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Business, Energy
& Industrial Strategy

IMPORTANT PUBLIC SERVICES REGULATIONS 2017

Guidance on the regulations

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Guidance on the Important Public Services Regulations 2017

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A. Introduction

1. Section 226(2B) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) requires ballots for industrial action, where the majority of union members who are entitled to vote are normally engaged in ‘important public services’, to have the support of at least 40% of members before they are valid, unless the union reasonably believes this not to be the case (the 40% threshold). Section 226(2D) of the 1992 Act allows the Secretary of State to make regulations to specify the ‘important public services’ captured by the 40% threshold, and the Government has brought forward the Industrial Action (Important Public Services) Regulations 2016 (“the regulations”) for this purpose.
2. This guidance accompanies the regulations, and is intended for unions and employers whose members or employees deliver a specified important public service. It provides advice for unions on applying the 40% threshold in practice, and also suggests examples of workers who will be covered in each sector in the regulations. It does not purport to be an exhaustive list of all workers who will be captured by the regulations, as organisational structures in these public services may change over time. The Government will review the guidance periodically to ensure it is still helpful in identifying which workers deliver an important public service.
3. This guidance is non-statutory. The document gives general guidance only, and is not a substitute for professional legal advice. Authoritative interpretations of the law can only be given by the courts.
4. The advice in this guidance only relates to how a union can apply the 40% threshold in practice. It sits alongside the Code of Practice on industrial action ballots and notice to employers, which provides procedural guidance on the full process of conducting and meeting the statutory requirements of holding industrial action ballots. The Code is available at: <https://www.gov.uk/government/publications/code-of-practice-industrial-action-ballots-and-notice-to-employers>

B. Applying the 40% threshold in practice

Background – taking industrial action

5. A trade union can only call on its members to take industrial action if there is a trade dispute between its members and their employer¹. The union must conduct a secret ballot in order to call for industrial action. All those union members who it is reasonable at the time of the ballot for the union to believe will be induced by the union to take part in industrial action must be given entitlement to vote. It is for a union to decide who they will ballot for industrial action.
6. All ballots for industrial action must have a turnout of at least 50% of union members who are entitled to vote. A simple majority must be in support of industrial action before it can go ahead. In addition, ballots for industrial action where the majority of union members who are entitled to vote are normally engaged in providing important public services must also have the support of at least 40% of those members, unless the union reasonably believes this not to be the case. The regulations set out which services have been specified as important public services for the purposes of the 40% threshold. The following sections set out how a union can determine whether the 40% threshold applies to a particular ballot, and unions are free to adapt these or their existing processes as appropriate in the specific circumstances.

Considering whether the 40% threshold applies

7. The 40% threshold is only relevant to industrial action ballots in specified important public services in the fire, health, education, transport, border security and nuclear decommissioning sectors. The regulations do not currently specify any services in the nuclear decommissioning sector, so ballots for industrial action in this sector do not currently have to meet the 40% threshold. Ballots for industrial action in services that are not currently covered by the regulations will not be caught by the 40% threshold.

Ballots with a mixture of workers

8. Ballots may involve a mixture of workers who are carrying out an important public service, and those who are not. Where this is the case, **the 40% threshold will apply if a majority (i.e. over half) of union members who are eligible to vote in the ballot are delivering an important public service**, unless the union reasonably believes this not to be the case.

¹ The meaning of a trade dispute is defined in section 244 of the 1992 Act.

Workers with multiple duties

9. Workers may have multiple duties and spend only part of their time delivering an important public service, and the remainder of their time on other responsibilities. Such workers are only considered to be delivering an important public service if they are normally engaged delivering in this service. **It is for a union to consider what is normal in the specific circumstances of their sector or workplace** when they determine who they will ballot for industrial action, and whether they hold sufficient information to reasonably believe whether or not a majority of workers are normally engaged in important public services.
10. When considering whether workers with multiple duties are normally engaged in delivering an important public service, the union may find the following matters to be relevant. This is not an exhaustive list, nor does the union have to take all of these matters into account.
 - How regularly the workers deliver important public services
 - The proportion of time that the worker spends on delivering important public services
 - Whether the worker is contracted to deliver important public services
 - Whether the substantive role of the worker is to deliver important public services at the time of the ballot or likely industrial action
 - Whether the worker has been temporarily allocated to different duties, and the time period this is expected to last for
11. It may be in the union's interest to determine the relevance of the 40% threshold to workers with multiple duties or specific balloting constituencies in advance of any upcoming ballot. Making considerations early could enable the union to proceed with an individual ballot more quickly, though the considerations may not necessarily be determinative of whether the 40% threshold does apply to any given ballot, as the balloting constituency will depend on the nature of the trade dispute.

