



HM Government

Supporting Guidance for the Trade Union (Facility Time Publication Requirements) Regulations 2017

Effective from 1 April 2017

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Foreword

The Trade Union (Facility Time Publication Requirements) Regulations 2017 came into force on the 1st April 2017. These regulations place a legislative requirement on relevant public sector employers to collate and publish, on an annual basis, a range of data on the amount and cost of facility time within their organisation.

During the passage of the Trade Union Act, the Government committed to develop guidance to help employers meet this new legislative requirements and, to ensure a high level of transparency and consistency across organisations. We hope that this document, which has been written with input from a range of employers, Trade Unions and the TUC will assist organisations to fully comply with the duties prescribed under the regulations.

Trade Unions play an important role in the modern workplace. There are significant benefits to both employers and employees when organisations and unions work together effectively, but facility time within the public sector must be accountable and represent value for money.

The regulations provide a framework for open and transparent monitoring. Greater accountability has already been introduced within the Civil Service, resulting in sensible savings. If replicated across the public sector, estimated savings of up to £100 million could be realised. The government supports demonstrating effective use of taxpayer's money.

Rt Hon Oliver Dowden MP

Minister for Implementation, Cabinet Office

Introduction

Overview

1. This guidance contains information about the Trade Union (Facility Time Publication Requirements) Regulations 2017, which took effect from 1 April 2017. These regulations were laid following the enactment of the Trade Union Act 2016. The Trade Union Act was passed in May 2016; one of the elements of this Act is the requirement for employers in the public sector to publish information on facility time.
2. Trade Unions (TUs) play an important role in the modern workplace and there are considerable benefits to both employers and employees when organisations and unions work well together.
3. The purpose of these regulations is to promote transparency and allow for public scrutiny of facility time. They create scope for sensible savings by improving public accountability, which will ensure taxpayers' money is only spent on justifiable and accountable trade union work that represents value for money.
4. These regulations require relevant public sector employers to collect and publish, on an annual basis, a range of data in relation to their usage and spend of TU facility time in respect of their employees who are TU representatives. The range of data required is detailed later in this guidance, under [Publication Requirements](#) and [Annex A](#).
5. These regulations do not apply to devolved Welsh authorities or Northern Ireland.
6. The regulations outline the type and range of data that organisations are required to publish. Whilst many organisations already record facility time, the requirement to publish externally is likely to be new.

Facility Time

7. Facility Time is the provision of paid or unpaid time off from an employee's normal role to undertake TU duties and activities as a TU representative. There is a statutory entitlement to reasonable paid time off for undertaking union duties. There is no such entitlement to paid time off for undertaking activities. TU Duties and activities are defined in [Annex B](#) – Glossary of terms.
8. It is recommended to have an agreement which sets out the amount of time off that can be provided whilst recognising fluctuations in use may occur depending on demands on time. Both employers and TU representatives have an important role to play in effectively and efficiently managing the use of facility time.

Who is in scope?

9. Most public authorities are in scope. This includes:
 - An authority listed, or of a description, in Schedule 1 of the regulations
 - Local authorities; [Annex C](#) provides additional information on Local authorities.

- The National Health Service;
 - Maintained schools and other educational institutions;
 - Police staff;
 - any department of the Government of the United Kingdom (excluding the Secret Intelligence Service, the Security Service and the Government Communications Headquarters); and
 - the Scottish Ministers;
10. As outlined in the regulations most advisory bodies/expert panels, regulatory bodies, bodies funded by a levy on a discrete group in society, or bodies which have a predominantly commercial focus are not in scope of these regulations.
11. A list of public authorities covered by the regulations can be found at Schedule 1 of the regulations. This information can be accessed in the
12. Resources section.
13. The regulations only apply to employers that have at least one TU representative and which have more than 49 full time equivalent (FTE) employees during any seven months of a 12 month relevant period.
14. A public authority which is covered under paragraph 9 (above) and fulfils the conditions outline in paragraph 12 (above) must publish the required data. If the authority does not meet the conditions of either one of paragraph 9 or 12, even if it does fulfil the conditions of one of these, then it need not disclose but may do voluntarily.

