



# Employment Act 1988

## 1988 CHAPTER 19

### PART I

#### TRADE UNIONS

##### *Rights of trade union members*

#### **1 Right to a ballot before industrial action**

- (1) A member of a trade union who claims that the union has, without the support of a ballot, authorised or endorsed any industrial action in which members of the union (including that member) are likely to be, or have been, induced by the union to take part or to continue to take part may apply to the court for an order under this section.
- (2) Where, on an application under this section, the court is satisfied—
  - (a) that a trade union has, without the support of a ballot, authorised or endorsed any industrial action;
  - (b) that (whether or not the action has already commenced) members of the union are likely to be, or have been, induced by the union to take part or to continue to take part in that action; and
  - (c) that the members of the union who are likely to be, or have been, so induced include the applicant,

the court shall make such order as it considers appropriate for requiring the union to take steps (including the withdrawal of any relevant authorisation or endorsement) for ensuring that there is no, or no further, inducement of members of the union to take part or to continue to take part in that action and that no such member engages in any conduct after the making of the order by virtue of having been induced before the making of the order to take part or to continue to take part in the action.

- (3) For the purposes of this section a trade union has authorised or endorsed any industrial action if there has been—

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- (a) such an authorisation or endorsement of an act which has been done for inducing any member of the union to take part or to continue to take part in that action; or
  - (b) such an authorisation of any proposed act for inducing such a member to take part or to continue to take part in that action,
- as requires that member, or if the act were done would require that member, to be treated for the purposes of this section as induced by the union to take part or, as the case may be, to continue to take part in that action.
- (4) For the purposes of this section a person shall be treated as induced by a trade union to take part or to continue to take part in any industrial action if he is subjected to such an inducement to take part or to continue to take part in that action as is or (if it constituted an inducement to break a contract of employment or to interfere with the performance of such a contract) would be taken, for the purposes of any such proceedings as are mentioned in subsection (2) of section 15 of the 1982 Act (liability of unions for official action), to have been done by the union.
- (5) For the purposes of an application under this section an authorisation or endorsement by a trade union of any industrial action is without the support of a ballot unless—
- (a) the trade union has held one or more ballots in respect of that action;
  - (b) the applicant has been accorded entitlement to vote in the ballot or, as the case may be, in one of them;
  - (c) section 11 of the 1984 Act (requirements to be satisfied in relation to ballots on industrial action) has been satisfied in relation to the ballot in which the applicant was accorded entitlement to vote;
  - (d) the majority voting in that ballot have answered “Yes”—
    - (i) in the case of action which consists in a strike, to a question (however framed) which requires the person answering it to say, by answering “Yes” or “No”, whether he is prepared to take part or, as the case may be, to continue to take part in a strike;
    - (ii) in the case of action which consists in action short of a strike, to a question (however framed) which requires the person answering it to say, by answering “Yes” or “No”, whether he is prepared to take part or, as the case may be, to continue to take part in such action;
    - (iii) in the case of action which consists in action to which both of the questions mentioned in sub-paragraphs (i) and (ii) above are applicable, to the question or questions applicable to that part of the action in which the applicant is likely to be, or has been, induced to take part or to continue to take part;
- and
- (e) the first authorisation or endorsement of that industrial action and, in the case of any action which has been authorised rather than endorsed, the commencement of the action occurred or is likely to occur at a time after the date of that ballot and before the end of the period of four weeks beginning with that date.
- (6) In this section references to an inducement, in relation to a member of a trade union, include references to an inducement which is or would be ineffective, whether because of that member’s unwillingness to be influenced by it or for any other reason.
- (7) In this section—
- “date of the ballot” has the same meaning as in Part II of the 1984 Act;

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“industrial action” means any strike or other industrial action by persons employed under contracts of employment;

“strike” means any concerted stoppage of work.

- (8) Nothing in this section shall be construed as requiring a trade union to hold separate ballots

## **2 Right not to be denied access to the courts etc**

- (1) Notwithstanding anything in the rules of any trade union or in the practice of any court, where—

- (a) a person who is or has been a member of a trade union commences proceedings in any court with respect to any relevant matter;
- (b) that person has previously made a valid application to the union for that matter to be submitted for determination or conciliation in accordance with the union’s rules; and
- (c) those proceedings are commenced after the end of the period of six months beginning with the day on which the union received the application,

the rules requiring or allowing that matter to be so submitted and the fact that any steps remain to be taken for the purposes of, or in connection with, the determination or conciliation of that matter shall be regarded for all purposes as irrelevant to any question whether those proceedings should be dismissed, stayed or sisted, or adjourned.

- (2) If a court is satisfied in any proceedings with respect to any relevant matter that any delay in the taking of steps for the purposes of, or in connection with, the determination or conciliation of that matter in accordance with the rules of any trade union was attributable to the unreasonable conduct of the person who commenced the proceedings, the court may, in relation to those proceedings, treat the period of six months specified in paragraph (c) of subsection (1) above as extended by such further period as the court considers appropriate.
- (3) Where any person has made an invalid application to a trade union for any relevant matter to be submitted for determination or conciliation in accordance with the union’s rules, the application shall be deemed to be valid for the purposes of subsection (1) above unless the union informs that person, before the end of the period of twenty-eight days beginning with the day on which the union received the application, of all the respects in which the application contravened the requirements of those rules.
- (4) For the purposes of this section a matter is a relevant matter, in relation to a person who is or has been a member of a trade union, if—
- (a) it is required or allowed under the rules of the union to be submitted for determination or conciliation in accordance with those rules; and
  - (b) a provision of the rules purporting to provide for such a determination or conciliation to be that person’s only remedy in respect of that matter has no effect or, as the case may be, would have no effect if there were one.
- (5) In this section—
- (a) references, in relation to a trade union, to its rules include references to any arbitration or other agreement entered into in pursuance of any requirement imposed by or under the rules of the union; and
  - (b) references to the taking of steps for the purposes of, or in connection with, the determination or conciliation of any matter which has been submitted

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for determination or conciliation in accordance with the rules of a trade union include references to the taking of any steps for the purposes of, or in connection with, any appeal, review or reconsideration under those rules of any determination or award made on that submission.

