briefing

Trade Union Bill
Prohibition on deduction of union subscriptions from wages in the public sector
October 2015

Prohibition on deduction of union subscriptions from wages in the public sector

On 20 October, the government tabled an amendment which will prevent all public sector employers from deducting union subscriptions via the payroll, i.e. 'check-off' arrangements. The New Clause was debated and passed by the Bill Committee on Tuesday 27 October. It now forms **Clause 14** of the Trade Union Bill. During the Committee debate, the government said that they currently plan to allow for a six month transition period after the regulations are passed by Parliament.

The ban on the use of check-off arrangements is clearly designed to target union finances and to make it harder for individuals, including lower paid workers, to access union representation in the workplace.

The government has failed to secure any substantial employer support for their proposals. Many employers, including in local government and the health sector, have expressed concern that the removal of check-off arrangements could undermine constructive relations between managers and unions, which are vital for the delivery of quality public services. The government's claim that the proposal will save taxpayers' money is also a red herring, given that many unions already cover the costs for check-off services themselves. In some cases, fees charged by government employers for check-off provision generate a net gain for the public finances.

Far from a modern and sensible approach to industrial relations, the TUC is concerned that the proposals on check-off joins many other parts of the Trade Union Bill in being a deliberate attempt to undermine unions, making it harder for them to represent people at work and for employees to act to protect jobs and services from significant public service cuts.

Concerns with the government's proposals

The TUC is firmly opposed to the ban on check-off arrangements in the public sector. We also have serious concerns about the government's plans for implementing the prohibition on check-off arrangements.

Under Clause 14 the government will be able to introduce regulations imposing a ban on check off arrangements across the entire public sector. The clause also provides the government with the power to ban the use of check-off arrangements in parts of the private sector and voluntary sector which *perform functions of a public nature which are wholly or partly funded from public funds*. It has been suggested that this wording has been included in Clause 14 to cover entities such as academy schools which may not otherwise be covered by the terms public authority. But it would also be possible for government ministers to use this wide-ranging power to extend the ban on check-off arrangements to parts of public sector providing outsourced public services. During the Committee debate in the Commons, Ministers committed to write to MPs providing more detail about the scope of the ban.

The TUC is concerned that the proposed ban on check-off arrangements could mean that some union members will inadvertently lose out on access to union services and to representation in the workplace. If the changes go ahead it will be vital that all union members are informed of the changes being introduced by the government and are given the opportunity to sign up to direct debit payments. The TUC is therefore seriously concerned that no provision is made in Clause 14 for union officials to be able to access workplaces to talk to union members. Clause 14 also fails to provide workplace union representatives with additional facility time to speak to members.

Transferring millions of members on to direct debit would create significant organisational challenges for unions. It would therefore be vital that unions are provided with ample time to transfer members on to direct debit. Time would also need to be provided for employers and unions to renegotiate existing collective agreements.

No timetable for the introduction of the ban on check-off has been specified in Clause 14. An explanatory note which accompanied these provisions suggested that a reasonable transition period will be provided. However, this explanation has no legal effect and no definition of 'reasonable' is provided. When questioned in Bill Committee, the government stated that they were minded to provide a six month transition period after the Regulations came into effect.

The TUC is concerned that unions would be required to sign members up to direct debit payments at the same time as needing to comply with other significant legislative changes. These include:

- Encouraging millions of members within three months of the Bill becoming law to 'opt-in' to the union's political fund, even though they have voluntarily contributed to the fund for many years.
- Gathering additional information for inclusion in the annual return to the Certification Officer, including information on industrial action taken and political fund expenditure.
- Complying with additional red tape relating to membership records introduced by the Lobbying Act.

In these circumstances, the need for significant time to allow unions to move members to direct debit would be further exacerbated.

Possible timetable for the implementation of the ban on check-off

The ban on check-off will be implemented through regulations. It is expected that the government will introduce a single set of regulations which apply across the public sector. As noted above the Regulations could also cover parts of the private sector (see above). The government expects to publish draft or template regulations before the Bill completes its Parliamentary stages.

