

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT TRADE UNION (DEDUCTION OF  
UNION SUBSCRIPTIONS FROM WAGES  
IN THE PUBLIC SECTOR) REGULATIONS 2023

*Tuesday 30 January 2024*

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**Saturday 3 February 2024**

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**The Committee consisted of the following Members:**

*Chair:* IAN PAISLEY

- |   |   |
|---|---|
| † Antoniazzi, Tonia ( <i>Gower</i> ) (Lab)                                  | † Hamilton, Mrs Paulette ( <i>Birmingham, Erdington</i> ) (Lab) |
| † Burghart, Alex ( <i>Parliamentary Secretary, Cabinet Office</i> )         | † Henry, Darren ( <i>Broxtowe</i> ) (Con)                       |
| † Clarke, Sir Simon ( <i>Middlesbrough South and East Cleveland</i> ) (Con) | † Khan, Afzal ( <i>Manchester, Gorton</i> ) (Lab)               |
| † Coffey, Dr Thérèse ( <i>Suffolk Coastal</i> ) (Con)                       | † Mather, Keir ( <i>Selby and Ainsty</i> ) (Lab)                |
| Coyle, Neil ( <i>Bermondsey and Old Southwark</i> ) (Lab)                   | † Patel, Priti ( <i>Witham</i> ) (Con)                          |
| † Crosbie, Virginia ( <i>Ynys Môn</i> ) (Con)                               | † Penning, Sir Mike ( <i>Hemel Hempstead</i> ) (Con)            |
| † Drax, Richard ( <i>South Dorset</i> ) (Con)                               | † Stephens, Chris ( <i>Glasgow South West</i> ) (SNP)           |
| † Fletcher, Katherine ( <i>South Ribble</i> ) (Con)                         | Kevin Maddison, <i>Committee Clerk</i>                          |
| † Fletcher, Mark ( <i>Bolsover</i> ) (Con)                                  |   |
| † Griffith, Dame Nia ( <i>Llanelli</i> ) (Lab)                              | † <b>attended the Committee</b>                                 |

## Fourth Delegated Legislation Committee

Tuesday 30 January 2024

[Ian Paisley *in the Chair*]

### Draft Trade Union (Deduction of Union Subscriptions from Wages in the Public Sector) Regulations 2023

2.30 pm

**The Chair:** Before I call the Minister to move the motion, I remind colleagues that today's debate is exactly, per the regulations' title, on the deduction of union subscriptions from wages in the public sector. It is not a general debate on Government economic policy, strikes, the merits or otherwise of trade unions, or anything else. I will be calling Members to order if they go out of scope. It is a serious piece of work that is in front of us, and it needs to be treated with respect.

**The Parliamentary Secretary, Cabinet Office (Alex Burghart):** I will have to jettison a large part of my speaking notes now, Mr Paisley!

I beg to move,

That the Committee has considered the draft Trade Union (Deduction of Union Subscriptions from Wages in the Public Sector) Regulations 2023.

To cut to the chase, the Trade Union (Deduction of Union Subscriptions from Wages in the Public Sector) Regulations, also known as the check-off regulations—not Anton Chekhov, the 19th-century Russian playwright, but check-off—stem from section 15 of the Trade Union Act 2016. It is the last piece of secondary legislation to be brought into force as part of that Act.

The regulations aim to modernise industrial relations in the UK. They define a relevant public sector employer for the purposes of section 15 of the 2016 Act. That provision requires relevant public sector employers that allow employees to pay union subscriptions directly through payroll—a process known as check-off—to charge trade unions a cost substantially equivalent to the cost they incur for providing the service. In addition, public sector employers must be satisfied that there is an alternative way of union members paying their subscriptions aside from check-off, such as through direct debit.

Should employers not be able to secure payment substantially equivalent to the costs of providing check-off, and there is an alternative payment available to employees, employers must cease to provide check-off. That will ensure that check-off services are provided by public sector employers only where there is no cost burden to the taxpayer and to guarantee members have choices about subscription payment methods.

