

Title: Certification Officer's Levy impact assessment IA No: BEIS034(F)-21-LM RPC Reference No: not applicable Lead department or agency: BEIS Other departments or agencies: Certification Office	Impact Assessment (IA)			
	Date: 01/11/2021			
	Stage: Final Stage			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
	Contact for enquiries:			

Summary: Intervention and Options	RPC Opinion: Not applicable
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Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£m	Not applicable	Not applicable	Not in scope

What is the problem under consideration? Why is government action or intervention necessary?

The Certification Officer is funded by Government and is responsible for ensuring that trade unions and employers' associations abide by statutory requirements, primarily in relation to governance, under the UK's trade union law. Running the office of the Certification Officer, required to ensure that trade unions and employers' associations comply with relevant regulation, currently falls to the Exchequer. The Government believes that the taxpayer should not be required to meet the costs of regulating trade unions and employers' associations and that these organisations should make a contribution towards the cost of the Certification Officer via an annual levy.

What are the policy objectives of the action or intervention and the intended effects?

The policy objective is that the costs incurred by the Certification Officer in regulating trade unions and employers' associations will be recovered (where eligible) from the organisations being regulated. The intention is that the amount to be recovered via the levy will be divided up in a way that is fair across the organisations eligible to make payment. This is in line with the operation of other levy schemes for other regulators. The levy framework should accord, to the extent possible, with four key objectives; that the levy is:

- Equitable: all eligible organisations will make a contribution to eligible costs based on usage;
- Simple: the structure of the levy is designed to be easy for organisations to understand;
- Predictable: provided that an organisation's income level does not suffer significant fluctuations, its annual contribution to the levy will be broadly similar year-on-year; and
- Affordable: organisations will make a contribution that will not go above a low proportion of their annual income.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Other options, such as a flat rate (equal across all organisations), a fixed percentage of income across all organisations, or a levy based on membership size were considered. However, these approaches failed on some of the key objectives: some of the organisations covered have very low incomes, and would be severely affected under the alternative options, while some organisations with large annual incomes have a relatively low regulatory cost, so the alternative approaches would lack equity. The chosen approach is a combined model, where a levy contribution is based on the functions that organisations use and on an affordability cap. This approach was considered to be most in accord with the policy objectives.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year				
Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?		Micro Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: -	Non-traded: -	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ **Paul Scully** _____ Date: _____ **10/12/2021** _____

Summary: Analysis & Evidence

Policy Option 1

Description: Introducing a levy on trade unions and employers' associations

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate	0.068		1.17		10.2
Description and scale of key monetised costs by 'main affected group'					
Employers' associations and trade unions will need to familiarise themselves with the levy at a one-off cost of £38,000. The Certification Office will have a familiarisation and transition cost of around £18,000, and an ongoing cost of between £11,000 and £31,000					
Unions and employers' associations will have to pay the levy – which in total is currently estimated at around £1.15 million a year, though this will be subject to change each year.					
Other key non-monetised costs by 'main affected groups'					
Some unions and employers' associations may need to take action to take account of the additional cost of the levy – potentially either by increasing income (possibly from members) or finding efficiencies.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate			1.15		9.9
Description and scale of key monetised benefits by 'main affected groups'					
The Exchequer will be paid the levy – at around £1.15 million a year on current estimates.					
Other key non-monetised benefits by 'main affected groups'					
Key assumptions/sensitivities/risks					Discount rate (%)
					3.5
As this policy is a levy it falls outside the Better Regulation Framework and therefore does not count towards the Business Impact Target.					
As noted above there is the potential risk that some unions and employers' associations may have to take action to meet the additional cost of the levy.					

