

EXPLANATORY MEMORANDUM TO
THE TRADE UNION ACT 2016 (POLITICAL FUNDS) (TRANSITION PERIOD)
REGULATIONS 2017

2017 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 Section 11 of the Trade Union Act 2016 (“the 2016 Act”) makes changes to provisions in the Trade Union and Labour Relations Consolidation Act 1992 (“the 1992 Act”) which apply to contributions made by members to political funds set up by unions and employer associations. These Regulations specify the length of the transition period which must expire before the Regulations come into force. The 2016 Act provides that the period must be no less than 12 months. After consulting with the Certification Officer (“the CO”) and all trade unions that have a political fund, as the 2016 Act requires, the Secretary of State has specified that the transition period will be 12 months which is to commence on 1st March 2017.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Section 11(7) of the 2016 Act provides that before making regulations, the Secretary of State must consult the CO and all trade unions that have a political fund. This was done on 6th July when the Department wrote to the relevant unions and the CO and requested a response by 12th August. In addition the Government held a meeting with the trade unions and the TUC on 28th July to discuss a number of issues including the transition period. The Government responded to the consultation on 2nd December by writing to the trade unions and the Certification Officer with the outcome of the consultation. Whilst the consultation was completed before section 11(7) came into force, the Department considers that it complies fully with that section.
- 3.2 The natural meaning of the words in section 11(7) permits consultation to take place in advance of the section coming into force. It is true that some statutes have contained express permissive wording, for the avoidance of doubt, which state that consultation conducted before a requirement to consult comes into force can satisfy that requirement (for instance, sections 46(4) and 47(4) of the Deregulation Act 2015.). However, we do not think such provisions are sufficient to change the natural meaning of section 11(7). It is clear to all those who have been consulted that the consultation that has taken place was for the purpose set out in section 11(7). The substance and the process of that consultation complied fully with the requirements of the legislation and it makes no difference to those who were consulted as to whether the consultation took place before or after section 11(7) was commenced. In the case of *Fletcher and Others v Minister of Town and Country Planning* [1947] 2 All ER 49, the High Court took the very same approach.

Other matters of interest to the House of Commons

- 3.3 Disregarding minor or consequential changes, the territorial application of this instrument is to Great Britain.

4. Legislative Context

- 4.1 Sections 82 to 91 of the 1992 Act set out the current legislation in relation to political funds. That legislation will remain in place for all existing members of trade unions and for existing political funds. Section 11 of the 2016 Act amends the 1992 Act so that after commencement of section 11 and after the expiry of the transition period of 12 months, the amended provisions in the 1992 Act will apply to:-

a person:-

- (a) who joins a trade union that has a political fund, or
- (b) who is a member of a trade union that has a political fund but did not have one immediately before the end of the transition period.

- 4.2 The new provisions in section 11 provide that:-

- (a) new members will be required to actively opt in to a political fund;
- (b) members will be able to use e-mail, post or agents, or an electronic form provided by the union, to opt in if they wish to contribute. They may also use these means to send a withdrawal notice where they no longer wish to contribute;
- (c) unions are to send annual notifications to new members to remind them of their right to withdraw their opt-in. This must be done by the end of the period of eight weeks after the union sends its annual return to the CO. A copy or copies of the notifications shall also be sent to the CO;
- (d) unions with political funds must make it clear on application forms that new members have a choice to opt-in and that they will not suffer any detriment should they decide not to opt-in. Unions must amend their rules to reflect the new requirements for new members.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain.

6. European Convention on Human Rights

- 6.1 The Minister of State for Business, Energy and Industrial Strategy has made the following statement regarding Human Rights:
- “In my view the provisions of the Trade Union Act 2016 (Political Funds) (Transition Period) Regulations 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The Trade Union Act establishes a series of measures to make strike law fairer for working people.
- 7.2 The aim of the Trade Union Act is to modernise the UK industrial relations framework to better support an effective and collaborative approach to resolving

industrial disputes, balancing the interests of unions with the interests of the wider public. Strikes and other forms of industrial action should be regarded as a last resort after all other attempts to resolve differences through dialogue have been exhausted.

