



Llywodraeth Cymru
Welsh Government

TRADE UNION (WALES) BILL

Explanatory Memorandum
Incorporating the
Regulatory Impact Assessment and
Explanatory Notes

January 2017

Trade Union (Wales) Bill

Explanatory Memorandum to Trade Union (Wales) Bill

This Explanatory Memorandum has been prepared by the Education and Public Service Group of the Welsh Government and is laid before the National Assembly for Wales.

Member's Declaration

In my view the provisions of the Trade Union (Wales) Bill, introduced on 16 January 2017, would be within the legislative competence of the National Assembly for Wales.

Mark Drakeford AM

Cabinet Secretary for Finance and Local Government
Assembly Member in charge of the Bill

16 January 2017

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PART 1 – EXPLANATORY MEMORANDUM

Chapter 1: Description

1.1 The Trade Union (Wales) Bill (the Bill) amends provisions in the Trade Union Act 2016 (c.15) (UK TU Act) that have an adverse effect on the social partnership approach taken by the Welsh Government in Wales. Sections 3, 13, 14 and 15 of the UK TU Act which amend the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) impose new requirements in relation to balloting for industrial action, facility time and check off (payment of trade union subscription fees by way of a deduction by the employer from the employee's wages). The Bill will reverse the effect of these provisions to protect the continued delivery of public services in Wales.

Chapter 2: Legislative Competence

2.1 The National Assembly for Wales (the Assembly) has the legislative competence to make the provisions in the Trade Union (Wales) Bill (the Bill) pursuant to Part 4 of the Government of Wales Act 2006 (GoWA 2006). The relevant provisions of GOWA 2006 in so far as they involve the delivery of public services are set out in section 108 and Schedule 7.

2.2 The following paragraphs of Schedule 7 set out the subjects relied on in so far as they relate to the delivery of public services.

1. Agriculture, forestry, animals, plants and rural development

Agriculture. Horticulture. Forestry. Fisheries and fishing. Animal health and welfare. Plant health. Plant varieties and seeds. Rural development.

In this Part of this Schedule “animal” means—

- (a) all mammals apart from humans, and
- (b) all animals other than mammals;

and related expressions are to be construed accordingly.

Exceptions—

Hunting with dogs.

Regulation of scientific or other experimental procedures on animals.

Import and export control, and regulation of movement, of animals, plants and other things, apart from (but subject to provision made by or by virtue of any Act of Parliament relating to the control of imports or exports)—

- (a) the movement into and out of, and within, Wales of animals, animal products, plants, plant products and other things related to them for the purposes of protecting human, animal [or plant] health, animal welfare or the environment or observing or implementing obligations under the Common Agricultural Policy, and
- (b) the movement into and out of, and within, Wales of animal feedstuff, fertilisers and pesticides (or things treated by virtue of any enactment as pesticides) for the purposes of protecting human, animal or plant health or the environment.

Authorisations of veterinary medicines and medicinal products.

2. Ancient monuments and historic buildings

Archaeological remains. Ancient monuments. Buildings and places of historical or architectural interest. Historic wrecks.

3. Culture

Arts and crafts. Museums and galleries. Libraries. Archives and historical records. Cultural activities and projects.

Exceptions—

- Public lending right.
- Broadcasting.
- Classification of films, and video recordings.
- Government indemnities for objects on loan.
- Payments to Her Majesty's Revenue and Customs in respect of property accepted in satisfaction of tax, apart from property in which there is a Welsh national interest.

4. Economic development

Economic regeneration and development, including social development of communities, reclamation of derelict land and improvement of the environment. Promotion of business and competitiveness.

Exceptions—

- Fiscal, economic and monetary policy (except so far as relating to devolved taxes) and regulation of international trade.
- Regulation of anti-competitive practices and agreements, abuse of dominant position and monopolies and mergers.
- Intellectual property, apart from plant varieties.
- Creation, operation, regulation and dissolution of types of business association.
- Insolvency.
- Product standards, safety and liability, apart from in relation to food (including packaging and other materials which come into contact with food), agricultural and horticultural products, animals and animal products, seeds, fertilisers and pesticides (and things treated by virtue of any enactment as pesticides).
- Consumer protection, including the sale and supply of goods to consumers, consumer guarantees, hire purchase, trade descriptions, advertising and price indications, apart from in relation to food (including packaging and other materials which come into contact with food), agricultural and horticultural products, animals and animal products, seeds, fertilisers and pesticides (and things treated by virtue of any enactment as pesticides).
- Financial services, including investment business, banking and deposit-taking, collective investment schemes and insurance.
- Occupational and personal pension schemes (including schemes which make provision for compensation for loss of office or employment, compensation for loss or diminution of emoluments, or benefits in respect of death or incapacity resulting from injury or disease), apart from schemes for or in respect of Assembly members, the First Minister, Welsh Ministers appointed under section 48, the Counsel General or Deputy Welsh Ministers and schemes for or in respect of members of local authorities.
- Financial markets, including listing and public offers of securities and investments, transfers of securities, insider dealing and money laundering.

Telecommunications, wireless telegraphy (including electromagnetic disturbance), internet services and electronic encryption.

Postal services, post offices and the Post Office, apart from financial assistance for the provision of services (other than postal services and services relating to money or postal orders) to be provided from public post offices.

Generation, transmission, distribution and supply of electricity.

Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation.

Coal, including mining and subsidence, apart from land restoration and other environmental matters.

Oil and gas.

Nuclear energy and nuclear installations and the Office for Nuclear Regulation —

- (a) including nuclear safety and liability for nuclear occurrences;
- (b) but not including disposal of very low level radioactive waste moved from a site requiring a nuclear site licence.

Units and standards of weights and measurement and the regulation of trade so far as involving weighing, measuring and quantities.

Industrial Development Advisory Board.

5. Education and training

Education, vocational, social and physical training and the careers service.
Promotion of advancement and application of knowledge.

Exception—

Research Councils.

6. Environment

Environmental protection, including pollution, nuisances and hazardous substances. Prevention, reduction, collection, management, treatment and disposal of waste. Land drainage and land improvement. Countryside and open spaces (including the designation and regulation of national parks and areas of outstanding natural beauty). Nature conservation and sites of special scientific interest. Protection of natural habitats, coast and marine environment (including seabed). Biodiversity. Genetically modified organisms.

Smallholdings and allotments. Common land. Town and village greens. Burial and cremation, except coroners' functions.

7. Fire and rescue services and fire safety

Fire and rescue services. Provision of automatic fire suppression systems in newly constructed and newly converted residential premises. Promotion of fire safety otherwise than by prohibition or regulation.

8. Food

Food and food products. Food safety (including packaging and other materials which come into contact with food). Protection of interests of consumers in relation to food.

“Food” includes drink.

9. Health and health services

Promotion of health. Prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder. Control of disease. Family planning. Provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities. Clinical governance and standards of health care. Organisation and funding of national health service.

Exceptions—

Abortion.

Human genetics, human fertilisation, human embryology, surrogacy arrangements.

Xenotransplantation.

Regulation of health professionals (including persons dispensing hearing aids).

Poisons.

Misuse of and dealing in drugs.

Human medicines and medicinal products, including authorisations for use and regulation of prices.

Standards for, and testing of, biological substances (that is, substances the purity or potency of which cannot be adequately tested by chemical means).

Vaccine damage payments.

Welfare foods.

Health and Safety Executive and Employment Medical Advisory Service and provision made by health and safety regulations.

10. Highways and transport

Highways, including bridges and tunnels. Streetworks. Traffic management and regulation. Transport facilities and services.

Exceptions—

Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.

Road freight transport services, including goods vehicles operating licensing.

Regulation of the construction and equipment of motor vehicles and trailers, and regulation of the use of motor vehicles and trailers on roads, apart from—

(a) any such regulation which—

(i) relates to schemes for imposing charges in respect of the use or keeping of vehicles on Welsh trunk roads (“trunk road charging schemes”), or

- (ii) relates to the descriptions of motor vehicles and trailers which may be used under arrangements for persons to travel to and from the places where they receive education or training, unless the regulation is the setting of technical standards for construction or equipment of motor vehicles or trailers which differ from the standards that would or might otherwise apply to them; and
- (b) regulation of the use of motor vehicles and trailers carrying animals for the purpose of protecting human, animal or plant health, animal welfare or the environment.