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Evidence Base

Problem under consideration and rationale for intervention

1. The position of the Certification Officer was established in 1975 but has existed in one form or another since the 1871 Trade Union Act. The Certification Officer is funded by Government and is responsible for ensuring that trade unions and employers' associations abide by statutory requirements, primarily in relation to governance, under the UK's trade union law. Some of their regulatory functions include:
 - Maintaining a list of trade unions and employers' associations;
 - Ensuring compliance with statutory requirements for annual returns from trade unions and employers' associations, keeping them available for public inspection;
 - Determining complaints concerning trade union elections, certain other ballots and certain breaches of trade union rules.
2. The role of the Certification Officer makes a contribution to the Government's priority of enhancing rights and protections in the workplace and is essential in ensuring there can be confidence in how trade unions and employers' associations operate in a workplace environment.
3. Running the office of the Certification Officer, required to ensure that trade unions and employers' associations comply with relevant regulation, currently falls to the Exchequer. The Government believes that taxpayers should not be required to meet the costs of regulating trade unions and employers' associations and that these organisations should make a contribution towards the cost of the Certification Officer via an annual levy.
4. The Certification Officer's Levy will affect trade unions and employers' associations, who will be included in the calculation of the levy distribution and collectively will pay the levy.

Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)

5. The Government introduced reforms to the Certification Officer's role in the Trade Union Act 2016 ("the 2016 Act"). The 2016 Act received Royal Assent on 4th May 2016 and amends the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"). The 2016 Act provides for partial recovery of the costs incurred in the delivery of the Certification Officer's regulatory function.
6. There are other examples of where regulators use a levy to recover their costs. The Pensions Regulator operates a general levy which is based on the total number of members in the scheme at the end of the scheme year before last. The levy is in place to cover the cost of running the Pensions Regulator, the Pensions Ombudsman and the Money and Pensions Service¹. Another example is the levy that is imposed on supermarkets by the Grocery Code Adjudicator, the independent adjudicator that oversees the relationship between supermarkets and their suppliers.

¹ The Pensions Regulator, Levy, available at: <http://www.thepensionsregulator.gov.uk/trustees/levy.aspx> [Last Accessed: 30th November 2021].

Policy objective

7. The objective of the policy is that the costs incurred by the Certification Officer in regulating trade unions and employers' associations will be recovered (where eligible) from the trade unions and employers' associations being regulated.
8. The intention is that the total amount of cost to be recovered via the levy (after any non-eligible costs have been removed) will be divided up in a way that is fair across the organisations eligible to make payment. This is in line with the operation of other levy schemes for other regulators. The framework for the levy scheme should accord, to the extent possible, with four key objectives; that the levy is:
 - **Equitable:** all eligible organisations will make a contribution to eligible costs based on usage (based on which functions the Certification Office undertakes in relation to the type of organisation);
 - **Simple:** the structure of the levy is designed to be easy for organisations to understand;
 - **Predictable:** provided that an organisation's income level does not suffer significant fluctuations, its annual contribution to the levy will be broadly similar year-on-year; and
 - **Affordable:** organisations will make a contribution that will not go above a low proportion of their annual income.
9. It should be noted that whilst the Government aims to implement a levy scheme in accord with the above objectives, there will be a degree of trade-off between the principles as all four cannot be maximised.
10. The principles of managing public money provide that only regular and relatively stable expenditure can be levy-funded. It is important that the Certification Officer's levy regime aligns with these principles. Some of the costs incurred by the Certification Officer in delivering the Office's functions are more variable than others. To manage the impact of this, during the parliamentary passage of the 2016 Act, the Government made a commitment that the levy will recover regular and relatively stable costs in accordance with HM Treasury guidance.
11. Costs which are for occasional services (and therefore less predictable) will continue to be funded by the Government. This ensures that the levy will operate fairly. The Government's response to the 2017 consultation on the levy sets out that the costs of external inspectors appointed and the costs of external legal advice will be excluded from the levy, and will continue to be met by the Government². This was also committed to in the Government response to the further engagement exercise conducted with unions and employers' associations in June and July 2021.

Description of options considered

12. The Government has considered a number of mechanisms for calculating the levy contribution which will fall to the organisations:
 - Option (i) – A levy contribution that is equal (flat-rate) across all organisations irrespective of the type of organisation, functions used, membership size, income or costs incurred;

² The Trade Union Act 2016 Certification Officer's Levy: Government Response, published 8th June 2021, sets out the cost components of the levy from page 8: <https://www.gov.uk/government/consultations/trade-union-act-2016-consultation-on-the-certification-officers-levy>

- Option (ii) – A levy contribution based on the size of the organisation;
- Option (iii) – A levy contribution based on the principle that costs should be paid by the type of organisation such costs are referable to (adjusted rate); and
- Option (iv) – A levy based on a percentage of declared income of an organisation.

