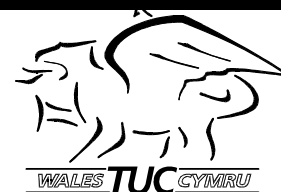

***National Assembly for Wales Equalities Local
Government & Communities Committee scrutiny of
the Trade Union (Wales) Bill***



1. The Wales TUC

1.1 The Wales TUC is the collective voice of the Welsh trade union movement and is the largest democratic civic membership organisation in Wales. With over 50 affiliated trades unions representing around 400,000 workers across the public, private and third sectors, the Wales TUC represents the views of workers in communities across the whole of Wales. A constituent part of the British TUC, the Wales TUC has devolved responsibility for Welsh issues, including all matters within the remit of the National Assembly for Wales and the Welsh government.

1.2 Unions in Wales elect delegates to the Wales TUC Conference which decides on policy for Wales and itself elects the Wales TUC General Council to oversee the delivery of Welsh policy. The Wales TUC also delivers UK wide and international matters as part of the TUC.

1.3 The Wales TUC plays an integral role in the social partnership model of governance developed with the Welsh Government and employers in Wales. Our aim is to make Wales a fair work nation. We support the Trade Union Wales Bill ('the Bill') which will serve to protect the model of social partnership developed between unions, employers and the Welsh government by acting to repeal sections of the UK Trade Union Act 2016.

1.4 Our evidence will provide details of the social partnership approach in the devolved public services and the rationale for and benefits of disapplying sections of the UK Act as it specifically applies to these services. We have also been asked to include our associated response to the consultation on agency workers regulations and this is attached.

1.5 We recognise there has been some discussion regarding whether this Bill is within the competence of the National Assembly for Wales. We strongly believe that the content of the Bill, in dealing with aspects which specifically impact the provision of devolved public services, is firmly within competence. Indeed it is central to what Welsh voters elect Assembly Members to deliver. While the rest of this evidence does not deal with that matter we have attached for information the detailed legal opinion obtained by the Wales TUC in this regard.

2. Social Partnership

2.1 Welsh government is committed to working through social partnership to achieve the best possible outcomes for public services and the economy of Wales. Successive Wales TUC Conferences have democratically endorsed this approach for Welsh unions and agreed that the Wales TUC should fully participate in the relevant structures. We bring our specific workforce perspective and priorities to these partnership arrangements, as the employer and government representatives bring theirs.

2.2 The social partnership approach applies across the public services and the economic interests of Wales. The Council for Economic Development and the Social Partners Strategy Group fully engage partners in the whole range of government policies and interventions which impact the economy. Employer organisations - such as the CBI, EEF, IOD and FSB -work as equal partners with unions through the Wales TUC and with government ministers and officials. All sides see the benefit of a joint approach to addressing mutual problems by delivering a shared response.

2.3 The Workforce Partnership Council (WPC) carries out the same role in Welsh public services and is the structure most relevant to the Committee's considerations. The Wales TUC co-ordinates the WPC involvement of the elected representatives of trade unions with members in the public sector. Employers in the devolved public sector are equal partners and the tripartite approach is completed by the full participation of Welsh government ministers and officials. The WPC considers all Wales, cross sector matters and arrives at agreements and guidance as required. The partnership approach is also reflected in collective bargaining arrangements for the devolved public services (eg the NHS Partnership Forum and the Local Government JNC) where sector specific terms and conditions matters are dealt with in the context of relevant UK or Wales agreements.

2.4 Across all elements of partnership, mutual respect and trust is essential. Difficult conversations are common and disagreement is addressed openly and directly. Trade unions and employers continue to invest in this grown up partnership approach because the challenges facing our public services are huge and the workforce implications of these challenges are significant. While each partner brings their own priorities and perspective there is a shared commitment to our public service and a shared objective of delivering excellent services and fair employment. All partners also explicitly recognise that negotiated settlement of contested areas prevents the development of industrial disputes with all the consequences that would have for service disruption and loss of income.

2.5 True social partnership is not an easy process of superficial unanimous agreement - it is a hard, contested and robust process which deals with challenging issues to the satisfaction of the partners involved. There will be occasions where agreement is not possible but the partnership process exists to ensure that is a rare event, that all possible avenues are exhausted prior to any dispute occurring and that any dispute is speedily resolved.