- (6) This section shall be without prejudice to any enactment or rule of law by virtue of which a court would, apart from this section, disregard any rules of a trade union, or any such fact as is mentioned in subsection (1) above, when determining whether to exercise any jurisdiction of the court or when determining how to exercise any such jurisdiction.

### **3 Right not to be unjustifiably disciplined**

- (1) An individual who is or has at any time been a member of a trade union shall have the right not to be unjustifiably disciplined by that union.
- (2) For the purposes of this section and sections 4 and 5 below an individual who is disciplined by a trade union is unjustifiably disciplined if the actual or supposed conduct which constitutes the reason, or one of the reasons, for disciplining him is—
- (a) conduct falling within subsection (3) below; or
  - (b) something which is believed by the union to amount to any such conduct.
- (3) Conduct by an individual falls within this subsection if—
- (a) it consists in a failure to participate in or support any strike or other industrial action (whether by members of the trade union in question or by others) or indicates opposition to, or a lack of support for, any such strike or industrial action;
  - (b) it consists in a failure to contravene, for any purpose connected with any such strike or other industrial action, any requirement imposed on that individual by or under a contract of employment or any other agreement between that individual and a person for whom he works or normally works;
  - (c) it consists in the making (whether by the bringing of proceedings or otherwise) of any assertion that the union, any official or representative of the union or any trustee of any of the union's property has contravened, or is proposing to contravene, any requirement which is, or is thought to be, imposed by or under the rules of the union or any other agreement or by or under any enactment or rule of law;
  - (d) it consists in encouraging or assisting any person to perform an obligation imposed on that person by a contract of employment or any other agreement between that person and a person for whom he works or normally works or to make or to attempt to vindicate any such assertion as is mentioned in paragraph (c) above;
  - (e) it involves the Commissioner or the Certification Officer being consulted or asked to provide advice or assistance with respect to any matter whatever or involves any other person being consulted or asked to provide advice or assistance with respect to a matter which forms, or might form, the subject matter of any such assertion as is mentioned in paragraph (c) above;
  - (f) it consists in a contravention of any requirement imposed by or in consequence of any determination constituting an infringement of the right under this section of that individual or of any other individual; or

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- (g) it consists in proposing to engage in conduct falling within any of paragraphs (a) to (f) above or in doing anything preparatory or incidental to engaging in any such conduct;

but an act, omission or statement by any individual does not fall within this subsection by reason of its being comprised in conduct falling within any of paragraphs (a) to (g) above if it is shown that that act, omission or statement is one in respect of which individuals would be disciplined by the union irrespective of whether their acts, omissions or statements were in connection with conduct falling within any of paragraphs (a) to (f) above.

- (4) An individual who has been disciplined by a trade union shall not be treated for the purposes of this section and sections 4 and 5 below as having been unjustifiably disciplined if it is shown—
  - (a) that the reason or one of the reasons for disciplining him was that he made any such assertion as is mentioned in subsection (3)(c) above or encouraged or assisted any other person to make or to attempt to vindicate any such assertion;
  - (b) that that assertion was false and that, in making it or, as the case may be, in encouraging or assisting any other person to make or to attempt to vindicate it, that individual acted either in the belief that it was false or otherwise in bad faith; and
  - (c) that there was no other reason for disciplining him or that the only other reasons were reasons in respect of which he does not fall to be treated for those purposes as having been unjustifiably disciplined.
- (5) For the purposes of this section and sections 4 and 5 below an individual is disciplined by a trade union if a determination is made, or purportedly made, under the rules of the union or is made by an official of the union or by a number of persons including such an official—
  - (a) that that individual should be expelled from the union or from any branch or section of the union;
  - (b) that that individual should pay any sum to the union, to any branch or section of the union or to any other person whatever;
  - (c) that sums tendered by that individual in respect of any obligation to pay subscriptions or other sums to the union, or to any branch or section of the union, should be treated as unpaid or as paid for a different purpose;
  - (d) that that individual should be deprived (whether indefinitely or for a specified period and whether in all circumstances or only in particular circumstances) of, or of access to, any of the benefits, services or facilities which would otherwise be provided or made available to him by virtue of his membership of the union, or of any branch or section of the union;
  - (e) that another trade union, or a branch or section of another trade union, should be encouraged or advised not to accept that individual as a member; or
  - (f) that that individual should be subjected to any other detriment.
- (6) In this section—
  - “enactment” includes an enactment contained in this Act or in any Act passed after this Act;
  - “representative”, in relation to a trade union, means any person acting or purporting to act—
    - (a) in his capacity as a member of the union; or

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- (b) on the instructions or advice of a person acting or purporting to act in that capacity or in the capacity of an official of the union.
- (7) The right conferred by this section is in addition to (and not in substitution for) any right which exists otherwise than by virtue of this section; and, without prejudice to any remedy for the infringement of any such other right and subject to subsection (8) below, the only remedies for any infringement of the right conferred by this section shall be those provided by sections 4 and 5 below.
- (8) Where a determination made in infringement of any individual's right under this section requires the payment of any sum or the performance of any other obligation, no person shall be entitled in any proceedings to rely on that determination for the purpose of recovering that sum or of enforcing that obligation.

