



The right to strike in the public services

United Kingdom



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This factsheet reflects the situation in July 2021. It was elaborated by Cristina Inversi (Alliance Manchester Business School, University of Manchester), updated by Stefan Clauwaert (ETUC) and Diana Balanescu (independent expert), and reviewed by EPSU/ETUI; comments received from the EPSU affiliate, UNISON, were integrated.

1. Legal basis

International level

The United Kingdom has ratified:

UN instruments¹

International Covenant on Economic Social and Cultural Rights

(ICESCR, Article 8)

International Covenant on Civil and Political Rights

(ICCPR, Article 22)

ILO instruments²

Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise

(ratified on 27 June 1949);

Convention No. 98 concerning the Right to Organise and to Bargain Collectively

(ratified on 30 June 1950);

Convention No. 151 concerning Labour Relations (Public Service)

(ratified on 19 March 1980)

UK did not ratify

Convention No. 154, Collective Bargaining Convention, 1981

European level

Article 6(4) of the European Social Charter of 1961³

(ratification on 11 July 1962 and entry into force on 26 February 1965).

The UK has signed, but not yet ratified the (Revised) European Social Charter.⁴

The UK has neither signed, nor ratified the Additional Protocol Providing for a System of Collective Complaints.⁵

The UK has incorporated the **European Convention of Human Rights including Article 11 (the right to freedom of assembly and association)** into national law through the Human Rights Act 1998 (HRA 1998).

National level

The Constitution of the UK

The UK does not have constitutional provisions on the right to strike.

- **General legislation on industrial action** is contained in the Trade Union and Labour Relations (Consolidation) Act 1992 (hereafter TULRCA) as amended by the Trade Union Act 2016 (TUA 2016); the TUA 2016 applies only to Great Britain, and so its provisions are not part of the legal framework of Northern Ireland.⁶ Provisions relating to protection against unfair dismissal in the case of official strike action are included in the Employment Relations Act 2004 (ERA 2004).
- **Specific public service regulations**⁷ can be found in the following sources: Criminal Justice and Public Order Act 1994; Important Public Services Regulations 2017 (SI 2017/132-133-134-135-136); non-statutory guidance on the Important Public Services Regulations 2017, issued by the Department for Business, Energy and Industrial Strategy in January 2017.
- **Case law on industrial action** is a particularly important part of the UK's legal framework guaranteeing the right to strike, in line with the common law legal tradition. For instance, there are two leading cases in the development of industrial action law. The first is *Simmons v Hoover Ltd*⁸, in which it is affirmed that there is no common law doctrine of suspension of the employment contract by strike notice; the primary approach therefore regards a strike as a breach of the contract of employment, which permits an employer to dismiss a striking employee. The second is *OBG Ltd v Allan*⁹, which provides the legal basis for industrial dispute liability, governed by tort law.
- The **voluntary nature of collective bargaining in the UK** implies that there is no formal mechanism for coordination between collective bargaining and the law. Collective agreements are generally negotiated at company level and less often at sectoral level. Although collective agreements are 'binding in honour only', if they are in place, their terms are generally incorporated into individual employment contracts.

In accordance with statutory provisions, the **restriction** on the right of workers to engage in industrial action may form part of an individual contract only under specific conditions (the agreement must be in writing; it must state that its terms are incorporated into the individual contract; it must be reasonably accessible to workers for consultation during working hours; and each trade union which is a party to the agreement must be 'independent').¹⁰

2. Who has the right to call a strike?

Workers (which under UK law represent a broader employment category than ‘employees’, these two different categories being subject to different standards and protections) and trade unions have the right to call a strike.

For a trade union to call a lawful strike, this has to be in compliance with the mandatory procedures for official industrial action, as outlined in the TULRCA 1992 and modified by the Trade Union Act 2016 applicable to Great Britain. Industrial action called in connection with a trade dispute must be between ‘workers and their employers’: this formulation brings significant limitations in terms of who has the right to call a strike. For instance, it excludes workers who are employed through an agency or intermediary company.¹¹

3. Definition of a strike

In the UK, **workers do not enjoy a positive right to strike** *per se*, and the regulation of strike action is quite complex and multi-layered.