Road traffic offences.

Driver licensing.

Driving instruction.

Insurance of motor vehicles.

Drivers' hours.

Traffic regulation on special roads, apart from regulation relating to trunk road charging schemes.

Pedestrian crossings.

Traffic signs, apart from the placing and maintenance of traffic signs relating to trunk road charging schemes.

Speed limits.

International road transport services for passengers.

Public service vehicle operator licensing.

Documents relating to vehicles and drivers for purposes of travel abroad and vehicles brought temporarily into Wales by persons resident outside the United Kingdom.

Vehicle excise duty and vehicle registration.

Provision and regulation of railway services, apart from financial assistance which—

- (a) does not relate to the carriage of goods,
- (b) is not made in connection with a railway administration order, and
- (c) is not made in connection with [Regulation \(EC\) No 1370/2007](#) of the European Parliament and of the Council on public passenger transport services by rail and by road.

Transport security, apart from regulation relating to the carriage of adults who supervise persons travelling to and from the places where they receive education or training.

Railway heritage.

Aviation, air transport, airports and aerodromes, apart from—

- (a) financial assistance to providers or proposed providers of air transport services or airport facilities or services,
- (b) strategies by the Welsh Ministers or local or other public authorities about provision of air services, and
- (c) regulation of use of aircraft carrying animals for the purposes of protecting human, animal or plant health, animal welfare or the environment.

Shipping, apart from—

- (a) financial assistance for shipping services to, from or within Wales, and

(b) regulation of use of vessels carrying animals for the purposes of protecting human, animal or plant health, animal welfare or the environment.

Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.

Technical and safety standards of vessels.

Harbours, docks, piers and boatslips, apart from—

(a) those used or required wholly or mainly for the fishing industry, for recreation, or for communication between places in Wales (or for two or more of those purposes), and

(b) regulation for the purposes of protecting human, animal or plant health, animal welfare or the environment.

Carriage of dangerous goods (including transport of radioactive material).

Technical specifications for fuel for use in internal combustion engines.

11. Housing

Housing. Housing finance except schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits. Encouragement of home energy efficiency and conservation, otherwise than by prohibition or regulation. Regulation of rent. Homelessness. Residential caravans and mobile homes.

12. Local government

Constitution, structure and areas of local authorities. Electoral arrangements for local authorities. Powers and duties of local authorities and their members and officers. Local government finance.

“Local authorities” does not include police and crime commissioners.

Exceptions—

Local government franchise.

Electoral registration and administration.

Registration of births, marriages, civil partnerships and deaths.

Licensing of sale and supply of alcohol, provision of entertainment and late night refreshment.

Orders to protect people from behaviour that causes or is likely to cause harassment, alarm or distress.

Local land charges, apart from fees.

Sunday trading.

Provision of advice and assistance overseas by local authorities in connection with carrying on there of local government activities.**13.**

National Assembly for Wales

Complaints about Assembly members (including provision for and about an office or body for investigating such complaints and reporting outcome of investigations). Assembly Commission. Salaries, allowances, pensions and gratuities for and in respect of Assembly Members, the First Minister, Welsh Ministers appointed under section

48, the Counsel General and Deputy Welsh Ministers. Register of interests of Assembly Members and the Counsel General. Meaning of Welsh words and phrases in Assembly Measures and Acts of the Assembly, in subordinate legislation made under Assembly Measures and Acts of the Assembly and in other subordinate legislation if made by the Welsh Ministers, the First Minister or the Counsel General. Private legislation in the Assembly. Financial assistance for political groups to which Assembly Members belong. The Welsh Seal. Arrangements for the printing of Acts of the Assembly, of subordinate legislation made under Assembly Measures and Acts of the Assembly and of other subordinate legislation if made by the Welsh Ministers, the First Minister or the Counsel General. Budgetary procedures.

Budgetary procedures" are procedures for a financial year relating to—

- (a) the authorisation of the amount of resources which may be used or retained in that year by relevant persons or pursuant to a relevant enactment,
- (b) the authorisation of the amount which may be paid out of the Welsh Consolidated Fund in that year to relevant persons or for use pursuant to a relevant enactment, or
- (c) the scrutiny of the use of the amounts so authorised under paragraph (a) or (b) or of the exercise of borrowing powers by the Welsh Ministers.

The following are "relevant persons"—

- (a) the Welsh Ministers,
- (b) the First Minister,
- (c) the Counsel General,
- (d) the Assembly Commission,
- (e) the Wales Audit Office, and
- (f) the Public Service Ombudsman for Wales.

A "relevant enactment" is an enactment which provides for payment out of the Welsh Consolidated Fund.

The reference to the use of resources is a reference to their expenditure, consumption or reduction in value.

14. Public administration

Public Services Ombudsman for Wales. Auditor General for Wales. Audit, examination, regulation and inspection of auditable public authorities. Inquiries in respect of matters in relation to which the Welsh Ministers, the First Minister

or the Counsel General exercise functions. Equal opportunities in relation to equal opportunity public authorities. Access to information held by open access public authorities.

The following are “auditable public authorities” and “equal opportunity public authorities”—

- (a) the Assembly,
- (b) the Assembly Commission,
- (c) the Welsh . . . Government,
- (d) persons who exercise functions of a public nature and in respect of whom the Welsh Ministers exercise functions,
- (e) persons who exercise functions of a public nature and at least half of the cost of whose functions in relation to Wales are funded (directly or indirectly) by the Welsh Ministers, and
- (f) persons established by enactment and having power to issue a precept or levy.

The following are “open access public authorities”—

- (a) the Assembly,
- (b) the Assembly Commission,
- (c) the Welsh Government, and
- (d) authorities which are Welsh public authorities, within the meaning of the [Freedom of Information Act 2000 \(c 36\)](#).

Exception—

Regulation of the profession of auditor.

15. Social welfare

Social welfare including social services. Protection and well-being of children (including adoption and fostering) and of young adults. Care of children, young adults, vulnerable persons and older persons, including care standards. Badges for display on motor vehicles used by disabled persons.

Exceptions—

Child support.

Child trust funds, apart from subscriptions to such funds by—

- (a) a county council or county borough council in Wales, or
- (b) the Welsh Ministers.

Tax credits.

Child benefit and guardian's allowance.

Social security.

[Independent Living Funds.

Motability.]

Intercountry adoption, apart from adoption agencies and their functions, and functions of “the Central Authority” under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

The Children's Commissioner (established under the [Children Act 2004 \(c 31\)](#)).

Family law and proceedings, apart from—

- (a) [welfare advice] to courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and
- (b) Welsh family proceedings officers.

16. Sport and recreation

Sport and recreational activities.

Exception—

Betting, gaming and lotteries.

16A. Taxation

Devolved taxes (as defined in section 116A(4)).

17. Tourism

Tourism.

18. Town and country planning

Town and country planning, including listed buildings and conservation areas. Caravan sites. Spatial planning. Mineral workings. Urban development. New towns. Protection of visual amenity.

Exception—

Development consent under the [Planning Act 2008](#)

19. Water and flood defence

Water supply, water resources management (including reservoirs), water quality and representation of consumers of water and sewerage services. Flood risk management and coastal protection.

Exceptions—

Appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales.

Licensing and regulation of any water supply licensee within the meaning of the [Water Industry Act 1991 \(c 56\)](#), apart from regulation in relation to licensed activities using the supply system of a water undertaker whose area is wholly or mainly in Wales.

20. Welsh language

Welsh language

Exception—

Use of the Welsh language in courts.