#### **4 Complaint of infringement of right under section 3**

- (1) An individual who claims that he has been unjustifiably disciplined by a trade union may present a complaint against the union to an industrial tribunal that his right under section 3 above has been infringed.
- (2) A tribunal shall not entertain a complaint presented by any individual against a trade union under this section unless it is presented to the tribunal before the end of the period of three months beginning with the date of the making of the determination which the individual claims constituted an infringement of his right or within such further period as the tribunal considers reasonable in a case where it is satisfied as to one or both of the matters mentioned in subsection (3) below.
- (3) The matters referred to in subsection (2) above are—
  - (a) that it was not reasonably practicable for the complaint to be presented before the end of the period of three months; and
  - (b) that any delay in the making of the complaint is wholly or partly attributable to any reasonable attempt, otherwise than under this section, to appeal against the determination to which the complaint relates or to have that determination reconsidered or reviewed.
- (4) Where, on a complaint presented by any individual against a trade union under this section, the tribunal finds that that individual has been unjustifiably disciplined by that union, the tribunal shall make a declaration that the complaint is well-founded.
- (5) An appeal shall lie to the Employment Appeal Tribunal on any question of law arising from any decision of, or arising in any proceedings before, an industrial tribunal under this section.
- (6) Where an individual who is, or is seeking to be, in employment to which section 4 of the Employment Act 1980 applies (employment governed by a union membership agreement) is refused membership of, or is expelled from, a trade union in pursuance of a determination which constitutes an infringement of his right under section 3 above—
  - (a) that individual shall not be entitled to present any complaint under this section in respect of that determination; but
  - (b) the refusal or expulsion shall be regarded as unreasonable for the purposes of the said section 4 (unreasonable exclusion or expulsion from a trade union in a case where a person is, or is seeking to be, in employment to which that section applies).

- (7) Any provision in an agreement shall be void in so far as it purports—
- (a) to exclude or limit the right conferred by section 3 above or the operation of this section or section 5 below; or
  - (b) to preclude any individual from presenting a complaint under this section or from making an application under section 5 below;
- but this subsection shall not apply to an agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action in accordance with section 133(2) or (3) of the 1978 Act (conciliation).

## **5 Further remedies for infringement of right under section 3**

- (1) An individual whose complaint against a trade union under section 4 above has been declared to be well-founded may make an application in accordance with subsection (2) below for one or both of the following, that is to say—
- (a) an award of compensation to be paid to him by the union; and
  - (b) an order that the union pay to him an amount equal to any sum which he has paid in pursuance of a determination falling within subsection (5)(b) of section 3 above.
- (2) If at the time when the application under this section is made—
- (a) the determination constituting the infringement of the applicant's right under section 3 above has not been revoked; or
  - (b) the trade union in question has failed to take all such steps as are necessary for securing the reversal of anything done for the purpose of giving effect to that determination,
- the application shall be to the Employment Appeal Tribunal; and, in any other case, it shall be to an industrial tribunal.
- (3) An industrial tribunal or the Employment Appeal Tribunal shall not entertain an application under this section if it is made before the end of the period of four weeks beginning with the date of the declaration under section 4 above or after the end of the period of six months beginning with that date.
- (4) Where the Employment Appeal Tribunal or any industrial tribunal is satisfied, on an application under this section, that it would (but for this subsection) be required by virtue of subsection (2) above to dismiss the application, it may, instead of dismissing it, transfer the application to an industrial tribunal or, as the case may be, to the Employment Appeal Tribunal; and an application transferred under this subsection shall be proceeded with as if it had been made in accordance with that subsection at the time when it was originally made.
- (5) Subject to the following provisions of this section, the amount of compensation awarded on an application under this section shall be such as the industrial tribunal or, as the case may be, the Employment Appeal Tribunal considers just and equitable in all the circumstances.
- (6) In determining the amount of compensation to be awarded under this section, the industrial tribunal or the Employment Appeal Tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable at common law in England and Wales or, as the case may be, in Scotland.

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- (7) Where the industrial tribunal or the Employment Appeal Tribunal finds that the infringement which is the subject matter of the application was to any extent caused or contributed to by any action of the applicant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.
- (8) The amount of compensation awarded against a trade union on an application under this section shall not exceed the aggregate of—
- (a) an amount equal to thirty times the limit for the time being imposed by paragraph 8(1)(b) of Schedule 14 to the 1978 Act (maximum amount of a week's pay for purpose of calculating basic award in unfair dismissal cases); and
  - (b) an amount equal to the limit for the time being imposed by section 75 of that Act (maximum compensatory award in such cases),
- and, in the case of an application to the Employment Appeal Tribunal, shall not be less than the amount for the time being specified in section 73(4A) of that Act (minimum basic award in certain cases of unfair dismissal).
- (9) In determining the amount of any compensation to be awarded against a trade union on an application under this section any reduction or increase which is required to be made by virtue of subsection (8) above shall be made—
- (a) before any reduction is made by virtue of subsection (6) or (7) above; and
  - (b) before any reduction is made on account of sums already paid by the union by way of compensation in respect of the determination to which the application relates or in respect of anything done for the purpose of giving effect to that determination;
- and, accordingly, where the case so requires, the reductions mentioned in paragraphs (a) and (b) above shall be applied to the maximum or, as the case may be, minimum award under subsection (8) above.
- (10) An appeal shall lie to the Employment Appeal Tribunal on a question of law arising from any decision of, or arising in proceedings before, an industrial tribunal under this section.

## **6 Right to inspect union's accounting records**

- (1) It shall be the duty of a trade union to keep its accounting records available for inspection in pursuance of this section from their creation until the end of the period of six years beginning with the 1st January following the end of the period to which the records relate.
- (2) Where—
- (a) at a time when a trade union is required under subsection (1) above to keep any accounting records available for inspection, any person who is a member of the union makes a request to the union to be allowed access to any of those records; and
  - (b) none of the records that are the subject matter of the request relates to a period other than one which includes a time when that person was a member of the union,

it shall be the duty of the union to comply with the request in accordance with subsection (3) below and, if the period mentioned in subsection (1) above expires



before the request is complied with, to continue to keep those records available for inspection by that person until the request is complied with.

