

# **TRADE UNION AND LABOUR RELATIONS (AMENDMENT) BILL**

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## **EXPLANATORY AND FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This Explanatory and Financial Memorandum has been prepared by Gerry Carroll MLA (“the Member”), in order to assist the reader of the Bill and to help inform the debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum should be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill, and where any part of a clause does not seem to require any explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. The Member contends that Northern Ireland has some of the most restrictive labour legislation in Europe, which has significantly curtailed the ability of trade unions to take effective strike action to defend the pay and conditions of the workers they represent.
4. The Member further believes strong workplace representation is crucial to tackling low pay and to creating a more equal society. However, workers’ rights to defend their jobs, pay and conditions and the ability to take industrial action in solidarity with other groups of workers is constrained under the existing legislation.
5. Consequently, the Bill seeks to amend the Employment Rights (Northern Ireland) Order 1996 (“the 1996 Order”) and the Trade Union and Labour Relations (Northern Ireland) Order 1995 (“the 1995 Order”) to enhance the rights of employees that are subject to dismissal from their employment whilst taking part in protected action and to extend rights to employees of smaller companies by removing the requirement that the workplace must employ at least twenty-one employees before a trade union can submit a request to be recognised by the employer.

6. The Bill also seeks to repeal Article 102 of the 1995 Order to permit ‘solidarity’ (referred to as ‘Secondary Action’), industrial action without the fear of civil prosecution.
7. In addition, the Bill aims to reduce the information that a trade union is required to collate prior to industrial action being instigated.
8. The Bill also seeks to reduce the required notice period prior to the opening of the ballot on industrial action.
9. The Trade Union and Labour Relations (Amendment) Bill has six broad policy objectives:
  - a. To remove the ban on ‘solidarity’ industrial action;
  - b. To remove the mandatory requirement of a postal ballot process when voting to determine whether to commence industrial action;
  - c. To simplify the type and amount of information required from trade unions before undertaking industrial action;
  - d. To reduce the required notice period before industrial action may be taken from seven days to two;
  - e. To reduce the minimum number of employees that an employer must have before being required to consider a request submitted by a trade union to be recognised from twenty-one to five; and
  - f. To mandate employers who recognise a trade union to negotiate on the basis of ‘terms and conditions of employment’ rather than ‘hours and holidays’.

## **CONSULTATION**

10. The Member conducted a consultation exercise on the policy objectives and proposed options for the Bill which commenced on 29 June 2020 and concluded on 20 October 2020.
11. The Member also shared his legislative proposal with the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland.

## **OPTIONS CONSIDERED**

12. **Option 1:** Do Nothing.

13. **Option 2:** Introduce and enact legislation to enhance the rights of employees and simplify the requirements that trade unions must satisfy when balloting their members to determine whether industrial action should be taken.
14. The Member contends that the conditions on industrial action put in place by the existing legislative framework are overly restrictive. In order to strengthen the bargaining power of trade unions, the Member notes that primary legislation is the best mechanism to achieve the policy objectives.

## **OVERVIEW**

15. The Bill has eight clauses and no schedules. A commentary on each of the clauses follows below.

## **COMMENTARY ON CLAUSES**

**Clause 1 - Industrial action etc:** repeals Article 102 of the 1995 Order (Secondary action), which removes the direct ban on secondary action by unions.

**Clause 2 - Notice of ballot for employers:** amends Article 105 of the 1995 Order (Notice of ballot and sample voting paper for employers), simplifying the information to be provided to employers by reverting to the information requirements which were contained in the original version of Article 105 which had effect between 1 October 1995 and 12 October 2002. This requires the notice to describe (so that the employer can readily ascertain them) the employees of the employer which it is reasonable for the union to believe will be entitled to vote in the ballot. The amendment also removes the requirement that a sample voting paper be provided to employers and reduces the notice period for industrial action from seven days to two.

**Clause 3 - Conduct of ballot:** amends Article 111 of the 1995 Order (Conduct of ballot) to introduce a range of options by which union members can be provided with voting papers and vote in a ballot, including workplace voting. It also adds Article 111A which introduces the provision of electronic voting in ballots. This complements the option of a voting paper being sent to a member by means other than post, where required for reasons of personal safety. This option is contained in Article 111(2)(b) of the 1995 Order as currently drafted, and has been retained in the amended Article 111 so as to make the options available as broad as possible.

**Clause 4 – Participation in official industrial action:** amends Article 144A of the 1996 Order (Participation in official industrial action) to extend the period during which dismissal of an employee because they have taken protected industrial action, is automatically unfair. The clause would make dismissal for the reason (or, if more than one, the principal reason) of taking protected industrial action automatically unfair, regardless of when the dismissal takes place.

**Clause 5 – Collective bargaining: recognition:** makes changes to Schedule 1A to the 1995 Order (Collective bargaining: recognition), in order to reduce from twenty-one to five the mandatory minimum number of employees required in order for a request for recognition to be valid, and to change the definition of collective bargaining so that it encompasses “pay, terms and conditions of employment”.

**Clause 6 – Consequential amendments:** makes consequential amendments to the 1995 and 1996 Orders relating to the changes made in the preceding clauses.

**Clause 7 – Short title:** sets out the short title by which the Act may be cited.

**Clause 8 – Interpretation:** provides definitions of terms used in the Act.

### **FINANCIAL EFFECTS OF THE BILL**

16. The Member contends that the current legislation is restrictive and a contributing factor to the scale of inequality and Northern Ireland’s reputation as a low wage economy. It is the Member’s view that the increased bargaining power for trade unions which would accompany the Bill will bring significant benefits to workers, including greater job security. The Member considers such economic benefits would outweigh the costs incurred by greater scope for industrial action.
17. The Member believes that the Bill should not give rise to any significant increase in direct costs to the public purse. However, the Member recognises that some administrative costs may be incurred by the Department for the Economy and the Labour Relations Agency, for example, to update publications or codes of practice. Other costs include the need to provide additional training and advice to workers and employers on the changes. Examples include advice on secondary industrial action and the need to deliver services to a larger union membership. This anticipated increase flows from the Bill’s reduction of the minimum number of employees required before an employer must consider a request to recognise a trade union from twenty-one to five.
18. The member does not anticipate that the provisions of the Bill will require significant changes to existing IT systems or administrative processes within the Department for the Economy and therefore no direct costs to the public purse of any significance should be incurred in this regard.

### **HUMAN RIGHTS ISSUES**

19. The Member is satisfied that the bill is human rights compliant.

### **EQUALITY IMPACT ASSESSMENT**

20. An Equality Impact Assessment has not been undertaken, as communications between the Member and the Equality Commission for Northern Ireland and legal

advice the Member has received did not identify any equality implications for the Bill. Therefore, it is considered the Bill will not have an adverse impact on any of the groups identified in section 75 of the Northern Ireland Act 1998.

#### **LEGISLATIVE COMPETENCE**

21. At Introduction, the Sponsor of the Bill, Mr Gerry Carroll MLA, had made the following statement under Standing Order 30 of the Northern Ireland Act 1998:

*“In my view the Trade Union and Labour Relations (Amendment) Bill would be within the legislative competence of the Northern Ireland Assembly”.*

#### **SECRETARY OF STATE CONSENT**

22. It is considered that the Secretary of State’s consent under section 8 of the Northern Ireland Act 1998 is not required for this Bill.