



Department for
Business, Energy
& Industrial Strategy

TRADE UNION ACT 2016

Consultation on the Certification Officer's levy



August 2017

Foreword

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 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, certain other ballots and certain breaches of trade union rules.

The role of the Certification Officer makes a contribution to the government’s priority of enhancing rights and protections in the workplace and is essential in ensuring there can be confidence in how unions operate in a workplace environment.

At a time of ongoing financial constraint, the government believes that the taxpayer should not be required to meet the costs of regulating trade unions and employers’ associations and the organisations should make a contribution towards this. This would bring the Certification Officer in line with other regulators such as the Pensions Regulator.

The Trade Union Act 2016 (the 2016 Act) provides that a levy may be paid by unions and employers’ associations to recover the costs incurred in the delivery of regulatory functions. It provides for regulations to set out the framework for the levy scheme. The specific amounts of the levy will be determined by the Certification Officer, in accordance with the framework.

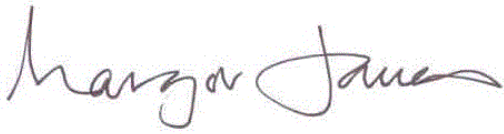
The government must now establish the framework which we intend to set in accordance with four objectives. The levy should be:

- **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.

We are consulting on how we should design the framework to meet our objectives. In particular we are seeking views on:

- what cost components the Certification Officer should use to calculate the contributions that trade unions and employers’ associations should make; and
- how much those organisations should pay towards the levy.

We welcome views from trade unions, employer associations and other interested organisations and individuals on our proposed implementation of the financial penalties regime.

A handwritten signature in dark ink, reading "Margot James". The signature is written in a cursive, flowing style.

Margot James, MP

Parliamentary Under Secretary of State and Minister for Small Business, Consumers and Corporate Responsibility

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General information

Purpose of this consultation

The government is consulting on the detail of our proposed implementation of the Certification Officer's levy under the Trade Union Act 2016. We welcome views from unions, employer associations, and other interested organisations and individuals on our proposals.

Issued: 31 August 2017

Respond by: 26 October 2017

Enquiries to:

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Consultation reference:

Trade Union Act 2016: Consultation on the Certification Officer's levy.

Territorial extent:

England, Scotland and Wales.

How to respond

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

You can respond to this consultation online at:

<https://beisgovuk.citizenspace.com/lm/certification-officer-levy>

Alternatively, you can email your response to: tulevyconsultation@beis.gov.uk.

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at: www.gov.uk/government/consultations/trade-union-act-2016-consultation-on-the-certification-officers-levy.

No hardcopies of this document are available.

Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on the [GOV.UK website](#). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the [government's consultation principles](#).

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to Angela.Rabess@beis.gov.uk.

Executive summary

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.

This consultation seeks your views on the government’s proposed implementation of section 20 of the 2016 Act that gives the Certification Officer the power to impose a levy on unions and employers’ associations to recover the cost of oversight and regulation.

Section 20 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.

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.

The Certification Officer may determine the amount of the levy according to specified criteria set out in regulation as well as the cycle of payment and any exemptions.

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;
- [Annex B](#): tables showing levy contribution affordability rates set at 5% and 10%; and
- [Annex C](#): Levy model – technical annex

The list of consultation questions below sets out the issues we are interested in receiving views on. It is important to note that **this consultation does 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 Act¹. Paragraphs 40, 41 and 282 of this impact assessment relate to the proposed levy regime. We will provide an updated impact assessment post consultation when the final levy regulations are laid in Parliament. **We are therefore consulting on the detail of how the proposed financial penalties regime will operate and we welcome your views on this.**

¹ www.gov.uk/government/uploads/system/uploads/attachment_data/file/493636/BIS-16-70-trade-union-bill-impact-assessment.pdf