The possible timetable for implementing the ban on check-off is:

- The Trade Union Bill receives Royal Assent (*Spring 2016)*
- The government will need to wait at least two months after Royal Assent before introducing regulations.
- New regulations prohibiting check off will be introduced in Parliament (*Summer 2016)*
- There must be 40 sitting days before the regulations can come into effect. During this time debates will be held in the House of Commons and House of Lords
- New regulations will come into effect (*Autumn 2016)*
- Six month transition period
- Ban commences (*April 2017)*

The dates *in italics* are estimates of the earliest dates when each stage will take place.

Arguments against the proposed ban on check-off arrangements

Government Ministers have suggested that check-off arrangements are an outdated practice.[1] But in reality, deductions from the payroll are an increasingly common way that employers help their employees manage their finances. Often child care, travel, bike or computer payments are made through pay-roll deductions.

The proposed ban on check-off for union subscriptions will affect millions of union members in the public sector who actively choose to pay their union subscriptions directly from their wages. Regular confirmation on their payslip that their union membership is still current, regardless of any wider changes in their bank details, gives public sector workers peace of mind that the workplace benefits unions bring are still available to them, and allows them to manage all payroll deductions associated with the workplace (including pension contributions and any wider payments) in one place.

The government assumes that it will be easy for all union members to transfer to direct debit payments. However, as the British Bankers Association reported in December 2014, between 1.2 and 1.3 million individuals still do not have a bank account.[2] While relatively few individuals working in the public sector will be in this position those who are will be at risk of losing out on their basic right to union representation in the workplace. Workers without a bank account often rely on check-off arrangements to maintain their membership of a union.

Lack of consultation with unions or employers over these changes

The TUC is seriously concerned that the proposals to ban check-off arrangements in the public sector have been introduced without any prior consultation with employers, engagement with unions or assessment of the impact on employment relations. The proposal was not included in either the Conservative Party manifesto, in the Queen's speech or indeed in the briefing accompanying the speech. There was no reference to it in any of the BIS consultations or impact assessments which accompanied the publication of the Trade Union Bill.

Instead, the government announced its plans 'out-of-the-blue' on 6 August 2015 and only published the amendment introducing the ban one week before the Committee is due to debate it.

To date, the government has failed to publish any evidence justifying the introduction or the ban. No assessment of the potential impact of the proposal for

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[1] https://www.gov.uk/government/news/new-steps-to-tackle-taxpayer-funded-support-to-trade-unions

[2] https://www.bba.org.uk/news/bba-voice/back-to-basics/#.VidQrX6rRMw

employers, unions, union members or for constructive employment relations has also been prepared.

Check-off proposals will interfere with employers' management choices

Thousands of employers in both the public and private sector *voluntarily* provide check-off arrangements for union members. They recognise that such arrangements form a normal part of constructive relations with recognised unions.

During the evidence sessions on the Bill, it was reported that check-off arrangements are not limited to the public sector: many private sector employers also provide check-off arrangements, including national retailers.

The TUC is concerned that proposals set out in Clause 14 cut across these voluntary agreements. The government has even decided to take the power to amend existing collective agreements and contracts of employment which have been mutually agreed by public sector employers, employees and trade unions.

The TUC expects that union members may seek to challenge changes to their contracts of employment which provide for check-off arrangements and to seek compensation from the government. As reported during the evidence sessions on the Bill, the High Court awarded union members compensation when check-off arrangements were removed in parts of the civil service. Far from saving the taxpayer money, the government's proposals may have significant cost implications.

The TUC also believes the government proposals, in particular plans to impose changes to collective agreements voluntarily agreed by employers and unions, do not comply with ILO standards. The TUC has raised this issue in their complaint to the ILO Committee of Experts.

The government's proposals will interfere with the ability of public sector employers to decide how to engage with their staff and manage their employment relations, including the Scottish Parliament and Welsh Assembly and also local authorities and NHS employers in England.

During the evidence sessions on the Bill, Roseanna Cunningham made it clear that the Scottish Government does not support the proposed ban on check-off arrangements.