Publication Requirements

15. The facility time (FT) data that organisations are required to collate and publish under the 2017 regulations are:
- Number of employees who were relevant union officials during the relevant period
 - How many employees who were relevant union officials during the relevant period spent a)0%, b)1 – 50%, c) 51-99% or d)100% of their working hours on facility time
 - Percentage of the total pay bill spent on facility time
 - Time spent on paid trade union activities as a percentage of total paid facility time hours
16. [Annex A](#) and [Annex B](#) include definitions and tables to illustrate the minimum statutory information required.
17. When using the employee hourly cost to calculate the percentage of the pay bill spent on facility time (see Annex A and Annex B for information on definitions and calculations) it should not be possible to identify individual employees. If this is possible a notional hourly cost should be used instead of the actual hourly cost.

Timescales

18. These regulations came into force on 1 April 2017. The first publication year runs from 1 April 2017 – 31 March 2018. The data must be published by 31 July 2018 and to the same timeframes every year thereafter.
19. We recommend that organisations put structures in place to collect data at frequent intervals and collate this centrally. This will allow time for data to be checked and ensure you are able to publish robust, complete data at the end of the relevant period.

Process for publishing data

20. Organisations are required to publish this information on a website maintained by or on behalf of the employer before 31st July each year.
21. If organisations currently produce an Annual Report and Accounts (ARAs), facility time data must also be included in the report covering the relevant period.
22. Organisations are also required to publish this data on a website maintained by or on behalf of the Government by 31st July each year.
23. The Cabinet Office is developing a central reporting service to enable organisations to publish their data on a website maintained by or on behalf of the Government.
24. This service will go live on the 1st July and be accessible from within gov.uk.

Annual Report and Accounts

25. In ARAs, disclosures should be included in the Staff Report. If a disclosing body prefers to refer to the SI in the staff report and then include the form (found at Annex A) as an annex elsewhere in the accounts that would also fulfil the requirements.
26. Disclosures for departments must cover the core departments and its Executive Agencies only. No consolidation is required of any other public sector body within the departmental boundary.
27. No Disclosures are required for prior years.

Data collection requirements

Data to be collected

28. In order to calculate data for publication you will need to collect information from your TU reps throughout the relevant period.
29. You should ensure that this data is collected, stored and used in accordance with data protection legislation.

Data required	Data output
<p>The total number of relevant union officials you employ</p> <p>To collect this you will need notification when one of your employees becomes a TU representative or ceases to be a TU representative</p>	<p>Required to report the total number of TU representatives within the public authority and should include all TU representatives during the relevant period.</p>
<p>Working hours</p>	<p>Required to calculate the percentage of TU representatives' working time spent on facility time.</p>
<p>Working hours spent on facility time for TU duties.</p> <p>This is the total time spent including all duties (i.e. if a TU representative has more than one TU role total hours should be recorded)</p>	<p>Used with the working hours data to calculate the percentage of working time spent on facility time.</p>
<p>Paid time for TU activities</p> <p>This is the total working time spent including all paid activities (i.e. if a TU representative has more than one TU role total hours should be recorded)</p>	<p>Used to calculate the percentage of paid working time spent on TU activities as a percentage of all paid facility time hours.</p>

- To facilitate the correct recording of facility time, line managers and TU representatives will need to record individual facility time usage and submit information as requested to allow your organisation to meet the annual publication requirements.

Frequently Asked Questions

Q1) What are the key drivers for the Trade Union (Facility Time Publication Requirements) Regulations 2017?

The Trade Union Act 2016 introduced a number of reforms to Britain's industrial relations framework, which are set out in the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

The aim of the Trade Union Act 2016 is to modernise the UK industrial relations framework to better support an effective and collaborative approach to industrial relations, balancing the interests of TUs with interests of the wider public sector.

These facility time regulations help fulfil these objectives by ensuring that relevant employers publish facility time data in order to promote transparency and public scrutiny of this information.

