



Department
for Business
Innovation & Skills

TRADE UNION BILL

Consultation on tackling
intimidation of non-striking
workers

JULY 2015

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Summary of consultation

Picketing and Protests

- **The Government is reforming and modernising the rules relating to picketing and associated protests to ensure they cover social media, to make sure they apply to protests linked to pickets, and to make clearer rights and remedies for non-striking workers, the public and businesses as well as picketers.**
- **The Trade Union Bill makes key aspects of the Code of Practice on Picketing legally binding. The Government seeks evidence on whether there are further requirements that should be legally enforceable.**
- **It also seeks views on how to improve transparency and accountability for picketing and associated protests - where so-called 'leverage' tactics have sometimes been used. This includes a requirement to publish a plan of intended action, and an annual report to the Certification Officer of picketing and associated protest activity.**
- **A key aim is to ensure that workers are better protected from intimidation. This consultation welcomes further evidence of intimidatory behaviour experienced during picketing and protests linked to industrial disputes. It seeks views on gaps and weaknesses in the framework governing these activities and how they can be remedied, including the case for a new criminal offence of intimidation on the picket line.**

The issue

1. Though most workplaces enjoy good employment relations, disagreements can on occasion occur. Sometimes this involves trade unions and can result in industrial action. Where this happens, picketing and protests are a legitimate part of how trade union members' interests are represented. However, picketing must be undertaken without intimidation - this applies whether individuals are on strike or wish to enter the workplace to go about their usual business.

Picketing

2. There are no data on the exact numbers of picketing and protests linked to industrial action undertaken each year. However, we do know that in the year to March 2015 there were 211 stoppages, totalling around 708,000 working days lost to strike action. This compares with 176 stoppages, totalling around 498,000 working days in the previous year.
3. Picketing in Great Britain is already governed by a detailed framework of civil and criminal law (see Box 1 below). This is further guided by a statutory [Code of Practice on Picketing](#) (the "Code") which was last updated in 1992. This is currently not directly legally enforceable, but its provisions can be taken into account in proceedings before any court. The current Code intends to help ensure that picketing is lawful and peaceful without interfering with or intimidating those who want to continue to work.
4. However, in recent years a range of problems have arisen despite this framework. While most unions adhere to the guidelines of the Code, there have been a number of high-profile

allegations of the rules on picketing being flouted, or proving difficult to enforce. The Carr Review,¹ which was conducted in 2014, received submissions which alleged that the following behaviour took place during picketing:

- Aggressive use of language directed at individuals on a picket line
- Approaching individuals in a threatening way and following them as they go to work
- Evidence of assault of individuals not participating in the picket
- Obstruction and other intimidatory behaviour.
- Non-striking individuals having photos taken as they cross pickets and posted online as a form of public shaming (the current Code pre-dates the rise of social media).

Wider protests

5. These problems do not end at the picket line however. Recent years have seen the emergence of new forms of protest that are being used in order to further industrial disputes outside the scope of current legal provisions in the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA). Protests directly related to industrial action that take place away from the workplace are not specifically regulated by TULRCA despite sometimes having an intent analogous to that of pickets of getting workers or suppliers to breach their contract with an employer. However protests away from the picket line will be covered by the Public Order Act 1986 where it occurs on public land, and other legal provisions where relevant. Whilst there are existing powers in the Public Order Act 1986, it is not clear to what extent that legislation deals effectively with allegations of intimidation of non-striking workers, third parties like suppliers and customers of businesses as well as the general public. This has created some uncertainty about the rights and remedies of individuals and organisations in these cases.
6. Some of the most high profile and extreme cases have included allegations of large groups of protestors outside employees' homes, causing alarm and distress to families. The Association of Chief Police Officers (ACPO) set out evidence to the Carr Review of a range of overlapping problems. It said that "Police forces have reported tactics used during industrial disputes that are considered intimidatory or inappropriate" as follows:
 - "The use of air horns in public in the proximity of small children, using aggressive behaviour in presence of customers, walking slowly in front of vehicles, videoing drivers, taking photographs of company managers whilst requesting disputes are brought to an end, using the internet to post intimidatory material and blocking the access for shoppers at the doors to retail stores."
 - "The Metropolitan Police Service has provided evidence of intimidatory behaviour at the 2012 London Fire Brigade strikes whereby eggs and flour were thrown at appliances being driven, Fire Station security door codes were changed by striking staff, striking staff refusing entry to Fire Station premises by linking arms and forming a physical barrier to the entrance and the filming of staff not in support of the strike. Some concerns

