



Trade Union and Labour Relations (Consolidation) Act 1992

1992 CHAPTER 52

PART I

TRADE UNIONS

CHAPTER I

INTRODUCTORY

Meaning of “trade union”

1 **Meaning of “trade union”.**

In this Act a “trade union” means an organisation (whether temporary or permanent)—

- (a) which consists wholly or mainly of workers of one or more descriptions and whose principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers’ associations; or
- (b) which consists wholly or mainly of—
 - (i) constituent or affiliated organisations which fulfil the conditions in paragraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions), or
 - (ii) representatives of such constituent or affiliated organisations, and whose principal purposes include the regulation of relations between workers and employers or between workers and employers’ associations, or the regulation of relations between its constituent or affiliated organisations.

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Modifications etc. (not altering text)

C1 Ss. 1, 5 applied (E.W.) (21.5.2001) by S.I. 2001/1185, art. 2, Sch. para. 126(viii)

The list of trade unions

2 The list of trade unions.

- (1) The Certification Officer shall keep a list of trade unions containing the names of—
 - (a) the organisations whose names were, immediately before the commencement of this Act, duly entered in the list of trade unions kept by him under section 8 of the ^{M1}Trade Union and Labour Relations Act 1974, and
 - (b) the names of the organisations entitled to have their names entered in the list in accordance with this Part.
- (2) The Certification Officer shall keep copies of the list of trade unions, as for the time being in force, available for public inspection at all reasonable hours free of charge.
- (3) A copy of the list shall be included in his annual report.
- (4) The fact that the name of an organisation is included in the list of trade unions is evidence (in Scotland, sufficient evidence) that the organisation is a trade union.
- (5) On the application of an organisation whose name is included in the list, the Certification Officer shall issue it with a certificate to that effect.
- (6) A document purporting to be such a certificate is evidence (in Scotland, sufficient evidence) that the name of the organisation is entered in the list.

Marginal Citations

M1 1974 c. 52.

3 Application to have name entered in the list.

- (1) An organisation of workers, whenever formed, whose name is not entered in the list of trade unions may apply to the Certification Officer to have its name entered in the list.
- (2) The application shall be made in such form and manner as the Certification Officer may require and shall be accompanied by—
 - (a) a copy of the rules of the organisation,
 - (b) a list of its officers,
 - (c) the address of its head or main office, and
 - (d) the name under which it is or is to be known,
 and by the prescribed fee.
- (3) If the Certification Officer is satisfied—
 - (a) that the organisation is a trade union,
 - (b) that subsection (2) has been complied with, and
 - (c) that entry of the name in the list is not prohibited by subsection (4),

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he shall enter the name of the organisation in the list of trade unions.

(4) The Certification Officer shall not enter the name of an organisation in the list of trade unions if the name is the same as that under which another organisation—

- (a) was on 30th September 1971 registered as a trade union under the Trade Union Acts 1871 to 1964,
- (b) was at any time registered as a trade union or employers' association under the ^{M2}Industrial Relations Act 1971, or
- (c) is for the time being entered in the list of trade unions or in the list of employers' associations kept under Part II of this Act,

or if the name is one so nearly resembling any such name as to be likely to deceive the public.

Marginal Citations

M2 1971 c. 72.

4 Removal of name from the list.

- (1) If it appears to the Certification Officer, on application made to him or otherwise, that an organisation whose name is entered in the list of trade unions is not a trade union, he may remove its name from the list.
- (2) He shall not do so without giving the organisation notice of his intention and considering any representations made to him by the organisation within such period (of not less than 28 days beginning with the date of the notice) as may be specified in the notice.
- (3) The Certification Officer shall remove the name of an organisation from the list of trade unions if—
 - (a) he is requested by the organisation to do so, or
 - (b) he is satisfied that the organisation has ceased to exist.

Certification as independent trade union

5 Meaning of “independent trade union”.

In this Act an “independent trade union” means a trade union which—

- (a) is not under the domination or control of an employer or group of employers or of one or more employers' associations, and
- (b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control;

and references to “independence”, in relation to a trade union, shall be construed accordingly.

Modifications etc. (not altering text)

C2 Ss. 1, 5 applied (E.W.) (21.5.2001) by S.I. 2001/1185, art. 2, Sch. para. 126(viii)

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6 Application for certificate of independence.

- (1) A trade union whose name is entered on the list of trade unions may apply to the Certification Officer for a certificate that it is independent.

The application shall be made in such form and manner as the Certification Officer may require and shall be accompanied by the prescribed fee.

- (2) The Certification Officer shall maintain a record showing details of all applications made to him under this section and shall keep it available for public inspection (free of charge) at all reasonable hours.
- (3) If an application is made by a trade union whose name is not entered on the list of trade unions, the Certification Officer shall refuse a certificate of independence and shall enter that refusal on the record.
- (4) In any other case, he shall not come to a decision on the application before the end of the period of one month after it has been entered on the record; and before coming to his decision he shall make such enquiries as he thinks fit and shall take into account any relevant information submitted to him by any person.
- (5) He shall then decide whether the applicant trade union is independent and shall enter his decision and the date of his decision on the record.
- (6) If he decides that the trade union is independent he shall issue a certificate accordingly; and if he decides that it is not, he shall give reasons for his decision.

7 Withdrawal or cancellation of certificate.

- (1) The Certification Officer may withdraw a trade union's certificate of independence if he is of the opinion that the union is no longer independent.
- (2) Where he proposes to do so he shall notify the trade union and enter notice of the proposal in the record.
- (3) He shall not come to a decision on the proposal before the end of the period of one month after notice of it was entered on the record; and before coming to his decision he shall make such enquiries as he thinks fit and shall take into account any relevant information submitted to him by any person.
- (4) He shall then decide whether the trade union is independent and shall enter his decision and the date of his decision on the record.
- (5) He shall confirm or withdraw the certificate accordingly; and if he decides to withdraw it, he shall give reasons for his decision.
- (6) Where the name of an organisation is removed from the list of trade unions, the Certification Officer shall cancel any certificate of independence in force in respect of that organisation by entering on the record the fact that the organisation's name has been removed from that list and that the certificate is accordingly cancelled.

8 Conclusive effect of Certification Officer's decision.

- (1) A certificate of independence which is in force is conclusive evidence for all purposes that a trade union is independent; and a refusal, withdrawal or cancellation of a

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- certificate of independence, entered on the record, is conclusive evidence for all purposes that a trade union is not independent.
- (2) A document purporting to be a certificate of independence and to be signed by the Certification Officer, or by a person authorised to act on his behalf, shall be taken to be such a certificate unless the contrary is proved.
 - (3) A document purporting to be a certified copy of an entry on the record and to be signed by the Certification Officer, or by a person authorised to act on his behalf, shall be taken to be a true copy of such an entry unless the contrary is proved.
 - (4) If in any proceedings before a court, the Employment Appeal Tribunal, the Central Arbitration Committee, ACAS or an ^{F1}employment tribunal] a question arises whether a trade union is independent and there is no certificate of independence in force and no refusal, withdrawal or cancellation of a certificate recorded in relation to that trade union—
 - (a) that question shall not be decided in those proceedings, and
 - (b) the proceedings shall instead be stayed or sisted until a certificate of independence has been issued or refused by the Certification Officer.
 - (5) The body before whom the proceedings are stayed or sisted may refer the question of the independence of the trade union to the Certification Officer who shall proceed in accordance with section 6 as on an application by that trade union.

Textual Amendments

- F1** Words in s. 8(4) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

Supplementary

9 Appeal against decision of Certification Officer.

- (1) An organisation aggrieved by the refusal of the Certification Officer to enter its name in the list of trade unions, or by a decision of his to remove its name from the list, may appeal to the Employment Appeal Tribunal.
- (2) A trade union aggrieved by the refusal of the Certification Officer to issue it with a certificate of independence, or by a decision of his to withdraw its certificate, may appeal to the Employment Appeal Tribunal.
- (3) If on appeal the Tribunal is satisfied that the organisation's name should be or remain entered in the list or, as the case may be, that the certificate should be issued or should not be withdrawn, it shall declare that fact and give directions to the Certification Officer accordingly.
- (4) The rights of appeal conferred by this section extend to any question of fact or law arising in the proceedings before, or arising from the decision of, the Certification Officer.

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CHAPTER II

STATUS AND PROPERTY OF TRADE UNIONS

General

10 Quasi-corporate status of trade unions.

- (1) A trade union is not a body corporate but—
 - (a) it is capable of making contracts;
 - (b) it is capable of suing and being sued in its own name, whether in proceedings relating to property or founded on contract or tort or any other cause of action; and
 - (c) proceedings for an offence alleged to have been committed by it or on its behalf may be brought against it in its own name.
- (2) A trade union shall not be treated as if it were a body corporate except to the extent authorised by the provisions of this Part.
- (3) A trade union shall not be registered—
 - (a) as a company under the ^{M3}Companies Act 1985, or
 - (b) under the ^{M4}Friendly Societies Act 1974 or the ^{M5}Industrial and Provident Societies Act 1965;
 and any such registration of a trade union (whenever effected) is void.

Marginal Citations

M3 1985 c. 9.

M4 1974 c. 46.

M5 1965 c. 12.

11 Exclusion of common law rules as to restraint of trade.

- (1) The purposes of a trade union are not, by reason only that they are in restraint of trade, unlawful so as—
 - (a) to make any member of the trade union liable to criminal proceedings for conspiracy or otherwise, or
 - (b) to make any agreement or trust void or voidable.
- (2) No rule of a trade union is unlawful or unenforceable by reason only that it is in restraint of trade.

Property of trade union

12 Property to be vested in trustees.

- (1) All property belonging to a trade union shall be vested in trustees in trust for it.
- (2) A judgment, order or award made in proceedings of any description brought against a trade union is enforceable, by way of execution, diligence, punishment for contempt

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or otherwise, against any property held in trust for it to the same extent and in the same manner as if it were a body corporate.

- (3) Subsection (2) has effect subject to section 23 (restriction on enforcement of awards against certain property).

13 Vesting of property in new trustees.

- (1) The provisions of this section apply in relation to the appointment or discharge of trustees in whom any property is vested in trust for a trade union whose name is entered in the list of trade unions.
- (2) In the following sections as they apply to such trustees references to a deed shall be construed as references to an instrument in writing—
- (a) section 39 of the ^{M6}Trustee Act 1925 and section 38 of the ^{M7}Trustee Act (Northern Ireland) 1958 (retirement of trustee without a new appointment), and
 - (b) section 40 of the Trustee Act 1925 and section 39 of the Trustee Act (Northern Ireland) 1958 (vesting of trust property in new or continuing trustees).
- (3) Where such a trustee is appointed or discharged by a resolution taken by or on behalf of the union, the written record of the resolution shall be treated for the purposes of those sections as an instrument in writing appointing or discharging the trustee.
- (4) In section 40 of the Trustee Act 1925 and section 39 of the Trustee Act (Northern Ireland) 1958 as they apply to such trustees, paragraphs (a) and (c) of subsection (4) (which exclude certain property from the section) shall be omitted.

Marginal Citations

M6 1925 c. 19.

M7 1958 c. 23 (N.I.).

14 Transfer of securities held in trust for trade union.

- (1) In this section—
- “instrument of appointment” means an instrument in writing appointing a new trustee of a trade union whose name is entered in the list of trade unions, and
- “instrument of discharge” means an instrument in writing discharging a trustee of such a trade union;
- and for the purposes of this section where a trustee is appointed or discharged by a resolution taken by or on behalf of such a trade union, the written record of the resolution shall be treated as an instrument in writing appointing or discharging the trustee.
- (2) Where by any enactment or instrument the transfer of securities of any description is required to be effected or recorded by means of entries in a register, then if—
- (a) there is produced to the person authorised or required to keep the register a copy of an instrument of appointment or discharge which contains or has attached to it a list identifying the securities of that description held in trust for the union at the date of the appointment or discharge, and

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(b) it appears to that person that any of the securities so identified are included in the register kept by him,

he shall make such entries as may be necessary to give effect to the instrument of appointment or discharge.

This subsection has effect notwithstanding anything in any enactment or instrument regulating the keeping of the register.

- (3) A document which purports to be a copy of an instrument of appointment or discharge containing or having attached to it such a list, and to be certified in accordance with the following subsection to be a copy of such an instrument, shall be taken to be a copy of such an instrument unless the contrary is proved.
- (4) The certificate shall be given by the president and general secretary of the union and, in the case of an instrument to which a list of securities is attached, shall appear both on the instrument and on the list.
- (5) Nothing done for the purposes of or in pursuance of this section shall be taken to affect any person with notice of any trust or to impose on any person a duty to inquire into any matter.
- (6) In relation to a Scottish trust, references in this section to the appointment and discharge of a trustee shall be construed as including references to, respectively, the assumption and resignation of a trustee; and references to an instrument appointing or discharging a trustee shall be construed accordingly.

15 Prohibition on use of funds to indemnify unlawful conduct.

- (1) It is unlawful for property of a trade union to be applied in or towards—
 - (a) the payment for an individual of a penalty which has been or may be imposed on him for an offence or for contempt of court,
 - (b) the securing of any such payment, or
 - (c) the provision of anything for indemnifying an individual in respect of such a penalty.
- (2) Where any property of a trade union is so applied for the benefit of an individual on whom a penalty has been or may be imposed, then—
 - (a) in the case of a payment, an amount equal to the payment is recoverable by the union from him, and
 - (b) in any other case, he is liable to account to the union for the value of the property applied.
- (3) If a trade union fails to bring or continue proceedings which it is entitled by bring by virtue of subsection (2), a member of the union who claims that the failure is unreasonable may apply to the court on that ground for an order authorising him to bring or continue the proceedings on the union's behalf and at the union's expense.
- (4) In this section "penalty", in relation to an 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.
- (5) The Secretary of State may by order designate offences in relation to which the provisions of this section do not apply.

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Any such order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (6) This section does not affect—
- (a) any other enactment, any rule of law or any provision of the rules of a trade union which makes it unlawful for the property of a trade union to be applied in a particular way; or
 - (b) any other remedy available to a trade union, the trustees of its property or any of its members in respect of an unlawful application of the union's property.
- (7) In this section “member”, in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes a member of any of the constituent or affiliated organisations.

16 Remedy against trustees for unlawful use of union property.

- (1) 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 an unlawful application of the union's property, or
 - (b) have complied, or are proposing to comply, with an 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) In a case relating to property which has already been unlawfully applied, or to an unlawful direction that has already been complied with, an application under this section may be made only by a person who 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) Where the court is satisfied that the claim is well-founded, it shall make such order as it considers appropriate.

The court may in particular—

- (a) require the trustees (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) appoint a receiver of, or in Scotland a judicial factor on, the property of the union;
 - (c) remove one or more of the trustees.
- (4) Where the court makes an order under this section in a case in which—
- (a) property of the union has been applied in contravention of an order of any court, or in compliance with a direction given in contravention of such an order, or
 - (b) the trustees were proposing to apply property in contravention of such an order or to comply with any such direction,

the court shall by its order remove all the trustees except any trustee who satisfies the court that there is a good reason for allowing him to remain a trustee.

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- (5) Without prejudice to any other power of the court, the court may on an application for an order under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.
- (6) This section does not affect any other remedy available in respect of a breach of trust by the trustees of a trade union's property.
- (7) In this section "member", in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes a member of any of the constituent or affiliated organisations.

17 Nominations by members of trade unions.

- (1) The Secretary of State may make provision by regulations for enabling members of trade unions who are not under 16 years of age to nominate a person or persons to become entitled, on the death of the person making the nomination, to the whole or part of any money payable on his death out of the funds of the trade union.
- (2) The regulations may include provision as to the manner in which nominations may be made and as to the manner in which nominations may be varied or revoked.
- (3) The regulations may provide that, subject to such exceptions as may be prescribed, no nomination made by a member of a trade union shall be valid if at the date of the nomination the person nominated is an officer or employee of the trade union or is otherwise connected with the trade union in such manner as may be prescribed by the regulations.
- (4) The regulations may include such incidental, transitional or supplementary provisions as the Secretary of State may consider appropriate.
- (5) They may, in particular, include provision for securing, to such extent and subject to such conditions as may be prescribed in the regulations, that nominations made under the ^{M8}Trade Union Act 1871 Amendment Act 1876 have effect as if made under the regulations and may be varied or revoked accordingly.
- (6) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Marginal Citations

M8 1876 c. 22.

18 Payments out of union funds on death of member.

- (1) The Secretary of State may make provision by regulations for enabling money payable out of the funds of a trade union on the death of a member, to an amount not exceeding £5,000, to be paid or distributed on his death without letters of administration, probate of any will or confirmation.
- (2) The regulations may include such incidental, transitional and supplementary provisions as the Secretary of State may consider appropriate.
- (3) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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- (4) The Treasury may by order under section 6(1) of the ^{M9}Administration of Estates (Small Payments) Act 1965 direct that subsection (1) above shall have effect with the substitution for the reference to £5,000 of a reference to such higher amount as may be specified in the order.

Marginal Citations

M9 1965 c. 32.

19 Application of certain provisions relating to industrial assurance or friendly societies.

[^{F2}(1) Section 99 of the Friendly Societies Act 1992 (insurance of lives of children under 10) applies to a trade union as to [^{F3}a friendly society]].

^{F4}(2)

.....

- (3) Section 52 of the Friendly Societies Act 1974 (charitable subscriptions and contributions to other registered societies) extends to a trade union, or branch of a trade union, as regards contributing to the funds and taking part in the government of a medical society, that is, a society for the purpose of relief in sickness by providing medical attendance and medicine.

A trade union, or branch of a trade union, shall not withdraw from contributing to the funds of such a society except on three months notice to the society and on payment of all contributions accrued or accruing due to the date of the expiry of the notice.

[^{F5}(4) In this section “industrial assurance company” has the meaning it has in section 99 of the Friendly Societies Act 1992.]

Textual Amendments

F2 S. 19(1) substituted (1.1.1994) by S.I. 1993/3084, reg. 7

F3 Words in s. 19(1) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 332

F4 S. 19(2) repealed (1.1.1994) by S.I. 1993/3084, reg.8

F5 S. 19(4) inserted (1.12.2001) by S.I. 2001/3647, art. 5, Sch. 3 para. 14(2)

Liability of trade unions in proceedings in tort

20 Liability of trade union in certain proceedings in tort.

(1) Where proceedings in tort are brought against a trade union—

(a) on the ground that an act—

- (i) induces another person to break a contract or interferes or induces another person to interfere with its performance, or
- (ii) consists in threatening that a contract (whether one to which the union is a party or not) will be broken or its performance interfered with, or that the union will induce another person to break a contract or interfere with its performance, or

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- (b) in respect of an agreement or combination by two or more persons to do or to procure the doing of an act which, if it were done without any such agreement or combination, would be actionable in tort on such a ground,
- then, for the purpose of determining in those proceedings whether the union is liable in respect of the act in question, that act shall be taken to have been done by the union if, but only if, it is to be taken to have been authorised or endorsed by the trade union in accordance with the following provisions.
- (2) An act shall be taken to have been authorised or endorsed by a trade union if it was done, or was authorised or endorsed—
- (a) by any person empowered by the rules to do, authorise or endorse acts of the kind in question, or
 - (b) by the principal executive committee or the president or general secretary, or
 - (c) by any other committee of the union or any other official of the union (whether employed by it or not).
- (3) For the purposes of paragraph (c) of subsection (2)—
- (a) any group of persons constituted in accordance with the rules of the union is a committee of the union; and
 - (b) an act shall be taken to have been done, authorised or endorsed by an official if it was done, authorised or endorsed by, or by any member of, any group of persons of which he was at the material time a member, the purposes of which included organising or co-ordinating industrial action.
- (4) The provisions of paragraphs (b) and (c) of subsection (2) apply notwithstanding anything in the rules of the union, or in any contract or rule of law, but subject to the provisions of section 21 (repudiation by union of certain acts).
- (5) Where for the purposes of any proceedings an act is by virtue of this section taken to have been done by a trade union, nothing in this section shall affect the liability of any other person, in those or any other proceedings, in respect of that act.
- (6) In proceedings arising out of an act which is by virtue of this section taken to have been done by a trade union, the power of the court to grant an injunction or interdict includes power to require the union to take such steps as the court considers appropriate for ensuring—
- (a) that there is no, or no further, inducement of persons to take part or to continue to take part in industrial action, and
 - (b) that no person engages in any conduct after the granting of the injunction or interdict by virtue of having been induced before it was granted to take part or to continue to take part in industrial action.

The provisions of subsections (2) to (4) above apply in relation to proceedings for failure to comply with any such injunction or interdict as they apply in relation to the original proceedings.

- (7) In this section “rules”, in relation to a trade union, means the written rules of the union and any other written provision forming part of the contract between a member and the other members.

21 Repudiation by union of certain acts.

- (1) An act shall not be taken to have been authorised or endorsed by a trade union by virtue only of paragraph (c) of section 20(2) if it was repudiated by the executive,

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president or general secretary as soon as reasonably practicable after coming to the knowledge of any of them.

- (2) Where an act is repudiated—
- (a) written notice of the repudiation must be given to the committee or official in question, without delay, and
 - (b) the union must do its best to give individual written notice of the fact and date of repudiation, without delay—
 - (i) to every member of the union who the union has reason to believe is taking part, or might otherwise take part, in industrial action as a result of the act, and
 - (ii) to the employer of every such member.
- (3) The notice given to members in accordance with paragraph (b)(i) of subsection (2) must contain the following statement— “ Your union has repudiated the call (or calls) for industrial action to which this notice relates and will give no support to unofficial industrial action taken in response to it (or them). If you are dismissed while taking unofficial industrial action, you will have no right to complain of unfair dismissal. ”
- (4) If subsection (2) or (3) is not complied with, the repudiation shall be treated as ineffective.
- (5) An act shall not be treated as repudiated if at any time after the union concerned purported to repudiate it the executive, president or general secretary has behaved in a manner which is inconsistent with the purported repudiation.
- (6) The executive, president or general secretary shall be treated as so behaving if, on a request made to any of them within [^{F6}three months] of the purported repudiation by a person who—
- (a) is a party to a commercial contract whose performance has been or may be interfered with as a result of the act in question, and
 - (b) has not been given written notice by the union of the repudiation, it is not forthwith confirmed in writing that the act has been repudiated.
- (7) In this section “commercial contract” means any contract other than—
- (a) a contract of employment, or
 - (b) any other contract under which a person agrees personally to do work or perform services for another.