2.6 To achieve a mutually beneficial agreement at the earliest possible stage, it is essential that a partnership of equals exists and one 'side' is not hamstrung in its ability pursue the

interests of their constituency and to deal with the consequences of a failure to find agreement.

2.7 A good example of the social partnership approach is the (attached) WPC Partnership and Managing Change Agreement 2012 which remains in force. The agreement sets out the principles, process and method of working which should be adopted to manage change in a manner which promotes partnership and prevents conflict. It should be noted that the agreement concerns the fair delivery of change. Social partnership does not seek to block or delay change but rather deals with any necessary change fairly. It brings the expertise of the workforce to the table in designing effective systems of service delivery and ensuring any change benefits service users without disadvantaging employees.

As the agreement states;

'High quality public service delivery must be synonymous with high quality employment practice. The Social Partners agree to adopt the principle of good practice on service improvement, delivery and employment to underpin this Agreement.'

2.8 Trade unions have invested heavily in these structures with senior union employees - funded by membership subscriptions – dedicating their time and expertise to supporting positive social partnership. These resources are part of the democratic function of trade unions which also serve to significantly benefit the delivery and improvement of public services. Delivery of the social partnership approach relies heavily on the ability of unions to operate effectively at workplace level with members fully engaged in the democratic decision making process and the elected workplace representatives able to receive training to carry out their role and allowed sufficient time to carry out the representative function.

2.9 Sections 3, 13, 14 and 15 of the UK Trade Union Act 2016, undermine the ability of social partnership to function as these provisions; shift the balance towards the employer undermining equity between social partners; they restrict the ability of union members to have their views represented effectively at the workplace and they place significant barriers in the individual choice in and smooth administration of union membership.

2.10 In order to safeguard our social partnership approach, the Trade Union (Wales) Bill addresses these issues as they impact the devolved public services. The rest of this evidence covers the three significant aspects of the bill.

3. Strike action and the 40% ballot threshold

3.1 Strike action is the last resort if extensive negotiation has not achieved a fair agreement on matters crucial to workers and their families, including jobs, pay and conditions. By repealing the new draconian restrictions on such action in devolved public services, the Bill protects the existing balance between employers and unions in the Welsh public sector. This balance is crucial to 'recruiting, retaining, developing and empowering a stable and

committed workforce' which the Bill's Explanatory Memorandum (EM) cites as 'essential' to the delivery of services to the people of Wales.

3.2 The Wales TUC supports the Bill's provision which removes the 40% ballot threshold for industrial action affecting 'important public services.' This arbitrary threshold will make it more difficult for many thousands of public sector workers to organise collectively in defence of their jobs, their livelihoods and the quality of their working lives.

3.3 The threshold is also discriminatory, presenting a clear disadvantage for workers in these services as compared with those in other parts of the public sector and those working in the private sector. The right to strike is a fundamental human right which should be enjoyed equally by all working people regardless of their job and whether they work in the private or public sector. Women will also be disproportionately affected by the UK threshold as the majority of union members working in the services concerned are female.

3.4 The UK Act's 40% threshold provision also fails to define the term 'important public services' or its rationale and instead lists the areas to be covered. As a result the effect of the legislation is to flout international standards. The Employment Law Association (ELA) warned against specific thresholds for services not covered by the International Labour Organisation's (ILO) 'essential services' definition, stating that this could be challenged 'on the basis that raised thresholds infringes Article 11 of the European Convention on Human Rights.' The ILO's Committee on Freedom of Association also states that it is not legitimate for governments to restrict the right to strike on the grounds that industrial action will impair wider economic activity.

3.5 The [UK Regulatory Policy Committee](#) (RPC) described the 40% threshold provision as not fit for purpose in 2015 and stated that the UK government's impact assessment 'does not explain the rationale for the proposals in a straight forward and logical way.' It further found that 'the Impact Assessment does not provide sufficient evidence of the likely impact of the proposals' and 'lacks evidence to support many of the quoted figures.' The report further criticised the UK government for failing to show evidence that alternatives to raised thresholds had been considered.

3.6 The increased threshold may also have the effect of prolonging and escalating disputes in Welsh public services as unions take more time ahead of ballots in order to meet the threshold. At the same time, employers will have less of an incentive to move towards a solution and may increasingly choose to wait to see if the additional threshold can be met. The effect will be to polarise the parties involved, making swift and amicable resolution more difficult to achieve.

