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Research Briefing

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Trade unions and industrial relations

Summary
1 Regulation of trade unions
2 Rights of trade union members and representatives
3 Collective bargaining
4 Trade union statistics
5 Strikes and other industrial action

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Summary

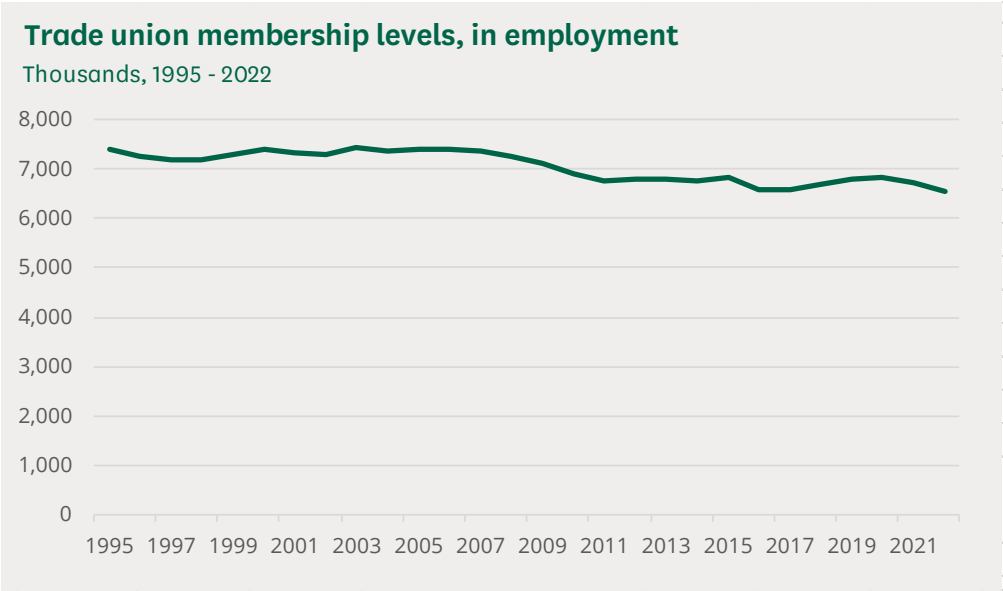
This briefing describes the rules and regulations that govern trade unions and industrial relations in the UK, including the rights of union members, collective bargaining and industrial action.

Most trade union law for Great Britain is contained in the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA 1992), which consolidated a large amount of prior trade union legislation dating from the 1870s up to the 1980s.

The 1992 Act has been amended a number of times, most recently and significantly through the Trade Union Act 2016 – see the Library briefing on the Trade Union Bill for the background and context of this legislation.

How many UK employees are in a trade union?

There has been a long-term trend in the UK of declining trade union membership levels which continued into 2022. Estimates from the Department for Business and Trade (DBT), using the Office for National Statistics (ONS) Labour Force Survey (LFS), show that in 2022, 6.55 million people in employment in the UK were members of a trade union, 174,000 fewer than in 2021, as shown in the chart below.



Source: Department for Business and Trade, Trade union statistics 2022, table 1.3a, 24 May 2023

Notes: Figures show membership levels of those in employment

Membership levels for women in employment decreased to 3.55 million in 2022, 115,000 fewer than in 2021. Membership levels for men in employment decreased to 2.70 million in 2022, 85,000 fewer than in 2021.

In 2022, 2.52 million working days were lost due to strike action in the UK, the most since 1989. This is equivalent to 75 days per 1000 workers over the year.

Collective bargaining and union recognition

One of the primary functions of trade unions is to represent the workforce in negotiations with employers over issues such as pay, terms and conditions or redundancies – a process known as collective bargaining.

To collectively bargain on behalf of a particular group of workers (known as the 'bargaining unit'), unions need to be 'recognised' by the employer. This can be by voluntary agreement, or unions can apply to the Central Arbitration Committee for statutory recognition if agreement cannot be reached.

Recognition grants unions rights to certain information and consultation.

How are trade union activities regulated?

A public official called the Certification Officer oversees the registration, annual returns, mergers and finances of trade unions and determines any complaints about elections, as well as some other ballots and union rules.

Trade unions are primarily funded by their members and there are restrictions on both their collection and spending of funds. 'Check-off', the process of an individual's union membership fees being deducted from their salary by the employer and paid to the union, can only be carried out with their written agreement. Unions wanting to spend any money on political activities must set up a political fund, authorised by a majority vote in a ballot of their members.

Trade unions are also required to elect certain senior officials. Chapter IV of TULRCA 1992 sets out detailed requirements for how these elections must be run, including the appointment of an independent person to supervise the election process.

Rights of union members and representatives

Trade union representatives have a statutory right to paid time off work to undertake certain duties ('facility time'), while all union members have a statutory right to unpaid time off to take part in trade union activities such as attending meetings. These rights are outlined in a statutory Code of Practice issued by the Advisory, Conciliation and Arbitration Service (Acas).

As outlined by GOV.UK guidance on Joining a trade union, trade union members are protected against 'detriment or dismissal' by their employer for being members of trade unions or taking part in union activities. Workers are also protected against unlawful inducement – offers made by their employer to induce them to become or not become members of a trade union.

Employers are also prohibited from compiling or exchanging information on workers' union membership with a view to discriminating against them in employment – a practice known as 'blacklisting'.

Regulation of strikes and industrial action

Industrial action is the withdrawal of labour as part of industrial dispute. A total stoppage of work is known as a strike, but other kinds of industrial action short of a strike are also possible, such as a work to rule.

While Article 11 of the European Convention on Human Rights has been held to include the right to take collective action, in Great Britain unions effectively have a freedom to do so only in circumstances protected by domestic law – otherwise unions could potentially be sued for committing torts (civil wrongs).

To gain protections against action in tort, unions must comply with all the statutory requirements for industrial action, including:

- Having a trade dispute with the employer in question
- Holding ballots with at least 50% turnout and a majority voting in favour of industrial action. Strikes in some important public services must additionally have at least 40% of total employees voting in favour.
- Notifying employers, usually including 14 days before taking action
- Complying with rules around peaceful picketing

As long as a union complies with these requirements, section 238A of TULRCA 1992 also gives employees automatic protection from dismissal on the grounds of taking part in protected industrial action for up to 12 weeks.

Employees are not protected during unofficial 'wildcat' strikes that lack union endorsement.

1 Regulation of trade unions

Trade unions have a long history, emerging in a modern form in the late nineteenth century after years of being criminalised, being formally legally recognised and regulated for the first time in the Trade Union Act 1871.[1]

Today, the majority of union administration in Great Britain is regulated by the Trade Union and Labour Relations (Consolidation) Act 1992. This legislation applies in England, Scotland and Wales, but not Northern Ireland where employment law is devolved.

This briefing likewise covers the situation in Great Britain but not Northern Ireland. For information about trade union law in Northern Ireland see instead the Labour Relations agency guidance on trade unions.

1.1 Registration and independence

The Certification Officer (CO – see Box 1) is responsible for maintaining a public registry of trade unions in Great Britain. The CO also determines whether a trade union is 'independent' of control by any employers and issues certificates of independence accordingly.

1 The Certification Officer

The Certification Officer (CO) is the primary regulator for trade unions in Great Britain, ensuring unions comply with statutory requirements around registration, annual returns, mergers, finances and determining any complaints about elections, as well as some other ballots and union rules.

The CO is a statutory post, appointed by the Secretary of State following consultation with the Advisory, Conciliation and Arbitration Service (Acas).[2] The current Certification Officer is Sarah Bedwell.

There is no requirement in law for trade unions to be registered in order to exist or carry out activities. However, as noted by Simon Deakin and Gillian Morris in their book Labour Law, there are a number of reasons in practice why most trade unions agree to be registered:

1 TUC, History of the TUC 1868-1968, Part 1 1868-1899, Section – the TUC's first victories, 12 March 2001
2 GOV.UK, Certification Officer [accessed 18 October 2023]

> Being listed has a number of advantages for a union. It is evidence (although not conclusive evidence) that the organisation is, indeed, a trade union; it entitles the union to tax relief on income tax, corporation tax and chargeable gains applied for the purpose of 'provident benefits' provided certain conditions are met; and there is a simplified procedure for vesting union property in newly appointed trustees. Moreover, inclusion on the list is an essential preliminary to an application for a certificate of independence… Thus, although listing is theoretically voluntary, a union is highly likely to seek entry to the list.[3]

Certificates of independence are particularly valuable for trade unions, as they are proof of the independent status that unions need to demonstrate in order to claim many of the statutory protections outlined below in part 2 of this briefing.

In particular, only members of independent unions are protected against detriment by their employer for carrying out union activities and have rights to time off work for union duties (facility time). Likewise, only independent unions can invoke the statutory recognition procedures and the statutory right to request certain information and consultation from employers.[4]

1.2 Political activities and funding

Political funds

Trade unions are normally prohibited by sections 71 to 72 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) from spending money from their general funds on certain political activities, such as supporting political parties or candidates for political office, but also potentially including wider activities such as campaigning on political issues.[5]

Instead, unions wanting to carry out such activities must set up a separate political fund, which must be approved by a majority vote in a ballot of their members. These ballots must follow strict rules, which are largely the same as those for elections of union officials outlined in part 1.4 of this briefing below.

Once a political fund is approved and set up, unions must adopt a set of rules ensuring that the political fund and general fund are kept separate.[6] There are also rules about how union members contribute to political funds, including that such contributions must be voluntary and that members must not be victimised for declining to contribute.

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3 Simon Deakin and Gillian S Morris, Labour Law, 2012, Sixth Edition, p800, para 7.21

4 Simon Deakin and Gillian S Morris, Labour Law, 2012, Sixth Edition, p801, para 7.22

5 Prospect, Political fund: What are 'political' activities?, prospect.org.uk, [accessed 15 December 2023]

6 Trade Unions and Labour Relations (Consolidation) Act 1992, ss71(1)(b)(i) and 82(1)(a)

Since March 2018, because of changes made by the Trade Union Act 2016, members have to choose to opt in to making contributions to a political fund. Before this date, unions could instead require members to opt out of making such contributions.

The Government published detailed guidance on the operation of political funds (PDF) ahead of the most recent legal changes in February 2018.[7] This also notes that a new ballot must be held within ten years to reauthorise the political fund, otherwise the legal authority to operate a political fund will lapse ten years after the original ballot took place.[8]

Check-off

Check-off is a system whereby employers deduct union membership union members' salaries by their employers and pay them over to unions. It became widespread during the 1960s, before being restricted under the John Major Conservative Government in 1993, which prohibited check-off unless it was authorised in writing by the employee.

For a detailed history and overview of check-off rules, see the Library briefing Check-off (May 2018).[9]

Subsequent governments have made further changes to check-off rules, most recently in the Trade Union Act 2016, which created a regulation-making power that would enable the Government to prohibit relevant public sector employers from operating check-off unless their employees have an alternative means of paying (such as direct debit) and unions reimburse the administrative costs of operating the scheme.[10]

The Government laid draft regulations in 2017 to implement this restriction, the Draft Trade Union (Deduction of Union Subscriptions from Wages in the Public Sector) Regulations 2017. However, the passage of these Regulations was delayed and they were not ultimately made at the time.

A new version of these Regulations, the Trade Union (Deduction of Union Subscriptions from Wages in the Public Sector) Regulations 2023, was laid before Parliament on 9 November 2023 and are due to come into force on 9 May 2024.[11]

7 Department for Business, Energy and Industrial Strategy, "Trade Union Political Funds: A guide for trade unions, their members and others" (PDF), February 2018

8 As above, p14

9 Commons Library Briefing CBP-7982 Check-off, 3 May 2018

10 Trade Union Act 2016, s15

11 Draft Trade Union (Deduction of Union Subscriptions from Wages in the Public Sector) Regulations 2023

1.3 Administration

All trade unions must comply with a detailed set of administrative requirements set out in Chapter III of Part 1, TULRCA. These include:

- A duty to keep a register of all the union members' names and addresses
- A duty to supply a copy of the union rules to anyone on request
- A duty to keep proper accounting records and make them available to members
- A duty to appoint auditors for the union's financial accounts

Unions are required to submit a membership audit certificate to the Certification Officer each year, with assurances that they have complied with their duty of maintaining an up-to-date register of their members' names and addresses.

In addition, unions must file an annual return with the CO, including:

- a copy of the annual financial accounts
- the salaries paid to certain senior union officials
- any changes in the officers of the union
- an auditor's report
- a copy of the trade union's current rules
- a statement of the number of members the union has on its register
- the details of any industrial action taken during that period and the results of any ballots relating to industrial action
- the details of any political spending out of the union's political fund.[12]

1.4 Elections

A series of reforms passed in the 1980s, now consolidated into Chapter IV of TULRCA 1992, regulate how internal elections in trade unions must be run. These rules about elections are distinct from, though similar in some respects to, the rules about strike ballots described in part 5.5 of this briefing below.

[12] Trade Union and Labour Relations (Consolidation) Act 1992, ss32-23ZB

All unions, whether listed or unlisted, have a duty to ensure certain key positions are elected, with these posts up for re-election at least once every five years.[13] The positions are:

- The union's general secretary
- The union's president[14]
- Every member of the union's executive (the committee that runs the union's day-to-day activities)[15]

Members of the trade union cannot be "unreasonably excluded from standing as a candidate" in an election, under section 47(1). However, unions can pass rules that exclude an entire class of candidates, such as members below a certain length of service, or holding certain posts, providing they apply such exclusions uniformly to everyone in that class.[16]

All candidates have a statutory right to prepare an election address in their own words, which the union must distribute, at the union's expense, by post along with the voting papers for the election.[17] Unions are allowed to set a word limit on these addresses, as long as it is not less than 100 words.[18]

The ballot

There are a number of rules unions must follow for election ballots. These are largely identical to the rules for ballots over political funds or the amalgamation or transfer of unions.