Textual Amendments

- F6** Words in s. 21(6) substituted (30.8.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para.17**; S.I. 1993/1908, art. 2(1), **Sch.1**

22 Limit on damages awarded against trade unions in actions in tort.

- (1) This section applies to any proceedings in tort brought against a trade union, except—
- (a) proceedings for personal injury as a result of negligence, nuisance or breach of duty;
 - (b) proceedings for breach of duty in connection with the ownership, occupation, possession, control or use of property;

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- (c) proceedings brought by virtue of Part I of the ^{M10}Consumer Protection Act 1987 (product liability).
- (2) In any proceedings in tort to which this section applies the amount which may awarded against the union by way of damages shall not exceed the following limit—

<i>Number of members of union</i>	<i>Maximum award of damages</i>
Less than 5,000	£10,000
5,000 or more but less than 25,000	£50,000
25,000 or more but less than 100,000	£125,000
100,000 or more	£250,000

- (3) The Secretary of State may by order amend subsection (2) so as to vary any of the sums specified; and the order may make such transitional provision as the Secretary of State considers appropriate.
- (4) Any such order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section—
- “breach of duty” means breach of a duty imposed by any rule of law or by or under any enactment;
- “personal injury” includes any disease and any impairment of a person’s physical or mental condition; and
- “property” means any property, whether real or personal (or in Scotland, heritable or moveable).

Marginal Citations

M10 1987 c. 43.

Restriction on enforcement against certain property

23 Restriction on enforcement of awards against certain property.

- (1) Where in any proceedings an amount is awarded by way of damages, costs or expenses—
- against a trade union,
 - against trustees in whom property is vested in trust for a trade union, in their capacity as such (and otherwise than in respect of a breach of trust on their part), or
 - against members or officials of a trade union on behalf of themselves and all of the members of the union,
- no part of that amount is recoverable by enforcement against any protected property.
- (2) The following is protected property—
- property belonging to the trustees otherwise than in their capacity as such;
 - property belonging to any member of the union otherwise than jointly or in common with the other members;

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- (c) property belonging to an official of the union who is neither a member nor a trustee;
 - (d) property comprised in the union’s political fund where that fund—
 - (i) is subject to rules of the union which prevent property which is or has been comprised in the fund from being used for financing strikes or other industrial action, and
 - (ii) was so subject at the time when the act in respect of which the proceedings are brought was done;
 - (e) property comprised in a separate fund maintained in accordance with the rules of the union for the purpose only of providing provident benefits.
- (3) For this purpose “provident benefits” includes—
- (a) any payment expressly authorised by the rules of the union which is made—
 - (i) to a member during sickness or incapacity from personal injury or while out of work, or
 - (ii) to an aged member by way of superannuation, or
 - (iii) to a member who has met with an accident or has lost his tools by fire or theft;
 - (b) a payment in discharge or aid of funeral expenses on the death of a member or the wife of a member or as provision for the children of a deceased member.

CHAPTER III

TRADE UNION ADMINISTRATION

Register of members’ names and addresses

24 Duty to maintain register of members’ names and addresses.

- (1) A trade union shall compile and maintain a register of the names and addresses of its members, and shall secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.
- (2) The register may be kept by means of a computer.
- (3) A trade union shall—
 - (a) allow any member, upon reasonable notice, to ascertain from the register, free of charge and at any reasonable time, whether there is an entry on it relating to him; and
 - (b) if requested to do so by any member, supply him as soon as reasonably practicable, either free of charge or on payment of a reasonable fee, with a copy of any entry on the register relating to him.
- ^{F7}(4)
- (5) For the purposes of this section a member’s address means either his home address or another address which he has requested the union in writing to treat as his postal address.
- (6) The remedy for failure to comply with the requirements of this section is by way of application under section 25 (to the Certification Officer) or section 26 (to the court).

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F8
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Textual Amendments

F7 S. 24(4) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F8 Words in s. 24(6) repealed (25.10.1999) by 1999 C. 26, ss. 29, 44, Sch. 6 paras. 1, 2, Sch. 9(7); S.I. 1999/2830, arts. 2(1)(3), **Sch. 2 Pt. I** (with Sch. 3 para. 5)

[^{F9}24A Securing confidentiality of register during ballots.

- (1) This section applies in relation to a ballot of the members of a trade union on—
 - (a) an election under Chapter IV for a position to which that Chapter applies,
 - (b) a political resolution under Chapter VI, and
 - (c) a resolution to approve an instrument of amalgamation or transfer under Chapter VII.
- (2) Where this section applies in relation to a ballot the trade union shall impose the duty of confidentiality in relation to the register of members' names and addresses on the scrutineer appointed by the union for the purposes of the ballot and on any person appointed by the union as the independent person for the purposes of the ballot.
- (3) The duty of confidentiality in relation to the register of members' names and addresses is, when imposed on a scrutineer or on an independent person, a duty—
 - (a) not to disclose any name or address in the register except in permitted circumstances; and
 - (b) to take all reasonable steps to secure that there is no disclosure of any such name or address by any other person except in permitted circumstances;
 and any reference in this Act to “the duty of confidentiality” is a reference to the duty prescribed in this subsection.
- (4) The circumstances in which disclosure of a member's name and address is permitted are—
 - (a) where the member consents;
 - (b) where it is requested by the Certification Officer for the purposes of the discharge of any of his functions or it is required for the purposes of the discharge of any of the functions of an inspector appointed by him;
 - (c) where it is required for the purposes of the discharge of any of the functions of the scrutineer or independent person, as the case may be, under the terms of his appointment;
 - (d) where it is required for the purposes of the investigation of crime or of criminal proceedings.
- (5) Any provision of this Part which incorporates the duty of confidentiality as respects the register into the appointment of a scrutineer or an independent person has the effect of imposing that duty on the scrutineer or independent person as a duty owed by him to the trade union.
- (6) The remedy for failure to comply with the requirements of this section is by way of application under section 25 (to the Certification Officer) or section 26 (to the court).

F10
.....]

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Textual Amendments

F9 S. 24A inserted (30.8.1993) by 1993 c. 19, s. 6; S.I. 1993/1908, art. 2(1), Sch. 1

F10 Words in s. 24A repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, 2, Sch. 9(7); S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, Sch. 2 Pt. I (with Sch. 3 para. 5)

25 Remedy for failure: application to Certification Officer.

- (1) A member of a trade union who claims that the union has failed to comply with any of the requirements of section 24 [^{F11}or 24A] (duties with respect to register of members' names and addresses) may apply to the Certification Officer for a declaration to that effect.
- (2) On an application being made to him, the Certification Officer shall—
 - (a) make such enquiries as he thinks fit, and
 - (b) ^{F12} . . . give the applicant and the trade union an opportunity to be heard, and may make or refuse the declaration asked for.
- (3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.
- (4) Where he makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.
- (5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.
- ^{F13}(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—
 - (a) to take such steps to remedy the declared failure, within such period, as may be specified in the order;
 - (b) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.
- ^{F13}(5B) Where an enforcement order has been made, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.]
- (6) In exercising his functions under this section the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.
- (7) Where he requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.
- ^{F14}(8) The Certification Officer shall not entertain an application for a declaration as respects an alleged failure to comply with the requirements of section 24A in relation to a ballot

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to which that section applies unless the application is made before the end of the period of one year beginning with the last day on which votes could be cast in the ballot.]

[^{F15}(9) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.

^{F15}(10) An enforcement order made by the Certification Officer under this section may be enforced in the same way as an order of the court.

^{F15}(11) The following paragraphs have effect if a person applies under section 26 in relation to an alleged failure—

- (a) that person may not apply under this section in relation to that failure;
- (b) on an application by a different person under this section in relation to that failure, the Certification Officer shall have due regard to any declaration, order, observations or reasons made or given by the court regarding that failure and brought to the Certification Officer's notice.]

Textual Amendments

F11 Words in s. 25(1) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 40(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F12 Words in s. 25(2)(b) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, **Sch. 6 paras. 1,4(2)**, Sch. 9(7); S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with Sch. 3 para. 5)

F13 S. 25(5A)(5B) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 para. 1, **4(3)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

F14 S. 25(8) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 40(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F15 S. 25(9)-(11) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **4(4)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

26 Remedy for failure: application to court.

(1) A member of a trade union who claims that the union has failed to comply with any of the requirements of section 24 [^{F16}or 24A] (duties with respect to register of members' names and addresses) may apply to the court for a declaration to that effect.

^{F17}(2)

(3) If the court makes a declaration it shall specify in it the provisions with which the trade union has failed to comply.

(4) Where the court makes a declaration it shall also, unless it considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—

- (a) to take such steps to remedy the declared failure, within such period, as may be specified in the order;
- (b) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

(5) Where an enforcement order has been made, any person who is a member of the union and was a member at the time it was made, is entitled to enforce obedience to the order as if he had made the application on which the order was made.

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- (6) Without prejudice to any other power of the court, the court may on an application under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.
- [^{F18}(7) The court shall not entertain an application for a declaration as respects an alleged failure to comply with the requirements of section 24A in relation to a ballot to which that section applies unless the application is made before the end of the period of one year beginning with the last day on which votes could be cast in the ballot.]
- [^{F19}(8) The following paragraphs have effect if a person applies under section 25 in relation to an alleged failure—
- (a) that person may not apply under this section in relation to that failure;
 - (b) on an application by a different person under this section in relation to that failure, the court shall have due regard to any declaration, order, observations or reasons made or given by the Certification Officer regarding that failure and brought to the court's notice.]

Textual Amendments

- F16** Words in s. 26(1) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 41(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F17** S. 26(2) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 para. 1, 5(2), **Sch. 9(7)**; S.I. 1999/2830, art. 2(1)(3), **Sch. 1 Pt. I, Sch. 2 Pt. I** (with Sch. 3 para. 5)
- F18** S. 26(7) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 41(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F19** S. 26(8) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **5(3)**; S.I. 1999/2830, **art. 2(1) Sch. 1 Pt. I** (with Sch. 3 para. 4)

Duty to supply copy of rules

27 Duty to supply copy of rules.

A trade union shall at the request of any person supply him with a copy of its rules either free of charge or on payment of a reasonable charge.

Accounting records

28 Duty to keep accounting records.

- (1) A trade union shall—
- (a) cause to be kept proper accounting records with respect to its transactions and its assets and liabilities, and
 - (b) establish and maintain a satisfactory system of control of its accounting records, its cash holdings and all its receipts and remittances.
- (2) Proper accounting records shall not be taken to be kept with respect to the matters mentioned in subsection (1)(a) unless there are kept such records as are necessary to give a true and fair view of the state of the affairs of the trade union and to explain its transactions.

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29 Duty to keep records available for inspection.

- (1) A trade union shall keep available for inspection from their creation until the end of the period of six years beginning with the 1st January following the end of the period to which they relate such of the records of the union, or of any branch or section of the union, as are, or purport to be, records required to be kept by the union under section 28.

This does not apply to records relating to periods before 1st January 1988.

- (2) In section 30 (right of member to access to accounting records)—
- (a) references to a union’s accounting records are to any such records as are mentioned in subsection (1) above, and
 - (b) references to records available for inspection are to records which the union is required by that subsection to keep available for inspection.
- (3) The expiry of the period mentioned in subsection (1) above does not affect the duty of a trade union to comply with a request for access made under section 30 before the end of that period.

30 Right of access to accounting records.

- (1) A member of a trade union has a right to request access to any accounting records of the union which are available for inspection and relate to periods including a time when he was a member of the union.

In the case of records relating to a branch or section of the union, it is immaterial whether he was a member of that branch or section.

- (2) Where such access is requested the union shall—
- (a) make arrangements with the member for him to be allowed to inspect the records requested before the end of the period of twenty-eight days beginning with the day the request was made,
 - (b) allow him and any accountant accompanying him for the purpose to inspect the records at the time and place arranged, and
 - (c) secure that at the time of the inspection he is allowed to take, or is supplied with, any copies of, or of extracts from, records inspected by him which he requires.
- (3) The inspection shall be at a reasonable hour and at the place where the records are normally kept, unless the parties to the arrangements agree otherwise.
- (4) An “accountant” means a person who is eligible for appointment as a company auditor under section 25 of the ^{M11}Companies Act 1989.
- (5) The union need not allow the member to be accompanied by an accountant if the accountant fails to enter into such agreement as the union may reasonably require for protecting the confidentiality of the records.
- (6) Where a member who makes a request for access to a union’s accounting records is informed by the union, before any arrangements are made in pursuance of the request—
- (a) of the union’s intention to charge for allowing him to inspect the records to which the request relates, for allowing him to take copies of, or extracts from, those records or for supplying any such copies, and

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(b) of the principles in accordance with which its charges will be determined, then, where the union complies with the request, he is liable to pay the union on demand such amount, not exceeding the reasonable administrative expenses incurred by the union in complying with the request, as is determined in accordance with those principles.

(7) In this section “member”, in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes a member of any of the constituent or affiliated organisations.

Marginal Citations

M11 1989 c. 40.

31 Remedy for failure to comply with request for access.

(1) A person who claims that a trade union has failed in any respect to comply with a request made by him under section 30 may apply to the court [^{F20}or to the Certification Officer].

(2) Where [^{F21}on an application to it] the court is satisfied that the claim is well-founded, it shall make such order as it considers appropriate for ensuring that [^{F22}the applicant]—

- (a) is allowed to inspect the records requested,
- (b) is allowed to be accompanied by an accountant when making the inspection of those records, and
- (c) is allowed to take, or is supplied with, such copies of, or of extracts from, the records as he may require.

[^{F23}^{F23}(2A) On an application to him the Certification Officer shall—

- (a) make such enquiries as he thinks fit, and
- (b) give the applicant and the trade union an opportunity to be heard.

^{F23}(2B) Where the Certification Officer is satisfied that the claim is well-founded he shall make such order as he considers appropriate for ensuring that the applicant—

- (a) is allowed to inspect the records requested,
- (b) is allowed to be accompanied by an accountant when making the inspection of those records, and
- (c) is allowed to take, or is supplied with, such copies of, or of extracts from, the records as he may require.

^{F23}(2C) In exercising his functions under this section the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.]

(3) Without prejudice to any other power of the court, the court may on an application [^{F24}to it]under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.

[^{F25}(4) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application

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notwithstanding that the information has not been furnished to him by the specified date.

^{F25}(5) An order made by the Certification Officer under this section may be enforced in the same way as an order of the court.

^{F25}(6) If a person applies to the court under this section in relation to an alleged failure he may not apply to the Certification Officer under this section in relation to that failure.

^{F25}(7) If a person applies to the Certification Officer under this section in relation to an alleged failure he may not apply to the court under this section in relation to that failure.]

Textual Amendments

- F20** Words in s. 31(1) inserted (25.10.1999) by 1999 C. 26, s. 29, Sch. 6 paras. 1, 6(1)(2); S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)
- F21** Words in s. 31(2) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **6(1)(3)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)
- F22** Words in 31(2) substituted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 para. 1, **6(1)(4)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)
- F23** S. 31(2A)-(2C) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **6(1)(5)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)
- F24** Words in s. 31(3) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **6(5)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)
- F25** S. 31(4)-(7) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **6(6)**; S.I. 1999/2830, art. 2(1) (2), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

Annual return, accounts and audit

32 Annual return.

(1) A trade union shall send to the Certification Officer as respects each calendar year a return relating to its affairs.

(2) The annual return shall be in such form and be signed by such persons as the Certification Officer may require and shall be sent to him before 1st June in the calendar year following that to which it relates.

(3) The annual return shall contain—

(a) the following accounts—

(i) revenue accounts indicating the income and expenditure of the trade union for the period to which the return relates,

(ii) a balance sheet as at the end of that period, and

(iii) such other accounts as the Certification Officer may require,

each of which must give a true and fair view of the matters to which it relates,

[^{F26}(aa) details of the salary paid to and other benefits provided to or in respect of—

(i) each member of the executive,

(ii) the president, and

(iii) the general secretary,

by the trade union during the period to which the return relates,]

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- (b) a copy of the report made by the auditor or auditors of the trade union on those accounts and such other documents relating to those accounts and such further particulars as the Certification Officer may require, ^{F27} . . .
- (c) a copy of the rules of the trade union as in force at the end of the period to which the return relates [^{F28}, and
- (d) in the case of a trade union required to maintain a register by section 24, a statement of the number of names on the register as at the end of the period to which the return relates and the number of those names which were not accompanied by an address which is a member’s address for the purposes of that section;]

and shall have attached to it a note of all the changes in the officers of the union and of any change in the address of the head or main office of the union during the period to which the return relates.

- (4) The Certification Officer may, if in any particular case he considers it appropriate to do so—
 - (a) direct that the period for which a return is to be sent to him shall be a period other than the calendar year last preceding the date on which the return is sent;
 - (b) direct that the date before which a return is to be sent to him shall be such date (whether before or after 1st June) as may be specified in the direction.
- (5) A trade union shall at the request of any person supply him with a copy of its most recent return either free of charge or on payment of a reasonable charge.
- (6) The Certification Officer shall at all reasonable hours keep available for public inspection either free of charge or on payment of a reasonable charge, copies of all annual returns sent to him under this section.

[^{F29}(7) For the purposes of this section and section 32A “member of the executive” includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.]

Textual Amendments

F26 S. 32(3)(aa) inserted (1.1.1994) by 1993 c. 19, s. 8(a); S.I. 1993/1908, art. 2(3), **Sch. 3**

F27 Word in s. 32(3) repealed (1.1.1994) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1993/1908, art. 2(3), **Sch. 3**

F28 S. 32(3)(d) and the word preceding it inserted (1.1.1994) by 1993 c. 19, s. 8(b); S.I. 1993/1908, art. 2(3), **Sch.3**

F29 S. 32(7) inserted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para.42**; S.I. 1993/1908, art. 2(3), **Sch. 3**

[^{F30}32A Statement to members following annual return.

- (1) A trade union shall take all reasonable steps to secure that, not later than the end of the period of eight weeks beginning with the day on which the annual return of the union is sent to the Certification Officer, all the members of the union are provided with the statement required by this section by any of the methods allowed by subsection (2).
- (2) Those methods are—
 - (a) the sending of individual copies of the statement to members; or

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- (b) any other means (whether by including the statement in a publication of the union or otherwise) which it is the practice of the union to use when information of general interest to all its members needs to be provided to them.
- (3) The statement required by this section shall specify—
- (a) the total income and expenditure of the trade union for the period to which the return relates,
 - (b) how much of the income of the union for that period consisted of payments in respect of membership,
 - (c) the total income and expenditure for that period of any political fund of the union, and
 - (d) the salary paid to and other benefits provided to or in respect of—
 - (i) each member of the executive,
 - (ii) the president, and
 - (iii) the general secretary,
 by the trade union during that period.
- (4) The requirement imposed by this section is not satisfied if the statement specifies anything inconsistent with the contents of the return.
- (5) The statement—
- (a) shall also set out in full the report made by the auditor or auditors of the union on the accounts contained in the return and state the name and address of that auditor or of each of those auditors, and
 - (b) may include any other matter which the union considers may give a member significant assistance in making an informed judgment about the financial activities of the union in the period to which the return relates.
- (6) The statement—
- (a) shall also include the following statement—

"A member who is concerned that some irregularity may be occurring, or have occurred, in the conduct of the financial affairs of the union may take steps with a view to investigating further, obtaining clarification and, if necessary, securing regularisation of that conduct.

The member may raise any such concern with such one or more of the following as it seems appropriate to raise it with: the officials of the union, the trustees of the property of the union, the auditor or auditors of the union, the Certification Officer (who is an independent officer appointed by the Secretary of State) and the police.

Where a member believes that the financial affairs of the union have been or are being conducted in breach of the law or in breach of rules of the union and contemplates bringing civil proceedings against the union or responsible officials or trustees, he [^{F31}should] consider obtaining independent legal advice."; and
 - (b) may include such other details of the steps which a member may take for the purpose mentioned in the statement set out above as the trade union considers appropriate.

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- (7) A trade union shall send to the Certification Officer a copy of the statement which is provided to its members in pursuance of this section as soon as is reasonably practicable after it is so provided.
- (8) Where the same form of statement is not provided to all the members of a trade union, the union shall send to the Certification Officer in accordance with subsection (7) a copy of each form of statement provided to any of them.
- (9) If at any time during the period of two years beginning with the day referred to in subsection (1) any member of the trade union requests a copy of the statement required by this section, the union shall, as soon as practicable, furnish him with such a copy free of charge.]

Textual Amendments

F30 S. 32A inserted (1.1.1994) by 1993 c. 19, s.9; S.I. 1993/1908, art. 2(3), **Sch.3**

F31 Word in s. 32A(6)(a) substituted (25.10.1999) by 1999 c. 26, **ss. 28(3), 45**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. 1** (with **Sch. 3 para. 4**)

33 Duty to appoint auditors.

- (1) A trade union shall in respect of each accounting period appoint an auditor or auditors to audit the accounts contained in its annual return.
- (2) An “accounting period” means any period in relation to which it is required to send a return to the Certification Officer.

34 Eligibility for appointment as auditor.

- (1) A person is not qualified to be the auditor or one of the auditors of a trade union unless he is eligible for appointment as a company auditor under section 25 of the ^{M12}Companies Act 1989.
- (2) Two or more persons who are not so qualified may act as auditors of a trade union in respect of an accounting period if—
 - (a) the receipts and payments in respect of the union’s last preceding accounting period did not in the aggregate exceed £5,000,
 - (b) the number of its members at the end of that period did not exceed 500, and
 - (c) the value of its assets at the end of that period did not in the aggregate exceed £5,000.
- (3) Where by virtue of subsection (2) persons who are not qualified as mentioned in subsection (1) act as auditors of a trade union in respect of an accounting period, the Certification Officer may (during that period or after it comes to an end) direct the union to appoint a person who is so qualified to audit its accounts for that period.
- (4) The Secretary of State may by regulations—
 - (a) substitute for any sum or number specified in subsection (2) such sum or number as may be specified in the regulations; and
 - (b) prescribe what receipts and payments are to be taken into account for the purposes of that subsection.

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Any such regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (5) None of the following shall act as auditor of a trade union—
- (a) an officer or employee of the trade union or of any of its branches or sections;
 - (b) a person who is a partner of, or in the employment of, or who employs, such an officer or employee;
 - (c) a body corporate.

F32 . . .

Textual Amendments

F32 In s. 34(5), the second sentence repealed (30.8.1993) by 1993 c. 19, ss. 49(1), 51, Sch. 7 para. 18, Sch.10; S.I. 1993/1908 art. 2(1), Sch. 1

Marginal Citations

M12 1989 c. 40.

