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STATUTORY INSTRUMENTS

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**2017 No. 328**

**The Trade Union (Facility Time Publication Requirements) Regulations 2017**

**Citation and commencement**

1. These Regulations may be cited as the Trade Union (Facility Time Publication Requirements) Regulations 2017 and come into force on 1st April 2017.

**Interpretation: general**

2. In these Regulations—

“the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992;

“paid facility time hours” means the number of hours spent on facility time by an employee who is a relevant union official during a relevant period (excluding hours attributable to time taken off under section 170(1)(b) of the 1992 Act in respect of which a relevant union official does not receive wages from the relevant public sector employer) and “total paid facility time hours” means the total of all such hours spent during that period by all such employees;

“paid trade union activities” means time taken off under section 170(1)(b) of the 1992 Act in respect of which a relevant union official receives wages from the relevant public sector employer;

“relevant period” means a period of 12 months beginning with 1st April, and the first relevant period begins on 1st April 2017;

“wages” (and “gross amount” in relation to wages) has the meaning given in section 27 of the Employment Rights Act 1996(1);

“working hours” has the meaning given in section 173(1) of the 1992 Act(2).

**Crown employees: person or entity to be treated as an employer**

3. For the purposes of section 172A of the 1992 Act, a public authority that is an emanation of the Crown is to be treated as the employer of a relevant union official who is employed by the Crown under or for the purposes of that authority (and a reference in these Regulations to an employee is, in the case of such a public authority, to a person employed by the Crown under or for the purposes of that authority).

**Meaning of total cost of facility time**

4.—(1) For the purposes of these Regulations, the total cost of facility time for a relevant period is calculated by taking the following steps—

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(1) 1996 c.18. Section 27(1) has been amended as follows: paragraphs (ca) and (cb) were inserted by the Employment Act 2002 (c. 22), Schedule 7, paragraph 25; paragraph (ca) was amended, and paragraph (cc) was inserted, by the Children and Families Act 2014 (c. 6), Schedule 7, paragraph 30; paragraph (fa) was inserted by S.I. 2010/93, regulation 1.

(2) Section 173(1) was amended by the Employment Act 2002 (c. 22), Schedule 7, paragraph 21.

- (a) Step 1 - determine the hourly cost of each employee who was a relevant union official during that period;
  - (b) Step 2 – multiply the hourly cost for each such employee by the number of paid facility time hours spent by that employee on facility time during the period (if there is only one employee who was a relevant union official, this amount is the total cost of facility time);
  - (c) Step 3 – if there is more than one employee who was a relevant union official, add together each of the amounts produced by the calculations at step 2.
- (2) The hourly cost for the purposes of step 1 is calculated by—
- (a) adding—
    - (i) the gross amount spent on wages by the employer in respect of the employee during the period;
    - (ii) the amount spent on pension contributions by the employer in respect of that employee during the period; and
    - (iii) the amount of national insurance contributions paid by the employer in respect of the employee during the period; then
  - (b) dividing that amount by the working hours of the employee during the period.
- (3) But a notional hourly cost must be used at step 2, instead of the actual hourly cost determined under step 1, where the employee is identifiable.
- (4) An employee is identifiable if the employer considers that the use of the actual hourly cost will lead, when the information required to be published under these Regulations is published, to another person being able to identify the employee’s wages during the relevant period.
- (5) The notional hourly cost referred to in paragraph (3) must be reasonable having regard to the type of work the identifiable employee ordinarily did for the employer during the relevant period.

**Meaning of total pay bill**

5. For the purposes of these Regulations, the total pay bill for a relevant period is calculated by adding—
- (a) the total gross amount spent on wages by the employer in respect of its employees during the period;
  - (b) the total amount spent on pension contributions by the employer in respect of its employees during the period; and
  - (c) the total amount of national insurance contributions paid by the employer in respect of its employees during the period.