The regulations will not come into force until a reasonable transition period has elapsed to allow everyone adequate time to make arrangements to comply with the regulations. To that end, the regulations will come into force on 9 May 2024, six months after laying. That is a generous transition period, considering that the

regulations were previously due to be laid in 2017, so employers have had a significant period of awareness of the impending changes.

**Chris Stephens** (Glasgow South West) (SNP): The Minister has said that six months is an appropriate period, but during the debates on the Trade Union Bill in Parliament, the Government committed to a consultation period of 12 months, not six months. Will the Minister explain why the Government's position has changed?

**Alex Burghart:** The hon. Member will be aware from my opening remarks that the Bill that floated this idea was given Royal Assent in 2016. A few international events got in the way of our completing the passage of the secondary legislation, but we think that given how much time has elapsed and how aware everyone is of the changes, there is no great problem in moving from 12 months to six months.

The Government have also provided to the House the explanatory memorandum and a full impact assessment, and we have published on gov.uk guidance to be issued to public sector employers to help them to familiarise themselves and comply with the regulations. The check-off regulations will deliver value for money for the taxpayer. The impact assessment has identified that the intervention will equate to a present benefit saving of approximately £1.5 million a year. However, I wish to be clear that the regulations stem from the Trade Union Act 2016, which was introduced in response to a 2015 manifesto commitment. As such, and despite delays owing to other Government priorities relevant to the UK's exit from the European Union, the coronavirus pandemic and so on, this has been a long-term ambition of the Government in our aim to modernise industrial relations in the UK.

2.34 pm

**Dame Nia Griffith** (Llanelli) (Lab): It is, as ever, an absolute pleasure to serve under your chairmanship, Mr Paisley.

It is extraordinary, when there are so many other pressing issues that the Government should be tackling, that they decide to prioritise pushing ahead with this legislation, which will squeeze yet another few pennies from hard-working public servants—people who are already working their socks off in sectors such as the NHS and other frontline services, trying to meet ever greater demand with shrinking resources. They are bearing the burden of the highest taxes since the second world war, and the latest gimmick of giving back tuppence in national insurance contributions does not make up for the at least 10p in additional tax burden that this Government have taken from them. These are public servants whose wages have nowhere near kept up with inflation and who are now facing a real cost of living crisis. Make no mistake, if this cost burden is placed on trade unions, they will inevitably have to pass it on to their members. What is it that the Government have against their own workforce? They will be charging for the toilet paper next.

According to Government documentation, the overall cost to employers is some £1.5 million, which, as noted in the draft impact assessment, equates to a matter of pennies per employee. Once established, as current check-off

systems are, costs are minimal—usually arising from just having to add or remove colleagues when they begin or finish their employment—but once employers have to try to disaggregate that cost and raise an invoice for a trade union, the workload is increased. The trade unions, dealing with multiple public sector employers, will have a considerable amount of additional work and additional costs.

**Afzal Khan** (Manchester, Gorton) (Lab): The TUC has expressed concern that the regulations could deny some members access to trade union services, which could infringe their rights under article 11 of the European convention on human rights, which protects freedom of assembly and association. Does my hon. Friend agree that these regulations are the latest attempt by the Government to make life more difficult for trade unions and their members?

**Dame Nia Griffith:** I agree with my hon. Friend. The guidance issued has considerable flaws. It was not even available when the regulations were debated in the other place in December. The guidance is non-statutory. That means that employers do not necessarily have to follow it and can decide for themselves what they consider to be “reasonable costs”. Even within the guidance, there seems to be no mechanism for trade unions to challenge employers’ calculations of reasonable costs. The guidance states baldly:

“If no agreement can be reached and the relevant trade unions do not agree to pay the amount, then the employer may wish to consider taking steps to stop administering Check-off”.

In other words, it is take it or leave it. There is no pathway or mechanism for trade unions to challenge the employers’ calculations of reasonable costs or their decision to terminate check-off. In other words, there is no redress, and the trade unions are put in a position where their only options are to pay what the employer demands or end check-off. What a disgraceful way to treat their loyal workers and their workers’ representatives.

