



HM Government

Trade Union Act 2016

Further Government Engagement on the
Certification Officer's levy

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Trade Union Act 2016 – Certification Officer’s levy

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 responsible for statutory functions relating to trade unions and employers’ associations and is currently funded by Government. Some of the duties 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, other trade union ballots and certain breaches of trade union rules.

The Certification Officer plays an important role by ensuring that members of the public, as well as trade union members, can have confidence in how unions operate in a workplace environment by complying with their statutory obligations.

The Trade Union Act 2016 (“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 government introduced reforms to the Certification Officer’s role in the 2016 Act.

Section 20 (now section 257A) provides that the Secretary of State may by regulations make provision for the Certification Officer to require trade unions and employers’ associations (“relevant organisations”) to pay a levy to the Officer. Requiring a levy is not unusual, many other sectors have to pay a levy to fund their regulator. Therefore, the Government’s proposals to bring forward a levy for the Certification Officer would bring this regulator in line with other regulators such as the Pensions Regulator.

The regulations must require the Certification Officer, in determining the amounts to be levied, to aim to ensure that the total amount levied over any period of three years does not exceed the total amount of the Officer’s expenses over that period that are referable to specified functions of the Officer, preventing the Certification Officer from using the levy as a profit-making mechanism.

The Certification Officer may determine the amount of the levy according to specified criteria set out in regulations, as well as the cycle of payment and any exemptions. The specific amounts of the levy will be determined by the Certification Officer, in accordance with the framework.

The Government is now establishing the framework which we intend to set in accordance with four objectives. We intend that the levy should be:

- **equitable:** user pays for functions consumed based on cost recovery (in accordance with statute);
- **simple:** and easily understood by organisations;
- **predictable:** so organisations can plan ahead; and
- **affordable:** so that organisations can still invest in services for their members.

Following the 2016 Act, the Government consulted on the framework for the levy between August and October 2017. Following consideration of the responses to that consultation¹, the Government is now proposing to proceed with the overall implementation approach set out in the 2017 consultation. Though we are not proposing to change the fundamentals of the levy system proposed there, we have made some relatively minor changes to our proposals. These include excluding the cost of the Certification Officer's external legal fees from the levy as these costs are highly variable year by year while also maintaining separate fees for listing as a trade union or employers' association and for the granting of certificates of independence.

The Government consulted on the operation of the proposed levy framework in 2017 and has carefully considered the responses to that consultation. Since the 2017 consultation there has been a significant passage of time. As the introduction of the levy will affect a large number of trade unions and employers' associations who will be required to make payments, the Government is keen to offer a further opportunity for comment on the approach to the implementation of the levy. Furthermore, there may have been a change in the financial circumstances of unions and employers' associations since 2017 which may not have been reflected in previous responses to the 2017 consultation.

We are therefore now providing a further opportunity for stakeholders to express new or updated views on the final proposed structure of the levy process. As we have scrutinised the responses to the 2017 consultation, we request that any responses reflect changes in views or circumstances and are not repetitions of previously offered opinions. This is not intended to be a full consultation, rather an opportunity for the final views of stakeholders to be considered prior to the introduction of the levy.

The list of questions below sets out the issues we are interested in receiving views on. It is important to note that **we do not seek views on the merits of the levy regime as this was debated in Parliament when the Trade Union Act was passed.** An impact assessment was provided in January 2016 in relation to the Act. Paragraphs 40, 41 and 282 of that impact assessment relate to the proposed levy regime.

In the annexes to the consultation document, we set out the following information:

- Annex A: the legislative provision for the power to impose a levy.

The Government is not offering further engagement on the introduction of financial penalties as these are only applicable to non-compliant unions and employers' associations.

General information

The government is conducting further engagement on the detail of our proposed implementation of the Certification Officer's levy under the Trade Union and Labour Relations (Consolidation) Act 1992, as amended by the Trade Union Act 2016.

To respond please email TULevyEngagement@beis.gov.uk by 21 July. Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are welcome.

¹ <https://www.gov.uk/government/consultations/trade-union-act-2016-consultation-on-the-certification-officers-levy>

If you are unable to respond by email, please send your response by post to:

TU Levy Engagement
Labour Markets Directorate
Department for Business, Energy & Industrial Strategy
1 Victoria Street,
London, SW1H 0ET

Confidentiality and data protection

Information you provide, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable UK data protection laws. See our [privacy policy](#).