Consultation questions

- 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
 - Employer association
 - Federated employer association
 - Individual
 - Other organisation (please describe)
 - Are you happy for your response to be published?
 - Yes
 - Yes, but without identifying information
 - No, I want my response to be treated as confidential
 - Would you like to be contacted when the consultation response is published? Yes/No
1. Do you agree that the costs for the functions delivered by the Certification Officer as defined above should be recoverable in the levy? Yes/No
Are there any omissions?
 2. Do you agree with excluding the costs of external inspectors from the levy? Yes/No
Are there any other significantly variable costs that should be excluded and why?
 3. Do you agree that the costs of regulating political funds and superannuation schemes should be subsumed into the levy? Yes/No
 4. Do you agree with removal of the Certification Officer's existing fees, and for the costs of these activities to be subsumed into the levy? Yes/No
Does this create any unintended consequences?
 5. Do you agree with the principle of having exemptions and a limited subsidy regime? Yes/No
Where should we set the affordability cap?
 6. Do you agree that this approach meets our objectives? Yes/No
Are there any unintended consequences or potential risks we should consider?

Section A: Cost components of the levy

1. The government is committed to an equitable system and has ensured, through the 2016 Act that the levy will operate on a cost-recovery basis only. This is why we are consulting on which cost components the Certification Officer should use to calculate the levy.
2. The underlying principle of a cost-recovery levy is that the contributions for one year 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, legal spend etc.). In practice, the Certification Officer will use the total levy received from organisations, and which are included in his annual report, to make those calculations in accordance with the framework set in regulations. The Officer's aim is to ensure that the total amount of funding recovered from organisations does not exceed total costs over any three-year period. Payments are likely to be on an annual basis.

Costs recoverable through the levy

3. The Impact Assessment for the 2016 Act estimates that running costs of the Certification Officer's office are likely to increase from £850,000 to £1.9m per annum (if all costs are included) once the 2016 Act is 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.
4. The intention is that the total amount of cost to be recovered via levies (after any non-eligible costs have been removed) will be divided up in a way that is equitable across the organisations eligible to make payment. This is in line with the operation of other levy schemes for other regulators.
5. The principles of managing public money provide that only regular and relatively stable expenditure can be levy-funded. 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 Office'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.
6. Costs which are for occasional services (and therefore less predictable) will continue to be funded by the government. This ensures that the levy will operate fairly. Ministers specifically **committed to consult on excluding the costs of external inspectors for investigations**, as these form the most variable costs (estimated £275,000 p.a.). This would bring the estimated total of the costs to be recovered down to £1,638,000 (rounded to £1.6m throughout the rest of this document).
7. The functions of the Certification Officer are still in the process of reform under the 2016 Act. The role will have increased functions by the time the levy is in operation and they will need to be accounted for in how the levy is set. The main functions are set out in the table below in relation to the type of organisation (trade union, federated trade union, employers' association, federated employers' association) that uses them.

Function	Relates to:			
	Trade union	Federated trade union	Employers' association	Federated employers' association
Determining applications to be listed, and maintaining lists and schedules	X	X	X	X
Ensuring annual returns and accounts are made	X	X	X	X
Supervising mergers	X	X	X	X
Investigating alleged breaches of financial irregularities	X	X	X	X
Determining member complaints relating to alleged breaches of statutory duties	X	[X]	[X]	[X]
Determining applications for certificates of independence	X			
Determining member complaints relating to alleged breaches of union rules	X			
Investigating alleged breaches in relation to trade union membership records	X	X		
Supervising political fund ballots, and approving rule books	X		X	
Supervising funds set up for members' superannuation schemes	X	X	X	
Investigating alleged breaches of statutory rules (new powers under Trade Union Act)	X	X	X	X

Question 1: Do you agree that the costs for the functions delivered by the Certification Officer as defined above should be recoverable in the levy?

Are there any omissions?

Specific cost considerations

8. The Certification Officer incurs some costs in his regulatory and supervisory capacity that we propose to either exclude from or include as part of the levy.

External inspectors

9. The Trade Union Act 2016 enables the Certification Officer to appoint one or more members of staff (i.e. "internal inspectors") or other persons (i.e. "external inspectors") as an inspector to investigate financial irregularities and membership register issues.
10. 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.
11. The Impact Assessment for the 2016 Act² estimated the costs of appointing external inspectors to be from £50,000 to £500,000 p.a. with a best estimate of £275,000. Removing these costs from the levy would reduce the overall amount to be collected from trade unions and employers' associations to approximately £1.6m.
12. **We propose that the costs for external inspectors are excluded from the levy.** If the Certification Officer wishes to appoint external inspectors, then he or she will need to seek the government's agreement to the additional costs. This is a safeguard against the risk that the Certification Officer might incur unnecessary unpredicted costs.