On 10 September 2015, Carwyn Jones, the Welsh first minister wrote to the Prime Minister expressing concerns about the government's proposals relating to check-off.[3] He said:

[3] http://www.wired-gov.net/wg/news.nsf/articles/DNWA-A27LPA

> "Nor am I convinced that the intention to end 'check off' arrangements for trade union subscriptions in the public sector is necessary or appropriate. The Welsh Government operates these arrangements as part of its approach to effective social partnership and is not seeking to change this."

Check-off proposals will damage constructive employment relations

The TUC is also concerned that the prohibition on check-off arrangements will undermine constructive employment relations.

Employers have expressed concerns at the government's proposals. The Financial Times reported that "human resources directors in the National Health Service, including those in some of the biggest hospitals, have written to Matthew Hancock, cabinet office minister, questioning government plans to scrap the "check-off" system for paying union subscriptions.[4] One letter, from London HR directors, suggested that staff motivation would be adversely affected in return for a "very limited cost benefit"."

The FT also reported that another letter from HR directors and regional union representatives from the east of England suggested "that a five-year plan to improve the NHS, published a year ago, may even be set back by the changes [set out in the Bill]. Close working between managers and union representatives had been "recognised by health ministers as fundamental" to its delivery, they said."

In evidence to the Bill Committee Leeds City Council wrote:

"Salary deductions such as paying Council Tax, Give as you earn, Credit Unions and health care schemes are a very low cost being a convenience benefit for employees at LCC. The option to pay trade union fees should be seen in the same light. In Leeds we estimate that this costs under £5,000 per year; a negligible 41 pence per year per trade union member. Therefore, in order to achieve better employee relations, the Council will seek to continue salary deductions for trade union subscriptions as it recognises trade unions and sees a benefit to negotiating, consulting and communicating with trade unions."

[4] http://www.ft.com/cms/s/096e2746-726c-11e5-a129-3fcc4f641d98,Authorised=false.html?siteedition=uk&_i_location=http%3A%2F%2Fwww.ft.com%2Fcms%2Fs%2F0%2F096e2746-726c-11e5-a129-3fcc4f641d98.html%3Fsiteedition%3Duk&_i_referer=&classification=conditional_standard&iab=barrier-app#axzz3pCXjWyBU

It is a myth that the removal of check-off will save the taxpayer money

The government has claimed that the proposed change will generate up to £6m in savings for the taxpayer. However, the TUC seriously questions this figure for two main reasons.

Firstly, as reported at the evidence sessions on the Bill, many trade unions pay public authorities for providing check-off services. In some workplaces, the fees paid by unions well exceed the cost of administrating the check-off arrangements.

Secondly, when check-off arrangements were removed from within Whitehall, Danny Alexander, the then Chief Secretary to the Treasury wrote to all government departments acknowledging there was "no fiscal case for doing this, as unions have offered to pay any costs associated with check-off, which are in any case minimal".[5]

The government has published no analysis or impact assessment to back up their claimed savings.

In written evidence to the Bill Committee the Welsh Local Government Association said:

"We also see no reason to outlaw the 'check off' system which is not considered problematic by local authorities, and indeed is part of our social partnership approach. The view has been promulgated that this is a 'huge expense to the tax payer' but again the facts do not bear this out. In our experience there are already arrangements in place in some authorities where the trades unions are paying for the administrative costs of the system. With the continuing budget cuts more are considering introducing appropriate charges. The trades unions in our experience fully understand that financial difficulties and this is not viewed as problematic. Mandating an appropriate charge would be a reasonable approach but seeking to ban the system is entirely unnecessary and again, unwarranted in our view."

Similarly, in evidence to the Committee, Wolverhampton City Council wrote

"We have effective methods in place for deducting trade union membership subscriptions through Deduction of Contributions at Source (DOCAS). We see this as an important part of our positive industrial relations and an effective system that supports our employees.

The potential ending of Deduction of Contributions at Source (DOCAS) in the public sector would be of concern to this council. Furthermore, savings with regard

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[5] http://www.theguardian.com/politics/interactive/2014/oct/03/liberal-conservative-coalition-danny-alexander

to the cessation of the administration of the deduction of union subscriptions would not be substantial as the transactional process is largely automated and well established and one of many pay deductions we process.

Trade unions already pay an approved 2.5% administration fee to the council, this forms part of our collective and contractual arrangements with the trade unions and one which this council will defend and support."