35 Appointment and removal of auditors.

- (1) The rules of every trade union shall contain provision for the appointment and removal of auditors.

But the following provisions have effect notwithstanding anything in the rules.

- (2) An auditor of a trade union shall not be removed from office except by resolution passed at a general meeting of its members or of delegates of its members.
- (3) An auditor duly appointed to audit the accounts of a trade union shall be re-appointed as auditor for the following accounting period, unless—
- (a) a resolution has been passed at a general meeting of the trade union appointing somebody instead of him or providing expressly that he shall not be re-appointed, or
 - (b) he has given notice to the trade union in writing of his unwillingness to be re-appointed, or
 - (c) he is ineligible for re-appointment, or
 - (d) he has ceased to act as auditor by reason of incapacity.
- (4) Where notice has been given of an intended resolution to appoint somebody in place of a retiring auditor but the resolution cannot be proceeded with at the meeting because of the death or incapacity of that person, or because he is ineligible for the appointment, the retiring auditor need not automatically be re-appointed.
- (5) The references above to a person being ineligible for appointment as auditor of a trade union are to his not being qualified for the appointment in accordance with [F33subsections (1) to (4)] of section 34 or being precluded by [F33subsection (5)] of that section from acting as its auditor.
- (6) The Secretary of State may make provision by regulations as to the procedure to be followed when it is intended to move a resolution—
- (a) appointing another auditor in place of a retiring auditor, or
 - (b) providing expressly that a retiring auditor shall not be re-appointed,

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and as to the rights of auditors and members of the trade union in relation to such a motion.

Any such regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (7) Where regulations under subsection (6)—
- (a) require copies of any representations made by a retiring auditor to be sent out, or
 - (b) require any such representations to be read out at a meeting,
- the court, on the application of the trade union or of any other person, may dispense with the requirement if satisfied that the rights conferred on the retiring auditor by the regulations are being abused to secure needless publicity for defamatory matter.
- (8) On such an application the court may order the costs or expenses of the trade union to be paid, in whole or in part, by the retiring auditor, whether he is a party to the application or not.

Textual Amendments

F33 Words in s. 35(5) substituted (30.8.1993) by 1993 c. 19, s. 49(1), Sch. 7 para. 19(a)(b); S.I. 1993/1908 art. 2(1), Sch.1

36 Auditors' report.

- (1) The auditor or auditors of a trade union shall make a report to it on the accounts audited by him or them and contained in its annual return.
- (2) The report shall state whether, in the opinion of the auditor or auditors, the accounts give a true and fair view of the matters to which they relate.
- (3) It is the duty of the auditor or auditors in preparing their report to carry out such investigations as will enable them to form an opinion as to—
 - (a) whether the trade union has kept proper accounting records in accordance with the requirements of section 28,
 - (b) whether it has maintained a satisfactory system of control over its transactions in accordance with the requirements of that section, and
 - (c) whether the accounts to which the report relates agree with the accounting records.
- (4) If in the opinion of the auditor or auditors the trade union has failed to comply with section 28, or if the accounts do not agree with the accounting records, the auditor or auditors shall state that fact in the report.

37 Rights of auditors.

- (1) Every auditor of a trade union—
 - (a) has a right of access at all times to its accounting records and to all other documents relating to its affairs, and
 - (b) is entitled to require from its officers, or the officers of any of its branches or sections, such information and explanations as he thinks necessary for the performance of his duties as auditor.

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- (2) If an auditor fails to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of an audit, he shall state that fact in his report.
- (3) Every auditor of a trade union is entitled—
 - (a) to attend any general meeting of its members, or of delegates of its members, and to receive all notices of and other communications relating to any general meeting which any such member or delegate is entitled to receive, and
 - (b) to be heard at any meeting which he attends on any part of the business of the meeting which concerns him as auditor.

[^{F34}Investigation of financial affairs]

Textual Amendments

F34 Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, s.10; S.I. 1993/1908, art. 2(1), Sch.1

[^{F35}37A Power of Certification Officer to require production of documents etc.

- (1) The Certification Officer may at any time, if he thinks there is good reason to do so, give directions to a trade union, or a branch or section of a trade union, requiring it to produce such relevant documents as may be specified in the directions; and the documents shall be produced at such time and place as may be so specified.
- (2) The Certification Officer may at any time, if he thinks there is good reason to do so, authorise a member of his staff or any other person, on producing (if so required) evidence of his authority, to require a trade union, or a branch or section of a trade union, to produce forthwith to the member of staff or other person such relevant documents as the member of staff or other person may specify.
- (3) Where the Certification Officer, or a member of his staff or any other person, has power to require the production of documents by virtue of subsection (1) or (2), the Certification Officer, member of staff or other person has the like power to require production of those documents from any person who appears to the Certification Officer, member of staff or other person to be in possession of them.
- (4) Where such a person claims a lien on documents produced by him, the production is without prejudice to the lien.
- (5) The power under this section to require the production of documents includes power—
 - (a) if the documents are produced—
 - (i) to take copies of them or extracts from them, and
 - (ii) to require the person by whom they are produced, or any person who is or has been an official or agent of the trade union, to provide an explanation of any of them; and
 - (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (6) In subsections (1) and (2) “relevant documents”, in relation to a trade union or a branch or section of a trade union, means accounting documents, and documents of any other description, which may be relevant in considering the financial affairs of the trade union.

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- (7) A person shall not be excused from providing an explanation or making a statement in compliance with a requirement imposed under subsection (5) on the ground that to do so would tend to expose him to proceedings for an offence; but an explanation so provided or statement so made may only be used in evidence against the person by whom it is made or provided—
- (a) on a prosecution for an offence under section 45(9) (false explanations and statements), or
 - (b) on a prosecution for some other offence where in giving evidence the person makes a statement inconsistent with it.]

Textual Amendments

F35 Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, s.10; S.I. 1993/1908, art. 2(1), Sch.1

[^{F36}37B Investigations by inspectors.

- (1) The Certification Officer may appoint one or more members of his staff or other persons as an inspector or inspectors to investigate the financial affairs of a trade union and to report on them in such manner as he may direct.
- (2) The Certification Officer may only make such an appointment if it appears to him that there are circumstances suggesting—
 - (a) that the financial affairs of the trade union are being or have been conducted for a fraudulent or unlawful purpose,
 - (b) that persons concerned with the management of those financial affairs have, in connection with that management, been guilty of fraud, misfeasance or other misconduct,
 - (c) that the trade union has failed to comply with any duty imposed on it by this Act in relation to its financial affairs, or
 - (d) that a rule of the union relating to its financial affairs has not been complied with.
- (3) Where an inspector is, or inspectors are, appointed under this section it is the duty of all persons who are or have been officials or agents of the trade union—
 - (a) to produce to the inspector or inspectors all relevant documents which are in their possession,
 - (b) to attend before the inspector or inspectors when required to do so, and
 - (c) otherwise to give the inspector or inspectors all assistance in connection with the investigation which they are reasonably able to give.
- (4) Where any person (whether or not within subsection (3)) appears to the inspector or inspectors to be in possession of information relating to a matter which he considers, or they consider, to be relevant to the investigation, the inspector or inspectors may require him—
 - (a) to produce to the inspector or inspectors any relevant documents relating to that matter,
 - (b) to attend before the inspector or inspectors, and
 - (c) otherwise to give the inspector or inspectors all assistance in connection with the investigation which he is reasonably able to give;
 and it is the duty of the person to comply with the requirement.

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- (5) In subsections (3) and (4) “relevant documents”, in relation to an investigation of the financial affairs of a trade union, means accounting documents, and documents of any other description, which may be relevant to the investigation.
- (6) A person shall not be excused from providing an explanation or making a statement in compliance with subsection (3) or a requirement imposed under subsection (4) on the ground that to do so would tend to expose him to proceedings for an offence; but an explanation so provided or statement so made may only be used in evidence against the person by whom it is provided or made—
 - (a) on a prosecution for an offence under section 45(9) (false explanations and statements), or
 - (b) on a prosecution for some other offence where in giving evidence the person makes a statement inconsistent with it.]

Textual Amendments

F36 Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, s.10; S.I. 1993/1908, art. 2(1), Sch.1

[^{F37}37C Inspectors’ reports etc.

- (1) An inspector or inspectors appointed under section 37B—
 - (a) may, and if so directed by the Certification Officer shall, make interim reports, and
 - (b) on the conclusion of their investigation shall make a final report, to the Certification Officer.
- (2) Any report under subsection (1) shall be written or printed, as the Certification Officer directs.
- (3) An inspector or inspectors appointed under section 37B may at any time, and if so directed by the Certification Officer shall, inform the Certification Officer of any matters coming to his or their knowledge as a result of the investigation.
- (4) The Certification Officer may direct an inspector or inspectors appointed under section 37B to take no further steps in the investigation, or to take only such further steps as are specified in the direction, if—
 - (a) it appears to the Certification Officer that matters have come to light in the course of the investigation which suggest that a criminal offence has been committed and those matters have been referred to the appropriate prosecuting authority, or
 - (b) it appears to the Certification Officer appropriate to do so in any other circumstances.
- (5) Where an investigation is the subject of a direction under subsection (4), the inspector or inspectors shall make a final report to the Certification Officer only where the Certification Officer directs him or them to do so at the time of the direction under that subsection or subsequently.
- (6) The Certification Officer shall publish a final report made to him under this section.
- (7) The Certification Officer shall furnish a copy of such a report free of charge—
 - (a) to the trade union which is the subject of the report,

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- (b) to any auditor of that trade union or of any branch or section of the union, if he requests a copy before the end of the period of three years beginning with the day on which the report is published, and
 - (c) to any member of the trade union if—
 - (i) he has complained to the Certification Officer that there are circumstances suggesting any of the states of affairs specified in section 37B(2)(a) to (d),
 - (ii) the Certification Officer considers that the report contains findings which are relevant to the complaint, and
 - (iii) the member requests a copy before the end of the period of three years beginning with the day on which the report is published.
- (8) A copy of any report under this section, certified by the Certification Officer to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report; and a document purporting to be a certificate of the Certification Officer under this subsection shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.]

Textual Amendments

F37 Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, s. 10; S.I. 1993/1908, art. 2(1), Sch.1

[^{F38}37D Expenses of investigations.

- (1) The expenses of an investigation under section 37B shall be defrayed in the first instance by the Certification Officer.
- (2) For the purposes of this section there shall be treated as expenses of an investigation, in particular, such reasonable sums as the Certification Officer may determine in respect of general staff costs and overheads.
- (3) A person who is convicted on a prosecution instituted as a result of the investigation may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the order.]

Textual Amendments

F38 Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, s. 10; S.I. 1993/1908, art. 2(1), Sch. 1

[^{F39}37E Sections 37A and 37B: supplementary.

- (1) Where—
 - (a) a report of the auditor or auditors of a trade union, or a branch or section of a trade union, on the accounts audited by him or them and contained in the annual return of the union, or branch or section—
 - (i) does not state without qualification that the accounts give a true and fair view of the matters to which they relate, or
 - (ii) includes a statement in compliance with section 36(4), or

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- (b) a member of a trade union has complained to the Certification Officer that there are circumstances suggesting any of the states of affairs specified in section 37B(2)(a) to (d),
- the Certification Officer shall consider whether it is appropriate for him to exercise any of the powers conferred on him by sections 37A and 37B.
- (2) If in a case where a member of a trade union has complained as mentioned in subsection (1)(b) the Certification Officer decides not to exercise any of the powers conferred by those sections he shall, as soon as reasonably practicable after making a decision not to do so, notify the member of his decision and, if he thinks fit, of the reasons for it.
- (3) Nothing in section 37A or 37B—
- (a) requires or authorises anyone to require the disclosure by a person of information which he would in an action in the High Court or the Court of Session be entitled to refuse to disclose on grounds of legal professional privilege except, if he is a lawyer, the name and address of his client, or
- (b) requires or authorises anyone to require the production by a person of a document which he would in such an action be entitled to refuse to produce on such grounds.
- (4) Nothing in section 37A or 37B requires or authorises anyone to require the disclosure of information or the production of documents in respect of which the person to whom the requirement would relate owes an obligation of confidence by virtue of carrying on the business of banking unless—
- (a) the person to whom the obligation is owed is the trade union, or any branch or section of the union, concerned or a trustee of any fund concerned, or
- (b) the person to whom the obligation of confidence is owed consents to the disclosure or production.
- (5) In sections 37A and 37B and this section—
- (a) references to documents include information recorded in any form, and
- (b) in relation to information recorded otherwise than in legible form, references to its production are to the production of a copy of the information in legible form.]

Textual Amendments

F39 Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, s.10; S.I. 1993/1908, art. 2(1), Sch. 1

Members' superannuation schemes

38 Members' superannuation schemes: separate fund to be maintained.

- (1) In the following provisions a “members' superannuation scheme” means any scheme or arrangement made by or on behalf of a trade union (including a scheme or arrangement shown in the rules of the union) in so far as it provides—
- (a) for benefits to be paid by way of pension (including any widows' or children's pensions or dependants' pensions) to or in respect of members or former members of the trade union, and

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(b) for those benefits to be so paid either out of the funds of the union or under an insurance scheme maintained out of those funds.

(2) A trade union shall not maintain a members' superannuation scheme unless it maintains a separate fund for the payment of benefits in accordance with the scheme.

A "separate fund" means a fund separate from the general funds of the trade union.

39 Examination of proposals for new scheme.

(1) A trade union shall not begin to maintain a members' superannuation scheme unless, before the date on which the scheme begins to be maintained—

(a) the proposals for the scheme have been examined by an appropriately qualified actuary, and

(b) a copy of a report made to the trade union by the actuary on the results of his examination of the proposals, signed by the actuary, has been sent to the Certification Officer.

(2) The actuary's report shall state—

(a) whether in his opinion the premium or contribution rates will be adequate,

(b) whether the accounting or funding arrangements are suitable, and

(c) whether in his opinion the fund for the payment of benefits will be adequate.

(3) A copy of the actuary's report shall, on the application of any of the union's members, be supplied to him free of charge.

40 Periodical re-examination of existing schemes.

(1) Where a trade union maintains a members' superannuation scheme, it shall arrange for the scheme to be examined periodically by an appropriately qualified actuary and for a report to be made to it by the actuary on the result of his examination.

(2) The examination shall be of the scheme as it has effect at such date as the trade union may determine, not being more than five years after the date by reference to which the last examination or, as the case may be, the examination of the proposals for the scheme was carried out.

(3) The examination shall include a valuation (as at the date by reference to which the examination is carried out) of the assets comprised in the fund maintained for the payment of benefits and of the liabilities falling to be discharged out of it.

(4) The actuary's report shall state—

(a) whether in his opinion the premium or contribution rates are adequate,

(b) whether the accounting or funding arrangements are suitable, and

(c) whether in his opinion the fund for the payment of benefits is adequate.

(5) A copy of the report, signed by the actuary, shall be sent to the Certification Officer.

(6) The trade union shall make such arrangements as will enable the report to be sent to the Certification Officer within a year of the date by reference to which the examination was carried out.

(7) A copy of the actuary's report shall, on the application of any of the union's members, be supplied to him free of charge.

Status: Point in time view as at 01/12/2001. This version of this part contains provisions that are not valid for this point in time.

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41 Powers of the Certification Officer.

- (1) The Certification Officer may, on the application of a trade union—
 - (a) exempt a members’ superannuation scheme which the union proposes to maintain from the requirements of section 39 (examination of proposals for new scheme), or
 - (b) exempt a members’ superannuation scheme which the union maintains from the requirements of section 40 (periodical re-examination of scheme),
 if he is satisfied that, by reason of the small number of members to which the scheme is applicable or for any other special reasons, it is unnecessary for the scheme to be examined in accordance with those provisions.
- (2) An exemption may be revoked if it appears to the Certification Officer that the circumstances by reason of which it was granted have ceased to exist.
- (3) Where an exemption is revoked under subsection (1)(b), the date as at which the next periodical examination is to be carried out under section 40 shall be such as the Certification Officer may direct.
- (4) The Certification Officer may in any case direct that section 40 (periodical re-examination of schemes) shall apply to a trade union with the substitution for the reference to five years of a reference to such shorter period as may be specified in the direction.

42 Meaning of “appropriately qualified actuary”.

In sections 39 and 40 an “appropriately qualified actuary” means a person who is either—

- (a) a Fellow of the Institute of Actuaries, or
- (b) a Fellow of the Faculty of Actuaries,

or is approved by the Certification Officer on the application of the trade union as a person having actuarial knowledge.

Supplementary

43 Newly-formed trade unions.

- (1) The following provisions of this Chapter do not apply to a trade union which has been in existence for less than twelve months—
 - (a) section 27 (duty to supply copy of rules),
 - (b) sections 32 to 37 (annual return, [^{F40}statement for members,] accounts and audit), ^{F41} . . .
 - [^{F42}(ba) sections 37A to 37E (investigation of financial affairs), and]
 - (c) sections 38 to 42 (members’ superannuation schemes).
- (2) Sections 24 to 26 (register of members’ names and addresses) do not apply to a trade union until more than one year has elapsed since its formation (by amalgamation or otherwise).

For this purpose the date of formation of a trade union formed otherwise than by amalgamation shall be taken to be the date on which the first members of the executive of the union are first appointed or elected.

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Textual Amendments

- F40** Words in s. 43(1)(b) inserted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 43(a)**; S.I. 1993/1908, art. 2(3), **Sch. 3**
- F41** Word in s. 43(1)(b) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F42** S. 43(1)(ba) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 43(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

44 Discharge of duties in case of union having branches or sections.

- (1) The following provisions apply where a trade union consists of or includes branches or sections.
- (2) Any duty falling upon the union in relation to a branch or section under the provisions of—
section 28 (duty to keep accounting records),
[^{F43}sections 32 and 33 to 37] (annual return, accounts and audit), or
sections 38 to 42 (members' superannuation schemes),
shall be treated as discharged to the extent to which a branch or section discharges it instead of the union.
- (3) In sections 29 to 31 (right of member to access to accounting records) references to a branch or section do not include a branch or section which is itself a trade union.
- (4) Any duty falling upon a branch or section by reason of its being a trade union under—
section 24 (register of members' names and addresses),
section 28 (duty to keep accounting records),
[^{F43}sections 32 and 33 to 37] (annual return, accounts and audit), or
section 38 to 42 (members' superannuation schemes),
shall be treated as discharged to the extent to which the union of which it is a branch or section discharges the duty instead of it.
- [^{F44}(5) Where the duty falling on a trade union under section 32 to send to the Certification Officer a return relating to its affairs is treated as discharged by the union by virtue of subsection (2) or (4) of this section, the duties imposed by section 32A in relation to the return shall be treated as duties of the branch or section of the union, or the trade union of which it is a branch or section, by which that duty is in fact discharged.]

Textual Amendments

- F43** Words in s. 44(2)(4) substituted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 44(a)**; S.I. 1993/1908, art. 2(3), **Sch. 3**
- F44** S. 44(5) inserted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 44(b)**; S.I. 1993/1908, art. 2(3), **Sch. 3**

45 Offences.

- (1) If a trade union refuses or wilfully neglects to perform a duty imposed on it by or under any of the provisions of—

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section 27 (duty to supply copy of rules),
 sections 28 to 30 (accounting records),
 sections 32 to 37 (annual return, [^{F45}statement for members,] accounts and audit), or
 sections 38 to 42 (members' superannuation schemes),
 it commits an offence.

- (2) The offence shall be deemed to have been also committed by—
- (a) every officer of the trade union who is bound by the rules of the union to discharge on its behalf the duty breach of which constitutes the offence, or
 - (b) if there is no such officer, every member of the general committee of management of the union.
- (3) In any proceedings brought against an officer or member by virtue of subsection (2) in respect of a breach of duty, it is a defence for him to prove that he had reasonable cause to believe, and did believe, that some other person who was competent to discharge that duty was authorised to discharge it instead of him and had discharged it or would do so.
- (4) A person who wilfully alters or causes to be altered a document which is required for the purposes of any of the provisions mentioned in subsection (1), with intent to falsify the document or to enable a trade union to evade any of those provisions, commits an offence.
- [^{F46}(5) If a person contravenes any duty, or requirement imposed, under section 37A (power of Certification officer to require production of documents etc.) or 37B (investigations by inspectors) he commits an offence.
- (6) In any proceedings brought against a person in respect of a contravention of a requirement imposed under section 37A(3) or 37B(4) to produce documents it is a defence for him to prove—
- (a) that the documents were not in his possession, and
 - (b) that it was not reasonably practicable for him to comply with the requirement.
- (7) If an official or agent of a trade union—
- (a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of, a document relating to the financial affairs of the trade union, or
 - (b) makes, or is privy to the making of, a false entry in any such document,
- he commits an offence unless he proves that he had no intention to conceal the financial affairs of the trade union or to defeat the law.
- (8) If such a person fraudulently—
- (a) parts with, alters or deletes anything in any such document, or
 - (b) is privy to the fraudulent parting with, fraudulent alteration of or fraudulent deletion in, any such document,
- he commits an offence.
- (9) If a person in purported compliance with a duty, or requirement imposed, under section 37A or 37B to provide an explanation or make a statement—
- (a) provides or makes an explanation or statement which he knows to be false in a material particular, or

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- (b) recklessly provides or makes an explanation or statement which is false in a material particular,
he commits an offence.]

Textual Amendments

F45 Words in s. 45(1) inserted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para.45**; S.I. 1993/1908, art. 2(3), **Sch.3**

F46 S. 45(5)-(9) substituted (30.8.1993) for s. 45(5) by 1993 c. 19, s. 11(1); S.I. 1993/1908, art. 1(2), **Sch. 1**

[^{F47}45A Penalties and prosecution time limits.

- (1) A person guilty of an offence under section 45 is liable on summary conviction—
 - (a) in the case of an offence under subsection (1) or (5), to a fine not exceeding level 5 on the standard scale;
 - (b) in the case of an offence under subsection (4), (7), (8) or (9), to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.
- (2) Proceedings for an offence under section 45(1) relating to the duty imposed by section 32 (duty to send annual return to Certification Officer) may be commenced at any time before the end of the period of three years beginning with the date when the offence was committed.
- (3) Proceedings for any other offence under section 45(1) may be commenced—
 - (a) at any time before the end of the period of six months beginning with the date when the offence was committed, or
 - (b) at any time after the end of that period but before the end of the period of twelve months beginning with the date when evidence sufficient in the opinion of the Certification Officer or, in Scotland, the procurator fiscal, to justify the proceedings came to his knowledge;

but no proceedings may be commenced by virtue of paragraph (b) after the end of the period of three years beginning with the date when the offence was committed.
- (4) For the purposes of subsection (3)(b), a certificate signed by or on behalf of the Certification Officer or the procurator fiscal which states the date on which evidence sufficient in his opinion to justify the proceedings came to his knowledge shall be conclusive evidence of that fact.
- (5) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.
- (6) For the purposes of this section—
 - (a) in England and Wales, proceedings are commenced when an information is laid, and
 - (b) in Scotland, subsection (3) of [^{F48}section 136 of the Criminal Procedure (Scotland) Act 1995]] (date of commencement of proceedings) applies as it applies for the purposes of that section.