The regulations provide a framework for open and transparent monitoring. Greater accountability has already been introduced within the Civil Service, resulting in sensible savings. If replicated across the public sector, estimated savings of up to £100 million could be realised. The government supports demonstrating effective use of taxpayer's money.

Q2) How should we engage with local TUs about the facility time publication requirements?

We recommend engaging with your local TUs as early as possible to understand what is involved in collecting and publishing this data and to ensure you are able to meet the statutory requirements.

Q3) What is the process if an employee becomes a relevant TU representative within the relevant period, how do we record/ report on this?

If an employee becomes a relevant TU representative within the relevant period they should be included within the total number of employees who were relevant TU officials, irrespective of when during the relevant period they undertook this role. The same applies to any employee who steps down as a relevant TU representative during the relevant period. Any time the employee spent on facility time should be counted when calculating the percentage of time and percentage of the pay bill for the overall facility time figure. If TU representatives change during a relevant period this may mean that the number of employees who were TU officials during the relevant period is greater than the number of TU officials in the role at any one time.

In other words, the disclosure requires that you report the total number of employees who were a relevant official in the period (not a monthly average), regardless of who becomes and who steps down as a union official.

Q4) Should organisations require TU representatives/ line managers to record their category of TU official and the types of duties undertaken?

Under the regulations organisations are only required to record and report on the information as set out in the publication requirements ([Annex A](#)) which does not include the number of representatives by type or categories of TU duties.

Q5) Should organisations record additional data – for example a breakdown of TU duties or the details of TU activities that TU Representatives have been given paid time off for?

Under the regulations public sector organisations are only required to record and report on the information set out in [Schedule 2](#) from 1 April 2017. ([Annex A](#)).

Resources

The Trade Union (Facility Time Publication Requirements) Regulations 2017 [Statutory Instrument]	The Trade Union (Facility Time Publication Requirements) Regulations 2017 [Statutory Instrument]
Trade Union and Labour Relations (Consolidation) Act	https://www.legislation.gov.uk/ukpga/1992/52/contents
Trade Union Act 2016	http://www.legislation.gov.uk/ukpga/2016/15/contents/enacted
Trade Union (Facility Time Publication Requirements) Regulations 2017 Explanatory Memorandum	Explanatory Memorandum
Central Publication Service	Available on gov.uk from the 1 st July.

Annex A

Facility Time Publication Requirements

The facility time data that organisations are required to collate and publish under the new regulations is shown below. We have included tables to illustrate the information required.

Table 1

Relevant Union Officials

What was the total number of your employees who were relevant union officials during the relevant period?

<i>Number of employees who were relevant union officials during the relevant period</i>	<i>Full-time equivalent employee number</i>

Table 2

Percentage of time spent on facility time

How many of your employees who were relevant union officials employed during the relevant period spent a) 0%, b) 1%-50%, c) 51%-99% or d) 100% of their working hours on facility time?

Percentage of time	Number of Employees
0%	
1-50%	
51-99%	
100%	

Table 3

Percentage of pay bill spent on facility time

Provide the figures requested in the first column of the table below to determine the percentage of your total pay bill spent on paying employees who were relevant union officials for facility time during the relevant period.

<i>First Column</i>	<i>Figures</i>
Provide the total cost of facility time	
Provide the total pay bill	
Provide the percentage of the total pay bill spent on facility time, calculated as:	

$(\text{total cost of facility time} \div \text{total pay bill}) \times 100$	
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Table 4

Paid trade union activities

As a percentage of total paid facility time hours, how many hours were spent by employees who were relevant union officials during the relevant period on paid trade union activities?

