



BRIEFING PAPER

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Check-off

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CHAPTER I

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1. Introduction

"Check-off" is a system under which employers deduct their employees' trade union subscriptions from their wages through the payroll and transfer the money to unions. It became widespread in the 1960s. Check-off procedures often form part of a collective agreement and, as such, the right to have union subscriptions deducted through payroll is typically incorporated into the individual's contract of employment. It can be useful both for trade unions, who are saved the administrative expense of collecting subscriptions individually, and for employers, who are able to monitor union membership.

Successive governments have adopted varying approaches to check-off. Conservative governments have typically sought to limit the practice, either across all employers or, more recently, in the public sector. Labour governments have, by contrast, supported check-off and eased restrictions on its use.

The Conservatives, under John Major, legislated in 1993 to prohibit check-off across all employers unless it was authorised in writing by the employee during the previous three years, thus creating the need for check-off to be re-authorised every three years should employee wish to continue the arrangement. The legislation also required employers to notify employees one month in advance if the subscription amount was set to increase. Labour, under Tony Blair, removed the requirement to re-authorise check-off every three years, and removed the requirement to notify employees in advance of increases, although written consent was still necessary and workers could withdraw from check-off by notifying their employers.

During the Conservative and Liberal Democrat Coalition Government's period in office, Ministers attempted to limit the use of check-off in the public sector. This took the form of Cabinet Office guidance and individual departmental policy. It was a source of public disagreement between the Coalition partners prompting the then Chief Secretary to the Treasury, Danny Alexander, a Liberal Democrat, to write to departments opposing moves by Conservative Secretaries of State to end check-off in their departments.¹ In one instance a department – the Department for Communities and Local Government – was prevented from ending check-off by a successful legal challenge.²

More recently, David Cameron's Conservative administration legislated to impose restrictions on the use of check-off in the public sector. The *Trade Union Act 2016* created a regulation-making power – not yet exercised – that would enable a Minister to prohibit relevant public sector employers from operating check-off unless their employees have an alternative means of paying (e.g. direct debit) and unions reimburse the administrative costs of operating the scheme.

¹ [Danny Alexander's letter to Whitehall departments](#), *Guardian*, 8 July 2014

² *Hickey & Hughes v Secretary of State for Communities & Local Government* [2013] EWHC 3163 (QB)

2. Current law

2.1 Check-off generally

Section 68 of the *Trade Union and Labour Relations (Consolidation) Act 1992* allows for check-off where a worker has consented to this in writing. An earlier version of section 68, inserted during John Major's government in 1993, set a three-year time limit on such authorisations. This was repealed under Tony Blair in 1998 (see below section on the policies of previous governments). Section 68 now provides:

68.— Right not to suffer deduction of unauthorised subscriptions

(1) Where arrangements ("subscription deduction arrangements") exist between the employer of a worker and a trade union relating to the making from workers' wages of deductions representing payments to the union in respect of the workers' membership of the union ("subscription deductions"), the employer shall ensure that no subscription deduction is made from wages payable to the worker on any day unless—

- (a) the worker has authorised in writing the making from his wages of subscription deductions; and
- (b) the worker has not withdrawn the authorisation.

(2) A worker withdraws an authorisation given for the purposes of subsection (1), in relation to a subscription deduction which falls to be made from wages payable to him on any day, if a written notice withdrawing the authorisation has been received by the employer in time for it to be reasonably practicable for the employer to secure that no such deduction is made.

(3) A worker's authorisation of the making of subscription deductions from his wages shall not give rise to any obligation on the part of the employer to the worker to maintain or continue to maintain subscription deduction arrangements.

Section 68A provides the right to complain to an employment tribunal if the above right is infringed.

2.2 Check-off in the public sector

[Section 15](#) of the *Trade Union Act 2016* inserted section 116B into the *Trade Union and Labour Relations (Consolidation) Act 1992*, which enables a Minister, by way of regulations, to restrict check-off in the public sector. Section 116B(1)-(2) provides that a "relevant public sector employer" may operate check-off only if workers have the option to pay their union subscriptions by other means, and arrangements have been made for the union to make reasonable payments to the employer in respect of making the deductions. Payments will be deemed reasonable if the employer is satisfied that the payment is substantially equivalent to the administrative costs of operating check-off.