13. None of these options however fully meet the objectives the Government has set, namely that the Certification Officer's Levy should be equitable, simple, predictable and affordable. As a result, these options have been discarded (further detail on the reasons for this are included in the following section).

14. The Do Nothing Option would mean that the Government would continue to fund the Certification Office.

15. This option does not meet the Government's objective that taxpayers should not continue to fully fund the entire running costs of the Certification Officer's regulatory function and is therefore not considered as viable.

2017 Consultation

16. A consultation on the levy was carried out from 31st August to 26th October 2017. There were 34 responses (20 from trade unions and 10 from employers' associations). 21 responses expressed general opposition to the principle of a levy. The Government's response sets out that subject to further engagement with stakeholders, it will proceed as set out in the 2017 Consultation document. The outcomes of the consultation were that:

- The costs of external contractors and the costs of external legal advice, considered likely to be the most variable costs, would be excluded from the levy
- The costs of regulating political funds and superannuation schemes would be included in the levy
- Fees for applications for inclusion on the lists of trade unions and employers' associations maintained by the Certification Office and for certificates of independence would continue to be charged. The Government will review the fees to bring them more in line to the actual costs of the activities in question.
- Other fees currently charged by the Certification Office would be subsumed into the levy.

17. The Government's response to the consultation can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991734/certification-officer-levy-consultation-govt-response.pdf

The 2021 Further Engagement Exercise

18. Given the time passed since the 2017 consultation, the Government was keen to offer trade unions and employers' associations a further opportunity for comment on the final approach to the implementation of the levy.

19. The further engagement exercise was carried out from 8th June to 21st July 2021 and provided an opportunity for these stakeholders to express new or updated views on the proposed structure of the levy process. It also provided an opportunity for newly formed organisations to comment, who may not have been established when the consultation was launched. This further engagement was not intended to be a full consultation, but rather an opportunity for the final views of stakeholders to be considered prior to the introduction of the levy.

20. 47 responses were received in total (33 from trade unions, 14 from employers' associations). A number of responses expressed general opposition to the principle of a levy. The further engagement exercise response upheld the outcomes of the 2017 consultation and proposed one policy change to the levy banding for non-federated trade unions. This is explained in further detail below in paragraph 29.

Summary and preferred option with description of implementation plan

21. None of the aforementioned options, by themselves, fully meets the set objectives but using a combination of them would allow us to create a balanced model. Our proposal is that the framework will be a combined version and will comprise two working concepts that the levy contributions will be:

- Based on the functions that organisations use and the resource that the Certification Officer spends on them – we do this by broadly apportioning costs between non-federated trade unions, federated trade unions and employers' associations³;
- Ensuring that the levy each organisation pays more accurately reflects their ability to pay by applying an affordability cap which is based on a percentage of an organisation's declared annual income – we propose setting this at 2.5%.

22. In 2017, the Certification Office undertook a weekly time recording exercise to estimate how much of their time was spent on which functions and therefore attributable to which type of organisations. It was estimated that around 50% of the Certification Office's time was spent on functions that just related to non-federated trade unions, and around 50% was spent on functions affecting all the regulated organisations. The Certification Office assessed this in 2021 and concluded their use of resources was broadly the same.

23. In line with the criteria specified in the 2016 Act, this would currently form the basis of dividing the costs across different organisations. Splitting the cost of running the Certification Officer accordingly will result in three levy amounts:

- A **Basic Amount**, to be levied amongst all organisations; and
- An **Additional Amount**, to be levied amongst non-federated trade unions only and representing the costs of functions which regulate or apply to non-federated trade unions only; and
- An **Enhanced Amount**, to be levied amongst all higher income organisations for whom their total levy payment would not exceed 2.5% of their annual income, to cover the total shortfall in the amount collected by the Basic and Additional Levies due to exempt organisations.