¹ <https://carr-review.independent.gov.uk/key-documents/carr-report/> Due to issues with the methodology of Carr Review, all events mentioned remain alleged and it was limited in what it concluded. It set out what happened in a number of industrial disputes based on the evidence provided, summarised the existing legal framework, and recorded the main calls for changes to that framework reached but arrived at no judgment on either the extent or extremity of use of extreme tactics in industrial disputes nor the effectiveness of the existing legal framework.

have also been expressed about false fire calls to deploy senior staff to locations where they have been intimidated by striking workers upon arrival or actual fire calls where those attending have then been met by 'flying' pickets who have followed the appliances to the scene."

- "The use of cameras and video appears to be emerging as a more common tactic contributing to the intimidation of individuals. A recent example is the RMT – City Link dispute which targeted secondary businesses that used City Link as a delivery courier, photographing and videoing managers of those businesses."
 - "During the Ineos dispute at Grangemouth in 2013 secondary targeting occurred at a number of premises and suppliers who had links to Grangemouth, some many miles away from the Grangemouth facility (including a number of premises in Hampshire). This action involved intimidatory protests at shops, hotels and other business premises, with protestors described as being persistent and occasionally aggressive. This caused anxiety to members of the public using those locations and who were generally unaware of the Ineos dispute or the connection between the businesses."
7. The Government believes that this conduct is unacceptable and action is needed to prevent it happening in future, with enforcement of strong remedies where it does. As Box 1 sets out in detail, breaches of the picketing code and associated breaches of provision on "peaceful picketing" and civil torts are subject to a number of civil penalties. There is also a wide range of general criminal offences likely to be applicable in some of these cases - for example harassment and intimidation. An aim of this consultation is to test to whether there are nonetheless gaps in this framework. The Carr Review received a range of views on whether there was an absence of tools and powers, problems of awareness of them, or of their application.
 8. In the Government's view, it is likely to be a combination of these factors. Industrial relations is a legally complex area but a key problem appears to be the difficulty of effective enforcement in the context of disputes where police are seeking to balance the rights of all parties to carry out lawful activities while maintaining order. Employers report that enforcing civil offences through the courts can be time-consuming and potentially expensive and slow. While the police can intervene where there are criminal offences, they are otherwise under a duty to facilitate lawful protests. Forces have deemed criminal sanction disproportionate in some cases where individuals may have felt intimidated but there was no direct evidence of criminal behaviour, or it was judged at an officer's discretion not to meet the bar for arrest.
 9. The Government believes that addressing intimidation of non-striking workers requires a robust but balanced solution. An important consideration in the proposals set out below is the need to pay due regard to the fundamental rights in the European Convention on Human Rights (ECHR) related to assembly and protest, and the UK's established position on freedom to undertake peaceful protests. These proposals therefore have been considered carefully in respect of these rights and aims to protect the interests of both those on strike and others who want to go into work without being intimidated or to express disagreement with the union's position.
 10. Given the range of law applicable in this area, the Government welcomes evidence on the adequacy of the legal framework including on whether there is a need for new criminal sanctions. We are interested in views on the case for a new criminal offence of intimidation on the picket line – whilst dependent on the outcome of this consultation such a step would

send a clear signal and clarify the intention of policy-makers that the legitimate right to protest should not prevent the enforcement of criminal activity where this occurs.

11. Our starting point however, is to seek views on reforms to the Code and relevant civil legislation (TULRCA) with the aim of strengthening basic standards of responsible conduct and therefore preventing intimidation and other unacceptable behaviour before it emerges. We also seek views on modernising provisions to take account of social media, and what can be done to improve enforcement.

Question 1: Most of this consultation focuses on specific proposals. Before turning to this detail, do you have any other evidence of intimidatory behaviour, directed either at non-striking or striking workers, that you believe should be considered as part of this consultation? If so, do you have any estimate of the economic impact of this?

