

Council for Economic Renewal

The Trade Union Bill

Introduction

1. This paper provides Council Members with an update in relation to the UK Government's Trade Union Bill. The Wales TUC had requested a paper on the Bill on the agenda of this meeting, but following the Executive Working Group have agreed that it would be a paper to note.

Background

2. The Trade Union Bill was introduced to the House of Commons on 15 July 2015 and had its Second Reading Debate on the 14 September. The Bill makes provision about industrial action, trade unions, employers' associations and the functions of the Certification Officer.
3. In parallel, the UK Government is proposing to amend existing regulations to remove provisions which ban the use of agency workers during strikes.

Update

4. The First Minister has written to the Prime Minister to express concerns around the Trade Union Bill. A Written Statement has also been issued on 9 September, setting out the Welsh Government's concerns on the impact of the Trade Union Bill and associated proposals, and challenging the UK Government's assertion that the Bill is not a matter for the Welsh Government or the National Assembly for Wales.
5. Members are asked to note the update and the attached Written Statement.



Llywodraeth Cymru
Welsh Government

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE UK Government's Trade Union Bill
DATE 9 September 2015
BY Rt Hon Carwyn Jones AM, First Minister of Wales

The Trade Union Bill which the UK Government has introduced to Parliament has the potential to cause significant damage to the social and economic fabric of the UK. In particular, I have grave concerns that it – and the UK Government's associated proposal to remove the ban on the use of agency workers during industrial action – will prove socially divisive, lead to more confrontational relationships between employers and workers, and ultimately undermine rather than support public services and the economy.

These concerns are heightened by the inadequate impact assessments the UK Government has produced to support the proposals, which the Regulatory Policy Committee has described as 'not fit for purpose'. When combined with a short consultation period over the summer a deeply worrying impression is created that the UK Government is simply not interested in evidence on the impact of these proposals. I hope that the UK Government will be able to correct this impression by showing it is listening genuinely and making significant changes in response to the sincere concerns of the trade union community. I would, in particular, endorse a range of well-made points based on evidence, experience and expertise in the TUC's responses to the consultations. Either through the UK Government properly addressing the concerns highlighted by the trade unions, or through the strong scrutiny the Bill deserves and will doubtless receive in Parliament, there are necessary, important changes that need to be made to the proposals.

Initial correspondence received from UK Government Ministers asserts that the Bill relates to a non-devolved matter and no Legislative Consent Motion is required in the National Assembly for Wales. It is clear, however, that significant elements of the Bill relate specifically to public services which in Wales are unambiguously devolved responsibilities. I therefore do not accept the suggestion that the Bill must be regarded as concerned exclusively with non-devolved issues.

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

In relation to the Trade Union Bill, the first three categories of “important public services” subject to the additional 40% overall membership support threshold for industrial action are health services, education of those aged under 17, and fire services, all of which are plainly devolved. The policy background section of the explanatory notes to the Bill sets a clear context for the Bill in seeking to ‘protect essential public services’ against strikes, and this context is also reflected in the consultation document on ballot thresholds in “important public services”. Policy on how to support, or ‘protect’, the delivery of devolved public services such as health, education and fire is, however, for the Welsh Government and the National Assembly for Wales. This includes the way public sector bodies in such devolved services work with trade unions to ensure effective delivery of services to the public.

There is an increasing divergence in approach to delivery of public services between England and Wales and it would be wrong, and potentially damaging to the UK Government’s stated aim of ‘protecting’ public services, for decisions based on English structures and approaches to be imposed on different service delivery models in Wales. As an illustration, in relation to which specific functions and ancillary roles would be subject to the 40% threshold, it would be wholly wrong to assume that roles in a devolved public service in Wales are identical to roles in that service area in England. Similarly, it cannot be right for the UK Government – blind to policy priorities and devolved service delivery reforms in Wales – to specify how much union ‘facility time’ devolved public sector employers should allow. Nor am I convinced that the intention to end ‘check off’ arrangements for trade union subscriptions in the public sector is necessary or appropriate. The Welsh Government operates these arrangements as part of its approach to effective social partnership and is not seeking to change this.

I have written to the Prime Minister to express my concerns around the Trade Union Bill. In view of the way the Bill relates to devolved public services, at this point I have reserved the Welsh Government’s position on whether a Legislative Consent Motion is necessary. I have, though, made clear that if the Bill proceeds the Welsh Ministers should be added on the face of the Bill as a statutory consultee for the development of regulations provided for

by the Bill to seek to ensure that decisions are not made by the UK Government without reference to the context of devolved public services in Wales.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Assembly returns I would be happy to do so. I will update the Assembly in due course following further dialogue with the UK Government.