Employment Rights Bill – the whats and whens of the trade union-related reforms

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Robert Shore: Hello, and welcome to the Brightmine podcast, formerly known as the XpertHR podcast. Brightmine is a leading provider of people data, analytics and insight, offering employment law expertise, comprehensive HR resources and reward data to meet every HR and organisational challenge and opportunity. You can find us any time of the day or night at https://www.brightmine.com.

Hello everyone. My name is Robert Shore, and today we're going to be talking about the Employment Rights Bill, and the many and various elements in it related to trade unions. We will be providing an overview of the union-related reforms, when they are likely to come into force, what they will change when they do so, and offering some insights into the Government's thinking on how trade union access agreements and being informed of the right to join a trade union will work.

To do this, I am joined today by Laura Merrylees, senior legal editor at Brightmine, and Nick Chronias, a partner in DAC Beechcroft's employment and pension's group and, exceptionally usefully, a specialist in trade union relations. Hello Laura, hello Nick.

At the time of recording this podcast on the afternoon of 6 November 2025, the bill is yet to receive Royal Assent, as it is caught in what is called the 'ping-pong phase', with the Lords and the Commons batting various proposed amendments to the Bill back and forth over the net to one another. However, the outcome of that shuttling should have very little impact on what we're going to be discussing here. So whether you're listening before or after the passage of the bill, when it will become the Employment Rights Act of course, what we are saying today should still be accurate and where there is any ambiguity or uncertainty we will signal that clearly. So you can listen with confidence.

So Laura, to begin with you, there's a lot of union-related detail in the Bill, of course. But it's perhaps useful to think of the legislation as coming in four phases, isn't it?

Laura Merrylees: Yeah, that's right. I mean, the Government back in July published its implementation timetable, and we can see the four phases from that. So the first phase really follows very soon after Royal Assent, around two months. We're then looking at April 2026 and October 2026 for the second and third phases, and then the final phase in 2027.

Robert Shore: Yes. And we said at the outset that the Bill's ping-pong phase doesn't really affect what we're discussing today but there is one issue – the turnout threshold for an industrial action ballot to be valid – that is affected.

Laura Merrylees: Yeah. I mean, that's right, Robert. So just a reminder for our listeners, under current law for an industrial action ballot to be valid at least 50% of trade union members that are entitled to vote must do so in order for that ballot to be valid.

So under the Employment Rights Bill, this turnout threshold would be removed. But in this ping-pong that's going between the Commons and the Lords at the moment, the Lords have rejected this and they're insisting that the 50% threshold be retained.

The latest news on that is that the Government, I understand, is offering up some sort of slight watering-down, so they have said that they would amend the Bill so that the effects of electronic balloting – which we'll be coming onto later, this e-balloting – would be taken into account when they monitor and assess the practical impacts that it has on participant rates and the threshold. But we'll have to wait and see what that means in practice.

Robert Shore: Okay, great. Right, Nick, let's bring you in at this point. First question for you is, have you been enjoying watching the Bill evolve?

Nick Chronias: It's been a fascinating process, hasn't it? There has been so much debate. There has been some movement. Of course the Government has been playing catch-up, having promised to move the Bill within 100 days and then realised quite how much detail they needed to fulfil the promises that they had made in their manifesto. So yes, it has been a really interesting exercise, albeit one where I think the Government has fundamentally stuck to its principles throughout the passage of the legislation.

Robert Shore: So we'll be discussing those things that are still to be settled via secondary legislation as we go through this. But let's begin at the beginning, shall we? And what's going to change first? So we're assuming that Royal Assent will be achieved at some point, and then things happen, things are triggered by that immediately. Can you tell us where it all begins?

Nick Chronias: So it begins with the virtually never-used minimum service level laws on industrial action being repealed the moment that Royal Assent is received. That is only worthy of a passing note.

The first critical stage is the stage that Laura mentioned, which is what happens two months after the Bill receives Royal Assent, which is that various trade union balloting, industrial action balloting reforms, will come into force. So in the simplest terms, that will mean it will be easier for a trade union to run an industrial action ballot. Specifically, they'll have to give less information about who they're going to ballot and call on to take the industrial action. They won't need to give any detail about the subject matter of the dispute. They won't need to give any detail about any proposed action short of a strike, what type of action short of a strike they're planning to take. And critically, they will only need to give 10 days' notice of the industrial action, as opposed to the current 14 days' notice.

