

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 3 - Trade Unions' Registers of Members**

##### ***Section 40: Duty to provide membership audit certificate***

142. The section inserts new section 24ZA into TULRCA which creates the duty on unions to provide a membership audit certificate.
143. This section introduces additional requirements to the existing duty in section 24(1) of TULRCA to maintain an accurate and up-to-date register of members. Those additional requirements are that unions must send, annually, to the CO a membership audit certificate that covers the reporting period. The section defines the reporting period as the same period in relation to which the union must submit an annual return. If a federated trade union is subject to the duty in section 24ZA but is not required to send an annual return, it is to be treated as though it is required to send an annual return for the purposes of sending the membership audit certificate. Where the trade union has more than 10,000 members the membership audit certificate will be provided by an assurer. In all other cases the membership audit certificate will be provided by an officer of the union. Any union branch or section that is subject to the duty in section 24ZA by reason of being a trade union will be treated as having discharged the duty to the extent to which the union of which they are a branch or section discharges the duty instead of it. The CO must at all reasonable hours keep copies of all membership audit certificates sent to the CO available for public inspection and must provide a copy of any certificate to a person on request – either free or on payment of a reasonable charge. The union must supply a copy of its most recent membership audit certificate on request – either free or on payment of a reasonable charge.

##### ***Section 41: Duty to appoint assurer etc***

144. This section inserts new sections 24ZB to 24ZG into TULRCA which concern the appointment, removal, rights and duties of an assurer.
145. Under section 24ZB a union must appoint a qualified independent person to be an assurer if it has more than 10,000 members. A qualified independent person is someone who satisfies the conditions set out in an order made by the Secretary of State or who is listed by name in the order. They must also be someone the union believes will act competently and independently. The assurer's terms of appointment will require the assurer to provide the membership audit certificate and require the assurer to make whatever enquiries are necessary to do this. Section 24ZD provides that the certificate must state whether, in the assurer's opinion, the union's system for compiling and

maintaining the register was satisfactory for the purposes of complying with its duty to compile and maintain a register under section 24(1) throughout the reporting period. The assurer must also state whether, in the assurer's opinion, the assurer was able to obtain in accordance with section 24ZE all the information or explanations needed to carry out the assurer's task. The assurer has powers under section 24ZE to request access to the register of members and other documents the assurer considers may be relevant and to require union officers to provide information or explanations the assurer considers necessary for the performance of the assurer's functions.

146. Section 24ZG imposes a duty on the assurer to treat the register of members as confidential by incorporating that duty into the terms of an assurer's appointment. This section will make consequential changes to sections 24A(3) and 299 of TULRCA to make clear that the meaning of "duty of confidentiality" in those sections is confined to the context of a scrutineer or independent person. The union's own rules must provide for the appointment and removal of an assurer. The appointment will continue until the assurer is removed in any of the circumstances set out in section 24ZC. Any union branch or section that is subject to the duties in sections 24ZB and 24ZC by reason of being a trade union will be treated as having discharged the duties to the extent to which the union of which they are a branch or section discharges the duties instead of it. Section 24ZF requires that an assurer who produces a negative audit certificate must send a copy to the CO as soon as is reasonably practicable after it is provided to the union. A negative certificate states that the system for compiling and maintaining the register is unsatisfactory, or the assurer has failed to obtain the information and explanations the assurer considers necessary. The negative certificate must state the assurer's reasons for making the statement and provide a description of the information or explanations and state whether that information or those explanations were required by the assurer under section 24ZE.

#### ***Section 42: Investigatory powers***

147. This section inserts new sections 24ZH to 24ZK into TULRCA to provide for the CO to require the production of documents and appoint inspectors to investigate.
148. Section 24ZH gives power to the CO, if the CO thinks there is good reason to do so, to require a union, or any person who appears to be in possession of them, to produce its membership register or any other documents relevant to whether the union has complied with its duties under section 24(1) regarding the register, to the CO, to a member of the CO's staff or anyone else the CO has authorised. The CO or CO's agent has powers to take copies of the documents or to require the person who supplied the documents, an official or ex-official of the union, or an agent or ex-agent of the union (including an assurer), to provide an explanation. If the documents are not produced, the person required to supply them can be required to state, to the best of their knowledge and belief, where the documents are.
149. Under section 24ZI the CO may appoint a member of the CO's staff or a third party to investigate whether a union has complied with its duties under section 24(1) to maintain a membership register and to report back to the CO as required. This power can only be exercised where it appears to the CO that there are circumstances suggesting the union has failed to comply with its duties under that section or under section 24ZA or 24ZB. Officials or agents of a union (including an assurer) or any person who the inspector believes has relevant information may be required to cooperate with the inspector and to produce the membership register or any other documents the inspector considers may be relevant to whether the union has complied with its duties regarding the register. Such persons may also be required to meet the inspectors and to provide all reasonable assistance. Inspectors who are not members of the CO's staff are placed under a duty to treat the register of members as confidential.
150. Section 24ZJ provides for the provision of written interim and final reports to the CO. A final report is to be produced unless the CO directs the inspector to take only specified

further steps or no further steps in the investigation and that a final report is not required. An inspector can inform the CO of anything coming to their knowledge as a result of the investigation and must do so if the CO asks.

151. Section 24ZK contains limitations on the duties of disclosure contained in sections 24ZH and 24ZI. Information subject to legal professional privilege is not subject to the disclosure requirements although a lawyer could be required to disclose the name and address of their client. A person cannot refuse to provide an explanation or make a statement on the grounds that it may expose them to proceedings for an offence but any explanation or statement provided can only be used in evidence against them in a prosecution for an offence where that person makes a statement which is inconsistent with it. This section will also make a consequential change to section 24A(4)(b) of TULRCA to provide that one of the permitted circumstances for the disclosure of a member's name and address under that section is where it is required by the CO.

### **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.

*These notes refer to the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 (c.4) which received Royal Assent on 30 January 2014*

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.