



## **“Ballot thresholds in important public services” ASLEF’s response – September 2015**

### **Introduction**

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.

ASLEF fundamentally opposes the Trade Union Bill. British labour law is already the most restrictive on trade unions in the western world. Workers in the United Kingdom have fewer rights in relation to industrial action than elsewhere in Europe. In fact current regulations already contravene international laws and guidance from the ILO or the United Nations.

British workers have no right to strike. In fact, the government appear to want to highlight this by insisting that it is stated on ballot papers. The only protection offered to British workers who take legal industrial action is that they cannot be sacked for doing so for 12 weeks. Following this, they can be dismissed for breach of contract. All industrial action in the UK can be considered a breach of contract.

It is this that also contravenes United Nations legislation. In December 1997 the UN committee which deals with the International Covenant on Economic, Social and Cultural Rights reviewed British law strike law. Despite Britain being a signatory, they stated that *“the Committee considers that failure to incorporate the right to strike into domestic law constitutes a breach of Article 8 of the Covenant. The Committee considers that the common law approach recognising only the freedom to strike, and the concept that strike action constitutes a*

*fundamental breach of contract justifying dismissal, is not consistent with protection of the right to strike.”* It therefore seems perverse to force trade unions to state that action is a breach of contract on ballot papers. Essentially it is repeating Britain’s failure to comply with international agreements to which it is a signatory.

The government should therefore be looking at reducing Trade Union restrictions and as the United Nations stated, “the right to strike be established in legislation.” Yet this government is taking the UK further away from international agreements on Trade Union freedom and looking at more union restrictions. This is despite the fact that days being lost to industrial action are at a historic low. The bill is therefore an unnecessary, anti-democratic and politically driven piece of legislation which aims to mute the voice of working people.

ASLEF believes that the proposed thresholds are entirely undemocratic. Such thresholds do not apply to any other form of ballot. In fact if they applied to the election of MPs, just 56 Tories would have been elected out of 330.

The fatal flaw of this system is that it treats abstentions as ‘no’ votes. No other form of democracy expects this in the UK. The ILO themselves have stated that this would contravene their standards.

*1) Do you agree these are the key impacts industrial action would have in these sectors? Why/ why not?*

*2. What other impacts are there of strike action in*

*a) Fire services,*

*b) Health services,*

*c) Education services,*

*d) Transport services,*

*e) Border Force, or*

*f) Nuclear decommissioning?*

Transport workers are committed to providing a quality transport network for the public. No worker chooses to strike lightly. Firstly due the negative effect it will have on passengers and secondly because they often will struggle with the loss of earnings. However the impacts suggested by this consultation are very superficial and fail to examine the many negative consequences of introducing such thresholds.

The consultation speaks about the negative health and safety impact of industrial action. However, there are occasions when industrial action is taken due to safety reasons. Our members work in an extremely safety critical role. Very often it is our members along with other maintenance workers in the industry who truly recognise safety concerns for the public. There have been times when employers do not respond appropriately when such concerns are raised and industrial action is the last option available. Therefore restricting the rights' of workers to take industrial action could in fact have a negative effect on safety, rather than the action itself.

The consultation asks about the potential impact of strike action. Yet it fails to access the impact of legislating to restrict industrial action. Such actions are likely to have a negative impact on many aspects of workers lives. As previously mentioned, it could have a negative effect on health and safety. However it could also have a substantial effect on staff morale if workers are hampered in their attempts to negotiate better conditions. Strike action is a last resort, but by making it harder to access, it is a less powerful tool. This in turn could lead to higher staff turnover and lower productivity.

Additionally, as we seek to turn our country into a high wage economy, reducing access to industrial action could prevent progress in this area. The government talks tough about welfare, but most benefits go to those in work on low pay. In effect, these benefits are subsidies to employers who pay a wage that cannot be lived on. To reduce the benefits bill the government must ensure that more employees receive a living wage from their employer. These proposals will hamper these attempts

The document also fails to acknowledge that the impact of strike action is down to the employers' failure to maintain cordial industrial relations, but rather suggests that the whole impact is due to striking workers.