Laura Merrylees: And Nick, just in terms of how that will apply, what will that mean, do you think, for ongoing trade disputes that are subject to industrial action?

Nick Chronias: It's not entirely clear from the implementation plan. But my expectation would be that these laws will apply to ballot processes that have yet to begin as opposed to something that's halfway through, because I think it would be inappropriate and rather odd to say, if for example there's already been a ballot notification, the ballot is halfway through, that the new laws would then apply. But we're waiting for the Government to clarify that. My expectation is that it would apply to new processes begun after that date.

Laura Merrylees: And the well-publicised changes that we've heard about in relation to the process of statutory trade union recognition, when are they due to come into force?

Nick Chronias: So that is coming around the corner in April of next year. That's when we will see basically a simplification and a reduction in the hurdles that trade unions need to meet. Most importantly, first, that they won't need likely 50% support when they make the application; second, that they won't need a 40% turnout requirement when it comes to the actual ballot as to statutory recognition; and third, that there'll be a lowering of the membership threshold. Now at the moment, the Government has said that that will be set somewhere between 2 and 10% of the membership of the proposed bargaining unit. I know I'm slightly crystal ball-gazing, but my expectation is that it's far more likely to be at the lower end of the scale there than it will be the upper end, but we wait for the Government to confirm that in secondary legislation.

Laura Merrylees: And so that's April 2026, as you mention. What about the right to trade union access to workplaces? Again, well publicised.

Nick Chronias: So that won't be coming in until October 2026, and that will apply to both the physical and the digital access entitlements that the Government's put forward.

Laura Merrylees: Okay. And we'll come onto a little bit more about that later.

Robert Shore: Yeah. So Nick, you mentioned the duty to inform workers of their right to join a union. When does that come into force?

Nick Chronias: So again, that will be an October 2026 right, and again we'll talk about that in a bit more detail in a minute.

Robert Shore: Okay, so this is all phase three, isn't it? So phase on is immediately after the passage of the act; phase two is April; then there's October. Anything else that's union-related for October for phase three?

Nick Chronias: Yes. So there will be some enhanced protections for trade union representatives. But I think most importantly in phase three there will be a right not to be subjected to a detriment for taking part in protected, official industrial action. And again, I can chat a little bit more about the practicalities of that in a minute.

Laura Merrylees: Nick, what else has the Government been doing to implement the reforms as the Bill's been going through?

Nick Chronias: So the Government has now brought forward a number of consultations about these reforms. Now, for the purposes of this podcast we're going to talk about two of them: first, the one about the right of trade union access to workplaces, and the other one being the right to be informed of the right to join a trade union.

Laura Merrylees: So in terms of those consultations, they're out at the moment and they've got a date of 18 December of this year to close, I believe?

Nick Chronias: That's right, Laura. So there's not a lot of time for employers to lodge their responses if they wish to do so on those proposals.

Laura Merrylees: Yeah. And can you just go through some of the key points of the consultations for us?

Nick Chronias: Absolutely. Let's take the access one first, if that's okay.

Laura Merrylees: Yeah.

Nick Chronias: So, the Government has a very clear direction from the consultation document. It's clearly done a lot of thinking and it's clearly got some strong, I would say, views about how it wants this reform to come about. So, the main aspects of what it said is, first, that there should be a standard form that is used by a trade union when making an access request and by an employer when responding to it.

Second, that there should be what I think is a very tight timetable for this process, being the employer having five working days to respond to an access request from the date that the request is made. Second, the parties having 15 working days to seek to reach an access agreement. And there is no (at the moment within the consultation) ability for the parties to extend that period by agreement. Third, that if there is no access agreement as a result of those discussions, that a party can apply to the Central Arbitration Committee – that's the body that is effectively tasked

with overseeing this new system – seeking a resolution of the access issue. And that has to be done within 25 working days of the end of that 15-day period that I've just mentioned. And again, there's no provision for that to be extended.