<p><i>Time spent on paid trade union activities as a percentage of total paid facility time hours calculated as:</i></p> <p><i>(total hours spent on paid trade union activities by relevant union officials during the relevant period ÷ total paid facility time hours) x 100</i></p>	
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Annex B

Glossary of terms

Term	Definition
Relevant public sector employer	<p>Regulation 7 defines what is a relevant public sector employer. This specifies:</p> <ul style="list-style-type: none"> • Government departments, which include executive agencies and non-ministerial departments (other than the Secret Intelligence Service, the Security Service and the Government Communications Headquarters) • the Scottish Ministers and • public authorities described or listed in Schedule 1 of the regulations
TU representative	<p>A relevant union official; ie:</p> <p>(a) a trade union official within the meaning of section 119 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA);</p> <p>(b) a learning representative of a trade union, within the meaning of section 168A(11) TULRCA;</p> <p>(c) a safety representative appointed under regulations made under section 2(4) of the Health and Safety at Work etc Act 1974</p>
Relevant period	A period of 12 months beginning with 1 April, the first relevant period starts on 1 April 2017.
Total pay bill	Is the total amount of (the total gross amount spent on wages) + (total pension contributions) + (total national insurance contributions) during the relevant period.
Full Time Equivalent (FTE) employee number	The number of relevant trade union officials expressed as the number of full time equivalent employees.

	<p>Calculated by establishing the number of full time employees and adding to that number a fraction in respect of those employees who are not full time.</p> <p>(total number of full time employees) + (the total fractions of full time employee hours worked by all employees who are not full time).</p>
Working Hours	Any time when an employee is required to be at work in accordance with their contract of employment.
TU Duties	<p>Duties where there is a statutory right to reasonable paid time off during working hours to undertake recognised duties and to complete training relevant to their TU role. This arises under:</p> <p>(a) section 168, section 168A of the 1992 Act (TULR(C)A)</p> <p>(b) section 10(6) of the Employment Relations Act 1999;</p> <p>(c) regulations made under section 2(4) of the Health and Safety at Work etc. Act 1974.</p>
TU Activities	<p>Means time taken off under section 170 (1) (b) of the 1992 Act. TULR(C)A section 170</p> <p>There is no statutory entitlement to paid time off to undertake TU activities.</p> <p>However TU representatives are entitled to be granted reasonable unpaid time off to participate in TU activities.</p>
Paid TU Activities	<p>Time taken off for TU activities under section 170 (1) (b) of the 1992 Act in respect of which a TU representative receives wages from the relevant public sector employer.</p> <p>There is no statutory entitlement to paid time off to undertake activities.</p>
Total paid facility time hours	<p>Total number of hours spent on facility time by TU representatives during a relevant period.</p> <p>Does not include hours attributable to time taken off under section 170(1)(b) of the 1992 Act in respect of which a TU representative does not receive wages.</p>

Hourly cost	For each employee: (the gross amount spent on wages) + (pension contributions) + (national insurance contributions) divided by the number of hours during the relevant period.
Total cost of facility time	<p>For each employee who was a TU representative during the relevant period, facility time cost is calculated by: (Hourly cost for each employee x number of paid facility time hours)</p> <p>Total facility time cost is calculated by adding together the amounts produced by the calculation of facility time cost for each employee.</p> <p>In calculating this figure the wages of any employee who can be identified from the information being published must be expressed as a notional hourly cost to represent the employee's wages.</p>
Local authority	A full list of organisations defined as local authorities can be found in Schedule 1 of the regulations Schedule 1
Local Authority Employees	
Central function employees	<p>Employees of the authority or Council other than</p> <ul style="list-style-type: none"> a) its fire and rescue function employees; and b) its education function employees
Education function employees	Persons employed by virtue of section 35(2) of the Education Act 2002 (staffing of community, voluntary controlled, community special and maintained nursery schools);
Fire and rescue function employees	Employees employed to carry out functions that the authority or Council has because it is a fire and rescue authority (see section 1 of the Fire and Rescue Services Act 2004)

Annex C

Guidance for Local Authorities, school academies and other organisations in cost-sharing arrangements with Local Authorities

1. As set out in the regulations, Local Authorities (LA's) must publish data separately for these categories:
 - Central function employees
 - Education function employees
 - Fire and rescue function employees
2. Separately means publishing the information as if the employer were a separate employer for each category of employees.
3. LA's are already subject to a duty to publish certain information regarding facility time usage within their organisation under the Local Government Transparency Code (LGTC). These regulations are separate and additional to the requirement to publish under the LGTC.
4. LA's may however choose to meet the requirements of both the LGTC and these regulations in one set of published figures as long as that publication meets the minimum requirements of both publication regimes. This may be the preferred option to avoid duplicated effort. For example, publication under these regulations, with the addition of the publication of the details all trade unions represented in a LA should cover the requirements of both regimes.