Chapter 3: Purpose and intended effect of the legislation

- 3.1 The Trade Union (Wales) Bill must be considered in the context of the legislative competence of the Assembly, which covers a wide range of key public service functions, set out in detail in Chapter 2. Many of these key services are provided through devolved Welsh authorities created by legislation. The delivery of high quality services by those Welsh authorities relies upon an engaged and committed workforce.
- 3.2 For many key services, recruiting, retaining, developing and empowering a stable committed and engaged workforce is essential to the effective delivery of services to the people of Wales and for meeting the challenges ahead. These workforce relationships are established and maintained within legislative frameworks for which the Assembly has legislative competence. Those legislative frameworks, including the powers conferred on Welsh Ministers extend to a wide range of matters; from core workforce matters such as pay and conditions of service and procedures for appointment, to arrangements aimed at ensuring the highest levels of engagement and quality of service, both within individual devolved Welsh authorities and between devolved Welsh authorities.
- 3.3 Strong stable and effective workforce relationships are a key element of these arrangements, and an important pillar of the Welsh Government's social partnership agenda. The short provisions of this Bill seek to support that social partnership agenda, through which the continuous improvement of key public services in Wales can be delivered.
- 3.4 The Trade Union Bill will dis-apply the following provisions of the Trade Union Act 2016 in relation to devolved Welsh public authorities:
- Section 3 (40% threshold) amends section 226 of Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) to provide that in the case of "important public services" 40% of union members entitled to vote must vote in support of industrial action. The Bill provides that "important public services" will not include health services, education of those under 17, fire services and transport services where these services are provided in Wales.
 - Section 13 (publication of facility time) which inserts section 172A in Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) gives Ministers of the Crown power, by regulations, to require public sector employers to publish information relating to facility time spent by relevant trade union officials. "Public sector employers" will not include devolved Welsh public authorities.

- Section 14 (reserve powers in relation to facility time) which inserts section 172B in Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) gives the Secretary of State power, by regulations, to impose requirements on public sector employers in relation to paid facility time. “Public sector employers” will not include devolved Welsh public authorities.
- Section 15 (check-off) inserts section 116B in Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) to restrict the deduction of union subscriptions from wages in the public sector. Section 15 will not apply to devolved Welsh public authorities.

3.5 The policy objectives of this Bill are based on the Welsh Government’s vision for public services is one which is rooted in the principles of social partnership.

3.6 In relation to public services, the Welsh Government is working, in partnership with statutory organisations and other partners to achieve continual improvement which will create better services for people in Wales and protect jobs of public service workers. The Welsh Government is doing this through social partnership with Welsh public authorities and between employers, employees and their representatives.

3.7 The Welsh Government’s approach to managing public sector staff and industrial relations in public services is characterised by social partnership. The commitment to social partnership is set out in *Working Together for Wales - A Strategic Framework for the Public Service Workforce in Wales* (2012), which states: “We believe that this kind of social partnership approach, which has a proven track record as shown by the economic summits, is equally valid for meeting the challenge of constrained budgets and the need to improve public services for the citizens we serve.”

3.8 This approach is distinctly different to the more adversarial approach to industrial relations taken in England and which is reflected in the Trade Union Act 2016.

3.9 The UK Trade Union Act restricts trade union activity and, in doing so, the Welsh Government believes that it undermines our model of social partnership and delivery of public services in Wales. The Welsh Government considers that when it comes into force the UK Act will be socially divisive; lead to more confrontational relationships between employers and workers and will undermine public service delivery and the economy in Wales rather than protect public services as asserted by the UK Government in the passage of the Trade Union Act.

3.10 This Bill thus reinforces and protects social partnership in Wales and its contribution to public service improvement. It does this by maintaining the

existing settled arrangement within the public sector which has, over time, supported positive employer/employee relationships, including recognising trade union rights to organise and to take industrial action in extremis.

3.11 The success of the model relies on a balance in the relationships between the social partners and particularly between trade unions and employers. Inhibiting industrial action by requiring a 40% threshold alters that balance and without it the social partnership model is not effective. If trade unions are unable to collaborate with employers on an equal footing this will have a detrimental effect on the way in which they work together with social partners to deliver public services.

3.12 Section 1(3) which dis-applies the provisions in the UK Trade Union Act on facility time will contribute to the preservation of social partnership because this is an integral element of partnership working in the workplace with established benefits that include:

- Savings to employer and exchequer as a result of reduced employment tribunals;
- Benefits as a result of reducing days lost to workplace injury;
- Benefits from reduced workplace illness;
- Reduced dismissals;
- Reduced early exits;
- Improved productivity resulting from improved people management policies developed through engagement between workplace representatives and managers.

3.13 Whilst it is challenging to quantify, there is strong evidence which was presented during the passage of the UK Trade Union Act through Parliament, setting out the substantial financial benefits associated with facility time.

3.14 Section 1(2) removes unnecessary restrictions on the circumstances in which public sector employers may make deductions of union subscriptions from their employees' wages.

Chapter 4: Consultation

- 4.1 The Welsh Government has engaged on the proposals through structures that facilitate social partnership in public service workforce issues and in discussion with social partners in Wales.
- 4.2 Consultation has taken place through the Workforce Partnership Council (WPC) – a forum for discussing public service workforce issues between the Welsh Government, public service organisations and trade unions in Wales. The UK Government’s Trade Union Act and the Welsh Government’s response has been a standing agenda item at each WPC since the Act was introduced into Parliament in July 2015. Discussions about the policy objectives of the Bill have been held and are supported by WPC members.
- 4.3 The Welsh Government opposed key aspects of the UK Government’s legislative proposals for the Trade Union Act 2016 and consistently asserted that areas pertaining to devolved public services were within the National Assembly for Wales’ legislative competence.
- 4.4 In line with the convention for the UK Government legislating in areas within the National Assembly’s legislative competence, the Welsh Government laid a Legislative Consent Motion (LCM) in the National Assembly, which was debated on 26 January 2016. Assembly Members voted overwhelmingly to withhold consent on the basis that the devolved public sector in Wales was within the competence of the National Assembly.
- 4.5 The First Minister for Wales’ statement about the Welsh Government’s legislative programme on 28 June 2016 confirmed that legislation would be brought forward at the earliest opportunity to reverse the effect of the provisions in the Trade Union Act 2016 which were within competence of the National Assembly for Wales.
- 4.6 A draft Bill has not been published prior to formal introduction for the following reasons:
 - (a) a commitment to reverse the effect of sections of the UK Government’s Trade Union Act was included in the Welsh Labour Assembly manifesto for the 2016 Assembly elections;
 - (b) the previous Assembly voted to withhold consent for the UK Government to legislate on the provisions as they were introduced;
 - (c) as set out above, key stakeholders have been involved in a dialogue with the Welsh Government about the policy development since the Act was introduced into Parliament; and
 - (d) social partners have emphasised pace in bringing forward the Bill to provide certainty and continuity in the extant legislation which will change when the UK Government commence the Act.

Chapter 5: Power to make subordinate legislation

5.1 The Bill will be commenced by regulations made by Welsh Ministers. It does not contain any other powers to make subordinate legislation. The regulations require no procedure because the provisions which are the subject of the power have already been subject to Assembly scrutiny during the legislative process.

Chapter 6: Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has been completed for the Bill and it follows below.

6.2 There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

6.3 The purpose and intended effect of the legislation is to ensure the continued and effective delivery of public services. .

6.4 The proposed legislation will have an effect on devolved Welsh public authorities and on trade unions operating within these public authorities. It will have no effect on the private sector, charities or the third sector.

6.5 The UK Government published Regulatory Impact Assessments for provisions within the Trade Union Bill, now the Trade Union Act 2016. These are available at:

- Trade Union Bill Impact Assessment
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/493636/BIS-16-70-trade-union-bill-impact-assessment.pdf
- Ballot Thresholds in Important Public Services
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445514/BIS-15-418-IA-40_threshold.pdf
- Impact assessment on reporting trade union facility time in the public sector
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/493638/BIS-16-71-trade-union-bill-impact-assessment-reporting-of-facility-time-in-the-public-sector.pdf
- Impact Assessment on the prohibition on deduction of union subscriptions from wages in the public sector
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/494133/BIS-16-83-trade-union-bill-impact-assessment-prohibition-on-deduction-of-union-subscriptions-from-wages-in-public-sector.pdf

6.6 As little data relating to the content of the legislation is available at the Wales level, this RIA will draw on content, assumptions and estimates in

the UK Government's documents and detail how costs and benefits may be apportioned to Wales.

PART 2 – REGULATORY IMPACT ASSESSMENT

SUMMARY – REGULATORY IMPACT ASSESSMENT (RIA)

Trade Union (Wales) Bill		
Preferred option: Option 1 (pages 24-28)		
Stage: Introduction	Appraisal period: 2017-18 - 2022-23	Price base year: 2016-17
Total Cost Total: £486,000 Present value: £442,700	Total Benefits Total: £858,000 Present value: £775,200	Net Present Value (NPV): £332,500

Administrative cost

Costs:

There are expected transition costs to public sector employers of £61,000 for familiarisation and legal fees. The definition of 'public sector employer' as set out Act means that the relevant public sector employers would include, but not be limited to, those public bodies outlined in the table after paragraph 8.22.

