

EXPLANATORY MEMORANDUM TO
THE TRADE UNION (DEDUCTION OF UNION SUBSCRIPTIONS FROM WAGES
IN THE PUBLIC SECTOR) REGULATIONS 2017

2017 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument specifies that a relevant public sector employer can only make deductions from its workers' wages in respect of trade union subscriptions (commonly referred to as "check-off") if: the trade union pays the employer a reasonable amount for this service; and, workers have the option to pay their subscriptions by other means. This ensures there is no cost burden to the taxpayer in the provision of check-off services in the public sector.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

- 4.1 The Trade Union Act 2016 introduces a number of reforms to Britain's industrial relations framework, which is set out in the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").
- 4.2 Section 116B(1) of the 1992 Act (as inserted by section 15 of the Trade Union Act 2016) sets out that a relevant public sector employer, as specified in the regulations, may make deductions from its workers' wages in respect of trade union subscriptions only if the workers also have the option to pay these subscriptions by other means and arrangements have been made for the trade union to reimburse the employer a reasonable amount in respect of the cost of making the deductions.
- 4.3 This instrument uses powers in section 116B for the first time to specify who a relevant public sector employer is and make provision to support section 116B(1).
- 4.4 If Parliament approves these draft Regulations, arrangements will be made for section 116B(1) itself to come into force on the same day as these draft Regulations (i.e. 10 March 2018).

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales and Scotland.

5.2 The territorial application of this instrument is England and Wales and Scotland.

6. European Convention on Human Rights

6.1 The Minister for the Cabinet Office has made the following statement regarding Human Rights:

“In my view the provisions of the Trade Union (Deduction of Union Subscriptions from Wages in the Public Sector) Regulations 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

7.1 The aim of the Trade Union Act 2016 is to modernise Great Britain’s industrial relations framework to better support an effective and collaborative approach to resolving industrial disputes, balancing the interests of unions with interests of the wider public sector.

7.2 This instrument helps fulfil these objectives by ensuring that union subscriptions are deducted from wages (check-off) in a way that represents value for money to the taxpayer. It allows check-off arrangements to exist between the employer and union, which many unions find a useful method by which to collect subscription fees from their members, but ensures unions pay reasonable costs for this service.

7.3 The cost of administering check-off varies across the public sector. A TaxPayers’ Alliance report published in 2014 found that most public sector organisations deducted union subscription fees from employees’ salaries, of these only 22% charged trade unions for the service. It is estimated that the administration of check-off costs the public sector upwards of £6.6 million per year. This instrument seeks to reduce this cost burden to the public sector.

7.4 Without legislative intervention the Government cannot ensure that publicly funded employers provide check-off services on behalf of trade unions at no cost burden to the taxpayer.

7.5 This instrument will not apply to devolved public authorities in Wales. The Wales Act 2017 will clarify that industrial relations are a reserved matter, and the UK Government will act at the earliest possibility opportunity, following commencement of the Wales Act, to ensure the legislation covers these public authorities.

Consolidation

7.6 There are no immediate plans to consolidate the regulations.

8. Consultation outcome

8.1 The Government consulted on which public sector employers should be included in the regulations by working with all relevant Government departments.

8.2 A cross-Government consultation exercise was conducted to ensure that the correct bodies are captured within the scope of this instrument. The consultation explained that the policy intention is to capture public authorities unless they are advisory bodies/expert panels, regulatory bodies, are funded by a levy on a discrete group in society, or which have a predominantly commercial focus. All Government

departments, which includes Non-Ministerial departments and Executive Agencies, are included.

- 8.3 This consultation took place on three occasions. The first consultation period commenced on 13th April 2016 and ran for a week (closed on the 20th April), the second opened on the 17th June 2016 and ran for three weeks (closed on the 13th July) and the third commenced 10th February 2017 and ran for a week (closed on 20th February). Responses were received from all Government departments and amendments were made to the regulations. This followed earlier informal consultation with departments over many months.
- 8.4 There was also significant engagement from the opposition in the House of Lords, which led to further consideration of the scope of these regulations.

9. Guidance

- 9.1 The Government does not plan to issue formal guidance to explain the new obligation under this instrument. The relevant public sector employers will be notified prior to the instrument coming into force.

10. Impact

- 10.1 There is no impact on businesses who are not also trade unions.
- 10.2 There is no impact on charities or voluntary bodies who are not captured within the scope of this instrument as a ‘relevant public sector employer’.
- 10.3 The impact on trade unions who use check-off facilities but do not: (1) currently make payments to the relevant public sector employer for providing this service nor (2) provide an alternative means to pay for trade union subscriptions, is that they will need to consider whether to seek an arrangement with that employer to make provision for reasonable payments to be made to the employer for providing check-off and provide an alternative means to pay for subscriptions. If no such arrangements are made, the trade union will need to consider making alternative arrangements for their affected members to pay their subscriptions.
- 10.4 The impact on trade unions who use check-off facilities and currently make payments to the employer for providing the service will be that they should consider seeking confirmation from the employer that it considers the payments to be reasonable as set out below.
- 10.5 Any trade union which uses a check-off service provided by the employer and also makes payment to the employer in regards of this service, whether as a result of an existing, varied or new arrangement, will also have to ensure that its members have the option of paying their membership subscription by other means, for example, direct debit.
- 10.6 The costs to the trade union of reimbursing the cost of check-off must be reasonable. For the purpose of this instrument, payments are considered “reasonable” if the employer is satisfied that the total amount of the payment is substantially equivalent to the total cost to the public funds of making deductions (check-off).
- 10.7 The impact on the public sector is that organisations will have to charge for the provision of check-off where they offer this service in order to relieve the taxpayer of the cost burden. The proposed change in regulation could result in net benefits to the taxpayer of between £8m and £42m over a ten-year period. It is anticipated that there

will be a small upfront cost linked to the business time and resource required to make arrangements with the relevant union for payment for the cost of the service.

- 10.8 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.
- 11.2 The legislation only directly regulates the wider public sector but due consideration has been given as to how it may indirectly apply to activities that are undertaken by small businesses (trade unions).
- 11.3 This instrument only requires that a union pays a reasonable cost to the employer if they are in receipt of a check-off service and wish to continue to receive this service. This cost will be proportionate to the size of the membership of the union and the union will only pay for the service it receives.

12. Monitoring & review

- 12.1 The Government will monitor further evidence on the impact of this instrument. If this demonstrates that the impact has shifted from that which was anticipated (that charging for check-off reduces the burden on the taxpayer) the Government will review this instrument accordingly.

13. Contact

- 13.1 Lucy Revill at the Cabinet Office Telephone: 07841 804594 or email: lucy.revill@cabinetoffice.gov.uk can answer any queries regarding the instrument.