24. There is potential for the functions and activities of the Certification Officer to change. That could lead to functions that apply only to other specific groups of scheduled or listed organisations regulated by the Certification Office. This would require further separating out of the Total Levy (the cost of the Certification Office to be paid through the levy) into different 'Categorised Additional Amounts'; for instance, for federated trade unions or for non-federated employers' associations. However, currently and also reflecting the additional powers covered in the Trade Union Act 2016, the split is between functions applied to all regulated organisations and functions regulating non-federated unions only.

³ Non-federated unions are unions whose members are individuals (workers), while federated unions are unions whose members are other unions so they provide a collective voice for unions (for example the TUC).

25. We propose to achieve the second principle by applying a progressive 'income criteria' and by setting charges according to three (or four for non-federated trade unions) bands based on income levels. These income bands will be based upon an organisation's declared annual income from their annual return, by reference to the value of the levy, which will vary from year to year depending on the operating costs of the Certification Officer. This number of bands helps make reasonable adjustments for income level and ensures no organisation pays more than 2.5% of declared annual income. This 2.5% affordability cap makes some allowance in the levy calculation for an organisation's ability to pay. However, the levy is an additional cost for listed and scheduled organisations, and some may have to adapt to this additional cost by increasing income or finding efficiencies.
26. The use of the affordability cap will mean that there will be some cross-subsidy within groups, with organisations with higher incomes paying higher levy amounts to take account of the money not raised from organisations who are exempted. This shortfall will be paid for by higher income organisations as an Enhanced Levy, which will be paid on top of the Basic Levy, and the Additional Levy for relevant organisations (set out in further detail in paragraph 29).
27. The levy will be operated by the Certification Officer. The levy regulations will allow the Certification Officer to recover any unpaid levy as a debt, which may necessitate pursuit of a debt through the county court system.
28. The levy will commence from April 2022. The Certification Officer currently intends to inform unions and employers' associations of the amounts to be paid in the final quarter of the financial year that the levy relates to.

How the levy will be calculated

29. The Certification Office will set out the costs of the Office for the year in question, excluding the costs of external inspectors and external legal advice (the "Total Levy"). It will assess whether the costs of regulatory activities carried out remain in line with the current 50% for activities covering all organisations (the "Basic Amount"), and the 50% specifically relating to non-federated unions (the "Additional Amount").
 - The Total Levy will be divided into two pots reflecting the division in resource allocation between regulatory activities: the Basic Amount and the Additional Amount. On the current basis, the Basic Amount and the Additional Amount would each account for 50% of the relevant cost of the Certification Office.
 - The Basic Levy is calculated by dividing the Basic Amount by the total number of listed and scheduled organisations (that are established enough to have been required to complete an annual return (AR21 form)). An organisation for which the Basic Levy is more than 2.5% of its annual income (as reported on its latest available annual return) is exempt from paying the Basic Levy for that financial year.
 - The Additional Levy is calculated by dividing the Additional Amount by the number of non-federated trade unions that are regulated (and have been required to complete an annual return). A non-federated union for which the Basic Levy + Additional Levy is more than 2.5% of its annual income (as reported on its latest available annual return) is exempt from paying the Additional Levy but will still have to pay the Basic Levy (unless its annual income is low enough to exempt it from that).

- As a result of exemptions for lower income organisations, a shortfall is anticipated in the amount collected by the Basic and Additional Levies to cover the Certification Officer's annual costs. This total shortfall is the Enhanced Amount. It will be divided equally amongst all federated trade unions and employers' associations who will pay the Basic Levy, and amongst all non-federated trade unions who will pay the Basic and Additional Levies. This is the Enhanced Levy. Where the Enhanced Levy would result in an organisation's total levy payment exceeding 2.5% of their annual income, they will be exempted from the Enhanced Levy and will instead pay the Basic or Basic and Additional Levies, as apportioned in the previous steps. The Enhanced Amount will then be divided amongst the remaining organisations, (to recalculate the Enhanced Levy to account for the exemptions). This calculation may need to be performed several times until the Enhanced Amount is apportioned equally to all remaining organisations. These organisations will generally be subsidising the lowest income organisations.
- This iterative process will ensure that no organisation's total levy payment will be greater than 2.5% of their annual income, and that organisations whose income requires them to pay the Enhanced Levy will pay the same amount of Enhanced Levy.

