

**PAYMENT OF UNION SUBSCRIPTIONS
THROUGH CHECK OFF**

Guidance

2006

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Introduction

Some workers who are union members pay their union subscriptions by deduction from their pay at source. The money is then passed direct to the union by their employer. This arrangement is known as 'check off'.

The Deregulation (Deduction from Pay of Union Subscriptions) Order 1998, which came into effect on 23 June 1998, amends the Trade Union and Labour Relations (Consolidation) Act 1992 and removes two requirements on employers who operate check off.

First, whilst retaining the requirement on employers to obtain written authorisation from individual workers before beginning to deduct check off payments, it no longer requires them to obtain further repeat authorisations at least every three years thereafter.

Second, it removes the requirement on employers to notify workers at least one month in advance, if the amount deducted by check off is to increase.

Under the law, workers continue to have the right to withdraw from check off at any time, by giving notice in writing to their employer.

This document sets out the steps that employers must take to ensure that deductions they make are lawful, and the remedy available to workers from whom deductions are *unlawfully* made.

The term "worker" is used throughout this document and includes employees and some people who work under contracts for services.

For further information on the rights of trade union members, see Union Membership: rights of members and non-members - Regulatory Guidance.

This document provides general guidance only. Only the courts can give authoritative interpretations of the law. For simplicity, the masculine pronoun is used throughout this document. The contents, however, apply equally to men and women.

SECTION 1: The employer: making lawful check off deductions

Where check off arrangements exist, the employer may lawfully make deductions only where the worker has given his written consent and has not subsequently withdrawn that consent.

A. WRITTEN CONSENT

What form must the written consent take?

The worker must have signed and dated a document containing his authorisation to check off deductions being made from his wages, if his employer is to make those deductions lawfully. The authorisation document is effective from the date on which it is signed and remains valid until withdrawn.

Must the authorisation contain any particular form of words?

No. It must simply indicate consent to the making of check off deductions from that worker's wages.

Can an employer pre-print consent forms?

Yes, provided that the worker signs and dates the form himself, a pre-printed form which indicates consent will be a valid authorisation.

Can a union obtain the written authorisation and then forward it to the employer?

Yes. It is common practice for unions to obtain written authorisations when they recruit new members. However, the employer remains responsible for ensuring that deductions are not made unlawfully.

Once the worker has given his written consent, is his employer obliged to keep making check off deductions indefinitely?

No. Check off is a voluntary arrangement, and employers have no *statutory* duty either to operate it at all, or to continue to do so having started. (Some employers, though, may have entered into a *contractual* duty to their workers to operate check off, in which case they could be acting in breach of contract if they stopped the arrangement).

B. WITHDRAWING CONSENT

What must a worker do to withdraw his consent to check off?

The worker must write to his employer notifying him that he no longer wishes to have check off deductions made from his wages.

How soon must the employer stop making deductions?

On receiving notification of a worker's withdrawal of consent the employer must stop making check off deductions as soon as it is reasonably practicable for him to do so.

How does this affect the right of union members to opt out of paying the political levy?

That right is unaffected. Where union members have chosen to pay a political levy with their membership subscription through check off, then the whole payment is subject to all the protections outlined in this document. The individual retains, however, his separate right to opt out of paying the political levy, whatever his method of payment, at any time. A separate document Trade union political funds - Regulatory Guidance explains the requirements of the law in relation to trade union political funds.

C. THE EFFECT OF THE DEREGULATION ORDER

The effect of the Deregulation Order on a given authorisation will differ depending on the authorisation's timing in relation to when the Order was made.

(I) Authorisations made after the Order came into effect

What is the status of authorisations given after the change in the law on 23 June 1998?

Any workers who start to pay union subscriptions through check off after noon on June 23 1998 (including those who do so when taking up work with a new employer, whether or not they paid their union subscriptions by check off with their former employer) will be covered by the new law immediately.

(II) Authorisations made before the Order came into effect

What is the status of authorisations given before the change in the law?

Authorisations given before the change in the law will normally expire three years after they were given, if employers take no action. However, employers can continue to make lawful deductions after this date if they issue a prescribed notice to each worker concerned or obtain a further written authorisation.

What is the prescribed notice?

