

## **(1) Submitting Organisation**

The International Centre for Trade Union Rights (ICTUR) was founded in 1987 to defend, extend, and raise awareness of trade union rights and their violations worldwide. ICTUR was founded in response to ‘an attack on trade union rights by transnational employers’ and ‘to take up the struggle for liberation from neo-colonialist and transnational corporation exploitation’. ICTUR affiliates unions, lawyers and human rights organisations worldwide.

ICTUR has consultative (roster) status with the UN ECOSOC and it is accredited to the ILO Special List of INGOs, since 1993. ICTUR’s main activities include monitoring labour rights, letter writing, submissions to international supervisory systems, trial observations, research and publishing. Publications include: *International Union Rights* journal (since 1993, 4 editions per year); the *World Map of Freedom of Association* (7<sup>th</sup> edition, 2022, pending); and the reference book *Trade Unions of the World* (8<sup>th</sup> edition, 2021).

## **(2) Previous UPR cycle**

Within the previous UPR cycle:

Civil Society groups raised concerns about poverty, such as CS10, which noted ‘regression in standards of living and the welfare system’s ability to tackle poverty, homelessness and worklessness’ as well as ‘rising destitution and food bank use’. The UK supported (some) State calls to address poverty reduction and children’s rights<sup>1</sup>.

Concerning trade union rights, CS10 observed ‘unjustified, disproportionate and discriminatory restrictions on trade unions activities. The Trade Union Act 2016 sets statutory thresholds and substantial new legal hurdles...’. CS10 called on the Government to ‘Review the Trade Union Act to remove unfair restrictions on the right to strike, union picketing and campaigning activities’.

CS16 noted that ‘The Trade Union Act 2016 restricts strike activity and industrial action in the UK ... tightens already-tough picketing rules, creating additional bureaucracy and excessive penalties’. CS16 also expressed concern at the Certification Officer’s new ‘powers to investigate trade unions’. CS16 called on the Government to ‘Amend the Trade Union Act to ensure protection of the freedom of expression and association; and to Limit the powers of the ‘Certification Officer’ to restrict the use of surveillance and punitive measures’.

The UK also accepted a recommendation that it should ‘Intensify its efforts to provide oversight over British companies operating abroad with regard to any negative impact of their activities on the enjoyment of human rights...’<sup>2</sup>. In our opinion this effort has not yet sufficiently been ‘intensified’ to protect labour rights throughout supply chains.

## **(3) A wealthy country with significant poverty**

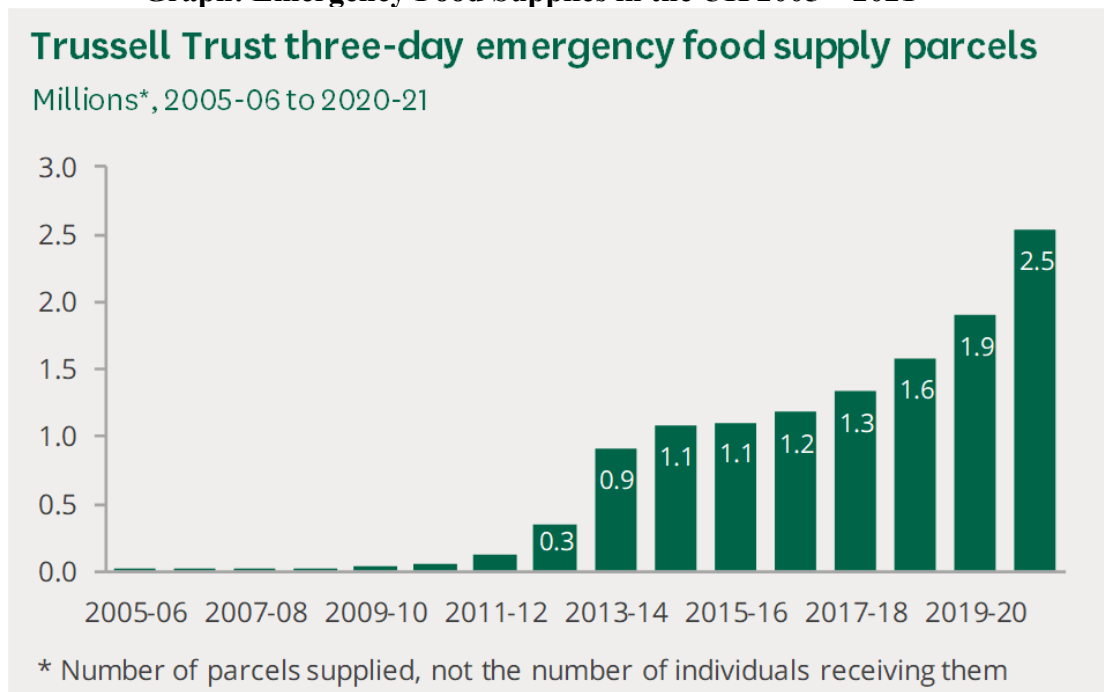
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<sup>1</sup> S - 134.168 (Syria) and S - 134.191 (Hungary), UK 3<sup>rd</sup> UPR Cycle (2017)