Under UK common law, industrial action entails a breach of the employment contract. Immunities are granted in order to protect striking employees from the enforcement of civil (tort) and criminal law. For the statutory immunities to apply, the industrial action must be ‘in contemplation or furtherance of a trade dispute’. The fact that the torts that are granted immunity are listed rather than there being a comprehensive immunity against civil liability implies that there is the possibility of new nominate torts being created, and so the organisers of the strike action need to be careful not to incur liability.¹²

Under UK law, industrial action may be taken only in furtherance of a trade dispute, which is defined as ‘a dispute between workers and their employer in the context which relates wholly or mainly to one or more of the following:

- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
- (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
- (c) allocation of work or the duties of employment between workers or groups of workers;
- (d) matters of discipline;
- (e) a worker’s membership or non-membership of a trade union;
- (f) facilities for officials of trade unions and;
- (g) machinery for negotiation and consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers’ associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures’.¹³

Industrial action includes strikes and other forms of industrial action short of a strike (such as **overtime bans** or **go-slows**). Secondary action is considered unlawful, as are **solidarity action** and **political strikes**.

Statutory protections (immunities) do not apply in certain cases where:

- (a) the requisite balloting and information procedures have not been followed (in relation to action organised by a union);
- (b) the action constitutes unlawful picketing;
- (c) the action was taken for a forbidden purpose;
- (d) the action constitutes unlawful secondary action.

4. Who may participate in a strike?

Workers and **trade unions** may participate in lawful strikes and collective action.

Public sector

- The British Civil Service is strictly defined as consisting of civil servants who are servants of the Crown; this definition includes officials working for ministries or their executive agencies.¹⁴
- There are **statutory restrictions** on trade union membership and the organisation of strike action in the **police force**.¹⁵ The Police Federation, the representative body of police officers, has no powers to call a strike. The situation of members of the police force is an unusual one: it is considered that the automatic affiliation of police officers to the Police Federation suggests that they are bodies of a corporate type which are entitled to impose their own regulations and may restrict the right of association (and to engage in a trade dispute).¹⁶
- **Further restrictions** are provided for in criminal law (although they are not usually applied)¹⁷ that may entail criminal liabilities for: postal workers who intentionally delay a postal packet;¹⁸ seamen who are subject to the provisions of merchant shipping legislation that can affect the legality of a seamen's strike;¹⁹ and persons who induce a prison officer to withhold services or commit a breach of discipline.²⁰
- The UK does not have any specific rules governing industrial action in public services, and so general regulations apply. However, the TUA 2016 has laid down further procedural requirements for a strike to be legal in '**important public services**' in Great Britain. Six categories have been identified as being part of 'important public services' and laid down by statutory instruments:
 - (a) Health services;²¹
 - (b) Education of those aged under 17;²²
 - (c) Fire services;²³
 - (d) Transport services;²⁴
 - (e) Decommissioning of nuclear installations and management of radioactive waste and spent fuel;
 - (f) Border security.²⁵
- In the UK, there is no established statutory minimum or **guaranteed service** for specific sectors of the economy. However, minimum services can be set down in collective agreements or other voluntary instruments.

There is no specific power granted by legislation to allow the restriction or prohibition of otherwise lawful strike action. It is worth noting that the Civil Contingencies Act 2004, which grants general government powers to make emergency regulations in situations of crisis, specifically provides that such action may not prohibit or enable the prohibition of participation in, or any activity in connection with, a strike or other industrial action.