Difference from 2017 Consultation

30. This final levy proposal varies slightly from the approach suggested in the 2017 consultation, which suggested that complete exemption from the annual levy would apply to all non-federated trade unions for whom the aggregate of the Basic Levy and the Additional Levy would exceed 2.5% of their annual income. Under those consultation proposals, over half of non-federated trade unions would not have paid anything towards the cost of their regulation. We now propose that where the Basic Levy would not exceed 2.5% of a non-federated trade union's annual income, but the aggregate of the Basic Levy and Additional Levy would exceed 2.5% of their income, that non-federated trade union will pay the Basic Levy, rather than being wholly exempt. As a result, there will be four levy bands for non-federated trade unions, rather than three stated in the consultation response: exempt; Basic; Basic and Additional; and Basic, Additional and Enhanced.
31. Also, there will be a single Enhanced Amount and Enhanced Levy, rather than separate Enhanced Amounts and Levies for non-federated unions, federated unions and employers' associations. This approach was chosen to simplify the Levy and make it easier to understand.
32. This approach is reasonable and meets the levy principles of equitability and fairness. It is also fairer to employers' associations of a similar size, which would still be required to pay the Basic Levy subject to the 2.5% cap. Under the final levy proposal, smaller employers' associations and non-federated trade unions would be treated the same in relation to the payment of the Basic Levy. Having a single Enhanced Levy makes the overall levy calculation simpler and more easily understandable. The approach is therefore a balance between the four levy principles.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

33. The main source of data used to model the impact of different levy contribution rates on trade unions and employers' associations are the declared returns to the Certification

Officer, submitted by trade unions and employers' associations on an annual basis⁴. The annual returns set out, amongst others, the organisation's income (including subscriptions, investment returns etc.) and membership size for the previous financial years. These annual returns are published by the Certification Office on its website and summarised in the Certification Officer's Annual Report, meaning that the criteria used in the different options are transparent and publicly available.

34. This impact assessment separates trade unions into two categories: non-federated and federated. Federated trade unions consist wholly or mainly of constituent, affiliated organisations, or representatives of such organisations, and are described fully within sections 118 and 135 of the 1992 Act⁵. Those federated bodies which are composed of representatives of trade unions are exempt from certain provisions of the 1992 Act including the duty to supply a copy of their rules, to keep accounting records and to submit annual returns.
35. On 20th July 2021 there were a total of 223 organisations listed or scheduled by the Certification Officer: 133 non-federated trade unions, 7 federated trade unions and 83 employers' associations.
36. The Certification Officer's Levy will benefit taxpayers as it will introduce a transfer of funds from the trade unions and employers' associations to enable a reduction in cost to Government. The costs associated with the Certification Officer's Levy (including the familiarisation costs) are not included in the Business Impact Target (BIT) as a levy is classed as a form of taxation (as it is compulsory, unrequited and redistributed), under HM Treasury classification. As a result, no equivalent annual net direct cost to business (EANDCB) has been monetised for this proposal and this impact assessment does not require clearance by the Regulatory Policy Committee (RPC).

Direct costs and benefits to business calculations

Familiarisation

37. We estimate that all organisations will have to spend time familiarising themselves with the Certification Officer's Levy and its framework. The Trade Union Act 2016 Impact Assessment already takes into account the costs for trade unions and employers' associations of familiarising themselves with the provisions relating to the levy in the 2016 Act. Both types of organisations will however need to familiarise themselves with the particular framework of the levy that will be set out in secondary legislation. We estimate that this **familiarisation will take 2 hours**⁶, given that the exact contribution rates will be determined by the Certification Officer and that the only administrative burden being placed on the organisations is the arrangement of payment.
38. Based on the evidence obtained during the consultation for the 2016 Act, we assume that the employers' associations' director or the trade unions' general secretary will meet with the finance director to familiarise themselves with the levy. We also assume that a contracted accountant will participate in that meeting.

