

SCHEDULES

SCHEDULE 3

Section 19

CERTIFICATION OFFICER: POWER TO IMPOSE FINANCIAL PENALTIES: SCHEDULE TO BE INSERTED INTO THE 1992 ACT

Commencement Information

- I1** Sch. 3 in force at 8.12.2021 for specified purposes by [S.I. 2021/1373, reg. 3\(b\)](#)
I2 Sch. 3 in force at 1.4.2022 in so far as not already in force by [S.I. 2021/1373, reg. 4\(c\)](#)

“SCHEDULE A4

Section 256D

CERTIFICATION OFFICER: POWER TO IMPOSE FINANCIAL PENALTIES

Introduction

- 1 (1) In this Schedule “enforcement order” means an order made by the Certification Officer under any of the following provisions of this Act—
- (a) section 24B(6) or 25(5A) (order on failure by union to comply with duties regarding the register of members);
 - (b) section 31(2B) (order on failure by union to comply with member's request for access to accounting records);
 - (c) section 32ZC(6) (order on failure by union to provide details of industrial action etc, or political expenditure, in annual return);
 - (d) section 45C(5A) (order on failure by union to comply with duty to secure positions not held by certain offenders);
 - (e) section 55(5A) (order on failure by union to comply with requirements about elections for certain positions);
 - (f) section 72A(5) (order on failure by union to comply with restriction on applying union's funds in the furtherance of political objects);
 - (g) section 80(5A) (order on failure by union to comply with rules as to ballots on political resolutions);
 - (h) section 82(2A) (order on failure by union to comply with rules as to political fund);
 - (i) section 84A(5) (order on failure by union to provide required information to members about contributing to political fund);
 - (j) section 108B(3) (order on breach or threatened breach by union of rules on certain matters);
 - (k) paragraph 5(1) of Schedule A3 (order on failure by union or other person to comply with investigatory requirements).
- (2) In this Schedule “the person in default” means the trade union against which, or other person against whom, an enforcement order is or could be made.

*Changes to legislation: There are currently no known outstanding effects for
the Trade Union Act 2016, SCHEDULE 3. (See end of Document for details)*

- (3) A reference in this Schedule to taking steps includes a reference to abstaining from acts.

Power to impose financial penalties

- 2 (1) Where the Certification Officer—
- (a) makes an enforcement order, or
 - (b) has power to make an enforcement order but does not do so,
- the Officer may make a penalty order or a conditional penalty order against the person in default.
- (2) A “penalty order” is an order requiring the person in default to pay a penalty of a specified amount to the Certification Officer by a specified date.
- (3) A “conditional penalty order” is an order requiring the person in default to pay a penalty of a specified amount to the Certification Officer by a specified date unless the person takes specified steps by a specified date or within a specified period.
- (4) Where the Certification Office makes both an enforcement order and a conditional penalty order, the steps specified in the conditional penalty order may, but need not, be the same as those that the enforcement order requires the person in default to take.
- (5) In this paragraph “specified” means specified in the penalty order or conditional penalty order.

Enforcement of conditional penalty order

- 3 (1) This paragraph applies where the Certification Officer has made a conditional penalty order.
- (2) If the Certification Officer is satisfied that the steps specified in the order have been taken by the date or within the period specified, the Officer must notify the person in default that the penalty is not payable.
- (3) If the Certification Officer is not so satisfied, and the penalty has not been paid by the required date, the Officer must make a further order requiring payment of—
- (a) the amount originally ordered, or
 - (b) where sub-paragraph (4) applies, a lesser amount specified in the further order.
- (4) This sub-paragraph applies where it appears to the Certification Officer that—
- (a) steps specified in the conditional penalty order have to some extent been taken, or have been taken (to any extent) but not by the date or within the period specified, and
 - (b) it would be just to reduce the amount of the penalty for that reason.
- (5) An order under this paragraph may require payment immediately or by a specified date.

Representations

- 4 Before making a penalty order or a conditional penalty order, or an order under paragraph 3, the Certification Officer—
- (a) must inform the person in default of the grounds on which the Officer proposes to make the order,
 - (b) must give that person an opportunity to make written representations, and

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- (c) may give that person an opportunity to make oral representations.

Appeals

- 5 A person in default may appeal to the Employment Appeal Tribunal against a decision of the Certification Officer under this Schedule on the ground that—
- (a) it was based on an error of fact,
 - (b) it was wrong in law, or
 - (c) it was unreasonable,
- or on such other grounds as may be prescribed.

Amount of penalty

- 6 (1) The amount specified in a penalty order or a conditional penalty order—
- (a) may not be less than the minimum amount set by regulations, and
 - (b) may not be more than the maximum amount set by regulations.
- (2) Different amounts may be set by regulations—
- (a) in relation to different enforcement orders,
 - (b) by reference to whether the person in default is an individual or an organisation, and
 - (c) in the case of an organisation, by reference to the number of members that it has.
- (3) But—
- (a) no minimum amount set by regulations may be less than £200, and
 - (b) no maximum amount set by regulations may be more than £20,000.
- (4) Regulations may amend sub-paragraph (3)(a) or (b) by substituting a different amount.

Early or late payment, and enforcement

- 7 (1) In relation to orders under this Schedule requiring payment of penalties, regulations may make provision for—
- (a) early payment discounts;
 - (b) the payment of interest or other financial penalties for late payment;
 - (c) enforcement.
- (2) Provision made by virtue of sub-paragraph (1)(b) must secure that the interest or other financial penalties for late payment do not in total exceed the amount of the penalty itself.
- (3) Provision made by virtue of sub-paragraph (1)(c) may include—
- (a) provision for the Certification Officer to recover the penalty, and any interest or other financial penalty for late payment, as a debt;
 - (b) provision for the penalty, and any interest or other financial penalty for late payment, to be recoverable, on the order of a court, as if payable under a court order.

Regulations

- 8 (1) Regulations may make provision that is incidental or supplementary to that made by this Schedule.

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- (2) Regulations under this Schedule may include transitional or consequential provision.
- (3) Regulations under this Schedule shall be made by the Secretary of State by statutory instrument.
- (4) No regulations under paragraph 6 or 7 or this paragraph shall be made unless a draft of them has been laid before Parliament and approved by a resolution of each House of Parliament.

Payment of penalties etc into Consolidated Fund

- 9 The Certification Officer shall pay into the Consolidated Fund amounts received—
- (a) under penalty orders and conditional penalty orders (including orders under paragraph 3), and
 - (b) by way of interest and other financial penalties for late payment in relation to such orders.”

Changes to legislation:

There are currently no known outstanding effects for the Trade Union Act 2016, SCHEDULE 3.