*3) What factors do you think are important in defining 'important public services'?*

ASLEF believes that all public services are important. Public service jobs are essential in the functioning of our everyday lives and creating economic growth. The people who provide them are central to their delivery and deserve respect. The biggest threat to public services is therefore not the possibility of workers taking strike action, but the mistreatment of employers' most important asset, their staff. Strike action is always the last resort, but if access to this tool is taken from staff to counter bad employers, staff morale, the ability to attract high quality workers and productivity will fall. That will lead to a far longer and more damaging fall in the standard of important public services than the very rare industrial action that takes place.

ASLEF would also argue that a temporary reduction in the ability of individuals to get to work, or very short term effect on economic activity is not a legitimate justification for restricting the fundamental human right to withdraw ones labour.

*4) Do you agree these are occupations and functions in*

- a) Fire services,*
- b) Health services,*
- c) Education services,*
- d) Transport services,*
- e) Border security, or*
- f) Nuclear decommissioning*

*the Government should consider when defining those subject to the 40% important public services threshold? When answering, please consider those key in avoiding the adverse impacts discussed above.*

*5) What other occupations and functions should the Government consider within these six sectors?*

*6) (If relevant) Please explain why the additional occupation or function should be covered.*

ASLEF does not believe that any occupation should be covered the 40% threshold.

*7) Do you agree with the Government's proposed approach to ancillary workers? Why/ why not?*

*8) Please give examples of ancillary workers in the six sectors discussed that you think should be subject to the 40% important public services threshold.*

*9) (If relevant) Please explain why the ancillary worker(s) you have cited should be covered.*

As stated above, ASLEF fundamentally rejects the idea that any ballot should have a threshold. Beyond this, questions around ancillary staff create further issues. This allows the government to cover a huge variety of staff under these proposals, with very vague definitions being used.

*10) Do you agree with the Government's proposed approach to private sector workers? Why / why not?*

No workers, whether public or private sector, should be covered by this restrictive, unnecessary and counterproductive legislation.

*11) How common are disputes involving some workers who would fall within scope of the 40% important public services threshold, and others who would not?*

*Frequent*

*Infrequent*

*Never*

*Not sure*

*12) Please give examples of a dispute that has or could include only a small proportion of workers undertaking “important public services” (using the definition used in this consultation).*

*13) Do you agree that the Government should require a ballot to be run under the 40% important public services threshold if a majority of workers involved in the dispute are subject to the 40% threshold? Why/ why not?*

*14) What are the practical and administrative considerations a trade union would have to make to calculate whether a ballot ought to be conducted under the 40% important public services threshold?*

Strike action is currently at a historic low. The amount of industrial action over the last 30 years has dramatically fallen. Since 2010, on average 647,000 days have been lost to industrial action each year, compared to 7,213,000 days lost per year in the 1980s. No matter how many days were lost to strike action, these proposals would still never be acceptable. Losing working days to strikes means that industrial relations must be fixed, not strike laws. However the fact that strikes are so infrequent shows how completely unnecessary and unjustified this action is.

This legislation is no more than a naked attempt to weaken working people in the UK. It will create tip the balance of power even further towards employers. It will also create a huge amount of uncertainty for unions and the lack of clarity in

many of the proposals will create a lot of legal risks. There is therefore a danger of arbitrary outcomes that could have disproportionate effects on certain workforces. Certain information will not be available to unions and with no obligation for employers to pass such information on, (such as amount of hours worked on certain tasks) employers would be able to deliberately prevent unions from complying with the proposed laws.

This government brags reducing red tape in nearly all parts of our economy. Yet trade unions appear to be one of the few areas where they are attempting to enforce even more regulation. This is despite UK unions operating under more regulation than any other western nation.

ASLEF believes that these changes will be counterproductive in regard to productivity. Unionised workforces feel listened to, respected, have better health and safety, job security and pay. These all lead to better productivity of the workforce. By reducing the ability for unions to represent members fully, the government will reduce this.

Therefore these proposals are anti-democratic, unjustifiable and counterproductive. They are an attack on labour and a blatant attempt for employers to have more power over their workforce and less consideration for working conditions. Far from improving productivity as the consultation claims, these regulations will reduce it. The trade union bill is the biggest attack on organised labour in decade, and ASLEF will do all it can to oppose it.

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