⁴ Certification Officer Official list and schedule of trade unions and their annual returns, available at: <https://www.gov.uk/government/publications/public-list-of-active-trade-unions-official-list-and-schedule> [Last Accessed: 20th July 2021].

⁵ Annual Report of the Certification Officer 2015-2016, pp. 18-19, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/629399/Cert_Off_Ann_Rep_2016-2017.pdf [Last Accessed: 30th November 2021].

⁶This is about a quarter of the time allocated to familiarisation for the Certification Officer provisions in the Trade Union Act 2016, and reflects that this is one element of the reforms, and that it would be more focused on the specifics of the levy calculation and collection procedures.

39. To estimate the labour costs, we use median gross hourly wages data from the 2020 Annual Survey of Hours and Earnings (ASHE). The relevant occupation codes were checked against the SOC10 index made available by the ONS. We do not anticipate that any organisation will need external legal advice on the implementation of the Certification Officer's Levy. To calculate total labour costs, we use the estimate for non-wage labour costs as 21.8% of wage costs, based on Eurostat data⁷. These figures are set out in table 1 below.

Table 1: Estimated median hourly wage costs and labour costs, 2020.

Staff	Median hourly wages <u>excluding overtime</u>	Hourly labour costs
Functional managers and directors (representing general secretaries and other senior officials)	£24.58	£29.94
Chartered and certified accountants	£21.09	£25.69

40. As noted above, we expect familiarisation with the regulations to take two hours of time for the general secretary (or chief executive) plus another senior official and an accountant. This would produce an estimated familiarisation cost for each organisation of $(£29.94 \times 2 + £25.69) \times 2 = £171$.

41. As noted above, there are around 140 trade unions and 83 employers' associations. This produces a total familiarisation cost to listed and scheduled organisations as follows:

Table 2: Estimated familiarisation cost for trade unions and employers' associations

Organisation type	Number scheduled or listed	Total familiarisation cost £000s
Trade unions	140	24
Employers' associations	83	14
Total	223	38

42. It should be noted that there is a lot of variation in payments to general secretaries and other officials, with some not receiving a wage. However, it is likely that low or no payment of officials is concentrated in low income organisations, who are not likely to need as much time to familiarise themselves with the legislation as they will be unlikely to meet the income threshold requiring them to contribute.

43. The Certification Office has also spent some time familiarising themselves with the levy regulations and preparing for its introduction. The Office estimates that this preparation has taken around 35 days at a labour cost of £500 a day. This produces a transition cost estimate of $35 \times £500 = £17,500$.

Ongoing costs

44. The Certification Office expects that administrative costs of managing the levy will be somewhere between £11,000 and £31,000 a year.

The Levy

⁷ Eurostat, Labour costs per hour in euro, whole economy (excluding agriculture and public administration), available at: https://ec.europa.eu/eurostat/databrowser/view/lc_lci_lev/default/table?lang=en [Last Accessed: 30th November 2021].

45. There will be a transfer of the value of the total levy (see current estimate below) from listed and scheduled organisations to the Exchequer. The levy will be an additional bill to pay for most listed or scheduled organisations. Although a 2.5% affordability threshold has been included as part of the levy calculation, some of the regulated organisations may decide to take some action (either reducing other expenditure or increasing income) to enable them to pay the levy (see Risks and Assumptions below).

Setting the Levy contributions (example calculation)

46. The current estimate from the Certification Officer for the 2022/23 budget that would be covered by the levy is around £1.15 million. It should be pointed out that this is an early estimate at this stage. It is fairly unlikely to change fundamentally (that is change by 50%) but is likely to vary to some extent from this amount.

47. The data on organisations' income and membership size was extracted from the organisations' annual returns, published on the Certification Officer's website (using the latest return for unions as at 16th July 2021, and for employers' associations on 19th July 2021. On these dates, there were 129 non-federated trade unions, 83 employers' associations and 7 federated trade unions that were listed or scheduled and had provided an annual return (nearly all were either for 2019 or 2020).