Question 2: The Government is interested in whether there are any further gaps in the legal framework (see Box 1 below) in relation to intimidation of non-striking workers and third parties. How could the framework be strengthened - for example, should there be a new criminal offence, such as for intimidation on the picket line?

Box 1: Current legal framework

Current legal framework

There is a long-standing legal framework that seeks to ensure that peaceful picketing take place without interfering or intimidating those who want to work. We therefore need to identify is the nature of the intimidation, establish whether there is a gap in the law and how can this be addressed.

The current legislative requirements for a lawful picket are set out in section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA"). A person can peacefully obtain or communicate information, or they can peacefully persuade any person to work or abstain from working, provided that:

- There is a trade dispute - as defined in TULCRA;
- The picketer is at or near his workplace; or
- The picketer is a dismissed employee who pickets his former workplace; or
- The picketer is a union official who accompanies a person whom he represents and that person is at or near his workplace.

People who picket peacefully in accordance with section 220 are given immunity in law from being sued for the civil offence which would otherwise arise by inducing another to breach their contract. Section 219 TULRCA exempts individuals taking part in lawful picketing from this liability in tort (i.e. damages). Section 238A of TULRCA provides that dismissals of those taking part in protected industrial action in the first 12 weeks is automatically unfair and may be unfair after that.

Separately to these provisions there is the Code of Practice on Picketing which, as noted above, in itself imposes no legal obligations. Failure to observe it does not by itself render anyone liable to proceedings. However the provisions of the Code are admissible in evidence and can be taken into account in proceedings before any court, employment tribunal or Central Arbitration Committee where considered relevant. Protests that are not at the workplace are not currently covered by the Code - even where these have the intent of persuading other workers to breach their contract of employment.

There is a strong framework of human rights set out in the European Convention on Human Rights. Of particular note are Article 11, which protects the right to freedom of assembly and association, including the right to form trade unions, and Article 10, which provides the right to freedom of expression and information. These rights are subject to certain restrictions that are in accordance with law and necessary in a democratic society.

In addition, there are existing protections for individuals from employers not to suffer detriment on the grounds related to union membership or activities. Furthermore, union members have a right not to be unjustifiably disciplined by the union where the individual has failed to participate in or support a strike or other industrial action or to indicate opposition or lack of support for the action in question. A trade union member can present a complaint to an employment tribunal.

In the event of non-striking workers being intimidated or harassed, there is a very wide range of criminal and civil sanctions that are applicable in this area. In England and Wales the relevant statute or common law includes offences and penalties under the Public Order Act 1986, The Protection from Harassment Act 1997, - section 137 of the Highways Act 1980 (obstruction of the highway), the Malicious Communications Act 1998, section 127 of the Communications Act 2003, breach of the peace, and the Criminal Damage Act 1971.

In relation to civil law, offences and penalties include section 237 of TULRCA which provides that immediate dismissal (i.e. no 12 week rule) of those taking part in unofficial industrial action is allowable. An employee has no right to complain of unfair dismissal if at the time of dismissal he was taking part in an unofficial strike or other unofficial industrial action.

In relation to criminal law, offences and penalties include:

- Under the Protection from Harassment Act 1997 (PHA), an offence is committed where a person pursues a course of conduct which he knows or ought to know, either: amounts to harassment of another, including alarming or causing a person distress (maximum custodial penalty six months); or causes another to fear that violence will be used against them (maximum custodial penalty five years). Aggressive language or actions on a picket line may constitute harassment, however there would have to be evidence of repeated behaviour.
- Section 240 of TULRCA makes it a criminal offence for a person breaking a contract of employment (i.e. to strike) if doing so endangers human life or causes serious bodily harm, or exposes valuable property to destruction or serious injury.
- Section 241 of TULRCA controls breaches of public order and criminalises five specific types of conduct (the so-called 'picketing offences'):
 - Using violence or intimidating a person, their partner or children, or injuring their property;
 - Persistently following a person from place to place;
 - Hiding any tools, clothes or property owned or used by that person;
 - Watching or besetting (not defined but understood to mean stopping, staying, remaining, surrounding or deliberately being outside some premises); and

- Following somebody with one or two or more people in a disorderly fashion.
- A person guilty of an offence under section 241 is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.

