**Trade Union Bill: civil liberties implications**

UNISON believes that the Trade Union Bill and the specific measures outlined in the government’s consultation documents are designed to restrict the ability of people at work to:

* organise collectively
* make their voice heard at work
* take industrial action

The government cannot be allowed to ignore the fact that these are rights which are protected by a wide range of international human rights treaties and legislation. They concern fundamental rights protected by the European Convention on Human Rights such as the right to freedom of expression and the right to freedom of association. Significant issues are also raised in relation to the right to a fair hearing, police powers and State intervention and surveillance.

It is notable that the proposals have already been widely criticised by lawyers, civil liberties groups and politicians on precisely this basis. This briefing is intended to highlight some key areas of concern for activists. It is not intended to be an exhaustive analysis of each and every civil liberties concern.

**Pickets and protests: infringing freedom of expression and association**

Many of the provisions relating to picketing and protest raise civil liberties concerns. The ability to picket and protest is a fundamental human right that is safeguarded by ILO Convention 87, the European Social Charter and the European Convention on Human Rights.

Pickets and protests enable trade unions and their members publicly to communicate the reasons and purposes of industrial action in a peaceful manner to persuade workers to support the industrial action and to mobilise support for the action. Industrial action and picketing is already subject to extensive regulation. There is no evidence that further regulation is required.

The Trade Union Bill proposes significant new restrictions on picketing activities and legitimate union protest. Requiring unions to appoint picket supervisors who must wear armbands and carry letters of authorisation are significantly disproportionate infringements on trade union freedoms. This is particularly the case when the failure to do so could lead to the trade union facing costly legal action.

Unions will also be required to publish picket and protest plans 14 days in advance. This includes the use of social media and blogs. Potentially a union could face action because of one unplanned tweet. The reality of the modern world is that most people do not know what they will tweet in five minutes time let alone 14 days time. There are now indications (yet to be

confirmed) that the government will not to pursue restrictions on planned use of social media – even they must have recognised the enormous freedom of expression restriction that this entailed.

The restrictions proposed in relation to picketing and protest indicate an intention for unprecedented State intervention and surveillance of trade union activities and communications. However, this also means that the activities and communications of individuals will be subject to scrutiny. It is inevitable that there will be employer monitoring of individuals as well as trade unions. This represents a gross privacy violation.

Additionally, as well as real and legitimate concerns about the infringement of freedom of association and freedom of expression there must also be concerns about the increased risk of

black listing of trade union activists and members. Recently exposed experiences of those working in the construction industry in relation to black listing demonstrate that this is a realistic and timely fear. There is a real risk that the effect of these proposals will be to deter people from exercising their fundamental democratic rights.

It is also of significant concern that the sanctions for non compliance with these provisions are excessive. It is wholly disproportionate that a union would lose statutory immunity from legal challenge simply because a union official forgot to bring or wear his or her armband on a picket line, has inadvertently misplaced their letter of authorisation or a tweet or blog piece was published which was not contained within the plan of campaign activity provided 14 days earlier. The union could face costly applications for injunctions preventing or imposing conditions on pickets or seeking damages over trivial breaches.

UNISON strongly believes that such penalties are unjustified and conflict with the requirements of the European Convention on Human Rights, the European Social Charter and ILO Convention 87.

**Police Powers: police interference in civil matters**

There is also a troubling role for police on the picket line. Letters of authorisation must be provided to police when requested. This provision is puzzling at best, sinister at worst. The police have no function or role in a civil dispute. Under the proposed legislation a failure to provide the letter would only lead to a civil sanction. Effectively the police will be enforcers and witnesses to employers attempts to enforce civil remedies.

Even more concerning is that the ability of police to request the letter of authorisation will take place outside of the usual protections and restrictions on their police powers. For example, they will not be required by law to inform the individual:

* the officer’s identity and station location
* that the individual is entitled to a record of the interaction
* the legal powers under which the interaction has taken place
* that the individual is being detained for the purposes of the interaction.

This means that those engaged in entirely lawful activity, protected by the European Convention on Human Rights, will not be afforded the same procedural protections as those suspected of criminal and terrorism offences. This is a good illustration of how one apparently small detail of the Bill has evident, serious civil liberties ramifications.

It is not only the police who have a right to view the picket supervisor’s letter of authorisation under the proposals. The letter of authorisation must be carried at all times by the picket supervisor and presented upon request to ‘any other person who reasonably asks to see it’. It is entirely unclear why members of the public should be entitled to know the identity of a picket supervisor.

UNISON is concerned that this provision will encourage the intimidation of pickets – by security firms appointed by the employer, members of anti-trade union campaign groups and the media. This letter will contain personal information about the picket supervisor – such as name, address and employer. This further highlights the level of interference with the legitimate activities of a trade union.

