

**EXPLANATORY MEMORANDUM TO**  
**THE TRADE UNION (FACILITY TIME PUBLICATION REQUIREMENTS)**  
**REGULATIONS 2017**

**2017 No. 328**

**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 will require relevant public sector employers to publish, on an annual basis, a range of data in relation to their usage and spend on trade union facility time. The range of data required, the relevant period to which the data corresponds and timeframes for publication is set out in the Regulations, in particular the required information is in Schedule 2.
- 2.2 The purpose of this instrument is to promote transparency and public scrutiny of facility time and, where appropriate, encourage public sector employers to moderate the amount of money spent on facility time in the light of that scrutiny. This will ensure taxpayers' money is only spent on justifiable and accountable trade union work that represents value for money.

**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 As this instrument is subject to the negative resolution procedure, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**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 172A of the 1992 Act (inserted by section 13 of the Trade Union Act 2016) sets out that a relevant public sector employer is required to publish, on an annual basis, information in relation to their facility time usage and spend.
- 4.3 This instrument uses this power for the first time to set out the facility time publication requirements in the public sector and specifies certain public authorities for the purposes of the meaning of "relevant public sector employer".
- 4.4 This instrument also relates to section 172B of the 1992 Act. Section 172B is a reserve power to cap facility time. It sets out that, after a period of three years beginning on the day these Regulations come into force, a Minister of the Crown may cap facility

time spend of a relevant public sector employer(s), having regard to a range of factors (for example, if the spend is considered unjustifiable or excessive) .

## **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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **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 relevant employers publish facility time data in order to promote transparency and public scrutiny of this information. It is the Government's intention that this will encourage public sector employers, where appropriate, to moderate the amount of money spent on facility time in the light of that scrutiny.

7.3 The instrument will only apply to employers that have at least one trade union representative and which normally have a full time equivalent number of employees of more than 49 during a relevant reporting period. Employers will not need to comply with the requirements where these criteria are not met during the relevant period.

7.4 The percentage of the Civil Service pay bill spent on facility time fell after the implementation of similar reforms, from 0.26% in 2012 to just 0.07% in the 1st quarter of 2015. Spending on facility time in the wider public sector is difficult to calculate but estimated at approximately 0.14% of the public sector pay bill, around twice the proportional spend of that in the Civil Service at present.

7.5 The whole public sector needs to ensure it delivers value for money. As such, taxpayers' money should not be spent without proper monitoring and control. These regulations will help to ensure taxpayers' money is only spent on appropriate and accountable trade union work that represents value for money to the taxpayer.

7.6 Without legislative intervention the Government cannot ensure that publicly funded employers publish information in relation to their trade union facility time, to improve transparency and accountability to the taxpayer.

7.7 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 also covers these public authorities.

### *Consolidation*

7.8 There are no immediate plans to consolidate the regulations.

## **8. Consultation outcome**

- 8.1 The Government consulted on which public sector employers should be affected by this provision and 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 correspondence explained that the policy intention is to capture all 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 instances. 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 Guidance will be issued to Government departments to assist them in supporting their relevant workforces to understand the new obligation under this instrument and the requirements placed on relevant public sector employers.

## **10. Impact**

- 10.1 There is no impact on business.
- 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 the public sector is that relevant organisations will be required to publish their facility time data on an annual basis in accordance with the requirements of the regulations.
- 10.4 The introduction of this legislation will result in one-off familiarisation costs and ongoing administrative costs to all relevant public sector employers.
- 10.5 There are uncertainties around the current level of facility time usage in the wider public sector and the extent to which the public sector behavioural response would be the same, or similar, to that experienced in the Civil Service following reforms to facility time data reporting and publishing. Therefore, the Government does not claim a specified, monetised net benefit of this provision but the supporting impact assessment does provide illustrative examples of the level of benefit that could potentially be seen in the public sector.
- 10.6 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

**11. Regulating small business**

11.1 This legislation does not apply to activities that are undertaken by small businesses.

**12. Monitoring & review**

12.1 The Government will monitor further evidence on the impact of this instrument by conducting a three-year report. If this demonstrates that the impact has shifted from that which was initially anticipated, 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](mailto:lucy.revill@cabinetoffice.gov.uk) can answer any queries regarding the instrument.