

Welsh Government to block UK laws?



The Welsh Government is looking at ways to block parts of the Trade Union Act 2016 that is soon to be introduced across Great Britain. Here, we take a look at why.

Trade Union Act 2016

The Trade Union Act 2016 recently received Royal Assent and will, upon implementation, make changes to what is considered to be a lawful strike. In some ways, it makes it more difficult for employees to take part in a lawful strike because thresholds in terms of interest from the workforce will need to be higher. However, secondary legislation is required to bring the provisions of the Act into force and therefore none of the changes have yet taken effect.

The View of the Welsh Government

The Welsh Government is of the opinion that the provisions of the Act have an impact on the delivery of public services – in health, education and the fire service. Delivery of public services is a devolved matter meaning that the Welsh Government has the power to make its own decisions in that area affecting the people of Wales. It believes then, that because it is entitled to take measures in relation to the delivery of those services that could be affected by the Act, that it has the power to reverse changes made by the Act.

Which Measures May Be Affected?

The precise parts of the Act that the Welsh Government will look to overturn have not been confirmed yet. However, it is likely to be:

- The requirement for 40% agreement of those entitled to vote to be in favour of the industrial action;
- The requirement for public sector authorities to publish information on 'facility time' i.e. time taken off work by employees in order to carry out trade union activities;
- The restriction on public sector employers automatically making deductions from workers' pay for trade union subscriptions.

What Challenges Does the Welsh Government Face?

Delivery of public services is a devolved matter, but employment is not. It is clear that the Act spans both policy areas and so the Welsh Government's ability to make changes would need to overcome certain hurdles first.

However, it may not be an insurmountable task because something similar was achieved in the recent past in relation to agricultural workers. After the Agricultural Wages Board for England and Wales was abolished meaning that special employment rights in excess of the 'normal' employment rights for all other workers would no longer be maintained, the Welsh Government instigated a legal challenge. It claimed that as agriculture is a devolved matter, it had the power to reintroduce a Wages Board applicable just to Wales. The challenge was successful and may therefore set a precedent for any legal challenge regarding Wales' ability to legislate in the area of public service delivery.

First Minister Carwyn Jones has said that he is willing to attempt to push through this legislation even if it means a further Supreme Court battle.

When Might This Happen?

The provisions of the Trade Union Act are not yet in force and so the Welsh Government has time yet. However, it may want to make preparatory steps at this stage because there may well be a period of time after the introduction of the Act's provisions but before the implementation of the Welsh legislation overturning those provisions – if of course this could happen at all – where the new provisions would apply.

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