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Textual Amendments

F47 S 45A inserted (30.8.1993) by 1993 c. 19, s. 11(2); S.I. 1993/1908, art. 2(1), Sch. 1

F48 Words in s. 45A(6) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 85

[^{F49} 45B Duty to secure positions not held by certain offenders.

- (1) A trade union shall secure that a person does not at any time hold a position in the union to which this section applies if—
 - (a) within the period of five years immediately preceding that time he has been convicted of an offence under subsection (1) or (5) of section 45, or
 - (b) within the period of ten years immediately preceding that time he has been convicted of an offence under subsection (4), (7), (8) or (9) of that section.
- (2) Subject to subsection (4), the positions to which this section applies are—
 - (a) member of the executive,
 - (b) any position by virtue of which a person is a member of the executive,
 - (c) president, and
 - (d) general secretary.
- (3) For the purposes of subsection (2)(a) “member of the executive” includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.
- (4) This section does not apply to the position of president or general secretary if the holder of that position—
 - (a) is not, in respect of that position, either a voting member of the executive or an employee of the union,
 - (b) holds that position for a period which under the rules of the union cannot end more than thirteen months after he took it up, and
 - (c) has not held either position at any time in the period of twelve months ending with the day before he took up that position.
- (5) In subsection (4)(a) “a voting member of the executive” means a person entitled in his own right to attend meetings of the executive and to vote on matters on which votes are taken by the executive (whether or not he is entitled to attend all such meetings or to vote on all such matters or in all circumstances).]

Textual Amendments

F49 S. 45B inserted (30.8.1993) by 1993 c. 19, s.12; S.I. 1993/1908, art. 2(1), Sch.1

[^{F50} 45C Remedies and enforcement.

- (1) A member of a trade union who claims that the union has failed to comply with the requirement of section 45B may apply to the Certification Officer or to the court for a declaration to that effect.
- (2) On an application being made to him, the Certification Officer—

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- [shall make such enquiries as he thinks fit,]]
- ^{F51}(aa)
- (a) shall ^{F52} . . . give the applicant and the trade union an opportunity to be heard,
 - (b) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,
 - (c) may make or refuse the declaration asked for, and
 - (d) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.
- ^{F53}(3)
- ^{F53}(4)
- (5) Where the court makes a declaration it shall also, unless it considers that it would be inappropriate, make an order imposing on the trade union a requirement to take within such period as may be specified in the order such steps to remedy the declared failure as may be so specified.
- [^{F54}(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that it would be inappropriate, make an order imposing on the trade union a requirement to take within such period as may be specified in the order such steps to remedy the declared failure as may be so specified.
- ^{F54}(5B) The following paragraphs have effect if a person applies to the Certification Officer under this section in relation to an alleged failure—
- (a) that person may not apply to the court under this section in relation to that failure;
 - (b) on an application by a different person to the court under this section in relation to that failure, the court shall have due regard to any declaration, order, observations or reasons made or given by the Certification Officer regarding that failure and brought to the court’s notice.
- ^{F54}(5C) The following paragraphs have effect if a person applies to the court under this section in relation to an alleged failure—
- (a) that person may not apply to the Certification Officer under this section in relation to that failure;
 - (b) on an application by a different person to the Certification Officer under this section in relation to that failure, the Certification Officer shall have regard to any declaration, order, observations or reasons made or given by the court regarding that failure and brought to the Certification Officer’s notice.]

(6) Where an order has been made [^{F55}under subsection (5) or (5A)], any person who is a member of the trade union and was a member at the time the order was made is entitled to enforce the order as if he had made the application on which the order was made.

[^{F56}^{F56}(7) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

^{F56}(8) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.

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^{F56}(9) An order made by the Certification Officer under this section may be enforced in the same way as an order of the court.]

Textual Amendments

- F50** S. 45C inserted (30.8.1993) by 1993 c. 19, s. 12; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F51** S. 45C (aa) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **7(1)(2)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)
- F52** Words in s. 45C(2)(a) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, 7(1)(3), **Sch. 9(7)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para 5)
- F53** S. 45C(3)(4) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, 7(1)(4), **Sch. 9(7)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 5)
- F54** S. 45C(5A)-(5C) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **7(1)(5)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)
- F55** Words in s. 45C(6) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **7(1)(6)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)
- F56** S. 45C(7)-(9) inserted (25.10.1999) by 1999 c. 26, s. 29, **Sch. 6**, paras. 1, 7(1)(7); S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

^{F57}45D Appeals from Certification Officer.

An appeal lies to the Employment Appeal Tribunal on any question of law arising in proceedings before or arising from any decision of the Certification Officer under section 25, 31 or 45C.]

Textual Amendments

- F57** S. 45D inserted (25.10.1999) by 1999 c. 26 s. 29, Sch. 6 paras. 1, 8; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

CHAPTER IV

ELECTIONS FOR CERTAIN POSITIONS

Duty to hold elections

46 Duty to hold elections for certain positions.

- (1) A trade union shall secure—
- (a) that every person who holds a position in the union to which this Chapter applies does so by virtue of having been elected to it at an election satisfying the requirements of this Chapter, and
 - (b) that no person continues to hold such a position for more than five years without being re-elected at such an election.
- (2) The positions to which this Chapter applies (subject as mentioned below) are—
- (a) member of the executive,
 - (b) any position by virtue of which a person is a member of the executive,

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- (c) president, and
- (d) general secretary;

and the requirements referred to above are those set out in sections 47 to 52 below.

- (3) In this Chapter “member of the executive” includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.
- (4) This Chapter does not apply to the position of president or general secretary if the holder of that position—
 - (a) is not, in respect of that position, either a voting member of the executive or an employee of the union,
 - (b) holds that position for a period which under the rules of the union cannot end more than 13 months after he took it up, and
 - (c) has not held either position at any time in the period of twelve months ending with the day before he took up that position.
- (5) A “voting member of the executive” means a person entitled in his own right to attend meetings of the executive and to vote on matters on which votes are taken by the executive (whether or not he is entitled to attend all such meetings or to vote on all such matters or in all circumstances).
- (6) The provisions of this Chapter apply notwithstanding anything in the rules or practice of the union; and the terms and conditions on which a person is employed by the union shall be disregarded in so far as they would prevent the union from complying with the provisions of this Chapter.

Requirements to be satisfied with respect to elections

47 Candidates.

- (1) No member of the trade union shall be unreasonably excluded from standing as a candidate.
- (2) No candidate shall be required, directly or indirectly, to be a member of a political party.
- (3) A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union.

But a rule which provides for such a class to be determined by reference to whom the union chooses to exclude shall be disregarded.

48 Election addresses.

- (1) The trade union shall—
 - (a) provide every candidate with an opportunity of preparing an election address in his own words and of submitting it to the union to be distributed to the persons accorded entitlement to vote in the election; and

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- (b) secure that, so far as reasonably practicable, copies of every election address submitted to it in time are distributed to each of those persons by post along with the voting papers for the election.
- (2) The trade union may determine the time by which an election address must be submitted to it for distribution; but the time so determined must not be earlier than the latest time at which a person may become a candidate in the election.
 - (3) The trade union may provide that election addresses submitted to it for distribution—
 - (a) must not exceed such length, not being less than one hundred words, as may be determined by the union, and
 - (b) may, as regards photographs and other matter not in words, incorporate only such matter as the union may determine.
 - (4) The trade union shall secure that no modification of an election address submitted to it is made by any person in any copy of the address to be distributed except—
 - (a) at the request or with the consent of the candidate, or
 - (b) where the modification is necessarily incidental to the method adopted for producing that copy.
 - (5) The trade union shall secure that the same method of producing copies is applied in the same way to every election address submitted and, so far as reasonably practicable, that no such facility or information as would enable a candidate to gain any benefit from—
 - (a) the method by which copies of the election addresses are produced, or
 - (b) the modifications which are necessarily incidental to that method,
 is provided to any candidate without being provided equally to all the others.
 - (6) The trade union shall, so far as reasonably practicable, secure that the same facilities and restrictions with respect to the preparation, submission, length or modification of an election address, and with respect to the incorporation of photographs or other matter not in words, are provided or applied equally to each of the candidates.
 - (7) The arrangements made by the trade union for the production of the copies to be so distributed must be such as to secure that none of the candidates is required to bear any of the expense of producing the copies.
 - (8) No-one other than the candidate himself shall incur any civil or criminal liability in respect of the publication of a candidate's election address or of any copy required to be made for the purposes of this section.

49 Appointment of independent scrutineer.

- (1) The trade union shall, before the election is held, appoint a qualified independent person (“the scrutineer”) to carry out—
 - (a) the functions in relation to the election which are required under this section to be contained in his appointment; and
 - (b) such additional functions in relation to the election as may be specified in his appointment.
- (2) A person is a qualified independent person in relation to an election if—
 - (a) he satisfies such conditions as may be specified for the purposes of this section by order of the Secretary of State or is himself so specified; and

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- (b) the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the election otherwise than competently or that his independence in relation to the union, or in relation to the election, might reasonably be called into question.

An order under paragraph (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) The scrutineer’s appointment shall require him—

- (a) to be the person who supervises the production [^{F58}of the voting papers and (unless he is appointed under section 51A to undertake the distribution of the voting papers) their distribution] and to whom the voting papers are returned by those voting;

[^{F59}(aa) to—

- (i) inspect the register of names and addresses of the members of the trade union, or
(ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with subsection (5A)(a),

whenever it appears to him appropriate to do so and, in particular, when the conditions specified in subsection (3A) are satisfied;]

- (b) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see section 52);
(c) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and
(d) to retain custody of all voting papers returned for the purposes of the election [^{F60}and the copy of the register supplied to him in accordance with subsection (5A)(a)]—
(i) until the end of the period of one year beginning with the announcement by the union of the result of the election; and
(ii) if within that period an application is made under section 54 (complaint of failure to comply with election requirements), until the Certification Officer or the court authorises him to dispose of the papers [^{F61}or copy].

[^{F62}(3A) The conditions referred to in subsection (3)(aa) are—

- (a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union or candidate who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and
(b) that the scrutineer does not consider that the suspicion of the member or candidate is ill-founded.

(3B) In subsection (3A) “the appropriate period” means the period—

- (a) beginning with the first day on which a person may become a candidate in the election or, if later, the day on which the scrutineer is appointed, and
(b) ending with the day before the day on which the scrutineer makes his report to the trade union.

(3C) The duty of confidentiality as respects the register is incorporated in the scrutineer’s appointment.]

(4) The trade union shall ensure that nothing in the terms of the scrutineer’s appointment (including any additional functions specified in the appointment) is such as to make

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it reasonable for any person to call the scrutineer's independence in relation to the union into question.

- (5) The trade union shall, before the scrutineer begins to carry out his functions, either—
- (a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or
 - (b) take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

[^{F63}(5A) The trade union shall—

- (a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and
- (b) comply with any request made by the scrutineer to inspect the register.

(5B) Where the register is kept by means of a computer the duty imposed on the trade union by subsection (5A)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.]

- (6) The trade union shall ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer's independence in relation to the union into question.
- (7) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.

[^{F64}(8) In this section “the relevant date” means—

- (a) where the trade union has rules determining who is entitled to vote in the election by reference to membership on a particular date, that date, and
- (b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the election.]

Textual Amendments

- F58** Words in s. 49(3)(a) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.46**; S.I. 1993/1908, art. 2(1), **Sch.1**
- F59** S. 49(3)(aa) inserted (30.8.1993) by 1993 c. 19, s. 1(1)(a); S.I. 1993/1908, art. 2(1), **Sch.1**
- F60** Words in s. 49(3)(d) inserted (30.8.1993) by 1993 c. 19, s. 1(1)(b); S.I. 1993/1908, art. 2(1), **Sch. 1**
- F61** Words in s. 49(3)(d)(ii) inserted (30.8.1993) by 1993 c. 19, s. 1(1)(b); S.I. 1993/1908, art. 2(1), **Sch.1**
- F62** S. 49(3A)-(3C) inserted (30.8.1993) by 1993 c. 19, s. 1(1)(c); S.I. 1993/1908, art. 2(1), **Sch.1**
- F63** S. 49(5A)(5B) inserted (30.8.1993) by 1993 c. 19, s. 1(1)(d); S.I. 1993/1908, art. 11(d); S.I. 1993/1908, art. 2(1), **Sch.1**
- F64** S. 49(8) inserted (30.8.1993) by 1993 c. 19, s. 1(1)(e); S.I. 1993/1908, art. 2(1), **Sch.1**

50 Entitlement to vote.

- (1) Subject to the provisions of this section, entitlement to vote shall be accorded equally to all members of the trade union.

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- (2) The rules of the union may exclude entitlement to vote in the case of all members belonging to one of the following classes, or to a class falling within one of the following—
- (a) members who are not in employment;
 - (b) members who are in arrears in respect of any subscription or contribution due to the union;
 - (c) members who are apprentices, trainees or students or new members of the union.
- (3) The rules of the union may restrict entitlement to vote to members who fall within—
- (a) a class determined by reference to a trade or occupation,
 - (b) a class determined by reference to a geographical area, or
 - (c) a class which is by virtue of the rules of the union treated as a separate section within the union,
- or to members who fall within a class determined by reference to any combination of the factors mentioned in paragraphs (a), (b) and (c).
- The reference in paragraph (c) to a section of a trade union includes a part of the union which is itself a trade union.
- (4) Entitlement may not be restricted in accordance with subsection (3) if the effect is that any member of the union is denied entitlement to vote at all elections held for the purposes of this Chapter otherwise than by virtue of belonging to a class excluded in accordance with subsection (2).

51 Voting.

- (1) The method of voting must be by the marking of a voting paper by the person voting.
- (2) Each voting paper must—
- (a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned,
 - (b) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the election, and
 - (c) be marked with its number.
- (3) Every person who is entitled to vote at the election must—
- (a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and
 - (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.
- (4) So far as is reasonably practicable, every person who is entitled to vote at the election must—
- (a) have sent to him by post, at his home address or another address which he has requested the trade union in writing to treat as his postal address, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates; and
 - (b) be given a convenient opportunity to vote by post.
- (5) The ballot shall be conducted so as to secure that—

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- (a) so far as is reasonably practicable, those voting do so in secret, and
- (b) the votes given at the election are fairly and accurately counted.

For the purposes of paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the election.

- (6) The ballot shall be so conducted as to secure that the result of the election is determined solely by counting the number of votes cast directly for each candidate.
- (7) Nothing in subsection (6) shall be taken to prevent the system of voting used for the election being the single transferable vote, that is, a vote capable of being given so as to indicate the voter's order of preference for the candidates and of being transferred to the next choice—
 - (a) when it is not required to give a prior choice the necessary quota of votes, or
 - (b) when, owing to the deficiency in the number of votes given for a prior choice, that choice is eliminated from the list of candidates.

[51A] ^{F65}Counting of votes etc. by independent person.

- (1) The trade union shall ensure that—
 - (a) the storage and distribution of the voting papers for the purposes of the election, and
 - (b) the counting of the votes cast in the election,
 are undertaken by one or more independent persons appointed by the union.
- (2) A person is an independent person in relation to an election if—
 - (a) he is the scrutineer, or
 - (b) he is a person other than the scrutineer and the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the election otherwise than competently or that his independence in relation to the union, or in relation to the election, might reasonably be called into question.
- (3) An appointment under this section shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any enactment or the occurrence of any unfairness or malpractice.
- (4) The duty of confidentiality as respects the register is incorporated in an appointment under this section.
- (5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.
- (6) The trade union—
 - (a) shall ensure that nothing in the terms of an appointment under this section is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,
 - (b) shall ensure that a person appointed under this section duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call into question the independence of the person appointed in relation to the union, and

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- (c) shall comply with all reasonable requests made by a person appointed under this section for the purposes of, or in connection with, the carrying out of his functions.]

Textual Amendments

F65 S. 51A inserted (30.8.1993) by 1993 c. 19, s. 2(1); S.I. 1993/1908, art. 2(1), Sch. 1

52 Scrutineer's report.

- (1) The scrutineer's report on the election shall state—
- (a) the number of voting papers distributed for the purposes of the election,
 - (b) the number of voting papers returned to the scrutineer,
 - (c) the number of valid votes cast in the election for each candidate, ^{F66} . . .
 - (d) the number of spoiled or otherwise invalid voting papers returned [^{F67} , and
 - (e) the name of the person (or of each of the persons) appointed under section 51A or, if no person was so appointed, that fact.]
- (2) The report shall also state whether the scrutineer is satisfied—
- (a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the election,
 - (b) that the arrangements made [^{F68}(whether by him or any other person)] with respect to the production, storage, distribution, return or other handling of the voting papers used in the election, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and
 - (c) that he has been able to carry out his functions without such interference as would make it reasonable for any person to call his independence in relation to the union into question;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.

[^{F69}(2A) The report shall also state—

- (a) whether the scrutineer—
 - (i) has inspected the register of names and addresses of the members of the trade union, or
 - (ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with section 49(5A)(a),
- (b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or candidate or at his own instance,
- (c) whether he declined to act on any such request, and
- (d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date,

but shall not state the name of any member or candidate who has requested such an inspection or examination.]

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- [^{F70}(2B) Where one or more persons other than the scrutineer are appointed under section 51A, the statement included in the scrutineer’s report in accordance with subsection (2)(b) shall also indicate—
- (a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and
 - (b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.]
- (3) The trade union shall not publish the result of the election until it has received the scrutineer’s report.
 - (4) The trade union shall within the period of three months after it receives the report either—
 - (a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
 - (b) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.
 - (5) Any such copy or notification shall be accompanied by a statement that the union will, on request, supply any member of the union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification.
 - (6) The trade union shall so supply any member of the union who makes such a request and pays the fee (if any) notified to him.

Textual Amendments

F66 Word in s. 52(1)(c) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F67 S. 52(1)(e) and the word preceeding it inserted (30.8.1993) by 1993 c. 19, s. 2(2)(a); S.I. 1993/1908, art. 2(1), **Sch.1**

F68 Words in s. 52(2)(b) inserted (30.8.1993) by 1993 c. 19, s. 2(2)(b); S.I. 1993/1908, art. 2(1), **Sch.1**

F69 S. 52(2A) inserted (30.8.1993) by 1993 c. 19, s. 1(2); S.I. 1993/1908, art. 2(1), **Sch. 1**

F70 S. 52(2B) inserted (30.8.1993) by 1993 c. 19, s. 2(2)(c); S.I. 1993/1908, art. 2(1), **Sch.1**

53 Uncontested elections.

Nothing in this Chapter shall be taken to require a ballot to be held at an uncontested election.

Remedy for failure to comply with requirements

54 Remedy for failure to comply with requirements: general.

- (1) The remedy for a failure on the part of a trade union to comply with the requirements of this Chapter is by way of application under section 55 (to the Certification Officer) or section 56 (to the court).

^{F71}
...

- (2) An application under those sections may be made—

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- (a) by a person who is a member of the trade union (provided, where the election has been held, he was also a member at the time when it was held), or
 - (b) by a person who is or was a candidate at the election;
- and the references in those sections to a person having a sufficient interest are to such a person.
- (3) No such application may be made after the end of the period of one year beginning with the day on which the union announced the result of the election.

Textual Amendments

F71 Words in s. 54(1) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, 9 Sch.9(7); S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, Sch 2 Pt. I (with Sch. 3 para. 5)

55 Application to Certification Officer.

- (1) A person having a sufficient interest (see section 54(2)) who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the Certification Officer for a declaration to that effect.
 - (2) On an application being made to him, the Certification Officer shall—
 - (a) make such enquiries as he thinks fit, and
 - (b) ^{F72} . . . give the applicant and the trade union an opportunity to be heard, and may make or refuse the declaration asked for.
 - (3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.
 - (4) Where he makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.
 - (5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.
- ^{F73}(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—
- (a) to secure the holding of an election in accordance with the order;
 - (b) to take such other steps to remedy the declared failure as may be specified in the order;
 - (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

- ^{F73}(5B) Where the Certification Officer makes an order requiring the union to hold a fresh election, he shall (unless he considers that it would be inappropriate to do so in the particular circumstances of the case) require the election to be conducted in accordance

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with the requirements of this Chapter and such other provisions as may be made by the order.

^{F73}(5C) Where an enforcement order has been made—

- (a) any person who is a member of the union and was a member at the time the order was made, or
- (b) any person who is or was a candidate in the election in question,

is entitled to enforce obedience to the order as if he had made the application on which the order was made.]

(6) In exercising his functions under this section the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.

(7) Where he requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

[^{F74}(8) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.

^{F74}(9) An enforcement order made by the Certification Officer under this section may be enforced in the same way as an order of the court.

^{F74}(10) The following paragraphs have effect if a person applies under section 56 in relation to an alleged failure—

- (a) that person may not apply under this section in relation to that failure;
- (b) on an application by a different person under this section in relation to that failure, the Certification Officer shall have due regard to any declaration, order, observations or reasons made or given by the court regarding that failure and brought to the Certification Officer's notice.]

Textual Amendments

F72 Words in s. 55(2)(b) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, 10(1)(2), **Sch. 9(7)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 5)

F73 S. 55(5A)-(5C) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **10(1)(3)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

F74 S. 55(8)-(10) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **10(1)(4)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

56 Application to court.

(1) A person having a sufficient interest (see section 54(2)) who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the court for a declaration to that effect.

^{F75}(2)

(3) If the court makes the declaration asked for, it shall specify in the declaration the provisions with which the trade union has failed to comply.

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(4) Where the court makes a declaration it shall also, unless it considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

- (a) to secure the holding of an election in accordance with the order;
- (b) to take such other steps to remedy the declared failure as may be specified in the order;
- (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The court shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

(5) Where the court makes an order requiring the union to hold a fresh election, the court shall (unless it considers that it would be inappropriate to do so in the particular circumstances of the case) require the election to be conducted in accordance with the requirements of this Chapter and such other provisions as may be made by the order.