Transitional: £61,000	Recurrent: £0	Total: £61,000	PV: £58,900
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Cost-savings: Based on the UK Government's impact assessment of the recurrent costs associated with annual reporting of facility time there would be cost-savings estimated to total £171,700 per annum from not having provisions associated with facility time reporting. These cost-savings are reported as 'benefits' above.

Transitional: £0	Recurrent: £858,000	Total: £858,000	PV: £775,200
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Net administrative cost-saving: £797,500

Compliance costs

There are no anticipated compliance costs.

Transitional: £0	Recurrent: £0	Total: £0	PV: £
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Other costs

On the basis of the UK Government's impact assessment there would be a cost to the Welsh public sector in Wales associated with not having the 40% ballot threshold provision of less than £85,000 per annum (£425,000 over the appraisal period). This reflects the estimated net impact of an increase in working days lost to industrial action.

Relationships between public sector employers and trade unions are, arguably, fundamentally different across Welsh public authorities compared to those in England. There is considered to be a net benefit associated with social partnership and therefore, a net cost as an outcome of imposing ballot thresholds.

Transitional: £0	Recurrent: £425,000	Total: £425,000	PV: £383,800
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Unquantified costs and disbenefits

Monetised costs of removing conditions on check-off facilities are not included. These costs are not known, however they are considered to be marginal to other human resource administrations and public authorities are not obliged to provide the service should they consider the costs to be onerous.

Benefits

The benefits of social partnership are qualitative and benefits to public service delivery are not easily quantified. As the UK Government has yet to specify the public authorities the 40% ballot threshold will apply to there is a further complication in providing a comprehensive quantitative analysis. The maximum base line figure suggested by the UK analysis is an £85,000 benefit from reduced working days lost due to strike action in important public services as set out in the Act.

Total: £

PV: £

Key evidence, assumptions and uncertainties

- 6.7 The key evidence, assumptions and uncertainties are outlined under the costs and benefits section below. There is some complexity as the provisions the Bill seeks to reverse the effect of have themselves yet to be commenced.
- 6.8 The summary costs are considered from the position that the Act has been commenced, based on a presumption that as the provisions have received Royal Assent, the UK Government will commence the provisions in the coming months.

Chapter 7: Options

7.1 This Regulatory Impact Assessment presents two options. Each of the options is analysed in terms of the associated costs and benefits. The options are:

- Option one – Do nothing
- Option two – The proposed legislative reforms put forward in this Bill

Option one – Do nothing

7.2 Option one is the no change option. This option allows for the provisions in the Trade Union Act 2016 to apply fully in Wales. The key disadvantage of this option is the risk to the current social partnership model for the delivery of public services in Wales.

Option two – The proposed legislative reforms put forward in this Bill

7.3 This is the preferred option and covers the three measures set out below, which are each included in the legislation. These cover all the elements identified in the policy options sections. The three parts are:

- Option 2a: Ballot thresholds
- Option 2b: Facility time
- Option 2c: Payment of trade union subscriptions

Chapter 8: Costs and benefits

Option one – Do nothing

8.1 This allows for the provisions in the Trade Union Act 2016 to apply fully in Wales. The UK Government has estimated the costs and benefits of the changes related to the commencement of the Trade Union Act 2016 at a UK level.

8.2 The UK Government's approach is considered in the context of assessing the costs and benefits of option two. Detail of how the costs and benefits were estimated is available in the UK Government's documentation can be found in the relevant Regulatory Impact Assessment's published here:

- Trade Union Bill Impact Assessment
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/493636/BIS-16-70-trade-union-bill-impact-assessment.pdf
- Ballot Thresholds in Important Public Services
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445514/BIS-15-418-IA-40_threshold.pdf
- Impact assessment on reporting trade union facility time in the public sector
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/493638/BIS-16-71-trade-union-bill-impact-assessment-reporting-of-facility-time-in-the-public-sector.pdf
- Impact Assessment on the prohibition on deduction of union subscriptions from wages in the public sector
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/494133/BIS-16-83-trade-union-bill-impact-assessment-prohibition-on-deduction-of-union-subscriptions-from-wages-in-public-sector.pdf

8.3 As the Trade Union Act 2016 would have to be commenced before an Assembly Bill disapplying its provisions could apply, the approach taken to costs and benefits is as though the provisions of the Act apply. In reality, the costs associated with implementation of the Act have yet to accrue. In assessing the costs and benefits some estimates, based on the UK Government's analysis, are therefore included of the baseline costs and benefits to public services in Wales.

8.4 On the premise that the Act applies, there are therefore no additional costs or benefits associated with the do nothing option.

8.5 As an illustration of the costs and benefits of the difference between current arrangements and the Act being commenced, the analysis undertaken in determining the costs/benefits of option two identifies that:

- There is a potential benefit of £85,000 per annum from implementing the 40% ballot threshold for important public services;

- There would be a transitional cost to public bodies in Wales due to the need to familiarise themselves with the changes brought about by the UK Act;
- There would be an annual cost totalling £171,000 incurred by public bodies due to the need to report on facility time.

8.6 The qualitative consequences of the do nothing option are summarised as the impact on the Welsh Government's approach to public service delivery in Wales.

8.7 The Welsh Government's approach to industrial relations in public services is characterised by social partnership. The commitment to Social Partnership is set out in *Working Together for Wales - A Strategic Framework for the Public Service Workforce in Wales* (2012). This has resulted in the avoidance of strike action in Wales, including:

- Firefighters dispute – in 2014, through constructive discussions in Wales it became clear some of the FBU's concerns about the new pension scheme were well-founded and they could be addressed. A minor rebalancing of the pension scheme benefits provided better terms for those who wanted to retire from 55 onwards. The Minister told the FBU he was happy to consult on this proposal in October 2014 and the FBU called off strike action in response. The Scottish Government made an identical offer to firefighters shortly after. Strike action continued in England, including over the high-risk Halloween and Bonfire Night period.
- Junior doctors – In September 2015, the Secretary of State for Health confirmed that in the absence of a negotiated position, a new doctors-in-training contract would be imposed in England from August 2016. The BMA balloted junior doctors in England about industrial action. However, BMA Wales confirmed a ballot for industrial action would not be taken in Wales, following confirmation from Welsh Government that a new contract would not be imposed. The Welsh Government maintains an open dialogue with BMA Wales.
- Agenda for Change NHS staff – Following a period of constructive negotiation in Wales, NHS employers and trade unions prepared a joint paper setting out a number of pay options for consideration by the Welsh Government. This inclusive approach ultimately led to the acceptance and successful application of a two-year pay deal in Wales, avoiding the risk of industrial action. In England, the imposition of a non-consolidated pay award led to industrial action and work to rule, as staff representatives and trade unions were not initially invited to negotiate on behalf of their members.
- Education – There is a long-running dispute between NASUWT/NUT and the UK and Welsh Government. In Wales constructive discussions were held to avoid rolling strike action due

to take place in 2013. As a result of those discussions and the development of agreed guidance about teacher observation, it was announced this would not take place in Wales. The action continued in England.

8.8 Social partnership offers a sustainable approach to maintaining a constructive and open relationship, in which partners can contribute and have ownership of challenges and issues and in which all are able to work together to develop citizen-centred outcomes.

8.9 This approach depends on sustaining a balance in the relationship between trade unions and employers. There are also several counter-arguments to the UK Government's predicted outcomes. For example:

- Should the provision curtail levels of industrial action, there may be a consequential impact on trade unions' effectiveness in negotiating pay. Low pay may detrimentally impact individuals and local economic activity;
- There may be consequences in productivity by limiting the ability of trade unions to strike and affect workplace change in the longer term (for example, on terms and conditions);
- Trade unions advocate safer working environments; address employment issues and represent members' concerns with employers. There are costs to inhibiting these activities - for example, a greater risk of litigation – in addition to potential harms.

8.10 When the Welsh Government's different approach to workforce issues in public services is taken into account and contrasted with the approach taken by the UK Government, there are not considered to be any benefits associated with option one.

8.11 Should option one be pursued, the costs and benefits established under option two would not be incurred. As this Bill responds to UK Government legislation there are no alternative ways of achieving the policy objective. The Welsh Government had formerly written to the UK Government requesting that the then Trade Union Bill be amended to reflect the Welsh Government's policy objectives following the debate on a related Legislative Consent Motion in which the Assembly withheld its consent for the UK Government to legislate.