Firstly, all such election ballots must be conducted fully by post. This means ballot papers must be printed and sent to the home or designated postal address of each union member. Unions are prohibited from sending voting papers to their members' workplace addresses unless that member has explicitly chosen to designate that as their postal address.[19]

All eligible members must be given a reasonable opportunity to vote by the union. Voting must be in secret and without any interference or constraint from the union.[20] The union is prohibited from carrying out the "storage", "distribution" and "counting" of the votes itself – it must appoint an independent person for these purposes.[21]

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13 Very limited exceptions exist, such as for Federated unions like the TUC, or unions of merchant seamen ordinarily resident outside the UK such as the International Transport Workers' Federation.

14 Exceptions exist where the post is a purely honorary position, or officers are nearing retirement. See IDS Employment Law Handbook, Trade Unions, Thompson Reuters, 2018, para 4.5

15 Trade Union and Labour Relations (Consolidation) Act 1992, s46

16 Trade Union and Labour Relations (Consolidation) Act 1992, s47

17 Trade Union and Labour Relations (Consolidation) Act 1992, s48

18 As above

19 IDS Employment Law Handbook, Trade Unions, Thompson Reuters, 2018, p130, para 4.32

20 Trade Union and Labour Relations (Consolidation) Act 1992, s51(3)(a)

21 Trade Union and Labour Relations (Consolidation) Act 1992, s51A

TULRCA 1992 imposes some restrictions on the voting systems to be used in trade union elections, saying specifically:

> (6) The ballot shall be so conducted as to secure that the result of the election is determined solely by counting the number of votes cast directly for each candidate.
>
> (7) Nothing in subsection (6) shall be taken to prevent the system of voting used for the election being the single transferable vote, that is, a vote capable of being given so as to indicate the voter's order of preference for the candidates and of being transferred to the next choice—
>
> > (a)when it is not required to give a prior choice the necessary quota of votes, or
> >
> > (b)when, owing to the deficiency in the number of votes given for a prior choice, that choice is eliminated from the list of candidates.[22]

This outlaws some older methods of election such as the branch block vote.

Appointment of an independent scrutineer

All such election ballots must also be subject to independent scrutiny. Ahead of any potential ballot, the union must appoint an independent person to be the "scrutineer". This can be a practising solicitor or qualified auditor, or can be one of six organisations prescribed by the Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Order 1993. These are:

- Electoral Reform Services Limited
- Involvement and Participation Association
- Popularis Limited
- Print Image Network Limited (trading as UK Engage)
- Democracy Technology Limited (trading as Mi-Voice)
- Kanto Elect Limited[23]

The primary job of the scrutineer is to prepare a report on the conduct of the ballot and certify whether they are satisfied that all legal requirements have been met. To do this, they can inspect the register of names and addresses of members and supervise the printing and distribution of ballot papers.

However, because of the separate requirement to appoint an independent person to carry out the printing, distribution and counting of ballots, it is often more convenient for the union to appoint the same organisation to carry out both the functions of scrutineer and conducting the actual ballot.

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22 Trade Union and Labour Relations (Consolidation) Act 1992, ss51(6)-51(7)

23 Most recently amended by the Trade Union Ballots and Elections (Independent Scrutineer Qualifications) (Amendment) Order 2017

2 Rights of trade union members and representatives

Trade union members and representatives have a range of specific rights guaranteed by statute, as outlined below. If an employer breaches any of these rights, workers can usually seek a remedy from an employment tribunal.

For more details on this process, see the Library's casework article Making a claim to an employment tribunal.

2.1 Facility time

Under the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA 1992), trade union officials and members have some rights to time off work to carry out certain specified trade union duties, often referred to as 'facility time'.[24] These rights generally only apply in cases where unions are both independent and recognised by the employer for collective bargaining (see part 3.1 below for details on recognition).[25]

These rights are governed by a statutory Code of Practice on time off for trade union duties and activities issued by the Advisory, Conciliation and Arbitration Service (Acas), which outlines how employers should apply these rights.

These rights only apply to the carrying out of specific duties listed in section 168 of TULRCA 1992.[26] These duties include:

- negotiating pay, terms and conditions
- helping union members with disciplinary or grievance procedures including meetings to hear their cases
- going with union members to meetings with their line manager to discuss flexible working requests

[24] Trade Union and Labour Relations (Consolidation) Act 1992, ss 168-173

[25] The only exception is rights to time off to accompany a worker at a disciplinary or grievance hearing, which is guaranteed even if the union is not recognised. See Acas, Code of Practice on time off for trade union duties and activities, 2010, para 20.

[26] Trade Union and Labour Relations (Consolidation) Act 1992, s168

- discussing issues that affect union members like redundancies or the sale of the business[27]

Trade union representatives are also allowed time off to undergo training relating to the carrying out these above listed trade union duties.

Union learning representatives are separately, under section 168A, allowed time off to carry out their duties, such as to:

- analyse the learning or training needs of union members
- give information and advice about learning or training
- arrange or encourage learning or training
- discuss their activities as a learning representative with their employer
- train as a learning representative[28]

In addition, separate provisions under the Safety Representatives and Safety Committees Regulations 1977 allow union health and safety reps time off to perform their functions.[29]

Union representatives have a right to be paid for the time off taken for all these duties, so long as they take place during the representative's usual working hours.[30]

Time off for other trade union activities

In addition to the rights outlined above for paid time off for representatives to undertake union 'duties', all members of recognised and independent unions are entitled to take reasonable time off work to take part in other trade union 'activities', under section 170 of TULRCA 1992.

However, unlike the time off for 'duties', there is no statutory entitlement to be paid for this time. The Acas Code does note, however, that employers "may want to consider payment in certain circumstances."[31]

The range of trade union activities this applies to is much broader than that of trade union duties and there is no statutory list of activities provided. It could for example include attending various types of union meetings to discuss workplace issues or voting in union elections. The only limitation provided in statute is that time off does not extend to union activities that consist of industrial action.[32]

27 GOV.UK, The rights of trade union reps [accessed 3 November 2023]
28 GOV.UK, The rights of trade union reps [accessed 3 November 2023]
29 Safety Representatives and Safety Committees Regulations 1977 regulation 4(2)(a)
30 Trade Union and Labour Relations (Consolidation) Act 1992, s169
31 Acas, Code of Practice on time off for trade union duties and activities, 2010, para 41
32 Trade Union and Labour Relations (Consolidation) Act 1992, s170(2)

Amount of time off allowed

The rights in all cases are to time off which is "reasonable". This is a legal test which must take into account all the circumstances of each particular case, though the Acas statutory Code of Practice outlines some relevant factors for consideration, including:

- The size of the organisation and number of workers
- The challenges to representing workers with particular needs, such as workers with disabilities or language requirements, remote workers or part-time workers
- The ability to ensure adequate staff cover for safety or continuity of service purposes
- Any agreed time off already taken[33]

Under powers introduced at section 172A of TULRCA 1992 by the Trade Union Act 2016, the Government made the Trade Union (Facility Time Publication Requirements) Regulations 2017. The Regulations require public authorities to publish certain information in relation to facility time taken by trade union officials.

The Trade Union Act 2016 also created new reserve powers in section 172B of TULRCA 1992 that allows the Government to create regulations limiting the total percentage of a public sector employer's pay bill that can be spent on facility time, if the Government has concerns about the amount being spent. However, these powers have not been used as of 2023.

2.2 Protection from dismissal or detriment

All workers have protection against both detriment or dismissal relating to their union membership or activities. Workers are specifically protected against being subject to any detriment by their employer with the purpose of:

- Preventing or deterring a worker from joining an independent trade union, or penalising them for doing so
- Compelling a worker to become a member of a trade union
- Preventing or deterring a worker from taking part in trade union activities at an appropriate time, or making use of their services at an appropriate time, or penalising them for doing so[34]

33 Acas, Code of Practice on time off for trade union duties and activities, 2010, Section 4

34 Trade Union and Labour Relations (Consolidation) Act 1992, s146

Likewise, if a worker is dismissed because of their union membership, lack of membership, use of union services or participation in union activities, their dismissal is automatically considered 'unfair'.[35] For more detail on the concept of unfair dismissal, see part 28 'unfair dismissal' of the Library briefing Key Employment Rights.[36]

However, protections against dismissal or detriment for union membership only apply in cases where the worker is a member of an independent trade union (see part 1.1 above for the definition of independence).

The types of union activities that qualify for protection may depend on whether the worker is a trade union official or merely a member.[37]

Workers are also protected from dismissal or detriment if they refuse to accept unlawful inducements (see part 2.3 below), or if they refuse to make any kind of payments on the grounds of not being a member of a union. This final provision, as noted by the IDS Employment Law Handbook: Trade Unions, "presents a significant obstacle to trade union attempts to recoup, by way of payroll deductions, the cost of negotiating on behalf of non-union members".[38]

There is no qualifying period required for these rights – unlike ordinary protections against unfair dismissal, they apply from day one of employment.

2.3 Unlawful inducement

Sections 145A to 145F of TULRCA 1992 provide workers with the right not to be offered unlawful inducements. Inducements are defined by section 145A(1) as offers made by an employer with the sole or main purpose of inducing a worker:

> (a) not to be or seek to become a member of an independent trade union,
>
> (b) not to take part, at an appropriate time, in the activities of an independent trade union,
>
> (c) not to make use, at an appropriate time, of trade union services, or
>
> (d) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions.

These sections of law were introduced in 2004 following a judgment of the European Court of Human Rights that previous law allowing employers "to use financial incentives to induce employees to surrender important union

35 Trade Union and Labour Relations (Consolidation) Act 1992, s152
36 Commons Library briefing CBP 7245, Key Employment Rights, 27 September 2022
37 IDS Employment Law Handbook, Trade Unions, Thompson Reuters, 2018, p498, para 12.21
38 IDS Employment Law Handbook, Trade Unions, Thompson Reuters, 2018, p450, para 11.9

rights" was in violation of Article 11 of the European Convention on Human Rights.[39]

While workers are separately protected from detriment on the grounds of refusing such offers (see part 2.2 above) there does not have to be any detriment for claims to be brought – section 145A means that their rights have already been breached at the point where an offer is made.

The law specifically restricts 'offers' as opposed to mere persuasion or the provision of information aimed at encouraging or discouraging union membership. However, as noted by the IDS Employment Law Handbook: Trade Unions, what constitutes an 'offer' is not defined in the legislation and remains a matter of legal debate:

> No definition of the term 'offer' is provided in S.145A. It therefore remains open to debate whether this provision applies only to express offers, or whether it also covers implied offers. The question is most likely to arise when an employer opts to deploy threats instead of sweeteners – for example, by declaring that it will close a workplace if the workers do not refrain from joining a particular union. In such circumstances there has not been an express offer, but the threat could be viewed as a negative offer – i.e. 'you will keep your jobs as long as you don't join the union'.[40]

However, a 2022 Employment Appeal Tribunal case, *Ineos Infrastructure Grangemouth Ltd v Jones and Others*, found that the unilateral imposition of new terms by the employer could amount to an "offer" for this purpose under certain circumstances.[41]

2.4 Blacklisting

Blacklisting refers to the practice of employers compiling or circulating information about trade union members or organisers for the purpose of discriminating against them in recruitment or other treatment. The practice has a long history, dating back to at least 1919 and the formation of the Economic League (an organisation which worked to promote the interests of industrialists and to monitor people seen as left-wing troublemakers).[42]

In March 2009 the Information Commissioner published evidence of blacklisting carried out by an organisation called The Consulting Association. This led to the enactment of the Employment Relations Act 1999 (Blacklists) Regulations 2010, which prohibit the compilation, use, sale or supply of blacklists.[43]

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39 *Wilson and ors v United Kingdom* 2002 IRLR 568, ECtHR

40 IDS Employment Law Handbook, Trade Unions, Thompson Reuters, 2018, p458, para 11.28

41 Employment Appeal Tribunal, *Ineos Infrastructure Grangemouth Ltd v Jones and Others* [2022] EAT 82

42 Mike Hughes, Spies at Work, 2012

43 Employment Relations Act 1999 (Blacklists) Regulations 2010, regulation 3(1)

Blacklists are referred to in the Regulations as "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. [44]

Regulations 5 and 6 make it unlawful to refuse to employ a person, or subject a worker to any detriment, or for an employment agency to refuse an individual any of its services, for a reason related to a prohibited list.[45]

For more detail on trade union blacklisting, including the background and passage of the 2010 Regulations and subsequent developments, see the 2017 Library briefing Trade unions: blacklisting.[46]

2.5 Access to workplaces

There are currently no specific rights in British law for trade union representatives to access workplaces for the purpose of organising or recruiting new members.

The question of union access to workplaces was the subject of a 2019 Westminster Hall debate led by then Labour MP Faisal Rashid. Opening the debate, Faisal Rashid MP noted the lack of union access rights as a barrier to improving working practices in many workplaces:

> I have spoken to countless trade union officials who tell me that, despite the widespread desire for improved rights and conditions at work, efforts to unionise staff in such workplaces are often fruitless.
>
> In large part, that is because there are currently no rights of access for trade unions to enter the workplace and speak to workers for the purposes of recruitment. Workers at Amazon have had their shift patterns interrupted and randomised simply to prevent them from talking to union officials on the way into work. Union representatives visiting branches of McDonald's across the UK to speak to workers about the benefits of joining a trade union are routinely thrown out of stores, with their presence reported to senior regional managers.[47]

The then Minister for Business and Industry, Andrew Stephenson, responded for the Government that existing rights for union members provided sufficient protection and ability for union organising without further need for specific legislation on rights to access workplaces:

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44 Employment Relations Act 1999 (Blacklists) Regulations 2010, regulation 3(2)

45 Employment Relations Act 1999 (Blacklists) Regulations 2010, regulations 5-6

46 Commons Library Briefing SN06819 Trade unions: blacklisting, 1 September 2017

47 HC Deb 4 June 2019 c53WH

> The Government recognise the important role that trade unions play in the UK economy and society and, personally, I hope that that continues for many years to come. Individual workers have the right to join a union and take part in union activities. Unions, through their individual members and officials, effectively have the right to recruit and organise in the workplace. Unions are also free to seek collective bargaining agreements with employers. If necessary, they can obtain statutory trade union recognition as long as they can demonstrate majority support for union recognition in the workplace. Our legislation therefore does not need amending. It is well established, and has been backed by successive Governments. If workers and unions want collective bargaining in workplaces across the UK, they are free to organise to achieve that.[48]

Faisal Rashid MP also introduced on 15 May 2019 a Ten Minute Rule Bill, the Trade Union (Access to Workplaces) Bill 2017-19, "to remove certain restrictions on trade unions conducting business in workplaces". The Bill did not receive a second reading.