Anti-social behaviour

Much of this criminal and civil legal framework is familiar territory to trade unions and employers engaged in industrial disputes. Less widely considered in this context but potentially relevant are new powers for the police and local authorities in relation to anti-social behaviour.

As part of the Anti-Social Behaviour, Crime and Policing Act 2014, the police were provided with a new dispersal power. This allows an officer (or in some cases, a Police Community Support Officer) to disperse any individual acting in a way that is causing or is likely to cause harassment, alarm or distress. This can be used in any area designated by a senior officer and is intended to be preventative as it allows an officer to deal instantly with someone's behaviour and nip the problem in the bud before it escalates.

Local authorities have also been granted new powers under the Act which may be applicable here. A Community Protection Notice (CPN) can be issued by a police officer or a local authority officer against any individual who is acting in a way that is having a detrimental effect on the quality of life of those in the locality, if the behaviour is persistent and unreasonable. A CPN can include restrictions on the individual's behaviour and breach of the terms of a Notice is a criminal offence and can result in a prison sentence. Where a number of complaints are made but nothing is seemingly done, an individual or business can activate the new community trigger. Each local area is required to set a threshold (for instance, three reports of anti-social behaviour in a six month period or five separate reports about the same incident). When this threshold is met, local agencies will meet and agree next steps on possible action.

Picketing

12. The current status of the Code was one of the themes noted in evidence to the Carr Review. Whilst most picketing undertaken by unions appears to adhere to the Code, evidence suggests that there have been instances where this was not the case.
13. To make it easier to enforce the basic standards set out in the Code, the Government is therefore introducing a new requirement for picketing in the current Trade Union Bill. This measure seeks to strengthen unions' accountability for their picketing actions by making the Code's key provisions legally binding as part of TULRCA. This step reflects the Government's clear manifesto commitment to tackle intimidation of non-striking workers. It largely replicates the content of parts of Section F of the current Code and applies it to the picket organiser, that is, the union. (See Box 2).
14. The proposal is that once this part of the Bill comes into force, unions wishing to communicate the reasons for industrial action and peacefully persuading another person to work or abstain from working, will have to appoint a picket supervisor to oversee the picketing and issue the individual with a letter of authorisation. The union or picketing supervisor must take reasonable steps to inform the police of the supervisor's name; where picketing will take place and how the supervisor can be contacted. The picketing supervisor:

- Must be an official or other member of the union who is familiar with the Code;
- Must be readily identifiable by wearing an armband, badge or other item; and
- Must show a letter of authorisation issued by the union to the police and others.

15. Though meeting these provisions cannot guarantee intimidation will not occur, the Government believes that doing so will make it more likely the picket will be conducted responsibly - for example by ensuring there is engagement with the police and that someone is in charge.
16. Direct applicability of these provisions will mean that unions who do not comply with these requirements will lose the protection from certain tort liabilities. In other words, employers will be able to apply to the courts for an injunction and seek damages where these requirements have not been complied with. Failure to comply with key provisions is likely to be particularly consequential where there is evidence of a picket not being peaceful. It will make it more likely that a court will grant an injunction to prevent the picket, or the court will impose conditions before allowing the picketing to continue.
17. This suggestion sits alongside wider measures that the Government has introduced in the Trade Union Bill to enhance the role of the key regulator, the Certification Officer, which include a strengthened enforcement function. The Government is considering the scope of this broader role (for example, the ability to undertake proactive investigation of suspected breaches in response to information and complaints raised by third parties, and to issue penalties for non-compliance).
18. As most unions already observe the guidelines of the Code, these new requirements should have little impact on responsible picketing but will encourage more responsible behaviour from those unions whose picketing activities ignore the guidelines with the intent to intimidate for the furtherance of industrial disputes.
19. The Bill focuses on parts of Section F of the picketing code because its provisions are basic standards consistent with well organised industrial action. It is possible however that there are a wider range of practices that would help protect workers from intimidation - for example, if officials were trained in the relevant law. The Government is therefore seeking further evidence on what makes a peaceful picket, and good practice that could be built into stronger legally binding standards or reflected in an updated Code.

Question 3: The Government is legislating to make a number of key aspects of the Code legally enforceable, such as the appointment of a picketing supervisor. Are there other practices that should be directly legally enforceable - for example, training or a requirement for all pickets to be properly identifiable in the same way as the supervisor? Please explain your views.