The restrictions will only affect "relevant public sector employers". Regulations will define which employers are caught by this. Section 116B(3)-(6) limits which employers may fall within the definition:

(3) An employer is a relevant public sector employer if the employer is a public authority specified, or of a description specified, in regulations made by a Minister of the Crown.

(4) A Minister of the Crown may by regulations provide, in relation to a body or other person that is not a public authority but has functions of a public nature and is funded wholly or mainly from public funds, that the body or other person is to be treated as a public authority for the purposes of this section.

(5) Regulations under this section may make provision specifying the person or other entity that is to be treated for the purposes of this section as the employer of a person who is employed by the Crown.

(6) The regulations may—

(a) deem a category of persons holding an office or employment under the Crown (or two or more such categories taken together) to be an entity for the purposes of provision made under subsection (5);

(b) make different provision under subsection (5) for different categories of persons holding an office or employment under the Crown.

Implementing regulations

Draft regulations to implement these restrictions were laid before both House of Parliament on 9 March 2017. The draft version of the regulations is available [here](#).³ They are subject to the affirmative resolution procedure, meaning that, to become law, they require the approval of both Houses.⁴ The Government has yet to move a motion to approve the draft. As such, the draft remains on the list of statutory instruments before Parliament, without any indication of when the Government will seek Parliament's approval.

³ Draft Trade Union (Deduction of Union Subscriptions from Wages in the Public Sector) Regulations 2017

⁴ *Trade Union and Labour Relations (Consolidation) Act 1992*, section 116B(9)

3. Trade Union Act 2016

As noted above, section 15 of the *Trade Union Act 2016* enables regulations to restrict the use of check-off in the public sector. When the Trade Union Bill was published on 15 July 2015 it did not contain any provisions on check-off. However, on 6 August 2015 the Conservative Government announced that the Bill would be amended to abolish check-off in the public sector:

Currently – under the check-off process – many public sector workers who are union members have their subscriptions taken directly from their salary, administered by their employer. This was a practice introduced at a time when many people didn't have bank accounts, and before direct debits or digital payments existed as a convenient and secure way for people to transfer money.

The removal of check-off will modernise the relationship between employees and their trade unions, while removing the burden of administration from the employer. The move also gives the employee greater control over their subscription, allowing them to set up their own direct debit with their chosen trade union, and giving them greater consumer protection under the Direct Debit Guarantee.

Cabinet Office Minister Matt Hancock said:

“In the 21st century era of direct debits and digital payments, public resources should not be used to support the collection of trade union subscriptions.

It's time to get rid of this outdated practice and modernise the relationship between trade unions and their members. By ending check-off we are bringing greater transparency to employees – making it easier for them to choose whether or not to pay subscriptions and which union to join.”⁵

Thus, it was expected that the Government would seek to amend the Bill during its passage through the Commons. It did this during the Bill's Committee Stage, although the provisions that reached the Statute Book differed from those originally proposed, following significant opposition in the Lords (see below).

3.1 Background to the Trade Union Bill

During 2014 media reports indicated that the Cabinet Office had written to government departments asking them to review check-off.⁶ When asked whether he would place the correspondence in the House of Commons Library, the then Minister for the Cabinet Office in the Coalition Government, Francis Maude, stated that internal discussions would not be disclosed:

Helen Goodman: To ask the Minister for the Cabinet Office if he will place in the Library all correspondence between his

⁵ Cabinet Office, BIS and The Rt Hon Matt Hancock MP, [Press release: New steps to tackle taxpayer-funded support to trade unions](#), Gov.uk, 6 August 2015 (accessed 8 June 2017)

⁶ '[Francis Maude's check-off letter](#)', *The Guardian*, 3 October 2014

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Department and other Departments on the matter of union subscription check-off.

Mr Maude: In line with the practice of successive Administrations, details of internal discussions and correspondence are not usually disclosed.⁷

Mr Maude was subsequently asked what his reasons were for writing to departments:

Mr Godsiff: To ask the Minister for the Cabinet Office for what reasons his Department requested that government departments review the check-off system for union subscriptions.