It is as if the Government have completely forgotten, or are choosing to ignore, the immense benefits of having trade union recognition in the workplace. Up and down the country, in both the private and public sector, on a daily basis we see trade unions and employers sorting out a whole range of issues amicably. Time was when Conservative Members recognised the valuable role of trade unions, but now one would almost think that the Government are looking to pick a fight with the trade unions and their own hard-working public servants. The Government’s draft impact assessment suggests there may be

“some loss of goodwill with employees and trade unions”.

There may indeed, and I would not underestimate the value of goodwill in services where so often we find individuals going above and beyond to deliver a good service.

Returning to the guidance, it looks as if the employer has carte blanche to allege additional cost. The example is given of additional cost being justified in the case of what is called “late” notification being given by a trade union of a change in membership fees—whatever “late” may be. This is from a Government who talked about a 12-month period, then a six-month period, and now they want to implement these changes by 9 May, leaving

barely three months to have everything worked out. This is from a Government who, in September 2022, with no notice sent the financial institutions into a spin and left people overnight with hundreds of extra pounds to pay on their mortgages or their rent.

On the matter of consultation, according to the draft explanatory memorandum, it sounds as if the consultation was simply to identify the various public bodies that would be covered by this legislation. We read:

“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.”

Furthermore, we are told:

“Trade union officials and others gave evidence during the passage of the Act and the Government listened to their comments.”

Make of that what you will, Mr Paisley, but I do not think the Government were doing much listening. To say that now there is no further need to seek advice or comment or to consult more widely is shocking.

There has been no opportunity for either the public or the main parties affected by this legislation—namely, the employees and the trade unions—to feed back on its implementation, because, the Government say, they did this seven years ago. If there had been proper consultation on the implementation, there would have been an opportunity for the trade unions to raise the issues of how an employer would determine costs and what the process for resolving a disagreement over the costs would be, rather than the situation of no redress that the Government are now trying to push through.

**Chris Stephens:** The hon. Lady is making an excellent speech. Is she not concerned, as I am, that there was not only no public consultation, but no consultation with the devolved Administrations? Given that the regulations will affect public sector workers and public bodies in Scotland, it is extraordinary that there was no consultation with the Scottish Government, who are their employer and who have clear manifesto commitments on industrial relations.

**Dame Nia Griffith:** Indeed I am. As the hon. Member will know, reflecting the will of the people of Wales, the Trade Union (Wales) Act 2017 disappplied devolved Welsh public sector employers from the provisions of the Trade Union Act 2016. Non-devolved bodies that operate in Wales are subject to the jurisdiction of the 2016 Act, however, so there is certainly an impact on people in Wales. There should have been full and proper consultation with the devolved Governments.

I hope the Minister will address this in his concluding remarks, but will he look again at what happens if the charges that the employer wishes to impose upon a trade union for providing check-off are considered unreasonable by the trade union? Will he look at working with trade unions and employers to agree some form of mechanism to resolve a disagreement?

In the draft impact assessment, the estimates for the scale of the use of check-off range from the 10-year-old TaxPayers’ Alliance figure of 90% of the workforce to the more recent Department for Business, Energy and Industrial Strategy figure of 65% of the workforce. The TaxPayers’ Alliance says that some 22% are already paid for by trade unions, whereas the Local Government Association says that 67% are already paid for. One



[*Dame Nia Griffith*]

would think that the Government could, without relying on external organisations, produce an accurate figure for how many employees are served by check-off and whether the costs are recovered from the trade unions. They certainly expect trade unions to have accurate information on whether their members are up to date with their subscriptions when they ballot for industrial action.

The current cost of check-off, which is estimated to be some £1.5 million, pales into insignificance when compared with the latest figures we have of nearly £10 billion wasted on personal protective equipment. Only last Thursday, the Department of Health and Social Care published its annual accounts, and figures showed that some £9.9 billion of the £13.6 billion-worth of PPE that the Department bought between 2020 and 2022 was unusable, and its value is now less than the Government paid for it. Rather than scrabbling to claw back a few pence from their employees, the Government should be making much more effort to chase down those who ripped off the British taxpayer by millions and billions, but they have done nothing to recoup that money. That is why Labour is committed to creating a powerful covid corruption commissioner to help recoup billions of pounds that has been lost to waste, fraud and flawed contracts.

