

TUB 08

Bil yr Undebau Llafur (Cymru)

Trade Union (Wales) Bill

Ymateb gan: Conffederasiwn GIG Cymru a chyflogwyr GIG Cymru

Response from: Welsh NHS Confederation and NHS Wales Employers

Introduction

1. We welcome the opportunity to contribute to the Equality, Local Government and Communities Committee consultation into the Trade Union (Wales) Bill.
2. The Welsh NHS Confederation represents the seven Health Boards and three NHS Trusts in Wales. The Welsh NHS Confederation supports our members to improve health and well-being by working with them to deliver high standards of care for patients and best value for taxpayers' money. We act as a driving force for positive change through strong representation and our policy, influencing and engagement work.
3. NHS Wales Employers is hosted by and operates as a part of the Welsh NHS Confederation. NHS Wales Employers supports the strategic workforce agenda of the NHS in Wales from an NHS employers' perspective. NHS Wales Employers supports the employers with workforce policy development, practical advice and information, and enables the NHS Wales Workforce and OD community to network and share knowledge and best practice. NHS Wales Employers work closely with trade unions when dealing with workforce policy and procedures.
4. Our response, which has been developed with our members, including Directors of Workforce and Organisational Development (OD), highlights the key issues and areas of interest for the NHS in Wales.

Overview

5. In general, partnership working between employer organisations (the seven Local Health Boards and three NHS Trusts) and trade unions works well in NHS Wales. The NHS in Wales currently employs around 86,500ⁱ staff, providing a significant contribution to both the national and local economy. The cost of the NHS workforce for 2015/16 was circa £3.3 billion.ⁱⁱ Throughout the years the NHS in Wales has established effective working relationships with trade unions. This relationship has supported the development of effective and mutually beneficial solutions to a number of significant challenges which the service has addressed, but will continue to face in the future.
6. As changes in demographics and our lifestyles have resulted in a dramatic rise in demand on the health and care services, it has become increasingly clear that a transformation in the way treatment is delivered is required if the NHS is to meet the needs of a future population. A sea-change in the way services are designed is vital. A key aspect to driving this, and successfully putting NHS Wales on a sustainable footing, is the workforce.
7. With an ageing population and a rising number of people with complex and chronic conditions, the workforce must be ready to evolve and respond to the challenges ahead. As well as meeting the future needs of the population, the workforce must also develop new ways of working to address concerns about an expected shortfall in the future NHS workforce, especially for certain

types of jobs and in different regions of Wales. Future demand for health and social care will not be met unless we plan, develop and use the health and social care workforce differently.

8. It is our view that the NHS's workforce challenges are best addressed by an efficient, engaged and productive workforce, where there is regular consultation and ongoing dialogue with our staff. A key element of this approach is through social partnership with trade unions representing NHS staff. To this end, we support the Welsh Government's commitment to strong, stable and effective workforce relationships, and its ongoing commitment to social partnership and subsequently the improvement of key public services in Wales.

Terms of reference

The general principles of the Trade Union (Wales) Bill and the need for legislation to ensure the continued and effective delivery of public services by dis-applying certain provisions of the UK Government's Trade Union Act 2016 as they apply to devolved Welsh authorities.

- **The 40% ballot threshold for industrial action affecting important public services.**
9. Strike action in the NHS in Wales over the last decade has been minimal, despite considerable organisational change and the introduction of significant changes to NHS contracts terms and conditions. When there has been industrial action, the impact has been managed through partnership discussions so as to ensure that essential services are maintained and trade union members are able to exercise their right to withdraw their labour. Notwithstanding this, when strike action does occur it can lead to service disruption, an impact on patients and loss of activity, especially when clinical departments are involved.
 10. Section 2 of the Trade Union Act 2016 (the TU Act 2016) has introduced a new requirement that in all ballots for industrial action at least 50% of the trade union members entitled to vote must do so in order for the ballot to be valid, with the additional condition that a simple majority (i.e. more than half) of the votes cast must be in favour of industrial action in order for action to go ahead. In the context of this consultation, we note that this provision is not being dis-applied.
 11. Section 3 of the TU Act 2016, which this Bill is seeking to dis-apply, introduced the further "support requirement" that 40% of all trade union members in important public services, such as the NHS, are entitled to vote in a ballot leading to industrial action should be in support of that action. This is in addition to the 50% participation threshold introduced by Section 2 of the TU Act 2016. The reality of this provision is that if there is a dispute comprising 100 staff, at least 50 members of staff will need to vote and of those 50, 40 would need to be in support of industrial action e.g. 80% of the turnout in this example.
 12. As employer's we recognise and understand the rationale for the provision set out in Section 3 of the TU Act 2016, in particular given our duty is to ensure that we are able to provide for the continuity of NHS service provision without disruption. However, we are concerned that the new requirements on ballot thresholds may have unintended consequences on the conduct of industrial relations. The emphasis for both parties, the employer and the trade union, should always be focussed on resolving any dispute. The requirement to reach both a 50% turnout and a 40% threshold may lead to trade unions concentrating more on tactical aspects of the management of a dispute e.g. targeting turnout in areas where support for strike action may be higher, rather than working with managers and employers (such as Local Health Boards and Trusts) to reach a resolution.