(6) Where an enforcement order has been made—

- (a) any person who is a member of the union and was a member at the time the order was made, or
 - (b) any person who is or was a candidate in the election in question,
- is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(7) Without prejudice to any other power of the court, the court may on an application under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.

[^{F76}(8) The following paragraphs have effect if a person applies under section 55 in relation to an alleged failure—

- (a) that person may not apply under this section in relation to that failure;
- (b) on an application by a different person under this section in relation to that failure, the court shall have due regard to any declaration, order, observations or reasons made or given by the Certification Officer regarding that failure and brought to the court's notice.]

Textual Amendments

F75 S. 56(2) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, 11(1)(2), Sch. 9(7); S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, Sch. 2 Pt. I (with Sch. 3 para. 5)

F76 S. 56(8) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 para. 1, 11(3); S.I. 1999/2830, art. 2(1)(2), Sch. 1 Pt. I (with Sch. 3 para. 5)

[^{F77}56A Appeals from Certification Officer.

An appeal lies to the Employment Appeal Tribunal on any question of law arising in proceedings before or arising from any decision of the Certification Officer under section 55.]

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Textual Amendments

F77 S. 56A inserted (25.10.1999) 1999 c. 26, s. 29, Sch. 6 paras. 1, 12; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. 1** (with Sch. 3 para. 5)

Supplementary

57 Exemption of newly-formed trade unions, &c.

- (1) The provisions of this Chapter do not apply to a trade union until more than one year has elapsed since its formation (by amalgamation or otherwise).

For this purpose the date of formation of a trade union formed otherwise than by amalgamation shall be taken to be the date on which the first members of the executive of the union are first appointed or elected.

- (2) Where a trade union is formed by amalgamation, the provisions of this Chapter do not apply in relation to a person who—

- (a) by virtue of an election held a position to which this Chapter applies in one of the amalgamating unions immediately before the amalgamation, and
- (b) becomes the holder of a position to which this Chapter applies in the amalgamated union in accordance with the instrument of transfer,

until after the end of the period for which he would have been entitled in accordance with this Chapter to continue to hold the first-mentioned position without being re-elected.

- (3) Where a trade union transfers its engagements to another trade union, the provisions of this Chapter do not apply in relation to a person who—

- (a) held a position to which this Chapter applies in the transferring union immediately before the transfer, and
- (b) becomes the holder of a position to which this Chapter applies in the transferee union in accordance with the instrument of transfer,

until after the end of the period of one year beginning with the date of the transfer or, if he held the first-mentioned position by virtue of an election, any longer period for which he would have been entitled in accordance with this Chapter to continue to hold that position without being re-elected.

58 Exemption of certain persons nearing retirement.

- (1) Section 46(1)(b) (requirement of re-election) does not apply to a person holding a position to which this Chapter applies if the following conditions are satisfied.

- (2) The conditions are that—

- (a) he holds the position by virtue of having been elected at an election in relation to which the requirements of this Chapter were satisfied,
- (b) he is a full-time employee of the union by virtue of the position,
- (c) he will reach retirement age within five years,
- (d) he is entitled under the rules of the union to continue as the holder of the position until retirement age without standing for re-election,

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- (e) he has been a full-time employee of the union for a period (which need not be continuous) of at least ten years, and
 - (f) the period between the day on which the election referred to in paragraph (a) took place and the day immediately preceding that on which paragraph (c) is first satisfied does not exceed five years.
- (3) For the purposes of this section “retirement age”, in relation to any person, means the earlier of—
- (a) the age fixed by, or in accordance with, the rules of the union for him to retire from the position in question, or
 - (b) the age which is for the time being pensionable age [^{F78}(within the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995)].

Textual Amendments

F78 Words in s. 58(3)(b) substituted (19.7.1995) by 1995 c. 26, ss. 126, 180(2), Sch. 4 Pt. III para. 15

59 Period for giving effect to election.

Where a person holds a position to which this Chapter applies immediately before an election at which he is not re-elected to that position, nothing in this Chapter shall be taken to require the union to prevent him from continuing to hold that position for such period (not exceeding six months) as may reasonably be required for effect to be given to the result of the election.

60 Overseas members.

- (1) A trade union which has overseas members may choose whether or not to accord any of those members entitlement to vote at an election for a position to which this Chapter applies.
- (2) An “overseas member” means a member of the union (other than a merchant seaman or offshore worker) who is outside Great Britain throughout the period during which votes may be cast.

For this purpose—

“merchant seaman” means a person whose employment, or the greater part of it, is carried out on board sea-going ships; and

“offshore worker” means a person in offshore employment, other than one who is in such employment in an area where the law of Northern Ireland applies.

- (3) Where the union chooses to accord an overseas member entitlement to vote, section 51 (requirements as to voting) applies in relation to him; but nothing in section 47 (candidates) or section 50 (entitlement to vote) applies in relation to an overseas member or in relation to a vote cast by such a member.

61 Other supplementary provisions.

- (1) For the purposes of this Chapter the date on which a contested election is held shall be taken, in the case of an election in which votes may be cast on more than one day, to be the last of those days.

Status: Point in time view as at 01/12/2001. This version of this part contains provisions that are not valid for this point in time.

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- (2) Nothing in this Chapter affects the validity of anything done by a person holding a position to which this Chapter applies.

CHAPTER V

RIGHTS OF TRADE UNION MEMBERS

Right to a ballot before industrial action

62 Right to a ballot before industrial action.

- (1) A member of a trade union who claims that members of the union, including himself, are likely to be or have been induced by the union to take part or to continue to take part in industrial action which does not have the support of a ballot may apply to the court for an order under this section.

[^{F79}In this section “the relevant time” means the time when the application is made.]

- (2) For this purpose industrial action shall be regarded as having the support of a ballot only if—

- [^{F80}(a) the union has held a ballot in respect of the action—
- (i) in relation to which the requirements of section 226B so far as applicable before and during the holding of the ballot were satisfied,
 - (ii) in relation to which the requirements of sections 227 to 231 were satisfied, and
 - (iii) in which the majority voting in the ballot answered “Yes” to the question applicable in accordance with section 229(2) to industrial action of the kind which the applicant has been or is likely to be induced to take part in;
- (b) such of the requirements of the following sections as have fallen to be satisfied at the relevant time have been satisfied, namely—
- (i) section 226B so far as applicable after the holding of the ballot, and
 - (ii) section 231B; and
- (c) the requirements of section 233 (calling of industrial action with support of ballot) are satisfied.

Any reference in this subsection to a requirement of a provision which is disappplied or modified by section 232 has effect subject to that section.]

- (3) Where on an application under this section the court is satisfied that the claim is well-founded, it shall make such order as it considers appropriate for requiring the union to take steps for ensuring—
- (a) that there is no, or no further, inducement of members of the union to take part or to continue to take part in the industrial action to which the application relates, and
 - (b) that no member engages in conduct after the making of the order by virtue of having been induced before the making of the order to take part or continue to take part in the action.

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- (4) Without prejudice to any other power of the court, the court may on an application under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.
- (5) For the purposes of this section an act shall be taken to be done by a trade union if it is authorised or endorsed by the union; and the provisions of section 20(2) to (4) apply for the purpose of determining whether an act is to be taken to be so authorised or endorsed.

Those provisions also apply in relation to proceedings for failure to comply with an order under this section as they apply in relation to the original proceedings.

- (6) In this section—
- “inducement” includes an inducement which is or would be ineffective, whether because of the member’s unwillingness to be influenced by it or for any other reason; and
- “industrial action” means a strike or other industrial action by persons employed under contracts of employment.
- (7) Where a person holds any office or employment under the Crown on terms which do not constitute a contract of employment between that person and the Crown, those terms shall nevertheless be deemed to constitute such a contract for the purposes of this section.
- (8) References in this section to a contract of employment include any contract under which one person personally does work or performs services for another; and related expressions shall be construed accordingly.
- (9) Nothing in this section shall be construed as requiring a trade union to hold separate ballots for the purposes of this section and sections 226 to 234 (requirement of ballot before action by trade union).

Textual Amendments

F79 Words in s. 62(1) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 47(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F80 S. 62(2)(a)-(c) and proviso substituted (30.8.1993) for 62(2)(a)-(c) by 1993 c. 19, s. 49(2), **Sch. 8 para. 47(b)**; S.I. 1993/1908, art. 2(1), **Sch.1**

Right not to be denied access to the courts

63 Right not to be denied access to the courts.

- (1) This section applies where a matter is under the rules of a trade union required or allowed to be submitted for determination or conciliation in accordance with the rules of the union, but a provision of the rules purporting to provide for that to be a person’s only remedy has no effect (or would have no effect if there were one).
- (2) Notwithstanding anything in the rules of the union or in the practice of any court, if a member or former member of the union begins proceedings in a court with respect to a matter to which this section applies, then if—

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- (a) he has previously made a valid application to the union for the matter to be submitted for determination or conciliation in accordance with the union's rules, and
 - (b) the court proceedings are begun after the end of the period of six months beginning with the day on which the union received the application,
- the rules requiring or allowing the matter to be so submitted, and the fact that any relevant steps remain to be taken under the rules, shall be regarded for all purposes as irrelevant to any question whether the court proceedings should be dismissed, stayed or sisted, or adjourned.
- (3) An application shall be deemed to be valid for the purposes of subsection (2)(a) unless the union informed the applicant, before the end of the period of 28 days beginning with the date on which the union received the application, of the respects in which the application contravened the requirements of the rules.
 - (4) If the court is satisfied that any delay in the taking of relevant steps under the rules is attributable to unreasonable conduct of the person who commenced the proceedings, it may treat the period specified in subsection (2)(b) as extended by such further period as it considers appropriate.
 - (5) In this section—
 - (a) references to the rules of a trade union include any arbitration or other agreement entered into in pursuance of a requirement imposed by or under the rules; and
 - (b) references to the relevant steps under the rules, in relation to any matter, include any steps falling to be taken in accordance with the rules for the purposes of or in connection with the determination or conciliation of the matter, or any appeal, review or reconsideration of any determination or award.
 - (6) This section does not affect any enactment or rule of law by virtue of which a court would apart from this section disregard any such rules of a trade union or any such fact as is mentioned in subsection (2).

Right not to be unjustifiably disciplined

64 Right not to be unjustifiably disciplined.

- (1) An individual who is or has been a member of a trade union has the right not to be unjustifiably disciplined by the union.
- (2) For this purpose an individual is “disciplined” by a trade union if a determination is made, or purportedly made, under the rules of the union or by an official of the union or a number of persons including an official that—
 - (a) he should be expelled from the union or a branch or section of the union,
 - (b) he should pay a sum to the union, to a branch or section of the union or to any other person;
 - (c) sums tendered by him in respect of an obligation to pay subscriptions or other sums to the union, or to a branch or section of the union, should be treated as unpaid or paid for a different purpose,

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- (d) he should be deprived to any extent of, or of access to, any benefits, services or facilities which would otherwise be provided or made available to him by virtue of his membership of the union, or a branch or section of the union,
 - (e) another trade union, or a branch or section of it, should be encouraged or advised not to accept him as a member, or
 - (f) he should be subjected to some other detriment;
- and whether an individual is “unjustifiably disciplined” shall be determined in accordance with section 65.
- (3) Where a determination made in infringement of an individual’s right under this section requires the payment of a sum or the performance of an obligation, no person is entitled in any proceedings to rely on that determination for the purpose of recovering the sum or enforcing the obligation.
- (4) Subject to that, the remedies for infringement of the right conferred by this section are as provided by sections 66 and 67, and not otherwise.
- (5) The right not to be unjustifiably disciplined is in addition to (and not in substitution for) any right which exists apart from this section; [^{F81}and, subject to section 66(4), nothing] in this section or sections 65 to 67 affects any remedy for infringement of any such right.

Textual Amendments

F81 Words in s. 64(5) substituted (30.11.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.48**; S.I. 1993/1908, art. 2(2), **Sch. 2**

65 Meaning of “unjustifiably disciplined”.

- (1) An individual is unjustifiably disciplined by a trade union if the actual or supposed conduct which constitutes the reason, or one of the reasons, for disciplining him is—
- (a) conduct to which this section applies, or
 - (b) something which is believed by the union to amount to such conduct;
- but subject to subsection (6) (cases of bad faith in relation to assertion of wrongdoing).
- (2) This section applies to conduct which consists in—
- (a) failing to participate in or support a strike or other industrial action (whether by members of the union or by others), or indicating opposition to or a lack of support for such action;
 - (b) failing to contravene, for a purpose connected with such a strike or other industrial action, a requirement imposed on him by or under a contract of employment;
 - (c) asserting (whether by bringing proceedings or otherwise) that the union, any official or representative of it or a trustee of its property has contravened, or is proposing to contravene, a requirement which is, or is thought to be, imposed by or under the rules of the union or any other agreement or by or under any enactment (whenever passed) or any rule of law;
 - (d) encouraging or assisting a person—
 - (i) to perform an obligation imposed on him by a contract of employment, or

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- (ii) to make or attempt to vindicate any such assertion as is mentioned in paragraph (c);^{F82} . . .
- (e) contravening a requirement imposed by or in consequence of a determination which infringes the individual's or another individual's right not to be unjustifiably disciplined.
- [^{F83}(f) failing to agree, or withdrawing agreement, to the making from his wages (in accordance with arrangements between his employer and the union) of deductions representing payments to the union in respect of his membership,
- (g) resigning or proposing to resign from the union or from another union, becoming or proposing to become a member of another union, refusing to become a member of another union, or being a member of another union,
- (h) working with, or proposing to work with, individuals who are not members of the union or who are or are not members of another union,
- (i) working for, or proposing to work for, an employer who employs or who has employed individuals who are not members of the union or who are or are not members of another union, or
- (j) requiring the union to do an act which the union is, by any provision of this Act, required to do on the requisition of a member.]
- (3) This section applies to conduct which involves^{F84} . . . the Certification Officer being consulted or asked to provide advice or assistance with respect to any matter whatever, or which involves any person being consulted or asked to provide advice or assistance with respect to a matter which forms, or might form, the subject-matter of any such assertion as is mentioned in subsection (2)(c) above.
- (4) This section also applies to conduct which consists in proposing to engage in, or doing anything preparatory or incidental to, conduct falling within subsection (2) or (3).
- (5) This section does not apply to an act, omission or statement comprised in conduct falling within subsection (2), (3) or (4) above if it is shown that the act, omission or statement is one in respect of which individuals would be disciplined by the union irrespective of whether their acts, omissions or statements were in connection with conduct within subsection (2) or (3) above.
- (6) An individual is not unjustifiably disciplined if it is shown—
- (a) that the reason for disciplining him, or one of them, is that he made such an assertion as is mentioned in subsection (2)(c), or encouraged or assisted another person to make or attempt to vindicate such an assertion,
- (b) that the assertion was false, and
- (c) that he made the assertion, or encouraged or assisted another person to make or attempt to vindicate it, in the belief that it was false or otherwise in bad faith, and that there was no other reason for disciplining him or that the only other reasons were reasons in respect of which he does not fall to be treated as unjustifiably disciplined.
- (7) In this section—
- “conduct” includes statements, acts and omissions;
- “contract of employment”, in relation to an individual, includes any agreement between that individual and a person for whom he works or normally works;^{F85} . . . [^{F86}, “employer” includes such a person and related expressions shall be construed accordingly;]

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“representative”, in relation to a union, means a person acting or purporting to act—

- (a) in his capacity as a member of the union, or
- (b) on the instructions or advice of a person acting or purporting to act in that capacity or in the capacity of an official of the union.

[^{F87}“require” (on the part of an individual) includes request or apply for, and “requisition” shall be construed accordingly][^{F88}and].

[^{F88}“wages” shall be construed in accordance with the definitions of “contract of employment”, “employer” and related expressions.]

- (8) Where a person holds any office or employment under the Crown on terms which do not constitute a contract of employment between him and the Crown, those terms shall nevertheless be deemed to constitute such a contract for the purposes of this section.

Textual Amendments

F82 Word in s. 65(2) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F83 S. 65(2)(f)-(j) inserted (30.8.1993) by 1993 c. 19, s. 16(1); S.I. 1993/1908, art. 2(1), **Sch. 1**

F84 Words in s. 65(3) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(6)**; S.I. 1999/2830, **art. 2(3) Sch. 2 Pt. 1** (with **Sch. 3 para. 4**)

F85 Word in s. 65(7) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F86 S. 65(7) definition amended (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 49(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F87 S. 65(7) definition inserted (30.8.1993) by 1993 c. 19, s. 16(2); S.I. 1993/1908, art. 2(1), **Sch. 1**

F88 S. 65(7) definition and word preceding it inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 49(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

66 Complaint of infringement of right.

- (1) An individual who claims that he has been unjustifiably disciplined by a trade union may present a complaint against the union to an [^{F89}employment tribunal].

- (2) The tribunal shall not entertain such a complaint unless it is presented—

- (a) before the end of the period of three months beginning with the date of the making of the determination claimed to infringe the right, or
- (b) where the tribunal is satisfied—

- (i) that it was not reasonably practicable for the complaint to be presented before the end of that period, or

- (ii) that any delay in making the complaint is wholly or partly attributable to a reasonable attempt to appeal against the determination or to have it reconsidered or reviewed,

within such further period as the tribunal considers reasonable.

- (3) Where the tribunal finds the complaint well-founded, it shall make a declaration to that effect.

[^{F90}(4) Where a complaint relating to an expulsion which is presented under this section is declared to be well-founded, no complaint in respect of the expulsion shall be presented or proceeded with under section 174 (right not to be excluded or expelled from trade union).]

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Textual Amendments

- F89** Words in s. 66(1) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1
- F90** S. 66(4) substituted (30.11.1993) by 1993 c. 19, s. 49(2), Sch. 8 para. 50; S.I. 1993/1908, art. 2(2), Sch. 2

67 Further remedies for infringement of right.

- (1) An individual whose complaint under section 66 has been declared to be well-founded may make an application for one or both of the following—
 - (a) an award of compensation to be paid to him by the union;
 - (b) an order that the union pay him an amount equal to any sum which he has paid in pursuance of any such determination as is mentioned in section 64(2)(b).
- (2) An application under this section shall be made to the Employment Appeal Tribunal if, when it is made—
 - (a) the determination infringing the applicant's right not to be unjustifiably disciplined has not been revoked, or
 - (b) the union has failed to take all the steps necessary for securing the reversal of anything done for the purpose of giving effect to the determination;
 and in any other case it shall be made to an [^{F91}employment tribunal].
- (3) An application under this section shall not be entertained if made before the end of the period of four weeks beginning with the date of the declaration or after the end of the period of six months beginning with that date.
- (4) Where the Employment Appeal Tribunal or [^{F91}employment tribunal] is satisfied that it would be required by virtue of subsection (2) to dismiss the application, it may instead transfer it to the tribunal to which it should have been made; and an application so transferred shall be proceeded with as if it had been made in accordance with that subsection when originally made.
- (5) The amount of compensation awarded shall, subject to the following provisions, be such as the Employment Appeal Tribunal or [^{F91}employment tribunal] considers just and equitable in all the circumstances.
- (6) In determining the amount of compensation to be awarded, the same rule shall be applied concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law in England and Wales or Scotland.
- (7) Where the Employment Appeal Tribunal or [^{F91}employment tribunal] finds that the infringement complained of was to any extent caused or contributed to by the action of the applicant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.
- (8) The amount of compensation [^{F92}calculated in accordance with subsections (5) to (7)] shall not exceed the aggregate of—
 - (a) an amount equal to 30 times the limit for the time being imposed by [^{F93}section 227(1)(a) of the Employment Rights Act 1996] (maximum amount of a week's pay for basic award in unfair dismissal cases), and
 - (b) an amount equal to the limit for the time being imposed by [^{F94}section 124(1)] of that Act (maximum compensatory award in such cases);

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and, in the case of an award by the Employment Appeal Tribunal, shall not be less than the amount for the time being specified in section [F95176(6) of this Act (minimum award by Employment Appeal Tribunal in cases of exclusion or expulsion from union)].

F96(9)

Textual Amendments

- F91** Words in s. 67 substituted (1.8.1998) by 1998 c. 8, s. 1(2) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F92** Words in s. 67(8) substituted (30.11.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 51(a)(i)**; S.I. 1993/1908, art. 2(2), **Sch. 2**
- F93** Words in s. 67(8)(a) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(2)(a)** (with ss. 191-195, 202)
- F94** Words in s. 67(8)(b) substituted (22.8.1996) by 1996 c. 18, ss. 230, 243, **Sch. 1 para. 56(2)(b)** (with ss. 191-195, 202)
- F95** Words in s. 67(8) substituted (30.11.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 51(a)(ii)**; S.I. 1993/1908, art. 2(2), **Sch. 2**
- F96** S. 67(9) repealed (30.11.1993) by 1993 c. 19, ss. 49(2), 51, Sch. 8 para. 51(b), **Sch. 10**; S.I. 1993/1908, art. 2(2), **Sch. 2**

[F97] *Right not to suffer deduction of unauthorised or excessive union subscriptions*

Textual Amendments

- F97** Heading substituted (30.8.1993) by 1993 c. 19, s.15, **Sch. 9 para. 2**; S.I. 1993/1908, art. 2(1), **Sch.1**

[F98] **Right not to suffer deduction of unauthorised subscriptions**

- (1) Where arrangements (“subscription deduction arrangements”) exist between the employer of a worker and a trade union relating to the making from workers’ wages of deductions representing payments to the union in respect of the workers’ membership of the union (“subscription deductions”), the employer shall ensure that no subscription deduction is made from wages payable to the worker on any day unless—
 - (a) the worker has authorised in writing the making from his wages of subscription deductions; and
 - (b) the worker has not withdrawn the authorisation.
- (2) A worker withdraws an authorisation given for the purposes of subsection (1), in relation to a subscription deduction which falls to be made from wages payable to him on any day, if a written notice withdrawing the authorisation has been received by the employer in time for it to be reasonably practicable for the employer to secure that no such deduction is made.
- (3) A worker’s authorisation of the making of subscription deductions from his wages shall not give rise to any obligation on the part of the employer to the worker to maintain or continue to maintain subscription deduction arrangements.

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- (4) In this section and section 68A, “employer”, “wages” and “worker” have the same meanings as in the Employment Rights Act 1996.]

Textual Amendments

F98 S. 68 substituted (23.6.1998) by S.I. 1998/1529, arts. 2(2), 3

[^{F99}68A Complaint of infringement of rights.

