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THE RT HON ANGELA RAYNER MP AND THE RT HON JONATHAN REYNOLDS MP

Trade Union Policy, Employment Rights Directorate

Department for Business and Trade

Old Admiralty Building

Admiralty Place

London

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Dear Secretaries of State,

## IoD response to the consultation on the creating a modern framework for industrial relations

## About the IoD

*The IoD is an independent, non-party political organisation representing approximately 20,000 company directors, senior business leaders, and entrepreneurs. It is the UK's longest-running organisation for professional leaders, having been founded in 1903 and incorporated by Royal Charter in 1906. Its aim is to promote good governance and ensure high levels of skills and integrity among directors of organisations. It campaigns on issues of importance to its members and to the wider business community with the aim of fostering a climate favourable to entrepreneurial activity in the UK.*

The IoD welcomes the opportunity to respond to this consultation on creating a modern framework for industrial relations. Building a modern industrial relations framework which supports meaningful employee-employer dialogue is of considerable interest to the IoD and its membership, and we are therefore pleased to present our views.

In the first section, we provide a summary of our key perspectives on the proposed framework for industrial relations. We then offer more detailed views in respect of the specific questions posed in the consultation.

## Summary of the IoD view

Meaningful engagement and dialogue between employers and employees are key to the long-term viability of a business. There is little doubt that the current framework for industrial relations is in places unfit for purpose, thus reform is welcome.

However, there are significant concerns in the business community regarding the government's planned reforms to industrial relations policy, with serious doubt as to whether they will engender an increase in meaningful employer-employee dialogue. A frequent theme in feedback from consultation with IoD members in recent months has been that the reforms rest on a view of the state of modern industrial relations which is out of kilter with reality, that is, one which is significantly more antagonistic than is the case and seeks to introduce changes which are consequently disproportionate.

## Specific questions

1. **Do you agree or disagree that these principles should underpin a modern industrial relations framework? Is there anything else that needs consideration in the design of this framework?**

Agree. The principles outlined would make for a solid foundation for industrial relations, although they should be elaborated on and applied in a more two-sided way than is implied by the descriptions in the consultation.

Beyond the four principles outlined in this section, the desire stated elsewhere in the consultation for trade union legislation to be based on 'modern, democratic principles' is one that employers would welcome. However, there are elements of the government's reforms to trade union legislation which directly counter this objective, most notably in the planned changes to the statutory recognition process. The lack of any requirement to secure anything remotely near to a majority of worker support for recognition could lead to absurd scenarios of unions being recognised and collectively bargaining on behalf of a workforce of whom only 2% are union members and a simple majority of any turnout supported recognition. While these changes are not the explicit focus of this consultation, it is important to highlight that the business community is unlikely to have confidence in the outlined principles if there is not a clear logical link between them and wider reforms in this space.

The framework should also make reference, under principle 2 or 4, to the importance of maintaining the UK's competitive advantage in having built an employment law framework which, compared to international competitors, reasonably effectively balances employee rights with a flexible labour market.

Furthermore, the framework should make it clear that unions should be accountable to all employees whom they represent during collective bargaining, whether or not they are members. This will be particularly important if the government's reforms to statutory recognition proceed as planned; unions should be accountable to more then the potentially 2-10% of employees in the bargaining unit who will need to be union members in order for recognition to be achieved.

2. How can we ensure that the new framework balances interests of workers, business and public?

A recurring issue with the government's messaging on its employment reforms is that the only references to employers' interests take the form of largely unsubstantiated claims about the vague benefits which may materialise as a result of higher pay and security for workers. The proposed principles for the industrial framework claim that planned industrial relations reforms will "help [businesses] to grow [and] bring substantial economic benefits", despite the government's own impact assessment confirming that – as part of the wider package of employment reforms – they represent a potential £5 billion annual cost to employers. The framework should therefore, as discussed above, make reference to the need for the framework to avoid undermining the competitive international advantage that the UK currently has as a result of the balance it strikes between employee rights and labour market flexibility.

4. Do you agree or disagree with the proposal to introduce a requirement that, at the point the union submits its formal application for recognition to the Central Arbitration Committee (CAC), the union must provide the employer with a copy of its application? Please explain your reasoning.

Agree. Keeping employers informed of the latest developments in the application process for recognition would be a positive step towards better information sharing.

5. Do you agree or disagree that the employer should then have 10 working days from that date to submit the number of workers in the proposed bargaining unit to the Central Arbitration Committee (CAC) which could not then be increased for the purpose of the recognition process? Please explain your reasoning.

Disagree. First, it is concerning that government is considering making the recognition process more complex, and undemocratic for new workers, in response to knowledge of a single instance of mass recruitment into a bargaining unit with the aim to undermine a trade union recognition application.

Secondly, it is unreasonable to both employers and employees to deny participation to staff recruited into the bargaining unit after the union's application for recognition, where they are recruited in the normal course of business.

Thirdly, there would be a risk of unions submitting claims before planned recruitment exercises for the express purpose of securing automatic recognition on the basis of membership among the smaller number of employees.