5. Procedural requirements

In addition to the territorial exceptions outlined earlier, the TUA 2016 introduced several procedural requirements for trade unions with a view to organising legal and official strike action. Procedural requirements are also outlined in the Code of Practice on Industrial Action Ballots and Notice to Employers (although the Code of Practice does not have legal force).²⁶

- The TUA 2016 brought significant changes with regard to **ballot thresholds**. For a strike to be considered legitimate, the trade union is required to secure a simple majority of voters in favour of industrial action; furthermore, for the strike to be called, a participation *quorum* of 50% of the workers entitled to vote must be met. Where the industrial action involves an '**important public service**', there is an additional requirement whereby 40% of workers must have voted in favour of strike action.
- For a strike to be legally and officially called, the trade union must first hold a ballot of its members. The ballot must be supervised by a scrutineer (qualified independent person), take the form of a postal ballot and include information explaining the reasons for the industrial action and specifying the address to which the voting paper is to be returned. The employer must receive notice of the ballot at least one week before its start, and the union must, as soon as possible, inform the employer and its members of the results of the ballot.
- Further procedural requirements impose on trade unions the obligation to disclose information about the nature of the trade dispute and the industrial action. This additional information must be provided annually to the Certification Officer.²⁷
- The trade union is required to **notify** the employer about the industrial action within a default notice period of 14 days, but this can be reduced to seven days if the union and the employer so agree.²⁸ The mandate period for industrial action is six months, extendable to nine months by agreement between the union and the employer.²⁹

6. Legal consequences of participating in a strike

Participation in a lawful strike

- The doctrine of suspension of the employment contract is not recognised in UK law; participation in industrial action is effectively regarded as a **breach of the contract**, but immunities protect the interests of trade unions and workers who engage in lawful strikes.
- Workers participating in lawful official strikes are **protected against dismissal** only for a period of 12 weeks (some extensions may apply, i.e. any 'lock-out' days will be disregarded when calculating the 12-week period).³⁰

An employee is not entitled to a statutory guarantee payment if the failure to provide him with work is in consequence of industrial action involving his employer or an associated employer.³¹ A week during which an employee took part in a strike will not count for the calculation of an employee's period of continuous employment.³²

Until very recently, workers had no legal basis for protection against suffering detriment because of participation in industrial action but an Employment Appeal Tribunal ruling in 2021 (*Mercer v Alternative Futures Group*³³) brings the UK more in line with Article 11 of the European Convention on Human Rights. It is, however, possible that the government will appeal against the judgement.

- Employers can impose a **lockout** to prevent employees from working or coming back to work during a dispute (if justified by the contract or by the employees' breach of contract).

Participation in an unlawful strike

- Individuals and trade unions involved in an unlawful strike can incur civil (tort) and criminal liabilities. Damages could be sought for wrongful conduct in inducing breach of contract,³⁴ causing economic loss by unlawful means and committing conspiracy.
- **Criminal liability:** under section 240 of the TULRCA, it is considered an offence if a person, acting either alone or in combination with others, wilfully and maliciously breaks a contract of service that can endanger human life or cause serious bodily injury, or expose valuable property, whether real or personal, to destruction or serious injury. This criminal offence could potentially apply to industrial action, particularly in the case of workers in 'essential services' such as nurses and doctors.³⁵
- **Participation in an unofficial strike affects workers' statutory rights:** the most serious consequence is the potential loss of the right to bring proceedings for unfair dismissal.³⁶

- A trade union which organises (i.e. authorises or endorses) industrial action without satisfying the procedural requirements will have no immunity. Hence, the trade union will be at **risk of legal action** by:
 - (a) an employer (and/or a customer or supplier of such an employer) who suffers (or may suffer) damage as a consequence of the trade union's unlawful inducement to his workers to break or interfere with the performance of contracts and/or;
 - (b) any individual who is deprived of goods or services because of the industrial action. Such legal proceedings might result in a court order requiring the trade union not to proceed with, and/or desist from, the unlawful inducement of its members to take part or continue with the action, and that no member does anything after the order is made as a result of unlawful inducement prior to the making of the order.

7. Case law of international/European bodies

United Nations – International Covenant on Economic, Social and Cultural Rights

In its Concluding observations on the sixth periodic report of the UK adopted in 2016³⁷, the Committee on Economic, Social and Cultural Rights (CESCR) stated that:

38. The Committee notes with concern the recent adoption of the Trade Union Act 2016, which has introduced procedural requirements that limit the right of workers to undertake industrial action. (...)