Principles

5. Some LA's currently meet their statutory obligations to provide facility time to union reps by pooling resources to cover the time spent by trade union reps across a number of different employers. Equally, LA's may arrange their internal resources so that a particular trade union representative (or representatives) based in one of its three functions acts as a trade union representative across two or three of its functions. For example, a LA may employ a trade union representative within its fire and rescue function who undertakes union duties and activities for the LA's central function, education function and/or 2 local school academies. The following guiding principles have been agreed to assist with the collection and publication of their facility time data in these circumstances.
6. The principles apply in respect of the tables found at [Annex A](#) which are taken from the regulations themselves.
 - **For tables 1 and 2:** Only the employer of the trade union rep should provide the required data. Where the body responsible for reporting is a LA, the LA should only include in its returns for each of the three functions, data relating to trade union reps employed within their respective functions.

- For example, trade union reps employed within a LA's education function who carry out activities across the other two local authority functions should only be included in the returns for the education function.
 - The same applies if such a union rep also carries out duties/activities for one or more school academy under cost sharing arrangements.
- **For table 3**, any monies a relevant public sector employer spends or contributes towards paid facility time hours should be included in their return. This should:
 - For LAs, be broken down and reported by function.
 - Include any monies paid into a shared pot. LA's should apportion monies paid by the LA into a 'central' pot between its three functions.
 - If the LA is reimbursed for some/all of its facility time costs by other public authorities using LA-employed union representatives, then that amount can be subtracted from the LA's overall facility time spend prior to apportionment across its three functions.
 - **For table 4**, only the employer of the trade union rep that carries out paid trade union activities should include the required information. Where the body responsible for reporting is a LA, the information is to be provided in respect of the particular LA function within which the trade union rep is employed.
 - Where a trade union rep carries out paid trade union activities relating to matters beyond the immediate interest or concern of the employer or, where the employer is the LA, the specific function in which they are employed, this information must be captured within the published figures by the union reps employer.
7. The principles underpinning the recommended approach for table 3 reflect the fact that some organisations in scope are seeking to comply with their statutory duties to provide paid facility time by pooling resources to contribute towards the cost of another employer's union representative. This is an arrangement that is not recognised under the legislation as one which discharges the duty to provide paid facility time given that the legislative duty relates to a particular employer's *own* employees who are relevant union officials/representatives.
8. For example, if employer A pools resources with another employer, B, to fund some or all of the cost of employer B's trade union rep employees with a view to such union reps carrying out union duties in respect of employer A, it is assumed employer A would see this funding as discharging its statutory duties to provide paid facility time even though it is not employing the union rep in question. It therefore seems justifiable for an employer who claims to be discharging its statutory obligations to provide for paid facility time in this non-standard way to report on the basis that the funding it provides under a cost sharing arrangement equates to its facility time spend for the purposes of calculating the total cost of facility time. Authorities are encouraged to meet their publication requirements under the regulations in this manner.

Example 1

9. The following is an example of how a LA that employs **two union reps, one within its central function and one within its educational function** who carry

out activities across a number of organisations, (including legally distinct employers such as school academies) under a cost sharing arrangement would obtain and publish the required information.