Mr Maude: The deduction of trade union subscriptions from payroll through check-off is a matter delegated to Departments. Departments should keep these arrangements under review to ensure that they are appropriate and meet the needs of a modern workplace, as per section 7.3.3 of the civil service management code.⁸

Following this, Members of the Opposition tabled a series of Parliamentary Questions asking Ministers whether they planned to end check-off in their departments.⁹ The responses indicated that check-off arrangements were under review. Mr Maude was asked about the plans during Cabinet Office Questions on 12 March 2014:

The Minister for the Cabinet Office and Paymaster General (Mr Francis Maude): The deduction of trade union subscriptions from payroll through check-off is a matter delegated to Departments in the civil service.

Ian Murray: The civil service has used check-off for the last 30 years. Indeed, large companies such as BAE Systems and Rolls-Royce use it as a very efficient way to deduct trade union subscriptions from salary. Is this not just another ideological attack? Removing check-off from the civil service payroll will cost many times more than running the current system for hundreds of years.

Mr Maude: As I say, it is a matter for Departments to decide for themselves. A number of trade unions take the view that it is much better to have a direct relationship with their members than have it intermediated through the employer—it is a rather more modern way to run things.

Priti Patel (Witham) (Con): Does my right hon. Friend think that it is fair on hard-working British taxpayers that their money is used to subsidise the administration of trade unions, rather than that cash going to front-line services?

Mr Maude: My hon. Friend has been a doughty campaigner for the use of facility time to be much better regulated. We inherited from Labour a position in which very large amounts of public money were being spent on subsidising 250 full-time officials in the civil service alone, let alone in the wider public sector. I am happy to tell her that we have got that under control.

Michael Dugher (Barnsley East) (Lab): The Minister says that this is a matter for individual Departments, but the private secretary in his Department has written round to every

⁷ [HC Deb 3 March 2014 c663W](#)

⁸ [HC Deb 1 May 2014 c806W](#)

⁹ For example: [HC Deb 14 May 2014 c729W](#); [HC Deb 6 May 2014 c157W](#)

Department in Whitehall asking them to review check-off. We know that the Government, for political reasons, want to scrap check-off, and I have seen a copy of an official letter from the Department for Work and Pensions, which was subsequently withheld by Ministers, that states:

1. “The department has concluded that the figure for the financial implications of ending check-off should be disclosed...The information held states: ‘We estimate that implementation costs could exceed one million pounds’.”

In the light of that revelation, will he agree, in the interests of transparency, to publish the full financial implications of this misguided policy?

Mr Maude: I am happy to bring the hon. Gentleman up to date. The DWP has subsequently said that that was a speculative and inaccurate figure—

Michael Dugher: It did not say that.

Mr Maude: Well, with respect, I have seen more recent correspondence than the hon. Gentleman has seen. The truth is that Ministers—as he will recall from his time in government—are sometimes given figures for the cost of making a change that turn out not to be true. This is such a case.¹⁰

The Cabinet Office’s letters to departments led to a dispute between the Liberal Democrat and Conservative Coalition Government partners. On 8 July 2014 the then Chief Secretary to the Treasury, Danny Alexander, [wrote to government departments](#) stating that “there is no fiscal case” for ending check-off:

It is my understanding that a number of Secretaries of State are considering ending check-off with their Departments despite some Ministers in those departments writing formally to register their opposition.

Departments should be aware that there is no fiscal case for doing this, as the Unions have offered to pay any costs associated with check-off, which are in any case minimal. In addition, the experience of DCLG suggests that any attempt may ultimately fail as a result of legal action being brought by the unions, at considerable cost to the public purse.

I am therefore writing to Secretaries of State and Permanent Secretaries in their role as Accounting Officers to make it clear that there is no public policy case to do this in any department across Whitehall. As such I want to make it clear that any department that pursues this policy is doing so at their own legal risk, leaving their department exposed to potential legal costs which they will be expected to meet in full.¹¹

Legal challenge

The Department for Communities and Local Government attempted to end check-off in the Department, although were prevented from doing so by a successful legal challenge. The judgment, reported as *Hickey & Hughes v Secretary of State for Communities & Local Government* [2013] EWHC 3163 (QB), summarised the background to the litigation:

¹⁰ [HC Deb 12 March 2014 c299](#)

¹¹ Danny Alexander’s letter to Whitehall departments, *The Guardian*, 3 October 2014

check-off arrangements are very widely used in the public sector and also, although less widely, in the private sector. DCLG and its predecessor departments have operated a check-off system for at least 20 years, and every member of a recognised union who had requested to be included within such a system has been so included by the Department. Some 94 per cent of the current PCS members employed by DCLG pay their subscriptions in this way by check-off.