- (3) The trade union shall perform its duty to comply with a request under subsection (2) above—
- (a) by making arrangements with the person who made the request for that person to be allowed, before the end of the period of twenty-eight days beginning with the day on which the request was made, to inspect the records which are the subject matter of the request;
  - (b) by allowing that person and any accountant who may accompany him for the purpose to inspect those records at the time and place arranged; and
  - (c) by securing that at the time of the inspection that person is allowed to take, or is supplied with, such copies of, or of extracts from, any records inspected by him as he may require.
- (4) Except where the parties to any arrangements made under subsection (3) above otherwise agree, an inspection under any such arrangements of any accounting records shall be at a reasonable hour and at the place where the records are normally kept.
- (5) A trade union shall not be required to allow a person inspecting any accounting records under this section to be accompanied by an accountant if the accountant fails to enter into such agreement as the union may reasonably require for protecting the confidentiality of the records.
- (6) Where—
- (a) a trade union complies with a request made by any person under subsection (2) above; and
  - (b) that person had been informed by the union, before any arrangements were made in pursuance of that request—
    - (i) of the union's intention to charge for allowing that person to inspect the records to which the request relates, for allowing that person to take any copies of, or of extracts from, those records or for supplying any such copies; and
    - (ii) of the principles in accordance with which its charges will be determined,that person shall be liable to pay to the union on demand such amount, not exceeding the reasonable administrative expenses incurred by the union in complying with the request, as is determined in accordance with the principles of which that person was so informed.
- (7) Any person who claims that a trade union has failed in any respect to comply with a request made by that person under subsection (2) above may apply to the court for an order under this section; and where, on such an application, the court is satisfied that a trade union has failed to comply with any such request, the court shall make such order as it considers appropriate for ensuring that that person—
- (a) is allowed to inspect the records which are the subject matter of the request;
  - (b) is allowed to be accompanied by an accountant when making an inspection of those records; and
  - (c) is allowed to take, or is supplied with, such copies of, or of extracts from, those records as he may require.
- (8) Section 12 of the 1974 Act (offences in relation to a trade union's accounts etc.) shall apply in relation to the duties to keep accounting records available for inspection which

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are imposed on trade unions by subsections (1) and (2) above as it applies in relation to the duties imposed on trade unions by sections 10 and 11 of that Act.

(9) In this section—

- (a) references to accounting records, in relation to a trade union, are references to such of the documentary and non-documentary accounting records of that union, or of any branch or section of that union, as are, or purport to be, records which are required to be kept by the union under section 10 of the 1974 Act and which relate to any period beginning after 31st December 1987;
- (b) references to a trade union do not include references to a trade union falling within paragraph (b) of section 28(1) of the 1974 Act which consists wholly of constituent or affiliated organisations, of representatives of such organisations or of such organisations together with representatives of constituent or affiliated organisations; and
- (c) references to an accountant, in relation to the inspection of any accounting records, are references to any person who, at the time of the inspection, is qualified under paragraph 6 of Schedule 2 to the 1974 Act to be the auditor of a trade union.

(10) Nothing in this section shall be construed as preventing a duty to comply with a request made in relation to the accounting records of a branch or section of a trade union from arising where the request is made by a person who, although he was a member of the union at the time of his request and at a time during the period to which the records relate, was not a member of that branch or section at one or both of those times.

## 7 **Right to require employer to stop deductions of union subscriptions**

(1) Where any person (“the employee”) has certified to his employer—

- (a) that there has been or will be, as from a particular date, such a termination of his membership of any trade union as is within the knowledge of the union; or
- (b) that any notice which he has given to a trade union for the purpose of terminating his membership of that union has expired or will expire on a particular date,

the employer shall ensure that no amount representing a payment to the union in respect of the employee’s membership after that date of that union is deducted from emoluments payable by the employer to the employee.

(2) Subsection (1) above does not apply in relation to emoluments paid—

- (a) before the first day following the giving of the certificate on which it is reasonably practicable for the employer to give effect, in compliance with that subsection, to a variation of the net amount of emoluments payable to the employee; or
- (b) after the employee notifies his employer that the certificate is withdrawn.

(3) Notwithstanding anything in any contract between the employee and the employer, or in any agreement or consent signified by the employee, a deduction made in contravention of this section shall in all cases be treated for the purposes of Part I of the Wages Act 1986 as a deduction in contravention of section 1(1) of that Act.

### *Use of trade union funds*

## **8 Use of funds for indemnifying unlawful conduct**

- (1) It shall be unlawful for any of the property of a trade union to be applied—
  - (a) in or towards the payment for any individual, or securing the payment for any individual, of any penalty which has been or may be imposed on him for a relevant offence or for contempt of court; or
  - (b) in or towards the provision of anything for indemnifying any individual in respect of any penalty which has been or may be imposed on him for any such offence or for contempt of court.
- (2) Where any property of a trade union is applied in contravention of subsection (1) above for the benefit of a particular individual on whom a penalty has been or may be imposed—
  - (a) in the case of a payment, an amount equal to the amount of the payment shall be recoverable by the union from that individual; and
  - (b) in the case of an application of property otherwise than by the making of a payment, that individual shall be liable to account to the union for the value of the property.
- (3) A member of a trade union who claims that a failure by that union to bring or continue any proceedings by virtue of subsection (2) above is unreasonable may apply to the court for an authorisation under this subsection; and where, on such an application, the court is satisfied that the failure is unreasonable, the court may make an order authorising the applicant to bring or continue the proceedings on the union's behalf and at the union's expense.
- (4) In this section—

“penalty”, in relation to a relevant offence, includes an order to pay compensation and an order for the forfeiture of any property, and references to the imposition of a penalty for an offence shall be construed accordingly;

“relevant offence” means any offence other than an offence for the time being designated by order made by the Secretary of State as an offence in relation to which this section does not apply.
- (5) The power of the Secretary of State to make an order under subsection (4) above designating any offence shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Subsection (1) above shall be without prejudice to any enactment, rule of law or provision of the rules of a trade union which, apart from this section, makes it unlawful for the property of a trade union to be applied in a particular way; and subsections (2) and (3) above shall be without prejudice to any remedy available otherwise than under this section to a trade union, the trustees of its property or any of its members in respect of any unlawful application of the union's property.