Comparisons to New Zealand law

During the presentation of the Trade Union (Access to Workplaces) Bill 2017-19, Faisal Rashid MP contrasted the situation in UK law to that in New Zealand following the passage of the New Zealand Employment Relations Amendment Act 2018.

Likewise, the New Zealand legislation was referenced favourably by an Early Day Motion on trade union rights of access to workplaces tabled on 27 March 2019 and whose sponsors included current Deputy Leader of the Labour Party Angela Rayner and current Shadow Minister for Employment Rights Justin Madders.[49]

According to Employment New Zealand, a government agency, this updated law in New Zealand allows union representatives to enter workplaces without the employer's consent in some circumstances:

> Union representatives can enter workplaces without consent, provided the employees are covered under or bargaining towards a collective agreement. Representatives can still only enter a workplace for certain purposes, must be respectful of normal operating hours, and follow health, safety and security procedures.
>
> Union representatives still need to seek consent before entering workplaces where no collective agreement or bargaining exists, and for workplaces that are also residences (such as farmhouses). Union representatives can also enter a workplace to assist a non-union employee with matters relating to health and safety if that employee has requested their assistance.[50]

48 HC Deb 4 June 2019 c30WH

49 EDM 2243, Trade union rights of access to workplaces, 27 March 2019

50 Employment New Zealand, Employment Relations Amendment Act 2018 [accessed 1 November 2023]

3 Collective bargaining

3.1 Recognition

Recognition of a trade union means, according to the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA 1992), "the recognition of the union by an employer, or two or more associated employers, to any extent, for the purposes of collective bargaining."[51]

Effectively, it means that employers have agreed, or been compelled by law, to negotiate with that union as a representative of some or all of the workforce, on one or more of a statutory list of issues.

The issues in question, specified in section 178(2) of TULRCA 1992, are:

> (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
>
> (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
>
> (c) allocation of work or the duties of employment between workers or groups of workers;
>
> (d) matters of discipline;
>
> (e) a worker's membership or non-membership of a trade union;
>
> (f) facilities for officials of trade unions; and
>
> (g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.[52]

Recognition can relate to negotiations on all of these issues, or just one or two of them. It can take the form of a written recognition agreement, or simply be implied from the behaviour of both parties over a period of time.

In the UK, unlike in some other countries such as France, there is no statutory mechanism for unions to be recognised across an entire sector – only at the level of individual workplaces.

51 TULRCA 1992, s178(3)
52 TULRCA 1992, s178(2)

Effects of recognition

Recognition grants a trade union a number of rights to do with collective bargaining. Unions are entitled to request the disclosure of certain information for collective bargaining purposes and to be consulted in a variety of situations (explained below in part 3.2). Officials of recognised unions also gain additional rights for time off work to carry out certain duties (explained above in part 2.1).

Recognition of a union in respect of a group of workers also prevents any other trade union from pursuing the statutory recognition procedure if there is any overlap between the groups of workers the unions seek to represent.[53]

Routes to recognition

Voluntary recognition

The simplest route to trade union recognition is through a voluntary agreement on the part of the employer. This can be an explicit, written agreement, but it could also be implied where an employer agrees to negotiate with a union over a period of time in respect of some of the statutory issues listed in section 178(2) of TULRCA 1992.

The Court of Appeal, in the key case of *NUGSAT v Albury Bros Ltd,* ruled that for conduct to amount to recognition it must be "sufficiently clear and distinct" and amount to more than simply a willingness on the part of the employer to meet with and discuss issues with the union.[54]

Where unions have been recognised voluntarily on the part of employers, there is no legal restriction on the ability of employers to vary the scope of the recognition, or to derecognise the union altogether.

Statutory recognition process

A procedure, set out in Schedule A1 to both TULRCA 1992 and the Employment Relations Act 1999, allows trade unions to attempt to compel reluctant employers to recognise a trade union for the purpose of collective bargaining.

The statutory procedure only applies to firms employing at least 21 workers and to unions which have a certificate of independence (see part 1.1 above).

A request under the statutory procedure must be made by the union, to the employer, in writing and clearly identify the relevant 'bargaining unit' - the set of employees that will be represented by the union when it is recognised. The employer has 10 working days to respond, in one of the following ways:

53 Simon Deakin and Gillian S Morris, Labour Law, 2012, Sixth Edition, p806, para 7.26

54 *National Union of Gold, Silver, and Allied Trades v Albury Brothers Ltd* [1979] ICR 84

- Accepting the request, in which case recognition is taken to be agreed and the parties can proceed to establishing a method of collective bargaining (see part 3.2 below).
- Not accepting the request but indicating a willingness to negotiate, in which case a period of at least 20 working days (extendable by agreement) is allowed for negotiations, which can be assisted by the Advisory, Conciliation and Arbitration Service (Acas).
  - If negotiations fail the union can apply to the Central Arbitration Committee (CAC – see Box 2) for recognition (providing the union has not failed to accept an employer offer for Acas support in the negotiations).
- Refusing the request (or failing to respond), in which case the union can apply to the CAC for recognition.

2 The Central Arbitration Committee

The Central Arbitration Committee (CAC) is an independent tribunal with statutory powers to resolve certain types of collective disputes in Great Britain, specifically around the statutory recognition of trade unions and disclosure of information to trade unions. The CAC can also offer voluntary arbitration in other kinds of collective disputes.[55]

The Committee consists of 36 members including a chair, seven deputy chairs, 15 members with experience as worker representatives and 13 members with experience as employer representatives, all appointed by the Secretary of State on the advice of a panel of existing members.[56]

The IDS Employment Law Handbook: Trade Unions notes that the statutory procedure is often invoked by unions as a negotiating tactic to ultimately achieve a more favourable voluntary recognition agreement:

> Although unions will not always find it necessary to invoke the statutory procedure, many are likely to view it as an important means of establishing, or re-establishing, collective bargaining rights. After all, by embarking on the statutory route, a union does not bar itself from winning recognition through voluntary agreement in the end, and the threat of intervention by the CAC could strengthen the union's hand in its negotiations with the employer[57]

Requests to the CAC for recognition

For a request to the CAC to be admissible, a trade union will have to show that at least 10% of the workers in the bargaining unit are members of the

55 GOV.UK, About the Central Arbitration Committee, [accessed 1 November 2023]
56 GOV.UK, Membership of the Central Arbitration Committee (CAC), [accessed 1 November 2023]
57 IDS Employment Law Handbook, Trade Unions, Thompson Reuters, 2018, p176, para 6.56

union, and that a majority of the workers in the bargaining unit would be likely to support the union conducting collective bargaining on their behalf.

Unions whose members include over 50% of the workforce will generally automatically satisfy both conditions. For those with smaller memberships, petitions signed by the workforce are often include with the application.

As noted on the GOV.UK page When the union applies for statutory recognition, certain other reasons might prevent a union's application from being valid, if:

- they've applied for recognition in the last 3 years
- they are not a certified independent union
- there's already a recognition agreement that allows another union to represent employees in the bargaining unit
- another union - representing 10% of the employees in the proposed bargaining unit - has already applied to CAC[58]

When a valid request is made, the CAC can be called upon to help decide two issues: what the appropriate bargaining unit is and whether the union has support of enough of the workforce to grant statutory recognition. The CAC will take evidence from both sides and may appoint a "suitable independent person" to liaise with employees from across the bargaining unit.[59]

Finally, the CAC may order a secret ballot of employees in the bargaining unit to be held, overseen by a qualified independent person, to see if the union has sufficient support for statutory recognition to be granted. The union will have to demonstrate that it has the support of 40% of those working in the bargaining unit as well as a majority of those voting.[60]

As an alternative to a ballot, the union will have to demonstrate that more than 50% of the workers in that bargaining unit are members of that union. Even if they are, the CAC may, in certain circumstances, order a ballot to be held.[61]

Derecognition

There are a number of routes laid out in Parts IV to VI of Schedule A1 to TULRCA 1992 that could allow for removal of union recognition, generally in cases where there have been changes in workforce composition or support:

58 GOV.UK Employers: recognise a trade union: When the union applies for statutory recognition, [accessed 12 September 2023]

59 GOV.UK Employers: recognise a trade union: Establishing the bargaining unit, [accessed 12 September 2023]

60 GOV.UK Employers: recognise a trade union: Ballot on union recognition, [accessed 12 September 2023]

61 As above

- Employers can end statutory recognition in cases where there are now fewer than 21 workers in the bargaining unit.[62]
- Employers or workers can end statutory recognition on the grounds that there is no longer majority support for it in the bargaining unit, requiring the CAC to arrange a ballot on derecognition[63]
- The CAC automatically ends statutory recognition if the Certification Officer withdraws the union's certificate of independence.
- Workers can also apply to end the voluntary recognition of a non-independent union, potentially requiring a ballot arranged by the CAC to demonstrate that the union lacks majority support for collective bargaining.[64]

3.2 Collective bargaining process

A declaration of recognition, by itself, is often only the first step in the collective bargaining process. To establish a more substantial collective bargaining process the employer and union need to agree a 'method of collective bargaining'.[65] Such a method is often outlined in a written collective agreement between unions and the employer. If they are unable to reach agreement, either party can apply to the CAC for assistance and, ultimately, the CAC can impose a method on them if needed.[66]

While, in the absence of CAC-imposed methods, there is no formal statutory process that must be followed for collective bargaining, in practice most collective bargaining tends to follow roughly the same pattern:

- Information is provided by the employer to the trade union, as required (see below)
- Union officials take some time off from their usual duties in order to prepare for the negotiations (see part 2.1 "Facility time" above).
- Negotiations take place, usually in a standard pre-agreed format such as a 'Joint Negotiating Committee', including representatives of the union and employer.
- Where negotiations are failing, Acas can be called on to offer collective conciliation or arbitration.[67]

62 Trade Union and Labour Relations (Consolidation) Act 1992, Schedule A1, paras 99-103
63 Trade Union and Labour Relations (Consolidation) Act 1992, Schedule A1, paras 104-121
64 Trade Union and Labour Relations (Consolidation) Act 1992, Schedule A1, paras 134-148
65 Trade Union and Labour Relations (Consolidation) Act 1992, Schedule A1, para 30
66 Trade Union and Labour Relations (Consolidation) Act 1992, Schedule A1, para 31
67 Acas, dispute resolution, [accessed 13 December 2023]

- Unions put any final offer to their members in a ballot before deciding whether to accept or reject it. Unions can make a recommendation to their members to either accept or reject a deal, or can remain neutral in the ballot.

When negotiations have failed to reach an agreement in a dispute between the employer and unions, unions may consider taking industrial action (see part 5 "Strikes and other industrial action" below).

Bypassing collective bargaining

One of the central features of collective bargaining is that a trade union is recognised to negotiate on behalf of the entire workforce, not just their own members. This means that there is generally no route for non-union members to have direct input into the collective bargaining process. Unions are free to only ballot or consult their own membership on whether to accept any offers put to them by employers.

During the collective bargaining process, employers are free to (and often do) write to the entire workforce to explain their position and try to convince workers to accept offers that have been put forward. However, employers must not communicate directly with employees in a way that could be taken to undermine collective bargaining by bypassing the recognised union in making an offer directly to individual workers.

A member of an independent union that is recognised (or seeking to be recognised) has the right not to be made an offer by their employer whose purpose is to undermine collective bargaining. This is specifically defined as any offer whose sole or main purpose would be that, if accepted by that worker and other workers, terms and conditions were no longer determined by collective bargaining via the union.[68] Doing so constitutes unlawful inducement (see part 2.3 "Unlawful inducement" above).

Legal status of collective agreements

In general, collective agreements are not legally binding, unless they take the form of CAC-imposed methods of collective bargaining (see above), or the terms and conditions that result from them are incorporated into individual workers' contracts of employment, in which case they can be enforced as part of the contract as usual.

In some cases, parts of written agreements between unions and employer have themselves been found to be legally binding.[69] However, section 179 of TULRCA specifically states that collective agreements "shall be conclusively

[68] Trade Union and Labour Relations (Consolidation) Act 1992, s145B

[69] For example, *Royal Mail Group Ltd v Communication Workers Union* [2017] EWHC 2548 (QB)).

presumed not to have been intended by the parties to be a legally binding contract" unless the agreement explicitly states otherwise in writing.[70]

As noted by law firm Lewis Silkin,in practice agreements tend not to include such provisions, making industrial action rather than the courts the only means of enforcing collective agreements (unless their terms are incorporated into individual workers' contracts):

> As such a provision is rare, most collective agreements are binding "in honour only", which means that neither party may enforce the agreement's terms in court. This means that industrial action is a trade union's ultimate recourse for an employer's breach of their agreement.[71]

3.3 Information and consultation rights

Information requirements under collective bargaining

Recognised trade unions have statutory rights to receive certain information from the employer for collective bargaining process. These rights are set out in sections 181 to 185 of TULRCA 1992.