10. It is recognised that this example will not apply to every scenario, but is intended as one illustration to assist LA's when preparing their data for publication.
 - **For tables 1 and 2** as the LA is the body responsible for publishing the facility time for the two union reps, they would be responsible for capturing this information. When publishing central function data they would include one union rep for table 1 and would include the total percentage of their time spent on facility time for table 2. They would do the same when publishing as the educational function in respect of the second union rep. For the fire and rescue function they would not publish any data as there are no employed union reps in the fire and rescue function.
 - Other (legally distinct) employers, for example, a school academy, that use the services of the union reps employed by the LA under cost sharing arrangements, would not capture this information in their own published data.
 - **For table 3**, as the LA is part of a cost sharing arrangement to cover the costs of the union reps salary, the amount they contribute towards this agreement would be considered the total cost of facility time for that LA. As the LA is required to publish by function, the total amount they contribute towards the upkeep of the two reps would need to be divided between the three functions. All three functions would carry out the required calculation using this figure and the total cost of the LA's pay bill apportioned into the three functions. These final figures would then be published by the LA.
 - Other legally distinct employers (e.g. a school academy) that use the services of the union reps would also need to publish the total amount they contributed towards the cost sharing arrangements as the total cost of facility time in order to carry out the required calculation.
 - **For table 4**, as the LA employs both union reps, they will be responsible for capturing the required information. To do this they will need to capture the total paid facility time hours the TU rep undertook, both for the LA and any other (legally distinct) organisation which is part of the cost sharing arrangement, as well as the total number of hours spent on paid trade union activities. When the authority reports under the education function it would include the above information for the union rep employed within this function. They would follow the same process for the central function as well. The fire and rescue function does not employ any union reps and would therefore have nothing to publish in this table.
 - Other legally distinct organisations (e.g. academies) that use the services of the two union reps employed by the LA, would not need to capture this information in their own published data as they are not the employers.
 - If the paid trade union activities were for the benefit of a particular aspect of the TU reps work, i.e. they clearly carried out activities on behalf of the fire and rescue function despite not being employed within the fire and rescue function, then LA's are encouraged to explain this in any accompanying narrative published.

Example 2

11. The following is an example of how a LA would complete the table found in Schedule 2.

12. In this example, the LA:

- Is reporting for its educational function only.
- Employs 3 TU representatives in total. Two within their educational function and one within their central function.
 - i. All three are full time and carry out 50% (18.5hrs p/w) of their time on facility time.
 - ii. All three have carried out 4 hours' worth of paid trade union activities each during the relevant period.
 - iii. All three spent 962 hours each carrying out facility time over the relevant period.
- Is part of a cost sharing arrangement with a number of legally distinct school academies, whereby the reps from all three functions carry out union rep work within these school academies, spending more or less the same amount of time each on such work
- Has a total organisational pay bill of £1,900,000 within the relevant period.
 - i. Has a total facility time cost of £60,000 for the 3 TU representatives.
 - ii. Receives £10,000 from the cost sharing arrangement from school academies using the services of the 3 TU representatives.

Table 1: Education function return

Relevant Union Officials

What was the total number of your employees who were relevant union officials during the relevant period?

<i>Number of employees who were relevant union officials during the relevant period</i>	<i>Full-time equivalent employee number</i>
2	2

Table 2

Percentage of time spent on facility time

How many of your employees who were relevant union officials employed during the relevant period spent a) 0%, b) 1%-50%, c) 51%-99% or d) 100% of their working hours on facility time?

Percentage of time	Number of Employees
0%	0
1-50%	2
51-99%	0

100%	0
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Table 3

Percentage of pay bill spent on facility time

Provide the figures requested in the first column of the table below to determine the percentage of your total pay bill spent on paying employees who were relevant union officials for facility time during the relevant period.

<i>First Column</i>	<i>Figures</i>
Provide the total cost of facility time	((total facility time spend for LA ÷ number of reps) x number of reps in the education function) - (total cost received by academies ÷ total number of reps in the LA) x (the number of reps in the education function) = £33,333
Provide the total pay bill	total pay bill for LA ÷ number of functions = £633,333
Provide the percentage of the total pay bill spent on facility time, calculated as: (total cost of facility time ÷ total pay bill) x 100	0.05%

Table 4

Paid trade union activities

As a percentage of total paid facility time hours, how many hours were spent by employees who were relevant union officials during the relevant period on paid trade union activities?

<i>Time spent on paid trade union activities as a percentage of total paid facility time hours calculated as: (total hours spent on paid trade union activities by relevant union officials during the relevant period ÷ total paid facility time hours) x 100</i>	0.41%
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