



Trade Union Act 2016

2016 CHAPTER 15

Certification Officer

16 Certification Officer not subject to ministerial direction

In section 254 of the 1992 Act (the Certification Officer), at the end of subsection (2) insert “(but is not subject to directions of any kind from any Minister of the Crown as to the manner in which he is to exercise his functions)”.

17 Investigatory powers etc

(1) After section 256B of the 1992 Act insert—

“256C Investigatory powers

Schedule A3 (Certification Officer: investigatory powers) shall have effect.”

(2) After Schedule A2 to the 1992 Act insert, as Schedule A3, the Schedule set out in Schedule 1 to this Act.

(3) Schedule 2, which makes amendments to the 1992 Act to enable the Certification Officer to exercise certain powers without an application or complaint being made to the Officer, has effect.

18 Enforcement by Certification Officer of new annual return requirements

(1) After section 32ZB of the 1992 Act (inserted by section 12 above) insert—

“32ZC Enforcement of sections 32ZA and 32ZB by Certification Officer

(1) Where the Certification Officer is satisfied that a trade union has failed to comply with any of the requirements of section 32ZA or 32ZB, the Officer may make a declaration to that effect.

(2) Before making such a declaration, the Certification Officer—

Status: This is the original version (as it was originally enacted).

- (a) may make such enquiries as the Officer thinks fit,
 - (b) must give the union an opportunity to make written representations, and
 - (c) may give the union an opportunity to make oral representations.
- (3) If the Certification Officer makes a declaration it must specify the provisions with which the union has failed to comply.
- (4) Where the Certification Officer makes a declaration and is satisfied—
- (a) that steps have been taken by the union with a view to remedying the declared failure or securing that a failure of the same or any similar kind does not occur in future, or
 - (b) that the union has agreed to take such steps,
- the Officer must specify those steps in the declaration.
- (5) Where a declaration is made, the Certification Officer must give reasons in writing for making the declaration.
- (6) Where a declaration is made, the Certification Officer must also make an enforcement order unless the Officer considers that to do so would be inappropriate.
- (7) An “enforcement order” is an order requiring the union to take such steps to remedy the declared failure, within such period, as may be specified in the order.
- (8) Where, having given the union an opportunity to make written representations under subsection (2)(b), the Certification Officer determines not to make a declaration under subsection (1), the Officer must give the union notice in writing of that determination.
- (9) Where the Certification Officer requests a person to provide information to the Officer in connection with enquiries under this section, the Officer must specify the date by which that information is to be provided.
- (10) Where the information is not provided by the specified date, the Certification Officer must proceed with determining whether to make a declaration under subsection (1) unless the Officer considers that it would be inappropriate to do so.
- (11) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.
- (12) An enforcement order made by the Certification Officer under this section may be enforced by the Officer in the same way as an order of the court.
- (13) Where an enforcement order has been made, a person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if the order had been made on an application by that person.”
- (2) Subsection (1) applies only to returns for periods that begin after the day on which this section comes into force.
- (3) In section 45 of the 1992 Act (offences), in subsection (1), for “sections 32” substitute “section 32 (but not sections 32ZA and 32ZB) and sections 32A”.

- (4) In section 45D of that Act (appeals from Certification Officer), after “31” insert “, 32ZC”.

19 Further powers of Certification Officer where enforcement order made

- (1) After section 256C of the 1992 Act (inserted by section 17 above) insert—

“256D Power to impose financial penalties

Schedule A4 (Certification Officer: power to impose financial penalties) shall have effect.”

- (2) After Schedule A3 to the 1992 Act (inserted by section 17 above) insert, as Schedule A4, the Schedule set out in Schedule 3 to this Act.
- (3) Subsections (1) and (2) do not apply in relation to any acts or omissions of a trade union or other person occurring before this section comes into force.
- (4) The provisions of the 1992 Act set out below (which provide for certain orders made by the Certification Officer to be enforceable in the same way as orders of the court) are amended as shown.