Question 2: Do you agree with excluding the costs of external inspectors from the levy?

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

Political funds and members' superannuation schemes

13. Only certain trade unions maintain political funds and funds set up for members' superannuation schemes. According to the Certification Officer's 2016 annual report, 25 unions maintain political funds, and three unions maintain eight superannuation schemes. The costs for the Certification Officer in supervising these funds are relatively small – they are spread out over a ten year period (political fund review ballots must be held every ten years), coming to about 1% of total current costs each year.
14. The costs are small and cannot sensibly be calculated on a contribution basis. We propose to manage these costs in the future by subsuming them into the levy. To balance this, we propose to moderate levy charges per union according to use of functions.

Question 3: Do you agree that the costs of regulating political funds and superannuation schemes should be subsumed into the levy?

² www.gov.uk/government/collections/trade-union-bill

Removal of existing statutory fees

15. 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. Fees are charged activities. These are:
- Application for entry in the list of trade unions £150;
 - Application for entry in the list of employers' associations £150;
 - Application for entry in the list of an amalgamated organisation where each amalgamating organisation was already entered £41;
 - Provision of a certificate of independence to an amalgamated union where each amalgamating organisation already had a certificate of independence £41;
 - Application for approval of a change of name £96;
 - Application for a certificate of independence £4,066;
 - Application for formal approval of an instrument of transfer of engagements or an instrument of amalgamation £1,850; and
 - Inspection of merger documents £19.
16. Income from fees is around £7,000 per annum. They have not been updated since 2005, and do not reflect the actual costs of the Certification Officer's work. We propose to remove the existing statutory fees so that the costs of the activities are included in the levy. They will be recoverable on a more representative basis because we propose to moderate levy charges per union according to use of functions.

Question 4: Do you agree with removal of the Certification Officer's existing fees, and for the costs of these activities to be subsumed into the levy?

Does this create any unintended consequences?

Section B: Setting the levy

Options

17. 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, membership number 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.
18. There is a range of functions delivered by the Certification Officer that both trade unions and employers' associations use and a further set used only by trade unions. To be proportionate, the levy model should reflect the usage as reasonably as possible.
19. We have considered a number of mechanisms for calculating the levy contribution which will fall to the organisations:
 - i) a levy contribution that is equal (flat-rate) across all organisations irrespective of type of organisation, functions used, membership size, income or costs incurred;
 - ii) a levy contribution based on the size of the organisation;
 - iii) a levy contribution based on the principle that costs should be paid by the type of organisation such costs are referable to (adjusted rate); and
 - iv) a levy based on a percentage of declared income of an organisation.

Option (i) Levy contribution based on an equal contribution - 'flat-rate'

20. There is an option to require each organisation to pay a 'flat-rate' contribution. It would ensure that every organisation that might use the functions of the Certification Officer contributes equally to the running costs. Dividing the estimated levy of approximately £1.6m across the total number of trade unions and employers' associations (currently 239) would create a flat-rate levy contribution of £6,854.
21. A flat rate is likely to be equitable (all pay), predictable and simple. However, organisations have very different levels of income and while a flat rate will be easily affordable for some, it is likely to be unaffordable for the smallest and newer organisations. Some of the functions are only used by non-federated trade unions and many are time variable with the same function taking a longer or shorter time according to the requirement.
22. Our view is that it would not be equitable to calculate an amount payable based on an assumption that all organisations use all functions at the same rate and that all organisations have sufficient income to cover this.

Option (ii) Levy contribution based on size of organisation membership

23. The levy regime could be based on membership size. The Pensions Regulator has this as a key criterion. A levy regime based on membership size is likely to be fair and broadly predictable. It would achieve the objective of simplicity to some extent but not fully. This is because some employers' associations have hardly any members although they have a

relatively large declared income. An amount payable towards the levy calculated on this basis alone would be distorted. We would have to devise a separate mechanism for employers' associations, which is potentially unaffordable for smaller/ newer organisations.

