

INTRODUCTION

BMA Cymru Wales is pleased to provide a response to the Stage 1 consultation by the Equality, Local Government and Communities Committee into the general principles of the Trade Union (Wales) Bill.

The British Medical Association (BMA) is an independent professional association and trade union representing doctors and medical students from all branches of medicine all over the UK and supporting them to deliver the highest standards of patient care. We have a membership of over 160,000, which continues to grow every year. BMA Cymru Wales represents almost 8,000 members in Wales from every branch of the medical profession.

RESPONSE

BMA Cymru Wales welcomes the purposes of the Bill which are to dis-apply certain aspects of the UK Government's Trade Union Act 2016 in relation to devolved Welsh public services, including the NHS in Wales.

In relation to each of the three provisions which it is proposed should be dis-applied, we would comment as follows:

The 40% ballot threshold for industrial action affecting important public services

BMA Cymru Wales is fully supportive of this aspect of the Bill which seeks to dis-apply the additional 40% support threshold that is to be placed upon industrial action ballots in relation to public services classified as 'important', on top of the requirement for a 50% turnout.

This would mean that before any industrial action could go ahead, 40% of union members entitled to vote would have to vote in favour, and not just a simple majority of those taking part in the ballot. If a union were to achieve a 50% response rate to a ballot, then 80% of those who voted (i.e. 40% of the entire eligible membership) would need to vote in favour of strike action in order for it to be legal. This seems to us to be an arbitrarily high threshold.

In responding to the UK Government proposals when they were introduced in the UK Parliament, the BMA described these particular proposals as unnecessary, inappropriate and unfounded. We still hold this view.

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Listed as a Trade Union under the Trade Union and Labour Relations Act 1974.

The logic behind the 40% threshold seems questionable as it implies that the current situation leads to illegitimate industrial action. When a majority of voting members must support an action (as is currently the case), the introduction of a 40% threshold of all members assumes that all those who abstain from voting, would vote 'no'. There is no basis for such an assumption. In fact, there is no evidence to suggest that those who vote are unrepresentative of the membership body as a whole.

Powers to require the publication of information on facility time and to impose requirements on public sector employers in relation to paid facility time

BMA Cymru Wales is fully supportive of this aim of the Bill. We are concerned that the proposals it seeks to dis-apply could be used to restrict the ability of unions to represent their members on a range of issues, such as health and safety and workplace representation. This is something we believe would be an unnecessary and unfair intrusion into the activities of trade unions that are legitimately representing the rights of their members.

Should these provisions not be dis-applied as is proposed, then this could impact on BMA members who are elected as trade union representatives onto the Local Negotiating Committees (LNCs) which have been established in each local health board and NHS trust in Wales.

LNC members are currently able to fulfil what we see as a vital trade union function of representing other BMA members, both individually and on a collective basis, whilst receiving paid time off to do so. In practical terms this means that doctors working in hospitals or public health medicine as consultants – or as staff, associate specialists or specialty doctors – are able to secure agreement for appropriate time off within the existing job planning processes in order to be able to perform such roles. In the case of junior doctors serving on LNCs, it means they are able to agree appropriate time off with their supervising consultant.

We feel it would be hugely detrimental if such arrangements were to be prevented from continuing.

Restrictions on deduction of union subscriptions from wages by employers

Whilst the BMA has for many years operated a largely direct debit system for collecting subscriptions directly from its members, we would nevertheless support the principle that employers should be able to freely negotiate agreements with trade unions to collect member subscriptions by way of deductions from wages.

We are therefore also fully supportive of this aspect of the Bill.

In conclusion

The BMA view of the UK Government's Trade Union Act 2016 is that it risks diminishing not only the important role trade unions play in the workplace, but also their legitimate right and need to represent their members' interests. The imposition of the tighter restrictions on trade unions which the Act introduces may have the inadvertent effect of prolonging workplace disputes, thereby making it more difficult to resolve disputes amicably. The Act also undermines workers' rights to representation and their right to express an opinion through industrial action, which is taken as a last resort. We would always prefer to negotiate for a solution that is fair to both employees and employers.

In view of this, BMA Cymru Wales commends the proposals which are being put forward by the Welsh Government through the Trade Union (Wales) Bill, which seek to dis-apply three key aspects of the Trade Union Act 2016 as they would apply to devolved public services in Wales. We would therefore urge Assembly Members to fully support these proposals.

It is also worth noting that we have additionally expressed our support, through our response to a recent consultation,¹ to the stated intent of the Welsh Government to undertake steps which would retain the status quo in relation to devolved Welsh public services should the UK Government proceed with plans to rescind the regulations that currently prohibit employment businesses from providing agency workers to cover the duties normally performed by employees when taking part in industrial action, or to cover the work of employees who are covering the duties of other employees whilst they are taking part in industrial action.

¹ <https://www.bma.org.uk/-/media/files/pdfs/collective%20voice/influence/uk%20governments/agency-workers-during-strikes-consultation-wales.pdf?la=en>