3.7 The enmity which naturally arises from prolonged and escalated disputes makes the resolution process harder still. Such continuing contested situations can cause lasting damage to organisations which rely on a committed and engaged workforce. As a result, the

UK Act could lead to unrest and demoralisation without resolution within the Welsh public sector, as new restrictions make it far harder to access the right to strike.

3.8 We dispute the quoted estimate of £85,000 annual savings through ‘reduced days lost to strike action’. This estimates originates from the UK government’s evidence in support of the UK Act. We believe that the new restrictions risk provoking longer industrial action and more unresolved unrest in Welsh public services meaning that the 40% threshold would incur greater costs to the public rather than savings.

3.9 Wales TUC also firmly believes that the effect of the 40% threshold which counts abstentions as no votes sets a dangerous and undemocratic precedent which is not applied to any other democratic vote. Similar rules were not applied to the decision to establish Welsh devolution, nor the decision to give the National Assembly law making powers, nor the vote on the UK’s membership of the EU. Furthermore, not a single Assembly Member or Member of Parliament in Wales would have been elected on the basis of this undemocratic and unnecessary hurdle.

3.10 Paragraph 8.7 of the EM points to some examples of the industrial action prevented in Wales. It should also be noted that ongoing dialogue reaches beyond directly comparable England examples. While it is not possible to quantify this work, the investment of all social partners in ongoing partnership talks prevents other disagreements from developing into disputes.

4. The deduction of union subscriptions from wages (Check off)

4.1 Wales TUC supports The Bill’s provision to remove restrictions on the collection of union membership fees known as ‘check off’ or ‘DOCAS’. There is a misperception that this system is an arrangement between employers and unions ‘above the heads’ of individual members – this is the opposite of the truth. It is not possible under statute to force an individual to join or pay subscriptions to a union. Where a worker decides to join a union they make an individual signed application for membership and make a choice in how they wish their subscription payments to be made. The direct deduction from salary is often the most convenient choice for the individual member. When setting out their opposition to the UK Act, Welsh public sector employers also expressed satisfaction with existing arrangements which are not considered onerous or controversial.

4.2 The benefits of check off for individual members have also been acknowledged by [the High Court](#) when a previous attempt to withdraw check off facilities across the civil service was held as unlawful. In giving judgement, Mr Justice Supperstone stated: ‘I am not impressed by the argument that check off is only or primarily for the benefit of the union as such, rather than for its members in their capacity as employees.’

4.3 Many employers offer similar salary deduction schemes covering childcare, travel, bicycle or gym payments. It is not logical or fair to exclude or restrict access to payroll deduction on the basis of its use for trade union membership. This interferes with the individual's freedom to choose how to arrange his/her voluntary payments to a union. It is also not reasonable to suggest that the costs of managing general payroll deduction systems are attributable solely to check off.

4.4 The cost of providing a check off option for an individual employee is not easily definable. Modern automated public sector payroll systems are already established with the capacity to offer the wide range of deductions from salary referred to above and therefore no new I.T. investment is required. The costs associated with inputting an individual choice to have any particular deduction made is certainly not a specific source of increased dedicated staff cost for employers. Paragraph 8.40 of the EM further states that discussions with public sector employers reveal that the cost of check off is 'minimal.'

4.5 Welsh public sector employers and unions agree that the smooth operation of check off provides a convenience for employees and stability for trade unions. Attempting to undermine the relationship between employees and the trade unions they voluntarily join has the potential to fundamentally challenge the social partnership model in Wales. In order to protect a partnership approach that respects and upholds the benefits of independent representation at work, it is crucial that this form of payment is protected and promoted as a healthy facet of workplace democracy.

4.6 Check off arrangements also allow for fair and equal access to trade union representation at work which could otherwise be undermined by digital exclusion. By providing a simple, consistent and manageable payment system check off ensures equal access for workers, regardless of whether they use ICT systems at work or at home and regardless of whether they have access to a bank account.

5. Facility Time

5.1 Wales TUC supports the Bill's proposal to protect existing arrangements for trade union facility time in the Welsh public sector. The ability of elected workplace union officials in the Welsh public sector to properly represent their members is in the interests of the effective delivery of Welsh public services in social partnership. This time is invested in the discharge of serious responsibilities including negotiating for fair pay and conditions, raising safety standards, promoting learning and equality as well as supporting members in grievance and disciplinary hearings. The ability to attend training in order to carry out this role effectively is also essential.