The government has also indicated that it is contemplating the introduction of criminal offences and the use of anti-social behaviour orders to regulate the activities of pickets. This is in the context of no meaningful evidence that the already high levels of trade union regulation, specifically around picketing and existing laws are insufficient. They are proposing draconian legislation on the basis of what amounts to unsubstantiated rumour.

**Certification Officer: complainant, investigator and adjudicator**

A new role for the Certification Officer will be to effectively police pickets using Certification Officer inspectors on a real time basis. UNISON believes that this amounts to excessive and unjustified monitoring by a government agency of the activities of trade unions and their members as they exercise fundamental, democratic rights to assemble and protest.

Another concerning area from a civil liberties perspective, which has perhaps received less coverage, is the way in which the role of the Certification Officer will be extended even further. There will no longer be a requirement for a complaint from a trade union member to launch an investigation into a trade union. The Certification Officer, appointed by the Government, will be able to start their own investigation of their own volition or at the instigation of a third party.

The Certification Officer will have the power to take copies of union records and documents they deem relevant. The impact of this is that employer and anti-trade union activists may consider it attractive to attempt to trigger an investigation without merit – there are no proposed sanctions to deal with spurious complaints. We are also presented with a situation whereby the Certification Officer has powers which mean that they can effectively occupy the role of complainant, investigator and adjudicator of the same matter.

The failure to comply with an order of the Certification Officer will be dealt with as a matter of contempt of court. This means that there is a realistic possibility that an individual could be jailed for a failure to comply with a Certification Officer order. An individual could be jailed following a process where the State appointed Certification Officer has served as complainant, investigator and adjudicator – applying the lower civil burden of proof.

Quite simply, these proposals are extraordinary. They are contrary to all principles of natural justice and protections in the European Convention on Human Rights in relation to the right to a fair hearing and right to liberty.

**Further attacks on Freedom of Association**

**Balloting and strike action**

The right to strike is fundamental. A wide range of international treaties including ILO Conventions, the UN Covenant on Social and Economic Rights, the European Social Charter and the European Convention on Human Rights safe guard this.

The Bill’s proposals will effectively treat any abstention in a ballot into a ‘no’ vote. This will skew the true results of ballots. It is recognised as part of a democratic process that individuals may have the right to abstain from indicating a preference. This, along with the refusal to permit electronic balloting, demonstrates the clear political attack on trade unions and their members which represents an unwarranted interference with freedom of association and the right to strike.

**Agency workers**

The permitted use of agency workers undermines the rights of workers taking industrial action. Allowing temporary workers to be recruited to provide cover during industrial action, potentially being paid less, effectively renders the industrial action void.

Far from providing resolution to matters it is likely to lead to longer more entrenched disputes and place agency workers in difficult positions. Workers may be less willing to exercise their democratic rights if steps have been taken to render them ineffective. They will be in a position where they have no meaningful way of addressing disputes in the workplace. This is a significant interference with the right to strike and freedom of association.

**Trade union funding**

The proposals in relation to check off and the funding of political campaign work under taken by trade unions represent significant interferences with civil liberties in terms of freedom of association. These proposals also betray the targeting, present throughout the Bill, of trade unions for ‘special’ treatment.

For instance, there is a requirement that trade unions document expenditure to political parties and campaigns in excess of £2,000 when a similar threshold for political parties is £7,500. Previous attempts to reduce the £7,500 threshold have been met with claims of a lower threshold being overly burdensome. This illustrates that there is one rule for trade unions and one rule for everyone else. This Bill singles out trade unions and subjects them to requirements which are unique to them.

**Targeting trade unions: draconian, disproportionate and unlawful**

It is telling that these draconian proposals have been censured by the independent Regulatory Reform Committee who have noted, damningly, that “there is little evidence presented that there will be any significant benefits arising from the proposal”.

The Bill specifically targets trade unions. It places requirements and restrictions on the legitimate activities of trade unions which are not replicated elsewhere in civil society. The activities of trade unions, union officials and workplace representatives will be subject to unprecedented scrutiny and monitoring by employers, police, other agencies and the Certification Officer.

By association, the Bill represents a direct attack on the rights of working people in the United Kingdom. Workers will be in a situation whereby their ability to enforce fundamental rights, in relation to health and safety, minimum pay and ill treatment in the workplace (for example) will be subject to significant interference.

The right to strike, protest and campaign will all be subject to restriction. This occurs in a wider context of increased difficulties in relation to access to justice with the introduction of high Employment Tribunal fees. The combination of restrictions on access to justice and restrictions on trade unions and their activities raise serious questions about the ability of working people to enforce their employment rights in the UK.

The Trade Union Bill is draconian, disproportionate and unlawful. The Trade Union Bill is undemocratic and represents a fundamental assault on the civil liberties of working people in the United Kingdom.