



Trade Union Act 2016

2016 CHAPTER 15

Facility time and check-off

14 Reserve powers

After section 172A of the 1992 Act (inserted by section 13 above) insert—

“172B Reserve powers in relation to facility time

- (1) After the end of the period of three years beginning with the day on which the first regulations under section 172A come into force, a Minister of the Crown may exercise the reserve powers (see subsection (3)) if the Minister considers it appropriate to do so having regard to—
 - (a) information published by employers in accordance with publication requirements;
 - (b) the cost to public funds of facility time in relation to each of those employers;
 - (c) the nature of the various undertakings carried on by those employers;
 - (d) any particular features of those undertakings that are relevant to the reasonableness of the amount of facility time;
 - (e) any other matters that the Minister thinks relevant.
- (2) The reserve powers may not be exercised so as to apply to any particular employer unless—
 - (a) a Minister of the Crown has given notice in writing to the employer—
 - (i) setting out the Minister's concerns about the amount of facility time in the employer's case, and
 - (ii) informing the employer that the Minister is considering exercising the reserve powers in relation to that employer;
 - (b) the employer has had a reasonable opportunity to respond to the notice under paragraph (a) and to take any action that may be appropriate in view of the concerns set out in it;

Changes to legislation: There are currently no known outstanding effects for the Trade Union Act 2016, Section 14. (See end of Document for details)

and the powers may not be exercised until after the end of the period of 12 months beginning with the day on which the notice under paragraph (a) was given.

- (3) The reserve powers are powers to make regulations—
 - (a) applying to relevant public sector employers on whom the publication requirements were imposed, and
 - (b) containing any provision that the Minister considers appropriate for the purpose of ensuring that, in each period specified by the regulations, the percentage of an employer's total pay bill spent on paying relevant union officials for facility time does not exceed a percentage that is so specified.
- (4) The regulations may, in particular, make provision restricting rights of relevant union officials to facility time by amending or otherwise modifying any of the following—
 - (a) section 168 or 168A;
 - (b) section 10 of the Employment Relations Act 1999;
 - (c) regulations made under section 2(4) of the Health and Safety at Work etc. Act 1974.
- (5) The regulations may make provision as to the calculation of working time, of paid facility time, or of an employer's total pay bill.
- (6) The regulations may impose requirements on employers in relation to whom the reserve powers are exercised to publish any further information that the Minister considers appropriate.
- (7) Where requirements are imposed under subsection (6) the regulations may make provision—
 - (a) as to the times or intervals at which the further information is to be published;
 - (b) as to the form in which the further information is to be published.
- (8) The regulations may provide that some or all of their provisions do not apply—
 - (a) in cases specified by the regulations, or
 - (b) if a person specified in the regulations is satisfied that conditions that are so specified are met.
- (9) The regulations may confer power on a Minister of the Crown, by notice in writing to a particular employer, to suspend the application of the regulations to that employer for such period and to such extent as the Minister may specify in the notice.
- (10) The regulations may—
 - (a) make provision in relation to any or all of the employers in relation to which the reserve powers are exercisable;
 - (b) make different provision for different employers or different categories of employer;
 - (c) make transitional provision in connection with the coming into force of any provision of the regulations;
 - (d) make consequential provision amending or otherwise modifying section 170, contracts of employment or collective agreements.

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- (11) In this section—
- (a) “publication requirements” means requirements imposed under section 172A or subsection (6);
 - (b) “relevant public sector employer” has the same meaning as in section 172A, read with any regulations made under subsection (9) of that section;
 - (c) “relevant union official” and “facility time” have the same meaning as in section 172A.
- (12) Subsections (10) and (11) of section 172A apply for the purposes of this section as they apply for the purposes of that section.
- (13) Regulations under this section shall be made by statutory instrument.
- (14) No regulations under this section shall be made unless a draft of them has been laid before Parliament and approved by a resolution of each House of Parliament.”

Commencement Information

II [S. 14](#) in force at 25.11.2022 by [S.I. 2022/1228](#), [reg. 2](#)

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