## **9 Remedy against trustees for unlawful use of property**

- (1) Subject to subsection (2) below, a member of a trade union who claims that the trustees of the union's property—

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- (a) have so carried out their functions, or are proposing so to carry out their functions, as to cause or permit any unlawful application of the union's property; or
- (b) have complied, or are proposing to comply, with any unlawful direction which has been or may be given, or purportedly given, to them under the rules of the union,

may apply to the court for an order under this section.

- (2) A person shall not be entitled to make an application under subsection (1) above in a case relating to property which has already been unlawfully applied or to an unlawful direction that has already been complied with, unless he was a member of the union at the time when the property was applied or, as the case may be, the direction complied with.
- (3) Subject to subsection (4) below, where, on an application under subsection (1) above, the court is satisfied that the claim is well-founded, the court shall make such order as it considers appropriate; and, without prejudice to the generality of its powers under this subsection, the powers of the court on such an application shall include—
  - (a) power to require the trustees of a trade union (if necessary, on behalf of the union) to take all such steps as may be specified in the order for protecting or recovering the property of the union;
  - (b) power to appoint a receiver of, or in Scotland a judicial factor on, the property of a trade union; and
  - (c) power to remove one or more of the trustees of any such property.
- (4) Where the court makes an order under this section—
  - (a) in a case in which property of a trade union has been applied in contravention of the order of any court or in compliance with any direction given in contravention of the order of any court; or
  - (b) in a case in which the trustees in question were proposing to apply property in contravention of the order of any court or to comply with any direction the giving of which was or, as the case may be, would have been in contravention of the order of any court,

the order of the court under this section shall remove all the trustees except any trustee who satisfies the court that there is a good reason for allowing him to remain a trustee.

- (5) This section shall be without prejudice to any remedy available otherwise than under this section in respect of any breach of trust by the trustees of a trade union's property.

*The closed shop etc.*

## **10 Industrial action to enforce membership**

- (1) Nothing in section 13 of the 1974 Act (immunity for acts in contemplation or furtherance of a trade dispute) shall prevent an act being actionable in tort or delict in any case where the reason, or one of the reasons, for which the act is done is the fact or belief that a particular employer—
  - (a) is employing, has employed or might employ a person who is not a member of any trade union, a person who is not a member of a particular trade union or a person who is not a member of one of a number of particular trade unions; or
  - (b) is failing, has failed or might fail to discriminate against any such person.

- (2) For the purposes of subsection (1)(b) above an employer discriminates against a person who is not a member of any trade union, of a particular trade union or, as the case may be, of one of a number of particular trade unions, if but only if he ensures that his conduct in relation to persons, or persons of any description, who are employed by him or who apply to be, or are, considered by him for employment or in relation to the provision of employment for such persons—
- (a) is different, in some or all cases, according to whether or not those persons are such members; and
  - (b) is more favourable to those who are.
- (3) In this section—
- (a) references to an employer employing a person are references to a person acting in the capacity of the person for whom a worker works or normally works; and
  - (b) references to not being a member of a trade union include references to not being a member of a particular branch or section of that union and to not being a member of one of a number of particular branches or sections of that union.

## **11 Action by an employer to enforce membership**

In the 1978 Act, the following provisions (which enable an employer to take action in certain circumstances to enforce trade union membership) shall cease to have effect, that is to say—

- (a) in section 23 (action short of dismissal), subsections (2A) and (2B); and
- (b) in section 58 (dismissal), subsections (3) to (12).

### *Provisions as to ballots and elections*

## **12 Extension to non-voting positions of duty to hold elections**

- (1) In subsections (1) to (3) of section 1 of the 1984 Act (duty to hold election of voting members of a trade union's principal executive committee), the word "voting", wherever it occurs, shall be omitted; and after subsection (6) of that section there shall be inserted the following subsections—

“(6A) For the purposes of this section a person is a member of the principal executive committee of a trade union if he is a voting member of that union's principal executive committee or, except in the case of a special register body and subject to subsection (6C) below, if—

- (a) that person is, under the rules of the union, a member, other than a voting member, of that committee (whether by virtue of his holding any position in the union or otherwise); or
- (b) that person may, under the rules or practice of the union, attend and speak at some or all of the meetings of that committee otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the committee in carrying out its functions.

(6B) Notwithstanding anything in the rules or practice of any trade union, the persons who hold the following positions in a trade union which is not a special register body shall (if the rules of the union do not otherwise provide for them to be members of the union's principal executive committee) be

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deemed for the purposes of this section to be members of that committee by virtue of subsection (6A)(b) above, that is to say—

- (a) the position of president of the union or, in the case of a union with no such position, any equivalent position; and
- (b) the position of general secretary of the union, or in the case of a union with no such position, the position in the union which is the equivalent, or nearest equivalent, to that of general secretary.

(6C) For the purposes of this section where any person who holds in any trade union any such position as is mentioned in paragraph (a) or (b) of subsection (6B) above—

- (a) is, in respect of that position, neither a voting member of the principal executive committee of the union nor an employee of the union;
- (b) holds that position for a period which under the rules of the union cannot end more than thirteen months after he took up that position; and
- (c) has held neither that position nor any other position so mentioned at any time in the period of twelve months ending with the day before he took up that position,

that position shall not be regarded for the purposes of this section as a position by virtue of holding which that person is a member of that committee or is deemed under that subsection to be such a member.”

