Draft Regulations laid before Parliament under section 257A(9) of the Trade Union and Labour Relations (Consolidation) Act 1992, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2022 No. 0000

TRADE UNIONS

The Trade Union (Levy Payable to the Certification Officer) Regulations 2022

Made - - - -	***
Coming into force	*1st April 2022*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 257A of the Trade Union and Labour Relations (Consolidation) Act 1992(**a**).

In accordance with section 257A(8) of that Act, the Secretary of State has consulted relevant organisations(**b**) and ACAS(**c**).

A draft of this instrument was laid before Parliament in accordance with section 257A(9) of that Act and approved by resolution of each House of Parliament.

PART 1

Preliminary

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Trade Union (Levy Payable to the Certification Officer) Regulations 2022.

(2) These Regulations come into force on 1st April 2022.

(3) These Regulations extend to England and Wales and Scotland only.

Interpretation

2. In these Regulations—

"the 1992 Act" means the Trade Union and Labour Relations (Consolidation) Act 1992;

"additional amount" has the meaning given in regulation 5(7);

"annual income" has the meaning given in regulation 6;

(**a**) 1992 c. 52. Section 257A was inserted by section 20(1) of the Trade Union Act 2016.
(**b**) "Relevant organisations" has the meaning given by section 257A(1) of the 1992 Act.
(**c**) The Advisory, Conciliation and Arbitration Service referred to under section 247 of the 1992 Act.

"basic amount" has the meaning given in regulation 5(6);

"basic levy" has the meaning given in regulation 5(9);

"categorised additional amount" has the meaning given in regulation 5(8);

"categorised additional levy" has the meaning given in regulation 5(10);

"category of relevant organisation" refers to either—

(a) federated trade unions(**a**),

(b) trade unions(**b**) that are not federated trade unions,

(c) federated employers' associations(**c**), or

(d) employers' associations(**d**) that are not federated employers' associations;

"enhanced levy" has the meaning given in regulation 5(15);

"qualifying relevant organisation" means a relevant organisation that, at the date when the Certification Officer(**e**) determines the amounts to be levied in accordance with regulation 5, is known to the Certification Officer to exist at the relevant date;

"relevant expenses" has the meaning given in regulation 4;

"relevant date" means the beginning of the financial year(**f**) immediately preceding that to which the levy relates;

"total levy" means the aggregate amount to be levied in respect of a financial year, determined in accordance with regulation 5(4);

"total levy shortfall" has the meaning given in regulation 5(13)(c).

PART 2

Levy payable to Certification Officer

Levy payable to Certification Officer

3.—(1) The Certification Officer must require certain relevant organisations to pay a levy to the Certification Officer to cover the relevant expenses of the Certification Officer.

(2) The Certification Officer must determine in accordance with regulation 5 which relevant organisations are to pay a levy, and in what respective amounts, in respect of each financial year.

(3) A relevant organisation must pay the levy due under a notice sent by the Certification Officer to that relevant organisation pursuant to regulation 7.

Relevant expenses of the Certification Officer

4.—(1) The Certification Officer's relevant expenses are expenses that are referable to the exercise by the Certification Officer of any function under—

(a) the 1992 Act; or

(b) any instrument made under the 1992 Act.

(2) For this purpose, functions include any power to do anything that is calculated to facilitate, or is conducive or incidental to, the exercise of a function specified under paragraph (1).

(3) Relevant expenses of the Certification Officer are to be treated as including—

(**a**) "Federated trade union" has the same meaning as in section 118 of the 1992 Act.
(**b**) "Trade union" has the same meaning as in section 1 of the 1992 Act.
(**c**) "Federated employers' association" has the same meaning as in section 135 of the 1992 Act.
(**d**) "Employers' association" has the same meaning as in section 122 of the 1992 Act.
(**e**) The Certification Officer referred to under section 254 of the 1992 Act.
(**f**) "Financial year" has the meaning given by section 272 of the 1992 Act.