**Meaning of full-time equivalent employee number**

6. For the purposes of these Regulations, the full-time equivalent employee number is calculated by—
- (a) establishing the number of full-time employees; and
  - (b) adding to that number such fraction as is just and reasonable in respect of those employees who are not full-time.

**Relevant public sector employer**

- 7.—(1) Subject to paragraph (3), a public authority referred to in paragraph (2) is specified for the purposes of section 172A(2)(a) of the 1992 Act.
- (2) The public authorities are—

- (a) any department of the Government of the United Kingdom (excluding the Secret Intelligence Service, the Security Service and the Government Communications Headquarters);
- (b) the Scottish Ministers; and
- (c) an authority listed, or of a description, in Schedule 1.

(3) An authority of a description in Schedule 1 which is a devolved Welsh authority is not specified for the purposes of section 172A(2)(a).

(4) In paragraph (3), “devolved Welsh authority” has the same meaning as in section 157A of the Government of Wales Act 2006<sup>(3)</sup> (inserted into that Act by section 4 of the Wales Act 2017<sup>(4)</sup>).

### **Requirement to publish information**

8.—(1) If the employee number condition is met in respect of a relevant period, a relevant public sector employer must publish the information that comprises the response to the questions, or request for information, set out in Schedule 2 in respect of that period as it applies to that employer.

(2) The employee number condition is met if the relevant public sector employer has a full-time equivalent employee number of more than 49 throughout the entirety of any seven of the months within the relevant period.

(3) The information must be published, together with the questions, or request for information, in the form indicated in Schedule 2.

(4) The information must be published by being—

- (a) placed on a website maintained by or on behalf of the employer before 31st July in the calendar year in which the relevant period to which the information relates ends; and
- (b) included in the employer’s annual report which covers the relevant period, where the employer produces an annual report.

(5) If the information is not, by virtue of paragraph (4), placed on a website maintained by or on behalf of the Government of the United Kingdom, the employer must also cause it to be placed on such a website before 31st July in the calendar year in which the relevant period to which the information relates ends.

(6) Paragraph (7) applies to a local authority, the Common Council of the City of London and the Council of the Isles of Scilly if the authority or Council is required to publish information under this regulation in respect of a relevant period.

(7) The authority or Council must comply with the requirements of this regulation separately in relation to—

- (a) its central function employees;
- (b) its education function employees;
- (c) its fire and rescue function employees,

to the extent it has employees within those categories.

(8) The reference in paragraph (7) to “separately” means publishing the information, and carrying out such calculations as are necessary for the purposes of determining the information to be published, as if the employer were a separate employer for each category of employees.

(9) In paragraph (7)—

“central function employees” means employees of the authority or Council other than—

- (a) its fire and rescue function employees; and

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(3) 2006 c. 32.

(4) 2017 c. 4.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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(b) its education function employees;

“education function employees” means persons employed by virtue of section 35(2) of the Education Act 2002<sup>(5)</sup> (staffing of community, voluntary controlled, community special and maintained nursery schools);

“fire and rescue function employees” means employees employed to carry out functions that the authority or Council has because it is a fire and rescue authority (see section 1 of the Fire and Rescue Services Act 2004<sup>(6)</sup>).

8th March 2017

*Ben Gummer*  
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(5) 2002 c. 32. Section 35(2) was amended by S.I. 2010/1158 so that “local authority” was substituted for “local education authority” (see Schedule 2, Part 1, paragraph 11(2)). For the meaning of “local authority” as used in section 35(2), see section 212(1) of the 2002 Act (as amended by S.I. 2010/1158, Schedule 2, Part 1, paragraph 11(12)) and section 579(1) of the Education Act 1996 (c. 56) (as amended by S.I. 2010/1158, article 3(2)(b)).

(6) 2004 c. 21. The reference in section 1(2)(d) to a metropolitan county fire and civil defence authority is treated as a reference to a metropolitan county fire and rescue authority (see the Civil Contingencies Act 2004 (c. 36), Schedule 2, Part 1, paragraph 10(2)).