

TRADE UNION (WALES) ACT 2017

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Trade Union (Wales) Act 2017 which was passed by the National Assembly for Wales on 18 July 2017 and received Royal Assent on 07 September 2017. They have been prepared by the Education and Public Services Group of the Welsh Government to assist the reader of the Act.
2. The Explanatory Notes should be read in conjunction with the Act but are not part of it. They are not meant to be a comprehensive description of the Act. Where a section of the Act is self-explanatory and does not seem to require any further explanation or comment, none is given.

OVERVIEW OF THE ACT

3. The Trade Union Act 2016 (c.15) (“the 2016 Act”) inserts provisions in the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) (“the 1992 Act”). This Act amends the provisions of the 1992 Act inserted by sections 3, 13, 14 and 15 of the 2016 Act so as to disapply them in so far as they relate to certain public services provided by devolved Welsh public authorities, or relate more generally to the operations of such authorities.
4. The Act also prohibits devolved Welsh public authorities from using workers supplied by an employment business (commonly referred to as agency workers), to cover the duties of staff engaged in official industrial action.

POLICY BACKGROUND

5. During the passage through the United Kingdom Parliament of the Bill that became the 2016 Act the National Assembly for Wales considered and opposed a Legislative Consent Motion, withholding consent for the UK Government to legislate on clauses pertaining to Welsh public authorities. The provisions for which the National Assembly withheld consent related to an overall support threshold for ‘important public services’, facility time and check-off arrangements.

6. The Trade Union (Wales) Act 2017 disapplies sections 3, 13, 14 and 15 of the 2016 Act as they apply to public services in Wales. The purpose is to remove provisions that the Welsh Government considers contrary to its social partnership approach to managing the public sector so as to protect the continued delivery of public services in Wales. Social partnership involves the Welsh Government and devolved Welsh public authorities, and civil servants and employees of those bodies, working collaboratively to deliver public services.
7. The Welsh Government considers that the effect of the Trade Union Act 2016 will affect its social partnership approach lead to more confrontational relationships between employers and employees, and ultimately undermine public service delivery. The success of the social partnership model relies on an appropriate balance in the relationships between the partners and particularly between trade unions and employers.
8. The Act prohibits devolved Welsh public authorities from using agency workers to cover the duties of staff engaged in official industrial action. The intention is to protect the social partnership model of providing public services from practices that could undermine industrial relations.

LEGAL BACKGROUND

9. The chief legislation on trade unions and employers' association is in the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52). Historically trade unions were treated as illegal and contrary to public interest. At common law a worker who engaged in industrial action was considered to be in breach of his or her employment contract. A trade union inducing industrial action was committing an actionable tort contrary to the doctrine on restraint of trade. Trade union reforms between the 1800s and 1900s introduced legislation which conferred certain "statutory immunities" and overrode the established common law position.
10. That legislation was consolidated in the 1992 Act which defines trade unions and sets out the framework (including legal rights and duties) under which they may operate including the circumstances in which industrial action may be undertaken.
11. The 2016 Act amends the 1992 Act to make provisions (among other things) about the balloting requirements for official industrial action and inserts provisions about facility time in the public sector and the circumstances in which trade unions subscriptions may be deducted by public sector employers from their worker's wages. This Act disapplies those provisions in so far as they relate to public services provided by devolved Welsh public authorities, or relate more generally to the operations of such authorities.

COMMENTARY ON SECTIONS

Section 1 – Amendments to the Trade Union and Labour Relations (Consolidation) Act 1992

Removing restrictions on deduction of union subscriptions from wages in the public sector

12. **Section 1(2)** provides that section 116B of the 1992 Act (inserted by section 15 of the 2016 Act), which restricts the circumstances in which union subscriptions may be deducted from the wages of workers in the public sector, does not apply to devolved Welsh public authorities.

13. Some employers deduct trade union subscription from the wages of their workers (referred to as “check off”). Section 116B imposes restrictions so that such deductions may not be made unless workers have the option to pay their union subscriptions by other means, and arrangements have been made for the union to make reasonable payments to the employer in respect of the making of the deductions.

Disapplies regulations about facility time to Welsh public authorities

14. **Section 1(3)** provides that sections 172A and 172B of the 1992 Act (as inserted by sections 13 and 14 of the 2016 Act) do not apply to devolved Welsh public authorities.