In about March 2013, DCLG informally notified the recognised trade unions that it was intending to terminate check-off arrangements. The unions protested and, in particular, at that stage sought to require a period of consultation over the issue. On about 15 July 2013, DCLG notified the trade unions and individual staff of the intended termination of check-off arrangements with effect from 1 September. It was confirmed at about the same time that only deductions of union subscriptions were to be terminated as opposed to other deductions made by DCLG from wages.¹²

Mr Justice Popplewell held that the check-off arrangements in the Department were incorporated into staff contracts of employment, concluding “that the Claimants are entitled to continue to pay their PCS subscriptions by deduction from pay by way of check-off”.¹³ According to the Public and Commercial Services Union, this resulted in approximately £90,000 in legal costs being awarded against the Government.¹⁴

The High Court’s judgment was handed down on 3 September 2013. On 13 September 2013 Brandon Lewis, then Parliamentary Under Secretary of State at the Department for Communities and Local Government, responded to a Parliamentary Question about the costs of check-off in the Department. Mr Lewis stated that the costs were included in the overall costs of the managed payroll service used by the department and not billed as a separate cost, although:

The additional cost of transferring credits to the three recognised unions currently amounts to £329 per annum. In this context, given the total cost will be higher and bundled within the managed payroll service, there is a hidden subsidy to the unions.¹⁵

Mr Lewis argued that the matter was one of principle, not cost:

this is not an issue of money, but also of the broader principle of taxpayer-funding of trade unions. Ministers in this Department do not believe it is appropriate for public resources to be used to support the collection and administration of membership subscriptions and believe is an outdated and unnecessary 20th-century practice. It is also unsatisfactory that trade unions like PCS collect the political levy via check-off, but make no attempt to inform would-be members that the political levy is optional, or even mention the right to opt out of their membership forms. It is

¹² *Hickey & Hughes v Secretary of State for Communities & Local Government* [2013] EWHC 3163 (QB), paras 2-3

¹³ *Ibid.*, para 25

¹⁴ [‘Union wins High Court battle with Pickles over collecting union subscriptions’](#), Local Government Lawyer website, 4 September 2014 (accessed 8 June 2017)

¹⁵ [HC Deb 13 September 2013 884W](#)

the view of Ministers in this Department that this is a misleading and dubious marketing practice through omission.¹⁶

3.2 Commons Committee Stage

The Conservative Government's proposal to abolish check-off in the public sector formed the basis of an amendment to the Bill during its Commons Committee Stage. The then Minister for Business, Innovation and Skills, Nick Boles, introduced the new clause as follows:

My right hon. Friend the Minister for the Cabinet Office and Paymaster General announced in August that the Government intended to end the outdated practice of check-off in the public sector. New clause 11 gives effect to that intention. It would prohibit relevant public sector employers in due course from deducting trade union subscriptions from workers' wages and sending these to the unions concerned.

Check-off is anachronistic. It dates from a time when most workers did not have bank accounts and direct debit payments did not exist. Nowadays all public sector workers have bank accounts, and trade union subscriptions can very easily be paid by direct debit. Trade unions themselves agree that filling in a direct debit form is a simple and straightforward task. Even the PCS union's own website currently promotes direct debit, saying:

"It's quick and easy to sign up for direct debit—you can do it online in a couple of minutes. You just need your membership or National Insurance number and bank account number and sort code".

Direct debits can even be set up on mobile phones. In addition to its convenience, this way of making payments gives employees the freedom to set up the direct debit arrangement with the trade union of their choice, as well as consumer protection under the direct debit guarantee. Such protection was withdrawn for check-off 17 years ago.

In any case, there is just no need for the relationship between a trade union and its members to be intermediated by the members' employer. Trade unions should have a direct subscription relationship with their members, using direct debit like any other modern member-based organisation. The collection and administration of union subscriptions is no business of the employer. It should be a matter for a union and its members to arrange between themselves.