Question 4: Do you have any figures that would enable us to estimate any costs to unions generated by making aspects of the Code legally enforceable?

Protests related to pickets

20. The wider concern underpinning this consultation is that industrial disputes are increasingly delivered through methods that go well beyond the traditional picket – so-called ‘leverage’ tactics. Any form of demonstration in relation to an industrial dispute that takes place away from the workplace, is classified as a protest regardless of its size or whether or not it is intended to encourage workers to go on strike (and therefore breach their contract).
21. These have included protests at the private residences of senior managers, protests at public places associated with managers and protests at the premises of other organisations/ third parties that appear sometimes only loosely connected with the trade dispute. The Carr Review reported that broader protests often appear to be organised by the relevant trade union. There will generally be a larger number of protesters than would usually be found on the picket line. They will include a mixture of trade union officials and employees but also other people who have no direct connection with the trade dispute.
22. Where unions are supporting industrial action through these new methods, there can be implications for the police, for union members and the public, as well as for employers. But unions are currently not formally required to tell the employer, members, the CO or the police of the action they are intending to take. The consequence is that there may be little or no notice for those affected, and limited scope to manage risks of intimidation or risks to public order.
23. Lack of any notification requirement also means that there is no link back to the Certification Officer, potentially making it harder to monitor their activities. The consequence is less transparency or accountability to members and the public in relation to protest and picketing activities than there otherwise would be.
24. The Government is concerned that broader protests associated with trade disputes and some pickets are a key area of risk for intimidation of non-striking workers, and interference with third parties. It is interested in views on the scope for proportionate regulation in this space to mitigate possible harms, without breaching individuals’ rights under the relevant articles of the ECHR. For example, transparency could be improved by requiring unions to provide details of their picketing and protesting strategy to employers, the police and the CO by publishing their plans. There are well-established public order grounds for proportionate restrictions on some protests. Where such activities are seeking to influence workers and businesses through the use of intimidation to break their contracts with business as part of a wider industrial dispute, there may be analogous grounds for qualifying these rights (also helping to promote transparency and accountability).

Requiring publication of picketing and protest plans

25. The Government seeks views on a requirement for a trade union to publish their plans in relation to picketing and protests each time industrial action is called. Such a requirement could be introduced by amending the Trade Union and Labour Relations (Consolidation) Act. Unions would need to take into account factors which would be set out in a revised Code. These could include:
- Specifying when a union is intending to hold a protest or picket
 - Where it will be
 - How many people it will involve

- Confirmation that people have been informed of the strategy
- Whether there will be loudspeakers, props, banners etc
- Whether it will be using social media, specifically Facebook, Twitter, blogs, setting up websites and what those blogs and websites will set out
- Whether other unions are involved and the steps to liaise closely with those unions
- That the union has informed members of the relevant laws

26. The Government believes this step could mitigate some of the risks of protests linked to trade disputes by enabling better policing, without preventing them taking place. As well as a rationale in relation to minimising risks of intimidation, the provision of prior notice by publication of plans has the potential to strengthen democratic accountability and provide reputational protection. In particular, it has not always been clear whether the high profile cases of leverage tactics have in all instances been deliberately deployed as the intent of trade unions or arisen locally during protests. Publication of plans would improve accountability for actions undertaken in the name of a trade union, and make it easier for a union to repudiate a protest where individuals have ignored the union's strategy and are acting on their own accord.

27. The Government seeks views on how this requirement could best work. Publication of the plans would mean that a document being provided to the employer, the police and the Certification Officer for example, at the same time as the notice of industrial action notice (14 days before industrial action is to take place, subject to the current Trade Union Bill). Some large unions do publish the action they plan to take on websites or provide certain bodies (e.g. police) with this information by their own volition, so again this is a requirement that would build on existing good practice.

28. Again, this proposal is linked to the wider proposals that the Government has introduced in the Trade Union Bill regarding an enhanced role for the Certification Officer which includes a strengthened enforcement function. This would mean that, where the union has failed to supply its strategy to the employer, the police or the Certification Officer, the regulator could issue a declaration and enforcement order or use the additional powers proposed in the Bill to issue a financial penalty. Where the union has failed to provide sufficient information so as to be useful, the Certification Officer would be able to make a direction requiring the union to provide further information.