| <i>Provision</i> | <i>Amendment</i> |
|-----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| In section 24B (enforcement of sections 24 to 24ZC by Certification Officer), subsection (12) | after “enforced” insert “by the Officer” |
| In section 25 (remedy for failure: application to Certification Officer), subsection (10) | after “enforced” insert “(by the Certification Officer, the applicant or a person mentioned in subsection (5B))” |
| In section 31 (remedy for failure to comply with request for access), subsection (5) | after “enforced” insert “(by the Certification Officer or the applicant)” |
| In section 45C (remedies and enforcement), subsection (9) | after “enforced” insert “(by the Certification Officer, the applicant or a person mentioned in subsection (6))” |
| In section 55 (application to Certification Officer), subsection (9) | after “enforced” insert “(by the Certification Officer, the applicant or a person mentioned in subsection (5C))” |
| In section 72A (application of funds in breach of section 71), subsection (9) | after “enforced” insert “(by the Certification Officer, the applicant or a person mentioned in subsection (8))” |
| In section 80 (application to Certification Officer), subsection (9) | after “enforced” insert “(by the Certification Officer, the applicant or a person mentioned in subsection (5C))” |
| In section 82 (rules as to political fund), subsection (4B) | after “enforced” insert “(by the Certification Officer, the complainant or a person mentioned in subsection (4A))” |

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| <i>Provision</i> | <i>Amendment</i> |
|-----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| In section 108B (declarations and orders), subsection (8) | after “enforced” insert “(by the Certification Officer, the applicant or a person mentioned in subsection (7))” |

20 Power to impose levy

(1) After section 257 of the 1992 Act insert—

“257A Levy payable to Certification Officer

- (1) The Secretary of State may by regulations make provision for the Certification Officer to require trade unions and employers’ associations (“relevant organisations”) to pay a levy to the Officer.
- (2) The regulations must require the Certification Officer, in determining the amounts to be levied, to aim to ensure that the total amount levied over any period of three years does not exceed the total amount of the Officers’s expenses over that period that are referable to specified functions of the Officer.
- (3) The regulations may make provision for determining what things count as expenses of the Certification Officer for the purposes of provision made by virtue of subsection (2), and may in particular provide for the expenses to be treated as including—
 - (a) expenses incurred by ACAS in providing staff, accommodation, equipment and other facilities under section 254(5), or
 - (b) expenses in respect of which payments are made under section 255(1) or (2).
- (4) The regulations may provide for the Certification Officer to determine the amount of levy payable by a relevant organisation by reference to specified criteria, which may include—
 - (a) the number of members or the amount of income that the organisation has;
 - (b) whether the organisation is—
 - (i) a federated trade union,
 - (ii) a trade union that is not a federated trade union,
 - (iii) a federated employers’ association, or
 - (iv) an employers’ association that is not a federated employers’ association;
 - (c) the different proportions of the Officer’s expenses that are referable to—
 - (i) functions in relation to federated trade unions,
 - (ii) functions in relation to trade unions that are not federated trade unions,
 - (iii) functions in relation to federated employers’ associations, and
 - (iv) functions in relation to employers’ associations that are not federated employers’ associations.

- (5) The regulations may provide—
- (a) for the levy not to be payable, or for a reduced amount to be payable, in specified cases or in cases determined by the Certification Officer in accordance with the regulations;
 - (b) for the intervals at which the levy is to be paid;
 - (c) for interest to be payable where a payment is not made by the required date;
 - (d) for an amount levied to be recoverable by the Certification Officer as a debt.
- (6) The regulations may contain such incidental, supplementary or transitional provisions as appear to the Secretary of State to be necessary or expedient.
- (7) In this section—
- “federated employers’ association” has the same meaning as in section 135;
 - “federated trade union” has the same meaning as in section 118;
 - “specified” means specified in the regulations.
- (8) Before making regulations under this section the Secretary of State must consult relevant organisations and ACAS.
- (9) No regulations under this section shall be made unless a draft of them has been laid before Parliament and approved by a resolution of each House of Parliament.
- (10) The Certification Officer shall pay into the Consolidated Fund amounts received by virtue of this section.”
- (2) In section 258 of that Act (annual reports and accounts), after subsection (1) insert—
- “(1A) A report under this section shall include details of—
- (a) amounts levied by the Certification Officer by virtue of section 257A in the year in question, and
 - (b) how the amounts were determined.”

21 Rights of appeal not limited to questions of law

In each of the following provisions of the 1992 Act, for “on any question of law arising” substitute “on any question arising”—

- (a) section 45D (appeal from Certification Officer on question arising in proceedings etc under section 24B, 24C, 25, 31, 32ZC or 45C);
- (b) section 56A (appeal from Certification Officer on question arising in proceedings etc under section 55);
- (c) section 95 (appeal from Certification Officer on question arising in proceedings etc under Chapter 6 of Part 1);
- (d) section 104 (appeal from Certification Officer on question arising in proceedings etc under section 103);
- (e) section 108C (appeals from Certification Officer on question arising in proceedings etc under Chapter 7A of Part 1).