Option two – Proposals for legislation

8.12 The legislative proposals outlined here will enable public service employers, trade unions and the Welsh Government to continue to develop an approach to public services based on the principles of social partnership.

8.13 They preserve the existing balance between employers and trade unions in the workplace and allow the flexibility for agreement on matters the

UK Trade Union Act 2016 either seeks to restrict or provide powers to UK Government Ministers to restrict.

- 8.14 There will be cost savings where the recurrent costs associated with compliance under the Trade Union Act does not apply.

40% support threshold in ‘important’ public services

8.15 The impact assessment for the Trade Union Act does not include a detailed review of the costs and benefits associated with implementing a 40% threshold in ‘important’ public services. It instead states that secondary legislation will set out which roles and functions within the important public services the 40% threshold will apply to. Without the additional information about roles and functions the provision will apply to it is only possible to make a broad assessment of the probable benefits and costs based on the UK Government’s initial calculations and then outline how the social partnership model affects this cost/benefit.

8.16 The UK Government’s initial calculations, based on all occupations and using the same dataset as for the 50% threshold, indicate that the 40% threshold would lead to an additional eight percentage points reduction in working days lost to industrial action, over and above the reduction brought about by the introduction of the general 50% ballot threshold.

8.17 The UK Government claims that the size of benefit from introducing a 40% threshold (in addition to the 50% turnout threshold) would be in the region of 1/5th (£1.7m) of the benefit from the 50% threshold in important public services.

8.18 Apportioning the benefit identified in the UK Government’s impact assessment to Wales on a population basis, the estimated benefit of applying the 40% threshold to Wales would be £85,000, (5%) of the total UK benefit. This benefit is further mitigated when Border Security and transport, included in the UK Government’s assessment, are omitted because they are not devolved, in so far as they apply in Wales.

8.19 On the basis of the UK Government’s impact assessment there would be a cost to the Welsh public sector associated with not applying the 40% ballot threshold provision of less than £85,000 per annum, which reflects the estimated net impact of an increase in working days lost to industrial action.

8.20 Relationships between public sector employers and trade unions are fundamentally different across public services in Wales, as evidenced under option one. In Welsh public services there is considered to be a net benefit associated with social partnership and therefore, a net cost as an outcome of imposing ballot thresholds. A narrative outlining how the Welsh Government’s social partnership approach has avoided strike action is included above.

Facility time and check-off

8.21 There will be a transitional cost to public bodies in Wales due to the need to familiarise themselves with the changes brought about by the Welsh legislation. The UK Government's approach to assessing the familiarisation costs associated with provisions relating to facility time was to apply a cost to selected public authorities including schools, NHS trusts, fire services, constabularies (police staff), and local authorities. The table below sets out the numbers of bodies in each category in Wales based on the UK Government's approach.

8.22 This is based on a targeted web-based search of data sources that contain information about the number of public bodies that would be affected. We believe the final figure is representative of the number of organisations which will be covered by this familiarisation cost but the figure may be slightly higher.

Public bodies in Wales which may be affected by facility time provisions

Public body	Number	Notes
Local authorities	22	
Maintained primary and secondary schools	1,522	http://gov.wales/docs/statistics/2016/160727-school-census-results-2016-en.pdf
NHS	10	Health boards and NHS trusts (Public Health Wales, Velindre NHS Trust and Welsh Ambulance Services NHS Trust)
Fire services	3	Mid and West-Wales, North and South,
Police services	4	North Wales, South Wales, Dyfed-Powys and Gwent
Total	1,561	

8.23 For the purposes of this impact assessment, we have assumed the staff involved in familiarising themselves with the proposed regulations will be public sector administrative officials.

8.24 The provisional ASHE data for 2016 shows the median gross hourly earnings in Wales in 2016 for administrative occupations: government and related organisations is £10.94. Eurostat data for 2015 shows UK non-wage costs were approximately 20%, giving a total hourly cost of £13.12.

8.25 Assuming the familiarisation activities take approximately three hours of an official's time, the total familiarisation cost per public sector organisation will be around £39.36 (£13.12 x three hours). Based on the number of public bodies identified above, the total one-off familiarisation cost to the public sector is estimated at £61,000. This one-off cost will be incurred in 2017-18. The table listed after paragraph 8.22 lists the same

groups of public bodies as the UK Government's Regulatory Impact Assessment has in assessing costs. The definition of public sector employer in the Act would include, but not be limited to, these public authorities.

- 8.26 The impact assessment for the Trade Union Act assumed eight hours would be required for familiarisation. This has been reduced to three hours for familiarisation for this legislation in this RIA on the basis that there is less familiarisation required where provisions are being disapplied (including check-off arrangements) and this restores long-standing commonly-understood arrangements. (N.B. Police services are not devolved and therefore this RIA reflects this difference in the estimation of familiarisation costs)

Reporting costs

- 8.27 The introduction of the Trade Union Act will also result in reporting costs to all public sector bodies, which will now be required to regularly report on spend on trade union facility time.

- 8.28 The UK Government's RIA summarises the method of assessment of costs as:

"Existing legislation already requires public sector bodies to include pay reporting in their annual accounts. For each public sector body, this change in regulation is therefore an extension on current annual reporting rules. The activities associated with reporting are likely to involve an administrative officer collating facility time data and producing and publishing a report, including total spend on facility time as well as associated statistics. It is expected that in smaller public bodies (especially primary and secondary schools) with fewer staff per body such reporting will be very straightforward and will often involve 'nil returns' (no facility time spend). In larger bodies, on the other hand, this exercise will be more burdensome".

- 8.29 The same method has been applied to assessing the cost to public authorities in Wales. It has been assumed the staff involved in reporting activities will be administrative officials, at an hourly cost to public sector bodies of £13.12, including wage and non-wage costs. The number of public bodies affected is identified in the table above.

- 8.30 The total annual reporting cost per smaller public sector body (schools) is therefore estimated at £104.96 (£13.12 x eight hours); for a larger public body at £314.18 (£13.12 x 24 hours). The total annual cost to the public sector is estimated at £171,700 (£104.96 x 1,522 schools + £314.16 x 38 other bodies).

- 8.31 Disapplying this element of the UK legislation would remove this annual cost to the public sector in Wales and amount to an estimated annual saving of £171,700. There is no cost associated with this saving.

- 8.32 The UK Government's RIA for facility time reporting cites that evidence from civil service reform shows the amount of paid time spent on trade union facility time has fallen since the reporting on time spent on facility time was introduced on a non-statutory basis.
- 8.33 Because of uncertainties in making an exact estimate, the assessment does not claim a monetised benefit in the final totals for the impact assessment in extending reporting across all public authorities. The assessment refers to uncertainties about the current level of facility time in the public sector and the response to introducing reporting requirements.
- 8.34 The UK Government's assessment concedes it is not possible to prove how much of the fall is directly attributable to the increased transparency resulting from reporting time spent on facility time. However, it asserts the increase in transparency is likely to be a key factor accounting for at least some of the reduction and the benefits are potentially large. Should there be such a perceived benefit then, in disapplying the provisions to Wales' public authorities, such benefits would not be realised.
- 8.35 It is not clear how benefits directly associated with reporting would, in and of themselves, reduce time spent on facility time without some further action or cultural change as an outcome of reporting. This cost/impact is therefore unknown.

Check-off

- 8.37 The UK Government's impact assessment was based on the abolition of check-off in the public sector. The final provisions allow check-off where conditions are met.
- 8.38 The UK Government's impact assessment outlines that 22% of public sector employers are currently reimbursed for the provision of a check off service. These modest payments (a median of 2.5% of the subscriptions collected) represent the administrative burden carried by publicly-funded employers.
- 8.39 The cost of removing restrictions on check-off provisions are difficult to calculate because the decisions both to provide this facility and to seek reimbursement will be a matter for agreement between public sector employers and employees. In disapplying the provisions employers are not under a duty to provide check-off facilities, nor are they precluded from seeking reimbursement for costs where they do. The impact and cost of removing restrictions on check-off provisions is therefore unknown.
- 8.40 Discussions with public sector employers suggest that in reality the administrative costs are minimal and undertaken alongside other aspects of human resource activity.