13. Given the points noted above, we feel that there are broader considerations which need to be taken into account regarding the dis-application of this provision. We value social partnership and the need to ensure that all parties remain solution focussed and work together to resolve any disputes which may arise.
14. While we understand the rationale behind Section 3 of the TU Act 2016 and what it is seeking to achieve in ensuring that "*important public services*" are maintained without disruption, we note that the new requirement, as outlined in Section 2 of the TU Act 2016, setting out that at least 50% of the trade union members entitled to vote will be required to do so in order for a ballot to be valid, has not been tested on its own and may be a significant enough test of the sentiments of the trade union members to provide a mandate for industrial action. We also note that the TU Act 2016 considers this to be an appropriate threshold in those areas not defined as "*important public services*".
 - **Powers to require the publication of information on facility time and to impose requirements on public sector employers in relation to paid facility time.**
15. As employers within the NHS we have our own agreed key principles framework for time off and facilities for trade union representatives in place. We believe that this meets the needs of the service and supports our approach to social partnership therefore we do not feel that any further requirements in relation to the publication of information with regard to facilities time, or imposing certain requirements on public sector employees in relation to paid facilities time, is necessary or appropriate.
16. Facilities time provides significant benefits to industrial relations, as well as providing savings and benefits to organisations and the service as a whole. Trade union representatives provide a vital role in developing and working with NHS workplace policies and procedures. They support staff and their members with mediation and navigation through policies and workplace issues which supports the smooth running of the service. We therefore support the proposal to dis-apply this provision.
 - **Restrictions on deduction of union subscriptions from wages by employers (Check Off System).**
17. This service is provided by payroll departments within the NHS at a cost to the trade unions. Where the facility is offered it enables employers to understand the numbers of members in any one union and gain an understanding of the relative trade union membership across the organisation. In addition, this is part of a broader service provided in support and acknowledgement of the NHS's commitment to social partnership. In the light of this, we support the proposal to dis-apply this provision.
 - **The financial implications of the Bill.**
18. In terms of the financial implications of the Bill, as outlined in appendix 2 of the Explanatory Memorandum, we are unsure of the calculation rationale that £85,000 is the suggested cost of not applying the 40% threshold. Whilst the level of industrial action within NHS Wales has been low in recent years, when it has occurred and we have had to recover lost activity through overtime and waiting list initiatives, this has resulted in significant costs to the NHS. Whilst we haven't been able to provide an amount for this, it is our judgement that the costs will be in excess of £85,000 within the NHS alone.

Conclusion

19. In conclusion, people working within the NHS and social care are our biggest asset. Without their hard work and dedication the health and care service would collapse. We need to think about the workforce we have today for our current service delivery requirements but also focus on creating a pipeline for the future, which will include many of today's health and social care employees. This will require innovation, and perhaps new regulation mechanisms for new roles, and we will have to work closely with our trade union partners when considering the future NHS workforce.
20. As clearly highlighted in our response, when considering new ways of working we work closely with our trade unions and encourage all aspects of social partnership within the NHS in Wales. In relation to this Bill we feel that the proposals to dis-apply the provisions in relation to facilities time and check off are appropriate and support this approach.
21. In relation to the threshold for industrial action, it is our view that the 50% ballot threshold has never been tested in the areas defined as "important public services" and may be a significant enough test of the sentiments of the trade union members to provide a mandate for industrial action.

ⁱ Stats Wales, May 2016. NHS staff by staff group and year 2015.

ⁱⁱ WEDS, Shared Services: NHS Wales' Workforce Trends (2016).