capping the percentage of employee working time that might be spent on union duties and activities.

Amendment 17

The Government opposes this amendment and is proposing an amendment to restore the reserve powers.

[*Consideration Of Lords Amendments*, pp2-3]

Lord Kerslake moved an amendment to remove clause 13 from the Bill. His Lordship argued that facility time is an important part of maintaining effective industrial relations, particularly when seeking to deliver organisational change. The Parliamentary Secretary for the

14 HL Deb 16 March 2016 c1873
15 Ibid., cc1889-1891

Cabinet Office, Lord Bridges, responded by arguing that the publication requirements were intended to encourage employers to moderate facility time spending, but if this failed "it is only right that there is a reserve power to ensure that wasteful use of taxpayer funding does not continue".[16]

The amendment was agreed to on division by 248 votes to 160.

[16] Ibid., c1909

2. Lords Report stage – second sitting

The second day of Report took place on 19 April 2016, during which the Government undertook to introduce amendments at Third Reading relating to check-off. The Government also introduced an amendment, agreed to by their Lordships, which would amend the Certification Officer's investigatory powers.

2.1 Check-off

Check-off is a system whereby union membership payments are deducted from union members' salaries by their employers and paid over to unions. A Government amendment introducing a new clause (clause 14), agreed during the Bill's Commons Committee stage, would prohibit relevant public sector employers from operating a check-off system. As such, unions would need to move to a different payment system, such as direct debit, to enable membership payments.

The proposal to abolish check-off in the public sector faced significant opposition in the Lords. In response to an amendment tabled by Lord Balfe (Con), the Government agreed to modify its proposal and allow check-off to continue where the union meets the administrative costs and there is an agreement with the employer to provide check-off. The Parliamentary Secretary for the Cabinet Office, Lord Bridges, **undertook to table an amendment to this effect during Third Reading (and did: see below section on Third Reading).** His Lordship also undertook to table an amendment that would clarify which public bodies would be subject to both the check-off provisions and the facility time publication requirements (clause 12; see above):

> My Lords, if the House will give me leave, I wish to clarify the Government's position on the first policy—check-off—that the House will consider this afternoon. I have been a Member of your Lordships' House for a little under a year. One of the many lessons I have learned is that when Ministers stand at this Dispatch Box and face cannons to the right of them, cannons to the left of them, cannons in front of them—and maybe even behind them—it is usually best to pause and to ask the reason why. Uncomfortable though this may be, it is nothing like as uncomfortable as charging on.
>
> I have met, as has my noble friend, a number of your Lordships to discuss the clause on check-off, and I think it only fair to say that many of your Lordships do not support the Government's contention that the measure we are debating will modernise the relationship between a trade union member and his or her trade union. I fear that my trying to convince your Lordships of our case this afternoon may simply add grist to the mill of those who see this measure as a means of undermining the trade unions themselves. That is certainly not—and never has been—the Government's intention. Trade unions play a crucial role in companies, organisations and communities across the country. Furthermore, arguments have been made with considerable vim and vigour that by ending check-off and moving to direct debit

> those on low pay—especially those who have payday loans—might have to cease being trade union members, or have to pay extra bank charges. Again, that is not our intention, and never has been.
>
> To show that the Government mean this and to avoid further acrimony on this issue, **the Government will support the principles behind the amendment from the noble Lord, Lord Balfe. Amendment 21 would allow check-off to remain where there is an agreement with the employer to provide check-off**. It sets out how the administration of this will be paid for and allows that employees can pay by another means should they wish. This amendment ticks three boxes: cost, which will be borne by the unions, not taxpayers; consistency across all sectors; and control, as individuals would be able to choose how to pay their union. However, the Government have one misgiving. We genuinely understand the noble Lord's wish to ensure that only the specific costs required to administer check-off are charged to the trade union. I want to ensure that we would not expect to see undue costs applied at financial detriment to the trade union.
>
> However, the Government do not feel it appropriate for this role to be undertaken by the Certification Officer—we will debate that role in due course—and **we have therefore accepted the principle of allowing check-off to continue where the union meets the costs. I therefore ask my noble friend Lord Balfe not to press his amendment and to allow the Government to bring back an amendment at Third Reading for consideration by this House.**
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> I would like briefly to touch upon one other aspect of Clause 14—its scope. We have produced a clear list of bodies, taking as our starting point the Freedom of Information Act, and we will share this list as part of draft regulations prior to the Third Reading of the Bill in this House.
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> As to organisations which may be in scope in the future, legitimate concerns have been raised about this clause, and Clause 12 relating to facility time, applying to organisations only partly funded by public funds. To address this, I shall not move Amendment 21A **but will bring back an amendment at Third Reading that would allow only those bodies mainly—I emphasise "mainly"—funded by public funds to be added to the provisions of this Bill, and that would be via the affirmative process**. **This will apply to both Clause 12 and Clause 14**.[17]

2.2 Certification Officer – investigatory powers

The Certification Officer (CO) is an independent officer, first appointed in 1975, with a statutory duty to oversee a range of administrative matters relating to trade unions and employers' associations. The CO is appointed by the Secretary of State, following consultation with the Advisory, Conciliation and Arbitration Service and reports annually on his activities.