- (1) A worker may present a complaint to an [^{F100}employment tribunal] that his employer has made a deduction from his wages in contravention of section 68—
- (a) within the period of three months beginning with the date of the payment of the wages from which the deduction, or (if the complaint relates to more than one deduction) the last of the deductions, was made, or
 - (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

[Where a tribunal finds that a complaint under this section is well founded, it shall ^{F101}(2) make a declaration to that effect and shall order the employer to pay to the worker the whole amount of the deduction, less any such part of the amount as has already been paid to the worker by the employer.]

- (3) Where the making of a deduction from the wages of a worker both contravenes section 68(1) and involves one or more of the contraventions specified in subsection (4) of this section, the aggregate amount which may be ordered by an [^{F100}employment tribunal] or court (whether on the same occasion or on different occasions) to be paid in respect of the contraventions shall not exceed the amount, or (where different amounts may be ordered to be paid in respect of different contraventions) the greatest amount, which may be ordered to be paid in respect of any one of them.
- (4) The contraventions referred to in subsection (3) are—
- (a) a contravention of the requirement not to make a deduction without having given the particulars required by section 8 (itemised pay statements) or 9(1) (standing statements of fixed deductions) of [^{F102}the Employment Rights Act 1996],
 - (b) a contravention of [^{F103}section 13 of that Act] (requirement not to make unauthorised deductions), and
 - (c) a contravention of section 86(1) or 90(1) of this Act (requirements not to make deductions of political fund contributions in certain circumstances).]

Textual Amendments

F99 Ss. 68, 68A substituted (30.8.1993) for s. 68 by 1993 c. 19, s. 15, **Sch. 9 para. 2**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F100 Words in s. 68A(1)(3) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F101 S. 68A(2) substituted (23.6.1998) by S.I. 1998/1529, arts. 2(2), 3

F102 Words in s. 68A(4)(a) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(4)(a)** (with ss. 191-195, 202)

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F103 Words in s. 68A(4)(b) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 56(4)(b) (with ss. 191-195, 202)

Right to terminate membership of union

69 Right to terminate membership of union.

In every contract of membership of a trade union, whether made before or after the passing of this Act, a term conferring a right on the member, on giving reasonable notice and complying with any reasonable conditions, to terminate his membership of the union shall be implied.

Supplementary

70 Membership of constituent or affiliated organisation.

In this Chapter “member”, in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes a member of any of the constituent or affiliated organisations.

[^{F104}CHAPTER VA

COLLECTIVE BARGAINING: RECOGNITION]

Textual Amendments

F104 S. 70A of Chapter VA Pt. I and Chapter heading inserted (6.6.2000) by 1999 c. 26, ss. 1(2); S.I. 2000/1338, art. 2(a)

[^{F105}70A Recognition of trade unions.

Schedule A1 shall have effect.]

Textual Amendments

F105 S. 70A of Chapter VA Pt. I and chapter heading inserted (6.6.2000) by 1999 c. 26, ss. 1(2), 44

Modifications etc. (not altering text)

C3 S. 70A applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(a)

[^{F106}70B Training.

(1) This section applies where—

- (a) a trade union is recognised, in accordance with Schedule A1, as entitled to conduct collective bargaining on behalf of a bargaining unit (within the meaning of Part I of that Schedule), and

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- (b) a method for the conduct of collective bargaining is specified by the Central Arbitration Committee under paragraph 31(3) of that Schedule (and is not the subject of an agreement under paragraph 31(5)(a) or (b)).
- (2) The employer must from time to time invite the trade union to send representatives to a meeting for the purpose of—
 - (a) consulting about the employer’s policy on training for workers within the bargaining unit,
 - (b) consulting about his plans for training for those workers during the period of six months starting with the day of the meeting, and
 - (c) reporting about training provided for those workers since the previous meeting.
 - (3) The date set for a meeting under subsection (2) must not be later than—
 - (a) in the case of a first meeting, the end of the period of six months starting with the day on which this section first applies in relation to a bargaining unit, and
 - (b) in the case of each subsequent meeting, the end of the period of six months starting with the day of the previous meeting.
 - (4) The employer shall, before the period of two weeks ending with the date of a meeting, provide to the trade union any information—
 - (a) without which the union’s representatives would be to a material extent impeded in participating in the meeting, and
 - (b) which it would be in accordance with good industrial relations practice to disclose for the purposes of the meeting.
 - (5) Section 182(1) shall apply in relation to the provision of information under subsection (4) as it applies in relation to the disclosure of information under section 181.
 - (6) The employer shall take account of any written representations about matters raised at a meeting which he receives from the trade union within the period of four weeks starting with the date of the meeting.
 - (7) Where more than one trade union is recognised as entitled to conduct collective bargaining on behalf of a bargaining unit, a reference in this section to “the trade union” is a reference to each trade union.
 - (8) Where at a meeting under this section (Meeting 1) an employer indicates his intention to convene a subsequent meeting (Meeting 2) before the expiry of the period of six months beginning with the date of Meeting 1, for the reference to a period of six months in subsection (2)(b) there shall be substituted a reference to the expected period between Meeting 1 and Meeting 2.
 - (9) The Secretary of State may by order made by statutory instrument amend any of subsections (2) to (6).
 - (10) No order shall be made under subsection (9) unless a draft has been laid before, and approved by resolution of, each House of Parliament.]

Textual Amendments

F106 Ss. 70B, 70C inserted (6.6.2000) by 1999 c. 26, s. 5; S.I. 2000/1338, art. 2(b)

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Modifications etc. (not altering text)

C4 S. 70B applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(a)

[^{F107}70C Section 70B: complaint to employment tribunal.

- (1) A trade union may present a complaint to an employment tribunal that an employer has failed to comply with his obligations under section 70B in relation to a bargaining unit.
- (2) An employment tribunal shall not consider a complaint under this section unless it is presented—
 - (a) before the end of the period of three months beginning with the date of the alleged failure, or
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (3) Where an employment tribunal finds a complaint under this section well-founded it—
 - (a) shall make a declaration to that effect, and
 - (b) may make an award of compensation to be paid by the employer to each person who was, at the time when the failure occurred, a member of the bargaining unit.
- (4) The amount of the award shall not, in relation to each person, exceed two weeks' pay.
- (5) For the purpose of subsection (4) a week's pay—
 - (a) shall be calculated in accordance with Chapter II of Part XIV of the ^{M13}Employment Rights Act 1996 (taking the date of the employer's failure as the calculation date), and
 - (b) shall be subject to the limit in section 227(1) of that Act.
- (6) Proceedings for enforcement of an award of compensation under this section—
 - (a) may, in relation to each person to whom compensation is payable, be commenced by that person, and
 - (b) may not be commenced by a trade union.]

Textual Amendments

F107 Ss. 70B, 70C inserted (6.6.2000) by 1999 c. 26, s. 5; S.I. 2000/1338, art. 2(b)

Modifications etc. (not altering text)

C5 S. 70C applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(a)

Marginal Citations

M13 1996 c. 18.

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CHAPTER VI

APPLICATION OF FUNDS FOR POLITICAL OBJECTS

Restriction on use of funds for certain political objects

71 Restriction on use of funds for political objects.

- (1) The funds of a trade union shall not be applied in the furtherance of the political objects to which this Chapter applies unless—
- (a) there is in force in accordance with this Chapter a resolution (a “political resolution”) approving the furtherance of those objects as an object of the union (see sections 73 to 81), and
 - (b) there are in force rules of the union as to—
 - (i) the making of payments in furtherance of those objects out of a separate fund, and
 - (ii) the exemption of any member of the union objecting to contribute to that fund,
 which comply with this Chapter (see sections 82, 84 and 85) and have been approved by the Certification Officer.
- (2) This applies whether the funds are so applied directly, or in conjunction with another trade union, association or body, or otherwise indirectly.

72 Political objects to which restriction applies.

- (1) The political objects to which this Chapter applies are the expenditure of money—
- (a) on any contribution to the funds of, or on the payment of expenses incurred directly or indirectly by, a political party;
 - (b) on the provision of any service or property for use by or on behalf of any political party;
 - (c) in connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot by the union in connection with any election to a political office;
 - (d) on the maintenance of any holder of a political office;
 - (e) on the holding of any conference or meeting by or on behalf of a political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party;
 - (f) on the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate.
- (2) Where a person attends a conference or meeting as a delegate or otherwise as a participator in the proceedings, any expenditure incurred in connection with his attendance as such shall, for the purposes of subsection (1)(e), be taken to be expenditure incurred on the holding of the conference or meeting.
- (3) In determining for the purposes of subsection (1) whether a trade union has incurred expenditure of a kind mentioned in that subsection, no account shall be taken of the ordinary administrative expenses of the union.

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(4) In this section—

“candidate” means a candidate for election to a political office and includes a prospective candidate;

“contribution”, in relation to the funds of a political party, includes any fee payable for affiliation to, or membership of, the party and any loan made to the party;

“electors” means electors at an election to a political office;

“film” includes any record, however made, of a sequence of visual images, which is capable of being used as a means of showing that sequence as a moving picture;

“local authority” means a local authority within the meaning of section 270 of the ^{M14}Local Government Act 1972 or section 235 of the ^{M15}Local Government (Scotland) Act 1973; and

“political office” means the office of member of Parliament, member of the European Parliament or member of a local authority or any position within a political party.

Marginal Citations

M14 1972. c.70

M15 1973 c.65

[^{F108}72A Application of funds in breach of section 71.

- (1) A person who is a member of a trade union and who claims that it has applied its funds in breach of section 71 may apply to the Certification Officer for a declaration that it has done so.
- (2) On an application under this section the Certification Officer—
 - (a) shall make such enquiries as he thinks fit,
 - (b) shall give the applicant and the union an opportunity to be heard,
 - (c) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,
 - (d) may make or refuse the declaration asked for,
 - (e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing, and
 - (f) may make written observations on any matter arising from, or connected with, the proceedings.
- (3) If he makes a declaration he shall specify in it—
 - (a) the provisions of section 71 breached, and
 - (b) the amount of the funds applied in breach.
- (4) If he makes a declaration and is satisfied that the union has taken or agreed to take steps with a view to—
 - (a) remedying the declared breach, or
 - (b) securing that a breach of the same or any similar kind does not occur in future, he shall specify those steps in making the declaration.

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- (5) If he makes a declaration he may make such order for remedying the breach as he thinks just under the circumstances.
- (6) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.
- (7) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.
- (8) Where an order has been made under this section, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.
- (9) An order made by the Certification Officer under this section may be enforced in the same way as an order of the court.
- (10) If a person applies to the Certification Officer under this section in relation to an alleged breach he may not apply to the court in relation to the breach; but nothing in this subsection shall prevent such a person from exercising any right to appeal against or challenge the Certification Officer's decision on the application to him.
- (11) If—
 - (a) a person applies to the court in relation to an alleged breach, and
 - (b) the breach is one in relation to which he could have made an application to the Certification Officer under this section,
 he may not apply to the Certification Officer under this section in relation to the breach.]

Textual Amendments

F108 S. 72A inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, 13; S.I. 1999/2830, art. 2(1), Sch. 1 Pt. I (with Sch. 3 para. 5)

Political resolution

73 Passing and effect of political resolution.

- (1) A political resolution must be passed by a majority of those voting on a ballot of the members of the trade union held in accordance with this Chapter.
- (2) A political resolution so passed shall take effect as if it were a rule of the union and may be rescinded in the same manner and subject to the same provisions as such a rule.
- (3) If not previously rescinded, a political resolution shall cease to have effect at the end of the period of ten years beginning with the date of the ballot on which it was passed.
- (4) Where before the end of that period a ballot is held on a new political resolution, then—
 - (a) if the new resolution is passed, the old resolution shall be treated as rescinded, and

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- (b) if it is not passed, the old resolution shall cease to have effect at the end of the period of two weeks beginning with the date of the ballot.

74 Approval of political ballot rules.

- (1) A ballot on a political resolution must be held in accordance with rules of the trade union (its “political ballot rules”) approved by the Certification Officer.
- (2) Fresh approval is required for the purposes of each ballot which it is proposed to hold, notwithstanding that the rules have been approved for the purposes of an earlier ballot.
- (3) The Certification Officer shall not approve a union’s political ballot rules unless he is satisfied that the requirements set out in—
- section 75 (appointment of independent scrutineer),
- section 76 (entitlement to vote),
- section 77 (voting), ^{F109} . . . [^{F110}section 77A (counting of votes etc. by independent person), and]
- section 78 (scrutineer’s report),
- would be satisfied in relation to a ballot held by the union in accordance with the rules.

Textual Amendments

F109 Word in s. 74(3) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F110 Words in s. 74(3) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para.1**; S.I. 1993/1908, art. 2(1), **Sch.1**

75 Appointment of independent scrutineer.

- (1) The trade union shall, before the ballot is held, appoint a qualified independent person (“the scrutineer”) to carry out—
- (a) the functions in relation to the ballot which are required under this section to be contained in his appointment; and
- (b) such additional functions in relation to the ballot as may be specified in his appointment.
- (2) A person is a qualified independent person in relation to a ballot if—
- (a) he satisfies such conditions as may be specified for the purposes of this section by order of the Secretary of State or is himself so specified; and
- (b) the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

An order under paragraph (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (3) The scrutineer’s appointment shall require him—
- (a) to be the person who supervises the production [^{F111}of the voting papers and (unless he is appointed under section 77A to undertake the distribution of the

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voting papers) their distribution] and to whom the voting papers are returned by those voting;

[^{F112}(aa) to—

- (i) inspect the register of names and addresses of the members of the trade union, or
- (ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with subsection (5A)(a),

whenever it appears to him appropriate to do so and, in particular, when the conditions specified in subsection (3A) are satisfied;]

- (b) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see section 78);
- (c) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and
- (d) to retain custody of all voting papers returned for the purposes of the ballot [^{F113}and the copy of the register supplied to him in accordance with subsection (5A)(a)]—
 - (i) until the end of the period of one year beginning with the announcement by the union of the result of the ballot; and
 - (ii) if within that period an application is made under section 79 (complaint of failure to comply with ballot rules), until the Certification Officer or the court authorises him to dispose of the papers [^{F114}or copy].

[^{F115}(3A) The conditions referred to in subsection (3)(aa) are—

- (a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and
- (b) that the scrutineer does not consider that the member’s suspicion is ill-founded.

(3B) In subsection (3A) “the appropriate period” means the period—

- (a) beginning with the day on which the scrutineer is appointed, and
- (b) ending with the day before the day on which the scrutineer makes his report to the trade union.

(3C) The duty of confidentiality as respects the register is incorporated in the scrutineer’s appointment.]

- (4) The trade union shall ensure that nothing in the terms of the scrutineer’s appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer’s independence in relation to the union into question.
- (5) The trade union shall, before the scrutineer begins to carry out his functions, either—
 - (a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or
 - (b) take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

[^{F116}(5A) The trade union shall—

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- (a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and
 - (b) comply with any request made by the scrutineer to inspect the register.
- (5B) Where the register is kept by means of a computer the duty imposed on the trade union by subsection (5A)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.]
- (6) The trade union shall ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer’s independence in relation to the union into question.
- (7) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.
- [^{F117}(8) In this section “the relevant date” means—
- (a) where the trade union has rules determining who is entitled to vote in the ballot by reference to membership on a particular date, that date, and
 - (b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the ballot.]

Textual Amendments

- F111** Words in s. 75(3)(a) substituted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F112** S. 75(3)(aa) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F113** Words in s. 75(3)(d) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(c)(i)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F114** Words in s. 75(3)(d)(ii) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(c)(ii)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F115** S. 75(3A)-(3C) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(d)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F116** S. 75(5A)(5B) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(e)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F117** S. 75(8) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(f)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

76 Entitlement to vote.

Entitlement to vote in the ballot shall be accorded equally to all members of the trade union.

77 Voting.

- (1) The method of voting must be by the marking of a voting paper by the person voting.
- (2) Each voting paper must—
 - (a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned, and

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- (b) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot, and
 - (c) be marked with its number.
- (3) Every person who is entitled to vote in the ballot must—
- (a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and
 - (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.
- (4) So far as is reasonably practicable, every person who is entitled to vote in the ballot must—
- (a) have a voting paper sent to him by post at his home address or another address which he has requested the trade union in writing to treat as his postal address, and
 - (b) be given a convenient opportunity to vote by post.
- (5) The ballot shall be conducted so as to secure that—
- (a) so far as is reasonably practicable, those voting do so in secret, and
 - (b) the votes given in the ballot are fairly and accurately counted.

For the purposes of paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the ballot.

[^{F118}77A Counting of votes etc. by independent person.

- (1) The trade union shall ensure that—
- (a) the storage and distribution of the voting papers for the purposes of the ballot, and
 - (b) the counting of the votes cast in the ballot,
- are undertaken by one or more independent persons appointed by the union.
- (2) A person is an independent person in relation to a ballot if—
- (a) he is the scrutineer, or
 - (b) he is a person other than the scrutineer and the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.
- (3) An appointment under this section shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any enactment or the occurrence of any unfairness or malpractice.
- (4) The duty of confidentiality as respects the register is incorporated in an appointment under this section.
- (5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.
- (6) The trade union—

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- (a) shall ensure that nothing in the terms of an appointment under this section is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,
- (b) shall ensure that a person appointed under this section duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call into question the independence of the person appointed in relation to the union, and
- (c) shall comply with all reasonable requests made by a person appointed under this section for the purposes of, or in connection with, the carrying out of his functions.]

Textual Amendments

F118 S. 77A inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para.3**; S.I. 1993/1908, art. 2(1), **Sch. 1**

78 Scrutineer's report.

- (1) The scrutineer's report on the ballot shall state—
 - (a) the number of voting papers distributed for the purposes of the ballot,
 - (b) the number of voting papers returned to the scrutineer,
 - (c) the number of valid votes cast in the ballot for and against the resolution, ^{F119} . . .
 - (d) the number of spoiled or otherwise invalid voting papers returned [^{F120}and.
 - (e) the name of the person (or of each of the persons) appointed under section 77A or, if no person was so appointed, that fact.]
- (2) The report shall also state whether the scrutineer is satisfied—
 - (a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the ballot,
 - (b) that the arrangements made [^{F121}(whether by him or any other person)] with respect to the production, storage, distribution, return or other handling of the voting papers used in the ballot, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and
 - (c) that he has been able to carry out his functions without such interference as would make it reasonable for any person to call his independence in relation to the union into question;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.

[^{F122}(2A) The report shall also state—

- (a) whether the scrutineer—
 - (i) has inspected the register of names and addresses of the members of the trade union, or
 - (ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with section 75(5A)(a),
- (b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or at his own instance,
- (c) whether he declined to act on any such request, and

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- (d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date,
- but shall not state the name of any member who has requested such an inspection or examination.
- (2B) Where one or more persons other than the scrutineer are appointed under section 77A, the statement included in the scrutineer's report in accordance with subsection (2)(b) shall also indicate—
- (a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and
 - (b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.]
- (3) The trade union shall not publish the result of the ballot until it has received the scrutineer's report.
- (4) The trade union shall within the period of three months after it receives the report—
- (a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
 - (b) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.
- (5) Any such copy or notification shall be accompanied by a statement that the union will, on request, supply any member of the union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification.
- (6) The trade union shall so supply any member of the union who makes such a request and pays the fee (if any) notified to him.

Textual Amendments

F119 Word in s. 78(1)(c) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F120 S.78(1)(e) and word preceding it inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 4(a)**; S.I. 1993/1908, art. 2(1), **Sch.1**

F121 Words in s. 78(2)(b) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 4(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F122 S. 78(2A)(2B) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 4(c)**; S.I. 1993/1908, art. 2(1), **Sch.1**

79 Remedy for failure to comply with ballot rules: general.

- (1) The remedy for—
- (a) the taking by a trade union of a ballot on a political resolution otherwise than in accordance with political ballot rules approved by the Certification Officer, or
 - (b) the failure of a trade union, in relation to a proposed ballot on a political resolution, to comply with the political ballot rules so approved,
- is by way of application under section 80 (to the Certification Officer) or 81 (to the court).

Status: Point in time view as at 01/12/2001. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Trade Union and Labour Relations (Consolidation) Act 1992, Part I is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

F123
...

- (2) An application under those sections may be made only by a person who is a member of the trade union and, where the ballot has been held, was a member at the time when it was held.

References in those sections to a person having a sufficient interest are to such a person.

- (3) No such application may be made after the end of the period of one year beginning with the day on which the union announced the result of the ballot.

Textual Amendments

F123 Words in s. 79(1) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, 14, Sch. 9(7); S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, Sch. 2 Pt. I (with Sch. 3 para. 5)

80 Application to Certification Officer.

- (1) A person having a sufficient interest (see section 79(2)) who claims that a trade union—

- (a) has held a ballot on a political resolution otherwise than in accordance with political ballot rules approved by the Certification Officer, or
(b) has failed in relation to a proposed ballot on a political resolution to comply with political ballot rules so approved,

may apply to the Certification Officer for a declaration to that effect.

- (2) On an application being made to him, the Certification Officer shall—

- (a) make such enquiries as he thinks fit, and
(b) ... give the applicant and the trade union an opportunity to be heard,

F124

and may make or refuse the declaration asked for.

- (3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.

- (4) Where he makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall in making the declaration specify those steps.

- (5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

[^{F125}(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

- (a) to secure the holding of a ballot in accordance with the order;
(b) to take such other steps to remedy the declared failure as may be specified in the order;
(c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

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The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union must comply with the requirements of the order.

^{F125}(5B) Where the Certification Officer makes an order requiring the union to hold a fresh ballot, he shall (unless he considers that it would be inappropriate to do so in the particular circumstances of the case) require the ballot to be conducted in accordance with the union's political ballot rules and such other provisions as may be made by the order.

^{F125}(5C) Where an enforcement order has been made, any person who is a member of the union and was a member at the time the order was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.]

(6) In exercising his functions under this section the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.

(7) Where he requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and shall, unless he considers that it would be inappropriate to do so, proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

[^{F126}(8) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.

^{F126}(9) An enforcement order made by the Certification Officer under this section may be enforced in the same way as an order of the court.

^{F126}(10) The following paragraphs have effect if a person applies under section 81 in relation to a matter—

- (a) that person may not apply under this section in relation to that matter;
- (b) on an application by a different person under this section in relation to that matter, the Certification Officer shall have due regard to any declaration, order, observations, or reasons made or given by the court regarding that matter and brought to the Certification Officer's notice.]

