



The Bar Council

Bar Council response to the Department for Business and Trade Consultation on duty to inform workers of their right to join a trade union

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Department for Business and Trade Consultation on duty to inform workers of their right to join a trade union.¹

2. The Bar Council is the voice of the barrister profession in England and Wales. Our nearly 18,000 members – self-employed and employed barristers – make up a united Bar that aims to be strong, inclusive, independent and influential. As well as championing the rule of law and access to justice, we lead, represent and support the Bar in the public interest through:

- Providing advice, guidance, services, training and events for our members to support career development and help maintain the highest standards of ethics and conduct
- Inspiring and supporting the next generation of barristers from all backgrounds
- Working to enhance diversity and inclusion at the Bar
- Encouraging a positive culture where wellbeing is prioritised and people can thrive in their careers
- Drawing on our members' expertise to influence policy and legislation that relates to the justice system and the rule of law
- Sharing barristers' vital contributions to society with the public, media and policymakers
- Developing career and business opportunities for barristers at home and abroad through promoting the Bar of England and Wales
- Engaging with national Bars and international Bar associations to facilitate the exchange of knowledge and the development of legal links and legal business overseas

3. To ensure joined-up support, we work within the wider ecosystem of the Bar alongside the Inns, circuits and specialist Bar associations, as well as with the Institute of Barristers' Clerks and the Legal Practice Management Association.

4. As the General Council of the Bar, we are the approved regulator for all practising barristers in England and Wales. We delegate our statutory regulatory functions to the

¹ [Make Work Pay: duty to inform workers of right to join a union - GOV.UK](#)

operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

5. In what follows, the Bar Council underlines their response on the yes/no questions.

Question 1: Do you agree that the following types of information should be included in the statement provided to workers?

a. A brief overview of the functions of a trade union.

6. Yes - We are in favour of a short statement summarising the core functions of trade unions - collective bargaining and negotiations about terms and conditions of employment and representation of individual workers in relation to grievances, problems at work and disciplinary matters. The definition of a trade union in s.1 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA") is too general for this purpose. Any definition, however, should be sufficiently brief so as not to lose the reader.

b. A summary of the statutory rights in relation to union membership.

7. Yes - The right to form and join a trade union is a fundamental human right, protected under Article 11 of the European Convention of Human Rights and other international human rights' instruments. In order to promote the Bill's aim of encouraging a growth in union and to ensure that workers are not dissuaded from exercising this fundamental right, workers should be told of the core individual statutory rights protecting them against any detrimental treatment because of trade union membership or activities – and especially s.146 of TULRCA. Once more, it is important that this statement is not so long as to confuse or bewilder the reader. It should be sufficient to summarise the rights in s. 146 and s.152 and refer to these as examples of the important legal protections, without attempting to summarise the other rights in e.g. ss 137, 145A. The best option would be for the statement to specify the exact wording (as is done in relation e.g. to strike notices in TULRCA) because otherwise employers may draft confusing or inaccurate summaries of the legal rights.

c. A list of all trade unions that the employer recognises (if any).

8. Yes - We can see virtue in the statement listing the unions that the employer recognises for the purpose of collective bargaining (whether as a result of voluntary recognition or the statutory procedures in Schedule A1), given the effects recognition has on industrial relations and the union's statutory rights. It is essential that this is restricted to independent trade unions, not under the control of the employer, as defined in s.5 of TULRCA (cf. the current definition of "recognition" in s.178(3) TULRCA). It is only independent unions who benefit from the legal rights which are a consequence of recognition, such as rights to time off work for their officials, to information, to consultation on redundancies and transfers of undertaking and to appoint safety representatives. More importantly, it is only independent trade unions who are able to engage in genuine free collective bargaining and properly to

represent their membership; it is only independent unions that can meet the aims of the legislation in strengthening worker voice; and the goal of the new right in s.136A of TULRCA should only be to promote membership of such unions. An employer should not be permitted to include non-independent “sweetheart” unions on the list because this may divert workers from joining independent unions.

d. A signpost to a GOV.UK page with list of trade unions

9. Yes - We consider this is a sensible idea, provided it does not result in the statement overall deluging the worker. However, if a link to a list is provided should be restricted to a list of trade unions with a certificate of independence: see above. It is not the purpose of the legislation to encourage workers to join non-independent trade unions.

e. Add other types of information (please specify)

10. There is something to be said for the statement, either when it gives a link to a list of independent trade unions (see 1(c) above) or elsewhere, explaining in a sentence what is an independent trade union.

Question 1f: If no, please explain your answer.

11. Not applicable.

Question 2: Do you agree that the statement should be a standardised statement provided by the government?

12. Yes - Some employers are hostile to union membership and can be expected to draft statements designed to discourage workers from joining unions; others may draft statements which are too long or are hard to follow. Unless the statement is in a prescribed form of wording there is a real risk it will confuse workers, inaccurately summarise the law or have the effect of discouraging workers from joining a union. For example, a statement containing excessive detail, drafted in obscure language or promoting forms of worker representation not involving independent unions may undermine the purpose of providing the statement in the first place. There are already precedents for such compulsory wording in areas of where language may be tendentious – see, for example, the prescribed wording on a voting paper for industrial action in s.229 of TULRCA.

Question 3: If the proposal for an employer-drafted statement (option B) is chosen, do you agree that the Government should provide a model statement that employers can adapt?

13. Not applicable.

Question 4: Do you agree that the written statement should be delivered directly to new workers?

14. Yes - the goal must be to promote a right to join a union which is practical and effective.

Question 5: Do you agree that employers should be able to deliver the statement indirectly or directly to existing workers?

15. It should be delivered directly to workers in order to promote the objectives of the legislation referred to on page 5 of the Consultation Paper.

Question 6: Do you agree that employers should be required to provide workers with the statement, or reminder, on an annual basis?

16. Given the importance of the right, we are supportive of providing the statement annually, though there could be an exemption for small employers. The most straightforward method of drafting would be to require the statement to be reissued on each anniversary of the date when it first had to be given.

Question 7: Do you agree that a standardised frequency should apply to all organisations regardless of sector or size?

17. See above.

Question 8: Do you have any further comments on how the duty to inform workers of their right to join a trade union should be implemented?

18. The only sanction for the employer breaching the duty is contained in the amended s.38 of the Employment Act 2002. This small award of compensation is only triggered in the event that an individual worker brings a complaint in the employment tribunal for infringement of a different legal right and which is upheld by the tribunal. The practical effect is that very few awards will be made. This is not a very effective sanction in light of the importance of the right that the legislation is meant to promote and the real risk that employers who are hostile to unions will try to undermine it. While this consultation is presumably only on the scope of the regulations to be made under new s.136A(3)-(4) of TULRCA, the Government should consider the effectiveness of the proposed sanction in the Bill and considering other forms of sanction (such as rights of a trade union which has members within the workforce to bring a complaint that the duty is not being met).

Bar Council

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