So that's a tight timetable. But beyond the timetable there are then some very clear indications from the Government on some things, and then some notable silences on others.

So, the Government has been clear that if a recognised trade union is in place – so let's say that an employer recognises Trade Union A and then Trade Union B makes an access request – then the fact of recognition will generally be regarded as a reasonable basis for the employer to turn down the access request from Union B.

But one of the notable silences is what if there are multiple requests from different trade unions to an employer that doesn't recognise any trade unions? And there's nothing in the consideration of reasonableness about whether an employer can say, "Well, it's first come, first served," or, "We can only deal with one at a time," or, "There should be limitations placed on how much consideration we have to give to those requests." And that's certainly something that I'm hearing employers are concerned about because they're saying, "Well, what if we get 10 unions applying to us at the same time for different sites because we're a multi-site organisation? That's going to be a big amount of work to deal with."

So that's one of the areas of silence within the consultation. And then another big one is on digital access. So there's nothing really in the consultation document about how digital access will take place.

Laura Merrylees: That's interesting. And as you say, it does look to be a tight timetable as well, at the moment. So, the other consultation that's out, as we were saying, is on the written statement. Do you want to give us a bit of background on what you can see from that in the consultation?

Nick Chronias: Absolutely. So, the Government has divided its proposals here into two: one, for the new starters; and two, for existing workers.

For new starters, what it's proposing is…or rather what it's stated its preference is, is for a standard form statement to be provided by the employer that deals with a number of issues. So the history of trade unions, a list of trade unions, if there is an existing recognised trade union details about that trade union, and the fact of a person having the right to join a trade union.

Now, for many of us I think this has slightly caught us unawares because we thought it would simply be a statement that a person has the right to join a trade union, but the Government clearly has intentions to go significantly beyond that. And the proposal is that that should be communicated directly to any new starter. But it

has to be in writing and it doesn't have to be within a written statement of terms and conditions of employment; it should be something separate.

What we don't know yet but I think is probably going to be permissible, is whether for example, if you put it into an employee handbook that you sent alongside a written statement of terms and conditions that would be compliant as long as it fulfilled the language that the Government provides. I think it will be.

So then we come to the second group, existing workers. And what the Government said there is, "We are open-minded about whether this is communicated directly, person-to-person, or indirectly through noticeboards or through an intranet post that the employer puts up. But the information should be the same and it should be regular." And the Government is looking at three possibilities there: either that it's annual or that it's biannual or that's its regularity should be sector-specific. I think the annual reminder seems to be the one that the Government is heading towards from the tone of the consultation document, but of course that will be subject to what comes out through the consultation.

Laura Merrylees: Just going back to the access agreement for one moment, Nick, in terms of what the consequences of what that would be if an employer breached it, what's your understanding as to how that would apply from an enforcement perspective?

Nick Chronias: So, the Government's proposal is an initial £75,000 fine for an employer that breaches, and there'd be a further fine of £75,000 for any subsequent breach of that access agreement. I think it's worth just mentioning as well that the Government proposes that these access agreements last for two years. So obviously in that situation there's the possibility that an employer that doesn't grant access that is determined by the CAC could find itself before the CAC more than once in that period of time.

Robert Shore: Now, we like to take a very practical view of these things, so in regard to the industrial action balloting changes, what can employers do to prepare?

Nick Chronias: I think it's more about where they should set their expectations. So as someone who advises employers routinely, for example we will often look very carefully at the data that a trade union provides about the members that it proposes to ballot or call on to take action. That exercise will be much more difficult to do because of the simplification of what unions have to provide. They have to provide much less information about their members.

The other thing – and this is where it comes, Robert, into what can they do – is where they are facing industrial action, they need to think about the fact that they're going to need to execute and put in place their contingency plans in a shorter timescale because of the reduction of the notice from 14 to 10 days. And that might not sound significant, but for many employers I know that that is really

significant because they're working at real pace to try and put the best contingency plans they can in place, and those four days could make a material difference. So they need to push forward any contingency planning earlier in the process, so way, way before there's any ballot result outcome, effectively at the point where the ballot lands they should be thinking about their contingency plans because if there's a yes vote, they will have precious little time to prepare otherwise.