Textual Amendments

F124 Words in s. 80(2)(b) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, 15(1)(2), Sch. 9(7); S.I. 1999/2380, art. 2(1)(3), Sch. 1 Pt. I, Sch. 2 Pt. I (with Sch. 3 para. 5)

F125 S. 80(5A)-(5C) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, 15(1)(3); S.I. 1999/2830, art. 2(1), Sch. 1 Pt. I (with Sch. 3 para. 5)

F126 S. 80(8)-(10) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, 15(1)(4); S.I. 1999/2830, art. 2(1), Sch. 1 Pt. I (with Sch. 3 para. 5)

81 Application to court.

(1) A person having a sufficient interest (see section 79(2)) who claims that a trade union—

- (a) has held a ballot on a political resolution otherwise than in accordance with political ballot rules approved by the Certification Officer, or

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(b) has failed in relation to a proposed ballot on a political resolution to comply with political ballot rules so approved, may apply to the court for a declaration to that effect.

^{F127}(2)

(3) If the court makes the declaration asked for, it shall specify in the declaration the provisions with which the trade union has failed to comply.

(4) Where the court makes a declaration it shall also, unless it considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

- (a) to secure the holding of a ballot in accordance with the order;
- (b) to take such other steps to remedy the declared failure as may be specified in the order;
- (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The court shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union must comply with the requirements of the order.

(5) Where the court makes an order requiring the union to hold a fresh ballot, the court shall (unless it considers that it would be inappropriate to do so in the particular circumstances of the case) require the ballot to be conducted in accordance with the union's political ballot rules and such other provisions as may be made by the order.

(6) Where an enforcement order has been made, any person who is a member of the union and was a member at the time the order was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(7) Without prejudice to any other power of the court, the court may on an application under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.

[^{F128}(8) The following paragraphs have effect if a person applies under section 80 in relation to a matter—

- (a) that person may not apply under this section in relation to that matter;
- (b) on an application by a different person under this section in relation to that matter, the court shall have due regard to any declaration, order, observations or reasons made or given by the Certification Officer regarding that matter and brought to the court's notice.]

Textual Amendments

F127 S. 81(2) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, 16(1)(2), Sch. 9(7); S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, Sch. 2 Pt. I (with Sch. 3 para. 5)

F128 S. 81(8) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 para. 1, 16(1)(3); S.I. 1999/2830, art. 2(1), Sch. 1 Pt. I (with Sch. 3 para. 5)

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The political fund

82 Rules as to political fund.

(1) The trade union's rules must provide—

- (a) that payments in the furtherance of the political objects to which this Chapter applies shall be made out of a separate fund (the “political fund” of the union);
- (b) that a member of the union who gives notice in accordance with section 84 that he objects to contributing to the political fund shall be exempt from any obligation to contribute to it;
- (c) that a member shall not by reason of being so exempt—
 - (i) be excluded from any benefits of the union, or
 - (ii) be placed in any respect either directly or indirectly under a disability or at a disadvantage as compared with other members of the union (except in relation to the control or management of the political fund);
 and
- (d) that contribution to the political fund shall not be made a condition for admission to the union.

(2) A member of a trade union who claims that he is aggrieved by a breach of any rule made in pursuance of this section may complain to the Certification Officer.

[^{F129}(2A) On a complaint being made to him the Certification Officer shall make such enquiries as he thinks fit.]

(3) Where, after giving the member and a representative of the union an opportunity of being heard, the Certification Officer considers that a breach has been committed, he may make such order for remedying the breach as he thinks just under the circumstances.

[^{F130}(3A) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.]

(4) Any such order, on being recorded in the county court or, in Scotland, the sheriff court, may be enforced in the same way as an order of that court.

Textual Amendments

F129 S. 82(2A) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **17(1)(2)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

F130 S. 82(3A) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **17(1)(3)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

83 Assets and liabilities of political fund.

(1) There may be added to a union's political fund only—

- (a) sums representing contributions made to the fund by members of the union or by any person other than the union itself, and

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- (b) property which accrues to the fund in the course of administering the assets of the fund.
- (2) The rules of the union shall not be taken to require any member to contribute to the political fund at a time when there is no political resolution in force in relation to the union.
- (3) No liability of a union's political fund shall be discharged out of any other fund of the union.

This subsection applies notwithstanding any term or condition on which the liability was incurred or that an asset of the other fund has been charged in connection with the liability.

84 Notice of objection to contributing to political fund.

- (1) A member of a trade union may give notice in the following form, or in a form to the like effect, that he objects to contribute to the political fund:—

Name of Trade Union

POLITICAL FUND (EXEMPTION NOTICE)

I give notice that I object to contributing to the Political Fund of the Union, and am in consequence exempt, in manner provided by Chapter VI of Part I of the Trade Union and Labour Relations (Consolidation) Act 1992, from contributing to that fund.

A.B. Address
day of 19

- (2) On the adoption of a political resolution, notice shall be given to members of the union acquainting them—
- that each member has a right to be exempted from contributing to the union's political fund, and
 - that a form of exemption notice can be obtained by or on behalf of a member either by application at or by post from—
 - the head office or any branch office of the union, or
 - the office of the Certification Officer.
- (3) The notice to members shall be given in accordance with rules of the union approved for the purpose by the Certification Officer, who shall have regard in each case to the existing practice and character of the union.
- (4) On giving an exemption notice in accordance with this section, a member shall be exempt from contributing to the union's political fund—
- where the notice is given within one month of the giving of notice to members under subsection (2) following the passing of a political resolution on a ballot held at a time when no such resolution is in force, as from the date on which the exemption notice is given;
 - in any other case, as from the 1st January next after the exemption notice is given.
- (5) An exemption notice continues to have effect until it is withdrawn.

Status: Point in time view as at 01/12/2001. This version of this part contains provisions that are not valid for this point in time.

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PROSPECTIVE

[^{F131}85 Manner of giving effect to section 84

- (1) A union that has a political fund must either—
 - (a) make a separate levy of contributions to that fund from the members who are contributors, or
 - (b) relieve members who are not contributors from the payment of the appropriate portion of any periodical contribution required from members towards the expenses of the union.
- (2) In the latter case, the rules shall provide—
 - (a) that relief shall be given as far as possible to all members who are not contributors on the occasion of the same periodical payment, and
 - (b) for enabling each member of the union to know what portion (if any) of any periodical contribution payable by the member is a contribution to the political fund.]

Textual Amendments

F131 S. 85 substituted (5.12.2016 for specified purposes) by [Trade Union Act 2016 \(c. 15\)](#), ss. **11(3)**, 25(1) (with s. 11(5)); S.I. 2016/1170, reg. 2(b)

Duties of employer who deducts union contributions

86 Certificate of exemption or objection to contributing to political fund.

- (1) If a member of a trade union which has a political fund certifies in writing to his employer that, or to the effect that—
 - (a) he is exempt from the obligation to contribute to the fund, or
 - (b) he has, in accordance with section 84, notified the union in writing of his objection to contributing to the fund,
 the employer shall ensure that no amount representing a contribution to the political fund is deducted by him from emoluments payable to the member.
- (2) The employer's duty under subsection (1) applies from the first day, following the giving of the certificate, on which it is reasonably practicable for him to comply with that subsection, until the certificate is withdrawn.
- (3) An employer may not refuse to deduct any union dues from emoluments payable to a person who has given a certificate under this section if he continues to deduct union dues from emoluments payable to other members of the union, unless his refusal is not attributable to the giving of the certificate or otherwise connected with the duty imposed by subsection (1).

Status: Point in time view as at 01/12/2001. This version of this part contains provisions that are not valid for this point in time.

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[^{F132}87 Complaint in respect of employer’s failure.

- (1) A person who claims his employer has failed to comply with section 86 in deducting or refusing to deduct any amount from emoluments payable to him may present a complaint to an employment tribunal.
- (2) A tribunal shall not consider a complaint under subsection (1) unless it is presented—
 - (a) within the period of three months beginning with the date of the payment of the emoluments or (if the complaint relates to more than one payment) the last of the payments, or
 - (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.
- (3) Where on a complaint under subsection (1) arising out of subsection (3) (refusal to deduct union dues) of section 86 the question arises whether the employer’s refusal to deduct an amount was attributable to the giving of the certificate or was otherwise connected with the duty imposed by subsection (1) of that section, it is for the employer to satisfy the tribunal that it was not.
- (4) Where a tribunal finds that a complaint under subsection (1) is well-founded—
 - (a) it shall make a declaration to that effect and, where the complaint arises out of subsection (1) of section 86, order the employer to pay to the complainant the amount deducted in contravention of that subsection less any part of that amount already paid to him by the employer, and
 - (b) it may, if it considers it appropriate to do so in order to prevent a repetition of the failure, make an order requiring the employer to take, within a specified time, the steps specified in the order in relation to emoluments payable by him to the complainant.
- (5) A person who claims his employer has failed to comply with an order made under subsection (4)(b) on a complaint presented by him may present a further complaint to an employment tribunal; but only one complaint may be presented under this subsection in relation to any order.
- (6) A tribunal shall not consider a complaint under subsection (5) unless it is presented—
 - (a) after the end of the period of four weeks beginning with the date of the order, but
 - (b) before the end of the period of six months beginning with that date.
- (7) Where on a complaint under subsection (5) a tribunal finds that an employer has, without reasonable excuse, failed to comply with an order made under subsection (4) (b), it shall order the employer to pay to the complainant an amount equal to two weeks’ pay.
- (8) Chapter II of Part XIV of the ^{M16}Employment Rights Act 1996 (calculation of a week’s pay) applies for the purposes of subsection (7) with the substitution for section 225 of the following—

For the purposes of this Chapter in its application to subsection (7) of section 87 of the ^{M17}Trade Union and Labour Relations (Consolidation) Act 1992, the calculation date is the date of the payment, or (if more than one) the last of the payments, to which the complaint related.]

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Textual Amendments

F132 S. 87 substituted (1.8.1998) by 1998 c. 8, s. 6; S.I. 1998/1658, art. 2(1), Sch. 1 (with art. 3(2))

Marginal Citations

M16 1996 c. 18.

M17 1992 c. 52.

^{F133}**88**

Textual Amendments

F133 S. 88 repealed (1.8.1998) by 1998 c. 8, s. 15, Sch. 2; S.I. 1998/2658, art. 2(1), Sch. 1 (with art. 3(3))

Position where political resolution ceases to have effect

89 Administration of political fund where no resolution in force.

- (1) The following provisions have effect with respect to the political fund of a trade union where there ceases to be any political resolution in force in relation to the union.
- (2) If the resolution ceases to have effect by reason of a ballot being held on which a new political resolution is not passed, the union may continue to make payments out of the fund as if the resolution had continued in force for six months beginning with the date of the ballot.

But no payment shall be made which causes the fund to be in deficit or increases a deficit in it.

- (3) There may be added to the fund only—
 - (a) contributions to the fund paid to the union (or to a person on its behalf) before the resolution ceased to have effect, and
 - (b) property which accrues to the fund in the course of administering the assets of the fund.
- (4) The union may, notwithstanding any of its rules or any trusts on which the fund is held, transfer the whole or part of the fund to such other fund of the union as it thinks fit.
- (5) If a new political resolution is subsequently passed, no property held immediately before the date of the ballot by or on behalf of the union otherwise than in its political fund, and no sums representing such property, may be added to the fund.

90 Discontinuance of contributions to political fund.

- (1) Where there ceases to be any political resolution in force in relation to a trade union, the union shall take such steps as are necessary to ensure that the collection of contributions to its political fund is discontinued as soon as is reasonably practicable.
- (2) The union may, notwithstanding any of its rules, pay into any of its other funds any such contribution which is received by it after the resolution ceases to have effect.

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- (3) If the union continues to collect contributions, it shall refund to a member who applies for a refund the contributions made by him collected after the resolution ceased to have effect.
- (4) A member of a trade union who claims that the union has failed to comply with subsection (1) may apply to the court for a declaration to that effect.
- (5) Where the court is satisfied that the complaint is well-founded, it may, if it considers it appropriate to do so in order to secure that the collection of contributions to the political fund is discontinued, make an order requiring the union to take, within such time as may be specified in the order, such steps as may be so specified.

Such an order may be enforced by a person who is a member of the union and was a member at the time the order was made as if he had made the application.
- (6) The remedy for failure to comply with subsection (1) is in accordance with subsections (4) and (5), and not otherwise; but this does not affect any right to recover sums payable to a person under subsection (3).

91 Rules to cease to have effect.

- (1) If there ceases to be any political resolution in force in relation to a trade union, the rules of the union made for the purpose of complying with this Chapter also cease to have effect, except so far as they are required to enable the political fund to be administered at a time when there is no such resolution in force.
- (2) If the resolution ceases to have effect by reason of a ballot being held on which a new political resolution is not passed, the rules cease to have effect at the end of the period of six months beginning with the date of the ballot.

In any other case the rules cease to have effect when the resolution ceases to have effect.
- (3) Nothing in this section affects the operation of section 82(2) (complaint to Certification Officer in respect of breach of rules) in relation to a breach of a rule occurring before the rule in question ceased to have effect.
- (4) No member of a trade union who has at any time been exempt from the obligation to contribute to its political fund shall by reason of his having been exempt—
 - (a) be excluded from any benefits of the union, or
 - (b) be placed in any respect either directly or indirectly under a disability or at a disadvantage as compared with other members (except in relation to the control or management of the political fund).

Supplementary

92 Manner of making union rules.

If the Certification Officer is satisfied, and certifies, that rules of a trade union made for any of the purposes of this Chapter and requiring approval by him have been approved—

- (a) by a majority of the members of the union voting for the purpose, or
- (b) by a majority of delegates of the union at a meeting called for the purpose,

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the rules shall have effect as rules of the union notwithstanding that the rules of the union as to the alteration of rules or the making of new rules have not been complied with.

93 Effect of amalgamation.

- (1) Where on an amalgamation of two or more trade unions—
 - (a) there is in force in relation to each of the amalgamating unions a political resolution and such rules as are required by this Chapter, and
 - (b) the rules of the amalgamated union in force immediately after the amalgamation include such rules as are required by this Chapter,
 the amalgamated union shall be treated for the purposes of this Chapter as having passed a political resolution.
- (2) That resolution shall be treated as having been passed on the date of the earliest of the ballots on which the resolutions in force immediately before the amalgamation with respect to the amalgamating unions were passed.
- (3) Where one of the amalgamating unions is a Northern Ireland union, the references above to the requirements of this Chapter shall be construed as references to the requirements of the corresponding provisions of the law of Northern Ireland.

94 Overseas members of trade union.

- (1) Where a political resolution is in force in relation to the union—
 - (a) rules made by the union for the purpose of complying with section 74 (political ballot rules) in relation to a proposed ballot may provide for overseas members of the union not to be accorded entitlement to vote in the ballot, and
 - (b) rules made by the union for the purpose of complying with section 84 (notice of right to object to contribute to political fund to be given where resolution passed) may provide for notice not to be given by the union to its overseas members.
- (2) Accordingly, where provision is made in accordance with subsection (1)(a), the Certification Officer shall not on that ground withhold his approval of the rules; and where provision is made in accordance with subsection (1)(b), section 84(2) (duty to give notice) shall not be taken to require notice to be given to overseas members.
- (3) An “overseas member” means a member of the trade union (other than a merchant seaman or offshore worker) who is outside Great Britain throughout the period during which votes may be cast.

For this purpose—

“merchant seaman” means a person whose employment, or the greater part of it, is carried out on board sea-going ships; and

“offshore worker” means a person in offshore employment, other than one who is in such employment in an area where the law of Northern Ireland applies.

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95 Appeals from Certification Officer.

An appeal lies to the Employment Appeal Tribunal on any question of law arising in proceedings before or arising from any decision of the Certification Officer under this Chapter.

96 Meaning of “date of the ballot”.

In this Chapter the “date of the ballot” means, in the case of a ballot in which votes may be cast on more than one day, the last of those days.

CHAPTER VII

AMALGAMATIONS AND SIMILAR MATTERS

Amalgamation or transfer of engagements

97 Amalgamation or transfer of engagements.

- (1) Two or more trade unions may amalgamate and become one trade union, with or without a division or dissolution of the funds of any one or more of the amalgamating unions, but shall not do so unless—
 - (a) the instrument of amalgamation is approved in accordance with section 98, and
 - (b) the requirements of [F134section 99 (notice to members) and section 100 (resolution to be passed by required majority on ballot held in accordance with sections 100A to 100E)] are complied with in respect of each of the amalgamating unions.
- (2) A trade union may transfer its engagements to another trade union which undertakes to fulfil those engagements, but shall not do so unless—
 - (a) the instrument of transfer is approved in accordance with section 98, and
 - (b) the requirements of [F134section 99 (notice to members) and section 100 (resolution to be passed by required majority on ballot held in accordance with sections 100A to 100E)] are complied with in respect of the transferor union.
- (3) An amalgamation or transfer of engagements does not prejudice any right of any creditor of any trade union party to the amalgamation or transfer.
- (4) The above provisions apply to every amalgamation or transfer of engagements notwithstanding anything in the rules of any of the trade unions concerned.

Textual Amendments

F134 Words in s. 97(1)(b) and (2)(b) substituted (30.8.1993) by 1993 c. 19, s. 49(2), Sch. 8 para.52; S.I. 1993/1908, art. 2(1), Sch. 1

98 Approval of instrument of amalgamation or transfer.

- (1) The instrument of amalgamation or transfer must be approved by the Certification Officer and shall be submitted to him for approval before [F135a ballot of the members

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of any amalgamating union, or (as the case may be) of the transferor union, is held on the resolution to approve the instrument.]

- (2) The instrument must comply with the requirements of any regulations in force under this Chapter and the Certification Officer shall approve it if he is satisfied that it does so.

Textual Amendments

F135 Words in s. 98(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.53**; S.I. 1993/1908, art. 2(1), **Sch. 1**

99 Notice to be given to members.

- (1) The trade union shall take all reasonable steps to secure [^{F136}that every voting paper which is supplied for voting in the ballot on the resolution to approve the instrument of amalgamation or transfer is accompanied by] a notice in writing approved for the purpose by the Certification Officer.
- (2) The notice shall be in writing and shall either—
- (a) set out in full the instrument of amalgamation or transfer to which the resolution relates, or
 - (b) give an account of it sufficient to enable those receiving the notice to form a reasonable judgment of the main effects of the proposed amalgamation or transfer.
- (3) If the notice does not set out the instrument in full it shall state where copies of the instrument may be inspected by those receiving the notice.
- [^{F137}(3A) The notice shall not contain any statement making a recommendation or expressing an opinion about the proposed amalgamation or transfer.]
- (4) The notice shall also comply with the requirements of any regulations in force under this Chapter.
- (5) The notice proposed to be supplied to members of the union under this section shall be submitted to the Certification Officer for approval; and he shall approve it if he is satisfied that it meets the requirements of this section.

Textual Amendments

F136 Words in s. 99(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.54**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F137 S. 99(3A) added (30.8.1993) by 1993 c. 19, s.5; S.I. 1993/1908, art. 2(1), **Sch. 1**

[^{F138}100 Requirement of ballot on resolution.

- (1) A resolution approving the instrument of amalgamation or transfer must be passed on a ballot of the members of the trade union held in accordance with sections 100A to 100E.

Status: Point in time view as at 01/12/2001. This version of this part contains provisions that are not valid for this point in time.

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- (2) A simple majority of those voting is sufficient to pass such a resolution unless the rules of the trade union expressly require it to be approved by a greater majority or by a specified proportion of the members of the union.]

Textual Amendments

F138 Ss. 100-100E substituted (30.8.1993) for s. 100 by 1993 c. 19, s.4; S.I. 1993/1908, art. 2(1), Sch. 1

[^{F139}100A] Appointment of independent scrutineer.

- (1) The trade union shall, before the ballot is held, appoint a qualified independent person (“the scrutineer”) to carry out—
- (a) the functions in relation to the ballot which are required under this section to be contained in his appointment; and
 - (b) such additional functions in relation to the ballot as may be specified in his appointment.
- (2) A person is a qualified independent person in relation to a ballot if—
- (a) he satisfies such conditions as may be specified for the purposes of this section by order of the Secretary of State or is himself so specified; and
 - (b) the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

An order under paragraph (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (3) The scrutineer’s appointment shall require him—
- (a) to be the person who supervises the production of the voting papers and (unless he is appointed under section 100D to undertake the distribution of the voting papers) their distribution and to whom the voting papers are returned by those voting;
 - (b) to—
 - (i) inspect the register of names and addresses of the members of the trade union, or
 - (ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with subsection (9)(a),
 whenever it appears to him appropriate to do so and, in particular, when the conditions specified in subsection (4) are satisfied;
 - (c) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see section 100E);
 - (d) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and
 - (e) to retain custody of all voting papers returned for the purposes of the ballot and the copy of the register supplied to him in accordance with subsection (9) (a)—
 - (i) until the end of the period of one year beginning with the announcement by the union of the result of the ballot; and

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- (ii) if within that period a complaint is made under section 103 (complaint as regards passing of resolution), until the Certification Officer or Employment Appeal Tribunal authorises him to dispose of the papers or copy.
- (4) The conditions referred to in subsection (3)(b) are—
 - (a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and
 - (b) that the scrutineer does not consider that the member’s suspicion is ill-founded.
- (5) In subsection (4) “the appropriate period” means the period—
 - (a) beginning with the day on which the scrutineer is appointed, and
 - (b) ending with the day before the day on which the scrutineer makes his report to the trade union.
- (6) The duty of confidentiality as respects the register is incorporated in the scrutineer’s appointment.
- (7) The trade union shall ensure that nothing in the terms of the scrutineer’s appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer’s independence in relation to the union into question.
- (8) The trade union shall, before the scrutineer begins to carry out his functions, either—
 - (a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or
 - (b) take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.
- (9) The trade union shall—
 - (a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and
 - (b) comply with any request made by the scrutineer to inspect the register.
- (10) Where the register is kept by means of a computer the duty imposed on the trade union by subsection (9)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.
- (11) The trade union shall ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer’s independence in relation to the union into question.
- (12) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.
- (13) In this section “the relevant date” means—

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- (a) where the trade union has rules determining who is entitled to vote in the ballot by reference to membership on a particular date, that date, and
- (b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the ballot.]

Textual Amendments

F139 S. 100-100E substituted (30.8.1993) for s. 100 by 1993 c. 19, s.4; S.I. 1993/1908, art. 2(1), Sch. 1

[^{F140}100E] Entitlement to vote.

Entitlement to vote in the ballot shall be accorded equally to all members of the trade union.]

Textual Amendments

F140 S. 100-100E substituted (30.8.1993) for s. 100 by 1993 c. 19, s.4; S.I. 1993/1908, art. 2(1), Sch. 1

[^{F141}100C] Voting.

