

EMPLOYMENT BILL

Impact Assessment –
Amendment to Trade Union
Law

DECEMBER 2007

Summary: Intervention & Options

Department /Agency: BERR	Title: Impact Assessment of Employment Bill: Amendment to Trade Union Law	
Stage: Final	Version: Final	Date: 5 December 2007
Related Publications: NECHR Judgement in Aslef v UK Case - Implications for Trade Union Law. Consultation Document May 2007 ; Response Document November 2007		

Available to view or download at:

<http://www.berr.gov.uk/files/file42757.pdf>

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What is the problem under consideration? Why is government intervention necessary?

The Government is responding to a European Court of Human Rights judgment of February 2007 with which we are obliged to comply. The case concerned the freedom of trade unions under GB law to expel or exclude individuals on the grounds of their political party membership, and the Court concluded that the relevant part of GB law violated Article 11 of the European Convention on Human Rights. The UK Government has recognised the need to amend the relevant part of trade union law in this country.

What are the policy objectives and the intended effects?

To amend the relevant part of trade union law to ensure compliance with Article 11 of The European Convention.

What policy options have been considered? Please justify any preferred option.

Two options were considered:

A: Amend Section 174 to ensure there is no explicit reference to a special category of conduct relating to political party membership or activities.

B: Retain the special category of conduct relating to political party membership and activities but significantly amend the rights not to be excluded or expelled for such conduct.

The Government's preferred option is A because it is simpler to understand and apply in practice. It should therefore provide less scope for unnecessary legal action.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The effects will be monitored by examining cases determined reached by the Tribunals Service

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Pat McFadden, Minister of State (Employment Relations and Postal Services)

.....Date: 6 December 2007

Summary: Analysis & Evidence

Policy Option:

Description: Amend Section 174 to ensure there is no explicit reference to a special category of conduct relating to

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£ 0		
	Average Annual Cost (excluding one-off)		
	£ 0		Total Cost (PV) £ 0
Other key non-monetised costs by 'main affected groups' Costs to unions should be minimal as any expulsions they make are voluntary			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' .
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 0		Total Benefit (PV) £ 0
Other key non-monetised benefits by 'main affected groups' allows trade unions a wider ability to expel members whose political affiliations are contrary to a union's principles.			

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	1.10.07			
Which organisation(s) will enforce the policy?	HMRC			
What is the total annual cost of enforcement for these organisations?	£ N/A			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	Yes/No			
Annual cost (£-£) per organisation (excluding one-off)	Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 0
		Net Impact	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Purpose and intended effect

Objectives

1. On 27 February 2007, the European Court of Human Rights (the "Court") issued a judgment in the case of *Aslef v The United Kingdom* (Application no 11002/05). The case concerns the freedom of trade unions under GB law to expel or exclude individuals on the grounds of their political party membership, and the Court concluded that the relevant part of GB law violated Article 11 of the European Convention on Human Rights (the "Convention"). The UK Government does not intend to appeal the judgment, and recognises that the relevant part of trade union law in this country should be amended to ensure compatibility with the Convention. The UK Government therefore concludes that those aspects of section 174 of the 1992 Act which refer to political party membership and activities need to be changed to ensure complete compliance with Article 11.

Background

2. Under the law, any individual who wishes to join or remain a member of a trade union has the right to do so. The union may exclude or expel that person only for one of a number of permitted reasons. Those reasons are set out in section 174 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the "1992 Act"). One of them is that the person's "conduct" is unacceptable.

3. Section 174 sets out categories of conduct, jointly classified as "excluded conduct", for which it is always unlawful for a union to expel or exclude a person. It also establishes a further category of conduct called "protected conduct", which it defines as "current or former membership of a political party". It is unlawful for a union to exclude or expel a person wholly or mainly on the grounds of that person's "protected conduct". However, Section 174 explicitly states that the "political activities" of a person do not constitute "protected conduct". The net effect of these provisions is to provide some scope for a union lawfully to expel or exclude political extremists on the basis of their political activities such as standing for political office or campaigning on behalf of a political party.

4. According to the Court, trade unions must be given greater autonomy to decide whether the political party membership of individuals should debar them from belonging to the union.

5. The UK Government recognises that the relevant part of trade union law in this country should be amended to ensure compatibility with the Convention. The UK Government therefore concludes that those aspects of section 174 of the 1992 Act which refer to political party membership and activities need to be changed to ensure complete compliance with Article 11.