This right to information is "on request" and employers can insist that such requests be in writing.[72] The actual definition of what information unions can request is fairly broad, covering all information:

> (a) without which the trade union representatives would be to a material extent impeded in carrying on collective bargaining with him, and
>
> (b) which it would be in accordance with good industrial relations practice that he should disclose to them for the purposes of collective bargaining.[73]

This is limited only by certain exceptions such as legally privileged information, information about individual workers or information obtained in confidence from third parties.[74]

Acas has published a Statutory Code of Practice on disclosure of information to trade unions for collective bargaining purposes, which outlines in more detail the expectations on employers and trade unions when it comes to these disclosures.[75] Disputes about disclosure can be referred to Acas for conciliation or, failing that, to the CAC for adjudication.

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70 Trade Union and Labour Relations (Consolidation) Act 1992, s179
71 Lewis Silkin LLP, Trade union recognition (PDF), 2021
72 Trade Union and Labour Relations (Consolidation) Act 1992, s181(4)
73 Trade Union and Labour Relations (Consolidation) Act 1992, s181(2)
74 Trade Union and Labour Relations (Consolidation) Act 1992, s182
75 Acas, Statutory Code of Practice on disclosure of information to trade unions for collective bargaining purposes, 27 April 2003

In addition, some UK-based employers continue to operate European Works Councils (EWCs), an EU-law derived information and consultation body for transnational employers. Despite departure of the UK from the European Union, the Court of Appeal has held that the EWCs of certain UK-based businesses continue to exist.[76]

Consultation requirements under collective bargaining

As noted by Acas guidance on Consulting employees and representatives, "As an employer, you can consult employees and their representatives on almost any issue and at any time."[77] This is true regardless of whether or not there is a recognition agreement in place, though as noted above under "voluntary recognition", a sustained willingness to consult and negotiate with a union over a period of time may itself constitute recognition in practice.

However, where a union is recognised, there are certain matters for which 'collective consultation' – consultation with the unions on behalf of the workforce – becomes mandatory. In particular, collective consultation is required during mass redundancies, changes to pension schemes, health and safety matters, and any plans to transfer ownership of the business.

Redundancies

Where an employer proposes to make redundant 20 or more employees at a single establishment within 90 days or less, there is a legal requirement under TULRCA 1992 to consult collectively with the workforce. The 'single establishment' restriction means that it is possible for employers to make larger numbers of employees redundant across multiple branches or outlets without triggering this requirement.

This consultation must be done through the recognised union where one exists.[78] However, even in the absence of union recognition, employers are still required to consult during mass redundancies, which would require the election of employee representatives. As noted by Acas, "When collective consultation is needed, by law you must consult any recognised trade union. If there's no trade union, you must consult employee representatives."[79]

The same rules apply if the employer is proposing to dismiss 20 or more employees in a single establishment for "some other substantial reason" rather than redundancy.[80]

Pension changes

Employers of 50 or more employees who are proposing to make certain changes to workforce pension schemes have a specific requirement under

76 Lewis Silkin, "European Works Councils continue to exist in a post-Brexit UK", 6 September 2023
77 Acas, Consulting employees and representatives: What to consult on, 21 December 2021
78 Trade Union and Labour Relations (Consolidation) Act 1992, ss188-190
79 Acas, Collective consultation for redundancy: How to hold consultation, 6 October 2022
80 Acas, Consulting employees and representatives: When consultation is required, 12 December 2021

pensions regulations to consult with their employees beforehand.[81] This must be done through the recognised union where one exists.

However, even in the absence of union recognition, employers are still required to consult ahead of these proposed pension changes, either through other existing arrangements or through newly elected representatives.[82]

Health and safety

Where requested by two or more union-appointed health and safety representatives, employers are required to set up a health and safety committee within three months.[83]

The Health and Safety Executive (HSE), the statutory body responsible for regulating health and safety at work, has guidance on setting up health and safety committees and how they should operate.

Transfer of ownership

When part of an organisation changes ownership, or there is a transfer of service provider, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply.[84] These Regulations exist to protect employee rights in such cases. When a TUPE transfer happens, both the old and new employers have to inform and consult with staff representatives. This must be done through the recognised union where one exists.[85]

However, even in the absence of union recognition, employers are still required to consult during TUPE transfers – as noted by Acas "If you do not have an existing arrangement for representatives for TUPE consultation, you will need to hold an election process."[86]

Additional information and consultation requirements

Separate from the collective bargaining provisions in TULRCA, the Information and Consultation of Employees Regulations 2004 additionally allows employees, even in the absence of a union recognition agreement, to request that their employer make arrangements to provide them with information and consult them about certain issues.

In practice these 2004 Regulations were not widely used after first coming into force in 2005, either by unions or non-unionised workforces.[87] However,

81 Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006

82 Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006, Regulation 12

83 HSE, Health and safety committees [accessed 1 November 2023]

84 See GOV.UK Business transfers, takeovers and TUPE [accessed 1 November 2023]

85 The Transfer of Undertakings (Protection of Employment) Regulations 2006, Regulation 13(3)

86 Acas, TUPE: informing and consulting: Why you must consult, 31 October 2023

87 CIPD and IPA, What, why and how of the Information and Consultation of Employees (ICE) regulations, March 2020, pp7-8

from April 2020, the threshold required to trigger such a request was reduced from 10% to 2% of the workforce, making it potentially easier for employees to make use of the Regulations.[88]

The CAC has published guidance on the Regulations for employers and employees and its own role in overseeing them.[89]

88 The Employment Rights (Miscellaneous Amendments) Regulations 2019, Regulation 16

89 Central Arbitration Committee, Guidance: The Information and Consultation Regulations, GOV.UK, 17 September 2020

4 Trade union statistics

This section covers some of the key statistics on trade unions, including membership levels, which the largest trade unions are, and donations made by trade unions to political parties.

4.1 The largest trade unions

There are a range of trade unions across the UK which cover all sectors. The table below shows the largest trade unions in the UK and shows all trade unions with a membership of over 20,000. A more expansive list of trade unions can be found on the union listing section of the Trades Union Congress site.[90]

UNISON is the largest trade union in the UK with 1.17 million members in the public services sector, and is closely followed in membership by Unite, with 1.12 million members across all sectors and industries in the UK.

The union with the highest proportion of female members is RCM, the Royal College of Midwives, with 95% female membership. The union with the highest proportion of male members is ASLEF, the Associated Society of Locomotive Engineers and Firemen, with 92% male membership.

[90] Trades Union Congress (TUC), Union listing, accessed 19 December 2023

Largest trade unions in the UK
Membership

Union	Total	Men	Women	Other
Accord	21,082	6,597	13,790	695
ASLEF	21,235	19,604	1,631	-
Community	31,886	23,577	8,309	-
CSP	47,700	9,530	38,170	-
CWU	186,665	148,445	38,107	113
EIS	55,715	12,647	43,068	-
Equity	46,683	22,041	24,501	141
FBU	32,632	29,299	3,168	165
GMB	488,409	233,335	254,610	464
NAHT	48,918	12,676	29,399	6,843
NASUWT	284,062	74,891	209,171	-
NEU	457,143	105,859	350,107	1,177
PCS	184,370	74,799	105,893	3,678
POA	31,204	21,562	9,642	-
Prospect	126,908	82,410	44,292	206
RCM	35,760	111	33,964	1,685
RMT	81,199	67,436	13,729	34
SOR	28,380	6,489	21,884	7
UCU	111,981	51,928	59,164	889
UNISON	1,184,991	248,848	900,594	35,549
Unite	1,130,045	832,089	289,138	8,818
USDAW	369,437	167,539	201,762	136

Source: Trades Union Congress (TUC), Union listing, accessed 6 November 2023

4.2 Trade union membership

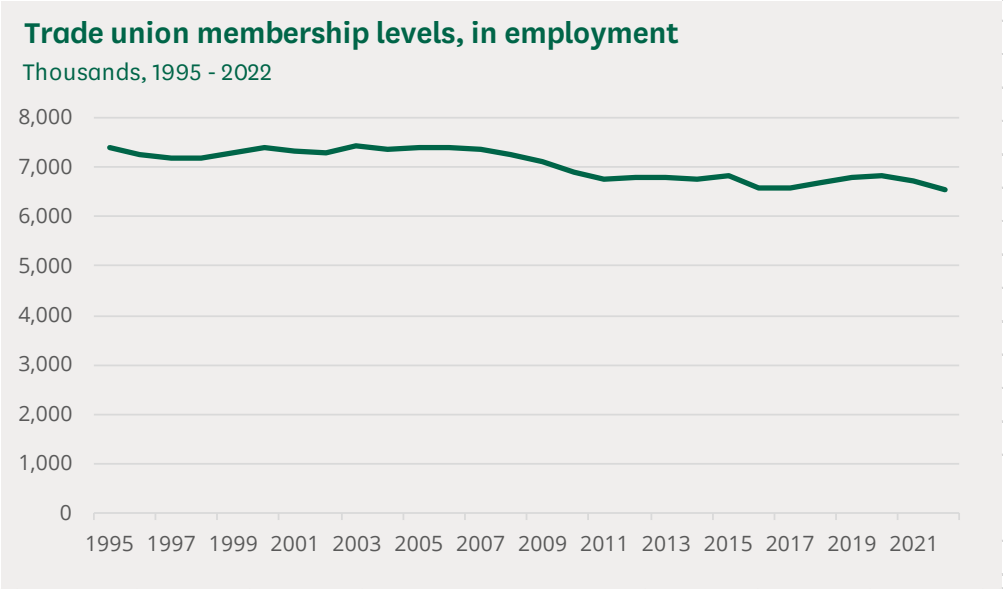
Estimates from the Office for National Statistics (ONS) Labour Force Survey (LFS) show that in 2022, trade union membership levels among UK employees fell by 200,000 on the year to 6.25 million. [91]

There has been a general decline in trade union membership since 1995 (as shown in the chart below), likely due to the legislation on trade unions introduced from 1980 and onwards. Trade union membership levels tend to reflect employment levels, which is likely why there was a sharp decline when employment levels fell following the 2008 financial crisis, an increase when unemployment fell prior to the start of the pandemic and then a decrease again after the pandemic in 2020 led to employment levels falling. [92]

The Resolution Foundation, a UK living-standards think tank, has argued that the combination of low unemployment and a low vacancies-to-employment ratio (which reached its lowest levels since the 2000s just before the Covid-19 pandemic) led to higher trade union memberships levels. This is due to

[91] Department for Business and Trade, Trade union statistics 2022, table 1.3a, 24 May 2023
[92] Resolution Foundation, Power plays, 7 July 2022

workers' having a greater number of options of employment, which led to greater competition among firms for workers, and therefore giving workers more power relative to this.[93]

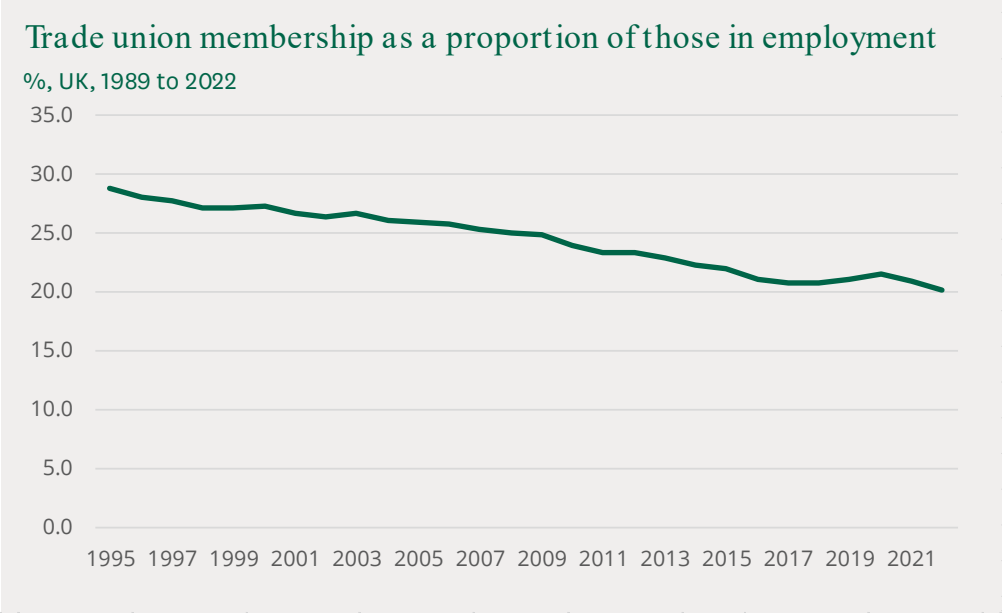


Source: Department for Business and Trade, Trade union statistics 2022, table 1.3a, 24 May 2023

Notes: Figures show membership levels of those in employment

Union membership has declined in the past four decades, though the decline has slowed.

Union membership as a proportion of those in employment fell from 28.8% in 1995 to 20.2% in 2022, as shown in the chart below. This is due to overall UK employment numbers rising in the period by around 5.9 million to 31.6 million in October to December 2022, while union membership among employees fell.