(2) Without prejudice to section 7(4) to (8) of the 1984 Act (Part I not to apply to a trade union for a year after its formation), where—

- (a) by virtue of any election (including one held before the coming into force of this subsection) a person is a member of a trade union’s principal executive committee at a time after the coming into force of this subsection when that trade union amalgamates with, or transfers its engagements to, another union under the Trade Union (Amalgamations, etc.) Act 1964;
- (b) under the instrument of amalgamation or transfer, that person becomes a member of the principal executive committee of the trade union formed by the amalgamation or, as the case may be, of the union to which the engagements are transferred (whether by taking up the same position as he held in the amalgamating or transferring union or by taking up any other position); and
- (c) under Part I of the 1984 Act or the following provisions of this section that person would have been entitled, at the time of the amalgamation or transfer, to continue for any period, without being re-elected, to be a member of the principal executive committee mentioned in paragraph (a) above or, as the case may be, to hold the position by virtue of which he was such a member,

Part I of that Act shall not apply in relation to that person to the union formed by the amalgamation or, as the case may be, to the union to which the engagements are transferred until the end of the period mentioned in paragraph (c) above.

(3) Where a person to whom the provisions of section 1 of the 1984 Act are extended by virtue of subsection (1) above was elected as a member of a trade union’s principal executive committee, or to any position in respect of which those provisions are so extended to him, at an election held within the period of five years ending with the coming into force of this section—

- (a) the amendment made by that subsection shall not have the effect of requiring section 2 of that Act (requirements as to elections) to be satisfied in relation to that election; and

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- (b) the period of five years mentioned in subsection (1)(b) of the said section 1 shall be calculated in relation to that person from the date of that election.
- (4) The reference in subsection (3) above to an election held within the period of five years ending with the coming into force of this section does not include a reference to an election in which the only persons entitled to vote were persons who at the time of the election were members of the principal executive committee of the trade union in question.
- (5) Where at the coming into force of this section any person—
  - (a) holds any full-time position as an employee of a trade union, being a position in respect of which (but for this subsection) the provisions of section 1 of the 1984 Act would be extended to him by virtue of subsection (1) above;
  - (b) is entitled under the rules of the union to hold that position, without any renewal of his contract of employment, until he reaches retirement age;
  - (c) will reach retirement age within two years; and
  - (d) has been a full-time employee of the union for a period (which need not be continuous) of at least ten years,

then the amendment made by that subsection shall not have the effect of extending those provisions to that person in respect of that position except in so far as he continues to hold it after reaching retirement age.

- (6) In this section—
  - “principal executive committee” has the same meaning as in Part I of the 1984 Act; and
  - “retirement age” has the same meaning as in section 8 of that Act;and references in this section to a person being a member of a trade union’s principal executive committee shall be construed, including in relation to a time before the coming into force of this section, in accordance with section 1 of the 1984 Act, as amended by this section.

### **13 Election addresses**

- (1) The requirements which are to be satisfied for the purposes of Part I of the 1984 Act (elections for certain positions) shall, in relation to any election held after the coming into force of this section, include the requirements of subsection (2) below.
- (2) The trade union in question must—
  - (a) subject to subsection (3) below, provide every candidate in the election with an opportunity of preparing an election address in his own words and of submitting it to the union to be distributed to the persons who are accorded entitlement to vote in the election;
  - (b) so far as reasonably practicable, secure that copies of every election address submitted to the union before such time as it may have determined are distributed by the sending of a copy of each such address, with the voting paper for the election, by post to each of those persons at his proper address;
  - (c) make such arrangements for the production of the copies to be so distributed as secure that none of the candidates is required to bear any of the expense of producing those copies;
  - (d) secure that no modification of any election address so submitted is made by any person in any copy of the address to be distributed except, subject to paragraphs (e) and (f) below, at the request or with the consent of the candidate

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- or where the modification is necessarily incidental to the method adopted for producing that copy;
- (e) secure that the same method of producing copies is applied in the same way to every election address so submitted and, so far as reasonably practicable, that no such facility or information as would enable a candidate to gain any benefit from—
- (i) the method by which copies of the election addresses are produced; or
  - (ii) the modifications which are necessarily incidental to that method,
- is provided to any candidate without being provided equally to all the others; and
- (f) so far as reasonably practicable, secure that the same facilities and restrictions with respect to the preparation, submission, length or modification of an election address and with respect to the incorporation in any such address of a photograph or of any other matter not in words are provided or applied equally to each of the candidates.
- (3) Subject to subsection (2)(f) above, a trade union may for the purposes of this section provide that election addresses submitted to it for distribution—
- (a) must not exceed such length, not being less than one hundred words, as may be determined by the union; and
  - (b) may incorporate only such photographs and other matter not in words as the union may determine.
- (4) A time determined for the purposes of subsection (2) above as the time by which election addresses for an election must be submitted to the union shall be no earlier than the latest time at which a person may become a candidate in that election.
- (5) No person other than the candidate himself shall be subject to any civil or criminal liability in respect of any publication of a candidate's election address, or of any copy of such an address, which is required to be made for the purposes of this section.
- (6) In this section "post" and "proper address" have the same meanings as in Part I of the 1984 Act.