39. The Committee recommends that the State party undertake a thorough review of the new Trade Union Act 2016 and take all necessary measures to ensure that, in line with its obligations under article 8 of the Covenant, all workers enjoy their trade union rights without undue restrictions or interference.

There are no recent Concluding observations adopted by the CESCR in respect of the UK.³⁸

International Labour Organisation (ILO)

Committee on Freedom of Association (CFA)

There are no recent decisions of the CFA relevant for the right to strike.³⁹ In previous cases, the CFA found as follows:

CFA Report No. 336, Case No. 2383. The Prison Officers' Association v the Government of the United Kingdom, March 2005.⁴⁰

The case concerned the violation of ILO principles in relation to the prohibition of industrial action in UK law by prison officers (embodied in section 127 of the Criminal Justice and Public Order Act 1994). The CFA recognised that, because prison officers exercise authority in the name of the state, their right to strike may be restricted or even prohibited. The CFA also recognised that the prison service is considered essential, as an interruption of the service could give rise to an imminent threat to the life, health or safety of the whole or part of the prison population and/or the general public. The Government may therefore restrict or prohibit the right to strike. However, the CFA emphasised that the compensatory guarantees provided are insufficient in this case, with particular regard to prison officers contracted out to the private sector.⁴¹

Committee of Experts on the Application of Conventions and Recommendations (CEACR)

CEACR, Direct Request – adopted 2018, published 108th ILC session (2019)⁴²

Return of workers to their posts following lawful industrial action

In its previous comments, the Committee had recalled that workers who stage a lawful strike should be able to return to their posts after the end of the industrial action, and requested the Government to provide information on any developments with regard to the review of the legislation in consultation with workers' and employers' organizations concerned, with a

view to strengthening the protection available to workers who stage official and lawfully organized industrial action.

The Committee notes the Government's indication that the measures in place afford the necessary protection for workers dismissed for taking part in lawful industrial action. The Government states that trade union members who take lawful industrial action are protected against dismissal for the first 12 weeks and that virtually all industrial action in the United Kingdom lasts for less than 12 weeks. It further indicates that regardless of the duration of the industrial action, an employer cannot dismiss a worker for taking industrial action before having exhausted all available procedures for dispute resolution. It explains that where a person is unfairly dismissed in the United Kingdom, the Employment Tribunal may order reinstatement or re-engagement and where the employer refuses to obey such orders, the Employment Tribunal may award higher compensation to the individuals concerned.

The Committee notes the Trades Union Congress (TUC)'s statement that this is a matter of continuing concern and, in particular, that the protection applies for the first 12 weeks of the dispute only and does not guarantee that workers involved in a dispute will be entitled to reinstatement, there being no prohibition on employers hiring permanent replacements. Furthermore, the TUC alleges that no steps have been taken to improve the security of those involved in a lawful strike and that, on the contrary, the position has been worsened by the Trade Union Act 2016, which by introducing new notice obligations, ballot thresholds and time limits significantly narrows further the scope of lawful industrial action, putting the workers at even greater risk of dismissal.

The Committee recalls that making the return to work conditional on time limits and on the employer's consent constitute obstacles to the effective exercise of the right to strike, essential for workers to promote and defend the interests of their members. The Committee therefore once again requests the Government to review the legislation, in full consultation with workers' and employers' organizations, with a view to strengthening the protection available to workers who stage official and lawfully organized industrial action and to provide information on the steps taken in this regard.

Procedural requirements for industrial action.

In its previous comment, the Committee had noted with concern that the expiration of the ballot mandate, coupled with the extensive notice requirements and the current context of a postal ballot, were likely to hinder the capacity of workers' organizations to exercise their activities free from interference. Accordingly, it had requested the Government to provide information on the progress made to allow electronic balloting and to review the articulation of sections 8 and 9 of the Trade Union Act on timing and duration of industrial action.