Consultation

6. The Government undertook public consultation in May 2007 on its proposed approach to ensuring that the relevant parts of section 174 of the 1992 Act are compliant with Article 11.

7. Thirty three organisations replied to the consultation, twenty six of which were trade unions. As regards the two options presented in the consultation document, the large majority of respondents favoured Option A, which the Government is pursuing. There were no comments about the partial Impact Assessment included in the consultation document.

Options

8. The May 2007 consultation document proposed two possible options:

Option A: Amend Section 174 to ensure there is no explicit reference to a special category of conduct relating to political party membership or activities.

Option B: Retain the special category of conduct relating to political party membership and activities but significantly amend the rights not to be excluded or expelled for such conduct by specifying the limited conditions under which it would remain unlawful to exclude or expel.

Discussion of options

9. **Option A** would in effect position political party membership and activities under the general heading of "conduct" (which was the situation before the Trade Union Reform and Employment Rights Act 1993 was implemented). Where such political party membership or activities were "unacceptable" to the trade union, it would therefore be lawful for the union to expel or exclude on those grounds. This option would provide trade unions with much greater autonomy in deciding their membership. However, there would be no special safeguards against possible abuse. Such safeguards may not be necessary in any event: there is no evidence that trade unions would make use of this greater freedom by expelling members or activists of mainstream political parties. Also, if a trade union acted outside its rules when expelling a member, then that person could seek legal redress by bringing a breach of rule claim before the courts.

10. **Option B** would refer to the limited conditions under which it would remain unlawful for the trade union to exclude or expel an individual on the grounds of their political party membership or activities. Those conditions would specify that the union's decision would be unlawful unless the political party membership or activity concerned was incompatible with a rule or objective of the union, and the decision to exclude or expel was taken in accordance with union rules or established procedures.

11. **Option B** would specify particular safeguards against potential abuse. Those safeguards are based on the reasoning of the Court which noted the need for the trade union to avoid arbitrary behaviour and to act transparently in accordance with its rules. Many union rule books now refer to racist, xenophobic or extremist political behaviour as unacceptable to the union. So, little adaptation by those trade unions would be needed in order to comply with this option. Where a trade union was required to amend its rule book, then members and potential members should gain because they would be properly informed of the potential consequences of their political actions. **Option B** might, however, create grey areas and give scope for legal action to arise about the precise meaning of a union's rules or objectives.

12. Following consultation the Government has determined that Option A best meets the obligation to comply with the Court judgement. It is easier to understand and simpler to apply in practice. It would give less scope for unnecessary legal action.

Costs and benefits

13. There is no firm information on the number of people expelled by trade unions for their political activities each year. Nor is there data on the potential number of union members who would face expulsion if unions felt able to expel them for their political affiliations. These figures are likely to be low. That view is supported by the fact that the number of employment tribunal claims that are lodged against unions for wrongful expulsions is very small. The Employment Tribunals Service does not collect specific figures for complaints of a breach of section 174. However, they are certainly fewer than twenty a year and possibly fewer than ten. This provides some indication that the proposed change in the law will not result in a significant rise in the number of expulsions from unions. There is also little evidence that trade unions expel or exclude many individuals. We therefore feel that the proposed change in the law is unlikely to result in a significant rise in the number of expulsions from unions.

Analysis of benefits

14. **Options A and B** are similar in their intended effect and so the benefits from both are also similar. Both options allow trade unions a wider ability to expel members whose political affiliations are contrary to a union's principles. There are few monetary benefits that flow from this, although to the limited extent that unions currently have to engage in legal proceedings where they are challenged over expulsions they may benefit from some reduction in these sorts of costs.

15. There may also be some intangible benefits to union members from both options, in ensuring that disruptive individuals whose political views are abhorrent to them are no longer involved in the trade union. This should also ensure the smoother running of the union's affairs for all concerned.

Analysis of costs

16. Both **Options A and B** should impose minimal costs on unions, as any expulsions they might make would be voluntary. However **Option B** may necessitate that some unions examine their rule books to ensure they were sufficient to deal with any expulsion situations that might arise. It is also possible that **Option B** may allow some scope for legal action to arise about the precise meaning of a union's rules or objectives.

17. For union members or potential members, the only costs would be felt by those who either were expelled for their membership of political groups or by those members who left their membership of a political group to remain in a union. To any individual these costs could be significant but given the numbers affected are likely to be very small, the overall size of the intangible costs would be low.

Enforcement, sanctions and monitoring

18. These rights are currently enforced via the Tribunals Service. The Government is not proposing any change to the method of enforcement or to the remedies.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

