

# Trade Union Bill

## Parliamentary Update

### Introduction

In Briefing 68 we summarised the provisions of the Trade Union Bill and the implications for Scotland. This briefing updates branches on the parliamentary campaign.

### Westminster

The Bill has passed the initial stages in the House of Commons although, despite the Conservative majority, not unscathed. In particular, the government dropped much of its planned limitations on protests. MPs at the committee stage savaged the Bill and government witnesses were shown to be shockingly unaware of industrial relations practice or even the Bill's provisions.

Amendments have also been tabled to the Scotland Bill to devolve employment law. UNISON supports this while recognising that it won't provide any immediate threat to the Trade Union Bill. Other amendments to the Trade Union Bill seek to exclude Scotland from the Bill's provisions on the grounds that it conflicts with devolved powers.

The Bill is now in the Lords. An early success was a vote against the government to refer the political fund provisions to committee, on the grounds that the Bill is a breach of the Churchill Convention: "*it has become a well established custom that matters affecting the interests of rival parties should not be settled by the imposition of the will of one side over the other.*"

The Lords have also been critical over delays in completing consultations on the detail of the Bill and the UK government's own Regulatory Impact Committee has described the Bill as 'not fit for purpose'.

The Westminster Joint Select Committee on Human Rights took evidence in Edinburgh this month and that was opportunity to seek their support on the human rights aspects of the Bill. This reinforces our submission, with HRCS, to the United Nations in Geneva last October.

### Scottish Parliament

The Scottish Parliament debated the Bill on 10 November and overwhelmingly passed a motion critical of the legislation. MSPs recognised many of UNISON's arguments on the impact the legislation has on Scotland's industrial relations culture, particularly in the public sector.

The Scottish Government then tabled a Legislative Consent Memorandum, which argues that the Bill has devolved aspects that require the approval of the Scottish Parliament through a Legislative Consent Motion (LCM).



## POLICY BRIEFING

### KEY POINTS:

- **The Bill is with the House of Lords after passing through the Commons with some amendments.**
- **Scottish Parliament opposes the Bill, but unlike Wales no LCM passed yet.**
- **Scottish Government and employers opposed.**
- **Human rights challenge may allow Scottish employers to resist the Bill.**
- **Further campaign events in February.**



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The Presiding Officer has ruled this motion incompetent, wrongly in our view. Subsequently, we set out how this could be dealt with by changing the Parliament's Standing Orders and that proposal has been submitted to the Standards Committee.

The Bill was also referred to the Devolution Committee and their highly critical report was debated in parliament on 26 January, when parliament yet again passed a critical motion.

The Welsh Assembly has been more robust in its approach and has passed an LCM and threatened to pass a Bill repealing the provisions that conflict with devolved matters. Their approach may result in the Bill being referred to the Supreme Court.

### **Resisting the Bill**

The Scottish Government has made it clear that they will not willingly cooperate with the Bill. CoSLA has taken a strong stance against the Bill and a number of councils have passed motions indicating that they will not cooperate with the legislation if it is passed.

During the last Parliamentary debate, Labour indicated that they had received initial legal advice that the Bill was contrary to the Human Rights Act. Under the Scotland Act, the Scottish Government and public bodies cannot do anything that is 'incompatible with any convention' and that includes the ECHR. We are assisting with firming up that legal position, as it is consistent with our view of the legislation as outlined in Briefing 68.

### **Staff Governance**

Another example of how the Trade Union Bill conflicts with devolved matters is NHS staff governance and partnership. The NHS Reform (Scotland) Act 2004 (s3(2)) reinforced this commitment by legislation.

The Staff Governance Standard requires a level of engagement from trade unions that is underpinned by facility time. Staff governance is viewed as an investment in patient care because Staff who are well informed, appropriately trained and sharing best practices, can influence and deliver services to the best of their ability in the changing health care setting.

While similar arguments apply to industrial relations structures in other public bodies, NHS Scotland has a statutory duty to maintain staff governance, creating a conflict of laws.

### **Next steps**

The parliamentary campaign has to be supported by activity on the ground.

Branches have been asked to make the Trade Union Bill a feature of AGMs this year. New pop-up banners and leaflets will be available for use at these events.

UNISON Week is supporting the TUC 'Unions Week' on 8-14 February. The week is about celebrating UNISON and the achievement of all unions, and making sure we are the strongest union we can be.

The STUC campaign focus is a Day of Action on 29 February. The aim is to show how the Bill will impact on workplace industrial relations and we will be discussing activities at Scottish Council on 6 February.



### **Further info**

#### **Briefing 68 – TU Bill**

[http://www.unison-scotland.org.uk/briefings/b068\\_PolicyBrief\\_TradeUnionBill+Scotland\\_Sep2015.pdf](http://www.unison-scotland.org.uk/briefings/b068_PolicyBrief_TradeUnionBill+Scotland_Sep2015.pdf)

#### **Bill at Westminster**

<http://services.parliament.uk/bills/2015-16/tradeunion.html>

#### **Bill in Scottish Parliament**

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/94994.aspx>

#### **HRCS at the UN**

<http://www.unison-scotland.org.uk/news/2015/sep/oct/1023a.htm>

#### **NHS Staff Governance**

<http://www.staffgovernance.scot.nhs.uk/what-is-staff-governance/overview/>

#### **UNISON Week**

<https://www.unison.org.uk/our-campaigns/trade-union-bill-2015/>



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