29. Clearly an important consideration in relation to potential requirements for prior notice is any implied qualification of some ECHR rights including the right of assembly. A significant protection here is that ignoring or departing from a published strategy would not be a civil offence in its own right. Organisations would be free to do something different but would be required to update their plans. If they failed to, or if action took place which had not been properly notified, then this would be a matter that a court could consider when assessing other civil claims. For example, in a civil action for nuisance or trespass an employer could point out that a union has not cited the protest action in its plan and therefore properly notified the employer, as it was required to do so.

Question 5: What are your views on the Government's proposal to require unions to publish their plans? What information should unions be required to provide? Please set out the reasons for your answer.

Question 6: Do you have any figures that would enable us to improve the estimates in the Impact Assessment of the cost to unions of publishing their plans?

Reporting on industrial action in the annual report

30. A possible requirement on trade unions to publish plans is designed to strengthen transparency and accountability *in advance* of pickets and associated protests within industrial disputes taking place. Alongside this, the Government proposes annual reporting requirements on trade unions to set out the industrial action which has *taken place during the reporting period* and set out details of any pickets/protests as well as any injunctions obtained by employers or other legal enforcement. The aim is to ensure there is a public record of action undertaken as part of an industrial dispute, so members know about unions' effectiveness, and the regulator has more effective oversight.
31. The Government proposes to require unions to include in their annual return to the Certification Officer details of public demonstrations and picketing activity that has taken place during the reporting period. Unions will also be required to set out whether anyone has been arrested or injunctions obtained. For most unions this latter part of the requirement will be a nil return, but for those where intimidatory or other unlawful behaviour has taken place, it will help to ensure greater scrutiny. Again, it could provide opportunity for unions to disassociate themselves from activity that they may be publicly linked to - for example, where unacceptable behaviour has arisen as a result of local decisions at protests that are not the intention of the organisation as a whole or intended to represent the membership.
32. As with prior publication of plans, a key issue is compliance. The Government proposes that, where a union has failed to do this and there are reports available which suggest that this information is available and should have been provided by the union, the Certification Officer should be able to consider whether to issue a declaration and enforcement order or using the additional powers proposed in the Bill to issue a financial penalty fine.

Question 7: What are your views on the Government's proposal to strengthen accountability?

Question 8: Do you have any other suggestions how union accountability and/or transparency could be improved?

Question 9: Do you have any figures that would enable us to improve the estimates in the Impact Assessment of the cost to unions to report on industrial action in their annual reports?

Wider reform of the Code of Practice on Picketing and Protests

33. Reforms discussed earlier in this document have significant implications for the Code on Picketing even before considering any other changes - at a minimum removing the key parts of Section F, which will be in statute, and potentially adding in material on prior notification of protests related to pickets. However wider changes to strengthen its effectiveness are also needed. The proposals discussed above therefore form part of a broader question regarding how the Code can be modernised to ensure it covers social media, provides guidance on protests linked to pickets, and makes clearer rights and remedies for non-striking workers, the public and businesses as well as picketers.
34. The Code has not been updated since 1992, and so pre-dates the development of social media. The Government proposes to seek its revision in order to make clear that, for

example, posting photographs of those continuing to work online or wider online abuse is not acceptable, and may constitute intimidation.

35. It also proposes to broaden its scope. ACPO said in 2014 that the Code could “usefully cover not only the rights of workers involved in industrial action but also the rights of local communities, non-striking workers, employers and others to carry on normal business activities during periods of industrial action. This would greatly assist the police in balancing the rights of all parties in any industrial dispute, including helping to negotiate the conduct of pickets, protestors and others where this is necessary”.
36. In order to make the Code as useful as possible the Government believes it should set out civil and criminal law on protest and provide a clearer description of what different actors can expect regarding the policing of protests. It is envisaged that the status of the Code will remain a statutory Code admissible in relation to picketing and protests. These new provisions relating to protests will be guidance only. Other changes could include as follows, for example:
- making an individual’s rights more prominent - for example, the right for union members not to suffer detriment from employers or unjustifiable disciplinary action by unions when exercising their legitimate rights;
 - the various laws which address unacceptable behaviour linked to industrial disputes, including misuse of social media in this context.
37. A key challenge is what more can be done to promote effective policing and prosecution of intimidation and other offences arising in the context of industrial disputes. We seek views on what more could be done to promote good enforcement. We are particularly interested in whether there is scope to apply provisions relating to anti-social behaviour. Some measures such as Community Protection Notices can be applied by local authorities, and we are interested in exploring the scope for them to play a bigger role in enforcement action.
38. Alongside this, we plan to engage with the Crown Prosecution Service and the police as well as relevant Government departments to better understand the use and efficacy of current criminal and civil laws in order to highlight and ensure that existing powers relating to picketing are used more effectively.

