



# Employment Act 1988

## 1988 CHAPTER 19

### PART I

#### TRADE UNIONS

##### *The Commissioner for the Rights of Trade Union Members*

#### **19 Appointment etc. of the Commissioner**

- (1) The Secretary of State shall appoint an officer to be known as the Commissioner for the Rights of Trade Union Members (in this Act referred to as “the Commissioner”) whose function shall be to provide assistance to persons under section 20 below.
- (2) The provisions of Schedule 1 to this Act shall have effect with respect to the Commissioner.
- (3) Neither the Commissioner nor any member of his staff shall, in his capacity as such, be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

#### **20 Assistance by the Commissioner**

- (1) Subject to the following provisions of this section, where, in relation to any proceedings to which this section applies, an individual who is an actual or prospective party to those proceedings applies to the Commissioner for assistance under this section, the Commissioner shall, as soon as reasonably practicable after receiving the application, consider the application and decide whether and to what extent to grant it.
- (2) It shall be the duty of the Commissioner, as soon as reasonably practicable after making any decision under subsection (1) above—
  - (a) if he has decided to provide assistance—
    - (i) to notify the applicant of his decision, stating the extent of the assistance to be provided; and

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- (ii) to give the applicant a choice, subject to any restrictions specified in the notification, as to the financial arrangements to be made in connection with the provision of the assistance; and
  - (b) if he has decided not to grant the application, to notify the applicant of the decision and, if he thinks fit, of the reasons for his decision.
- (3) Assistance by the Commissioner under this section may include—
  - (a) the making of arrangements for, or for the Commissioner to bear the costs of, the giving of any advice or assistance by a solicitor or counsel; and
  - (b) the making of arrangements for, or for the Commissioner to bear the costs of, the representation of the applicant or the provision to him of such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring an end to any proceedings;

but nothing in this section shall affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend and address the court in any proceedings.
- (4) The matters to which the Commissioner may have regard in determining whether, and to what extent, to grant an application under this section shall include, in particular—
  - (a) whether the case raises a question of principle;
  - (b) whether it is unreasonable, having regard to the complexity of the case, to expect the applicant to deal with the case unaided; and
  - (c) whether, in the opinion of the Commissioner, the case involves a matter of substantial public interest.
- (5) Where—
  - (a) an application for assistance under this section is made in relation to any proceedings or prospective proceedings consisting in, or arising out of, an application for an order of the court under section 16 above or under section 5 of the 1984 Act;
  - (b) the Certification Officer has already made a declaration under that section with respect to the subject matter of the proceedings or, as the case may be, prospective proceedings; and
  - (c) it appears to the Commissioner that the applicant for assistance would (if assisted) have a reasonable prospect of securing the making of such an order in those proceedings,

the Commissioner shall grant the application for assistance to the extent that he considers necessary for securing, so far as reasonably practicable, that all such steps as he considers appropriate (including, where appropriate, the taking of another ballot or the holding of another election) are taken by the trade union in question for the purpose of remedying the failure specified in the declaration and of ensuring that a failure of the same, or a similar, kind does not arise on the part of the union.
- (6) The power of the Commissioner to provide assistance to a prospective applicant to the court under section 16 above or section 5 of the 1984 Act (under which applications may be made either to the court or to the Certification Officer and, in certain cases, may be made to both) shall not entitle the Commissioner to provide assistance with the making of an application to the Certification Officer.
- (7) This section applies to any proceedings or prospective proceedings to the extent that they consist in, or arise out of—

- (a) an application to the court under section 1, 6, 9 or 16 above;
  - (b) an application to the court under subsection (3) of section 8 above or any other proceedings brought by virtue of that section;
  - (c) an application to the court under section 5 of the 1984 Act (remedy for failure to comply with Part I of that Act);
  - (d) proceedings brought by virtue of section 3(1) of the 1913 Act (restriction on application of union funds for certain political purposes) with respect to the unlawful application of the funds of any trade union;
  - (e) such other proceedings, being proceedings against a trade union, an official of a trade union or the trustees of the property of a trade union, as may be specified in an order made by the Secretary of State.
- (8) The power of the Secretary of State to make an order under subsection (7)(e) above shall be exercisable by statutory instrument; and no such order shall be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

## **21 Provisions supplemental to section 20**

- (1) Without prejudice to the power of the Commissioner to enter into any such agreement as he thinks fit as to the terms on which assistance under section 20 above is provided, where the Commissioner grants an application under that section to any person who for the purposes of the application—
- (a) has made any statement which he knew to be false in a material particular; or
  - (b) has recklessly made any statement which was false in a material particular,
- the Commissioner shall be entitled to recover from that person an amount equal to any sums paid by him to that person, or any other person, by way of assistance provided in pursuance of the grant of that application.
- (2) Where the Commissioner provides assistance under section 20 above in relation to any proceedings, it shall be his duty to do so on such terms, or to make such other arrangements, as will secure that any person against whom those proceedings have been or are commenced is informed that assistance has been or is being provided by the Commissioner in relation to the proceedings.
- (3) In every case where assistance provided by the Commissioner under section 20 above extends to assistance with respect to the conduct of any proceedings to which that section applies, that assistance shall include an agreement under which the Commissioner is required (subject only to such exceptions as may have been contained in the notification under subsection (2) of that section of the Commissioner's decision on the application) to indemnify the applicant for so much of any liability of the applicant to pay any amount in respect of costs or expenses to any other person as arises by virtue of any judgment or order of the court in the proceedings in relation to which the assistance is provided.
- (4) In so far as expenses are incurred by the Commissioner in providing the applicant with assistance under section 20 above the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules of court) shall, in England and Wales, constitute a first charge for the benefit of the Commissioner—
- (a) on any costs which, by virtue of a judgment or order of the court, are payable to the applicant by any other person in respect of the matter in connection with which the assistance is provided; and

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- (b) on any sum payable to the applicant under any compromise or settlement arrived at in connection with that matter to avoid or bring an end to any proceedings.
- (5) In relation to Scotland such expenses as are referred to in subsection (4) above (as taxed or assessed as provided for in that subsection) shall be paid to the Commissioner, in priority to any other debts—
- (a) out of any expenses which, by virtue of a judgment or order of the court, are payable to the applicant by any other person in respect of the matter in connection with which the assistance is provided; and
  - (b) out of any sum payable to the applicant under any such compromise or settlement as is referred to in paragraph (b) of that subsection.
- (6) In this section “the applicant”, in relation to any assistance under section 20 above, means the individual on whose application under that section that assistance is provided.