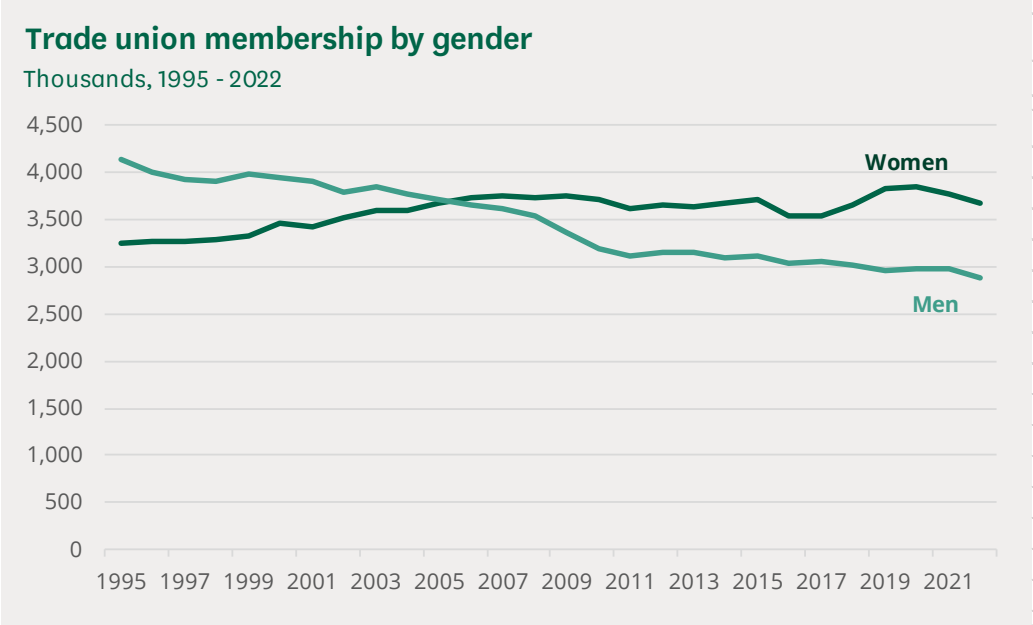
Source: Department for Business and Trade, Trade union statistics 2022, table 1.3b, 24 May 2023

[93] Resolution Foundation, Power plays, 7 July 2022

Men and women in trade unions

The number of UK women in employment who were union members decreased by 115,000 to 3.55 million in 2022, falling from a record high of 3.72 million in 2020. The fall in female membership makes up 58% of the total fall across all employees. Membership levels for men in employment decreased by 85,000 on the year to 2.70 million in 2022.

These trends are shown in the chart below.



Source: Department for Business and Trade, Trade union statistics 2022, 24 May 2023

Notes: Figures show membership levels of those in employment

Trade union membership by sectors

The decline in membership among employees primarily occurred in the private sector.

Since 2002, a growing gap has opened between the percentage of private sector workers who are members of a union, and the percentage of public sector workers who are members of a union, with membership being more heavily concentrated among public sector workers.

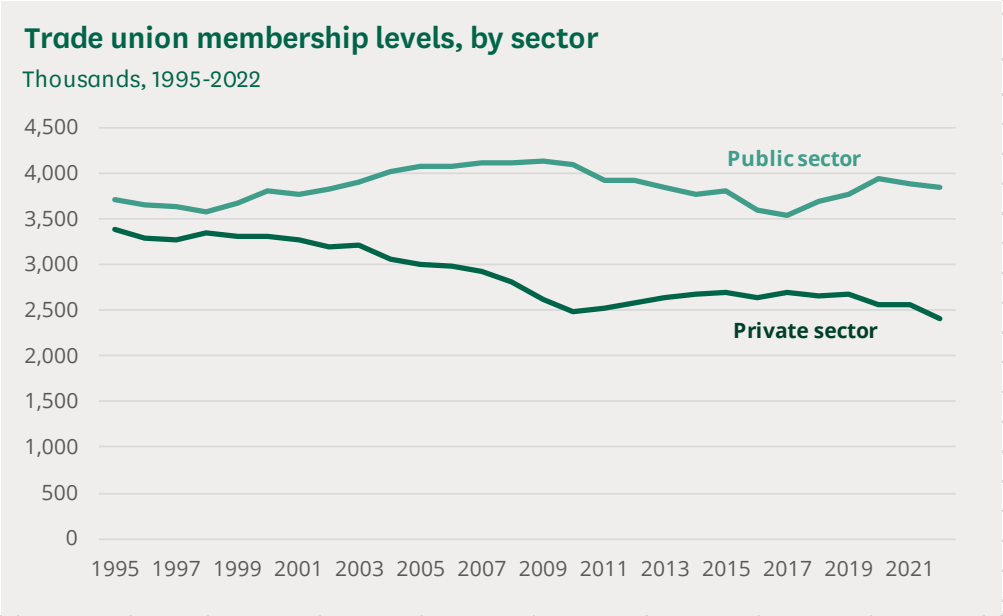
Calculations from the Department for Business and Trade (DBT) estimate that trade union membership in the private sector has decreased by 981,000 since 1995, a decrease of 28.9%. Trade union membership in the public sector has increased by 121,000 since 1995, an increase of 3.3%.[94]

Figures published by the DBT using LFS data estimated that trade union membership among public sector employees decreased to 3.84 million in 2022; this was 48,000 fewer than in 2021. This followed a similar-sized decrease of 56,000 between 2020 and 2021. Union membership among

[94] Department for Business and Trade, Trade union statistics 2022, 24 May 2023

private sector employees also decreased to 2.4 million in 2022; this was 151,000 fewer than in 2021.

These trends are shown in the chart below.



Source: Department for Business and Trade, Trade union statistics 2022, 24 May 2023

Note: data is only available for number of employees who are members of a trade union by sector, and not the total number of those who are in employment.

Despite an increase of trade union members in the public sector since 1995, trade union density – the proportion of employees who are members of a trade union – has fallen in both public and private sectors.

The proportion of private sector employees in a union fell from 12.7% in 2021 to 12.0% in 2022. The proportion of public sector employees in a union fell from 50.0% in 2021 to 48.6% in 2022. This is the first time trade union density has fallen below 50% in the public sector since records began in 1995.

Why have trade union membership levels fallen?

The Organisation for Economic Co-operation and Development (OECD) has suggested that the following factors have played a role in the decline in unionisation in OECD countries:

- A push towards more collective bargaining at the enterprise level
- The decline of manufacturing and shift towards services
- The declining role of the public sector
- The spread of flexible contracts.[95]

[95] OECD, OECD Economic Surveys: Iceland, June 2017

Research by the Resolution Foundation has also suggested that a factor in declining trade union membership levels is that fewer new workplaces are recognising unions.[96]

4.3 Donations

Trade unions have historically been associated with the Labour party, which is currently affiliated with 11 trade unions.[97] The trade unions listed in the chart below have made donations to political parties since the beginning of 2023.

A full historical list of donations made to political parties by trade unions is available on the electoral commission site.[98] The trade union which has donated the highest amount so far in 2023 is Unite.

Donations made to political parties by trade unions, 2023

Trade union	Political party	Amount (£)
CWU	Labour party	223,000
ASLEF	Labour party	15,000
Transport and Salaried Staffs' Association	Labour party	30,000
GMB	Labour party	609,000
UNISON	Labour party	564,000
USDAW	Co-operative party	10,000
	Labour party	471,000
Fire Brigades Union	Labour party	23,000
Community union	Labour party	86,000
Unite	Labour party	1,088,000
Musicians union	Labour party	15,000

Source: Electoral Commission, Donations, accessed 6 November 2023

4.4 An international comparison

Trade unionisation

As the table below shows, Iceland is the most highly unionised country in the OECD, with 92.2.% of employees being members of trade unions in 2020.

The OECD has suggested that the high levels of union membership in Nordic countries is due to differences in institutional factors and regulation in Nordic countries compared with other OECD countries. For example, in Iceland:

96 Resolution Foundation, Power plays, 7 July 2022
97 The Labour Party, Affiliated Unions, undated, accessed 29 December 2023
98 Electoral Commission, Donations, accessed 6 November 2023

one crucial institutional determinant of union membership is the existence of the system where unemployment benefits and potentially other welfare payments are administered by union-affiliated institutions (the so-called Ghent system). In Iceland, a large share of welfare payments is administered through funds under the custodianship of the social partners.[99]

Percentage of employees in trade unions, OECD countries, 2010-2020

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Australia	18.4	18.4	18.2	17.0	15.1	..	14.6	..	13.7	..	..
Austria	28.9	28.3	28.0	27.8	27.7	27.4	26.9	26.7	26.3	26.3	..
Belgium	53.0	54.2	54.1	53.3	52.9	52.3	51.6	50.7	50.0	49.1	..
Canada	27.2	26.9	27.2	27.1	26.4	26.5	26.3	26.3	25.9	26.1	27.2
Chile	13.9	13.8	14.4	14.1	14.6	15.3	16.9	17.0	16.6	..	..
Colombia	9.2	9.1	9.1	9.7	9.6	9.4	9.5	9.5	..	..	..
Costa Rica	12.9	13.4	13.1	13.7	12.4	18.6	19.3	19.3	19.4	20.5	..
Czech Republic	16.1	15.4	14.8	13.6	12.9	11.9	11.9	11.7	11.4	..	..
Denmark	68.1	68.7	69.0	68.8	68.5	68.2	67.4	66.7	67.5	67.0	..
Estonia	8.2	7.0	6.0	5.6	5.3	4.5	5.0	4.7	5.9	6.0	..
Finland	71.4	69.6	69.2	67.5	67.8	67.5	65.7	62.9	60.0	58.8	..
France	10.8	..	..	11.0	..	..	10.8	..	..	..	..
Germany	18.9	18.4	18.3	18.0	17.7	17.6	17.0	16.7	16.6	16.3	..
Greece	22.2	..	..	23.1	..	..	19.0	..	..	..	..
Hungary	..	..	12.5	..	11.0	..	9.2	..	8.3	..	..
Iceland	85.2	85.0	85.3	88.9	90.4	91.6	90.4	91.0	90.7	90.7	92.2
Ireland	31.6	31.6	30.1	28.5	26.3	25.4	23.4	24.3	24.1	25.1	26.2
Israel	..	..	22.8	..	..	..	..	25.0	..	..	..
Italy	35.3	35.2	35.5	35.7	35.4	34.2	33.6	33.2	32.6	32.5	..
Japan	18.4	19.0	18.0	17.8	17.6	17.5	17.4	17.2	17.0	16.8	..
Korea	9.6	9.8	9.9	10.1	10.1	10.0	10.0	10.5	11.6	..	..
Lithuania	10.1	9.7	9.0	8.4	8.1	7.9	7.7	7.7	7.1	7.4	..
Latvia	15.1	13.7	13.2	12.9	12.8	12.7	12.4	12.3	11.6	..	..
Luxembourg	36.1	36.6	35.3	34.8	34.1	33.3	32.3	32.1	30.4	28.2	..
Mexico	14.5	14.7	14.0	13.8	13.6	13.1	12.7	12.5	12.0	12.3	12.4
Netherlands	19.5	19.3	18.8	18.2	18.1	17.7	17.3	16.8	16.5	15.4	..
New Zealand	21.4	20.5	20.3	19.5	18.6	17.9	17.8	17.5	17.7	..	..
Norway	50.5	49.9	49.9	49.8	50.1	49.8	50.0	50.0	49.9	50.4	..
Poland	17.4	17.3	16.6	..	16.5	..	14.1	13.4	..	..	..
Portugal	19.6	18.6	..	..	..	16.1	15.3	..	..	..	..
Slovak Republic	16.4	14.5	14.5	14.1	13.4	12.6	11.8	11.5	11.3	..	..
Slovenia	32.6	36.7	26.8	26.2	29.4	23.8	..	..	..	..	..
Spain	18.2	17.9	17.8	17.0	15.8	14.4	13.9	13.4	13.0	12.5	..
Sweden	68.2	67.5	67.5	67.7	67.3	67.0	66.7	66.1	65.5	65.2	..
Switzerland	17.6	17.0	16.5	16.6	16.1	15.7	15.3	14.9	14.4	..	..
Türkiye	7.3	7.1	6.3	6.3	6.9	8.0	8.2	8.6	9.2	9.9	..
United Kingdom	26.6	26.0	26.1	25.6	25.0	24.7	23.6	23.3	23.4	23.5	..
United States	11.4	11.3	10.8	10.8	10.7	10.6	10.3	10.3	10.1	9.9	10.3
OECD - Total	17.8	17.7	17.3	17.1	16.8	16.5	16.2	16.0	15.9	15.8	..

[99] OECD, OECD Economic Surveys: Iceland, June 2017

Source: OECD, trade union density, accessed 6 November 2023

Collective bargaining

In 2019, 26.9% of the UK workforce had the right to collective bargaining in the UK, a decrease from 31.2% in 2011. In the UK, most collective bargaining agreements are voluntary.[100] The Resolution Foundation has argued that there has been a decrease in collective bargaining, and that where collective bargaining does still occur:

> it has become more decentralised, most often involving union and management negotiations at individual workplaces rather than at a national, industry, regional, or multi-employer level.[101]

While there has been a fall in collective bargaining across all OECD countries, the fall has been smaller than that in the UK, with the estimated total across OECD countries falling from 34.6% in 2011 to 32.1% in 2019. The percentage of the workforce with the right to collective bargaining is shown for each OECD country in the chart below.

