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STATUTORY INSTRUMENTS

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**2021 No. 1373 (C. 77)**

**TRADE UNIONS**

The Trade Union Act 2016 (Commencement  
No. 4 and Transitional) Regulations 2021

Made - - - - 6th December 2021

The Secretary of State, in exercise of the powers conferred by section 25 of the Trade Union Act 2016<sup>(1)</sup>, makes the following Regulations.

**PART 1**

Citation, extent and interpretation

**Citation and extent**

1.—(1) These Regulations may be cited as the Trade Union Act 2016 (Commencement No. 4 and Transitional) Regulations 2021.

(2) These Regulations extend to England and Wales and Scotland.

**Interpretation**

2. In these Regulations—

“the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(2)</sup>; and

“the 2016 Act” means the Trade Union Act 2016.

**PART 2**

Provisions coming into force

**Provisions coming into force on 8th December 2021**

3. The following provisions of the 2016 Act come into force on 8th December 2021—

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(1) 2016 c. 15.

(2) 1992 c. 52.

- (a) section 17 (Investigatory powers etc), for the purpose of enabling the exercise of the power to make regulations under section 256D of, and paragraphs 6, 7 and 8 of Schedule A4 to, the 1992 Act<sup>(3)</sup>, in so far as section 17 relates to:
  - (i) the insertion of section 256C of the 1992 Act (which gives effect to a new Schedule A3 to the 1992 Act);
  - (ii) paragraph 5(1) of Schedule 1 to the 2016 Act (inserted as Schedule A3 to the 1992 Act), which comprises part of the definition of an “enforcement order” set out in Schedule A4 to the 1992 Act; and
  - (iii) paragraphs 7(1) and (3) of Schedule 2 to the 2016 Act (to the extent that they amend section 82(2A) of the 1992 Act), which comprises part of the definition of an “enforcement order” set out in Schedule A4 to the 1992 Act;
- (b) section 19(1) and (2) (Further powers of Certification Officer where enforcement order made), for the purpose of enabling the exercise of the power to make regulations under section 256D of, and paragraphs 6, 7 and 8 of Schedule A4 to, the 1992 Act;
- (c) section 20 (Power to impose levy).

#### **Provisions coming into force on 1st April 2022**

- 4. The following provisions of the 2016 Act come into force on 1st April 2022—
  - (a) section 16 (Certification Officer not subject to ministerial direction);
  - (b) section 17 (Investigatory powers etc), to the extent that it is not then already in force;
  - (c) section 19 (Further powers of Certification Officer where enforcement order made), to the extent that it is not then already in force;
  - (d) section 21 (Rights of appeal not limited to questions of law);
  - (e) section 22 (Minor and consequential amendments), to the extent that it is not then already in force.

## **PART 3**

### **Transitional provisions**

#### **Transitional provisions in relation to section 256C (Investigatory powers) and Schedule A3 (Certification Officer: Investigatory Powers) of the 1992 Act**

5. The powers at section 256C of, and Schedule A3 to, the 1992 Act, inserted by section 17(1) and (2) of the 2016 Act, apply only where the failure of the trade union to comply with any of the relevant obligations listed in paragraph 1(1)(a) to (g) of Schedule A3 to the 1992 Act, which is the subject of an investigation of the Certification Officer, occurs on or after 1st April 2022.

6. The powers at section 256C of, and Schedule A3 to, the 1992 Act, inserted by section 17(1) and (2) of the 2016 Act, apply to unincorporated employers’ associations by virtue of section 132 or 133 of the 1992 Act only where the failure to comply with any of the relevant obligations listed in paragraph 1(1)(d) to (g) of Schedule A3 to the 1992 Act, which is the subject of an investigation of the Certification Officer, occurs on or after 1st April 2022.

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(3) Sections 256D and Schedule A4 are inserted by section 19(1) and (2) of, and Schedule 3 to, the 2016 Act.

**Transitional provision in relation to section 45C (Remedies and enforcement) of the 1992 Act**

7. The amendments made to section 45C of the 1992 Act by section 17(3) of, and paragraph 1 of Schedule 2 to, the 2016 Act apply only where the failure of the trade union to comply with the requirements of section 45B of the 1992 Act, which is the subject of the application to the Certification Officer or the court or of the exercise of powers by the Certification Officer, occurs on or after 1st April 2022.