**Sir Simon Clarke** (Middlesbrough South and East Cleveland) (Con): I was not intending to intervene in this debate, Mr Paisley, mindful of your stricture at the outset, but we appear to have drifted into a wider consideration of the Government's response to covid. I was the Chief Secretary to the Treasury at the time, and I gently point out that we did instigate a number of controls to try to make sure that wherever wrongdoing relating to the procurement of PPE had been perpetrated against the taxpayer, it would be followed up. That is something that the Department continues to do.

I further observe—I will conclude my remarks in a moment, Mr Paisley—that it was the Labour party that was urging us at the time to disregard ever more processes and to do ever more to procure at pace, to a point when the shadow Chancellor was urging us to go to historical re-enactment companies to procure PPE. I do think that in chiding the Minister and seeking to make a point, the hon. Lady—

**The Chair:** Order. We are not getting into the settling of scores. I encourage the shadow Minister to stick to the scope of the statutory instrument. Otherwise, we could be here for a very long time.

**Dame Nia Griffith:** Indeed, Mr Paisley.

What I am saying is that the Government should be concentrating their efforts there, not on trying to squeeze a few more pennies from their hard-pressed workforce. The Opposition will oppose this legislation, because it will cause unnecessary bureaucracy, put an additional financial burden on hard-pressed public sector workers, and do nothing to improve good will between the Government and their loyal public servants.

2.45 pm

**Chris Stephens** (Glasgow South West) (SNP): It is pleasure to see you in the Chair, Mr Paisley. I refer to my entry in the Register of Members' Financial Interests, my position as chair of the PCS parliamentary group and my membership of Unison, Glasgow city branch, which is one of the largest branches of that trade union.

What we have in front of us is not quite the non-controversial, bland instrument we heard about from the Minister. He suggests that a small change is being made, but of course he knows it is far more controversial than that. I think it is important to point out what can be deducted from a public sector worker's wages other than subscriptions, as that will set the scene of what is really going on here. People can pay their bills, their council tax and their rent. They can make a charitable donation: when I was employed by Glasgow City Council, I made a regular donation to a South Africa charity founded by the great Denis Goldberg, Community H.E.A.R.T. A worker's staff association subscriptions can be paid through deductions from wages, but a colleague sitting next to them who is a member of a trade union now faces legislation to curb that activity. It is quite extraordinary what other subscriptions people will allow to come off pay—employers of cyclists might come up with a scheme to promote cycling, for example.

We are in the collective bargaining arena, and it seems to me, as one who was a member of the Committee on the Trade Union Bill that discussed at length the arguments around check-off when the Government tried to stop it altogether, that once again we have a Government who do not understand or have little understanding of what takes place in a collective bargaining unit in a trade union organised workplace. I am concerned that the instrument reflects a bias toward staff associations and against trade unions.

I have tabled many questions on this topic in the nearly nine years that I have been a Member of Parliament. There are also legal risks: every time the Government have tried to do something around check-off, it has ended up in a court defeat for them. If they were a football team with that sort of record, they would be firmly in the relegation zone. Every time they have been taken to court around check-off arrangements, they have been defeated. It is worth quoting Mr Justice Supperstone's remark in one such case:

"I am not impressed by the argument that check-off is only or primarily for the benefit of the union as such, rather than for its members in their capacity as employees."

We have employees of public services who want their trade union subscriptions to be taken out of their pay packet, and the Government seem to have an issue with that. I cannot understand the Government's fascination with this. A Government who are supposed to be all for small government and against state interference oppose voluntary arrangements between a trade union and a public sector employer. It is quite extraordinary, but we know why the Government have put themselves in that position: it is because they have for many years tried to curb the activities of the trade union movement. They are doing that because, as we all know, the benefits of trade union membership in a workplace are increased wages, better terms and conditions, and a decreased likelihood of being dismissed. That is a fact. It seems to me quite extraordinary that the Conservative party and

this Government oppose those principles, on which the trade union movement of which I am a proud member was founded.

