



Department  
for Business  
Innovation & Skills

EQUALITY DUTY

Trade Union Membership  
Records

DECEMBER 2014

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# Introduction

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill received Royal Assent on 30 January 2014. The Bill included measures to deliver assurance that union membership records are kept accurate and up to date through providing an annual membership audit certificate to the Certification Officer and by giving the Certification Officer powers to require production of relevant documents and to appoint inspectors to investigate.

The Government carried out a 10 week consultation which closed on the 4 December 2014 to seek views of stakeholders on the implementation of the new requirements places upon trade unions as set out in Part 3 of the Act. This Equality Duty has been updated following this consultation to reflect the latest evidence base. A full impact assessment has been published separately. This assesses the impacts of this policy on trade unions, members, employers and the exchequer.

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This assessment covers all of the nine protected groups which include: age, race, gender, disability, religion or belief, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership. Our analysis suggests that there will be no significant equality or discriminatory impacts on these groups.

## Scope of this Equality Impact Assessment

On 5 April 2011 the new public sector Equality Duty came into force. The Equality Duty replaces the three previous duties on race, disability and gender, bringing them together into a single duty, and extends it to cover age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment (as a whole these are called protected characteristics or protected groups). Based on a proportional analysis we will outline the impacts, both positive and negative, on these protected groups.

Equality Impact Assessments are an important framework for demonstrating due regard, through considering evidence and analysis, to help identify the likely positive and negative impacts that policy proposals may have on certain protected groups, and to estimate whether such impacts disproportionately affect these groups. This Equality Impact Assessment takes a summary view of the equality impacts of proposed legislative measures regarding the certification of trade union membership registers.

# Description of the Policy

The intention of **Part 3 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act** is to amend the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) to require trade unions to keep fully audited and up-to-date lists of their members by:

- Enhancing the regulatory powers of the Certification Officer (CO), creating a power to enable the CO to investigate list discrepancies.
- Requiring unions to undertake an annual audit of union membership.
- Requiring unions to provide evidence of how they will store and monitor membership data effectively.

## Policy Rationale

There is an existing duty on trade unions to maintain an accurate and up to date register, so far as is reasonably practicable. However, union members only have the right to check the accuracy of their own personal entry, and therefore cannot easily establish the state of the register as a whole. The member can apply to the Certification Officer if the union fails to comply, but the CO can only make enquiries about that member's record.

It is not unreasonable to expect that trade unions should keep up-to-date membership records, not only because of a duty of care to members and for efficient administration, but because those unions that intend to take industrial action must be able to ballot accurately those members who may be affected. This general principle is already enshrined in statute, and the government is looking to ensure that the requirements on unions to fulfil this responsibility are adequate.

## Outline of Proposals

The Act introduces an additional statutory obligation on trade unions to:

- Supply assurance to the Certification Officer (as part of the union's annual return) that the register is accurate and up-to-date.
- Where a trade union has more than 10,000 members it must appoint an independent qualified person to complete the annual assurance on its behalf,

The Act also gives powers to the Certification Officer (CO) to:

- Require documents to be produced where he or she thinks there is good reason to do so;
- Appoint an inspector to investigate where it appears there are circumstances suggesting that the union has failed to comply with its duties in relation to the register of members;
- Act on their own authority and may take into account information brought to their attention by union members or third parties; Make a Declaration or Declaration and Enforcement Order where they find a union not be compliant with the already existing Section 24(1) duty to maintain an up to date membership register as far as

is reasonably practicable, or where there is a breach of the new duties to provide a membership audit certificate, appoint an assurer or in relation to the appointment and removal of assurers.

## Investigation

The power to investigate will allow the Certification Officer (CO) to take the decision to act on their own authority or in response to complaints from union members or third parties. If an annual assurance proves unsatisfactory that could also prompt the CO to investigate, although this is entirely at their discretion.

The government expects that in the great majority of cases, it will be members of the CO's staff who will investigate (and who will develop the appropriate expertise and skill). However, there may be circumstances where the CO considers the investigation warrants external expertise – for example, where the scale of an investigation is significant. The CO would be able to appoint a third party for these purposes.

# The evidence base

## Who does the proposal affect?

### Trade Unions

Statistics from the Certification Officer in 2013-2014<sup>1</sup> show us that there are 166 unions, with 13 unions accounting for around 84 per cent of total trade union membership.

