

TRADE UNION (WALES) ACT 2017

EXPLANATORY NOTES

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).