The Committee notes with concern that the Government does not consider it necessary to carry out a review of sections 8 and 9 of the Act as it is satisfied that the measures in place relating to 14 days' notice to be given to employers of industrial action are reasonable, proportionate and based on a balanced approach. The Government states that it already extended the notice period from seven to 14 days to give the employer and trade union more time to negotiate a settlement of the dispute, and which may help parties to avoid industrial action. Furthermore, the Government affirms that the notice period of 14 days for industrial action gives time for the employer and public to prepare for a strike, if it proves unavoidable,

which will enable some employers to find a way to continue providing their services to the public. With regard to section 9, the Government affirms that the aim of it is to ensure that employers will no longer be subject to strike threats for which the original balloting took place some years before, besides encouraging disputes to be resolved earlier and where possible via dialogue, and not industrial action.

The Committee notes that the TUC once again raises its concerns about the 14-day strike notice established by the Act and refers to the conclusions of the European Social Rights Committee which found that the notice requirements are excessive. The Committee recalls that the notice requirement of 14 days for the taking of industrial action is to be added to the seven-day notice requirement for balloting, along with the time for carrying out the ballot, which at present remains a postal ballot. It further recalls TUC's concerns that the ballot mandate is now declared to come to an end after six months, regardless of whether the dispute has been resolved, and that in order to continue industrial action, the balloting process will have to begin anew. According to the TUC, continuous industrial action would be complicated by the above notice requirements which, in its view, with a postal ballot, could take up to as much as 42 days meaning that the balloting process would have to begin again shortly after its conclusion.

The Committee reiterates its position that workers and their organizations should be able to call a strike for an indefinite period if they so wish (see 2012 General Survey on the fundamental Conventions, paragraph 146). The Committee therefore once again asks the Government to review sections 8 and 9 of the Trade Union Act in consultation with the social partners, and to provide information on any developments in this regard.

CEACR, Direct Request – adopted 2016, published 106th ILC session (2017)⁴³

The Committee continued to request that the UK Government review the legislation 'with a view to strengthening the protection available to workers who stage official and lawfully organized industrial action', in observance of Article 3 of ILO Convention No. 87. Furthermore, the Committee expressed its concerns about the strictness of the procedural requirements for industrial action, with particular regard to the changes introduced by the TUA 2016. Concerns were raised about the notice requirements, the ballot mandate and the requirement that a ballot should take the form of a postal ballot (noting that electronic balloting should be allowed).⁴⁴

European Court of Human Rights (ECtHR)

UNISON v United Kingdom (January 2002)⁴⁵

The Court declared inadmissible the application by UNISON in respect of the violation by British Law of Article 11 of the ECHR, in relation to the case *College London NHS Trust v UNISON*.⁴⁶ The Court held that the UK 'did not exceed the margins of appreciation accorded to it in regulating trade union action, and the prohibition on the applicant's ability to strike could be considered as a proportionate measure and necessary in a democratic society' for the protection of the rights of their current employers under Article 11(2).⁴⁷

RMT v United Kingdom (September 2014)

In this case, the Court held that the ban on secondary industrial action is not in violation of Article 11.⁴⁸

European Committee of Social Rights (ECSR)

In its **2014 Conclusions (XX-3)**⁴⁹, on Article 6§4 on the right to collective action, the ECSR concluded that the situation in the UK is not in conformity with Article 6§4 of the 1961 Charter on the grounds that the possibilities for workers to defend their interests through lawful collective action are excessively limited.

This is firstly because lawful collective action was limited to disputes between workers and their employer, which prevented unions from taking action against the de facto employer if this was not the immediate employer.

The ECSR furthermore noted that British courts excluded collective actions concerning a future employer and future terms and conditions of employment in the context of a transfer of part of a business (University College London NHS Trust v. UNISON).

The Committee considers that employees nowadays often do not work solely for and under the direction of a single clearly defined employer, as evidenced by outsourcing, working in networked organisations, the formation of inter-organisational partnerships, particularly in public services, but also more use of agency staff, secondments and joint partnership working.

The result is a far more diverse and complex matrix of contractual relationships with workers who used to share the same employer being split amongst different employers, even while they may find themselves simultaneously brought together with workers from other industries under new employment arrangements.