<sup>2</sup> S - 134.80 (Palestine), UK 3<sup>rd</sup> UPR Cycle (2017)

The UK is a wealthy nation and remains the world's fifth largest economy<sup>3</sup>, yet many of its citizens have experienced surging poverty over the past 15 years. Food bank dependency developed following the 2008 financial crisis but accelerated in 2013, following the UK's austerity programme, when between 2010 and 2013 the Government 'claimed to have found £14.3bn of savings'<sup>4</sup>. Despite the Government's commitments during the last UPR review, this situation has further deteriorated.

**Graph: Emergency Food Supplies in the UK 2005 – 2021<sup>5</sup>**



This graph shows only Trussell Trust food banks. In February 2021 there were over 1300 Trussell Trust food banks in the UK 'in addition to over 900 independent food banks'<sup>6</sup>.

#### **(4) Trade union rights**

<sup>3</sup> IMF data mapper, GDP current prices, at: <https://www.imf.org/external/datamapper/NGDPD@WEO/OEMDC/ADVEC/WEOWORLD>

<sup>4</sup> R. Merrick, 'Chancellor Philip Hammond accused of more 'failed austerity' after demanding extra spending cuts before the election', The Independent (28 February 2017), at: <https://www.independent.co.uk/news/uk/politics/chancellor-philip-hammond-latest-budget-spending-cuts-austerity-social-care-john-mcdonnell-a7603096.html>

<sup>5</sup> Graph from G. Tyler, 'Food Banks in the UK', House of Commons Library (Research Briefing), at: <https://commonslibrary.parliament.uk/research-briefings/cbp-8585/>

<sup>6</sup> G. Tyler, 'Food Banks in the UK', House of Commons Library (Research Briefing), at: <https://commonslibrary.parliament.uk/research-briefings/cbp-8585/>

Our organisation is primarily concerned with trade union rights. In the UK deep and continuing problems have been exacerbated by recent developments. Despite civil society concerns raised at the last UPR Review regarding the restriction of trade union rights, including the right to strike, and a growing burden of bureaucratic entanglement, the framework complained of by CS10 and CS16 under the previous Review remains in place. Additional powers under the Trade Union Act 2016 enter force in 2022 that entail far-reaching interference with freedom of association.

In post-War Britain, industrial relations machinery was extensive. Collective bargaining and standard setting by various bodies was very high. In 1946, it peaked at 86 percent, and remained steady thereafter, with a density of 82 percent being reported for 1980. From the 1980s bargaining and wage setting was dismantled and bargaining density collapsed to 26 percent, most of which is in the public sector.

