

TRANSPARENCY OF LOBBYING, NON-PARTY CAMPAIGNING AND TRADE UNION ADMINISTRATION ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Trade Unions' Registers of Members

Section 43: Enforcement

152. This section inserts *new sections 24B and 24C* into TULRCA to provide for the enforcement of the new duties on unions and of the new requirements imposed.
153. Section 24B gives the CO power to make a declaration that a trade union has failed to comply with the duties relating to the register of members under section 24(1) and the new duties imposed by section 24ZA to 24ZC. Before doing so, the CO may make enquiries and may give the union an opportunity to make oral representations. He must give the union the opportunity to make written representations and must also give written reasons for making the declaration. If, having given an opportunity for written representations, the CO determines not to make a declaration that the union has failed to comply with a duty the CO must give the union written notice of that determination.
154. Where the CO makes a declaration that the union has failed to comply with a duty, the CO must also make an enforcement order, unless he considers it would be inappropriate to do so.
155. If the CO requests a person to provide information in connection with the CO's enquiries under section 24B the CO must specify a date by which the information must be provided. If that deadline is not met, the CO must proceed to determining whether to make a declaration unless it would be inappropriate to do so. Declarations and enforcement orders made by the CO under the powers contained in section 24B can be relied upon and enforced as though they were an order of the court. They are enforceable by the CO and by any person who is a member of the union and was a member when the enforcement order was made.
156. Section 24C gives the CO power to make an enforcement order requiring a union or person to comply with any requirement to produce documents, to supply information or to cooperate with inspectors under section 24ZH or 24ZI. Any order made must specify what it is that the union or individual has failed to do and the date by which they must comply and can be enforced in the same way as an order of the court. Before making such an order the CO must give the union or any other person an opportunity to be heard and can only make the order if the CO is satisfied that it is reasonably practicable for the union or person to comply with the duty and, where the order is for the production of documents, if the CO is satisfied that the documents are in the possession of that union or person.

157. Section 25 of TULRCA gives the CO a power to determine whether a union is complying with the requirements in section 24 if a member of the union applies for a declaration that the union has failed to do so. The CO is required to ensure that any such application is determined within six months of it being made, insofar as this is reasonably practicable. Section 43(4) amends this section so that circumstances in which it may not be reasonably practicable to fulfil this requirement include those where delay is caused by the exercise of powers under sections 24ZH or 24ZI.
158. Section 43(5) amends section 26 of TULRCA to provide that, where a person applies to the court alleging failure of the union to comply with its duties the court must have regard to any declaration or order regarding that failure made under section 24B. Section 43(6) amends section 45D of TULRCA so that any decision of the CO under section 24B or 24C can be appealed on a question of law to the Employment Appeal Tribunal. Section 43(3) amends section 24(6) of TULRCA to highlight the CO's new powers under section 24B. Section 43(7) extends the power of the CO under section 256(1) of TULRCA so that the CO may regulate the procedure to be followed with respect to new sections 24B and 24C.