Option (iii) Basic levy contribution based the principle that costs should be paid by the type of organisation such costs are referable to (adjusted rate)

24. We have set out why we believe that a flat-rate regime would not provide a balanced method for calculating levy contribution costs because some of the functions are only used by trade unions. We consider that it would be fairer that, where the exercise of a function is predominantly exercised in respect of a particular type of organisation, that type of organisation should bear the proportionate cost incurred by the Certification Officer for that function. The table sets out the functions and which organisations use them.

Function	Applicability	Distribution
a. Determining applications to be listed, and maintaining lists and schedules	Function is applicable to all	Divide equally between all organisations
b. Ensuring annual returns and accounts are made	Function is applicable to all	Divide equally between all organisations
c. Supervising mergers	Function is applicable to all	Divide equally between all organisations
d. Investigating alleged breaches of financial irregularities	Function is applicable to all	Divide equally between all organisations
e. Determining member complaints in respect of breach of statute	In practice complaints are only raised in respect of trade unions	Divide equally between all trade unions
f. Determining applications for certificates of independence	Function only applies to trade unions	Divide equally between all trade unions
g. Investigating alleged breaches in relation to trade union membership records	Function only applies to trade unions	Divide equally between all trade unions
h. Complaints in respect of breaches of union rules	Function only applies to trade unions	Divide equally between all trade unions
i. Supervising political fund ballots, and approving rule books	Function only applies to trade unions	Divide equally between all trade unions
j. Supervising funds set up for members' superannuation schemes	Function only applies to trade unions	Divide equally between all trade unions
k. Investigating alleged breaches of statutory rules (new powers under TU Act)	Function only applies to trade unions	Divide equally between all trade unions

25. Functions (a) to (d) are used by all organisations and therefore they will all contribute to the cost. The remainder are only used, or only used in practice, by non-federated trade unions so the cost of these functions should fall only to them. To apportion the cost

appropriately we need to understand how much resource the Certification Officer spends in delivering each set of functions.

26. The Certification Officer introduced a detailed time-recording system in December 2016. Using this data, we estimate that 51% of the Certification Officer's time is spent on functions where the distribution of the levy will apply to all organisations and on general administration outside the regulatory activity of the Certification Officer. Around 49% of the Certification Officer's time is taken up by functions that only regulate trade unions, or only apply to them.
27. This moves us closer to an equitable division but does not account for the fact that even if we exclude some costs (paragraphs 15 to 22), the organisations vary in their ability to pay. The smallest trade unions have an annual income of a few thousand pounds, the income of many of the medium sized ones is several million and the larger ones up to and over £100 million. There needs to be consideration of affordability.

Option (iv) Levy contribution based on a percentage of the declared income of an organisation

28. Organisations submit returns to the Certification Officer on an annual basis setting out their income (including subscriptions, investment returns etc.) for the previous financial year. These data are published in the Certification Officer's annual report meaning that declared income is a transparent and publicly available criterion. A levy regime built around recovering a percentage of declared income would be predictable and simple [i.e. such that unions with a low income, pay a lower levy compared to larger unions]. However, as a standalone criterion this would not reflect how organisations use functions so would not fully meet our objective of fairness and is potentially be unaffordable for some smaller and newer organisations.

Proposed model

29. None of the options fully meets the objectives we have set for the framework but using a combination of them would allow us to create a balanced model. Our proposal is that the framework will comprise three working principles that levy contributions will be:
 - based on the functions that organisations use and the resource that the Certification Officer spends on them – we do this by apportioning costs (paragraph 32), making a different charging structure between trade unions, federated trade unions, and employers' associations;
 - exempted or subsidised according to the declared annual income of an organisation;
 - subject to an affordability cap based on a percentage of an organisation's declared annual income – we propose setting this at 2.5%.
30. We achieve this by setting charges according to three bands based on income levels. This number of bands helps make reasonable adjustments for income level and ensures no organisation pays more than 2.5% of declared annual income.
31. The table below sets out how the 2.5% affordability cap and the principle of three income bands would work across all the organisations. We could set the cap at different levels, which would affect the number of organisations exempted, paying the adjusted levy, and paying the subsidy levy accordingly – the tables in [Annex B](#) illustrate this. We have also

included a technical annex ([Annex C](#)) which sets out how the model would work on an illustrative basis.