15. Sections 168 to 172 of the 1992 Act make provision about “facility time”, which is time off permitted by employees for the purpose of carrying out trade union duties. Sections 13 and 14 of the 2016 Act inserted sections 172A and 172B which confer powers on a Minister of the Crown to make regulations about facility time.

16. Regulations made under section 172A may require public sector employers to publish information about on the amount of facility time allowed. Section 172B provides that where a Minister of the Crown considers it appropriate to do so, and having regard to matters in section 172B(1), he or she may make regulations to cap the percentage of the employers’ total pay bill spent on paying union officials for facility time and to restrict the rights of union officials to facility time by amending provisions in section 172B(4). Regulations under section 172B may only be made three years after the first regulations under section 172A come into force.

Disapplies 40% ballot threshold for important public services in relation to Welsh public services

17. **Section 1(4)** provides that regulations made by the Secretary of State which define “important public services” for the purpose of section 226 of the 1992 Act may not include services provided by devolved Welsh public authorities.

18. Section 219 of the 1992 Act provides that certain actions taken in contemplation or furtherance of a trade dispute are protected in that they are not actionable in tort. Section 226 sets out the requirements which must be met before industrial action may be taken by a trade union in such a way as to attract the immunity under section 219. This includes a requirement that there must be a ballot of the union's members. At least 50% (a simple majority) of those who vote in the ballot must vote in support of taking industrial action.
19. The 2016 Act amended section 226 to include further requirements that must be met before the statutory immunity in section 219 applies. Section 226(2)(ia) (inserted by section 2 of the 2016 Act) provides that at least 50% (a simple majority) of those entitled to vote must vote; and section 226(2B) (inserted by section 3 of the 2016 Act) provides that, where those entitled to vote are engaged in providing important public services, at least 40% of them must vote in support of taking industrial action.
20. Section 226, therefore, now requires that at least 50% of all members entitled to vote must exercise their right to vote, and at least 50% of those who vote must vote in support of taking action. As an example, where 1000 union members are affected by the dispute, this means that at least 500 members must vote and at least 251 must vote in support of taking action.
21. Section 226(2B) imposes a further requirement where the members are engaged in providing important public services which are as defined in regulations made under section 226(2D) by the Secretary of State. At least 40% of those members entitled to vote must vote in support of taking industrial action. In the above example, at least 400 members would need to vote in support for the statutory immunity in section 219 to apply.
22. Section 226(2)(ia) applies in relation to Wales but section 1(2) of the Act provides that subsections 226(2B) to (2F) do not apply to devolved Welsh authorities.

Definition of devolved Welsh authorities

23. **Section 1(5)** defines the Welsh public authorities to which the Act applies by reference to the definition of "a devolved Welsh authority" in section 157A of the Government of Wales Act 2006 (inserted by section 4 of the Wales Act 2017). In that section a "devolved Welsh authority" means a public authority specified in Schedule 9A to the Government of Wales Act 2006 or that exercises functions that (a) are only exercisable in relation to Wales and (b) are wholly or mainly functions that do not relate to reserved matters. Schedule 9A may be amended by Order in Council approved by Parliament and the National Assembly for Wales.

Section 2 – Prohibition on using temporary workers to cover industrial action

- 24. Section 2 prohibits devolved Welsh public authorities from hiring a worker supplied by an employment business (commonly known as “agency workers”) to cover the normal duties of a member of its staff undertaking industrial action, or a member of staff who is covering the duties of the worker taking industrial action.
- 25. The industrial action in question must be “official” – a notion that is defined by reference to section 237 of the 1992 Act.
- 26. This provision does not affect existing law on the conduct of employment businesses set out in the Employment Agencies Act 1973 or the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (S.I. 2003/3319) made under section 5 of that Act. (Regulation 7 of the 2003 Regulations prohibits employment businesses from supplying workers to cover industrial action).

RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES

- 27. The following table sets out the dates for each stage of the Act’s passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales’ website at:
<http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IIId=16591&Opt=0>

Stage	Date
Introduced	16 January 2017
Stage 1 - Debate	9 May 2017
Stage 2 Scrutiny Committee – consideration of amendments	15 June 2017
Stage 3 Plenary - consideration of amendments	11 July 2017
Stage 4 Approved by the Assembly	18 July 2017
Royal Assent	7 September 2017