

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.

1.2 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.

1.3 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.

1.4 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.

2. Concerns about the use of agency workers to replace strikers

2.1 The UK government plan to lift the ban on the supply of agency workers during strikes is opposed by the Wales TUC, unions and many employers on the grounds it is likely to escalate disputes and will place agency workers in the invidious position of needing to choose whether to cross a picket line.

2.2 Agency workers will often not be familiar with procedures used in workplaces, raising concerns over safety and the quality of services. The use of agency workers to break strikes could also damage ongoing employment relations, especially in workplaces where agency workers are used on a regular basis.

2.3 The ILO Committee of Experts concluded that the proposals breached international standards, notably ILO Convention 87. The Committee requested that the UK Government *“review this proposal with the social partners concerned”*

2.4 The agency industry faces significant reputational damage if it is seen to fuel and prolong difficult industrial disputes. The UK government’s proposals have attracted criticism within the agency sector.

- The International Confederation of Private Employment Agencies Code of Conduct prohibits the supply of agency workers during strikes.
- Several UK employment businesses have signed international framework agreements which prohibit the supply of agency workers during strikes.
- Kate Shoemith, Head of Policy at the UK Recruitment and Employment Confederation, said: *“We are not convinced that putting agencies and temporary workers into the middle of difficult industrial relations situations is a good idea for agencies, workers or their clients. Our members want to provide the best possible levels of service to their clients but they also have a duty of care to the workers they provide.”*

3. Social partnership in Wales

3.1 The Wales TUC fully supports the social partnership approach adopted by Welsh government. We welcome the ability to work in formal tripartite (government, employers and unions) structures to deliver more effective services and fair outcomes for all. While advisory groups/commissions, bilateral discussions and open consultations may have a role but they cannot replace or replicate the workforce engagement made possible by the direct, formal tripartite social partnership such as that developed in the Welsh public sector Workforce Partnership Council.

3.2 The Wales TUC strongly welcomes and endorses the approach adopted by Welsh government and the National Assembly as a whole in acting to protect Welsh social partnership from the negative impacts of the UK Trade Union Act – at least insofar as the devolved public services are concerned.

3.3 The proposed change to regulation 7 of the UK Conduct of Employment Agencies and Employment Businesses Regulations 2003, while not part of the UK Trade Union Act itself, is nonetheless a significant part of the same agenda with the same detrimental impact on Welsh social partnership arrangements in the delivery of devolved public services in Wales.

3.4 The Wales TUC therefore welcomes the action proposed in this Welsh government consultation to prevent the Welsh social partnership approach being undermined by UK legislation.

4. The consultation questions

Q1. The Welsh Government believes that the effect of the law currently in place should continue, in which Welsh public service employers are not be able to use workers employed by an employment business to provide cover for staff taking industrial or providing cover for them.

Do you agree? **Yes**

Q2. The Welsh Government believes that the current voluntary arrangements are adequate to ensure that 'life and limb' continues to be protected by public services during industrial action.

Do you agree? **Yes**

Q3. The Welsh Government does not anticipate that the proposal would significantly affect the financial position of employment agencies and businesses.

Do you agree? **Yes**

Q4. Do you agree that the option to use primary legislation to create a duty on Welsh public service employers not to use agency workers best achieves our intention?

And

Q5. Do you agree that the option to use guidance or Ministerial direction to Welsh public service employers best achieves the intention?

The Wales TUC believes that preventing the use of agency workers during strike action is a matter of fundamental principle and should be clearly identified in statute as such.

There is certainly a place for such a clause in the proposed Welsh primary legislation to dis-apply aspects of the UK Trade Union Act.

Enshrining the principle in statute would also make less possible any easy repeal at some future point.

We do however recognise that the specific detail of the regulation may be better delivered in secondary legislation/ministerial direction.

This would avoid unnecessary delay at primary legislation stage. It would also allow any necessary amendment dealing with new circumstances to be made quickly.

The consultation document says that a legal duty ‘carries the same weight’ whether delivered through primary or secondary routes and that each route is equally binding on employers and each is equally enforceable.

The Wales TUC would be content for the specifics of the duty to be delivered through secondary legislation if the principle is set out in primary statute and the full terms of the duty are equally binding and fully enforceable in all areas of the devolved public service.

Complications of the devolution settlement and varying ministerial powers in different sectors must not interfere with the full and equal application of the duty to all employers and all sectors in the devolved services.

Q6. Are there any circumstances which should be exempted from the duty and if so what do you think would be the consequences of not exempting them?

No/none.

Q7. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

See above.