Furthermore, some other countries have higher levels of collective bargaining than the UK. In Italy, 100% of workers have the right to collective bargaining, as unions are able to freely negotiate collective agreements at all levels. The International Labour Organisation, an agency of the United Nations, has estimated that roughly 95% of categories of workers in Italy were covered by a collective agreement at the time of writing.[102]

Iceland also has one of the most widespread coverages of collective bargaining, which corresponds with their high level of union membership amongst employees, as discussed above. The OECD has said that 'administrative extension of collective agreements' is an important factor in this. This means that in Iceland, when a union has bargained for and won certain rights in the labour market, these rights are automatically extended to all workers, regardless of which union they belong to.[103]

100 TUC, Collective bargaining, undated, accessed 15 December 2023
101 Resolution Foundation, Power plays, 7 July 2022
102 International Labour Organisation, National Labour Law Profile: Italy, undated, accessed 29 December 2023
103 OECD, OECD Economic Surveys: Iceland, June 2017

Percentage of employees with the right to bargain

OECD countries, 2011-2021

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Australia	..	60.0	..	62.0	..	61.3	..	61.2	..	..	..
Austria	98.0	98.0	98.0	98.0	98.0	98.0	98.0	98.0	98.0	..	..
Belgium	96.0	96.0	96.0	96.0	96.0	96.0	96.0	96.0	96.0	..	..
Canada	31.0	31.3	31.1	30.4	30.6	30.3	30.4	30.1	30.2	31.3	..
Chile	16.1	16.9	17.5	18.5	19.0	19.9	17.7	20.4	..	..	..
Colombia	1.0	0.9	10.7	12.3	14.5	15.7	..	..	..	..	..
Czech Republic	36.9	36.7	36.4	34.3	34.2	32.9	33.6	34.2	34.7	..	..
Denmark	83.0	83.7	..	..	83.1	..	..	82.0	..	..	..
Estonia	..	..	..	..	18.6	..	..	..	..	..	19.1
Finland	..	..	..	91.9	..	..	88.8	..	..	..	..
France	..	..	98.0	..	98.0	..	..	98.0	..	..	..
Germany	58.9	58.3	57.6	57.8	56.8	56.0	55.0	54.0	..	..	..
Greece	100.0	51.5	37.3	29.2	21.3	14.3	14.2	..	..	..	..
Hungary	26.4	26.9	25.5	25.4	28.3	28.1	23.3	21.1	21.8	..	..
Iceland	90.0	90.0	90.0	90.0	90.0	90.0	90.0	90.0	90.0	..	..
Ireland	..	..	..	..	..	..	34.0	..	..	..	..
Israel	..	26.1	..	..	..	..	..	..	..	..	..
Italy	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	..	..
Japan	19.0	17.9	17.7	17.6	17.5	17.3	17.1	16.9	16.8	..	..
Korea	12.6	12.8	12.8	12.9	12.7	12.8	13.3	14.8	..	..	..
Lithuania	19.3	17.9	16.6	16.2	15.6	15.2	15.3	14.1	14.2	17.5	26.6
Latvia	..	..	..	32.4	..	..	..	27.1	..	..	..
Luxembourg	..	..	..	56.8	..	..	..	56.9	..	..	..
Mexico	9.8	11.0	10.1	10.0	9.8	9.9	10.0	10.0	10.4	..	..
Netherlands	87.2	85.1	85.7	85.9	79.4	79.3	77.1	76.7	75.6	..	..
New Zealand	15.3	..	..	..	15.9	19.9	18.5	19.2	18.4	18.6	..
Norway	..	71.0	73.0	72.0	..	70.0	69.0	..	..	..	..
Poland	18.1	17.7	..	..	17.3	..	..	..	13.4	..	..
Portugal	82.0	79.0	80.1	77.5	77.2	77.7	76.6	77.2	77.4	78.0	77.2
Slovak Republic	35.0	..	..	..	24.4	..	..	..	..	..	..
Slovenia	..	..	65.4	69.2	67.5	70.9	78.6	..	..	..	..
Spain	79.8	80.1	84.6	83.4	79.6	80.8	78.9	80.1	..	..	..
Sweden	88.3	88.8	88.4	88.6	88.7	88.6	87.7	88.0	..	..	..
Switzerland	..	44.8	..	44.6	..	45.1	..	45.0	..	..	..
Türkiye	6.7	6.0	5.9	6.7	6.9	7.0	7.5	8.1	8.5	..	..
United Kingdom	31.2	29.3	29.5	27.5	27.9	26.3	26.0	26.0	26.9	..	..
United States	13.0	12.5	12.4	12.3	12.3	12.0	11.9	11.7	11.6	12.1	..
OECD - Total	34.6	33.5	33.4	33.1	32.7	32.4	32.2	32.1	32.1	..	..

Source: OECD statistics on collective bargaining coverage, 6 November 2023

5 Strikes and other industrial action

5.1 Is there a right to strike in Great Britain?

Unlike in some other European countries, such as France or Germany, where the 'right to strike' is explicitly outlined in their constitutions, the 'right to strike' is not as explicitly protected in domestic law in Great Britain. There is no recognition in common law of a right to take industrial action, but there are protections in statute law for industrial action meeting certain criteria.

By default under common law, employees taking part in industrial action could be held in breach of their contractual obligations. Trade unions that organise strikes could be sued for committing torts (civil wrongs), such as inducement of a breach of contract or conspiracy to do an unlawful act. If such lawsuits were successful, the remedies for these torts are primarily monetary compensation (damages) and injunctions (court orders to do or not do something).

However, several international agreements the UK is party to do include rights to take collective action. The general right to freedom of assembly is guaranteed by Article 11 of the European Convention on Human Rights (ECHR), embedded in domestic law through the Human Rights Act 1998.[104] This includes the right to organise in trade unions, and case law has made clear that this includes the right to take strike action.[105]

A separate treaty of the Council of Europe, the European Social Charter, which the UK is a signatory to, also guarantees the right to collective action under Article 6.[106] So too do International Labour Organisation Conventions 98 and 151.[107]

This situation was summed up by Lord Justice Elias in the 2011 Court of Appeal judgement *RMT v Serco*:

> The common law confers no right to strike in this country. Workers who take strike action will usually be acting in breach of their contracts of employment. Those who organise the strike will typically be liable for inducing a breach of contract, and sometimes other economic torts are committed during the

[104] European Court of Human Rights, Guide on Article 11 of the European Convention on Human Rights (PDF), 31 August 2022

[105] See Department of Business, Energy and Industrial Strategy, Human Rights Memorandum to the Strikes (Minimum Service Levels) Bill 2022-23 (PDF), 16 January 2023, para 6

[106] Council of Europe, European Social Charter, Turin, 1961, Article 6

[107] International Labour Organisation, Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and Labour Relations (Public Service) Convention, 1978 (No. 151)

> course of a strike. Without some protection from these potential liabilities, virtually all industrial action would be unlawful. Accordingly, ever since the Trade Disputes Act 1906 legislation has been in place to confer immunities on the organisers of strikes from certain tort liabilities provided [...] The legislation therefore secures a freedom rather than conferring a right as such.
>
> [...]
>
> Although the common law recognises no right to strike, there are various international instruments that do: see for example Article 6 of the Council of Europe's Social Charter and ILO Conventions 98 and 151. Furthermore, the ECHR has in a number of cases confirmed that the right to strike is conferred as an element of the right to freedom of association conferred by Article 11(1) of the European Convention on Human Rights which in turn is given effect by the Human Rights Act. The right is not unlimited and may be justifiably restricted under Article 11(2).[108]

The way this right to take collective action is expressed in domestic statute law is in the form of an immunity against legal action only in limited circumstances where unions meet various statutory conditions, rather than an express right.

Currently, the provisions governing when industrial action and unions are protected can be found in sections 219 to 235 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA 1992). Unions must comply with all the requirements, such as around the holding of ballots or notifying employers, to be eligible for protection.

Section 238A of TULRCA 1992 also gives employees automatic protection from dismissal on the grounds of taking part protected industrial action.

5.2 Types of industrial action

Strike

Perhaps the most well-known form of industrial action is a strike.

In TULRCA 1992 the official definition of a strike is provided in section 246 as "any concerted stoppage of work". Strikes can either take place on a series of individual pre-announced days over a period of time or be open-ended with workers remaining on strike indefinitely until a dispute is resolved.

Strike pay

Employers are under no obligation to pay workers for days spent on strike and, as noted in guidance on strikes from Acas (the government-funded Advisory, Conciliation and Arbitration Service), "Employees who go on strike

[108] *National Union of Rail, Maritime and Transport Workers v Serco Ltd (t/a Serco Docklands)* [2011] EWCA Civ 226, 04 March 2011, paras 2-8

will not usually get their pay or other contractual benefits like pension contributions."[109]

Some unions maintain strike funds: financial reserves set up ahead of time through member contributions which can be used to help cover the pay of workers on strike. These payments can cover all or only part of the striking members' wages and can be made either to all striking members equally or only to those most in need to help minimise the risk of hardship.

Unions set their own rules around the operation of these funds and how payments are made. For example, UNISON's industrial action handbook sets a "standard level of strike pay" at £25 per day, payable during a strike of four days or more; on top of this, individual UNISON branches can make hardship payments to members from any industrial action funds that have been set up and operated at branch-level, in accordance with their own criteria.[110]

Industrial action short of a strike

As well as strikes, there are various other types of industrial action which unions could take, involving more limited reductions or stoppages of work.

While employers are under no obligation to pay wages to employees who are on strike, the entitlement of employees to pay when participating in industrial action short of a strike will be more complex and depend on the exact circumstances of the employment contract and the type of industrial action.

Section 14(5) of the Employment Rights Act 1996 disapplies usual prohibitions on deductions from wages if the deduction is made "on account of" a worker having taken part in a strike or other industrial action. In practice employers faced with partial performance of duties by an employee will have to decide whether to accept that partial performance, in which case the employee must be paid, or to refuse to accept it, in which case the employee is not entitled to pay for any services performed.[111]

John Bowers QC and others in their 2011 book The Law of Industrial Action and Trade Union Recognition identify several reasons why unions may prefer to take industrial action short of a strike, including making it riskier for employers to deduct wages and avoiding losing the public's sympathy:

- It is likely to be more difficult for the employer to identify the union as having 'authorised or endorsed' such action, which is essential for the union to be liable under the Trade Union and Labour Relations (Consolidation) Act 1992

- Employers may be at risk if they deduct wages. It may require only a small amount of disruption by unidentifiable persons for example to bring a television station to a standstill whilst other employees will rightly claim to have been ready, willing and able to work and that they should

109 Acas, Strikes and industrial action: Strikes, 10 August 2023

110 UNISON Industrial Action Handbook (PDF), June 2019, pp28-32

111 IDS Employment Law Handbook, Industrial Action, Thompson Reuters, 2017, p275, para 9.19

therefore be paid in full. The employee may claim that there has been an unlawful deduction from wages under the Employment Rights Act 1996, Part II.

- There may be a greater compatibility with the employees' professional code of conduct or ethics. Thus, a full-scale strike by hospital staff is now almost impossible to envisage, but a work-to-rule or overtime ban are regular features of industrial relations in the health and other essential services.

- Forms of industrial action short of strike may not alienate public sympathy for those involved as might a strike.[112]

Nevertheless, such action short of a strike can involve significant risks for employees as well. For example, the 2023 marking and assessment boycott by members of the University and College Union led some universities to withhold 50% of pay from all participating staff.[113]

The various forms of industrial action short of a strike are not generally defined in law (TULRCA mostly refers simply to "industrial action short of a strike"[114]) and in practice, as noted by Economist Peter Donaldson in 1973, "the forms of industrial action are limited only by the ingenuity of mankind".[115] Nevertheless, such action has tended to fall into one or more of the following broad categories.

Work-to-rule and go slow

A "work-to-rule" or "go slow" refers to action where employees perform the minimum work explicitly required by their contract and/or follow the letter of rules and processes usually ignored for the sake of efficiency, in order to inconvenience the employer. John Bowers QC and others in The Law of Industrial Action and Trade Union Recognition describe this approach as:

> Employees here meticulously follow work rules, the rationales for many of which have been lost in the mists of time. Forms are filled in with punctilious care. Usually ignored safety provisions are reactivated and relied on to excess. Remote risks to employees' safety are emphasized and the factory inspector may be called in without any real need.[116]

This effectively represents a withdrawal of the goodwill by employees that is usually required for a workplace to operate effectively.

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112 John Bowers QC, Michael Duggan and David Reade QC, The Law of Industrial Action and Trade Union Recognition, second edition, 2011, p93 para 6.01

113 For example, see University of Nottingham, Marking and Assessment Boycott – pay deductions policy, 12 May 2023

114 The exception being that section 229(2A) of the Trade Union and Labour Relations (Consolidation) Act 1992 explicitly defines that for balloting purposes "an overtime ban and a call-out ban constitute industrial action short of a strike"

115 Peter Donaldson, Economics of the Real World, Penguin Books 1973

116 John Bowers QC, Michael Duggan and David Reade QC, The Law of Industrial Action and Trade Union Recognition, second edition, 2011, p94 para 6.02

The extent to which work-to-rule or go-slow action might constitute a breach of contract depends on how much it might breach the implied term of faithful service that exists in all employment contracts, as found by the Court of Appeal in *Secretary of State for Employment v ASLEF (No 2)* [1972]. In some cases, courts have found employers to be justified in locking out employees until they return to normal working (see below).[117]

Overtime ban

Bans on overtime – work beyond the contracted number of hours – again represent a form of withdrawal of goodwill from the workforce that is often required for workplaces to operate effectively.

This might not constitute a breach of contract if the workers are not contractually required to carry out overtime. However, the wording of section 229(2A) makes clear that an "overtime ban" can meet the definition of industrial action under TULRCA 1992.[118]

Refusal to carry out particular duties

Agreements by employees not to carry out certain duties, but continue to perform the rest of their work as normal, can also be a form of industrial action.

As with an overtime ban, the degree to which such action constitutes a breach of contract will depend on the circumstances of each case and the nature of the duties in question.

Sit-in

A sit-in is where employees occupy part of the workplace, usually by physically sitting down, thereby preventing usual work from taking place. Unlike the other types of action outlined above, sit-ins are generally not a form of lawful action that can be authorised by an industrial action ballot.

John Bowers QC and others in The Law of Industrial Action and Trade Union Recognition note that "employees who participate in such action will normally be in breach of their contracts of employment… they are also likely to commit trespass, since employees normally only have contractual license to remain on the promises of the employer while they are at work".[119]

Sit-ins might also violate various rules relating to picketing (see below).

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117 See for example *Ticeburst v British Telecommunications Plc* [1992] IRLR 219

118 Trade Union and Labour Relations (Consolidation) Act 1992, section 229(2A)

119 John Bowers QC, Michael Duggan and David Reade QC, The Law of Industrial Action and Trade Union Recognition, second edition, 2011, p98 para 6.17

Lock-out

A lock-out is different from other forms of industrial action in that it is action taken by an employer rather than employees.

Traditionally a lock-out was when workers were literally locked out of a factory by employers to prevent them from working, though in general any work stoppage where an employer stops workers from working (or from returning to work during a dispute) will be considered a lock-out.

Employers might use a lock-out when they refuse to accept work from employees participating in industrial action short of a strike. In such cases, employers sometimes refuse to allow employees to work (and thus be paid) at all until the employees are prepared to carry out their usual duties.

