



ASLEF Response to the BEIS Consultation on the Trade Union Act: Codes of Practice & Guidance – August 2016

1. The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train driver's union representing approximately 20,000 members in train operating companies and freight companies as well as London Underground and light rail systems.
2. ASLEF has consistently opposed the provisions of the Trade Union Act in their entirety. The union believes that the regulations contained within the Act are completely unnecessary and are simply punitive ways of obstructing the work of trade unions. No other organisations in Britain whether business or charity are subject to such stringent measures on their operation.
3. The union is concerned that any guidance created could exceed the requirements of the Act and could lead to onerous additional obligations. We are therefore seeking substantial changes to the proposed Codes of Practice and guidance.
4. ASLEF is disappointed that there is not a formal consultation process on these matters.

Draft guidance to accompany 40 per cent threshold regulations

5. We are concerned that the draft guidance on this issue is overly prescriptive and in some cases exceeds the legal duties in the Act. The

guidance should seek to assist unions to comply with the law and not extend the obligations due under the Act.

6. ASLEF is therefore extremely concerned that the guidance sets out a series of actions which unions should consider taking in the run up industrial action which include approaching employers, gathering data on members' roles at work, assessing the accuracy of existing data, and carrying out regular information gathering exercises. None of these steps are actually required by the Trade Union Act or the current law on industrial action. The idea behind the guidance may be to help to promote good industrial relations but, in practice, we believe it will be totally counterproductive because employers will simply use it to challenge the validity of ballots.
7. ASLEF therefore believes that the draft guidance should be shortened. An amended version of Section 6, which provides examples of the types of jobs and functions to be treated as 'important public services' should be retained. However the remaining sections should be removed.
8. If this is not to happen, we would make the following observations. Within the introduction the references to unions engaging with employers ahead of an upcoming ballot or to obtain information about members' roles found in the second paragraph of the introduction should be removed. Neither the TU Act nor the wider provisions of the 1992 Act include such requirements.
9. ASLEF also opposes the idea that the guidance should have statutory status not least because the advice exceeds unions' legal duties. All references to the courts adhering to advice given in proceedings should therefore be removed.

10. In terms of employer engagement ASLEF acknowledges the government's intention to encourage good industrial relations. We know from experience that each industrial dispute is different and that unions must be able to determine the appropriate level of dialogue with employers before any action. In some cases, forcing such dialogue could be counterproductive
11. ASLEF therefore believes the guidance must not advocate a universal approach as this would raise expectations that unions will always approach employers in advance of a ballot, even though there is no legal duty for them to do so.
12. The Trade Union Act explains that the first stage at which unions are required to notify employers that they believe the 40 per cent threshold applies is when they inform the employer of the results of a ballot (section 6 of the Trade Union Act, amending section 231 of the 1992 Act. At this point, the union is only required to refer to the 40 per cent threshold if they reasonably believe that it applies. In such cases, they should also state whether the threshold has been met. Therefore the guidance should therefore not suggest or raise an expectation that unions will notify employers at an earlier stage.
13. We would point out that if advice for unions is to be included in the guidance then it is important that advice to employers is also retained.
14. ASLEF believes that the section should be strengthened to advise employers 'always to co-operate and assist unions in the preparation of industrial action ballots and notices. Such co-operation can help to avoid future litigation and prevent the escalation of disputes.'
15. The final sentence on page 5 should also be amended to read 'If an employer chooses not to facilitate the sharing of information or work

together with unions, this will / this is likely to form part of a union's 'reasonable belief' defence in the event of a legal challenge'.