**Transitional provision in relation to section 54 (Remedy for failure to comply with requirements: general) of the 1992 Act**

8. The amendments made to section 54 of the 1992 Act by section 17(3) of, and paragraph 2 of Schedule 2 to, the 2016 Act apply only where the failure of the trade union to comply with the requirements of Chapter 4 of Part 1 of the 1992 Act, which is the subject of the application to the Certification Officer or the court or of the exercise of powers by the Certification Officer, occurs on or after 1st April 2022.

**Transitional provision in relation to section 55 (Powers of Certification Officer) of the 1992 Act**

9. The amendments made to section 55 of the 1992 Act by section 17(3) of, and paragraph 3 of Schedule 2 to, the 2016 Act apply only where the failure of the trade union to comply with the requirements of Chapter 4 of Part 1 of the 1992 Act, which is the subject of the application to the Certification Officer or of the exercise of powers by the Certification Officer, occurs on or after 1st April 2022.

**Transitional provision in relation to section 72A (Application of funds in breach of section 71) of the 1992 Act**

10. The amendments made to section 72A of the 1992 Act by section 17(3) of, and paragraph 4 of Schedule 2 to, the 2016 Act apply only where the breach by the trade union of section 71 of the 1992 Act, which is the subject of the application to the Certification Officer or of the exercise of powers by the Certification Officer, occurs on or after 1st April 2022.

**Transitional provision in relation to section 79 (Remedy for failure to comply with ballot rules: general) of the 1992 Act**

11. The amendments made to section 79(4) of the 1992 Act by section 17(3) of, and paragraph 5 of Schedule 2 to, the 2016 Act apply only where the trade union's or unincorporated employers' association's holding of a ballot on a political resolution or failure to comply with political ballot rules, which is the subject of the application to the Certification Officer or the court or of the exercise of powers by the Certification Officer, occurs on or after 1st April 2022.

**Transitional provision in relation to section 80 (Powers of Certification Officer) of the 1992 Act**

12. The amendments made to section 80(5) of the 1992 Act by section 17(3) of, and paragraph 6 of Schedule 2 to, the 2016 Act apply only where the trade union's or unincorporated employers' association's holding of a ballot on a political resolution or failure to comply with political ballot rules, which is the subject of the application to the Certification Officer or of the exercise of powers by the Certification Officer, occurs on or after 1st April 2022.

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(4) Section 79 also applies to unincorporated employers' associations by virtue of section 132 of the 1992 Act.

(5) Part of section 80 also applies to unincorporated employers' associations by virtue of section 132 of the 1992 Act.

**Transitional provision in relation to section 82 (Rules as to political fund) of the 1992 Act**

13. The amendments made to section 82(6) of the 1992 Act by section 17(3) of, and paragraph 7 of Schedule 2 to, the 2016 Act apply only where the breach by the trade union or unincorporated employers' association of a rule made in pursuance of section 82 of the 1992 Act, which is the subject of the complaint to the Certification Officer or of the exercise of powers by the Certification Officer, occurs on or after 1st April 2022.

**Transitional provision in relation to section 103 (Powers of Certification Officer as regards passing of resolution) of the 1992 Act**

14. The amendments made to section 103(7) of the 1992 Act by section 17(3) of, and paragraph 8 of Schedule 2 to, the 2016 Act apply only where the failure of the trade union or unincorporated employers' association to comply with the requirements of sections 99 to 100E of the 1992 Act or with any rule of the trade union or unincorporated employers' association relating to the passing of a resolution, which is the subject of the application to the Certification Officer or of the exercise of powers by the Certification Officer, occurs on or after 1st April 2022.

**Transitional provision in relation to sections 24B(12), 25(10), 31(5), 45C(9), 55(9), 72A(9), 80(9), 82(4B) and 108B(8) of the 1992 Act**

15. The amendments made to sections 24B(12), 25(10), 31(5), 45C(9), 55(9), 72A(9), 80(9), 82(4B) and 108B(8)(8) of the 1992 Act by section 19(4) of the 2016 Act apply only to orders made by the Certification Officer on or after 1st April 2022.