The Conservative government from 1980 also began to enact an increasingly complex and far-reaching set of restrictions over the organisation of industrial action. Balloting for industrial action became highly complex and expensive for unions. If a union fails to comply with any aspect of an increasingly sophisticated web of obligations the action can be restrained. The legislation includes detailed provision for notices of various kinds to be given to the employer, and ballots to be held in advance of industrial action taking place. It is not just the number of notices that must be given that is an issue; there is also the question of the detail that each notice must contain. The demand for precise and specific information to be supplied over and over during the prelude to industrial action is presented as an attempt to improve democratic accountability and the supply of information. Its real impact – and purpose – has been to supply employers with opportunities to litigate every minor infraction so as to achieve an injunction, thus preventing the strike from taking place.

## **(5) Our present concerns**

The Trade Union Act 2016 was regarded by many trade unionists as a double-fronted attack on trade union rights, adding further complexity to lawful industrial action, while also attempting to starve the trade unions and the wider labour movement of funds. A further aspect of the Act introduces powers that tie-up trade union administrative and regulatory functions in unnecessary and costly bureaucratic knots.

The Trade Union Act 2016 introduced: a duty on public service providers to publish detailed information about union ‘facility time’ (staff time spent on union business); more rapid expiry of strike authorisation granted by a ballot; doubling of the notice period that must be given to an employer before industrial action; requirements for additional information on ballot papers and for more detailed reporting at several stages to both members and employers; a requirement to report annually to the Certification Officer on industrial action; the introduction of a quorum of 50% for strike votes; an even more demanding double quorum of 50% participating plus 40% casting a vote in favour for ‘important public services’. These quora are in addition to the requirement for a majority of all those voting to vote in favour. There are also requirements for a ‘picket supervisor’.

The 2016 law also encumbers fund raising: payroll deductions of union dues are now only permitted in the public sector so long as unions cover ‘reasonable’ administrative costs and members are also given the option to pay by other means (e.g. direct debit); a requirement that new members must ‘opt-in’ before any portion of union dues can be contributed to a fund used for any political purposes; and an obligation on unions to inform members of the right to ‘opt out’ from contributions on an annual basis. The purpose is to scupper trade union fund-raising for political purposes.

Unions are also now required to include in their annual report to the Certification Officer more detailed information than any other civil society group, including political donations, political publicity materials, non-political campaigns, and donations to campaign groups (not only by the national union, but also by their individual branches, of which there are many thousands for the largest UK unions).

In June 2021, the Government announced plans to implement Sections 17, 19 and 20 of the Trade Union Act 2016, extending the powers of the Certification Officer. The three major changes in force from April 2022 include:

- a levy on unions to fund the Certification Officer’s costs of up to 2.5% of a union’s annual income.
- a power of the Certification Officer to levy fines for breaches of trade union legislation.
- a power to investigate third party complaints about unions by members of the public and third party organisations, raising concerns of vexatious complaints.

The Government consultation into the extension of these powers received 15 responses, all from unions<sup>7</sup>. Revealingly, no businesses, employers or individuals responded to the consultation<sup>8</sup>. The TUC argues there is no basis for these measures as unions have a good record of compliance with statutory obligations. The Government dismissed these concerns without any acknowledgement that the *only* parties who had responded to the consultation *universally opposed it*<sup>9</sup>.

The Government is fully aware that these regulations impose financial costs on unions simply due to the expense entailed in familiarising their operations with the new obligations, but seems unconcerned that these costs are estimated at five times the anticipated level of fines that might be imposed. ‘The costs to trade unions associated with familiarisation with the financial penalties’ regime are anticipated to be [...] below £500,000’, which figure the Government cheerfully dismissed as ‘low’<sup>10</sup>. So, half a million pounds will be needed to protect unions from accidentally falling foul of a new range of financial penalties that are not needed, that no-one is asking for, and that purport

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<sup>7</sup> Consultation on the Certification Officer's Enforcement Powers: Government response, Department for Business, Energy and Industrial Strategy (June 2021), at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/991739/certification-officer-enforcement-powers-consultation-govt-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991739/certification-officer-enforcement-powers-consultation-govt-response.pdf)

<sup>8</sup> Consultation on the Certification Officer's Enforcement Powers

<sup>9</sup> Consultation on the Certification Officer's Enforcement Powers

<sup>10</sup> Consultation on the Certification Officer's Enforcement Powers

to resolve a problem that does not exist<sup>11</sup>. Even the Government recognises that the compliance costs for unions are going to be far in excess of even the maximum penalties that might be imposed even if substantial and significant breaches were found<sup>12</sup>.