Levy contribution with an affordability rate set at 2.5% of an organisation's income

Income bands	Trade unions			Federated trade unions			Employers' associations and federated employers' associations		
	Less than £370,000	More than £370,000 but less than £900,000	More than £900,000	Less than £140,000	More than £140,000 but less than £250,000	More than £250,000	Less than £140,000	More than £140,000 but less than £210,000	More than £210,000
Number of organisations	76	13	53	3	0	4	26	4	60
Levy payment	£0	£9,149	£22,269	£0	£3,493	£6,113	£0	£3,493	£5,007

Question 5: Do you agree with the principle of having exemptions and a limited subsidy regime?

Where should we set the affordability cap?

Conclusion

32. We have used the filters of which functions are used by which 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;
 - **simple:** there are two stages to the framework but they are based on publicly available data;
 - **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 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— “257ALevy 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.”

Annex B: Tables showing levy contribution affordability rates set at 5% and 10%

Levy contribution affordability rate set at 10% of an organisation's income

	Trade unions			Federated trade unions			Employers' associations and federated employers' associations		
	Less than £100,000	More than £100,000 but less than £160,000	More than £160,000	Less than £40,000	More than £40,000 but less than £50,000	More than £50,000	Less than £40,000	More than £40,000 but less than £50,000	More than £50,000
Income bands									
Number of organisations	54	7	81	2	0	5	19	0	71
Levy payment	£0	£9,149	£15,249	£0	£3,493	£4,890	£0	£3,493	£4,428

Levy contribution affordability rate set at 5% of an organisation's income

	Trade unions			Federated trade unions			Employers' associations and federated employers' associations		
	Less than £190,000	More than £190,000 but less than £360,000	More than £360,000	Less than £70,000	More than £70,000 but less than £100,000	More than £100,000	Less than £70,000	More than £70,000 but less than £100,000	More than £100,000
Income bands									
Number of organisations	62	13	67	2	0	5	21	2	67
Levy payment	£0	£9,149	£17,616	£0	£3,493	£4,890	£0	£3,493	£4,588

Annex C: Levy model – technical annex

Our proposal therefore is that the framework for the levy will comprise:

- a **basic rate** to cover the functions of the Certification Officer that all organisations use;
- an **adjusted rate** which covers the functions that only trade unions use;
- an **exemption mechanism** for those organisations with a low declared annual income;
- a **limited subsidy regime** to offset the exemption, and payable by organisations with a higher declared annual income;
- an **affordability cap** for the exemptions and subsidy based on a percentage of declared annual income – we propose setting this at 2.5%.

Declared annual income is a transparent and published indicator. Using a percentage of it as an additional filter onto the basic levy and adjusted rate helps build a model that takes affordability into account. We therefore propose to set an affordability cap of 2.5% and to work with three bands of income levels. This number of bands helps make reasonable adjustments for income level and avoids complexity.

There are two essential considerations for the framework principles we have set out:

- although we are varying costs by type of organisation, some will pay for services they do not use or do not use regularly;
- an exemption mechanism means that higher income organisations, mainly but not only trade unions, will subsidise those on a lower income.