I am equally concerned about the lack of consultation with the devolved Administrations. It is quite extraordinary that we have public sector workers in Scotland, some working for the Scottish Government, some for a Westminster Department, some for other public bodies, yet there was no consultation with the Scottish Government. Is it because they would have been told by the Scottish Government that they were not interested in interfering in this regard? We know that any time a trade union has been approached to make a contribution to the employer for a check-off arrangement, it has met that request. Why do the Government want to interfere where the employer and the trade unions are happy for check-off arrangements to be made, at very little cost? It is more blue tape—not red tape, but blue tape. The most regulated part of the economy seems to be the trade union movement. It is a case of *laissez faire* in some parts of the economy, and Stalinism when it comes to these arrangements. It is extraordinary that the Government can go from one to the other, with no intervening period.

I am similarly concerned that the Government's approach is in breach of International Labour Organisation rules, as we have seen in countries such as Congo, on which the ILO committee of experts reported that

“since the check-off system was abandoned...there has been no procedure for deducting trade union dues from workers' pay.”

That is the agenda here: to have trade union subscriptions paid by other means than from the pay packet. It is a device to try to ensure that the size of trade unions in the workplace is reduced and that they are derecognised. We know that that is the Government's agenda. This is not the uncontroversial, bland statutory instrument that the Minister presented; it is very much the opposite. If the Government push ahead with this measure, they will find themselves in court again, probably facing defeat. There are very real issues about that.

Last, there is the change from the commitment that the implementation period would be 12 months. I say this with great respect for the Minister—he and I were on the Work and Pensions Committee together, so I know how assiduous he is—that that is not an uncontroversial change because of technology; nor is it modernisation. The Government committed to a 12-month implementation period. I think it is disgraceful that they are renegeing on that commitment; they need to be called out on it and to justify that change, as the Minister has not done.

This statutory instrument strikes at the heart of trade union organisation in the public sector. It is insidious, and I too will oppose it today.

2.54 pm

**Alex Burghart:** I thank all those who contributed to the debate. The hon. Member for Llanelli says that this is not a pressing issue, and I am inclined to agree with her, because that is why it has taken us the better part of eight years to get to this point. We put this relatively minor measure on hold while we were dealing with much larger issues.

The hon. Lady talks about it being a matter of a few pence. At £1.5 million a year, I am not sure I agree with her definition of a few pence, but if it is just a few pence,

I am sure that the trade unions will be able to cover the cost, as they justly should. They all have a choice to make on whether to pass the cost on to their members, but they may wish to consider the size of their expense accounts before doing so. The main thing here is the principle that the public services should not be providing for the trade unions a service that is unremunerated. This delegated legislation will help to embed that principle.

Regarding challenges, our view is that there are existing and well established processes for resolving disputes between our public services and the trade unions which will be fit for purpose in this instance. The hon. Member for Manchester, Gorton raised a question about the ECHR. The regulations deny no one the right to join a trade union, so that issue will not arise.

I am pleased to be able to tell my former colleague on the Work and Pensions Committee, the hon. Member for Glasgow South West, that Scotland was consulted on the scope of the regulations. The Minister for the Cabinet Office wrote to relevant Ministers. This is obviously and clearly a reserved area—

**Afzal Khan:** Will the Minister give way?

**Chris Stephens:** Will the Minister give way?

**Alex Burghart:** I will give way to the hon. Member for Manchester, Gorton first.

**Afzal Khan:** Can the Minister explain why the Government failed to consult the unions? The instrument clearly affects them.

**Alex Burghart:** I am pleased to be able to tell the hon. Gentleman that the trade unions were consulted as part of the work we did during the passage of the Trade Union Act 2016. To be clear: for a lot of people, direct debit is much more effective. It is often much better for trade unions, too. Going back over *Hansard*, I noticed that in 2016 a number of trade union websites were actively encouraging members to move to direct debit, because they thought it was a better process.