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<sup>1</sup> [Annual Report of the Certification Officer 2013-2014](#).

Table 1: Trade unions – Distribution by size

<b>Number of Members</b>	<b>Number of Unions</b>				<b>Membership of all Unions</b>		
	<i>Number of Unions</i>	<i>Membership</i>	<i>Per cent</i>	<i>Cumulative per cent</i>	<i>Per cent</i>	<i>Cumulative Per cent</i>	
<b>Under 100</b>	30	1,202	18.1	18.1	0.0	0.0	
<b>100 – 499</b>	30	8,287	18.1	36.1	0.1	0.1	
<b>500 – 999</b>	15	11,083	9.0	45.2	0.2	0.3	
<b>1,000 – 2,499</b>	23	37,912	13.9	59.0	0.5	0.8	
<b>2,500 – 4,999</b>	15	54,875	9.0	68.1	0.8	1.6	
<b>5,000 – 9,999</b>	11	85,025	6.6	74.7	1.2	2.8	
<b>10,000 – 14,999</b>	2	23,848	1.2	75.9	0.3	3.2	
<b>15,000 – 24,999</b>	11	225,061	6.6	82.5	3.2	6.3	
<b>25,000 – 49,999</b>	12	404,427	7.2	89.8	5.7	12.0	
<b>50,000 – 99,999</b>	4	268,726	2.4	92.2	3.8	15.8	
<b>100,000 – 249,999</b>	5	797,381	3.0	95.2	11.3	27.1	
<b>250,000 and over</b>	8	5,168,289	4.8	100.0	72.9	100.0	
<b>Total</b>	166	7,086,116	100	100	100	100	

Source: Annual report of the Certification Officer 2013-2014

We actively engaged a range of trade unions and other experts throughout the consultation period to understand how these provisions would work in practice, with a view to reducing additional burden as far as possible. This involved 11 face to face meetings with unions of various sizes, 3 meetings with organisations seeking to become assurers and an additional meeting with the Certification Officer in the most recent round of consultation. We also received 27 formal consultation responses.

Smaller unions will not be balloting significant numbers for industrial action and maintenance of records should be more straightforward. There is a risk that the requirement to appoint an expert to conduct an annual assurance could prevent the start up of new unions. New unions over the size threshold will also be exempt from this in the first year so as to mitigate this risk.

The government intends, therefore, that the new regime should allow smaller unions to provide an annual *self*-assurance. The power for the CO to investigate would, though, be the same for these unions as for all others.

### Trade Union Members

According to Statistics from the Certification Officer in 2013-2014<sup>2</sup> (see table 1) there were 7,086,116 members. Table 2 below outlines the trade union statistics (via the labour force

<sup>2</sup> Annual Report of the Certification Officer 2013-2014

survey) for 2013, split by protected group characteristics.<sup>3</sup> This is an estimate of the potential pool of individuals that may be impacted by this policy

<i>Table 2: Characteristics of union members and non-members, 2013</i>	<i>Union Members</i>	<i>Non-Members</i>	<i>All Employees</i>
<i>Gender</i>			
<b>Male</b>	45.2	52.2	50.5
<b>Female</b>	54.8	47.8	49.5
<i>Age</i>			
<b>16 to 24</b>	3.9	16.4	13.8
<b>25 to 34</b>	18.7	24.1	23.8
<b>35 to 49</b>	40.2	33.4	35.0
<b>50 plus</b>	37.2	26.2	27.5
<i>Ethnicity</i>			
<b>White</b>	91.7	89.5	89.5
<b>Mixed</b>	0.7	1.1	1.0
<b>Asian or Asian British</b>	3.8	5.3	5.2
<b>Black or Black British</b>	2.6	2.2	2.5
<b>Chinese or other ethnic group</b>	1.2	1.9	1.8
<i>Nationality</i>			
<b>UK, British</b>	95.6	90.1	91.2
<b>Other</b>	4.4	9.9	8.8
<i>Country of Birth</i>			
<b>UK</b>	90.1	84.3	85.4
<b>Other</b>	9.9	15.7	14.6
<i>Disability</i>			
<b>Disabled</b>	14.3	11.4	11.9
<b>Not disabled</b>	85.7	88.6	88.1
<i>Sector</i>			
<b>Private</b>	40.7	83.6	73.2
<b>Public</b>	59.3	16.4	26.8
<i>Full-time/ part-time</i>			
<b>Full time</b>	78.0	71.2	73.5
<b>Part-time</b>	22.0	28.8	26.5

<sup>3</sup> In 2014, the ONS published revised Labour Force Survey data for 2001-2013 to take account of the latest available official population estimates. These new Census population weights have been used to update the data in this publication.