At a time of fiscal consolidation, taxpayer-funded employers providing the important public services that we all rely on should no longer carry unnecessary burdens.¹⁷

The then Shadow Minister for Business, Innovation and Skills, Stephen Doughty, said the motivation behind the proposal was to attack union finances:

I believe that the Government are deliberately targeting trade union finances by making it harder for individuals, including lower paid workers and many women in particular, to get access to trade union representation in the workplace. That is particularly true for dispersed workforces. I was struck by the evidence I received from the Union of Shop, Distributive and Allied Workers,

¹⁶ Ibid., c884W

¹⁷ [PBC 27 October 2015 cc405-406](#)

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which works in the retail sector, about the many people working in small shops and retail outlets throughout the country who find check-off a convenient way to have their payments taken, without a complicated process. They will struggle because of the new clause.

The move is almost universally opposed, save for the Government and the TaxPayers Alliance, and we all know that the basis of the oral evidence they gave was very flimsy. It is all rather ironic when we consider that the Government's claim that the proposal will save taxpayers' money is, in fact, a red herring, given that many trade unions already cover the cost of check-off services. In some cases, the fees generated in the process and charged by Government employers for check-off provision generate a net gain for the public finances. There seems to be no sense at all in the proposals.

...

There are also huge implementation issues. Transferring millions of members on to direct debit would create significant organisational challenges for many trade unions, particularly those operating in dispersed work forces.¹⁸

Several Members noted that payroll deductions were accepted for other purposes, such as charitable donations; repayment of loans; registration fees for professionals; bills; and staff association subscriptions.¹⁹ Julie Elliott (Lab) noted that the abolition of check-off could create difficulty for unions when identifying a bargaining unit (and balloting constituency):

one of the consequences—unintended, I am sure—of removing check-off will be that if there is, for instance, an industrial action ballot of a public sector workforce of many tens of thousands, with people working all over the place, it will be even more difficult for people to agree on what the bargaining unit is in that case. If people pay by direct debit—as many trade union members already do—then when they change their place of work, if they are still working for the same employer, their place of work will not necessarily notify their trade union.²⁰

Chris Stephens (SNP) cited comments from the ILO Committee of Experts:

The International Labour Organisation is looking at other countries that have tried the same thing, such as Congo. In 2010 the ILO committee of experts reported

“...deduction of trade union dues by employers and their transfer to the unions is not a matter that should be excluded from the scope of collective bargaining”²¹

Responding to questions about the transitional arrangements, the Minister said:

My right hon. Friend the Minister for the Cabinet Office has suggested that a transition period of six months from

¹⁸ Ibid., cc406-408

¹⁹ Ibid., cc408-409

²⁰ Ibid., c410

²¹ Ibid.

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commencement of the provisions on check-off would be appropriate.²²

An SNP amendment would have introduced a requirement for legislative consent from the Scottish Government, the Welsh Government, the Northern Ireland Executive, the Mayor of London and local authorities in England in their areas of responsibility, prior to the abolition of check-off in those areas. The Minister said the matter was “clearly reserved” and that he therefore saw “no reason why the Government should seek consent before applying those provisions in particular areas”.²³ The amendment was defeated on division (10 votes to 7) and the new clause read a Second time (10 votes to 7).

3.3 Lord amendments

The proposal to abolish check-off in the public sector faced significant opposition in the Lords. In response to an amendment tabled by Lord Balfe (Con) during the Bill’s Report Stage, the Government agreed to modify its proposal and allow check-off to continue where the union meets the administrative costs and there is an agreement with the employer to provide check-off. The Parliamentary Secretary for the Cabinet Office, Lord Bridges, undertook to table an amendment to this effect during Third Reading. His Lordship also undertook to table an amendment that would clarify which public bodies would be subject to the check-off provisions.

The Government amendments moved at Third Reading, which were agreed to, proposed to permit public sector employers to continue to use check-off if:

- workers have the option to pay their subscriptions by other means; and
- arrangements have been made by the union to make reasonable payments to the employer to cover the cost of administering check-off.

The reasonableness of the payments would be assessed by employers, as the Minister noted:

it is important that these costs are indeed reasonable. So we have set out on the face of the Bill that employers must satisfy themselves that the total amount of the payment is only substantially equivalent to the total cost to the taxpayer of making these deductions.²⁴

The Bill originally proposed to enable a Minister to make regulations extending the check-off provisions to bodies that are not public authorities but have functions of a public nature if those bodies are funded wholly or “partly” from public funds. An amendment replaced the word “partly” with “mainly”, thereby restricting the potential scope of regulations.