6. Can you provide any examples where there has been mass recruitment into a bargaining unit to thwart a trade union recognition claim? Please provide as much detail as you can.

No. The feedback we have received is that, as reflected in the government being aware of only one instance of such a process taking place, this is not a prevalent issue. Recruiting sufficient numbers of employees into a bargaining unit to achieve this outcome would be absolutely uneconomical for the vast majority of employers, who will be conscious that in such a circumstance, the conditions for other routes to statutory recognition are highly likely to be met.

8. Do you have any views on a possible alternative to place a new obligation on employers not to recruit into a proposed bargaining unit for the purpose of seeking to prevent a union from being recognised? How would this alternative work in practice?

This proposal would be preferable to the approach of freezing the number of workers in the proposed bargaining unit at the date of application for recognition, as it would ensure that new employees are not denied participation and mitigate the risk of unions rushing a recognition process through before planned recruitment.

We are confident that employment tribunals would be capable of ascertaining whether an employer recruited new employees solely or primarily for the purposes of undermining union recognition as opposed to business-as-usual recruitment.

17. How should Government ensure that our modern framework for industrial relations successfully delivers trade unions a meaningful mandate to support negotiation and dispute resolution?

A key means of achieving this aim is in reconsidering other elements of planned industrial relations reform. The government's intention to remove the requirement that trade unions achieve a 50% turnout for an industrial action ballot to be legally valid undermines its intention to build an industrial relations framework which is proportionate and in the interests of all parties. Employers will struggle to understand how a simple majority of a turnout well below 50% constitutes the will of employees and conveys a legal mandate for industrial action. If industrial action is truly to be considered a final resort, it is essential that it represents the genuine democratic will of relevant workers and not that of a minority. This development is especially concerning considering the government's plans to allow e-balloting, given that it makes achieving a 50% turnout considerably simpler and less resource-intensive. The 50% threshold should therefore be retained, delivered alongside e-balloting, to ensure that trade unions are able to achieve a meaningful mandate where it exists.

20. What are your views on the proposal to amend the requirement that unions should provide information on the results of the ballot to those entitled to vote and their employers 'as soon as reasonably practicable'?

Stating a specific timeframe could, so long as it is not an unduly long period, add clarity to ballot proceedings and help employers to plan more precisely. However, there is a risk that unions would have little incentive to provide the information sooner rather than later.

25. Do you agree or disagree with the proposal to extend the expiration date of a trade union's legal mandate for industrial action from 6 to 12 months? Please explain your reasoning and provide any information to support your position.

Disagree. Business conditions, as well as the views of members of bargaining units, can change rapidly; a requirement to renew the legal mandate for industrial action at the six month mark is therefore entirely reasonable. An extension of the expiration date would also represent a direct transfer of power from individual employees to unions, which is not in line with the stated principle of unions being accountable to their members.

An IoD survey of 601 business leaders in November 2024 found that almost three quarters (71%) disagreed with this proposal (see Appendix). Concerns from members centred on two themes: that a twelve-month mandate fails to recognise how significantly business conditions can change within that timeframe, and the risk of a longer mandate discouraging dialogue and delaying dispute resolution:

> "Issues in a dispute change over time and 6 months is sufficient in our view to end the dispute; 12 months [would] delay resolution by either party and is too much of a comfort blanket. We have often seen the views of the membership change and this should be at the fore of any dispute." – Small business, Professional, scientific and technical activities, North West England

> "Businesses who have trade unions embedded in them like to work constructively to reach joint direction. Not everywhere is adversarial. A six-month decision point gave businesses a point at which they can plan looking forward, and reduce potential disruption." – Microbusiness, Professional, scientific and technical activities, Wales

> "Six months should remain the limit. This will encourage dialogue from both sides." – Microbusiness, Professional, scientific and technical activities, South West England

In light of the government's planned reforms to rules relating to electronic balloting for union balloting – a measure which will make it significantly easier and cost-effective for unions to ascertain members' views – the current six-month expiration date is reasonable and should be retained.

26. What time period for notice of industrial action is appropriate? Please explain your reasoning.

The appropriate time period varies considerably according to the type of industrial action being undertaken and the sector in which it is occurring. The planning needed on the part of an employer for the full withdrawal of labour in the care sector, for instance, is vastly greater than the withdrawal of overtime labour in the retail sector. Given the complexities inherent in any attempt to implement varying notice lengths according to sector and type of industrial action, the most proportionate option is to retain the current 14-day notice period.

I hope you have found our comments helpful. If you require further information about our views, please do not hesitate to contact us.

With kind regards,

A Hall-Chen

Alex Hall-Chen

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# Appendix

## IOD POLICY VOICE RESULTS: NOVEMBER 2024, 601 RESPONSES

**Do you agree or disagree with the government's proposal to extend the expiration date of a trade union's legal mandate for industrial action from 6 to 12 months?**

| | |
|---|---|
| Strongly agree | 2.5% |
| Agree | 4.0% |
| Neither agree nor disagree | 13.6% |
| Disagree | 19.8% |
| Strongly disagree | 50.7% |
| Don't know | 9.3% |