



Trade Union Act 2016

2016 CHAPTER 15

Facility time and check-off

13 Publication requirements

After section 172 of the 1992 Act insert—

“172A Publication requirements in relation to facility time

- (1) A Minister of the Crown may by regulations made by statutory instrument require relevant public sector employers to publish any information within subsection (3).
- (2) An employer is a relevant public sector employer if the employer—
 - (a) is a public authority specified, or of a description specified, in the regulations, and
 - (b) has at least one employee who is a relevant union official.
- (3) The information that is within this subsection is information relating to facility time for relevant union officials including, in particular—
 - (a) how many of an employer’s employees are relevant union officials, or relevant union officials within specified categories;
 - (b) the total amount spent by an employer in a specified period on paying relevant union officials for facility time, or for specified categories of facility time;
 - (c) the percentage of an employer’s total pay bill for a specified period spent on paying relevant union officials for facility time, or for specified categories of facility time;
 - (d) the percentage of the aggregate amount of facility time taken by an employer’s relevant union officials in a specified period that was attributable to specified categories of duties or activities;
 - (e) information relating to facilities provided by an employer for use by relevant union officials in connection with facility time.

- (4) In subsection (3) “specified” means specified in the regulations.
- (5) The regulations may make provision—
- (a) as to the times or intervals at which the information is to be published;
 - (b) as to the form in which the information is to be published.
- (6) The regulations may make different provision for different employers or different categories of employer.
- (7) In this section a “relevant union official” means—
- (a) a trade union official;
 - (b) a learning representative of a trade union, within the meaning given by section 168A(11);
 - (c) a safety representative appointed under regulations made under section 2(4) of the Health and Safety at Work etc. Act 1974.
- (8) In this section “facility time” means time off taken by a relevant union official that is permitted by the official’s employer under—
- (a) section 168, section 168A or section 170(1)(b);
 - (b) section 10(6) of the Employment Relations Act 1999;
 - (c) regulations made under section 2(4) of the Health and Safety at Work etc. Act 1974.
- (9) The regulations may provide, in relation to a body or other person that is not a public authority but has functions of a public nature and is funded wholly or mainly from public funds, that the body or other person is to be treated as a public authority for the purposes of subsection (2).
- (10) The regulations may make provision specifying the person or other entity that is to be treated for the purposes of this section as the employer of a relevant union official who is employed by the Crown.
- (11) The regulations may—
- (a) deem a category of persons holding an office or employment under the Crown (or two or more such categories taken together) to be an entity for the purposes of provision made under subsection (10);
 - (b) make different provision under subsection (10) for different categories of persons holding an office or employment under the Crown.
- (12) No regulations containing provision made by virtue of subsection (9) shall be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House.
- (13) Regulations under this section to which subsection (12) does not apply shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

14 Reserve powers

After section 172A of the 1992 Act (inserted by section 13 above) insert—

“172B Reserve powers in relation to facility time

- (1) After the end of the period of three years beginning with the day on which the first regulations under section 172A come into force, a Minister of the Crown may exercise the reserve powers (see subsection (3)) if the Minister considers it appropriate to do so having regard to—
 - (a) information published by employers in accordance with publication requirements;
 - (b) the cost to public funds of facility time in relation to each of those employers;
 - (c) the nature of the various undertakings carried on by those employers;
 - (d) any particular features of those undertakings that are relevant to the reasonableness of the amount of facility time;
 - (e) any other matters that the Minister thinks relevant.
- (2) The reserve powers may not be exercised so as to apply to any particular employer unless—
 - (a) a Minister of the Crown has given notice in writing to the employer—
 - (i) setting out the Minister’s concerns about the amount of facility time in the employer’s case, and
 - (ii) informing the employer that the Minister is considering exercising the reserve powers in relation to that employer;
 - (b) the employer has had a reasonable opportunity to respond to the notice under paragraph (a) and to take any action that may be appropriate in view of the concerns set out in it;and the powers may not be exercised until after the end of the period of 12 months beginning with the day on which the notice under paragraph (a) was given.
- (3) The reserve powers are powers to make regulations—
 - (a) applying to relevant public sector employers on whom the publication requirements were imposed, and
 - (b) containing any provision that the Minister considers appropriate for the purpose of ensuring that, in each period specified by the regulations, the percentage of an employer’s total pay bill spent on paying relevant union officials for facility time does not exceed a percentage that is so specified.
- (4) The regulations may, in particular, make provision restricting rights of relevant union officials to facility time by amending or otherwise modifying any of the following—
 - (a) section 168 or 168A;
 - (b) section 10 of the Employment Relations Act 1999;
 - (c) regulations made under section 2(4) of the Health and Safety at Work etc. Act 1974.
- (5) The regulations may make provision as to the calculation of working time, of paid facility time, or of an employer’s total pay bill.