## Unintended Consequences and Risks

### Membership Affordability

There could potentially be some impact of this policy with regards to the affordability of trade union membership fees.

Under this policy, trade unions will need to undertake an annual audit of union membership. This may increase the costs faced by trade unions as they introduce new processes and staff in order to meet their compliance obligations. If these costs are passed on to members via increasing membership fees, there could be some impact on protected groups who are in the low income bracket.

Given the minimal changes in terms of regulatory burden placed on trade unions we expect the additional regulatory cost to be low and hence the risk of increased membership fees to be small. Our final Impact Assessment accompanying this Equality Duty estimates the costs and benefits of these proposals in more detail.

### Trade Union Core Activity

Under this policy trade unions will need to undertake an annual audit of their membership. In the previous section we discussed how this additional regulatory burden could impact trade unions and thus protected groups via an increase in monetary costs. However increased regulatory burdens placed by this policy could also impact the time unions devote to some of their core activity. If unions are spending additional time on auditing their membership list (as a result of this policy), they may have less time to represent members (including those in protected groups).

However given the minimal changes in terms of regulatory burden placed on trade unions, early BIS thinking believes that additional regulatory costs in terms of time spent on audits will be small. Our final Impact Assessment estimates the costs and benefits of these proposals in more detail.

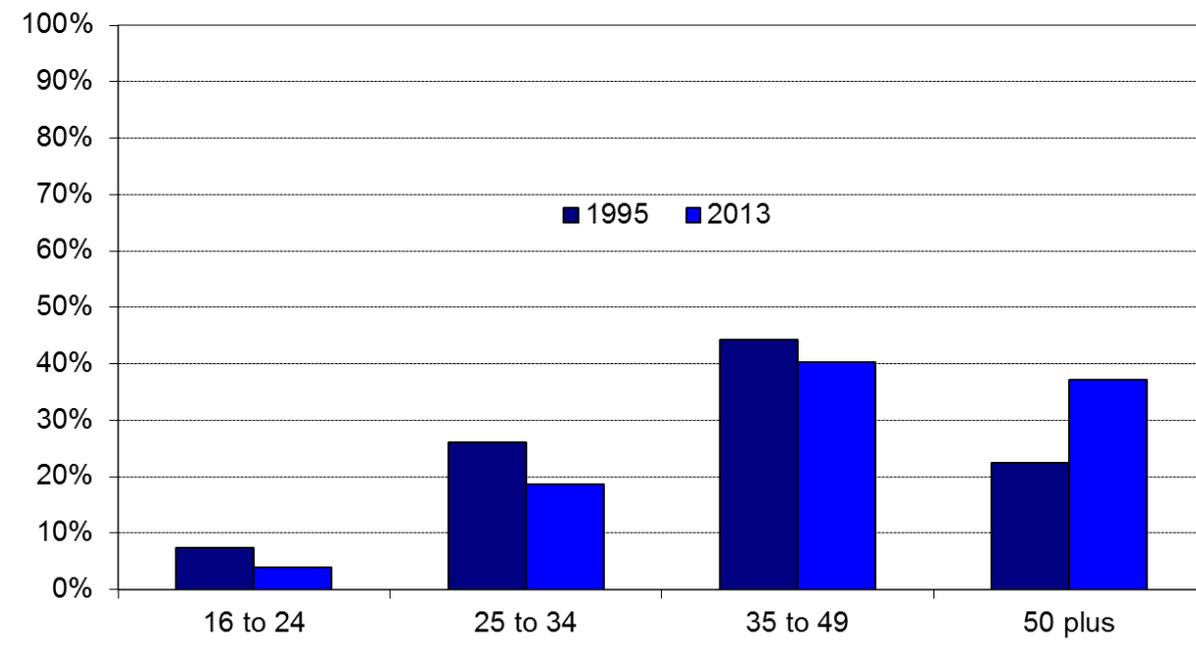
## How does the proposal affect protected groups?