TUC General Secretary Frances O’Grady has said

These reforms are based on politics rather than the real problems working people face. They will hit unions with expensive new levies – that’s money straight from the pockets of care workers, nurses and supermarket staff. And unions will have to spend more time dealing with baseless complaints. Ministers should be working with unions to improve working lives – not looking for new ways to undermine us<sup>13</sup>

In addition to the problems introduced by the Trade Union Act 2016, our organisation is alarmed by rhetoric from Her Majesty’s Chief Inspector of Fire and Rescue Services (HMCIFRS) that threatens the collective bargaining system and the right to strike in the Fire and Rescue Services. These proposals are not yet introduced in law, but we express our concern at the proposed objectives.

## **(6) International Human Rights Obligations**

The Universal Declaration of Human Rights makes it clear that “everyone has the right to form and to join trade unions for the protection of his interests” (Article 23(4)). The UK ratified ILO Convention No. 87 on the Freedom of Association and Protection of the Right to Organise in 1949 and the following year it ratified ILO Convention No. 98 on the Right to Organise and Collective Bargaining. It has also ratified ILO Labour Relations (Public Service) Convention, 1978, which complements Convention No. 98 and further enhances the protection of collective bargaining in the public sector.

In 1976, the UK ratified both the International Covenant on Economic, Social and Cultural Rights ("CESCR") and the International Covenant on Civil and Political Rights ("CCPR"). The CESCR obliges State parties to ensure the right to form and join trade unions of their own choice, including at national and international level. It further states that trade unions have the right to function freely and to take strike action (Article 8). The CCPR stipulates that, “everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests” (Article 22).

The UK has further human rights obligations under the regional human rights protection frameworks of the Council of Europe, the European Convention on Human Rights<sup>14</sup> and

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<sup>11</sup> There are about 32 million workers in the UK. Last year there were some 118,000 claims made against employers in employment tribunals. That is a rate of complaint of 0.004%. In comparison there are about 6.56 million trade union members in 141 trade unions. In 2018-19 the CO received 15 applications against 8 unions. In 2019-20 she received 7 applications against 6 unions. In 2020-21 she received 14 applications against 11 different unions. This level of applications in proportion to the number of trade union members is infinitesimally small, 0.000002%.

<sup>12</sup> Consultation on the Certification Officer's Enforcement Powers

<sup>13</sup> TUC slams government for “trying to tie unions up in red tape”, TUC (8 June 2021), at: <https://www.tuc.org.uk/news/tuc-slams-government-trying-tie-unions-red-tape>

<sup>14</sup> See discussion at para. 154 in *Demir and Baykara v Turkey* (2009) 48 EHRR 54, [2009] IRLR 766

the European Social Charter of 1961 (Articles 5 and 6), which instruments reflect broadly similar protections for the rights to freedom of association and collective bargaining.

The ILO's Committee on Freedom of Association has stated that 'The conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organisations' (*Freedom of Association: Compilation of decisions of the Committee on Freedom of Association*, ILO, 6th Edition, 2018<sup>15</sup>, para. 789), and that 'The legal procedures for declaring a strike should not be so complicated as to make it practically impossible to declare a legal strike' (*Freedom of Association*, para. 790). The information asked for in a strike notice 'should be reasonable, or interpreted in a reasonable manner, and any resulting injunctions should not be used in such a manner as to render legitimate trade union activity nearly impossible' (*Freedom of Association*, para. 803).