Setting the levy contributions

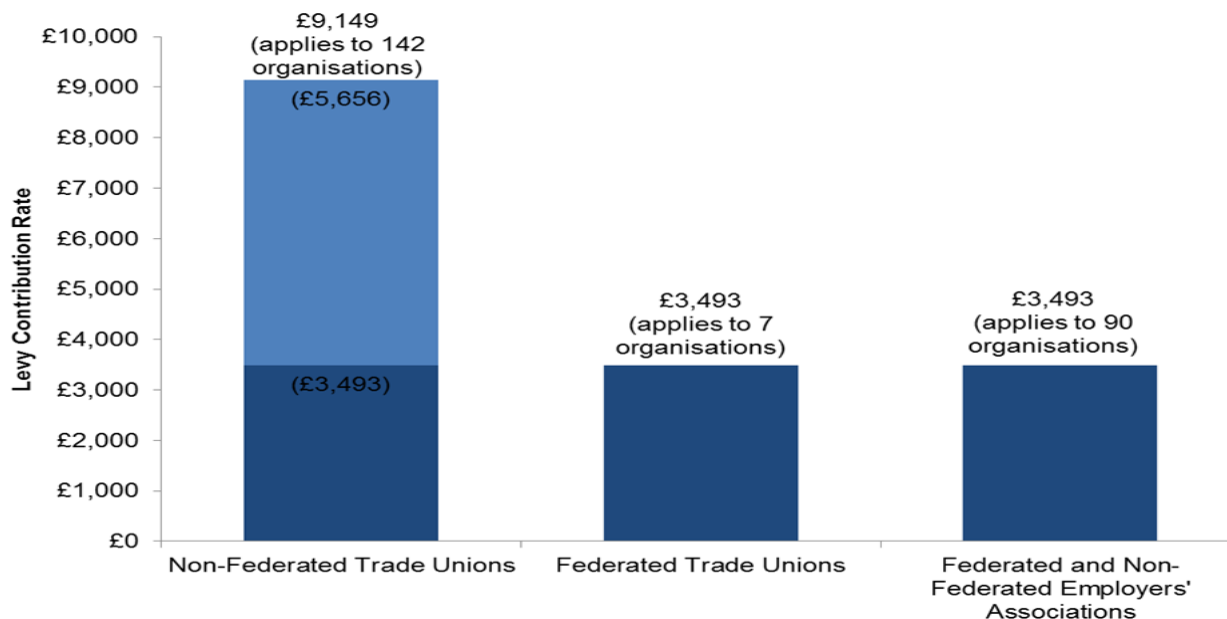
The aim is to recover the £1.6m (rounded figure) of eligible costs incurred by the Certification Officer in the delivery of their functions.

The Certification Officer would confirm which functions the different organisations use and the level of resource and time incurred as a result. Based on current data, the Certification Officer spends 51% of time and resource on functions used by all organisations and 49% on functions that only regulate non-federated trade unions, or only apply to them.

Using the data and costs available, to recoup £1.6m (rounded figure) of costs incurred by the Certification Officer this might result in a fee structure as follows:

- **basic levy contribution for all organisations:** 51% of the Certification Officer's time is spent on functions used by all organisations. Dividing 51% of the estimated levy of £1.6m across the total number of trade unions and employers' associations (currently 239) would create a **basic levy of £3,493**.
- **adjusted levy contribution for non-federated trade unions:** around 49% of the Certification Officer's time is spent on functions that only regulate non-federated trade unions. This means that, in addition to the basic levy, trade unions would have an uplifted amount (£5,656) to account for the additional expenditure. The **adjusted levy for non-federated trade unions** (currently 142) **is £9,149**.

The graph below sets out the distribution of the basic and adjusted levy contribution rates for each type of organisation and the number of organisations affected.



Affordability considerations

Based on current income levels, the trade union levy of £9,149 would completely exceed the income of 24 (17%) unions. This amount of levy contribution would also substantially impact the ability of other unions with low declared annual incomes to continue to deliver all of their current functions for their members.

For example, trade unions need to contribute £1.3 million towards the overall cost recovery of £1.6 million. The 142 trade unions have large variances of income from a few thousand pounds to hundreds of millions. We want to ensure that trade unions with a lower income are still able to deliver a range of functions for their members. To do this, we need to ensure that the levy contribution is manageable.

We propose to set an affordability cap of 2.5% on the levy contribution as a guide to affordability. For some 76 trade unions, the adjusted levy of £9,149 would equate to more than 2.5% of their income making them exempt from any levy payment.

This leaves circa. £1.3m of eligible costs. One option is to divide this amount equally between the remaining 66 unions. If we continue to apply our rule that a levy contribution should never be more than 2.5% of an organisation's income, the higher adjusted levy contribution will however be unaffordable for some other trade unions. We carried out further iterations to ensure the affordability rule is continuously applied and determined that 13 trade unions should pay the established adjusted levy of £9,149 making a contribution of just under £119,000 towards the levy.

The outstanding £1.18m can be divided equally between the remaining 53 trade unions without exceeding 2.5% of their declared annual income. This equates to a levy contribution of £22,269 for these organisations.

Trade Union Act 2016: Consultation on the Certification Officer's levy

The consultation is available from:

www.gov.uk/government/consultations/trade-union-act-2016-consultation-on-the-certification-officers-levy



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