#### **14 Requirement of postal ballot for certain ballots and elections**

- (1) In section 4 of the 1913 Act (approval of rules for ballots to be taken on the application of trade union funds for political purposes), for subsection (1D) (which allows for non-postal ballots) there shall be substituted the following subsection—

“(1D) So far as is reasonably practicable every person who is entitled to vote in the ballot must—

- (a) have a voting paper sent to him by post at his home address or any other address which he has requested the trade union in writing to treat as his postal address; and
- (b) be given a convenient opportunity to vote by post.”;

and the approval which is required under the said section 4 to be given in relation to any ballot taken after the coming into force of this subsection shall be an approval given after the coming into force of this subsection.

- (2) Section 3 of the 1984 Act (which allows for non-postal ballots in the elections required to be held for certain union positions) shall cease to have effect.



## **15 Independent scrutiny of certain ballots and elections**

- (1) In relation to ballots taken and elections held after the coming into force of this section—
- (a) the requirements as to which the Certification Officer is to be satisfied under subsection (1) of section 4 of the 1913 Act (ballots on the application of funds for political purposes); and
  - (b) the requirements which are to be satisfied for the purposes of Part I of the 1984 Act (elections for certain positions),
- shall include the requirements of subsections (2) to (7) below.
- (2) The trade union in question—
- (a) must, before the ballot is taken or the election held, appoint a qualified independent person (“the scrutineer”) to carry out—
    - (i) the functions in relation to the ballot or election which are required under subsection (4) below to be contained in the scrutineer’s appointment; and
    - (ii) such additional functions in relation to that ballot or election as may be specified in his appointment;
  - (b) must ensure that nothing in the terms of the scrutineer’s appointment, or in any additional functions specified in that appointment, is such as to make it reasonable for any person to call the scrutineer’s independence in relation to the union into question;
  - (c) must ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer’s independence in relation to the union into question; and
  - (d) must comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.
- (3) For the purposes of this section a person is a qualified independent person in relation to a ballot or election if—
- (a) he satisfies such conditions as may be specified for the purposes of this paragraph in an order made by the Secretary of State or is himself so specified; and
  - (b) the trade union in question has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot or election otherwise than competently or that his independence in relation to the union, or in relation to the ballot or election, might reasonably be called into question;
- and the power to make an order under paragraph (a) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) An appointment for the purposes of this section shall require the scrutineer—
- (a) to be the person who supervises the production and distribution, for the purposes of the ballot or election, of all the voting papers and the person to whom those voting papers are returned by those voting;
  - (b) to take such steps as appear to him to be appropriate for the purpose of enabling him to make the report mentioned in subsection (5) below;
  - (c) as soon as reasonably practicable after the last date for the return of voting papers, to make that report to the trade union in question; and

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- (d) to retain custody of all voting papers returned for the purposes of the ballot or election—
  - (i) until the end of the period of one year beginning with the announcement by the union of the result of the ballot or election; and
  - (ii) where within that year any application is made under section 16 below or section 5 of the 1984 Act with respect to that ballot or election, for the period after the end of that year until the Certification Officer or the court authorises the disposal of the papers.
- (5) The report referred to in subsection (4) above is a report with respect to the ballot or election stating—
  - (a) the number of voting papers distributed for the purposes of the ballot or election;
  - (b) the number of voting papers returned to the scrutineer;
  - (c) the number of valid votes cast in the ballot or election for each proposition or candidate;
  - (d) the number of spoiled or otherwise invalid voting papers returned;
  - (e) whether the scrutineer is satisfied as to each of the matters specified in subsection (6) below; and
  - (f) if he is not satisfied as to any of those matters, the particulars of his reasons for not being satisfied as to that matter.
- (6) The matters mentioned in subsection (5)(e) above are—
  - (a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the ballot or election;
  - (b) that the arrangements made with respect to the production, storage, distribution, return or other handling of the voting papers used in the ballot or election, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur; and
  - (c) that the scrutineer has been able to carry out his functions without any such interference as is mentioned in subsection (2)(c) above.
- (7) The trade union in question must not publish the result of the ballot or election until it has received such a report as is mentioned in subsection (5) above from the scrutineer; and the union must—
  - (a) within the period of three months after it receives the report—
    - (i) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
    - (ii) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention;
  - (b) ensure that any copy sent or notification given for the purposes of paragraph (a) above is accompanied by a statement that the union will, on request, supply any member of the union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification; and
  - (c) so supply any member of the union who makes a request to the union to be supplied and pays such fee (if any) as has been notified to him.

- (8) Section 6A of the 1913 Act (application of sections 3 to 6 of that Act to employers' associations) shall apply to the provisions of this section, in so far as they relate to the requirements mentioned in subsection (1)(a) above, as it applies to sections 3 to 6 of, and the Schedule to, that Act.

## **16 Remedy with respect to ballot on use of funds for political purposes**

- (1) A person who claims—
- (a) that any ballot for the purposes of the 1913 Act (which relates to ballots on the use of funds for political purposes) has been taken otherwise than in accordance with rules approved for the purpose by the Certification Officer under section 4 of that Act; or
  - (b) that there has been a failure, in relation to any proposed ballot for those purposes, to comply with any rules approved under that section in relation to that proposed ballot,
- may apply to the Certification Officer or to the court for a declaration that the ballot has been so taken or that there has been such a failure.
- (2) A person shall not make an application under subsection (1) above unless he is a member of the trade union in question at the time of the application and, in the case of an application by virtue of paragraph (a) of that subsection, was such a member at the time when the ballot was taken.
- (3) An application under subsection (1) above in respect of any ballot shall not be made at any time after the end of the period of one year beginning with the day on which the result of the ballot is announced by the trade union in question.
- (4) The provisions of subsections (3) to (13) of section 5 of the 1984 Act and the provisions of section 6 of that Act (which relate to an application with respect to a failure by a trade union to comply with the requirements of that Act in relation to an election) shall apply in relation to an application under subsection (1) above as they apply in relation to an application under the said section 5, but with the necessary modifications, that is to say, as if—
- (a) for any reference to an election there were substituted a reference to a ballot for the purposes of the 1913 Act;
  - (b) for the reference in subsection (8) of the said section 5 to section 2 of the 1984 Act there were substituted a reference to rules approved under section 4 of the 1913 Act; and
  - (c) for the reference in subsection (10) of the said section 5 to the remedy for a failure to comply with one or more of the provisions of Part I of the 1984 Act or, in relation to an election, with one or more of the provisions of sections 13 and 15 above there were substituted a reference to the remedy—
    - (i) for the taking of a ballot for the purposes of the 1913 Act otherwise than in accordance with rules approved under the said section 4; or
    - (ii) for a failure, in relation to any proposed ballot for those purposes, to comply with rules so approved.
- (5) Section 6A of the 1913 Act (application of sections 3 to 6 of that Act to employers' associations) shall apply to this section as it applies to sections 3 to 6 of, and the Schedule to, that Act.