	Financial Year				
Costs	2017-18	2018-19	2019-20	2020-21	2021-22

40% Threshold	£85,000	£85,000	£85,000	£85,000	£85,000
Familiarisation	£61,000				
Cost savings					
Reporting	£171,700	£171,700	£171,700	£171,700	£171,700
Total saving	£25,700	£86,700	£86,700	£86,700	£86,700

Chapter 9: Specific Impact Assessments

9.1 A series of impact assessments on the draft Bill were completed as part of this RIA. These included:

- Equalities Impact Assessment
- Rights of the Child Impact Assessment
- Welsh Language Impact Assessment
- Justice Assessment
- Health Impact Assessment
- Privacy Impact Assessment
- Rural Proofing Assessment
- Other Impacts

Key points identified in impact assessments undertaken

9.2 Having conducted a range of impact assessments or screening processes no major issues were identified concerning the following, summarised below.

Equality Impact Assessment

9.3 A full impact assessment was conducted and no negative impacts have been identified in relation to equalities issues.

9.4 There are a number of positive impacts if the proposed legislation is enacted. Through legislation we are seeking to reinforce social partnership in Wales and its contribution to public service improvement by maintaining a settled arrangement within the public sector which has, over time, supported positive employer/employee relationships by recognising trade union rights to organise and to take industrial action.

9.5 The Welsh Government believes the Trade Union Act 2016 will significantly undermine this approach and so success will be measured by specifically disapplying those sections of the Act to Wales.

Rights of the Child Impact Assessment

9.6 The rights of the child were considered through the Welsh Government screening process, which measures the impact on children, young people and their rights. This revealed that the proposed legislation will have no direct impact; therefore a full impact assessment has not been undertaken.

Welsh Language Impact Assessment

9.7 The proposed legislation would maintain the status quo in relation to Welsh public services. This would result in none/negligible impact/effect from the current situation. At this stage therefore, no negative impacts

have been identified in relation to the Welsh Language Standards. The Welsh Language Impact Assessment has been published with the Bill documentation.

The Justice Assessment

9.8 First stage or screening tools for the other impact assessments have been completed, which confirm there is no evidence to suggest the Trade Union (Wales) Bill will have more than a negligible effect in relation to the other impact assessments.

Health Impact Assessment

9.9 Health impact has been considered. It has been agreed there would be none/negligible impact on health issues and an impact assessment did not have to be completed.

Privacy Impact Assessment

9.10 The proposed legislation will not require the processing of any personal data. Following completion of the screening tool a formal impact assessment is not required.

Rural Proofing Assessment

9.11 The implications of the proposed Trade Union (Wales) Bill have been considered through the Welsh Government screening process and found to have no direct impact on the specific needs of rural communities and individuals.

Other impacts

9.12 Economic impact has been considered. It has been agreed there would be no or negligible economic impact beyond those incorporated into the RIA.

Chapter 10 Competition Assessment

- 10.1 The competition filter is required to be completed if the legislation affects businesses, charities and/or the voluntary/third sector.
- 10.2 The legislation is not expected to have any impact on competition or place any restrictions on new or existing suppliers. The majority of the costs associated with the legislation are expected to fall to trade unions and public services in Wales.
- 10.3 The legislation is not expected to have any impact on small and medium-sized enterprises (SMEs) in Wales as it only applies to devolved public services in Wales. In view of the answers below, the second stage of the competition assessment is not required.

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Annex 1

TRADE UNION (WALES) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Trade Union (Wales) Bill introduced on 16 January 2017. They have been prepared by the Education and Public Services Group of the Welsh Government in order to assist the reader of the Bill.
2. The Explanatory Notes should be read in conjunction with the Bill but are not part of it. They are not meant to be a comprehensive description of the Bill. Where a section of the Bill is self-explanatory and does not seem to require any further explanation or comment, none is given.
3. The National Assembly for Wales has the power to pass this Bill by virtue of the provisions contained in Schedule 7 to the Government of Wales Act 2006.

OVERVIEW OF THE BILL

4. The Trade Union Act 2016 (c.15) inserts provisions in the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52). This Bill 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.

POLICY BACKGROUND

5. During the passage through the United Kingdom Parliament of the Bill that became the Trade Union Act 2016 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 that the Assembly withheld consent for related to an overall support threshold for 'important public services', facility time and check-off arrangements.
6. The Trade Union (Wales) Bill disapplies sections 3, 13, 14 and 15 of the Trade Union Act 2016 as they apply to public services in Wales. The purpose is to remove provisions that will undermine the Welsh Government's 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 public bodies, 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 prove socially divisive, 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.

LEGAL BACKGROUND

8. The current 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.
9. That legislation is now consolidated in the 1992 Act which defines trade unions, sets out the framework (including legal rights and duties) under which they may operate including the circumstances in which industrial action may be undertaken.
10. The Trade Union Act 2016 makes 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 Bill is intended to disapply 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

11. **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 Welsh public authorities.
12. 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

13. **Section 1(3)** provides that sections 172A and 172B of the Trade Union and Labour Relations (Consolidation) Act 1992 (as inserted by sections 13 and 14 of the Trade Union Act 2016) do not apply to Welsh public authorities.
14. 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 insert sections 172A and 172B which confer powers on a Minister of the Crown to make regulations about facility time.
15. Regulations made under section 172A may require public sector employers to publish information about 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

16. 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 Trade Union and Labour Relations (Consolidation) Act 1992 may not include services provided by devolved Welsh public authorities.
17. 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.
18. The Trade Union Act 2016 amends section 226 to include further requirements that must be met before the statutory immunity in section 219 applies. Section 226(2)(iia) (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) now 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.

19. 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.
20. 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.
21. When it comes into force section 226(2)(iia) will apply in relation to Wales but section 1(2) of the Bill provides that subsections 226(2B) to (2F) do not apply to devolved Welsh authorities.

Definition of devolved Welsh authorities

22. **Section 1(5)** defines the Welsh public authorities to which the Bill applies by reference to the definition of “a devolved Welsh authority” in section 157A of the Government of Wales Act 2006 (to be inserted by section 4 of the Wales Bill). In that section a “devolved Welsh authority” means a public authority specified in Schedule 9A to the Act 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.
23. It is anticipated that, subject to obtaining the consent of the National Assembly, the Wales Bill will receive Royal Assent in April 2017. It is a convention in the UK Parliament that Bills that have received a second reading in the second House may be referred to in other draft legislation.

Annex 2

Index of Standing Order requirements

Table 1

Standing order	Section	pages/ paragraphs
26.6(i)	Statement that the provisions of the Bill would be within the legislative competence of the Assembly	Member's declaration Page 2
26.6(ii)	Set out the policy objectives of the Bill	Chapter 3 - Purpose and intended effect of the legislation Pages 14-16 Paras 3.1-3.14
26.6(iii)	Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted	Part 2 – impact assessment Page 25 Para 8.11
26.6(iv)	Set out the consultation, if any, which was undertaken on: (a) the policy objectives of the Bill and the ways of meeting them; (b) the detail of the Bill, and (c) a draft Bill, either in full or in part (and if in part, which parts)	Chapter 4 – Consultation Page 17 paras 4.1 – 4.5

Standing order	Section	pages/ paragraphs
26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended	Chapter 4 – Consultation Page 17 paras 4.1 – 4.5
26.6(vi)	If the Bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision	Stakeholders have been extensively engaged on the scope and proposals of the Bill through the Workforce Partnership Council. The effect of the Bill is limited to repealing provisions in the Trade Union Act 2016 and stakeholders are familiar with those provisions. Stakeholders have emphasised pace in delivering the Bill to ensure certainty in the continued application of extant arrangements. Page 17 para 4.2
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill	Annex 1 – Explanatory Notes Pages 35 -37
26.6(viii)	Set out the best estimates of: (a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise; (b) the administrative savings arising from the	Part 2 – impact assessment (a) page 19-20

Standing order	Section	pages/ paragraphs	
	<p>Bill;</p> <p>(c) net administrative costs of the Bill's provisions;</p> <p>(d) the timescales over which such costs and savings would be expected to arise; and</p> <p>(e) on whom the costs would fall</p>	<p>(b) page 19</p> <p>(c) page 19</p> <p>(d) page 19</p> <p>(e) page 27 para 8.25</p>	
26.6(ix)	Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially	Part 2 – impact assessment	Page 25 -26 paras 8.1 – 8.14
26.6(x)	<p>Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision:</p> <p>(a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;</p> <p>(b) why it is considered appropriate to delegate the power; and</p> <p>(c) the Assembly procedure (if any) to which the</p>	Chapter 5 - Power to make subordinate legislation	Page 18

Standing order	Section	pages/ paragraphs
	subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure);	
26.6(xi)	Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate	The requirement of Standing Order 26.6(xi) does not apply to this Bill
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	The Bill is not derived from existing legislation.
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill.	The requirement of Standing Order 26.6C does not apply to this Bill. To aid the reader Annex 3 sets out a table which explains the effect of provisions in the Bill on primary legislation and Annex 4 shows the 1992 Act as amended by the 2016 Act, with the amendments made by the Bill (as introduced).
		Annex 3,4

Annex 3

Table of Amendments

The table below is intended to provide information on how the Trade Union (Wales) Bill amends provisions in existing law.