Question 10: How should the Code be updated to be more useful for parties affected by industrial disputes? Please explain your answer.

Box 2: Section F of the Picketing Code**Section F**

Wherever picketing is "official" (i.e. organised by a trade union), a trade union official should always be in charge of the picket line. He should have a letter of authority from his union which he can show to the police officers or to the people who want to cross the picket line.

The organiser should maintain close contact with the police. In particular the organiser and the pickets should seek directions from the police on the number of people who should be present on the picket line at any one time and on where they should stand in order to avoid obstructing the highway. The other main functions of the organiser should include ensuring that:

- the pickets understand the law and are aware of the provisions of this Code;
- badges or armbands are distributed to authorised pickets to wear so that they are clearly identified, and are worn while they are picketing [protesting];
- close contact is established and maintained with his own union office (if any), and with the offices of other unions if they are involved in the picketing.

Questions for consultation

Question 1:

Most of this consultation focuses on specific proposals. Before turning to this detail, do you have any other evidence of intimidatory behaviour, directed either at non-striking or striking workers, that you believe should be considered as part of this consultation? If so, do you have any estimate of the economic impact of this?

Question 2:

The Government is interested in whether there are any further gaps in the legal framework (see Box 1 below) in relation to intimidation of non-striking workers and third parties. How could the framework be strengthened - for example, should there be new criminal sanctions such as an offence of intimidation on the picket line?

Question 3:

The Government is legislating to make a number of key aspects of the Code legally enforceable, such as the appointment of a picketing supervisor. Are there other practices that should be directly legally enforceable - for example, training or a requirement for all pickets to be properly identifiable in the same way as the supervisor? Please explain your views

Question 4:

Do you have any figures that would enable us to estimate any costs to unions generated by making aspects of the Code legally enforceable?

Question 5:

What are your views on the Government's proposal to require unions to publish their plans? What information should unions be required to provide? Please set out the reasons for your answer

Question 6:

Do you have any figures that would enable us to improve the estimates in the Impact Assessment of the cost to unions of publishing their plans??

Question 7:

What are your views on the Government's proposal to strengthen accountability?

Question 8:

Do you have any other suggestions how union accountability and/or transparency could be improved?

Question 9:

Do you have any figures that would enable us to improve the estimates in the Impact Assessment of the cost to unions to report on industrial action in their annual reports?

Question 10:

How should the Code be updated to be more useful for parties affected by industrial disputes? Please explain your answer.

How to respond

Consultation issued: **15 July 2015**

Respond by: **9 September 2015**

Enquiries to: labourmarket.consultations@bis.gsi.gov.uk

You can reply to this consultation online at

<https://bisgovuk.citizenspace.com/lm/intimidation-of-non-striking-workers>

The consultation response form is available electronically on the consultation page:

<https://www.gov.uk/government/consultations/tackling-intimidation-of-non-striking-workers> (until the consultation closes).

The form can be submitted online, by email or by letter to:

Labour Market Directorate
Abbey 304
Department for Business, Innovation and Skills
1 Victoria Street,
London SW1H 0ET
Email: labourmarket.consultations@bis.gsi.gov.uk

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

Name:

Organisation (if applicable):

Address:

Please tick a box from a list of options that best describes you as a respondent.

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)

	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union
	Staff association
	Other (please describe)

Do you have any comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No

Confidentiality & Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Principles of Government consultation

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

Telephone Angela on 020 7215 1661
or e-mail to: angela.rabess@bis.gsi.gov.uk

However if you wish to comment on the specific policy proposals you should send an email to labourmarket.consultations@bis.gsi.gov.uk



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