The 2017 Consultation

The Government previously consulted on the introduction of the Certification Officer levy between August and October 2017². The full response to this consultation is available on GOV.UK.

The Government plans to introduce the financial penalties, investigatory powers and levy in April 2022. In the intervening years from the passage of the 2016 Act to the introduction of the levy, Government has continued to fund the Certification Officer costs that will, in future, for the most part be covered by the levy. The Government has also agreed to change the detail of our proposals for the levy by:

- Excluding the cost of external inspectors from the levy
- Excluding external legal costs from the levy
- Maintaining some of the existing fee structure for the Certification Officer instead of subsuming all of the current statutory fees into the levy

We are now exploring these changes further, in addition to completing our consideration of the overall levy system.

Questions to Answer

- Your name
 - Email address
 - What organisation do you represent (if any)?
 - If you are representing an organisation, what type of organisation is it?
 - Trade union
 - Federated trade union
 - Employers' association
 - Federated employers' association
 - Individual
 - Other organisation (please describe)
1. Following the 2017 consultation, the Government proposes excluding both the costs of external inspectors and the cost of external legal advice from the levy. Do you agree with this approach?
Yes/No
Are there any other significantly variable costs that should be excluded and why?
 2. The Government proposes keeping the existing fees for listing and certificates of independence, instead of subsuming them into the levy. Do you have any comments on this approach? Does this create any unintended consequences?
 3. These existing statutory fees have not changed since 2005, and no longer represent the cost to the Certification Officer of providing the function. Do you believe the Government should consider the level these fees are set at?

² <https://www.gov.uk/government/consultations/trade-union-act-2016-consultation-on-the-certification-officers-levy>

Yes/No

Do you have any views on how such a review should be conducted?

4. Do you agree with the principle of having exemptions and a limited subsidy regime?

Yes/No

5. The Government proposes setting the affordability cap at 2.5% of annual income. Do you agree with this level?

Yes/No

Please give reasons for your answer.

6. Do you agree that this approach meets our objectives as set out on page 3 of this document?

Yes/No

Are there any unintended consequences or potential risks we should consider?

Section A: Cost components of the levy

The Government is committed to an equitable levy system. The 2016 Act ensures that the levy will operate purely on a cost-recovery basis. The previous consultation in 2017 identified which cost components the Certification Officer should use to calculate the levy.

To ensure that the underlying principle of cost-recovery is maintained, the levy will be based on the actual amounts of levy paid in the previous year alongside forecast costs for the year in question (such as staff salaries, accommodation, overheads etc.). Following the 2017 consultation, the Government proposes to exclude the costs of both external inspectors and external legal counsel.

In practice, the Certification Officer will use the total levy received from organisations, and which are included in her annual report, to make those calculations in accordance with the framework set out in regulations. The Officer's aim is to ensure that the total amount of funding recovered from organisations does not exceed the Officer's total costs over any three-year period. The intention is for payments to be made on an annual basis.

Costs recoverable through the levy

The implementation of the 2016 Act will increase the running costs of the Certification Officer's Office. Our latest estimate of new operating costs is £1,150,000 per annum (if all costs are included) once the 2016 Act is fully implemented. This accounts for additional staff, office expansion, and new systems required as a result of the wider reforms in the 2016 Act to the Certification Officer's investigatory and enforcement powers.

The intention is that the total amount of cost to be recovered from levies (after excluded costs are removed) will be divided up in a way that is equitable across the organisations that are eligible to make payments. This is in line with levy schemes used by other regulators.

The Government has been clear that it is only fair for the levy to cover regular and relatively stable expenditure. 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 Certification Officer'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.

To further ensure that the costs to be levy funded are stable, the Government has agreed to exclude the costs of external inspectors for investigations from the levy. The Government has also agreed to exclude the costs of external legal advice from the levy. In recent years, there has been no need for external inspectors, but these costs may return in future as the need arises.

The Government intends to bring in the financial penalties regime and enhanced investigatory powers from the 2016 Act in April 2022, as outlined in the Government response to the 2017 consultation.³ The expansion of the Certification Officer's functions will need to be accounted for in how the levy is set.