²² Ibid., c413

²³ Ibid., c415

²⁴ Ibid., c909

4. Previous governments

4.1 Conservative Governments (1987-1997)

Green Paper, July 1991

The Major Government's green paper, *Industrial Relations in the 1990s*, published in July 1991, argued that individual union members should have the right to decide how they paid their subscriptions. The paper proposed that the law should be amended to make it unlawful to deduct union subscriptions from an employee's pay unless he had given his express consent in writing during the previous 12 months:

... the Government propose that the law should be amended to make it unlawful for an employer to deduct union subscriptions from an employee's pay unless the employee has given his express consent in writing to such an arrangement. **Written confirmation would also be required from each employee at least once every 12 months** that he wishes to continue to pay his union subscriptions through the check-off. Without such confirmation, further deductions from his pay for this purpose through the check-off would be unlawful.

In addition, there may be a case for making it unlawful for an employer to continue deducting union subscriptions from an employee's pay whenever the level of the subscription changes unless the employee expressly requests him in writing to do so. This would give direct and immediate assistance to an employee who, for example, discovered that his union subscriptions had been increased to include a compulsory contribution to a union strike fund.

The responses to the proposals showed little support. Many employer organisations, including the British Institute of Management and the Engineering Employers' Federation, feared that the need for annual written consent would impose an unnecessary administrative burden on their members. They also pointed out that most employers already required written consent before deducting an individual union member's subscriptions from his pay. In any case, section 1(5)(d) of the *Wages Act 1986* made it illegal for an employer to deduct union subscriptions without prior written agreement from the employee. Both employers and unions compared check-off with direct debit payments, noting that there was no requirement for annual consent for direct debit arrangements, just the option to cancel at any time.

The TUC described this proposal as a "mischievous and crude attempt to reduce union membership and weaken the financial position of trade unions".²⁵ Professor Paul Willman of the London Business School, estimated that trade unions could lose one million members (about 15% of the total at the time) as a result of the changes.²⁶

Conversely, the Institute of Directors supported the proposal.²⁷ The CBI suggested that re-affirmation should be every five years and that the

²⁵ TUC response to the Green Paper

²⁶ *Financial Times*, 5 May 1992, "Check-off risk to unions"

²⁷ *Financial Times*, 31 October 1991, "IOD opposes proposal on bargaining"

union, rather than the employer, should collect the consents.²⁸ The Engineering Employers Federation proposed that raising specific levies (e.g. for strikes) through the check-off could be outlawed.²⁹

Trade Union Reform and Employment Rights Act 1993

In the event, the Government did make some concessions by deciding that employers should be required to seek the consent of their employees to the check-off once every three years instead of once every 12 months.³⁰ They also decided that all employees covered by the check-off arrangements when the legislation came into force would have to give their individual written consent within 12 months; that all employees should have the right to opt out of the check-off at any time; and that all employees would have to be informed by their employer before amounts deducted through the check-off were increased, and reminded at the same time of their right to opt out.³¹ The changes were given effect by section 15 of the *Trade Union Reform and Employment Rights Act 1993* which came into force on 30 August 1993, amending the *Trade Union and Labour Relations (Consolidation) Act 1992*, replacing section 68 with a new section 68 and 68A.

Although it was employers who had the legal responsibility to obtain consents every three years, in practice, unions took on the task on their behalf, given the financial and membership implications. Ultimately, the predictions of severe reductions in union membership were unrealised. Indeed, union campaigns to re-authorise check-off had, in some cases, encouraged new people to join. The main difficulty unions encountered was "the sheer workload".³²

A CBI survey in 1995 of 318 unionised firms assessed the business reaction to the changes. It found that just over 92% of firms operated check-off. Around 91% of these had reviewed their check-off facilities in the light of the 1993 Act and the overwhelming majority had decided to retain them. The maintenance of good industrial relations was by far the most important reason (40%), while the ability to monitor union membership was the next (18%). Nearly 74% of respondents considered that the Act's changes would have no effect on union membership, although there was a noticeable difference between manufacturing and service organisations; 18% of the former predicted a fall in membership, compared with 41% of the latter.³³ A study of a 1994 campaign to encourage re-authorising check-off arrangements found that the proportion of union members paying by check-off fell from 83% to 67% as a result of the changes, but that there had been a corresponding increase in those using direct debit - from 10% to