The Committee has criticised 'excessive' thresholds and quora for strike ballots. 'The requirement of a decision by over half of all the workers involved in order to declare a strike is excessive and could excessively hinder the possibility of carrying out a strike, particularly in large enterprises' (*Freedom of Association*, para. 806). The Committee further argued that 'The requirement that an absolute majority of workers should be obtained for the calling of a strike may be difficult, especially in the case of unions which group together a large number of members. A provision requiring an absolute majority may, therefore, involve the risk of seriously limiting the right to strike' (*Freedom of Association*, para. 807). And the Committee has requested amendment to a legal requirement that a strike call be adopted by more than half of the workers to which it applies (*Freedom of Association*, para. 809).

Concerning the collection of union dues, the Committee has said that, 'The withdrawal of the check-off facility, which could lead to financial difficulties for trade union organisations, is not conducive to the development of harmonious industrial relations and should therefore be avoided' (*Freedom of Association*, para. 690), and that, 'The deduction of trade union dues by employers and their transfer to trade unions is a matter which should be dealt with through collective bargaining between employers and all trade unions without legislative obstruction' (*Freedom of Association*, para. 701).

The Committee has also raised concerns about excessive reporting obligations placed on trade unions, 'The control exercised by the public authorities over trade union finances should not normally exceed the obligation to submit periodic reports. The discretionary right of the authorities to carry out inspections and request information at any time entails a danger of interference in the internal administration of trade unions' (*Freedom of Association*, para. 711).

The Committee has also criticised limitations on use of funds. 'Provisions which restrict the freedom of trade unions to administer and utilise their funds as they wish for normal and lawful trade union purposes' and 'Provisions which give the authorities the right to restrict the freedom of a trade union to administer and utilise its funds as it wishes for normal and lawful trade union purposes' are both said to be 'incompatible with the

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<sup>15</sup> Hereafter '*Freedom of Association*'

principles of freedom of association' (*Freedom of Association*, paras. 683 and 706).

And the Committee's jurisprudence makes clear that transport and education (which are 'important public services' under the 2016 Act) do not amount to essential services. 'The following do not constitute essential services in the strict sense of the term' 'transport generally, including metropolitan transport' (*Freedom of Association*, para. 842) and '...the education sector does not constitute an essential service...' (*Freedom of Association*, para. 844).

Article 6 of ILO Convention 151 states that 'facilities shall be afforded to the representatives of recognised public employees' organisations as may be appropriate in order to enable them to carry out their functions promptly and efficiently', while Article 7 makes clear that the appropriate mechanism for the determination of trade union facility time is collective bargaining.

In respect of firefighters, the Committee has, on many occasions, insisted that State parties must 'fully grant the right to organise and collective bargaining to firefighters' (Committee on Freedom of Association, Interim Report - Report No 386, June 2018, Case No 2177 (Japan), para. 423).

## **(7) Recommendations**

The International Centre for Trade Union Rights calls on the UK Government to:

Urgently address problems of widespread poverty, inequality, and reliance on food aid that are being exacerbated by rising inflation and energy prices.

Repeal the Trade Union Act 2016, and in particular remove:

- Restrictions relating to payroll deduction of union dues.
- Burdensome reporting requirements on unions.
- The levy on unions to fund the Certification Officer's costs.
- The Certification Officer's power to levy fines for breaches of union legislation.
- The power to investigate third party complaints about unions by members of the public and third party organisations, raising concerns of vexatious complaints.

Significantly reduce the complexity of the rules and notice requirements applicable to strikes and balloting, including but not limited to those measures introduced under the 2016 Act.

Respect and protect:

- trade union rights for firefighters.

Ramp-up efforts:

- to improve regulatory oversight of British companies operating abroad with regard to negative impacts on human rights.

Work with the British TUC to improve compliance with ILO standards.

Seek the assistance of the ILO and other relevant UN agencies in making amendments to domestic law and practice.