As a consequence, trade unions increasingly find themselves representing a workforce whose terms and conditions are to a large extent not determined by their direct employer. The ECSR also notes that Article 6§4 of the Charter is more specific than Article 11 of the Convention. It therefore considers that while the rights at stake may overlap, the obligations on the State under the Charter extend further in their protection of the right to strike, which includes the right to participate in secondary action.

The Committee also found that the requirement to give notice to an employer of a ballot on industrial action is excessive and the protection of workers against dismissal when taking industrial action is insufficient, mainly because the period of twelve weeks after which those concerned lost their employment protection is arbitrary.

In its **2018 Conclusions (XXI-3)**⁵⁰, the ECSR found and concluded the following:

Collective action: definition and permitted objectives

In its previous conclusions (most recently Conclusions XX-3 (2015)) the Committee found that lawful collective action was limited to disputes between workers and their employer, thus preventing a union from taking action against the de facto employer if this was not the immediate employer (Section 244 of the Trade Union and Labour Relations (Consolidation)

Act 1992 (TULRCA). It furthermore noted that the courts excluded collective action concerning a future employer and future terms and conditions of employment in the context of a transfer of part of a business (University College London NHS Trust v UNISON). The Committee therefore considered that the scope for workers to defend their interests through lawful collective action was excessively circumscribed in the United Kingdom. Given that there have been no changes to the situation, the Committee reiterates its finding that the situation is not in conformity with Article 6§4 of the Charter in this respect.

Specific restrictions to the right to strike and procedural requirements

The Committee considered in its previous conclusions (most recently Conclusions XX-3 (2015)) that the requirement **to give notice to an employer of a ballot** on industrial action, in addition to the strike notice that must be issued before taking action, is excessive. As there had been no changes to the situation, the Committee reiterated its finding that the situation was not in conformity with Article 6§4 of the Charter in this respect.

The Committee noted that during the reference period the Trade Union Act 2016 amended provisions of the Trade Union and Labour Relations (Consolidation) Act 1992. It inter alia, introduced two thresholds in relation **to strike ballots**. In order for a strike to be lawful, a union will still be required to obtain a majority in favour of strike action out of those who have voted and, in addition at least 50 per cent of those entitled to vote in a ballot must have voted in all cases. Where those involved in the dispute work in an ‘important public service’ there is a requirement that 40 per cent of those entitled to vote in the ballot have voted ‘yes’ to strike action.

The Committee noted that the above-mentioned provisions only entered into force in March 2017, outside the reference period. The Committee would examine their conformity, along with other changes introduced by the Act, with the Charter during the next cycle of supervision.

Consequences of a strike

Pursuant to the Employment Rights Act 2004, workers participating in lawful industrial action are protected against dismissal for 12 weeks. The Committee previously held the period of 12 weeks beyond which those concerned lost their employment protection to be arbitrary. The situation had not changed in this respect and therefore the Committee reiterated its conclusion of non-conformity.

Conclusion

The Committee concluded that the situation in the United Kingdom was not in conformity with Article 6§4 of the Charter on the following grounds:

- the scope for workers to defend their interests through lawful collective action is excessively circumscribed; lawful collective action is limited to disputes between workers and their employer, thus preventing a union from taking action against a de facto employer if this was not the immediate employer;
- the requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking action, is excessive;
- the protection of workers against dismissal when taking industrial action is insufficient.

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Miscellaneous:

- <https://www.gov.uk/industrial-action-strikes>

Notes

1 Status of ratification by Spain of UN instruments:

https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=_en (accessed on 12 July 2021).

2 The status of the UK's ratification of all ILO conventions can be viewed at:

http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102651 (accessed on 12 July 2021).

3 See status of ratification by the UK of the European Social Charter of 1961:

<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/035?module=signatures-by-treaty&treaty=035> (accessed on 12 July 2021).

4 See status of ratification of the Revised European Social Charter:

<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163?module=signatures-by-treaty&treaty=163> ; see also European Social Charter, Country profile: the United Kingdom:

<https://www.coe.int/en/web/european-social-charter/united-kingdom> (accessed on 12 July 2021).

5 See status of ratification of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/158?module=treaty-detail&treaty=158> (accessed on 12 July 2021).