The Bill would create new investigatory powers for the CO relating to unions' (and, where relevant, unincorporated employer's associations')

[17] HL Deb 19 April 2016 cc584-585

compliance with a range of "relevant obligations" defined in Schedule 1. The obligations include, for example, duties regarding unions' registers of members, compliance with rules as to ballots on political resolutions, and requirements relating to political funds. If it appears to the CO that there are circumstances suggesting that a trade union has failed to comply with a relevant obligation, the CO would have the power to appoint inspectors to investigate this. A **Government amendment**, agreed without division, would make this power subject to the CO having "reasonable grounds" to suspect that a union had failed to comply with a relevant obligation. The amendment was explained by the Minister, Baroness Neville-Rolfe, as follows:

Amendment 26

> government Amendment 23A provides for a higher threshold for the appointment of inspectors in relation to the investigatory powers proposed in the Bill. The Certification Officer will be able to appoint an inspector **only where he or she has reasonable grounds to suspect that a union has failed to comply with a duty**. This is on top of two safeguards already in the Bill. He or she will be able to request documents only where there is good reason to do so and will be required to give a union the opportunity to make representations before taking any enforcement action.[18]

[18] Ibid., c594

3. Lords Third Reading

3.1 Union's annual return to include details of political expenditure

The Bill proposes to introduce requirements for unions to provide in their annual returns details of political fund expenditure once that expenditure exceeds £2,000. During debate in Committee a number of their Lordships expressed concern that the Bill's proposal would be unduly onerous, requiring unions to particularise trivial expenditure. The concerns were summarised by the Minister, Baroness Neville-Rolfe:

> Concerns were raised on Report about the potential burden of the Government's proposed reporting requirements, and in particular the need to report expenditure on a bus fare paid to an individual union member. As I said, unions were required to provide details of all expenditure to all recipients in each of the categories in Section 72(1) of the 1992 Act once the £2,000 threshold was exceeded. This would have included, for example, any relatively small payment for an individual union member to attend a party conference.[19]

Amendments 9-11

The **Government introduced a group of amendments** to address these concerns. The effect of the amendments would be to replace the requirement to report on each individual item of expenditure with a requirement to report on total expenditure in each category, as explained by the Minister:

> Amendment 1 therefore seeks to provide a more proportionate level of transparency by removing the requirement to report on each item of expenditure for every individual. Instead, we now require them to provide only a total of expenditure in each category and to specify which political party, organisation or candidate has been paid. I will give noble Lords an example of how this will work in practice in relation to conferences and meetings. Rather than reporting the payments for travel to individual members to attend a party conference, the union will now have to report only the total expenditure on conferences for a particular political party in any given year. This is much more comparable to the best practice that some unions currently exhibit, and the Certification Office has told us that the amendment brings helpful clarity to reporting requirements.[20]

The amendments also addressed criticism from the Delegated Powers and Regulatory Reform Committee. The original proposal would have enabled regulations to amend the reporting threshold level to above £2,000 or lower it again (but not below £2,000) subject to the negative resolution procedure. The Committee recommended that regulations lowering the threshold, once it had been raised, should be subject to the affirmative resolution. The Government agreed, and moved an amendment to this effect.

The Government amendments were broadly supported insofar as they were seen as providing welcome simplification. A number of Labour

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19 HL Deb 25 April 2016 c898
20 Ibid., 898

Peers, though appreciating that the Government had moved substantially on the issue, remained critical of the proposed publication requirements, arguing that these were burdensome and incommensurate with the transparency obligations of other political donors.[21]

The amendments were agreed to without division.[22]

3.2 Facility time – publication requirements

Amendments 12-16

The Bill proposes to create a regulation-making power, enabling regulations to impose facility time reporting requirements on public sector employers. The **Government moved amendments**, attracting cross-party support and agreed to by their Lordships, to clarify which public bodies could be in scope of the proposals, as set out in the Explanatory Notes to the Lords amendments:

> Lords Amendment 13 would introduce a provision that the regulations made under the clause for the purposes of facility time publication requirements would either specify the public authority, or would specify a description of a public authority (for example allowing it to be a category of public authority and not all listed by name). Lords Amendment 12 would require that all regulations to apply the publication requirements must be made by statutory instrument, and Lords Amendment 16 would require that where those regulations apply to a body that is not a public authority that those regulations should be subject to the affirmative procedure. Lords Amendment 15 would provide that where a body to be subject to regulations imposing reporting requirements is not a public authority, the body must be funded mainly from public funds.

3.3 Check-off

Amendments 18-20

As noted above, the Minister undertook to table amendments at Third Reading which would enable the continued use of check-off in the public sector. The **Government moved amendments** which would permit a public sector employer to continue to use check-off if (a) workers have the option to pay their subscriptions by other means; and (b) arrangements have been made by the union to make reasonable payments to the employer to cover the cost of administering check-off. The reasonableness of the payments would be assessed by employers, as the Minister noted:

> it is important that these costs are indeed reasonable. So we have set out on the face of the Bill that employers must satisfy themselves that the total amount of the payment is only substantially equivalent to the total cost to the taxpayer of making these deductions.[23]

The Bill originally proposed to enable a Minister to make regulations extending the check-off provisions to bodies that are not public authorities but have functions of a public nature if those bodies are funded wholly or "partly" from public funds. An amendment replaced

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21 E.g., see ibid., c901
22 Ibid., cc903-904
23 Ibid., c909

the word "partly" with "mainly", thereby restricting the potential scope of regulations.

3.4 Certification Officer not subject to ministerial direction

Amendment 21

A **Government amendment** sought to address concerns about the independence of the Certification Officer from government. The amendment provides that the Certification Officer would not be subject to Ministerial direction in respect of the exercise of his functions.

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