5.3 Official and protected action

Strikes and industrial action can be 'official' or 'unofficial'. They can also be 'protected' or 'unprotected'. These are closely related but technically distinct terms.

Official versus unofficial action

Official action is generally when the strike is authorised or endorsed by a trade union. An employee's action is official if:

- they are a member of a union that has endorsed or authorised the action; or
- they are not a member of a trade union, but work in a bargaining unit where there is a union that has endorsed or authorised the action; or
- they are not a member of a union and nobody else taking part in the action is a member of a union either (something which may apply to very small workplaces – in which case balloting and various other requirements do not apply).[120]

An employee's action is unofficial if:

- they are a member of a trade union that has not authorised or endorsed the action (even if a different union has); or
- they are not a member of a trade union and no union has endorsed the action, but some other employees taking part in the action are members of a union.[121]

[120] Trade Union and Labour Relations (Consolidation) Act 1992, s237(2)

[121] As above

Unofficial action is sometimes referred to as a 'wildcat strike'. Employees will lose most of their usual protections against unfair dismissal if they take part in unofficial strikes or industrial action.[122]

Protected versus unprotected action

Protected action means industrial action where the union qualifies for immunity from liability in torts (such as 'inducing a breach of contract') under section 219 TULRCA. Employees taking part in protected action also gain additional protections against unfair dismissal, set out in section 238A of TULRCA.

To qualify for immunity, unions must follow all relevant rules, including around ballots, notice and reasons for the action, as set out in more detail below.

Unions will generally repudiate strikes that are not protected to avoid liability. Unions can do this by sending a written notice of repudiation to the local committee or official, employer, and all union members involved.[123]

Therefore, where action is unprotected, it will also tend to be unofficial as it will lack endorsement or authorisation from a trade union.

Protections for employees taking industrial action

Employees dismissed for taking protected industrial action are considered automatically unfairly dismissed, under section 238A TULRCA 1992. This protection applies from day one of employment, even if employees have not accrued the two years' continuous service required to qualify for general unfair dismissal protections.

This special protection applies unless the employee continues to take action beyond the "protected period", generally 12 weeks from the first day of protected industrial action. After that time, provided the employer has taken "reasonable" procedural steps to try and resolve the dispute, the employee loses their special protections against unfair dismissal granted by section 238A.

In cases where employees lose their section 238A protections (such as for industrial action continuing beyond 12 weeks or the union failing to meet the tests for protected action), section 238 of TULRCA provides employers with immunity against any unfair dismissal claims for dismissing workers taking part in industrial action. This includes dismissals for reasons of redundancy or in cases of lock-out (see above). This only applies if the employer dismisses all such workers without exception, and does not offer to re-employ any of them within three-months.

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122 Trade Union and Labour Relations (Consolidation) Act 1992, s237

123 IDS Employment Law Handbook, Industrial Action, Thompson Reuters, 2017, p222, para 8.13

Where the employer is selective in dismissing some striking employees but retaining others, this section 238 immunity from unfair dismissal claims does not apply.

If the employer does not have immunity from claims under section 238 and the employee does not have automatic protections from dismissal under section 238A, then any unfair dismissal claims would simply be heard in the usual way under Part X of the Employment Rights Act 1996 (ERA), with the usual tests of reasonableness contained in section 98 ERA applying.[124]

See part 28 of the Library briefing on Key Employment Rights for more detail about the usual law on unfair dismissal.[125]

5.4 Reasons for taking industrial action

The wording of section 291 of TULRCA means that industrial action can only be protected if it is taken "in contemplation or furtherance of a trade dispute".[126] A trade dispute is a dispute between workers and their employer which relates wholly or mainly to one or more of the following set list of reasons:

> (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
>
> (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
>
> (c) allocation of work or the duties of employment between workers or groups of workers;
>
> (d) matters of discipline;
>
> (e) a worker's membership or non-membership of a trade union;
>
> (f) facilities for officials of trade unions; and
>
> (g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.[127]

[124] IDS Employment Law Handbook, Industrial Action, Thompson Reuters, 2017, p232, paras 8.38-8.39
[125] Commons Library Briefing CBP-7245, Key Employment Rights, 27 September 2022
[126] Trade Union and Labour Relations (Consolidation) Act 1992, section 219
[127] Trade Union and Labour Relations (Consolidation) Act 1992, section 244

Political strikes

To be eligible for protection, industrial action must be "in contemplation or furtherance of a trade dispute".[128] This means that strikes over political or other issues are not protected in law.

However, the boundary between political and trade disputes has sometimes been hard to draw, as noted by Simon Deakin and Gillian Morris in their book Labour Law:

> Particular problems may arise in public services; for example, disputes over matters such as wages or job cuts, which are clearly within the definition of a trade dispute, often involve challenging broader government policies, such as incomes policies, reductions in public spending or privatisation. At the time the predominant purpose test was introduced, ministers maintained that they did not intend to jeopardise the lawfulness of public sector disputes concerning pay, conditions or jobs, even if they did challenge government policies. However, in interim proceedings, doubt about the predominant purpose of a dispute may be sufficient to persuade a court to grant an interim injunction.[129]

Secondary action

'Secondary' industrial action is also not protected. This means that there is no protection for a union that calls for industrial action at one employer in sympathy with or support of separate industrial action taking place at another employer (such as a customer or supplier).[130]

There must be actual grounds for a trade dispute with the employer against whom the industrial action is to take place.

Other reasons excluded from protection

Certain other reasons for industrial action are explicitly excluded from protection by TULRCA 1992:

- Action taken to enforce trade union membership, such as striking against employers who employ non-union workers
- Action taken because the employer has dismissed one or more employees for taking unofficial industrial action of their own
- Action taken to impose a union recognition requirement in contracts for the supply of goods or services.[131]

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128 Trade Union and Labour Relations (Consolidation) Act 1992, section 219
129 Simon Deakin and Gillian S Morris, Labour Law, 2012, Sixth Edition, p1065, para 11.28
130 Trade Union and Labour Relations (Consolidation) Act 1992, section 224
131 Trade Union and Labour Relations (Consolidation) Act 1992, sections 222-225

5.5 Ballots

The statutory provisions governing industrial action ballots and notices are contained in TULRCA, sections 226 to 235.

For the union to be protected from liability, it must conduct a secret postal ballot of "all the members of the trade union who it is reasonable at the time of the ballot for the union to believe will be induced by the union to take part" in the strike, and no others.[132] Some minor and accidental errors will be disregarded.

The voting paper must contain at least one of two questions:

- a question … which requires the person answering it to say, by answering "Yes" or "No", whether he is prepared to take part or, as the case may be, to continue to take part in a strike.

- a question … which requires the person answering it to say, by answering "Yes" or "No", whether he is prepared to take part or, as the case may be, to continue to take part in industrial action short of a strike.[133]

Since the passage of the Trade Union Act 2016, the voting paper must now also include additional details about each option being voted on. This includes specifying what types of action "short of a strike" are being proposed, when each proposed type of industrial action would take place and a summary of the disputed issues that have led to the union calling for industrial action.[134]

All voting papers must also include the following mandatory text, which cannot be qualified or commented on elsewhere on the paper:

> If you take part in a strike or other industrial action, you may be in breach of your contract of employment. However, if you are dismissed for taking part in strike or other industrial action which is called officially and is otherwise lawful, the dismissal will be unfair if it takes place fewer than twelve weeks after you started taking part in the action, and depending on the circumstances may be unfair if it takes place later.[135]

Strike ballots with at least 50 eligible voters must also be overseen by an 'independent scrutineer': someone outside the dispute who is qualified to report on the conduct of the ballot. Similar rules apply to those for trade union elections (see "Appointment of an independent scrutineer" under part 1.4 above).

Ballots can be conducted either at individual workplaces, providing a mandate for a strike in that workplace only, or for multiple workplaces at

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132 Trade Union and Labour Relations (Consolidation) Act 1992, section 227
133 Trade Union and Labour Relations (Consolidation) Act 1992, section 229
134 Trade Union and Labour Relations (Consolidation) Act 1992, section 229
135 Trade Union and Labour Relations (Consolidation) Act 1992, section 229(4)

once. Strikes at multiple workplaces must meet certain conditions relating to the workplaces being part of a common dispute.[136]

The Government has published a Code of Practice on Industrial action ballots and notice to employers, which provides guidance for unions on the conduct of ballots.[137]

Electronic ballots

As with other kinds of trade union ballots (see part 1.4 of this briefing), industrial action ballots must be conducted by post. Electronic balloting (e-balloting) is not permitted.

In 2016 the Government commissioned an independent review of the possibility of using e-balloting in industrial disputes. The review, conducted by Sir Ken Knight, reported in 2017, recommending a "a test of e-balloting on non-statutory ballots" before the possibility of using e-balloting for industrial disputes was decided.[138]

In June 2023, the Government said it was "finalising our consideration of Sir Ken's recommendations before we issue our response" to the review.[139]

Ballot thresholds and important public services

For the union to gain protection in the case of industrial action, the ballot must satisfy all the following conditions:

- a majority of those who vote must vote in favour of the action
- at least 50% of those entitled to vote in the ballot must have turned out to vote
- if the majority of those who vote are normally engaged in the provision of "important public services", at least 40% of those entitled to vote must vote in favour of the action.[140]

These last two requirements were added by the Trade Union Act 2016. Important public services are more specifically defined in a series of regulations covering the following sectors:

- Health
- Education

136 Trade Union and Labour Relations (Consolidation) Act 1992, sections 228-228A
137 Code of Practice on Industrial action ballots and notice to employers
138 BEIS, Electronic balloting for industrial action: Knight review, 18 December 2017, p3
139 PQ 190278 [on Trade Unions: Electronic Voting], 20 June 2023
140 Trade Union and Labour Relations (Consolidation) Act 1992, section 226

- Fire
- Transport
- Border security[141]

The Trade Union Act 2016 also allows for regulations to define services in the nuclear decommissioning sector as important public services. However, no such regulations have yet been made, so these additional thresholds do not currently apply in that sector.[142]

Expiry of mandates

Mandates from successful industrial action ballots become invalid after six months, or after nine months with agreement of the employer.

This provision was included in the Trade Union Act 2016 and replaced an earlier rule under which mandates only expired if no action had been taken within four weeks (or eight if extended by agreement with the employer) following a ballot.[143]

5.6 Notice

There are three key points where unions are required to provide notice to employers in order for action to be protected under TULRCA 1992.

- Unions must give notice to all relevant employers of their intention to hold a ballot on industrial action, at least one week before the first day voting papers are sent out.[144]
- Unions must then inform members and any relevant employers of the results of any ballot held, as soon as is reasonably practicable.[145]
- Unions must then give notice to relevant employers of their intention to hold industrial action least 14 days before action begins (or seven days with consent of the employer).
    - The notice must include the dates of any relevant action (or date it would begin if continuous) and lists and figures showing the number

[141] See GOV.UK Important Public Services Regulations 2017 – guidance on the regulations for further details
[142] GOV.UK Important Public Services Regulations 2017 – guidance on the regulations, para 7
[143] Explanatory notes to the Trade Union Act 2016, para 33
[144] Trade Union and Labour Relations (Consolidation) Act 1992, section 226A
[145] Trade Union and Labour Relations (Consolidation) Act 1992, section 231-231A

and categories of employees affected and the workplaces where they are employed.[146]

5.7 Picketing

A 'picket line' is a place where workers and union reps stand outside a workplace to tell other people why they are striking and encourage them to support the strike.[147]

One of the aims of picketing is to try and discourage other workers from going into the workplace or otherwise carrying out their usual work, and instead to join in the industrial action taking place.

The precise methods that workers are allowed to use in order to try and accomplish this have been a point of contention since the early days of trade union legislation in the 1870s.

Protections for picketing

Sections 219-221 of TULRCA 1992 provide immunity from liabilities in tort around picketing providing that certain rules are followed. Without this statutory immunity, workers who induce other people to breach their contracts, or who otherwise interfere with contracts, would be potentially liable in tort for damages and at risk of receiving a court injunction.

The conditions which must be followed to gain protection include:

- The picketing (as with other forms of industrial action) must be "in contemplation of furtherance of a trade dispute".
- Workers must only picket at or near their own place of work. Trade union officials can attend picket lines if accompanying a worker they represent at or near that worker's place of work.
- The picket must only have the purpose of "peacefully obtaining or communicating information, or peacefully persuading any person to work or abstain from working".[148]

In addition, if the picket is organised by a trade union, the union must appoint a picket supervisor and provide the police with their contact details.[149] The supervisor must be easily identifiable on the picket line and carry a letter or

146 Trade Union and Labour Relations (Consolidation) Act 1992, section 234A
147 GOV.UK, Taking part in industrial action and strikes: Going on strike and picketing [accessed 25 October 2023]
148 Trade Union and Labour Relations (Consolidation) Act 1992, section 220
149 Trade Union and Labour Relations (Consolidation) Act 1992, section 220A

authorisation from the union to show to employees on request. This requirement was introduced by the Trade Union Act 2016.

Picketing offences

Certain other picketing behaviours are deemed to be an offence. Section 241 of TULRCA sets out a series of intimidation or annoyance offences which could apply to certain kinds of picketing behaviour:

> (1) A person commits an offence who, with a view to compelling another person to abstain from doing or to do any act which that person has a legal right to do or abstain from doing, wrongfully and without legal authority—
>
> (a) uses violence to or intimidates that person or his spouse or civil partner or children, or injures his property,
>
> (b) persistently follows that person about from place to place,
>
> (c) hides any tools, clothes or other property owned or used by that person, or deprives him of or hinders him in the use thereof,
>
> (d) watches or besets the house or other place where that person resides, works, carries on business or happens to be, or the approach to any such house or place, or
>
> (e) follows that person with two or more other persons in a disorderly manner in or through any street or road.

These offences still use the original wording from legislation of the 1870s.[150] Effectively they prohibit actions that prevent access to workplaces, intimidate or otherwise hinder workers from going about their business.

