



# Employment Act 1988

## 1988 CHAPTER 19

### PART I

#### TRADE UNIONS

##### *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—

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Act 1988, Cross Heading: Use of trade union funds. (See end of Document for details)*

“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—
  - (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

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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.

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