Membership records

12. Unions will likely rely on their membership records when considering whether the 40% threshold is relevant to its members or an individual ballot. Section 24(1) of the 1992 Act requires unions to compile and maintain a register of members' names and addresses and, so far as is reasonably practicable, to secure that the entries are accurate and kept up-to-date. Section 226A of the 1992 Act also requires the union to provide written notice of an individual ballot to employers. The union has to either provide a list of categories of employees which members belong to and the numbers in each of those categories along with an explanation as to how the figures were arrived at (amongst other things), or it has to provide information that allows the employer to readily deduce the categories and numbers. This information must be as accurate as is reasonably practicable in the light of information in the possession of the union at the time of providing that written notice.
13. In addition, the union is only required to hold a reasonable belief in relation to applicability of the 40% threshold. This means that if the union reasonably believes that the majority of members who are entitled to vote in the ballot are not carrying out an important public service, then it will have a defence to legal challenge, even if that later turns out to be an erroneous belief.

14. It is for a union to consider the practical application of the legislative requirements and whether it holds a reasonable belief. In doing so, unions may wish to seek further advice from legal representatives or umbrella union bodies on the following matters:

- Obtaining information on members' roles in order to determine whether the 40% threshold is relevant
- Updates to membership records, so that they are as accurate as is reasonably practicable
- Taking account of information provided by a member or the employer
- Engaging with employers early in the interests of good industrial relations, to resolve any issues and prevent delays following the outcome of a ballot

C. Examples of workers who deliver 'important public services' under the 40% threshold

15. The following table sets out examples of workers who are considered to deliver the specified important public services. It is for trade unions in the first instance to determine which of their members are normally engaged in the provision of the specific services and therefore potentially subject to the 40% threshold.

Important public service	Examples of workers who deliver this service
Health	
<i>Emergency, urgent or critical healthcare services, including:</i>	
<i>Services provided in an emergency by an ambulance or associated transport service, including dealing with calls for help and organising their response</i>	Paramedic
	Emergency care assistant
	Emergency technician
	Emergency dispatcher
<i>Accident and emergency services in a hospital</i>	Doctor
	Nurse
<i>Services which are provided in high-dependency units and intensive care in a hospital</i>	Doctor
	Nurse
<i>Psychiatric services provided by a hospital for conditions which require immediate attention in order to prevent serious injury, serious illness or loss of life</i>	Psychiatrist
	Doctor
	Nurse
<i>Obstetric and midwifery services provided by a hospital for conditions which require immediate attention in order to prevent serious injury, serious illness or loss of life</i>	Obstetrician
	Midwife
	Doctor
	Nurse
Education	
<i>Teaching and other services provided by teachers and persons appointed to fulfil the role of a head teacher to persons of compulsory school age at a school other than a fee-paying school, a 16-19 Academy or an institution within the further education sector other than one whose services to persons of compulsory school age are not publicly funded</i>	Teachers
	Those fulfilling the role of a head teacher, including Academy principals
Fire	
<i>Firefighting services, including dealing with calls for help and organising their response</i>	Firefighters
	Airport firefighters
	MOD firefighters
	Firefighter managers
	Control centre staff
	Control centre managers

C. Examples of workers who deliver 'important public services' under the 40% threshold

Transport	
<i>Any bus service which is a London local service as defined in section 179(1) of the Greater London Authority Act 1999</i>	<p>Bus drivers</p> <p>Engineers</p> <p>Depot managers</p>
<i>Passenger railway services (including metro, underground and tramway services), including maintenance of trains or of the network, signalling or controlling the operation of the network, and other services which enable trains to operate</i>	<p>Station staff – despatch staff, safety and security staff, and station supervisors</p> <p>Train staff – train drivers, guards and conductors responsible for train despatch, rail engineers and maintenance staff, and management and control staff including train crew and fleet rostering</p> <p>Operations staff – control room staff, signallers and signalling maintainers, infrastructure operators, incident and emergency response staff, and network maintenance</p>
<i>Civil air traffic control services</i>	Licensed air traffic controllers
<i>Airport security services</i>	<p>Airport workers and managers who are directly involved in carrying out the following security activities:</p> <ul style="list-style-type: none"> • Controlling access to an area of an airport designated as a critical part • Screening persons, items or vehicles entering a critical part • Searching and/or patrolling critical parts
<i>Port security services</i>	<p>Port security officers who are directly involved in carrying the following security activities:</p> <ul style="list-style-type: none"> • Controlling access to an area of a port designated as a critical part • Screening persons, items or vehicles entering a critical part • Searching and/or patrolling critical parts <p>Designated Port Facility Security Officers (PFSO) at each port facility</p>
Border security	
<i>Services related to border control functions in respect of the entry and exit of people and goods into and from the United Kingdom</i>	<p>Border Force officers of all grades who are directly engaged in:</p> <ul style="list-style-type: none"> • Immigration and customs controls at UK borders. This covers those who are physically present at the border as well as those present where goods are first encountered in the UK. • Intelligence and targeting functions which directly support immigration and customs controls at UK borders. This covers intelligence officers in both regional and national offices, as well as those in the Watchlist and Information Control Unit and the National Border Targeting Centre. • Regional and national command and control structures for a critical incident escalation, and who provide mandated authorities on border matters. This covers officers in both regional Command and Control Units and National Operations Command and Control.