48. Based on a 50%:50% split between the allocation of Certification Office resources on functions relevant to all organisations and functions just relevant to non-federated unions, the Total Levy amount of £1.15m was split equally into a Basic Amount and an Additional Amount, each of £575,000.

49. The Basic Amount will be split equally between non-federated unions, federated unions and employers' associations. The **Basic Levy** is calculated based on the Basic Amount divided by the total number of listed or scheduled organisations: $£575,000 / 219 = £2,526.57$.

50. Any organisation for which the Basic Levy is more than 2.5% of their total annual income (as reported in the latest annual return) is exempted from paying the levy for that financial year. In this example, that totals 40 non-federated unions, 3 federated unions and 21 employers' associations, whose income was lower than £105,023.

51. The next stage is to calculate the **Categorised Additional Levy**. This distributes the total Additional Amount of £575,000 equally across those non-federated unions judged able to pay (using the 2.5% affordability threshold) in an iterative process. In this example, it was established that the Categorised Additional Levy would be £4,457.36. Non-federated unions for whom the Basic Levy plus the Categorised Additional Levy is more than 2.5% of their total annual income will be exempt from paying the Categorised Additional Levy for that financial year but will still have to pay the Basic Levy. This left 66 non-federated with an annual income of over £283,318 for whom the Categorised Additional Levy was judged affordable.

52. The next stage is to calculate the **Enhanced Levy**. The purpose of the Enhanced Levy is to make up the shortfall in the Basic Levy and Additional Levy Amounts resulting from the exemptions to paying these contributions on grounds of affordability (based on the 2.5% affordability threshold); the Enhanced Amount. The exempted lower income organisations will be subsidised by (most) federated trade unions and employers' associations who will pay the Basic Levy, and (most) non-federated trade unions who will pay the Basic and Additional Levies.

53. An iterative process is undertaken to derive the level of the Enhanced Levy that each of the unions and employers' associations who are able to pay (based on the 2.5% affordability threshold) will have to contribute. The total shortfall amount will then be

divided amongst the remaining organisations, with organisations being exempted where the Enhanced Levy amount would result in their total levy payment exceeding 2.5% of their annual income. For employers' associations and federated trade unions, if the Basic Levy plus the Enhanced Levy is no more than 2.5% of their total annual income, they will be required to pay the Enhanced Levy. For non-federated trade unions, if the Basic Levy plus Categorized Additional Levy plus the Enhanced Levy is no more than 2.5% of their total annual income, they will be required to pay the Enhanced Levy. This calculation may need to be performed several times until the total shortfall is apportioned equally to all remaining organisations. This iterative process will ensure that these organisations pay the same amount of Enhanced Levy. A summary of the example levy calculation is set out in the table below:

Table 3: Example levy calculation outcomes

Levy calculation stage	Levy amount (£)	Number of employers' associations	Number of federated trade unions	Number of non-federated trade unions	Total amount raised (£)	Income Threshold (£)
Exempt (not contributing)	0	21	3	40	0	
Basic Levy	2,625.57	8	1	23	84,018	105,023
Basic + Categorized Additional Levy	7,082.93			7	49,581	283,318
Basic + Enhanced Levy	6,494.98	54	3		370,214	259,799
Basic + Categorized Additional + Enhanced Levy	10,952.33			59	646,187	438,094
Total		83	7	129	1,150,000	