Although the effects of the proposals may impact on different protected groups in different ways, our assessment suggests that there will be **no direct adverse equality impacts** on these groups from the implementation of the proposed legislative measures regarding certification of trade union membership registers.

Details of our analysis of each protected group are provided below.

### Age

Chart 1 below shows us that older workers account for a larger proportion of union members than younger workers. Over the eighteen years to 2013, the proportion of employees who belonged to a trade union has fallen in all age groups except those aged over 65. About 37 per cent of trade union member employees were aged over 50 in 2013, compared with 22 per cent in 1995. This may be linked to the rising employment rate among people in this age group in recent years.

**Chart 1: Age of Trade Union members, 1995 and 2013**

Source: Labour Force Survey, Office for National Statistics

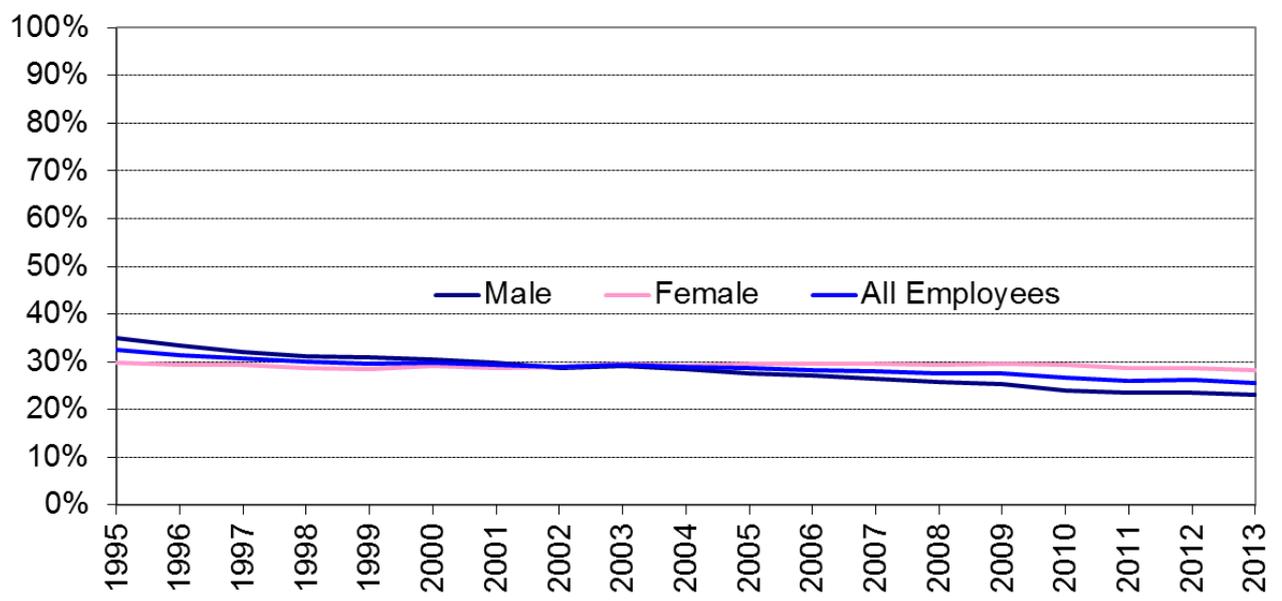
## Gender

Female employees were more likely than male employees to be a trade union member. The proportion of female employees who were in a trade union was around 28 per cent in 2013, compared with 23 per cent for male employees.

From chart 2 below we can see that in 1995, the proportion of male employees who belonged to a trade union was around 35 per cent, compared with around 30 per cent for female employees. High falls in union membership among males steadily narrowed the gap between male and females. In 2002, the proportion of employees who belonged to a trade union was around 29 per cent for both genders.

The trend continued between 2002 and 2013, with union membership among male employees falling by 6 percentage points from 29 per cent in 2002 to 23 per cent in 2013, compared with relative stability in the rate for females with the exception of 2011 where the gap narrowed slightly. About 55 per cent of union member employees were female in 2013, up from 45 per cent in 1995.

**Chart 2: Employee trade union density by gender, 1995 to 2013 (per cent of UK employees who were trade union members)**



Source: Labour Force Survey, Office for National Statistics

### Disability

The proportion of employees who were trade union members was higher for those classified as being disabled.

