

EXPLANATORY MEMORANDUM TO
THE TRADE UNION (DEDUCTION OF UNION SUBSCRIPTIONS FROM WAGES
IN THE PUBLIC SECTOR) REGULATIONS 2023

2023 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument specifies who a relevant public sector employer is for the purposes of section 116B(1) of the Trade Union and Labour Relations Act 1992. Section 116B(1) 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 seeks to ensure that 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.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Scotland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Scotland.

5. European Convention on Human Rights

- 5.1 The Minister for the Cabinet Office, Jeremy Quin MP 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 are compatible with the Convention rights."

6. Legislative Context

- 6.1 The Trade Union Act 2016 introduced a number of reforms to Britain's industrial relations framework set out in the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").
- 6.2 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.

- 6.3 This instrument uses powers in section 116B to specify who a relevant public sector employer is for the purposes of section 116B(1) of the Trade Union and Labour Relations Act 1992.
- 6.4 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 (9 May 2024).

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. Currently, public sector employers may administer the check-off process, without necessarily being reimbursed for the time and cost of doing so. This instrument sets out the list of public sector employers who, should this process exist, must charge trade unions for the costs associated with administration. 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. Data from the 2018/19 Wellbeing and Management Practices Survey, conducted by the Department for Business, Energy and Industrial Strategy, found that 65% public sector employees are employed within organisations that provide them with access to check-off. However, the TaxPayers’ Alliance report published in 2014, supported by more recent Cabinet Office sample data collected in 2022 through consultation with public sector workforce groups, found that, of these employers, less than a quarter currently charged trade unions for the service. An Impact Assessment conducted to assess the likely cost of check-off estimated that the administration of check-off costs the public sector approximately £1.63 million per year. This instrument seeks to reduce this cost burden to the public sector, and therefore the taxpayer.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.4 Section 116B(1) of the 1992 Act provides that a relevant public sector employer can only administer 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. Prior to this instrument being made there was no secondary legislation which specified who is a relevant public sector for the purposes of section 116B(1) of the 1992 Act.

Why is it being changed?

- 7.5 The Government is committed to the responsible and transparent use of taxpayers' money. As such, the Government believes that check-off services should not be provided by public sector organisations on behalf of trade unions at a cost burden to the taxpayer. Therefore, trade unions operating in the public sector that collect their membership subscription fees through the use of check-off services, should be liable for the cost of that service. Further, the Government believes that public sector workers should be offered a choice about how to pay union subscriptions to best meet their needs and personal circumstances.
- 7.6 Without legislative intervention the Government cannot seek to ensure that publicly funded employers provide check-off services on behalf of trade unions at no cost burden to the taxpayer.

What will it now do?

- 7.7 This instrument will ensure that a public sector employer can only make deductions from its workers' wages in respect of trade union subscriptions if the trade union pays the employer a reasonable amount for this service.
- 7.8 The instrument will also ensure a public sector employer can only make deductions from its workers' wages in respect of trade union subscriptions if the trade union offers workers another means through which to pay their union subscriptions.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There are no immediate plans to consolidate the regulations.

10. Consultation outcome

- 10.1 The Government consulted on which public sector employers should be included in the regulations by working with all relevant Government departments. No public consultation was carried out as the principles of this provision were debated extensively in Parliament during the passage of the Trade Union Act in 2016. Trade union officials and others gave evidence during the passage of the Act and the Government listened to their comments.
- 10.2 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 that are wholly or mainly funded by public funds, 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.
- 10.3 This consultation took place on four occasions. The first consultation period commenced on 13th April 2016 and ran for a week (closed on 20th April), the second opened on 17th June 2016 and ran for three weeks (closed on 13th July), the third commenced 10th February 2017 and ran for a week (closed on 20th February) and the fourth opened on the 17 August 2022 and ran for a week (closed on 3rd September

2022). Responses were received from all Government departments and amendments were made to the regulations. This followed earlier informal consultation with departments over many months.

- 10.4 There was also significant engagement from the opposition in the House of Lords, in 2017 which led to further consideration of the scope of these regulations.

11. Guidance

- 11.1 The Government will issue formal guidance to explain the new obligations under this instrument. This guidance will help in scope public sector employers comply with the regulations, specifically by supporting them in determining a reasonable payment, alternative mechanisms to pay union subscription fees, and how to remove check-off if necessary. In addition, relevant public sector employers will be notified prior to the instrument coming into force.

12. Impact

- 12.1 There is no impact on businesses who are not also trade unions.
- 12.2 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’.
- 12.3 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 or (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.
- 12.4 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.
- 12.5 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.
- 12.6 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).
- 12.7 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 costs of introducing the Regulations total approximately £17 million over 10 years, of which £15.5m is expected to fall to trade unions, and around £1.93m to public sector employers in year one for transitional costs. Nevertheless, this legislation is expected to save the taxpayer £12.18 million over the next 10 years.

12.8 The costs and savings have been calculated as part of the Impact Assessment, informed largely by the 2018 Management and Wellbeing Practices Survey, the 2014 TaxPayers Alliance report, and sample data collected by the Cabinet Office from public sector workforce groups (the NHS, Police, Local Government, Maintained Schools and Academies and the Civil Service). A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 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).

13.2 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.

14. Monitoring & review

14.1 The Government will monitor further evidence on the impact of this instrument in May 2027. 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.

14.2 To do this, the Government will look to collect data through the annual returns from trade unions to the certification officer, and will reach out to public sector workforces and trade unions to capture their perspectives. This will enable the Government to reach those organisations in scope while keeping the burden on those organisations to a minimum.

15. Contact

15.1 Patrick Fleming at the Cabinet Office, email: patrick.fleming@cabinetoffice.gov.uk or Hayley Needs at the Cabinet Office, email hayley.needs@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Craig Fitzek, Deputy Director for the Reward, TUPE, Employment Framework and Industrial Relations Team, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jeremy Quin, Paymaster General & Minister for the Cabinet Office, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.