An employer who operates check off may in effect extend the life of these existing authorisations provided that each affected worker is issued with a notice prescribed in the Order, informing him that in future his authorisations will be treated as open-ended unless he instructs otherwise within fourteen days. Workers who do not reply to the notice will be taken to have authorised deductions to continue indefinitely.

Must the notice contain any particular form of words?

Yes. A prescribed notice in the form set out at [Annex A](#) must be used.

Must the prescribed notice be sent to each individual worker?

Yes. The notice must be dispatched to each individual worker. It will **not** be sufficient to place it on a notice board at a worker's place of work.

Must the notice be issued by the employer?

Not necessarily. The employer is quite free to involve a third party acting on his behalf in carrying out his statutory duties with regard to the check off. However, it remains the employer's responsibility to ensure that **each** worker receives the prescribed notice containing the form of words as set out in the Schedule to the Order, including the name and address of the employer.

How soon do employers need to act?

The notice need not be issued until the three year term of current authorisations is due to end, as long as affected workers have at least fourteen days to respond before the current authorisation expires. Of course, an employer may notify his workforce of the change in the law at any time before the three year period has elapsed and, in practice, he might find it convenient to issue the notice to affected workers as soon as possible.

Do employers still have to notify these workers of increases?

Employers will still be obliged to give advance notice of any increases in check off deductions until the prescribed notice referred to above is issued, and workers have had the opportunity to respond.

What happens when individual workers respond to the prescribed notice by informing their employer that they wish the old law to apply to them?

It is expected that very few workers will choose this course of action. Where they do, employers will be obliged to inform the workers concerned of any increase in check off deductions until the end of the three year period of existing authorisations. Also, employers will need to obtain fresh written authorisations from each individual concerned to continue to make lawful deductions when the existing authorisations expire. These fresh authorisations will be covered by the new law and so, unless the worker specifies otherwise, they will be valid indefinitely.

Since there is no statutory duty on employers to operate check off, it would be open to an employer, subject to any contractual obligations he has entered into, to refuse to operate check off for workers who do not authorise check off indefinitely.

What happens if employers fail to issue the prescribed notice before the three year period of existing authorisations ends?

If they have not issued the prescribed notice, employers will need to obtain fresh written authorisations from the workers concerned if deductions are to

continue on a lawful basis. Unless the workers specify otherwise, these fresh authorisations will be valid indefinitely.

D. THE ROLE OF THE UNION

What is the role of the union in this procedure?

The union has no statutory role in this procedure. The law is designed to protect the individual worker when his employer makes check off deductions from his salary, and is therefore concerned only with the relationship between employer and worker.

Can the employer involve the union in carrying out his statutory duties with regard to check off?

Yes. However, it remains the employer's responsibility to ensure that he acts lawfully when he makes check off deductions.

The employer may involve the union as much or as little as he chooses. He is quite free, for example, to enlist the union's assistance in seeking initial consent from its members. He may also choose to charge the union for the administration involved in providing the service of collecting its members' subscriptions. However, the *responsibility* for ensuring that the legal requirements are met rests with the employer.

Can the prescribed notice be issued by the union?

The employer is free to enlist the help of the union - or some other person - to act on his behalf in ensuring that relevant workers are issued with the prescribed notice. However, it remains the employer's responsibility to ensure that **each** worker receives the prescribed notice containing the form of words as set out in the Schedule to the Order, including the name and address of the employer.

SECTION 2: The worker:

A. THE EFFECT OF THE DEREGULATION ORDER

I already pay my union subscriptions by check off. Does the new law affect me?

If you gave your authorisation given for check off before noon on 23 June 1998 it will normally expire three years from the date it was given. However, under the new law an employer (or someone acting on his behalf e.g. the union) may extend the life of current authorisations provided that each affected worker is issued with a notice prescribed in the Order (see [Annex A](#)) informing him that in future his authorisations will be treated as open-ended unless he instructs otherwise. Workers who do not reply to the notice within fourteen days of receiving it will be taken to have authorised deductions to continue indefinitely. The notice also informs workers that they have the right to stop paying by check off at any time by giving notice in writing to their employer.

If you have given an authorisation for check off after 23 June 1998, it will probably be open-ended unless you specifically included an end date.

I want my current authorisation to expire after three years. Need I do anything?

Workers who wish their current authorisation to remain time-limited have fourteen days from receiving the prescribed notice to inform their employer to that effect in writing.

