

Mark Drakeford AM/AC
Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
Cabinet Secretary for Finance and Local Government

Y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau/
Equality, Local Government and Communities Committee
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Eich cyf/Your ref
Ein cyf/Our ref



Llywodraeth Cymru
Welsh Government

John Griffiths AM
Chair
Equality, Local Government and Communities Committee
National Assembly for Wales
Cardiff
CF99 1NA

15 February 2017

Dear John

At my evidence session with the Committee on the 2 February I promised to write to the Committee to clarify the extent to which the Bill will affect those who provide public services on behalf of devolved Welsh Authorities.

The provisions in the Trade Union (Wales) Bill, as introduced, will dis-apply the provisions of the Trade Union Act 2016 to “devolved Welsh authorities” which are defined in the Wales Act 2017.

Devolved Welsh authorities are listed in Schedule 3 to the Act. The definition also includes other public authorities that exercise functions in devolved areas and will include new public bodies which may be created in the future such as the WRA. Where the devolved authority has contracted with a private sector or third sector body to provide public services, that provider will not fall within the definition and therefore will not be within the scope of the Bill.

The Bill will change how the UK Trade Union Act 2016 will apply to Wales in the following ways.

Provisions in the 2016 Act for facility time and check off impose duties on public sector employers. Public sector employers are as specified in regulations yet to be made by the Secretary of State but will not include any private or third sector employer, whether providing a service on behalf of a public body or not. The effect of the Bill is these duties will not apply to devolved Welsh authorities. As they already will not apply to private or third sector bodies, nobody working on behalf of a devolved Welsh authority will be captured by the facility time and check-off provisions, although they may still apply to non-devolved public sector employers operating within Wales. The Trade Union Act 2016 will apply the

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

40% ballot threshold to workers who are engaged in providing 'important public services' which are specified in regulations to be made by the Secretary of State but which must within the following categories;

- 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;
- f) border security.

'Important public services' has been interpreted by the UK Government to include any public service whether provided by a public or private sector body. Draft regulations published by the UK Government in January 2016 show the intention is to include services provided by rail, bus and air operators within the private sector. The effect of the Bill is that regulations may not specify as 'important public services' services provided by devolved Welsh authorities and the 40% threshold will not apply to workers taking industrial action who are employed by these authorities. Important public services provided by private or third sector bodies would remain subject to the threshold as set out in the 2016 Act.

The Committee were particularly interested in the application of the Bill to social care services. Because social care does not fall within any of the categories of 'important public services' that may be specified in the Secretary of State's regulations, the 40% ballot threshold can not apply to workers who are engaged in providing social care services in Wales. This is the case whether they are employed by devolved Welsh authorities or by private or third sector providers.

For the avoidance of any confusion, I also wanted to clarify the position in relation to the Government's consultation on the use of agency workers, as this did come up during the discussion. As the Committee may be aware, in July 2015 the UK Government consulted on a proposal to revoke Regulation 7 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003. Regulation 7 prohibits employment businesses from providing temporary workers to provide cover during industrial action. Whilst the UK Government has not yet acted following its consultation, should it revoke the regulation this would apply to industrial action taken by workers in all sectors, including workers employed in the public sector in Wales.

In September 2016, I published a consultation on whether the legal position should continue unchanged in Wales – i.e. to sustain the position where devolved Welsh authorities in Wales are unable to use temporary workers to provide cover when their staff take industrial action. I am yet to announce my policy on this but, as I mentioned in my legislative statement, one option would be to seek legislation in this Bill to affect devolved Welsh authorities. Should this be the case the effect of revoking Regulation 7 would apply to all other employers.

I also spoke to the Committee about correspondence I have received from Ben Gummer MP Minister for the Cabinet Office and Paymaster General. I have contacted his office to forward the Committee's request to see the correspondence and informed them that I feel obliged to release the letter to you.

Elements of our approach, for example the Regulatory Impact Assessment, have been predicated on the commencement of these provisions in the UK Act. The Committee will therefore wish to be cognisant of this development as part of their consideration, which is

why I have decided to share the attached letter with you without the consent of the Cabinet Office.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

Mark Drakeford AM/AC

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The Rt Hon Ben Gummer MP
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15 February 2017

Den Ben,

Thank you for your letter of 24 January.

I enclose an extract from the transcript of the Assembly's Equality, Local Government and Communities Committee that considered the Trade Union (Wales) Bill in their meeting on 2 February.

I would draw your attention to the discussion about correspondence with the UK Government, including a request that your letter is made available to the Committee.

I am aware, following a verbal request by my officials to share the letter, that Cabinet Office has expressed the view that the letter is not for public consumption.

However, given the clear implications for scrutiny of the Bill, I feel obliged to share the letter with the Committee and will do so in due course.

Best wishes,

Mark

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Extract from transcript of Equalities, Local Government and Communities Committee, 2 February meeting

The full transcript of the Committee meeting can be accessed at:
<http://senedd.assembly.wales/documents/s59033/2%20February%202017.html?CT=2>

[22] **John Griffiths:** Well, I'm sure that the committee will be interested in that, and I'm sure that the clerk can make that available. Is there any other correspondence that, subsequent to any of that, Cabinet Secretary, is not in the public domain?

[23] **Mark Drakeford:** Well, Chair, I have received a letter from the Cabinet Office Minister responsible for the UK Bill since this Bill was introduced on the floor of the National Assembly. That is a letter from Ben Gummer MP. My office has been in contact with the Cabinet Office seeking their agreement for me to share that letter with the committee. Their position at the moment is that that letter isn't for public consumption.

[24] **John Griffiths:** Is that a letter that would be germane and relevant to this committee's work in terms of scrutinising this legislation and understanding these issues, Cabinet Secretary?

[25] **Mark Drakeford:** Well, Chair, of course, I've had the benefit of reading the letter and reading it carefully. My conclusion is that the content of the letter is relevant to the work of this committee in the scrutiny of this Bill, and it's why I sought to gain the consent of the writer to making the content of the letter available to you.

[26] **John Griffiths:** I think that the committee might be interested in pressing that point, because I think it's very important that we are in possession of as much information as possible that would help this committee scrutinise this very important legislation. So perhaps these are matters that the committee may wish to discuss further and, perhaps, have further communication with you, Cabinet Secretary.

[27] **Mark Drakeford:** Well, Chair, I will certainly relay that view to my counterpart at Whitehall and relay the content of these last few exchanges.

[28] **John Griffiths:** Okay. Well, we're grateful for that. Okay, perhaps we can move, then, to—. Sorry, Rhianon, did you have a question on this?