³ <https://www.gov.uk/government/consultations/trade-union-act-2016-consultation-on-the-certification-officers-enforcement-powers>

Specific Cost Considerations

The Certification Officer incurs some costs in her regulatory and supervisory capacity that the Government proposes will be excluded from the levy. Specifically, the Government proposes excluding two significant variable costs from the levy.

External Inspectors

The 2016 Act enables the Certification Officer to appoint one or more members of staff (i.e., “internal inspectors”) or other persons (i.e., “external inspectors”) as to investigate alleged breaches across a number of the Certification Officer’s jurisdictions.

We anticipate the appointment of external inspectors is the most variable cost for the Certification Officer. In contrast to internal inspectors, salaried with relatively defined roles, external inspectors are contracted on a case-by-case basis to deal with breaches that require specific expertise. In future, they could also be appointed to carry out enquiries into alleged breaches as reported by third parties, which would make predicting the extent to which they might be used even less predictable.

External Legal Advice

Responses to the 2017 consultation suggested that the cost of external legal advice was a further material variable cost to the Certification Officer. This is because it is utilised on a case-by-case basis and as such could potentially vary significantly. It is also difficult to forecast this cost in advance. Therefore, the Government agrees that these costs should be excluded from the levy.

This cost significantly varies year on year. Based on recent years, it is estimated that the annual cost to the Certification Officer of receiving this advice is between £33,300 to £71,500

Therefore, we estimate that removing the cost of external legal advice and external inspectors from the levy would reduce the overall amount to be collected from trade unions and employers’ associations to approximately £1,100,000.

Question 1:

Following the 2017 consultation, the Government proposes excluding both the costs of external inspectors and the cost of external legal advice from the levy. Do you agree with this approach?

Yes/No

Are there any other significantly variable costs that should be excluded and, if so, why?

Removal of Existing Statutory fees

Currently, some of the Certification Officer’s activities incur a statutory charge, set out in the Trade Unions and Employers’ Associations (Amalgamations, etc.) Regulations 1975. Activities that incur fees include, but are not limited to:

- Applications for entry into the list of trade unions or employers’ associations
- Application for approval of a change of name
- Application for a certificate of independence

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- Inspection of merger documents

Income from fees is approximately £5,000 per annum. In the 2017 consultation, the Government proposed subsuming the fees into the levy.

However, responses to the consultation highlighted unintended consequences of removing the fees and instead building them into the levy. For example, it was suggested that imposing fees for a certificate of independence deters organisations that did not properly fulfil the functions of a union from applying for independent status. Removing these fees would remove this deterrent. Similarly, respondents felt that a standalone fee for listing was a fair and useful contribution for a new applicant to make, instead of requiring existing applicants to cover the costs through the levy. As a result, the **Government proposes instead to keep the existing fee system for listing and for certificates of independence.**

The primary concerns raised around subsuming existing fees into the levy was that it would encourage an increase in applications (and thus costs). Therefore, keeping the existing fees for new applicants, either to listings or for certificates of independence, should deter any frivolous applications. However, the other fees listed above will be subsumed into the levy as there is minimal benefit to keeping them separate.

Even doing so, the levy will be required to, in part, fund the activities related to the fees. Because charges do not reflect the actual costs to the Certification officer, any additional costs not covered by the fees will instead be covered by the levy. To address this, the Government is also considering whether it should review the level of these fees to ensure they better reflect the cost to the Certification Officer.

Question 2:

The Government proposes keeping the existing fees for listing and certificates of independence, instead of subsuming them into the levy. Do you have any comments on this approach? Does this create any unintended consequences?

Question 3:

These existing statutory fees have not changed since 2005, and no longer represent the cost to the Certification Officer of providing the function. Do you believe the Government should consider the level these fees are set at?

Yes/No

Do you have any views on how such a review should be conducted?

Section B: Setting the levy

The enabling power introduced by the 2016 Act allows the amount payable by each organisation via the levy to be set by the Certification Officer (in accordance with regulations) by reference to specified criteria. For example, number of members or level of income, type of organisation, and costs referable to a particular type of organisation. The amount paid by each organisation may be different as a result. As some of the functions delivered by the Certification Officer apply solely to trade unions, and not employers' associations, we are keen to ensure that the levy model reflects usage as reasonably as possible.