Risks and assumptions

54. As noted above, the 2.5% affordability cap provides some limit to the size of the levy contribution for an organisation relative to its annual income. However, that does not necessarily mean that all of the listed or scheduled organisations that will be required to pay a levy contribution will easily be able to pay the extra bill. Some organisations will be likely to feel the need to raise their annual income or find efficiencies (potentially impacting on services provided) in order to cover the levy.
55. There is often some fluctuation in annual expenditure year to year, and other relevant factors (membership, other income sources) so a clear estimate of which organisations would take action is not straightforward. However, comparing annual surplus (income minus expenditure) for one year's annual returns for non-federated unions. Of the 89 unions who will contribute some levy based on the example calculation, for 39 the levy was more than the annual surplus. Of these, 15 – over a third – had annual incomes of over £2.5m (some much higher than this) and would probably be able to adapt more

easily as the levy would be less than 0.5% of their income. However, for some of the others with lower membership and fewer other income streams, and with the levy being somewhere between 1% and 2.5% of their income, may need to take some action to adapt to the levy, either by raising income or finding efficiencies (which may mean reducing services to some extent). Some employers' associations, primarily those with relatively low annual incomes, may also need to adapt to cover the levy cost. It should be feasible for any organisation that looks to raise income, for instance, to do this within their normal administrative processes.

56. The Certification Officer's enforcement powers will also be extended from April 2022. While the estimates of the Certification Office costs have tried to reflect that, it can't be guaranteed that the extra enforcement duties might have a bigger impact on costs. Costs such as external inspectors and external legal advice would not be included within the levy total.

Summary

57. The estimated costs of this policy are:

- One-off costs
 - i. Familiarisation by unions and employers' associations: £38,000
 - ii. Familiarisation and preparation by Certification Office: £17,500
- Ongoing costs
 - i. Annual cost to Certification Office of administering the levy: £11,000 to £31,000
 - ii. Cost of levy to regulated organisations [currently estimated at £1.15million – though it is likely to change from this]
- Ongoing benefits
 - i. Government to receive levy payment [currently estimated at £1.15 million]

58. There are potential costs to regulated organisations (and potentially members of these organisations) if they need to raise income or find efficiencies to cover the additional cost of the levy.

Impact on small and micro businesses

59. We do not have information on the number of employees that the listed or scheduled organisations have. However, it is likely that many of these organisations are small or micro businesses. Based on the annual income data for these organisations used in the levy estimates, around 82 of 129 non-federated unions and 39 out of 83 employers' associations had an annual income of less than £1m. If all the income was used to pay wages it would not be enough to pay the labour costs of 50 full-time staff at the National Living Wage.

60. Generally, although some mitigation has been introduced to limit the levy for small and micro organisations by way of the 2.5% affordability cap, the levy will be a higher proportion of the annual incomes of small and micro organisations making a contribution than larger organisations.

61. The levy calculation will include a 2.5% affordability cap, which is designed to exempt some of the lowest income organisations from making any contribution. It also helps ensure that relatively low income non-federated unions do not contribute to the

Categorised Additional Levy. There is some cross-subsidy of lower income organisations (especially non-federated unions) by higher income organisations.

62. However, the Certification Officer regulates all of the listed or scheduled organisations, which are generally independent of each other (apart from federated unions, which are comprised of non-federated unions). To meet the fairness criterion, there needs to be some limit to cross-subsidy provided by higher income organisations, and some expectation that smaller organisations make a contribution, without imposing too great an obligation on the smaller organisations.

Wider impacts

63. It is possible that some organisations may have to increase income to cover the additional cost of the levy or find efficiencies (which may impact on the service they provide to some extent). Given the affordability cap of 2.5% of income, any wider impact should be limited.

Equality Impact Assessment

64. The Government published an equality assessment for the Trade Union Bill to understand the impact of individual workers (both union and non-union members)⁸. An Impact Assessment for the Trade Union Act was also published, which set out the Equality Assessment for the Bill as a whole, including the Certification Officer reforms⁹. It assessed that there would be no adverse equality impacts on any protected group because of the Trade Union Act 2016.

A summary of the potential trade implications of measure

65. There are no estimated impacts on international trade and investment.

Monitoring and Evaluation

66. The impact of the levy will primarily be monitored through the management information collected by the Certification Officer, and through the annual returns of the organisations. This will enable the monitoring of income and expenditure of these organisations, and the number of organisations listed or scheduled.

⁸ <https://www.gov.uk/government/publications/trade-union-bill-equality-analysis> [Last Accessed: 30th November 2021]

⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583579/trade_union_act_enactment_IA_BEIS_clean.pdf [Last Accessed: 30th November 2021]