Status: This is the original version (as it was originally enacted).

- (6) The regulations may impose requirements on employers in relation to whom the reserve powers are exercised to publish any further information that the Minister considers appropriate.
- (7) Where requirements are imposed under subsection (6) the regulations may make provision—
- (a) as to the times or intervals at which the further information is to be published;
 - (b) as to the form in which the further information is to be published.
- (8) The regulations may provide that some or all of their provisions do not apply—
- (a) in cases specified by the regulations, or
 - (b) if a person specified in the regulations is satisfied that conditions that are so specified are met.
- (9) The regulations may confer power on a Minister of the Crown, by notice in writing to a particular employer, to suspend the application of the regulations to that employer for such period and to such extent as the Minister may specify in the notice.
- (10) The regulations may—
- (a) make provision in relation to any or all of the employers in relation to which the reserve powers are exercisable;
 - (b) make different provision for different employers or different categories of employer;
 - (c) make transitional provision in connection with the coming into force of any provision of the regulations;
 - (d) make consequential provision amending or otherwise modifying section 170, contracts of employment or collective agreements.
- (11) In this section—
- (a) “publication requirements” means requirements imposed under section 172A or subsection (6);
 - (b) “relevant public sector employer” has the same meaning as in section 172A, read with any regulations made under subsection (9) of that section;
 - (c) “relevant union official” and “facility time” have the same meaning as in section 172A.
- (12) Subsections (10) and (11) of section 172A apply for the purposes of this section as they apply for the purposes of that section.
- (13) Regulations under this section shall be made by statutory instrument.
- (14) No regulations under this section shall be made unless a draft of them has been laid before Parliament and approved by a resolution of each House of Parliament.”

15 Restriction on deduction of union subscriptions from wages in public sector

- (1) After section 116A of the 1992 Act insert—

“Deduction of trade union subscriptions from wages

116B Restriction on deduction of union subscriptions from wages in public sector

- (1) A relevant public sector employer may make deductions from its workers’ wages in respect of trade union subscriptions only if—
 - (a) those workers have the option to pay their trade union subscriptions by other means, and
 - (b) arrangements have been made for the union to make reasonable payments to the employer in respect of the making of the deductions.
- (2) Payments are “reasonable” for the purposes of subsection (1) if the employer is satisfied that the total amount of the payments is substantially equivalent to the total cost to public funds of making the deductions.
- (3) An employer is a relevant public sector employer if the employer is a public authority specified, or of a description specified, in regulations made by a Minister of the Crown.
- (4) A Minister of the Crown may by regulations provide, in relation to a body or other person that is not a public authority but has functions of a public nature and is funded wholly or mainly from public funds, that the body or other person is to be treated as a public authority for the purposes of this section.
- (5) Regulations under this section may make provision specifying the person or other entity that is to be treated for the purposes of this section as the employer of a person who is employed by the Crown.
- (6) The regulations may—
 - (a) deem a category of persons holding an office or employment under the Crown (or two or more such categories taken together) to be an entity for the purposes of provision made under subsection (5);
 - (b) make different provision under subsection (5) for different categories of persons holding an office or employment under the Crown.
- (7) Regulations under this section may—
 - (a) make different provision for different purposes;
 - (b) make transitional provision in connection with the coming into force of any provision of the regulations;
 - (c) make consequential provision amending or otherwise modifying contracts of employment or collective agreements.
- (8) Regulations under this section are to be made by statutory instrument.
- (9) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (10) In this section—

“trade union subscriptions” means payments to a trade union in respect of a worker’s membership of the union;

Status: This is the original version (as it was originally enacted).

“wages” has the same meaning as in Part 2 of the Employment Rights Act 1996 (see section 27);

“worker” has the same meaning as in that Act.”

- (2) In section 296 of that Act (meaning of “worker” and related expressions), in subsection (3), after “68(4),” insert “116B(10),”.