

## **Report on the consideration of the Legislative Consent Memorandum arising from the Trade Union Bill ('the Bill')**

### **1.0 The Bill**

1.1 The [Bill](#) was introduced in the House of Commons on 15 July 2015 and was brought to the House of Lords on 11 November 2015 and received its first reading on the same date. The second reading of the Bill in the House of Lords took place on 11 January 2016.

1.2 The UK Government's main policy objectives for the Bill as set out in the [Explanatory Notes](#) are to "introduce legislation to reform trade unions and to protect essential public services against strikes".

1.3 The relevant paragraphs in the Explanatory Notes that relate to this LCM and connected provisions of the Bill are 14-19 (*40% overall threshold to take industrial action in key Public Sector areas*), 52-56 (*facility time*) and 57-59 (*prohibition on deduction of union subscriptions from wages in the public sector*).

### **2.0 Provisions for which consent are sought:**

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

2.1.1 This clause amends section 226 the 1992 Act and introduces a new 40% minimum threshold (of those were entitled to vote in the ballot) of support that must be satisfied in ballots for industrial action in important public services. This is a new requirement.

2.1.2 Important public services will be specified in regulations made by the Secretary of State only and approved by resolution of each House of Parliament (affirmative procedure). The Regulations will specify only services that fall within any of the following categories:

- (a) health services
- (b) education of those aged under 17
- (c) fire services
- (d) transport services
- (e) decommissioning of nuclear installations and management of radioactive waste and spent fuel
- (f) border security

2.1.3 The new 40% important public services threshold comes into force for all ballots taking place after this clause comes into effect.

2.2 **Clauses 12 and 13: facility time**

### 2.2.1 **Clause 12: Publication requirements in relation to facility time**

This clause inserts a new section 172B into the 1992 Act so that the Minister of the Crown (i.e. the Secretary of State) may make regulations requiring some or all public sector employers with one or more trade union representatives to publish information relating to time taken by those representatives for trade union duties and activities. These Regulations will be subject to the Negative procedure in either House of Parliament.

### 2.2.2 **Clause 13: Reserve powers in relation to facility time**

This clause inserts a new section 172B into the 1992 Act, immediately after the new section 172A inserted by clause 12. The new section allows the Minister of the Crown (i.e. the Secretary of State) to make regulations exercising reserve powers, where the Minister considers it is appropriate to do so. Para 55 of the Explanatory notes state that, 'the reserve powers may be exercised so as to limit the paid time off taken by the employers' trade union representatives for facility time to a percentage of the representatives' working time'.

2.2.3 In relation to clauses 12 and 13, as para 10 of the LCM indicates, these provisions apply to the devolved public sector in Wales.

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

2.3.1 The Bill was amended at Committee Stage in the House of Commons. Nick Boles MP, Minister of State for Skills tabled successful amendments that included a provision to amend the 1992 Act which prohibits public sector employers, prescribed by regulations, from deducting union subscriptions from workers' wages and sending these to the unions concerned.

2.3.2 Para 59 of the Explanatory Notes says:

'The regulations, **which are subject to the affirmative procedure**, may amend or otherwise modify existing legal entitlement, such as those contained in contracts of employment. The regulations may also make transitional provisions before the prohibition takes effect, such as specifying a commencement date after a certain period of time to enable trade unions to make alternative arrangements to check off and notify their members of these, encouraging them to switch to direct debit for example.'

### 3.0 **Legislative Competence**

3.1 As the LCM explains, the provisions to which Clause 3 (*40% overall support threshold to take industrial action in key public sector areas*) refers relate to a matter within the National Assembly's legislative competence insofar as it relates to the following paragraphs of Schedule 7 of the GOWA '06:

Paragraph 5 (Education and training):

*‘education, vocational, social and physical training’*

Paragraph 7 (Fire and rescue services):  
*‘fire and rescue services’*

Paragraph 9 (Health and health services):  
*‘provisions of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities’*

Paragraph 10 (Highways and transport):  
*‘transport facilities and services’*

- 3.2 The provisions to which Clauses 12 and 13 of the Bill (*facility time*) and Clause 14 (*Prohibition on deduction of union subscriptions from wages in the public sector*) refer come within the National Assembly’s legislative competence under the same paragraph headings of Schedule 7 as Clause 3 (above) including the addition of Paragraph 12 (Local Government): powers and duties of local authorities and their members and officers.
- 3.3 As the Welsh Government states in para 13 of the LCM, *‘the provisions would therefore, apply to public sector employers in Wales involved in these subjects including: Fire and Rescue Services, Local Health Boards, NHS Trust and Special Health Authorities and Local Authorities. The list is not exhaustive’*.
- 3.4 The legislative consent of the Assembly is therefore, required in accordance with Standing Order 29.6, and also from the perspective of the UK Government in accordance with the revised Devolution Guidance Note 9.
- 3.5 Further, in a [written statement](#) concerning the Bill, the First Minister stated:

“It is clear, however, that significant elements of the Bill relate specifically to public services which in Wales are unambiguously devolved responsibilities. I therefore do not accept the suggestion that the Bill must be regard as concerned exclusively with non-devolved issues.

The judgment of the Supreme Court in the reference of the Agricultural Sector (Wales) Bill confirmed that provided an Assembly Bill fairly and realistically satisfies the test set out in section 108 of the Government of Wales Act 2006 and is not within an exception, it does not matter whether it might also be capable of being classified as relating to a subject which has not been devolved, such as employment rights and industrial relations.”

#### 4.0 **Conclusion**

- 4.1 The Enterprise and Business Committee considered the LCM overall, in addition to the requirement for a LCM concerning the Bill provisions in the relevant areas.

- 4.2 On the basis of the legal advice received, the Committee felt strongly that a LCM is required in relation to various provisions of the Bill and that it was for the Assembly to decide whether or not to give consent.
- 4.3 The Committee noted that the Welsh Government has recommended that consent should not be given by the Assembly to this LCM. Committee Members noted that there were different political positions among the different parties and that it was entirely appropriate for the Assembly to reach a decision on the LCM in Plenary on 26 January 2016.