In the 2017 consultation, the Government outlined four options to set the levy. Of these four options, the Government proposed a hybrid model, basing levy contributions around three principles:

- The amount of the levy is to be based on the functions that organisations use and the resource that the Certification Officer spends on them. This is calculated by apportioning costs and setting a different charging structure between trade unions, federated trade unions, employers' associations, and federated employers' associations.
- Individual organisations who pay the levy are exempted or subsidised according to the declared annual income of an organisation.
- The amount levied on any single organisation is subject to an affordability cap based on 2.5% of an organisation's declared annual income.

This is achieved by setting three income bands for each type of organisation. Lower income organisations within each type of organisation will be exempt from the levy, middle income organisations will pay one rate and higher income organisations will pay a higher rate. These bands will help ensure that no organisation pays more than 2.5% of its declared annual income, whilst enabling reasonable adjustments for income level.

Question 4:

Do you agree with the principle of having exemptions and a limited subsidy regime?
Yes/No

Question 5:

The Government proposes setting the affordability cap at 2.5% of annual income. Do you agree with this level?
Yes/No
Please give reasons for your answer.

Conclusion

We have used the filters of functions used by types of organisations and total declared income of organisations to create a framework for the levy which is:

- **equitable:** all eligible organisations will make a contribution to eligible costs based on usage.

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- **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 which reflects likely use of functions and is related to annual income.

Question 6:

Do you agree that this approach meets our objectives?

Are there any unintended consequences or potential risks we should consider?

Annex A: Power to impose a levy

Section 20

(1) After section 257 of the 1992 Act insert— “257A Levy payable to Certification Officer

(1)The Secretary of State may by regulations make provision for the Certification Officer to require trade unions and employers’ associations (“relevant organisations”) to pay a levy to the Officer.

(2)The regulations must require the Certification Officer, in determining the amounts to be levied, to aim to ensure that the total amount levied over any period of three years does not exceed the total amount of the Officer’s expenses over that period that are referable to specified functions of the Officer.

(3)The regulations may make provision for determining what things count as expenses of the Certification Officer for the purposes of provision made by virtue of subsection (2), and may in particular provide for the expenses to be treated as including—

- (a) expenses incurred by ACAS in providing staff, accommodation, equipment, and other facilities under section 254(5), or
- (b) expenses in respect of which payments are made under section 255(1) or (2).

(4)The regulations may provide for the Certification Officer to determine the amount of levy payable by a relevant organisation by reference to specified criteria, which may include—

- (a) the number of members or the amount of income that the organisation has;
- (b) whether the organisation is—
 - (i) a federated trade union,
 - (ii) a trade union that is not a federated trade union,
 - (iii) a federated employers’ association, or
 - (iv) an employers’ association that is not a federated employers’ association;
- (c) the different proportions of the Officer’s expenses that are referable to—
 - (i) functions in relation to federated trade unions,
 - (ii) functions in relation to trade unions that are not federated trade unions,
 - (iii) functions in relation to federated employers’ associations, and
 - (iv) functions in relation to employers’ associations that are not federated employers’ associations.

(5) The regulations may provide—

- (a) for the levy not to be payable, or for a reduced amount to be payable, in specified cases or in cases determined by the Certification Officer in accordance with the regulations;
- (b) for the intervals at which the levy is to be paid;
- (c) for interest to be payable where a payment is not made by the required date;
- (d) for an amount levied to be recoverable by the Certification Officer as a debt.

(6) The regulations may contain such incidental, supplementary or transitional provisions as appear to the Secretary of State to be necessary or expedient.

(7) In this section—

- “federated employers’ association” has the same meaning as in section 135;
- “federated trade union” has the same meaning as in section 118;
- “specified” means specified in the regulations.

(8) Before making regulations under this section the Secretary of State must consult relevant organisations and ACAS.

(9) 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.

(10) The Certification Officer shall pay into the Consolidated Fund amounts received by virtue of this section.”

(2) In section 258 of that Act (annual reports and accounts), after subsection (1) insert—

“(1A) A report under this section shall include details of—

- (a) amounts levied by the Certification Officer by virtue of section 257A in the year in question, and
- (b) how the amounts were determined.”