What about authorisations given after the new law came into effect?

Authorisations given after noon on 23 June 1998 will be covered by the new law. This means that employers will not be required by law to obtain repeat re-authorisations from each of these workers unless the workers themselves included time limits in their authorisations. Nor will employers be required to inform them in advance of increases in deductions. Employers will still require workers' written authorisation to begin making check off deductions and workers still have the right to stop paying by check off at any time.

B. THE REMEDY FOR UNLAWFUL CHECK OFF DEDUCTIONS

Who can complain?

A worker who has union subscriptions are deducted from his wages by his employer may make a complaint to an employment tribunal against his employer if he considers that a deduction has been made without proper authorisation.

Making an application

Complaints of unlawful deduction of union subscriptions must normally be received within three months of the payment of the salary from which the deduction was made. (If the complaint relates to more than one deduction, it

must be made within three months of the date of the salary from which the last of the deductions was made).

If an application is received more than three months after that date, the tribunal will consider the complaint only if it considers that it was not reasonably practicable for the worker to have complained earlier.

The relevant application form IT1, or IT1 (Scot) in Scotland and an explanatory leaflet *How to apply to an employment tribunal* can be obtained from Jobcentre Plus offices. The worker should send the completed form to the appropriate regional tribunal office (the address is on the application form).

Conciliation

When a complaint is made to a tribunal, a copy of the application form is sent to the Advisory, Conciliation and Arbitration Service (Acas). Acas conciliators will attempt to assist the parties to reach a voluntary settlement without the need for a tribunal hearing if the parties concerned ask them to do so or if they think that there is a reasonable chance of success. Conciliators can also become involved at the request of any of the parties concerned before a formal complaint has been made to a tribunal. However, it is important to remember that the time limit for applying to an employment tribunal is not extended just because conciliation discussions are taking place.

Voluntary procedures

An employer may have procedures for settling complaints made by workers. These sometimes involve third parties as a final stage. Where such procedures exist, individuals may wish to make use of them, but the time limit for applying to an employment tribunal will not be extended because such procedures are used.

Remedies for wrongful deduction of union subscriptions through check off

Where a tribunal finds that an unlawful check off deduction has been made, it will make a declaration to that effect. It will also order the employer to pay to the individual the whole amount deducted if the deduction was made without proper authorisation. The tribunal will deduct from the amount that it orders the employer to pay any amount already paid to the employee by the employer.

If a worker makes a complaint under the check off provisions, can he also complain under other provisions relating to deductions from pay?

There is nothing to prevent a worker making a complaint under these provisions and under other legislation that could apply equally to the deduction - for example the provisions in the 1996 Employment Rights Act which deal more generally with deductions from pay or the provisions dealing with political fund contributions. However, the aggregate amount that may be

awarded overall may not exceed the greatest amount the worker could have received under any one of the provisions.

Appeals

An individual or an employer may appeal to the Employment Appeal Tribunal against the decision of an employment tribunal to give, or refuse, a declaration of unlawful deduction of union subscriptions. Such an appeal may be made only on a point of law.

ANNEX A

Article 3: Schedule

FORM OF NOTICE TO BE GIVEN UNDER ARTICLE 3(2) OF THE DEREGULATION (DEDUCTION FROM PAY OF UNION SUBSCRIPTIONS) ORDER 1998

DEDUCTION OF TRADE UNION SUBSCRIPTIONS FROM PAY

Following the coming into force of the Deregulation (Deduction from Pay of Union Subscriptions) Order 1998 you no longer need to re-authorise payments of trade union subscriptions by "check off" (deduction from pay by your employer) every three years and your employer need not give you advance written notice of any increase in the rate of deductions. The law continues to require your written authorisation before check off can start, and you continue to have the right to stop paying by check off at any time, by giving notice in writing to your employer.

This notice affects you if you pay your union subscriptions by check off and you gave your current authorisation before the date on which the Order came into force.

If you are content for the new arrangements to apply for you, **you need do nothing.**

If, however, you wish the previous arrangements to continue to apply to you, you must give notice to that effect in writing to your employer at [*name and address of employer*] **within 14 days of receiving this notice.**

If you do so, your current authorisation will expire three years after you gave it, but any subsequent authorisation will be subject to the new arrangements.