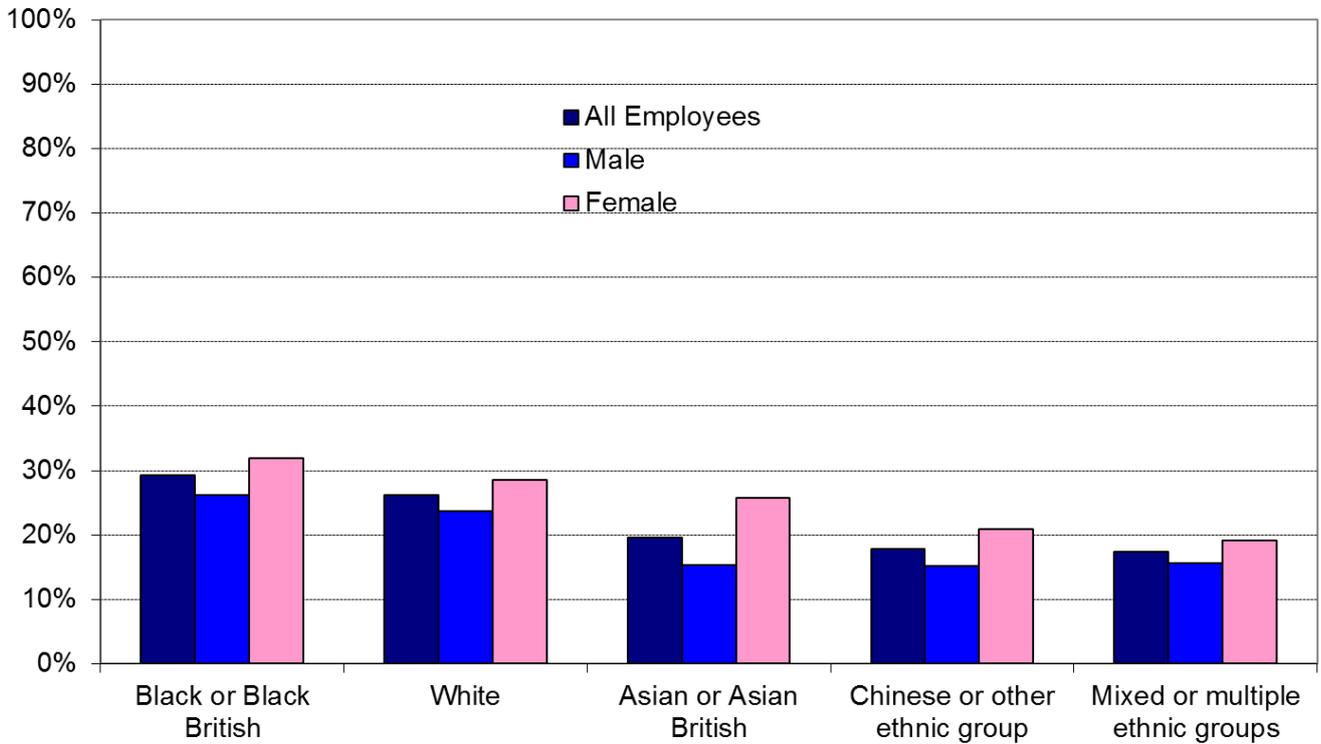
Employees who were disabled make up about 14 per cent of all trade union members in 2013, compared with 12 per cent of all employees in the UK.

### Ethnicity

Chart 3 below shows us that the proportion of employees who were trade union members was highest in Black or Black British ethnic group at around 29 per cent in 2013, compared with 26 per cent for all employees. The Mixed or Multiple ethnic groups had the lowest proportion of union members at just 17 per cent in 2013.

Higher proportions of female employees belonged to a trade union than males for all ethnic groups. The largest difference was within the Asian or Asian British ethnic group. In 2013, the proportion of female Asian employees who belonged to a trade union was around 26 per cent, compared with around 15 per cent for male employees.

**Chart 3: Trade Union density by gender and ethnicity, 2013 (per cent of UK employees who were trade union members)**



Source: Labour Force Survey, Office for National Statistics

### Other Protected Groups

Our assessment of the equality impacts of this policy suggests that there would be **no direct equality impact** on the other protected groups such as religion and belief, sexual orientation, gender reassignment, pregnancy and maternity.

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