(a) expenses incurred by ACAS in providing staff, accommodation, equipment and other facilities under section 254(5) of the 1992 Act; and

(b) expenses in respect of which payments are made under section 255(1) or (2) of the 1992 Act.

(4) But relevant expenses of the Certification Officer are not to be treated as including expenses that are incurred in relation to—

(a) the appointment of, and the exercise of functions by, an inspector who is not a member of the Certification Officer's staff and who is appointed under—

(i) paragraph 3 of Schedule A3 to the 1992 Act (investigation by inspectors); or

(ii) section 37B of the 1992 Act (investigation by inspectors of financial affairs);

(b) the provision of legal services to the Certification Officer by a person who is not a member of the Certification Officer's staff;

(c) any order by a court or tribunal that requires the Certification Officer to pay the costs of any other party to legal proceedings involving the Certification Officer;

(d) dealing with any application to be entered in the list of trade unions under section 3 of the 1992 Act or with any application to be entered in the list of employers' associations under section 124 of the 1992 Act; and

(e) dealing with any application for a certification of independence under section 6 of the 1992 Act.

Determination of the levy

5.—(1) The Certification Officer must determine the amounts to be levied and paid by relevant organisations in respect of a financial year in accordance with this regulation.

(2) No levy is payable by a relevant organisation that is not a qualifying relevant organisation.

(3) The levy payable by a qualifying relevant organisation in respect of a financial year is—

(a) the basic levy determined in accordance with paragraph (9), but subject to paragraph (11);

(b) if applicable, the categorised additional levy determined in accordance with paragraph (10), but subject to paragraph (12);

(c) if applicable, the enhanced levy determined in accordance with paragraph (14).

Step 1 – determine the total levy

(4) The Certification Officer must determine the total levy, and in doing so—

(a) must have regard to the total amount of relevant expenses, incurred or to be incurred by the Certification Officer in respect of the financial year to which the levy relates;

(b) may take into account estimated as well as actual relevant expenses, where the determination occurs before the end of that financial year;

(c) must aim to ensure that the total amount levied over any period of three financial years does not exceed the total amount of the Certification Officer's relevant expenses over that period; and

(d) must not take into account any shortfall in the amount of levy collected in respect of any earlier financial year which arises from the circumstances set out in regulation 7(3).

Step 2 – apportion the total levy between the categories of relevant organisation

(5) The Certification Officer must apportion the total levy between the categories of relevant organisation, based on the relevant expenses that the Certification Officer considers are broadly referable to functions exercised, or to be exercised, in relation to that category for the financial year.

(6) In making that apportionment, the Certification Officer may decide that there is a proportion of the total levy which is to be attributed to all qualifying relevant organisations equally, on the basis that there is an equivalent proportion of relevant expenses which cannot reasonably be

referred to any of the respective categories of relevant organisation; and if the Certification Officer so decides, that proportion of the total levy is the "basic amount".

(7) Any difference between the total levy and the basic amount is the "additional amount".

(8) Each proportion of the additional amount which is apportioned to a category of relevant organisation is a "categorised additional amount".

Step 3 – Determine the basic levy

(9) The Certification Officer must divide any basic amount equally between all qualifying relevant organisations; and the resulting amount is the "basic levy".

Step 4 – Determine each categorised additional levy

(10) The Certification Officer must divide each categorised additional amount equally between all qualifying relevant organisations in the relevant category; and each resulting amount is a "categorised additional levy".

Step 5 – Identify relevant organisations which will be exempt from any basic levy

(11) The Certification Officer must exempt from payment of any basic levy in respect of the financial year all qualifying relevant organisations for which the basic levy would exceed 2.5 per cent of their annual income.