**Transitional provision in relation to sections 45D, 56A, 95, 104 and 108C of the 1992 Act**

16. The amendments made to sections 45D, 56A, 95, 104 and 108C(9) of the 1992 Act by section 21 of the 2016 Act apply only to an appeal against a decision of the Certification Officer where that decision was made on or after 1st April 2022.

*Paul Scully*  
Minister for Small Business, Consumers and  
Labour Markets  
Department for Business, Energy and Industrial  
Strategy

6th December 2021

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(6) Section 82 also applies to unincorporated employers' associations by virtue of section 132 of the 1992 Act.  
(7) Part of section 103 also applies to unincorporated employers' associations by virtue of section 133 of the 1992 Act.  
(8) Sections 82(4B) and 108B(8) also apply to unincorporated employers' associations by virtue of section 132 and section 133 of the 1992 Act respectively.  
(9) Section 95 also applies to unincorporated employers' associations by virtue of section 132 of the 1992 Act. Sections 104 and 108C also apply to unincorporated employers' associations by virtue of section 133 of the 1992 Act.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations bring into force specified provisions of the Trade Union Act 2016 (c. 15) (“the 2016 Act”). These are the fourth commencement regulations made under the 2016 Act. Certain provisions came into force on the passing of the 2016 Act.

Regulation 3 brings certain provisions of the 2016 Act into force on 8th December 2021, in some cases only for limited purposes.

Section 17 of the 2016 Act is required to be commenced on 8th December 2021 for the purpose of exercising powers to make regulations under section 256D of, and paragraphs 6, 7 and 8 of Schedule A4 to, the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”), since section 17 of the 2016 Act amends two provisions referred to in the definition of enforcement order at paragraph 1 of Schedule A4 and which are also relevant to the powers in paragraphs 6, 7 and 8 of that Schedule.

Section 19(1) and (2) of the 2016 Act are required to be commenced on 8th December 2021 for the purpose of exercising powers to make regulations under section 256D of, and paragraphs 6, 7 and 8 of Schedule A4 to, the 1992 Act, since section 19(1) and (2) of the 2016 Act insert section 256D and Schedule A4, comprising the power for the Certification Officer to impose financial penalties and relevant definitions. Those regulations are themselves, when made, intended to come into force on 1st April 2022.

Section 20 of the 2016 Act is required to be commenced on 8th December 2021 to allow the exercise of powers to make regulations under section 257A of the 1992 Act. Those regulations are themselves, when made, intended to come into force on 1st April 2022. Section 20 is commenced generally, not just for a limited purpose, but section 257A will not have any practical effect until those regulations are made.

Regulation 4 brings certain provisions of the 2016 Act into force on 1st April 2022, to the extent that they have not previously been commenced.

Regulations 5 to 16 contain transitional provisions made under section 25(2) of the 2016 Act. The primary aim of these provisions is that certain additional powers of the Certification Officer provided for by the 2016 Act apply only to matters occurring on or after 1st April 2022.

## NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

*(This note is not part of the Regulations)*

The following provisions of the 2016 Act have been brought into force by commencement regulations made before the date of the Regulations:

<i>Provision of the 2016 Act</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 1	3rd November 2016	<a href="#">2016/1051</a>
Section 2	1st March 2017	<a href="#">2017/139</a>
Section 3 (partially)	5th December 2016	<a href="#">2016/1170</a>
Section 3 (remainder)	1st March 2017	<a href="#">2017/139</a>

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>Provision of the 2016 Act</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 4	3rd November 2016	2016/1051
Section 5	1st March 2017	2017/139
Section 6	1st March 2017	2017/139
Section 7	1st March 2017	2017/139
Section 8	1st March 2017	2017/139
Section 9	1st March 2017	2017/139
Section 10	1st March 2017	2017/139
Section 11 (partially)	5th December 2016	2016/1170
Section 11 (remainder)	1st March 2017	2017/139
Section 12	1st March 2017	2017/139
Section 13	1st March 2017	2017/139
Section 15 (partially)	1st March 2017	2017/139
Section 18	1st March 2017	2017/139
Section 22 (partially)	1st March 2017	2017/139