

LEGISLATIVE CONSENT MEMORANDUM

TRADE UNION BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies the legislative competence of the National Assembly.
2. The Trade Union Bill (the “Bill”) was introduced in the House of Commons on 15 July 2015. The Bill can be found at:

<http://services.parliament.uk/bills/2015-16/tradeunion.html>

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Department for Business Innovation and Skills. The UK Government has said that its broad policy objectives for the Bill are to “introduce legislation to reform trade unions and to protect essential public services against strikes”. It has also said that the Bill would introduce greater transparency into trade union activities, and increase independent oversight of the way trade unions conduct their business.
4. The key provisions of the Bill cover:
 - Ballot thresholds for industrial action: a 50% turnout requirement for all industrial action ballots, and an additional threshold of 40% of support to take industrial action from all members eligible to vote in the key health, education, fire, transport, border security and nuclear decommissioning sectors
 - Information requirements relating to industrial action: requirements for certain information to be included on voting papers, for information to be provided to members and others about the result of a ballot, and for information about industrial action to be provided to the Certification Officer
 - Provision about the timing and duration of industrial action
 - Provision about union supervision of picketing
 - Opting in by union members to contribute to political funds, and unions’ annual returns to include details of political expenditure

- Provisions relating to facility time for trade union officials, and prohibition of “check-off”, i.e., deduction of union subscriptions from wages, in the public sector
- Enhancing the regulatory role of the Certification Officer, which is the body responsible for statutory functions relating to trade unions and employers’ associations.

Provisions in the Bill which the Welsh Government consider to be relevant for the purposes of Standing Order 29

5. The Welsh Government considers that the Assembly’s consent would be required for clauses 3, 12, 13 and 14 of the Bill as introduced in the second House (House of Lords) on 11 November 2015 (HL Bill 74 2015-16). All these provisions apply in relation to Wales.

Clause 3: 40% overall support threshold to take industrial action in key public sector areas

6. Clause 3 imposes a 40% overall membership support threshold to take industrial action in key service areas such as health services, education of those aged under 17, fire services and transport services.
7. This will be achieved by amending section 226 of the Trade Union and Labour Relations (Consolidation) Act 1992, so that an additional threshold requirement (“at least 40% of those who were entitled to vote in the ballot answered “Yes” to the question”) applies where the majority of those entitled to vote in the ballot are normally engaged in the provision of important public services, or activities ancillary to the provision of important public services.
8. Important public services will be specified in regulations made by the Secretary of State, and must fall within one of six categories, including the categories specified under paragraph 6 above. The purpose of the provision, as set out by the UK Government in the Explanatory Notes to the Bill, is to protect essential public services against strikes.
9. It is the view of the Welsh Government that this provision falls within the legislative competence of the Assembly insofar as it relates to education, vocational, social and physical training under paragraph 5 (Education and training); fire and rescue services under paragraph 7 (Fire and rescue services and fire safety); provisions of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities, and organisation and funding of national health service, under paragraph 9 (Health and health services); transport facilities and services under paragraph 10 (Highways and transport), in Part 1 of Schedule 7 to the Government of Wales Act 2006.

Clauses 12 and 13: facility time

10. Clauses 12 and 13 extend the reporting requirements for trade union facility time which currently apply to the Civil Service to the wider public sector, and enable UK Ministers to place limits on facility time across the public sector. These clauses apply to the devolved public sector in Wales.
11. It is the view of Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to a range of subjects in Schedule 7, Part 1 of the Government of Wales Act 2006.
12. These subjects include (but are not limited to)-

Education, vocational, social and physical training under paragraph 5 (Education and training); fire and rescue services under paragraph 7 (Fire and rescue services and fire safety); provisions of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities, and organisation and funding of national health service, under paragraph 9 (Health and health services); transport facilities and services under paragraph 10 (Highways and transport), Powers and duties of local authorities and their members and officers under paragraph 12 (Local government) in Part 1 of Schedule 7 to the Government of Wales Act 2006.
13. The provisions would therefore apply to public sector employers in Wales involved in these subjects including: Fire and Rescue Services, Local Health Boards, NHS Trusts and Special Health Authorities and Local Authorities. This list is not exhaustive.

Clause 14: Prohibition on deduction of union subscriptions from wages in the public sector

14. The Bill was amended at Committee stage in the House of Commons (New Clause 11 tabled by Nick Boles MP Minister of State for Skills on 20th October) to include a provision to prohibit public sector employers, prescribed by regulations, from deducting trade union subscriptions from workers' wages and sending these to the unions concerned (commonly known as 'check-off'). This provision is included as clause 14 of the Bill introduced to the second House.
15. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to a range of subjects in Schedule 7, Part 1 of the Government of Wales Act 2006.
16. These subjects include (but are not limited to)-

Education, vocational, social and physical training under paragraph 5 (Education and training); fire and rescue services under paragraph 7 (Fire and rescue services and fire safety); provisions of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities, and organisation and funding of national health service, under paragraph 9 (Health and health services); transport facilities and services under paragraph 10 (Highways and transport), Powers and duties of local authorities and their members and officers under paragraph 12 (Local government) in Part 1 of Schedule 7 to the Government of Wales Act 2006.

17. The provisions would therefore apply to public sector employers in Wales involved in these subjects including: Fire and Rescue Services, Local Health Boards, NHS Trusts and Special Health Authorities and Local Authorities. This list is not exhaustive.

Whether it is appropriate for these provisions to be made, and whether they should be made by means of the Bill

18. The Welsh Government does not agree that these provisions should be made because we consider they will prove socially divisive, lead to more confrontational relationships between employers and workers, and ultimately undermine rather than support public services and the economy.
19. The Welsh Government's position on the Trade Union Bill was set out in a Written Statement to the Assembly on 9 September:

<http://gov.wales/about/cabinet/cabinetstatements/2015/tradeunionbill/?lang=en>

20. I intend to table a Legislative Consent Motion under Standing Order 29.6. To comply with Standing Orders, the Motion will seek Assembly Members' consent to the inclusion of the provisions outlined above in the Bill. However, the Welsh Government's view is that consent should not be given in this case.

Financial implications

21. There are no direct financial implications in not consenting to the provisions set out in the UK Bill.

Leighton Andrews AM
Minister for Public Services

November 2015