- 7.3 The Trade Union Act ensures that strikes only happen as the result of a clear, democratic decision by those entitled to vote, restoring public confidence that where industrial action takes place, it has the strong support of union members.
- 7.4 None of the reforms in the Trade Union Act are about banning strikes. The Government recognise that responsible trade unions can play a constructive role in maintaining positive industrial relations and the Trade Union Act will ensure that strikes happen only as a result of a clear, positive decision by those entitled to vote.
- 7.5 The Trade Union Act strikes a fair balance between the rights of unions and the needs of employers and the wider public, restoring public confidence that where industrial action takes place, it has the strong support of union members.
- 7.6 Great Britain trade unions and unincorporated employer associations that have passed a political resolution are able to run political funds. Currently, when there has been a successful ballot on a political resolution, the union or employer association must write to each of its members setting out the rules of the political fund, and informing them that they can opt-out of the fund (and letting them know where an opt-out form can be obtained). Members automatically contribute to the political fund unless they choose to exempt themselves from making contributions. Members are able to opt out of the political fund at any time. However, the majority of trade unions with political funds do not currently highlight the right to opt-out on their membership forms, leading to insufficient information for employees on their rights.
- 7.7 Section 11 of the Trade Union Act 2016 meet the Government's manifesto aim to provide that union members should be required to actively opt in should they wish to contribute to a trade union political fund. Section 11 also provides that, having decided to contribute, members can choose to withdraw that opt in at any time. As well as using post and agents to send either an opt in notice or a withdrawal notice, members may also send an email to an address a union has told its members they can use for these purposes, or by completing an electronic form, provided by the union and then sending the form by electronic means in accordance with the union's instructions.
- 7.8 Section 11 also provides that new members joining a union should be advised on the application form on joining the union that they can opt to be a contributor to the political fund and if they choose not to contribute they will not suffer any detriment.
- 7.9 Section 11 also provides that new members will receive an annual reminder that they have the right to withdraw an opt-in decision.
- 7.10 The effect of the reforms will be to ensure that new members are better informed and have a conscious choice on whether they wish to contribute to a political fund. Such an opt-in is similar to the choices which are required by data protection and consumer protection law. Trade unions in Northern Ireland already operate by way of opt-in.
- 7.11 The Act makes no change to the way that trade unions may decide to affiliate and/or donate from their political funds to any political party.

Consolidation

- 7.12 As the regulations deal with a one off transition period consolidation is not relevant.

8. Consultation outcome

- 8.1 The Government consulted by writing to the CO and the 24 unions with political funds on 6th July 2016 and asking for responses by 12th August 2016. The Government also held meetings with the CO on the 20th of July 2016 and with the TUC and unions on the 28th of July. In total the Government received 16 responses to the consultation, from the CO, the TUC and 14 unions. The main issues raised by unions included a request for updated model rules from the CO; the need to allow an appropriate time period for unions to amend their rulebooks; and allowing sufficient time to make a number of changes to IT systems and administrative procedures (such as printing new application forms, recruitment and training materials). The CO stressed that as few unions use the model rules without any amendments they are encouraged to submit draft rules to the CO prior to adopting them. The CO will therefore require sufficient time to manage the approval process.
- 8.2 Having considered these issues, the Government has decided to set a transition period of 12 months.

9. Guidance

- 9.1 To assist unions in compliance with the political fund opt-in arrangements the CO will prepare and publish new model rules and guidance which the CO will aim to have available to unions at the beginning of the transition period. The CO commenced consultation on his draft guidance and the model rules on 25th October.
- 9.2 At the end of the transition period the Government will publish guidance on gov.uk to clarify the rules and processes in relation to new provisions on political funds, in order to assist unions and employer associations with political funds or where they are planning to set up a new political fund.
- 9.3 The link to the guidance will be circulated to interested parties.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is low.
- 10.2 There is no impact on the public sector.
- 10.3 An enactment impact assessment for the 2016 Act is with the RPC and will be published in due course.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small business.

12. Monitoring & review

- 12.1 The transition period is a fixed 12 month period and therefore the Government considers that a review is not necessary. Once the transition period has expired, matters of compliance with section 11 of the 2016 Act will be for the CO.

13. Contact

- 13.1 Mini Krishnan at the Department for Business, Energy and Industrial Strategy
Telephone: 0207 215 3922 or email: mini.krishnan@beis.gov.uk can answer any queries regarding the instrument.