²⁸ CBI response to the Green Paper

²⁹ EEF response to the Green Paper

³⁰ Statement by Michael Howard on the results of consultations on *Industrial relations in the 1990s*, HC Deb 28 January 1992 cc 813-830

³¹ Department of Employment Press Release, 28 January 1992, "Michael Howard gives green light to further industrial relations reforms"

³² See, eg, *Labour Research*, September 1994, "Signing up - a hard slog"; and *Guardian*, 19 July 1994, "Tories draw blank with check-off manoeuvre"

³³ *CBI Employment Affairs Report*, February 1995

26%.³⁴ On average, 95% of members re-signed for check-off, while most of the rest remained members but switched to other methods of payment. A Labour Research Department survey in 1996 found that the average subscription at the time for a full member was £1.77 a week.³⁵

4.2 Labour Government

The Labour Party promised, in *Building Prosperity - Flexibility, Efficiency and Fairness at Work*, published in June 1996, that:

we will end the unnecessary burden on business which the Tories have created by forcing trade unions to get repeated authorisation from individual members before union subscriptions can be deducted through the payroll.³⁶

The pledge was not repeated in the 1997 General Election Manifesto, nor was it mentioned in the Queen's Speech on 14 May 1997. However, on 8 July 1997, Margaret Beckett, Secretary of State for Trade and Industry, announced that the requirement for three-yearly authorisation would be repealed by means of a deregulation order under the *Deregulation and Contracting Out Act 1994*:

Ms Beverley Hughes: To ask the President of the Board of Trade if she will make a statement on the Government's policy towards the requirement for employers to obtain re-authorisations from their employees every three years for the deduction of trade union subscriptions direct from pay. [7645]

Mrs. Beckett: The Government believes this requirement is unnecessary and burdensome for employers and unions. We propose to repeal it by a deregulation order under the Deregulation and Contracting Out Act 1994. After we have consulted with interested parties this summer on the scope and content of a deregulation order, we intend to start the Parliamentary stages in the autumn, and complete the repeal next year.³⁷

Commenting later, Ian McCartney, Minister in the Department for Trade and Industry, said:

We will retain those parts of the law on check-off which provide essential freedoms for individuals to choose whether they wish to pay their union subscriptions directly by check-off. No deductions will be made unless employees have authorised them. Employees will also be free to opt out of check-off arrangements at any time, if they wish.

It makes no sense to retain the bureaucratic requirement for frequent re-authorisations and I am glad we are able to remove this costly but pointless administrative load from the shoulders of business. This means that people who pay their subscriptions by check-off will be in exactly the same position as those who pay by direct debit.³⁸

³⁴ *Labour Research*, July 1996, "Signing up for a good deal"

³⁵ *Ibid*

³⁶ Labour Party, *Road to the Manifesto - Building Prosperity - Flexibility, Efficiency and Fairness at Work*, 22 June 1996, p.5

³⁷ HC Deb, 8 July 1997, c 413W

³⁸ DTI Press Notice, 8 July 1997, "Government to remove burden on business by ending the three-yearly re-authorisation of 'check-off' "

The Deregulation Order

The power to make deregulation orders was created in sections 1-4 of the *Deregulation and Contracting Out Act 1994*. It enables changes to be made to primary legislation in order to remove or reduce a burden as long as any necessary protection is maintained. Under the Act, there are requirements to undertake prior consultations of such organisations as Ministers consider to be representative of interests substantially affected by proposed deregulation orders. The Act also provides for Parliament to consider the substance of proposed orders before they are made. Under special Parliamentary procedures, a Select Committee in each House scrutinises proposed orders and makes a report. The orders must then be approved by a resolution of each House.

The [*Deregulation \(Deduction from Pay of Union Subscriptions\) Order 1998 \(1529\)*](#) came into force on 23 June 1998 and amended sections 68 and 68A of the *Trade Union and Labour Relations (Consolidation) Act 1992*. Article 2 of the Order removed the three year time limit on check-off authorisation and the restrictions whereby employers may not increase the amount to be deducted unless they have given a month's written notice to the worker.

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