5.2 Facility time in the form of paid release agreed with an employer should not be confused with other trade union functions. Almost all officials working fulltime on union matters are directly employed by unions and funded from membership subscriptions to negotiate and

represent members on a wide range of issues at no cost to the public. These officials engage in social partnership structures, investing union resources in bodies which are integral to delivery and change management in Welsh public services.

5.3 The Workplace Employment Relations Study (WERS) - the authoritative UK government backed report - found that only 2.8% of workplaces with a recognised union have a union representative that spends all, or nearly all, of their working time on representative duties. In both the public and private sectors this degree of paid release is found in workplaces with an average of over 500 employees. In health, the equivalent figure stands at around 2,500 employees.

5.4 Elected union representatives in public sector workplaces throughout Wales are civic minded volunteers who work tirelessly to support their colleagues and enhance services. This means managing challenging and complex issues, often outside of working hours with no extra pay or in working hours on an unpaid basis. Occasionally, in a period of significant organisational change, employers may agree a temporary increase in paid release to ensure that they can access the full benefit of collective union representation in the delivery of change.

5.5 In the devolved public sector, employers reach agreement with unions over the degree of paid release from work appropriate for elected reps to deliver social partnership. Mostly this involves release for training in their role, attending occasional meetings with their employers to establish and present the collective workforce view or to represent individual employees. The role has a major beneficial impact on the delivery of safer and better public services. The key issue is that facility time is a *voluntary* agreement between employer and union which identifies arrangements appropriate to the needs of specific workplaces or specific services.

5.6 As an example the Fire Brigades Union (FBU) utilises facility time to train highly qualified Serious Accident Investigators who work with fire authorities to investigate incidents where firefighters are killed on duty and to identify and implement service improvements which can prevent future fatalities. Caps on facility time could restrict the ability of FBU representatives to participate. This would further endanger firefighters and could mean any new safety critical problems identified are left unresolved.

5.7 In 2007, the then UK Dept for Business, Enterprise & Regulatory Reform (BERR) conducted a review into the cost of union representatives and the benefits accrued. The report found significant benefits in the areas identified in paragraph 3.12 of the EM:

- a) Workplace-related injuries were lower in unionised workplace with union reps resulting in savings to employers of £126–371m a year.
- b) Workplace-related illnesses were lower in unionised workplace with union reps resulting in savings to employers of £45–207m a year.

- c) Employment tribunal cases were lower in unionised workplaces with union reps resulting in savings to government of £22–43m a year.
- d) Dismissal rates were lower in unionised workplaces with union reps – this resulted in savings related to recruitment costs of £107–213m a year.
- e) Voluntary exit rates were lower in unionised workplaces with union reps, which again resulted in savings related to recruitment costs of £72–143m a year.

5.8 The UK government has not fully updated these figures since but TUC analysis of the 2011 WERS study finds that similar savings have continued to be realised by facility time. In protecting the existing arrangements rather than accepting unnecessary imposed change; the Bill will allow the Welsh public sector to realise the benefits brought about by a trained and effective network union representatives working in partnership with their employers on behalf of their work colleagues.

5.9 The benefits of facility time cited in the EM are further supported by the decision of all Welsh public sector employers represented on the WPC to oppose the UK Act. This included NHS Wales and the Welsh Local Government Association (WLGA). The WLGA's [evidence](#) to Westminster's Business Innovation & Skills (BIS) Committee described facility time as essential during a time of growing pressure and constant change: 'Facility time enables councils to consult and negotiate with the trades unions officials representing the workforce, and therefore actually saves considerable time and resources. It is therefore essential in our view, and very much in the interests of council tax payers to see it maintained.'

5.10 As unions and public sector employers in Wales all oppose restrictions on facility time, it is correct that The Bill should maintain the existing Welsh arrangements which allow employers and unions to negotiate appropriate arrangements on this matter. This provision will also save public bodies £171,700 in needless reporting costs as set out in the EM.

6. Conclusion

The Wales TUC will be happy to provide oral evidence to support our position on the Bill along with further written background information should the Committee find this useful.