KEY TO ABBREVIATIONS

Trade Union and Labour Relations (Consolidation) Act 1992 (as amended by the Trade Union Act 2016)	TULR(C)A
Trade Union Act 2016	UK TU Act

SECTION/ PARAGRAPH	CORRESPONDING REFERENCE IN EXISTING LEGISLATION	SUBSTANTIVE CHANGE
Section 1(2)	Section 116B (3) of TULR(C)A	Section 116B as inserted by section 15 of the UK TU Act does not apply to devolved Welsh authorities
Section 1 (3)	Section 172A (2) of TULR(C)A	“Relevant public sector employer” in section 172A(2) as inserted by section 13 of the UK TU Act does not include devolved Welsh authorities
Section 1(3)	Section 172B TULR(C)A	“Relevant public sector employer” in section 172B(a) as inserted by section 14 of the UK TU Act is as defined in section 172A(2) and does not include devolved Welsh authorities
Section 1(4)	Section 226 of TULR(C)A	“Important public services” in section 226(E) as inserted by section 3 of the UK TU Act do not include services provided by a devolved Welsh authority
Section 1(5)	Section 297A of TULR(C)A	Definition of “devolved Welsh authority”

Section 1(6)	Section 299 TULR(C)A	Inserts definition in section 297A in the index
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Annex 4

Schedule of amendments

Trade Union and Labour Relations (Consolidation) Act 1992 (as amended by the Trade Union Act 2016)

AMENDMENTS TO BE MADE BY THE TRADE UNION (WALES) BILL

The Trade Union and Labour Relations (Consolidation) Act 1992 is amended by the Trade Union Act 2016. This Bill makes further amendments to disapply provisions in the 2016 Act to devolved Welsh authorities. This document is intended to show the 1992 Act as amended by the 2016 Act with the amendments by the Trade Union (Wales) Bill (if enacted as introduced on 16 January 2017).

Material to be deleted by the Trade Union (Wales) Bill is in strikethrough, e.g. ~~omitted material looks like this~~. Material to be added by the Trade Union (Wales) Bill is underlined, e.g. added material looks like this. References to the relevant amending provisions of the Bill are provided in the right hand column on each page.

A number of related provisions from the Act, although not being amended, are included to aid understanding of the proposed amendments.

Warning

This text has been prepared by officials the Education and Public Services Group of the Welsh Government. Although efforts have been taken to ensure that it is accurate, it should not be relied on as a definitive text of the Act or the Bill.

It has been produced solely to help people understand the effect of the Trade Union (Wales) Bill. It is not intended for use in any other context.

Trade Union and Labour Relations (Consolidation) Act 1992, as amended by the Trade Union Act 2016	Amending section of the Trade Union (Wales) Bill
<p>116B Restriction on deduction of union subscriptions from wages in public sector (inserted by section 15 of the Trade Union Act 2016)</p> <p>(1) A relevant public sector employer may make deductions from its workers' wages in respect of trade union subscriptions only if—</p> <ul style="list-style-type: none"> (a) those workers have the option to pay their trade union subscriptions by other means, and (b) arrangements have been made for the union to make reasonable payments to the employer in respect of the making of the deductions. <p>(2) Payments are “reasonable” for the purposes of subsection (1) if the employer is satisfied that the total amount of the payments is substantially equivalent to the total cost to public funds of making the deductions.</p> <p>(3) An employer is a relevant public sector employer if the employer is a public authority specified, or of a description specified, in regulations made by a Minister of the Crown.</p> <p>(3A) But regulations under subsection (3) may not specify –</p> <ul style="list-style-type: none"> (a) a devolved Welsh authority, or (b) a description of public authority that applies to a devolved Welsh authority. <p>(4) A Minister of the Crown may by regulations provide, in relation to a body or other person that is not a public authority but has functions of a public nature and is funded wholly or mainly from public funds, that the body or other person is to be treated as a public authority for the purposes of this section.</p> <p>(5) Regulations under this section may make provision specifying the person or other entity that is to be treated for the purposes of this section as</p>	Section 1(2)

<p>the employer of a person who is employed by the Crown.</p> <p>(6) The regulations may—</p> <ul style="list-style-type: none">(a) deem a category of persons holding an office or employment under the Crown (or two or more such categories taken together) to be an entity for the purposes of provision made under subsection (5);(b) make different provision under subsection (5) for different categories of persons holding an office or employment under the Crown. <p>(7) Regulations under this section may—</p> <ul style="list-style-type: none">(a) make different provision for different purposes;(b) make transitional provision in connection with the coming into force of any provision of the regulations;(c) make consequential provision amending or otherwise modifying contracts of employment or collective agreements. <p>(8) Regulations under this section are to be made by statutory instrument.</p> <p>(9) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.</p> <p>(10) In this section—</p> <p>“trade union subscriptions” means payments to a trade union in respect of a worker's membership of the union;</p> <p>“wages” has the same meaning as in Part 2 of the Employment Rights Act 1996 (see section 27);</p> <p>“worker” has the same meaning as in that Act.</p>	
172A Publication requirements in relation to facility time	

(inserted by section 13 Trade Union Act 2016)	
<p>(1) A Minister of the Crown may by regulations made by statutory instrument require relevant public sector employers to publish any information within subsection (3).</p> <p>(2) An employer is a relevant public sector employer if the employer—</p> <ul style="list-style-type: none">(a) is a public authority specified, or of a description specified, in the regulations, and(b) has at least one employee who is a relevant union official. <p>(2A) But regulations under subsection (1) may not specify –</p> <ul style="list-style-type: none">(a) a devolved Welsh authority, or(b) a description of public authority that applies to a devolved Welsh authority. <p>(3) The information that is within this subsection is information relating to facility time for relevant union officials including, in particular—</p> <ul style="list-style-type: none">(a) how many of an employer's employees are relevant union officials, or relevant union officials within specified categories;(b) the total amount spent by an employer in a specified period on paying relevant union officials for facility time, or for specified categories of facility time(c) the percentage of an employer's total pay bill for a specified period spent on paying relevant union officials for facility time, or for specified categories of facility time;(d) the percentage of the aggregate amount of facility time taken by an employer's relevant union officials in a specified period that was attributable to specified categories of duties or activities(e) information relating to facilities provided by an employer for use by relevant union officials in connection with facility time. <p>(4) In subsection (3) “specified” means specified in</p>	Section 1(3)