Picketing at someone else's place of work is considered 'secondary picketing' and is explicitly unlawful.[151] Nevertheless, it is possible in some circumstances for lawful picketing, at a worker's own place of work, to induce other workers who don't work there from engaging in secondary industrial action (for example by persuading delivery drivers not to enter the site).

The Government has also issued a Code of Practice on Picketing (last updated February 2017), which provides guidance for unions and workers around picketing rules.[152]

[150] Specifically section 7 of the Conspiracy, and Protection of Property Act 1875, replacing similarly worded provisions in section 1 of the Criminal Law Amendment Act 1871

[151] Trade Union and Labour Relations (Consolidation) Act 1992, section 220

[152] Department for Business, Energy and Industrial Strategy, Code of Practice: Picketing 24 February 2017

5.8 Restrictions on strikes in important public services

Police, armed forces and prison officers

Provisions under the Police Act 1996 mean police officers in the UK are prohibited from striking altogether. Likewise, members of the armed forces are prohibited from striking under the Incitement to Disaffection Act 1934.

Prison officers were prohibited from striking by sections 126 to 128 of the Criminal Justice and Public Order Act 1994, though these prohibitions were disapplied for many prison officers in 2005 after unions and the Government negotiated a voluntary no-strike agreement.[153]

Some other "important public services" face higher ballot thresholds to gain protections for industrial action (see "ballot thresholds" under part 5.5 above).

Strikes (Minimum Service Levels) Act 2023

The Strikes (Minimum Service Levels) Act 2023 received Royal Assent on 20 July 2023. For more information on the background and detail of the legislation, see the Library briefing on the Strikes (Minimum Service Levels) Bill 2022-23.[154]

The Act grants the Secretary of State powers to make "minimum service regulations", which could set minimum service levels that employers are allowed to enforce during strikes in any services within six sectors:

- health services
- fire and rescue services
- education services
- transport services
- decommissioning of nuclear installations and management of radioactive waste and spent fuel
- border security

Any such regulations are subject to the draft affirmative procedure, meaning both Houses of Parliament must approve them before they can take effect.

153 Explanatory Note to the Regulatory Reform (Prison Officers) (Industrial Action) Order 2005 SI No.908

154 Commons Library Briefing CBP 9703, Strikes (Minimum Service Levels) Bill 2022-23, 13 January 2023

On 7 November 2023 the Government laid three such statutory instruments before Parliament:

- The Strikes (Minimum Service Levels: Passenger Railway Services) Regulations 2023
- The Strikes (Minimum Service Levels: Border Security) Regulations 2023
- The Strikes (Minimum Service Levels: NHS Ambulance Services and the NHS Patient Transport Service) Regulations 2023

All three were subsequently approved by both Houses; the rail and ambulance regulations came into force on 8 December 2023 and the border security regulations on 12 December 2023.[155]

For more detail on how minimum services will operate in passenger rail services, see the Library Insight How will minimum service regulations affect passenger rail?[156]

Alongside these regulations, a Code of Practice on reasonable steps to be taken by a trade union (minimum service levels) has been published and approved by Parliament and entered into effect on 8 December 2023.[157] This was required before any minimum service regulations could take effect.

In addition, the Government has consulted on a wider set of minimum service levels in hospital services and minimum service levels for fire and rescue services.[158] The Government has also launched a consultation on minimum service levels in education, which closes on 30 January 2023.[159]

Work notices to provide minimum service levels

The 2023 Act allows an employer to issue a "work notice" to a trade union concerning any strike affecting a service subject to minimum service regulations. If the union and affected employees do not take steps to comply with the work notice, they will lose their legal protections.

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155 Strikes (Minimum Service Levels: Passenger Railway Services) Regulations 2023, Regulation 1(2); Strikes (Minimum Service Levels: NHS Ambulance Services and the NHS Patient Transport Service) Regulations 2023, Regulation 1(2); Strikes (Minimum Service Levels: Border Security) Regulations 2023, Regulation 1(2)

156 Commons Library Insight, How will minimum service regulations affect passenger rail?, 13 December 2023

157 Department for Business and Trade, Code of practice issued by the Secretary of State under section 203 of the Trade Union and Labour Relations (Consolidation) Act 1992 on reasonable steps to be taken by a trade union (minimum service levels), 6 December 2023

158 Department of Health and Social Care, consultation: Minimum service levels in event of strike action: hospital services, 19 September 2023; Home Office, consultation: Minimum service levels for fire and rescue services, 9 February 2023

159 Department for Education, consultation: Minimum service levels (MSLs) in education, 15 December 2023

The work notice would specify which workers the employer requires to work to ensure they can provide the minimum service levels set out in the regulations.[160] Employers are not permitted to request more workers than "reasonably necessary" to meet the minimum services defined in the regulations.[161] Nor are employers permitted to take into account union membership when specifying workers in work notices.[162]

Where a union fails to "take reasonable steps" under the new Code of Practice to ensure that all workers requested to work by a work notice comply with that notice, it will lose its protection from liability for inducing workers to take part in the strike.[163] This means all workers involved will also lose their automatic protection against unfair dismissal if their union fails to take reasonable steps.

The Act also removes automatic protection from unfair dismissal for any individual employee who takes part in a strike contrary to a valid work notice. Any such employee will not be automatically regarded as unfairly dismissed under Part X of the Employment Rights Act 1996 if the reason or principal reason for the dismissal is because they took part in the strike.[164]

The legislation has prompted questions about comparisons with minimum service laws in other countries. The Library has produced a briefing on Strikes and minimum service laws in Europe, based on information from other parliamentary libraries, to provide a comparative overview of how other European countries approach this issue.[165]

5.9 Hiring of agency staff during industrial action

Regulation 7 of the Conduct of Employment Agencies and Employment Business Regulations 2003, as originally made, prohibits employment agencies from supplying temporary workers to provide cover for workers "taking part in a strike or other industrial action". The Regulations were briefly amended to repeal this restriction but, following a ruling by the High Court, the provision of agency staff to cover strikes remains unlawful. [166]

In June 2022, the Government announced that it planned to repeal this restriction and laid the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022 . This announcement was explained in more detail in the Library Insight Plans to let agency staff cover for striking workers. These (Amendment) Regulations were approved by the

160 Trade Union and Labour Relations (Consolidation) Act 1992, section 234C
161 Trade Union and Labour Relations (Consolidation) Act 1992, section 234C(5)
162 Trade Union and Labour Relations (Consolidation) Act 1992, section 234C(6)
163 Trade Union and Labour Relations (Consolidation) Act 1992, section 234E
164 Trade Union and Labour Relations (Consolidation) Act 1992, section 238A(2)(aa)
165 Commons Library Briefing CBP 9751, Strikes and minimum service laws in Europe, 28 March 2023
166 People Management, "What the High Court's ruling on hiring agency cover for striking workers means for employers", 25 July 2023

Commons on 11 July 2022 and the Lords on 18 July 2022, coming into force on 21 July 2022.[167]

However, on 13 July 2023, the High Court quashed the 2022 Regulations in the case of *ASLEF, Unison and NASUWT v Secretary of State for Business and Trade* on the grounds that the behaviour of the Secretary of State in bringing them forward without adequate consultation or consideration of evidence was "so unfair as to be unlawful and, indeed, irrational". [168]

The court ruled that this was contrary to section 12(2) of the parent legislation, the Employment Agencies Act 1973, which required consultation with representative bodies ahead of the introduction of any regulations made under it.[169]

Following the legal judgment, on 16 November 2023 the Government launched a new consultation on hiring agency staff to cover industrial action as part of another attempt to repeal this law.[170] The consultation closes on 16 January 2024.

5.10 Industrial action statistics

The Office for National Statistics (ONS) publishes statistics on the number of working days lost due to industrial disputes, although the collection and publication of these figures was temporarily suspended following the start of the coronavirus pandemic. The ONS resumed publication of these statistics from December 2021, but figures are not available for the period between February 2020 and December 2021.

Figures from August 2023 have also been affected by the decrease of respondents to the Labour Force Survey and should be treated with more caution than usual.

The Library briefing Has labour market data become less reliable? covers why labour market data for Great Britain has become less reliable, what this means for policy makers, and what will happen next.

Days lost due to strike action

From 1990 onwards there have only been five years in which the number of lost working days due to strike action has exceeded a million.

167 Statutoryinstruments.parliament.uk, Timeline: Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022

168 *ASLEF, Unison and NASUWT v Secretary of State for Business and Trade* [2023] EWHC 1781 (Admin)

169 As above

170 Department for Business and Trade, consultation: Hiring agency staff to cover industrial action, 16 November 2023

Between 1970 and 1990 at least a million days were lost in every single year. The maximum number of days lost in any year during this period was in 1979 when almost 30 million days were lost, which was the equivalent of roughly 1170 days lost per 1000 workers. These strikes happened during what is widely known as the 'winter of discontent', a period during which public sector workers went on strike in response to an attempt by the government to put a cap on pay to control inflation.[171]

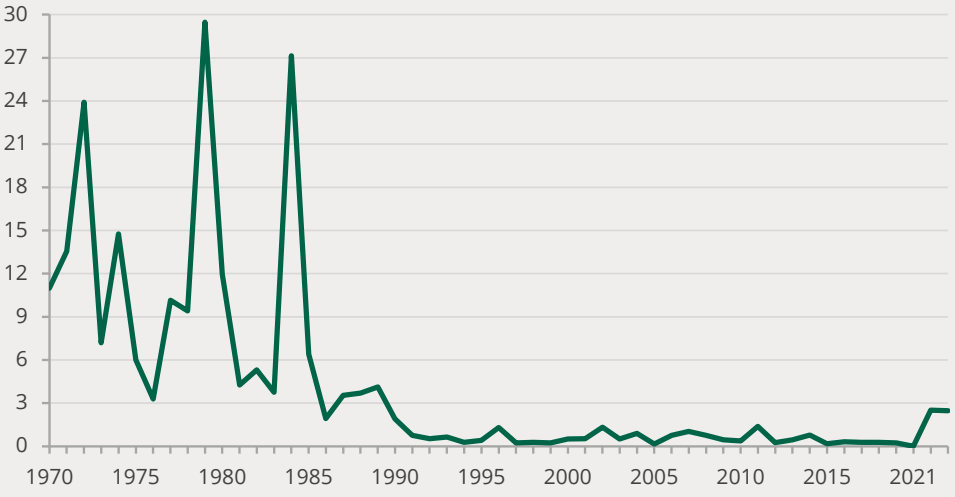
Following this, various pieces of legislation were put in place to restrict trade union powers, starting with the Employment Act 1980, which led to a decrease in working days lost due to strike action.[172] The Strikes (Minimum Service Levels) Bill was passed on 20 July 2023, with some MPs referencing the 2022 strikes during the debate of this Bill.[173]

From January 2023 to October 2023, a total of 2.47 million working days were lost due to strike action in the UK. This is equivalent to 75 days lost per 1000 workers over the year. In 2022, 2.52 million working days were lost due to strike action in the UK, which was equivalent to approximately 78 days lost per 1000 workers. This is the highest number of days lost since 1989, when 4.13 million working days were lost, or 154 days per 1000 workers.

The number of days lost due to strike action for each year since 1970 are shown in the chart below.

Working days lost annually due to strike action

Millions of days, 1970-2023, UK



Source: ONS, Labour disputes in the UK, 14 December 2023

Notes: The publication of this data was temporarily suspended following the start of the coronavirus pandemic. The ONS resumed publication of these statistics from December 2021, but figures are not available for the period between February 2020 and December 2021.

171 ONS, the history of strikes in the UK, 21 September 2015

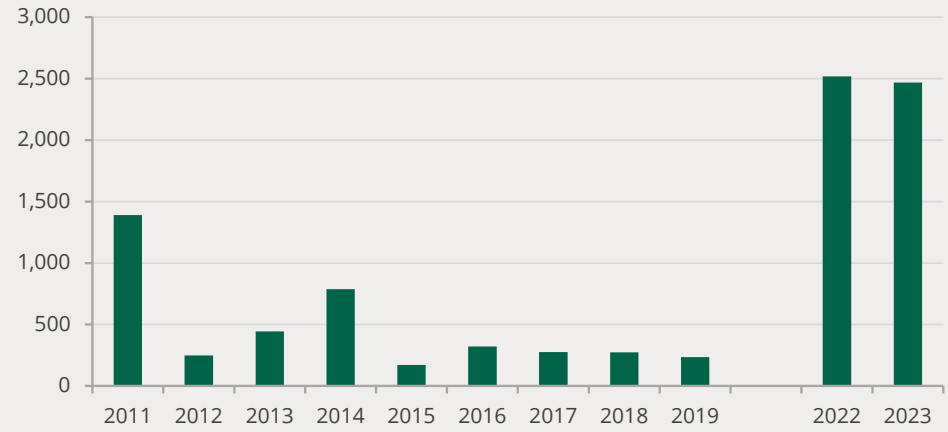
172 House of Commons Library, Trade union legislation 1979-2010, 26 January 2017

173 HC Deb 725 10 January 2023

Before 2022, the largest number of days lost due to strike action in the UK since 1990 was in 2011, in which 1.39 million working days were lost due to (mainly) public sector strikes. The chart below shows the number of working days lost due to strike action in the UK from 2011 to October 2023.

Working days lost due to strike action in the UK

Millions of days, 2011 - 2023



Source: ONS, Labour disputes in the UK, 14 December 2023

Notes: The publication of this data was temporarily suspended following the start of the coronavirus pandemic. The ONS resumed publication of these statistics from December 2021, but figures are not available for the period between February 2020 and December 2021.

Historically, a higher number of working days have been lost due to strike action in the public sector than the private sector, likely owing to the larger number of union members in the public sector.

Working days lost due to strike action, by sector

Thousands, 1996-2023

Source: ONS, Labour disputes in the UK, 14 December 2023

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