Robert Shore: Good to know. How about the written statement changes? What can employers be doing there?

Nick Chronias: So I think there is an element of needing to see whether the Government goes through with what is proposed in the consultation. But what I'd say is there's a significant systems issue for employers here. Where do they…they need to make these decisions. First, where do we want to put this statement? Will it be a separate document? Will it form part of a welcome pack and we just need to standardise it, and once we know what the words are it goes in automatically? Or do we want to put it into a bigger document?

Second, when it comes to existing staff, again ensuring that you have one, a decision about where you're going to put that information Do you have an intranet that you can use? Do you think that's the right place to put it? Do you have your own social media setting because many employers do have their own localised social media place that is secure for their colleagues? So that's the first bit. Where does it go?

And the second, obviously the organisational importance of making sure that the reminder is given at the period that the Government states, whether that's annual, biannual or sector-specific.

The last thing I'd say about this is, again, that assumes that it can be communicated indirectly. If the Government goes for the direct route, then again employers will need to make sure they've got the systems in place to ensure that they're notifying every single person in their workforce of that information.

Robert Shore: Yeah. So that's potentially quite onerous, actually.

Nick Chronias: Although there are certainly other countries that have a law of this kind, the level of detail that we are likely to be required to provide in the UK, I think, is quite novel. But it is obviously where the Government is at the moment.

Robert Shore: Sticking to my practicalities theme, what about access arrangements?

Nick Chronias: So, there are so many elements to this. So for example I would be looking at the sort of rostering and shift arrangements that employers have, how far in advance they're actually determined. Because one of the things that the consultation doesn't grapple

with is the practical reality of a union saying, “Well, I want access to see this group of people at this time,” but they’re not necessarily rostered to work at that time, or rostered to work at various different times. And the Government has said, “Well, we think that once the system is in place, a union has to only give two days’ notice of access.” Well, what if an employer is the subject of an HSC inspection at that point in time or an audit of its own kind, or there is some particular customer pressure point that means that they are in a particularly busy period? These are all the sorts of questions that I’m getting asked about “Well, can we put that in as reasons why there needs to be some account for that when it comes to access arrangements?” And my answer is, “Well, it’s not specifically stated within the consultation at the moment but it must follow that those sorts of things fall into the question of whether it’s reasonable to grant access.”

Another significant area is when it comes to employers who engage children, so the under-18s, and vulnerable adults. Because those employers have legal safeguarding obligations to those individuals, and they have to have a safeguarding policy. And that can mean that an employer can place specific constraints on visitors to its sites, to ensure that it meets those safeguarding commitments. But there’s nothing within the consultation document that takes into account those sorts of considerations. So is the employer entitled to require credentials of the trade union representative? Are they entitled to apply the same standards that they would to other visitors to that representative to ensure that they’re meeting their safeguarding responsibilities?

They’re just a few of the sort of examples of the practical considerations that I'm talking to employers about at the moment.

Laura Merrylees: Interesting. And just looking at practical considerations again, and you were touching on earlier about the introduction of this sort of protection from detriment for taking part in industrial action, what do you think…what does that mean, in the first place, and what do you think employers can do to prepare for that sort of, kind of strengthening of the law?

Nick Chronias: So, first, it means that anything other than docking pay for a person who is taking part in strike action will be unlawful if it is simply connected to the taking part in that industrial action. But then that raises some wider issues. So for example what it will mean is that employers definitely won’t be able to, in effect, penalise a person financially for taking part in industrial action when it comes to their bonus, for instance. So if they say, “Well, you are going to…because you’ve taken part in that strike action you’re not going to get a bonus at all,” that would be an unlawful detriment under this law. If they say, “Your bonus will be reduced,” that will be an unlawful detriment.

Now there will be subtleties here. So if you have a performance-driven or a business metric set, a performance target that relates

to a bonus – for example, “You need to achieve a certain productivity level” as a group of employees – and as a consequence of the industrial action you don’t meet that objective, then I think it would be lawful to say, “Your bonus will be reduced,” because that’s about not meeting the productivity target. But anything that’s individualised and personally connected to the person taking part in action, that won’t be permissible.