**Chris Stephens:** Trade unions were doing that because at that time the Government had stopped their members' rights to have their subscriptions come off their wages. The Minister said—after his distasteful attack on trade unions, which I hope he will reflect on—that this is clearly a reserved area. I accept that, unfortunately, employment law is reserved to this place—it would be far better if it was under the aegis of the Scottish Parliament—but industrial relations are not. Industrial relations are between employer and employees. Why should the Government interfere in the voluntary arrangements between an employer and a trade union?

**Alex Burghart:** The hon. Gentleman has answered his own question. This is a matter of the relationship between the public sector employer and its employee. That is why it is a reserved matter.

In his closing remarks, the hon. Gentleman said that membership of trade unions leads to higher wages. That was not necessarily the lesson of the 1970s. I hope he will reflect on that part of history. As for his reference

[Alex Burghart]

to Stalinism, I should probably take that in the spirit in which it was delivered, but as we are having a political dust-up, I will remind him what Stalinism was. Real Stalinism involved the death of tens of millions of people at the hands of perhaps the most brutal regime the world has ever seen, and that was the result of socialism.

2.59 pm

**Chris Stephens:** I listened intently to the Minister, and there are still some questions that have not been answered. In the time that we have left, and I understand that we do have time left, there may be an opportunity—

**Dr Thérèse Coffey** (Suffolk Coastal) (Con): On a point of order, Mr Paisley. Can an hon. Member speak twice? The hon. Member for Glasgow South West has already spoken.

**The Chair:** The right hon. Lady is a very experienced Member and she will know that the Member may speak as many times as I call him.

**Chris Stephens:** I am grateful, Mr Paisley. As I understand it, when time is available, Members can speak—

**Dr Coffey:** Only with the leave of the Committee.

**The Chair:** Order. I have ruled on this issue.

**Chris Stephens:** Thank you, Mr Paisley. I was trying to help the right hon. Member for Suffolk Coastal.

There are still some outstanding questions. Given the Government's track record in court in relation to check-off, how confident is the Minister that this particular statutory instrument will not lead to court action from a trade union or individual? It is important that before the Committee makes a decision the Minister tells us how tight the legislation is. This is a serious issue. The Minister is smiling, but he knows that the Government keep losing in court on this. How confident is he that if a trade union took this matter to court, it would not win?

3.1 pm

**Alex Burghart:** I am happy to respond to the hon. Gentleman. If he wants to know whether a trade union will bring legal action, he had better ask the trade union. We believe that the regulations are fit for purpose.

**Dame Nia Griffith:** I would like the Minister to clarify the issue of the employer setting a rate and the trade union disagreeing with that rate. There is no mechanism for that. The Minister mentioned “the usual”—going to ACAS or whatever—but the fact is that the legislation needs some redress or balance. It is all stacked in favour of the employer, who picks the figure, and the trade union has to take it or leave it. Perhaps the Minister could give us a better answer on that point.

**Alex Burghart:** I refer the hon. Lady to the answer I gave a few moments ago. She will know that there are existing, well established processes for dispute resolution between trade unions and public sector employers, and we believe that those will serve in this instance.

**The Chair:** Before I put the question, I remind colleagues that paragraph 13.2 of the rules of debate states that Members are entitled to speak as many times as they wish.

*Question put.*

*The Committee divided: Ayes 10, Noes 6.*

#### Division No. 1]

#### AYES

Burghart, Alex	Fletcher, Katherine
Clarke, rh Sir Simon	Fletcher, Mark
Coffey, rh Dr Thérèse	Henry, Darren
Crosbie, Virginia	Patel, rh Priti
Drax, Richard	Penning, rh Sir Mike

#### NOES

Antoniazzi, Tonia	Khan, Afzal
Griffith, Dame Nia	Mather, Keir
Hamilton, Mrs Paulette	Stephens, Chris

*Question accordingly agreed to.*

*Resolved,*

That the Committee has considered the draft Trade Union (Deduction of Union Subscriptions from Wages in the Public Sector) Regulations 2023.

5.4 pm

*Committee rose.*