<p>the regulations.</p> <p>(5) The regulations may make provision—</p> <ul style="list-style-type: none">(a) as to the times or intervals at which the information is to be published;(b) as to the form in which the information is to be published. <p>(6) The regulations may make different provision for different employers or different categories of employer.</p> <p>(7) In this section a “relevant union official” means—</p> <ul style="list-style-type: none">(a) a trade union official;(b) a learning representative of a trade union, within the meaning given by section 168A(11);(c) a safety representative appointed under regulations made under <u>section 2(4)</u> of the Health and Safety at Work etc Act 1974. <p>(8) In this section “facility time” means time off taken by a relevant union official that is permitted by the official's employer under—</p> <ul style="list-style-type: none">(a) section 168, section 168A or section 170(1)(b);(b) <u>section 10(6)</u> of the Employment Relations Act 1999;(c) regulations made under <u>section 2(4)</u> of the Health and Safety at Work etc Act 1974. <p>(9) The regulations may provide, in relation to a body or other person that is not a public authority but has functions of a public nature and is funded wholly or mainly from public funds, that the body or other person is to be treated as a public authority for the purposes of subsection (2).</p> <p>(10) The regulations may make provision specifying the person or other entity that is to be treated for the purposes of this section as the employer of a relevant union official who is employed by the</p>	
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Crown. (11) The regulations may— (a) deem a category of persons holding an office or employment under the Crown (or two or more such categories taken together) to be an entity for the purposes of provision made under subsection (10); (b) make different provision under subsection (10) for different categories of persons holding an office or employment under the Crown. (12) No regulations containing provision made by virtue of subsection (9) shall be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House. (13) Regulations under this section to which subsection (12) does not apply shall be subject to annulment in pursuance of a resolution of either House of Parliament.	
172B Reserve powers in relation to facility time (inserted by section 14 of the Trade Union Act 2016) (1) After the end of the period of three years beginning with the day on which the first regulations under section 172A come into force, a Minister of the Crown may exercise the reserve powers (see subsection (3)) if the Minister considers it appropriate to do so having regard to— (a) information published by employers in accordance with publication requirements; (b) the cost to public funds of facility time in relation to each of those employers (c) the nature of the various undertakings carried on by those employers; (d) any particular features of those undertakings that are relevant to the reasonableness of the amount of facility time;	Effect of section 172B altered by the amendment to section 172A

	<p>(e) any other matters that the Minister thinks relevant.</p>
(2)	<p>The reserve powers may not be exercised so as to apply to any particular employer unless—</p> <p>(a) a Minister of the Crown has given notice in writing to the employer—</p> <p>(i) setting out the Minister's concerns about the amount of facility time in the employer's case, and</p> <p>(ii) informing the employer that the Minister is considering exercising the reserve powers in relation to that employer;</p> <p>(b) the employer has had a reasonable opportunity to respond to the notice under paragraph (a) and to take any action that may be appropriate in view of the concerns set out in it; and the powers may not be exercised until after the end of the period of 12 months beginning with the day on which the notice under paragraph (a) was given.</p>
(3)	<p>The reserve powers are powers to make regulations—</p> <p>(a) applying to relevant public sector employers on whom the publication requirements were imposed, and</p> <p>(b) containing any provision that the Minister considers appropriate for the purpose of ensuring that, in each period specified by the regulations, the percentage of an employer's total pay bill spent on paying relevant union officials for facility time does not exceed a percentage that is so specified.</p>
(4)	<p>The regulations may, in particular, make provision restricting rights of relevant union officials to facility time by amending or otherwise modifying any of the following—</p>

<ul style="list-style-type: none">(a) section 168 or 168A;(b) section 10 of the Employment Relations Act 1999;(c) regulations made under section 2(4) of the Health and Safety at Work etc Act 1974. <p>(5) The regulations may make provision as to the calculation of working time, of paid facility time, or of an employer's total pay bill.</p> <p>(6) The regulations may impose requirements on employers in relation to whom the reserve powers are exercised to publish any further information that the Minister considers appropriate.</p> <p>(7) Where requirements are imposed under subsection (6) the regulations may make provision—</p> <ul style="list-style-type: none">(a) as to the times or intervals at which the further information is to be published;(b) as to the form in which the further information is to be published. <p>(8) The regulations may provide that some or all of their provisions do not apply—</p> <ul style="list-style-type: none">(a) in cases specified by the regulations, or(b) if a person specified in the regulations is satisfied that conditions that are so specified are met. <p>(9) The regulations may confer power on a Minister of the Crown, by notice in writing to a particular employer, to suspend the application of the regulations to that employer for such period and to such extent as the Minister may specify in the notice.</p> <p>(10) The regulations may—</p> <ul style="list-style-type: none">(a) make provision in relation to any or all of the employers in relation to which the reserve powers are exercisable;(b) make different provision for different	
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	<p>employers or different categories of employer;</p> <p>(c) make transitional provision in connection with the coming into force of any provision of the regulations;</p> <p>(d) make consequential provision amending or otherwise modifying section 170, contracts of employment or collective agreements.</p> <p>(11) In this section—</p> <p>(a) “publication requirements” means requirements imposed under section 172A or subsection (6);</p> <p>(b) “relevant public sector employer” has the same meaning as in section 172A, read with any regulations made under subsection (9) of that section;</p> <p>(c) “relevant union official” and “facility time” have the same meaning as in section 172A.</p> <p>(12) Subsections (10) and (11) of section 172A apply for the purposes of this section as they apply for the purposes of that section.</p> <p>(13) Regulations under this section shall be made by statutory instrument.</p> <p>(14) No regulations under this section shall be made unless a draft of them has been laid before Parliament and approved by a resolution of each House of Parliament.</p>	
226	Requirement of ballot before action by trade union (amended by sections 2 and 3 of the Trade Union Act 2016)	
	<p>(1) An act done by a trade union to induce a person to take part, or continue to take part, in industrial action—</p> <p>(a) is not protected unless the industrial action has the support of a ballot, and</p> <p>(b) where section 226A falls to be complied with in relation to the person's employer,</p>	

<p>is not protected as respects the employer unless the trade union has complied with section 226A in relation to him.</p> <p>In this section “the relevant time”, in relation to an act by a trade union to induce a person to take part, or continue to take part, in industrial action, means the time at which proceedings are commenced in respect of the act.</p> <p>(2) Industrial action shall be regarded as having the support of a ballot only if—</p> <p>(a) the union has held a ballot in respect of the action—</p> <p>(i) in relation to which the requirements of section 226B so far as applicable before and during the holding of the ballot were satisfied,</p> <p>(ii) in relation to which the requirements of sections 227 to 231 were satisfied, and</p> <p>(iia) in which at least 50% of those who were entitled to vote in the ballot did so, and</p> <p>(iii) in which <i>the majority voting in the ballot</i> the required number of persons (see subsections (2A) to (2C)) answered “Yes” to the question applicable in accordance with section 229(2) to industrial action of the kind to which the act of inducement relates;</p> <p>(b) such of the requirements of the following sections as have fallen to be satisfied at the relevant time have been satisfied, namely—</p> <p>(i) section 226B so far as applicable after the holding of the ballot, and</p> <p>(ii) section 231B; . . .</p>	
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<p>(bb) section 232A does not prevent the industrial action from being regarded as having the support of the ballot; and</p> <p>(c) the requirements of section 233 (calling of industrial action with support of ballot) are satisfied.</p> <p>Any reference in this subsection to a requirement of a provision which is disapplied or modified by section 232 has effect subject to that section.</p> <p>(2A) In all cases, the required number of persons for the purposes of subsection (2)(a)(iii) is the majority voting in the ballot.</p> <p>(2B) There is an additional requirement where the majority of those who were entitled to vote in the ballot are at the relevant time normally engaged in the provision of important public services, unless at that time the union reasonably believes this not to be the case.</p> <p>(2C) The additional requirement is that at least 40% of those who were entitled to vote in the ballot answered “Yes” to the question.</p> <p>(2D) In subsection (2B) “important public services” has the meaning given by regulations made by statutory instrument by the Secretary of State.</p> <p>(2E) Regulations under subsection (2D) may specify only services that fall within any of the following categories—</p> <ul style="list-style-type: none">(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;	
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<p>(f) border security.</p> <p><u>(2EA) But regulations under subsection (2D) may not specify services provided by a Welsh public authority.</u></p> <p>(2F) No regulations shall be made under subsection (2D) unless a draft of them has been laid before Parliament and approved by a resolution of each House of Parliament.</p> <p>(3) Where separate workplace ballots are held by virtue of section 228(1)—</p> <p>(a) industrial action shall be regarded as having the support of a ballot if the conditions specified in subsection (2) are satisfied, and</p> <p>(b) the trade union shall be taken to have complied with the requirements relating to a ballot imposed by section 226A if those requirements are complied with,</p> <p>in relation to the ballot for the place of work of the person induced to take part, or continue to take part, in the industrial action.</p> <p>(3A) If the requirements of section 231A fall to be satisfied in relation to an employer, as respects that employer industrial action shall not be regarded as having the support of a ballot unless those requirements are satisfied in relation to that employer.</p>	Section 1(4)
<p><u>297A Devolved Welsh authorities</u></p> <p><u>For the purposes of this Act a “devolved Welsh authority” has the same meaning as in section 157A of the Government of Wales Act 2006 (c.32).</u></p>	Section 1(5)