And then the other thing, which is an area that I’ve advised on quite often, is what happens on a picket line and also in communications on social media during industrial action. So, what if a picket threatens a colleague on a picket line? Should they be immune because they can say, “Well that…if I’m disciplined for that, it’s happened in the course of taking industrial action.” And I think the answer there is to look at what our law is at the moment, and that is that that detriment protection doesn’t extend where a person carries out their trade union activity or membership in a wholly unreasonable way. What I can see is that that simple statement will become the subject of a lot of debate. You know, was the behaviour on the picket line so significant as to lose the person the protection that they would otherwise have? And I’m sure employers would say yes if they feel that that person’s behaved in an intimidating way, and that person may well say no and be supported by their trade union in doing so.

Laura Merrylees: Some of this is going to be settled by case law, I guess, down the line.

Nick Chronias: Yes.

Laura Merrylees: Yeah. So what next? What next in the chapter of the Employment Rights Bill and the progression of these reforms?

Nick Chronias: So, my expectation is that we’ll see, obviously once the consultations close on the 18th, that we’ll see draft regulations at the start of next year to ensure that obviously the Government can meet that tranche two and three timetable that we’ve been talking about, and that we’ll then have the clearest picture of what the proposals will be. And some of that planning that I’ve already talked about, employers can firm up on in the knowledge that it’s now wired into those regulations.

Laura Merrylees: Your thoughts on the sort of specific planning that employers can do is so helpful. I mean, just to close, maybe if I can just get some of your general thoughts on how you think this shift, these reforms, will potentially sort of impact the…well it will, I mean, it will impact the landscape of industrial relations. I mean, you’re very experienced in dealing in this area. I mean, what’s your sense of how this will impact?

Nick Chronias: There are very differing perspectives on this. What I certainly know is that for trade unions this is seen as a critical engine for it to increase membership, to have a platform to make recognition requests which have a better prospect of success, and to run

industrial action ballot processes in a less onerous and costly way. And you talked about e-balloting a little while ago, and that will definitely come into that category. It's highly likely that e-balloting will be cheaper than the current postal balloting system that we have.

So for trade unions, it is a shot in the arm, a big opportunity. For many of the employers that I'm advising, what they see is a significant amount of responsibility, a significant amount of management time that will be needed to address these issues, and a discussion for them about any existing employee forums and their effectiveness and how well they feel they're engaging with their employees at the moment through those forums and mechanisms that they have. Because of course, if they feel that they have strong and good direct connections to the workforce, that may weigh in the balance as to how they respond to, for example, a trade union recognition request.

Robert Shore: And just one further question to that is, do you think it's going to lead to a significant amount of reunionisation of workspaces where there isn't much current union activity?

Nick Chronias: I think, Robert, that's the million-dollar question. So that's clearly the belief of trade unions who have lobbied so hard for these reforms and see them as part of a package. You know, the written statement obligation leads to higher membership; higher membership leads to the opportunity to make a recognition request; lower thresholds for recognition lead to recognition. That's the thought process. But that assumes lots of things, including that trade unions have the resources to pursue lots of these recognition campaigns. And they are a significant resource occupier for trade unions. So we'll have to see how dramatic an impact they have in reality. I think what's more likely is that trade unions will have particular employers in mind where they will use these reforms because they are perhaps…have a higher profile, or the union will feel that it is achieving more in terms of the scale and size by seeking recognition for that employer than they might if they were going at lots of small employers.

Robert Shore: But probably all employers, whether currently engaging in sort of relations with unions or not, need to be over the sort of detail of…I mean, they need to be aware of these things.

Nick Chronias: Absolutely. It touches every employer because every employer will have to give the written statement, and only the smallest of employers won't have to deal with an access request. And many employers who do have recognised unions do face industrial action ballots. But everyone will be touched by it in some way.

Robert Shore: So everybody needs to look at the resources on the Brightmine website, is my line from that. Right, I think that's covered everything we said we were going to cover today. Nick, thank you so much for leading us through that. That was really, really engaging and insightful for us. And Laura, thank you also for being

on board for this particular journey. And beyond that, we have links to various resources in the show notes. And I will say, until next time.

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