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## 17 Ballots on industrial action affecting different places of work

(1) After subsection (1) of section 11 of the 1984 Act (requirements as to ballots with respect to industrial action) there shall be inserted the following subsections—

“(1A) Subject to subsection (1B) below, where the members who it is reasonable at the time of the ballot for the union to believe will be induced as mentioned in subsection (1) above have different places of work—

- (a) a separate ballot in relation to which the requirements of this section are satisfied must be held for each place of work (instead of one ballot of all those members); and
- (b) subsection (1) above shall have effect so as to require entitlement to vote in the ballot held for each place of work to be accorded to such of those members as the union reasonably believes to be members having that place as their place of work, and to no other persons.

(1B) Subsection (1A) above shall not apply in relation to a ballot if at the time of the ballot it is reasonable for the trade union to believe and it does believe—

- (a) that all the members who are accorded entitlement to vote in the ballot have the same place of work;
- (b) that there is, in relation to each of the members of the union who is accorded entitlement to vote in the ballot, some factor (whether or not the same factor) which—
  - (i) relates to the terms or conditions of that member’s employment or to the occupational description which is applicable to that member in his employment;
  - (ii) is a factor which that member has in common with one or more of the other members of the union who are accorded that entitlement; and
  - (iii) in a case where there are individuals employed by the same employer as that member who are members of the union but are not accorded that entitlement, is neither a factor which that member has in common with any of those individuals nor a factor which individuals employed by that employer have in common as a consequence of having the same place of work;

or

- (c) that the condition specified in paragraph (b) above would be satisfied if any overseas members accorded entitlement to vote in the ballot were disregarded.”

(2) Accordingly, after subsection (3) of section 10 of that Act (conditions to be fulfilled for act to be treated as with the support of a ballot) there shall be inserted the following subsection—

“(3A) Where—

- (a) any person has been induced by an act to break his contract of employment or to interfere with its performance; and
- (b) separate ballots have been held by virtue of section 11(1A) of this Act in relation to the strike or industrial action in the course of which that act has induced the breach or interference,

then subsection (3) above shall be construed, in relation to the inducement of that breach or interference, as making provision which, in the case of

paragraph (b) of that subsection, requires only that the majority voting in the ballot for that person’s place of work have answered “Yes” to the appropriate question and, in the case of paragraphs (c) and (d), does not impose any requirements in relation to any other ballot.”

- (3) In subsection (5) of section 10 of that Act (interpretation of Part II), after the definition of “the date of the ballot” there shall be inserted the following definition—

““place of work”, in relation to any person who is employed, means the premises occupied by his employer at or from which that person works or, where he does not work at or from any such premises or works at or from more than one set of premises, the premises occupied by his employer with which his employment has the closest connection;”.

## **18 Codes of practice as to ballots and elections**

- (1) In subsection (1) of section 3 of the Employment Act 1980 (codes of practice for the purpose of promoting the improvement of industrial relations), at the end there shall be inserted the words “or of promoting what appear to him to be desirable practices in relation to the conduct by trade unions of ballots and elections.”
- (2) After subsection (8) of that section there shall be inserted the following subsection—
- “(9) In this section “trade union” has the same meaning as in the 1974 Act.”

### *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.

*Procedure before the Certification Officer*

**22 Procedure before the Certification Officer**

- (1) Except in relation to matters as to which express provision is made by or under any enactment, the Certification Officer may regulate the procedure to be followed—
- (a) on any application or complaint made to him; or
  - (b) where his approval is sought with respect to any matter;
- and, without prejudice to the generality of the power conferred by this subsection, the provision made by the Certification Officer in exercise of that power shall include such provision as he considers appropriate for restricting the circumstances in which the identity of an individual who has made, or is proposing to make, any such application or complaint is disclosed to any person.
- (2) The Secretary of State, with the consent of the Treasury, may by scheme make provision for the payment by the Certification Officer to any persons of such sums as may be specified in or determined under the scheme in respect of expenses incurred by those persons for the purposes of, or in connection with, their attendance at hearings held by the Certification Officer in the course of carrying out his functions.
- (3) In Part III of Schedule 1 to the Employment Protection Act 1975 (supplementary provisions with respect to ACAS), after paragraph 32 there shall be inserted the following paragraph—

*“Expenses of hearings before the Certification Officer*

- 32A The Service shall pay to the Certification Officer such sums as he may require for the making of payments in pursuance of any scheme made by the Secretary of State under section 22(2) of the Employment Act 1988.”



*Interlocutory and interim orders*

**23 Interlocutory and interim orders**

- (1) Without prejudice to any power conferred on the court otherwise than by virtue of this section, the court shall have power, on an application to which this section applies, to grant any such interlocutory relief or, in Scotland, any such interim order as it considers appropriate.
- (2) This section applies to any application to the court under section 1, 6, 9 or 16 above and to any application to the court under section 5 of the 1984 Act (remedy for failure to comply with Part I of that Act).