6 See paragraph 10 of the Explanatory Notes to the TUA 2016 on 'Territorial extent and application', available at http://www.legislation.gov.uk/ukpga/2016/15/pdfs/ukpgaen_20160015_en.pdf (accessed 10 February 2018). Note that there is also a Trade Union (Wales) Act 2017 (in force 13/12/2017) that overturns some of the reforms put in place by the TUA 2016. This TU(Wales)A disapplies in particular the requirement for a 40% ballot threshold to be met before workers employed in 'important' public services may take industrial action (see below section (5)).

7 As will be explained later, the UK applies a very restrictive definition of the 'public sector'; the broader definition of 'public services' could therefore prove useful in identifying specific regulations.

8 [1997] ICR 61, [1976] IRLR, EAT.

9 [2007] IRLR 608, 4 All ER 545, HL.

10 TULRCA 1992, section 180(2).

11 See *Dimbleby and Sons Ltd v Woods* [1979] IRLR 161.

12 See Deakin and Morris (2012), section 11.24.

13 TULRCA 1992, section 244.

14 Clauwaert, S. and Warneck, W. (2009), p. 179.

15 Police Act 1996, sections 64 and 91.

16 Clauwaert, S. and Warneck, W. (2009), p. 190.

17 See Smith and Baker (2013), pp. 750-751.

18 Postal Service Act 2000, section 83.

19 Merchant Shipping Act 1995, section 59(1).

20 Criminal Justice and Public Order Act 1994, section 127.

21 See the Important Public Services (Health) Regulations, SI 2017/132.

22 See the Important Public Services (Education) Regulations, SI 2017/133.

23 See the Important Public Services (Fire) Regulations, SI 2017/134.

24 See the Important Public Services (Transport) Regulations, SI 2017/135.

25 See the Important Public Services (Border Security) Regulations, SI 2017/136.

26 The text of the Code of Practice is available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/594781/Code_of_Practice_on_Industrial_Action_Ballots_and_Information_to_Employers.pdf.

27 TULRCA 1992, section 32ZA.

28 TUA 2016, section 8.

29 TUA 2016, section 9.

30 TULRCA 1992, sections 237-238.

31 Employment Rights Act 1996, section 29(3).

32 Employment Rights Act 1996, section 216.

33 See *Fiona Mercer v Alternative Future Group Limited and Others* [2021] IRLR 620. As of October 2021 it was not known whether the government would appeal against the Employment Appeal Tribunal's judgment

34 See *OBG Ltd v. Allan*.

35 See Baker and Smith (2013), p. 751.

36 Section 237 of TULRCA 1992.

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- 37 Adopted by the Committee at its fifty-eighth session (6-24 June 2016); available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f6&Lang=en.
- 38 As of 30 June 2021
- 39 As of 30 June 2021; See the list of freedom of association cases concerning the UK at: <https://www.ilo.org/dyn/normlex/en/f?p=1000:20060::FIND:NO::>
- 40 Full text of the report is available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2909082.
- 41 ETUI Report 108.
- 42 The direct request can be found at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3962761,102651,United%20Kingdom%20of%20Great%20Britain%20and%20Northern%20Ireland,2018
- 43 The direct request can be found at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3299879,102651,United%20Kingdom,2016
- 44 Further comments and recommendations can be found in the last ILO Report on the Application of International Labour Standards 2017, available at: [http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2017-106-1A\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(2017-106-1A).pdf).
- 45 Decision No. 53574/99.
- 46 [1999] IRLR 31.
- 47 The decision can be found at: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=002-5623&filename=002-5623.pdf&TID=thkbhnlzk>
- 48 The judgment can be found at: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-142192&filename=001-142192.pdf>.
- 49 ECSR, Conclusions XX-3 (2014) on Article 6(4), United Kingdom at: <http://hudoc.esc.coe.int/eng/?i=XX-3/def/GBR/6/4/EN>
- 50 ECSR, Conclusions XXI-3(2018) on Article 6(4), United Kingdom, at: <http://hudoc.esc.coe.int/eng/?i=XXI-3/def/GBR/6/4/EN>.