Revised Code of Practice on Industrial action ballots and notice to employers

16. It is vital that revisions to the Code of Practice on Industrial action ballots and notice to employers only reflect changes introduced by the Trade Union Act. ASLEF opposed the changes made by the Act in the first instance and would therefore oppose any additional burden being placed on unions through such guidance.
17. The opening sentence of paragraph 24 of the revised Code should be removed as it does not reflect the requirements of the 1992 Act as amended by the TU Act and therefore places unwarranted obligations on unions.
18. There is nothing in the 1992 Act, as amended, which would require unions to seek an opinion from the relevant employer on their assessment of whether the 40 per cent threshold applies to a ballot. The current wording could create an expectation that unions will always or usually approach an employer to seek views. It should therefore be removed.
19. It is good practice for employers to alert unions to any concerns that they may have relating to an industrial action ballot. If the second sentence in paragraph 24 is retained, it should be revised to read: 'to raise that with the union promptly rather than pursuing the matter in court'. The words in bold replace the word 'before'. ASLEF believes that a sentence should be added to this paragraph which states: 'If an employer chooses not to inform unions at an early stage of any issues relating to the application of the 40 per cent threshold and the reasons for their concern, this will form

part of the union's reasonable belief defence if the a legal challenge is mounted.'

20. ASLEF opposed the provisions of section 5 of the TU Act which will require unions to include additional information on the voting paper mostly due to the long and complicated way the paper will look. This could well deter members from taking part in the ballot.

21. In order to alleviate some of these concerns, it would be helpful for the sample ballot paper to be restructured so that the statutory question(s) are set out as near to the top of the paper as possible. The reference to [INDICATE PERIOD OR PERIODS WITHIN WHICH THE INDUSTRIAL ACTION IS EXPECTED TO TAKE PLACE] should at least be moved down below the question(s).

Revised Code of Practice on Picketing

22. It is vital that revisions to the Code of Practice on Picketing only reflect changes introduced by the TU Act.

23. ASLEF is seriously concerned that paragraphs 12 and 13 could significantly extend the personal liability for individuals appointed to act as picket supervisors. Section 10 of the TU Act requires unions to appoint a picket supervisor who is a member or officer of the union and who is familiar with the section of the Code dealing with picketing. The individual must be issued with a letter of approval by the union and they or the union must inform the police of their name and contact details and the location of the picket. The individual must also attend the picket or be able to return at short notice.

24. The guidance in section 12 and 13 well exceeds these basic procedural requirements. Paragraph 12 suggests that picket supervisors should be responsible for ensuring that ‘those involved in a picket or affected by picketing are able to go about their business without fear of potential intimidation directed at people on the picketing line or at people wishing to cross the picket line.’ They are also required to ‘ensure that the picket remains peaceful’. Paragraph 13 also suggests that picket supervisors must be able to return to the picket line at short notice ‘to prevent a problem from arising or escalating’.

25. None of these responsibilities is specified in the TU Act. The Code suggests that the supervisor would be personally liable if problems do arise on the picket line, even though this is not provided for in the legislation. It is also completely unreasonable for picket supervisor to be expected to anticipate potential sources of intimidation and to take steps to prevent these from arising.

26. This would deter many union members from taking on the responsibility of being a picket supervisor. If this was the case, this would seriously restrict unions' ability to exercise their rights to protest in defence of their jobs, livelihoods and working conditions, - rights which are protected by Articles 9 and 11 of the European Convention on Human Rights.

27. The words in paragraph 16 which advise unions to email a copy of the letter of approval to the employer should also be removed. In workplaces with good employment relations, unions may decide to email the letter to the employer. However, the inclusion of these words in a statutory Code of Practice implies that this should be a normal practice, even though the TU Act does not require it. The text should therefore be removed.

28. Section D of the Code confirms that the police have no responsibility for enforcing the civil law. The employer cannot require the police to identify a picket.

29. ASLEF believes that this section should be updated to take account of the new rules relating to picket supervisors. The text should confirm that the police cannot be required by employers to give witness statements in civil proceedings against the union. In particular, the police cannot be required to confirm whether the union or the picket supervisor has provided the police with the name or contact details of the supervisor or the location of the picket. The involvement of the police in civil proceedings is likely to undermine their impartiality and will therefore hinder their ability to enforce the criminal law.

Mick Whelan
General Secretary
ASLEF
77 St John Street
London
EC1M 4NN