Step 6 – Identify relevant organisations which will be exempt from any categorised additional levy

(12) The Certification Officer must exempt from payment of any categorised additional levy in respect of the financial year all qualifying relevant organisations for which the aggregate of any basic levy and any categorised additional levy would exceed 2.5 per cent of their annual income.

Step 7 – Calculate the levy shortfall

(13) The Certification Officer must—

(a) multiply the basic levy by the total number of qualifying relevant organisations, other than those exempt from the basic levy under paragraph (11);

(b) multiply each categorised additional levy by the number of qualifying relevant organisations in the relevant category, other than those exempt from that categorised additional levy under paragraph (12); and

(c) calculate the difference between the total levy and the aggregate of the amounts calculated under sub-paragraphs (a) and (b), that difference being the "total levy shortfall".

Step 8 – Determine the enhanced levy

(14) The Certification Officer must divide and allocate the total levy shortfall equally between all qualifying relevant organisations, other than those—

(a) exempt under paragraph (11) from payment of the basic levy;

(b) exempt under paragraph (12) from payment of any categorised additional levy; or

(c) for which the aggregate of any basic levy, any categorised additional levy and any amount so allocated would exceed 2.5 per cent of their annual income.

(15) The amount so allocated to each qualifying relevant organisation under paragraph (14) is the "enhanced levy".

(16) Where a qualifying relevant organisation ceases to exist, after the relevant date but before the Certification Officer determines the levy in accordance with this regulation, by virtue of an amalgamation or transfer of engagements under Chapter VII of Part I of the 1992 Act, the levy which would otherwise be payable by that qualifying relevant organisation is payable by the relevant organisation that is the successor to that qualifying relevant organisation, in addition to any other amount of levy payable by that successor.

(17) Where a qualifying relevant organisation ceases to exist, after the relevant date but before the Certification Officer determines the levy in accordance with this regulation, other than by virtue of an amalgamation or transfer of engagements under Chapter VII of Part I of the 1992 Act, that qualifying relevant organisation is not to be treated as a qualifying relevant organisation for

the purposes of the determination of the levy in accordance with this regulation and the Certification Officer must leave that qualifying relevant organisation out of account in the determination of the levy payable by other qualifying relevant organisations.

Annual income of relevant organisations

6.—(1) The annual income of a relevant organisation refers to—

(a) the annual income identified in the annual return sent by the relevant organisation to the Certification Officer under section 32 of the 1992 Act(**a**) which is the most recent at the date of the determination carried out under regulation 5, if the relevant organisation has sent a return that includes such information; or

(b) in the absence of such a return, the Certification Officer's reasonable estimate, at the date of the determination carried out under regulation 5, of the relevant organisation's annual income, in respect of the calendar year to which relate the highest proportion of the annual returns referred to under sub-paragraph (a) submitted by other relevant organisations in respect of the relevant financial year.

(2) Before making any estimate under sub-paragraph (1)(b), the Certification Officer must allow the relevant organisation a reasonable opportunity to provide information about its annual income for that calendar year, and must take any such information into account in making such an estimate.

Notification of the levy

7.—(1) Where a levy is payable by a relevant organisation for a financial year in accordance with regulation 5, the Certification Officer must send a notice requiring payment of the levy to that relevant organisation.

(2) Where the amount of levy determined by the Certification Officer in accordance with regulation 5 is payable by a relevant organisation which ceases to exist by virtue of an amalgamation or transfer of engagements under Chapter VII of Part I of the 1992 Act, after that determination and before a notice is sent to that relevant organisation under paragraph (1), the levy which would otherwise be payable by that relevant organisation is payable by the successor to that relevant organisation, in addition to any other amount of levy payable by that successor, and the Certification Officer must send a notice requiring payment accordingly.

(3) Where the amount of levy determined by the Certification Officer in accordance with regulation 5 is payable by a relevant organisation which ceases to exist other than by virtue of an amalgamation or transfer of engagements under Chapter VII of Part I of the 1992 Act, after that determination and before a notice is sent to that relevant organisation under paragraph (1), that amount ceases to be payable.

