

# TRADE UNION (WALES) ACT 2017

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

#### **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.