(4) The notice may only be sent during the period—

(a) beginning with 1st April of the financial year to which the levy relates; and

(b) ending with 30th June of the financial year following that to which the levy relates.

(5) The notice must specify—

(a) the amount of the levy payable by the relevant organisation;

(b) the day by which the levy, or any instalment of the levy, must be paid, which must be at least 30 days after the date the notice is sent; and

(c) how the levy is to be paid.

(6) The notice must also include an explanation of how the amount has been determined.

(7) Notices sent under this regulation must be in writing and served on a relevant organisation by—

(**a**) Part of section 32 also applies to employers' associations by virtue of section 131(1) of the 1992 Act.

(a) delivering the notice to the relevant organisation's—

(i) last address known to the Certification Officer;

(ii) place of business; or

(iii) registered office; or

(b) sending the notice by post to the relevant organisation's—

(i) last address known to the Certification Officer;

(ii) place of business; or

(iii) registered office; or

(c) where the relevant organisation has notified the Certification Officer of an e-mail address at which the relevant organisation is content to accept service, sending an electronic copy of the notice to that e-mail address.

(8) Where a notice sent under this regulation later appears to the Certification Officer to be incorrect in any respect, the Certification Officer may withdraw it by sending a notice of withdrawal to the relevant organisation, to be served in accordance with paragraph (7).

(9) Where a notice of withdrawal has been sent under paragraph (8)—

(a) unless it appears to the Certification Officer that no levy is payable by the relevant organisation in respect of the financial year, the Certification Officer must send a replacement notice requiring payment of the levy to the relevant organisation;

(b) the provisions of this regulation apply to the replacement notice; and

(c) the replacement notice must also state that it replaces the notice in respect of which the notice of withdrawal has been sent.

Recovery of levies

8.—(1) This regulation applies if all or part of a levy due from a relevant organisation is unpaid after the date specified in the notice requiring payment of the levy under regulation 7.

(2) The unpaid amount of the levy is recoverable by the Certification Officer as a debt.

Name
Minister for Small Business, Consumers and Labour Markets
Date Department for Business, Energy & Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision requiring certain trade unions and employers' associations (relevant organisations) to pay an annual levy to the Certification Officer in respect of each financial year.

These Regulations establish which relevant organisations will be required to pay a levy in respect of each financial year, setting out the mechanisms for determining the amount of the levy (regulations 3 to 5) and requiring payment (regulation 7). Relevant organisations will qualify to be subject to a levy for a financial year if they existed at the beginning of the preceding financial year.

In determining the amounts of levy in respect of each financial year, the Certification Officer must act in accordance with the principles and calculations set out in regulations 3 to 5, and in particular—

- the Certification Officer must aim to ensure that the total amount levied over any period of three financial years should not exceed the total amount of the Certification Officer's relevant expenses (as specified in regulation 4) over that period;
- the amount of levy to be paid by a qualifying relevant organisation may include any or all of a basic levy (regulation 5(9)), a categorised additional levy (regulation 5(10)) and an enhanced levy (regulation 5(15));
- the total amounts of any basic levy and any categorised additional levy must broadly reflect the total amount of relevant expenses that the Certification Officer considers are referable to functions exercised, or to be exercised, in relation to the respective categories of relevant organisation (regulations 5(5) and (6));
- any enhanced levy results from the total levy shortfall being divided and allocated equally between all qualifying relevant organisations as specified at regulation 5(14); and
- no relevant organisation will be required to pay an annual levy that is more than 2.5 per cent of their annual income (regulation 5(11), (12) and (14)(c)) and qualifying relevant organisations with a relatively higher income are to pay a higher amount (regulation 5(14)).

Regulation 8 provides for any unpaid amount of the levy due to be recoverable by the Certification Officer as a debt.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Labour Market Directorate, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET, and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

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