- (1) The method of voting must be by the marking of a voting paper by the person voting.
- (2) Each voting paper must—
 - (a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned, and
 - (b) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot, and
 - (c) be marked with its number.
- (3) Every person who is entitled to vote in the ballot must—
 - (a) be allowed to vote without interference or constraint, and
 - (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.
- (4) So far as is reasonably practicable, every person who is entitled to vote in the ballot must—
 - (a) have a voting paper sent to him by post at his home address or another address which he has requested the trade union in writing to treat as his postal address, and
 - (b) be given a convenient opportunity to vote by post.
- (5) No voting paper which is sent to a person for voting shall have enclosed with it any other document except—
 - (a) the notice which, under section 99(1), is to accompany the voting paper,
 - (b) an addressed envelope, and
 - (c) a document containing instructions for the return of the voting paper, without any other statement.
- (6) The ballot shall be conducted so as to secure that—

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- (a) so far as is reasonably practicable, those voting do so in secret, and
- (b) the votes given in the ballot are fairly and accurately counted.

For the purposes of paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the ballot.]

Textual Amendments

F141 S. 100-100E substituted (30.8.1993) for s. 100 by 1993 c. 19, s. 4; S.I. 1993/1908, art. 2(1), Sch.1

[^{F142}100D Counting of votes etc. by independent person.

- (1) The trade union shall ensure that—
 - (a) the storage and distribution of the voting papers for the purposes of the ballot, and
 - (b) the counting of the votes cast in the ballot,
 are undertaken by one or more independent persons appointed by the trade union.
- (2) A person is an independent person in relation to a ballot if—
 - (a) he is the scrutineer, or
 - (b) he is a person other than the scrutineer and the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.
- (3) An appointment under this section shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any enactment or the occurrence of any unfairness or malpractice.
- (4) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.
- (5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.
- (6) The trade union—
 - (a) shall ensure that nothing in the terms of an appointment under this section is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,
 - (b) shall ensure that a person appointed under this section duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call into question the independence of the person appointed in relation to the union, and
 - (c) shall comply with all reasonable requests made by a person appointed under this section for the purposes of, or in connection with, the carrying out of his functions.]

Status: Point in time view as at 01/12/2001. This version of this part contains provisions that are not valid for this point in time.

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Textual Amendments

F142 S. 100-100E substituted (30.8.1993) for s. 100 by 1993 c. 19, s.4; S.I. 1993/1908, art. 2(1), Sch. 1

[^{F143}100E] Scrutineer's report.

- (1) The scrutineer's report on the ballot shall state—
 - (a) the number of voting papers distributed for the purposes of the ballot,
 - (b) the number of voting papers returned to the scrutineer,
 - (c) the number of valid votes cast in the ballot for and against the resolution,
 - (d) the number of spoiled or otherwise invalid voting papers returned, and
 - (e) the name of the person (or of each of the persons) appointed under section 100D or, if no person was so appointed, that fact.

- (2) The report shall also state whether the scrutineer is satisfied—
 - (a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the ballot,
 - (b) that the arrangements made (whether by him or any other person) with respect to the production, storage, distribution, return or other handling of the voting papers used in the ballot, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and
 - (c) that he has been able to carry out his functions without any such interference as would make it reasonable for any person to call his independence in relation to the union into question;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.

- (3) The report shall also state—
 - (a) whether the scrutineer—
 - (i) has inspected the register of names and addresses of the members of the trade union, or
 - (ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with section 100A(9)(a),
 - (b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or at his own instance,
 - (c) whether he declined to act on any such request, and
 - (d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date,

but shall not state the name of any member who has requested such an inspection or examination.

- (4) Where one or more persons other than the scrutineer are appointed under section 100D, the statement included in the scrutineer's report in accordance with subsection (2)(b) shall also indicate—

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- (a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and
 - (b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.
- (5) The trade union shall not publish the result of the ballot until it has received the scrutineer's report.
- (6) The trade union shall within the period of three months after it receives the report—
- (a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
 - (b) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.
- (7) Any such copy or notification shall be accompanied by a statement that the union will, on request, supply any member of the trade union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification.
- (8) The trade union shall so supply any member of the union who makes such a request and pays the fee (if any) notified to him.]

Textual Amendments

F143 S. 100-100E substituted (30.8.1993) for s. 100 by 1993 c. 19, s.4; S.I. 1993/1908, art. 2(1), Sch.1

101 Registration of instrument of amalgamation or transfer.

- (1) An instrument of amalgamation or transfer shall not take effect before it has been registered by the Certification Officer under this Chapter.
- (2) It shall not be so registered before the end of the period of six weeks beginning with the date on which an application for its registration is sent to the Certification Officer.
- [^{F144}(3) An application for registration of an instrument of amalgamation or transfer shall not be sent to the Certification Officer until section 100E(6) has been complied with in relation to the scrutineer's report on the ballot held on the resolution to approve the instrument.]

Textual Amendments

F144 S. 101(3) inserted (30.8.1993) by 1993 c. 19, s. 49(2), Sch. 8 para.55; S.I. 1993/1908, art. 2(1), Sch.1

VALID FROM 06/04/2005

[^{F145}101A] Listing and certification after amalgamation

- (1) Subsection (2) applies if when an instrument of amalgamation is registered by the Certification Officer under this Chapter each of the amalgamating unions is entered in the list of trade unions.

Status: Point in time view as at 01/12/2001. This version of this part contains provisions that are not valid for this point in time.

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- (2) The Certification Officer shall—
- (a) enter, with effect from the amalgamation date, the name of the amalgamated union in the list of trade unions, and
 - (b) remove, with effect from that date, the names of the amalgamating unions from that list.
- (3) Subsection (4) applies if when an instrument of amalgamation is registered by the Certification Officer under this Chapter each of the amalgamating unions has a certificate of independence which is in force.
- (4) The Certification Officer shall issue to the amalgamated trade union, with effect from the amalgamation date, a certificate that the union is independent.
- (5) In this section “the amalgamation date” means the date on which the instrument of amalgamation takes effect.

Textual Amendments

F145 Ss. 101A, 101B inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), ss. 50(2), 59(2)-(4); S.I. 2005/872, art. 4, Sch. (with arts. 6-21)

VALID FROM 06/04/2005

101B Supply of information by amalgamated union

- (1) If an instrument of amalgamation is registered under this Chapter by the Certification Officer and the amalgamated union is entered in the list of trade unions in accordance with section 101A, that union shall send to him, in such manner and form as he may require—
- (a) a copy of the rules of the union,
 - (b) a list of its officers, and
 - (c) the address of its head or main office.
- (2) The information required to be sent under subsection (1) must be accompanied by any fee prescribed for the purpose under section 108.
- (3) The information must be sent—
- (a) before the end of the period of six weeks beginning with the date on which the instrument of amalgamation takes effect, or
 - (b) if the Certification Officer considers that it is not reasonably practicable for the amalgamated union to send it in that period, before the end of such longer period, beginning with that date, as he may specify to the amalgamated union.
- (4) If any of subsections (1) to (3) are not complied with by the amalgamated union, the Certification Officer shall remove its name from the list of trade unions.]

Status: Point in time view as at 01/12/2001. This version of this part contains provisions that are not valid for this point in time.

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Textual Amendments

F145 Ss. 101A, 101B inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), ss. 50(2), 59(2)-(4); S.I. 2005/872, art. 4, Sch. (with arts. 6-21)

102 Power to alter rules of transferee union for purposes of transfer.

- (1) Where a trade union proposes to transfer its engagements to another trade union and an alteration of the rules of the transferee union is necessary to give effect to provisions in the instrument of transfer, the committee of management or other governing body of that union may by memorandum in writing alter the rules of that union so far as is necessary to give effect to those provisions.

This subsection does not apply if the rules of the trade union expressly provide that this section is not to apply to that union.

- (2) An alteration of the rules of a trade union under subsection (1) shall not take effect unless or until the instrument of transfer takes effect.
- (3) The provisions of subsection (1) have effect, where they apply, notwithstanding anything in the rules of the union.

103 Complaints as regards passing of resolution.

- [^{F146}(1) A member of a trade union who claims that the union—
- (a) has failed to comply with any of the requirements of sections 99 to 100E, or
 - (b) has, in connection with a resolution approving an instrument of amalgamation or transfer, failed to comply with any rule of the union relating to the passing of the resolution,

may complain to the Certification Officer.]

- (2) Any complaint must be made before the end of the period of six weeks beginning with the date on which an application for registration of the instrument of amalgamation or transfer is sent to the Certification Officer.

Where a complaint is made, the Certification Officer shall not register the instrument before the complaint is finally determined or is withdrawn.

- [^{F147}(2A) On a complaint being made to him the Certification Officer shall make such enquiries as he thinks fit.]

- (3) If the Certification Officer, after giving the complainant and the trade union an opportunity of being heard, finds the complaint to be justified—
- (a) he shall make a declaration to that effect, and
 - (b) he may make an order specifying the steps which must be taken before he will entertain any application to register the instrument of amalgamation or transfer;

and where he makes such an order, he shall not entertain any application to register the instrument unless he is satisfied that the steps specified in the order have been taken.

An order under this subsection may be varied by the Certification Officer by a further order.

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- (4) The Certification Officer shall furnish a statement, orally or in writing, of the reasons for his decision on a complaint under this section.
- (5) The validity of a resolution approving an instrument of amalgamation or transfer shall not be questioned in any legal proceedings whatsoever (except proceedings before the Certification Officer under this section or proceedings arising out of such proceedings) on any ground on which a complaint could be, or could have been, made to the Certification Officer under this section.
- [^{F148}(6) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.
- ^{F148}(7) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.
- ^{F148}(8) Where an order has been made under this section, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.
- ^{F148}(9) An order made by the Certification Officer under this section may be enforced in the same way as an order of the court.]

Textual Amendments

F146 S. 103(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 56**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F147 S. 103(2A) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **18(1)(2)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. 1** (with Sch. 3 para. 5)

F148 S. 103(6)-(9) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **18(3)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. 1** (with Sch. 3 para. 5)

104 Appeal from decision of Certification Officer.

An appeal lies to the Employment Appeal Tribunal, at the instance of the complainant or the trade union, on any question of law arising in any proceedings before, or arising from any decision of, the Certification Officer under section 103.

105 Transfer of property on amalgamation or transfer.

- (1) Where an instrument of amalgamation or transfer takes effect, the property held—
- (a) for the benefit of any of the amalgamating unions, or for the benefit of a branch of any of those unions, by the trustees of the union or branch, or
 - (b) for the benefit of the transferor trade union, or for the benefit of a branch of the transferor trade union, by the trustees of the union or branch,
- shall without any conveyance, assignment or assignation vest, on the instrument taking effect, or on the appointment of the appropriate trustees, whichever is the later, in the appropriate trustees.

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- (2) In the case of property to be held for the benefit of a branch of the amalgamated union, or of the transferee union, “the appropriate trustees” means the trustees of that branch, unless the rules of the amalgamated or transferee union provide that the property to be so held is to be held by the trustees of the union.
- (3) In any other case “the appropriate trustees” means the trustees of the amalgamated or transferee union.
- (4) This section does not apply—
 - (a) to property excepted from the operation of this section by the instrument of amalgamation or transfer, or
 - (b) to stocks and securities in the public funds of the United Kingdom or Northern Ireland.

106 Amalgamation or transfer involving Northern Ireland union.

- (1) This Chapter has effect subject to the following modifications in the case of an amalgamation or transfer of engagements to which a trade union and a Northern Ireland union are party.
- (2) The requirements of sections [F14998 to 100E and 101(3) (approval of instrument, notice to members and ballot on resolution)] do not apply in relation to the Northern Ireland union; but the Certification Officer shall not register the instrument under section 101 unless he is satisfied that it will be effective under the law of Northern Ireland.
- (3) The instrument of amalgamation or transfer submitted to the Certification Officer for his approval under section 98 shall state which of the bodies concerned is a Northern Ireland union and, in the case of an amalgamation, whether the amalgamated body is to be a Northern Ireland union; and the Certification Officer shall withhold his approval if the instrument does not contain that information.
- (4) Nothing in section 102 (alteration of rules) or [F150sections 103 and 104] (complaint as to passing of resolution) applies in relation to the Northern Ireland union.
- (5) Subject to the exceptions specified above, the provisions of this Chapter as to amalgamations or transfers of engagements apply in relation to the Northern Ireland union.

Textual Amendments

F149 Words in s. 106(2) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 57(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F150 Words in s. 106(4) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 57(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

Change of name

107 Change of name of trade union.

- (1) A trade union may change its name by any method expressly provided for by its rules or, if its rules do not expressly provide for a method of doing so, by adopting in

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accordance with its rules an alteration of the provision in them which gives the union its name.

- (2) If the name of the trade union is entered in the list of trade unions a change of name shall not take effect until approved by the Certification Officer.
- (3) The Certification Officer shall not approve a change of name if it appears to him that the proposed new name—
 - (a) is the same as one entered in the list as the name of another trade union, or
 - (b) is the same as one entered in the list of employers' associations kept under Part II of this Act,or is a name so nearly resembling such a name as to be likely to deceive the public.
- (4) A change of name by a trade union does not affect any right or obligation of the union or any of its members; and any pending legal proceedings may be continued by or against the union, the trustees of the union or any other officer of the union who can sue or be sued on its behalf notwithstanding its change of name.

Supplementary

108 General power to make regulations.

- (1) The Secretary of State may make regulations as respects—
 - (a) applications to the Certification Officer under this Chapter,
 - (b) the registration under this Chapter of any document or matter,
 - (c) the inspection of documents kept by the Certification Officer under this Chapter,
 - (d) the charging of fees in respect of such matters, and of such amounts, as may with the approval of the Treasury be prescribed by the regulations,and generally for carrying this Chapter into effect.
- (2) Provision may in particular be made—
 - (a) requiring an application for the registration of an instrument of amalgamation or transfer, or of a change of name, to be accompanied by such statutory declarations or other documents as may be specified in the regulations;
 - (b) as to the form or content of any document required by this Chapter, or by the regulations, to be sent or submitted to the Certification Officer and as to the manner in which any such document is to be signed or authenticated;
 - (c) authorising the Certification Officer to require notice to be given or published in such manner as he may direct of the fact that an application for registration of an instrument of amalgamation or transfer has been or is to be made to him.
- (3) Regulations under this section may make different provision for different circumstances.
- (4) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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[^{F151}CHAPTER VIIA

BREACH OF RULES]

Textual Amendments

F151 S. 108A-108C of Chapter VIIA Pt. I and chapter heading inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, 19; S.I. 1999/2830, art. 2(1), Sch. 1 Pt. I (with Sch. 3 para. 5)

[^{F152}108A] **Right to apply to Certification Officer.**

- (1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).
- (2) The matters are—
 - (a) the appointment or election of a person to, or the removal of a person from, any office;
 - (b) disciplinary proceedings by the union (including expulsion);
 - (c) the balloting of members on any issue other than industrial action;
 - (d) the constitution or proceedings of any executive committee or of any decision-making meeting;
 - (e) such other matters as may be specified in an order made by the Secretary of State.
- (3) The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.
- (4) A person may not apply under subsection (1) in relation to a claim if he is entitled to apply under section 80 in relation to the claim.
- (5) No application may be made regarding—
 - (a) the dismissal of an employee of the union;
 - (b) disciplinary proceedings against an employee of the union.
- (6) An application must be made—
 - (a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or
 - (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).
- (7) Those days are—
 - (a) the day on which the procedure is concluded, and
 - (b) the last day of the period of one year beginning with the day on which the procedure is invoked.
- (8) The reference in subsection (1) to the rules of a union includes references to the rules of any branch or section of the union.
- (9) In subsection (2)(c) “industrial action” means a strike or other industrial action by persons employed under contracts of employment.

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- (10) For the purposes of subsection (2)(d) a committee is an executive committee if—
- (a) it is a committee of the union concerned and has power to make executive decisions on behalf of the union or on behalf of a constituent body,
 - (b) it is a committee of a major constituent body and has power to make executive decisions on behalf of that body, or
 - (c) it is a sub-committee of a committee falling within paragraph (a) or (b).
- (11) For the purposes of subsection (2)(d) a decision-making meeting is—
- (a) a meeting of members of the union concerned (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union, is final as regards the union or which, under the rules of the union or a constituent body, is final as regards that body, or
 - (b) a meeting of members of a major constituent body (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union or the body, is final as regards that body.
- (12) For the purposes of subsections (10) and (11), in relation to the trade union concerned—
- (a) a constituent body is any body which forms part of the union, including a branch, group, section or region;
 - (b) a major constituent body is such a body which has more than 1,000 members.
- (13) Any order under subsection (2)(e) shall be made by statutory instrument; and no such order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.
- (14) If a person applies to the Certification Officer under this section in relation to an alleged breach or threatened breach he may not apply to the court in relation to the breach or threatened breach; but nothing in this subsection shall prevent such a person from exercising any right to appeal against or challenge the Certification Officer's decision on the application to him.
- (15) If—
- (a) a person applies to the court in relation to an alleged breach or threatened breach, and
 - (b) the breach or threatened breach is one in relation to which he could have made an application to the Certification Officer under this section,
- he may not apply to the Certification Officer under this section in relation to the breach or threatened breach.]

Textual Amendments

F152 S. 108A-C of Chapter VIIA Pt. I and chapter heading inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, 19; S.I. 1999/2830, art. 2(1), Sch. 1 Pt. I (with Sch. 3 para. 5)

[^{F153}108B] Declarations and orders.

- (1) The Certification Officer may refuse to accept an application under section 108A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.

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- (2) If he accepts an application under section 108A the Certification Officer—
- (a) shall make such enquiries as he thinks fit,
 - (b) shall give the applicant and the union an opportunity to be heard,
 - (c) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,
 - (d) may make or refuse the declaration asked for, and
 - (e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.
- (3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—
- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
 - (b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.
- (4) The Certification Officer shall in an order imposing any such requirement as is mentioned in subsection (3)(a) specify the period within which the union is to comply with the requirement.
- (5) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.
- (6) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.
- (7) Where an enforcement order has been made, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.
- (8) An enforcement order made by the Certification Officer under this section may be enforced in the same way as an order of the court.
- (9) An order under section 108A(2)(e) may provide that, in relation to an application under section 108A with regard to a prescribed matter, the preceding provisions of this section shall apply with such omissions or modifications as may be specified in the order; and a prescribed matter is such matter specified under section 108A(2)(e) as is prescribed under this subsection.]

Textual Amendments

F153 S. 108A-C of Chapter VIIA Pt. I and chapter heading inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, 19; S.I. 1999/2830, art. 2(1), Sch. 1 Pt. I (with Sch. 3 para. 5)

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[^{F154}108A Appeals from Certification Officer.

An appeal lies to the Employment Appeal Tribunal on any question of law arising in proceedings before or arising from any decision of the Certification Officer under this Chapter.]

Textual Amendments

F154 S. 108A-C of Chapter VIIA Pt. I inserted (25.10.1999) by 1999 c. 26 s. 29, Sch. 6 para. 1, 19; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

^{F155}CHAPTER VIII

. . .

Textual Amendments

F155 Pt I Chapter VIII (ss.109-114) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(6)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with Sch. 3 para. 4)

CHAPTER IX

MISCELLANEOUS AND GENERAL PROVISIONS

Further provisions with respect to ballots

^{F162}115

Textual Amendments

F162 S. 115 shall cease to have effect (1.4.1996) by virtue of 1993 c. 19, ss. 7(1)(4), 51, **Sch. 10**

^{F163}116

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Textual Amendments

F163 S. 116 shall cease to have effect (1.4.1996) by virtue of 1993 c. 19, ss. 7(1)(4), 51, Sch. 10

VALID FROM 06/04/2005

^{F164}Union modernisation

Textual Amendments

F164 S. 116A and preceding cross-heading inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 55(1), 59(2)-(4); S.I. 2005/872, art. 4, Sch. (with arts. 6-21)

116A Provision of money for union modernisation

- (1) The Secretary of State may provide money to a trade union to enable or assist it to do any or all of the following—
 - (a) improve the carrying out of any of its existing functions;
 - (b) prepare to carry out any new function;
 - (c) increase the range of services it offers to persons who are or may become members of it;
 - (d) prepare for an amalgamation or the transfer of any or all of its engagements;
 - (e) ballot its members (whether as a result of a requirement imposed by this Act or otherwise).
- (2) No money shall be provided to a trade union under this section unless at the time when the money is provided the union has a certificate of independence.
- (3) Money may be provided in such a way as the Secretary of State thinks fit (whether as grants or otherwise) and on such terms as he thinks fit (whether as to repayment or otherwise).
- (4) If money is provided to a trade union under this section, the terms on which it is so provided shall be deemed to include a prohibition (“a political fund prohibition”) on any of it being added to the political fund of the union.
- (5) If a political fund prohibition is contravened, the Secretary of State—
 - (a) is entitled to recover from the trade union as a debt due to him an amount equal to the amount of money added to the union’s political fund in contravention of the prohibition (whether or not that money continues to form part of the political fund); and
 - (b) must take such steps as are reasonably practicable to recover that amount.
- (6) An amount recoverable under subsection (5) is a liability of the trade union’s political fund.
- (7) Subsection (5) does not prevent money provided to a trade union under this section from being provided on terms containing further sanctions for a contravention of the political fund prohibition.]

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Exceptions and adaptations for certain bodies

117 Special register bodies.

- (1) In this section a “special register body” means an organisation whose name appeared in the special register maintained under section 84 of the ^{M18}Industrial Relations Act 1971 immediately before 16 September 1974, and which is a company registered under the ^{M19}Companies Act 1985 or is incorporated by charter or letters patent.
- (2) The provisions of this Part apply to special register bodies as to other trade unions, subject to the following exceptions and adaptations.
- (3) In Chapter II (status and property of trade unions)—
 - (a) in section 10 (quasi-corporate status of trade unions)—
 - (i) subsections (1) and (2) (prohibition on trade union being incorporated) do not apply, and
 - (ii) subsection (3) (prohibition on registration under certain Acts) does not apply so far as it relates to registration as a company under the ^{M20}Companies Act 1985;
 - (b) section 11 (exclusion of common law rules as to restraint of trade) applies to the purposes or rules of a special register body only so far as they relate to the regulation of relations between employers or employers’ associations and workers;
 - (c) sections 12 to 14 (vesting of property in trustees; transfer of securities) do not apply; and
 - (d) in section 20 (liability of trade union in certain proceedings in tort) in subsection (7) the reference to the contract between a member and the other members shall be construed as a reference to the contract between a member and the body.
- (4) Sections 33 to 35 (appointment and removal of auditors) do not apply to a special register body which is registered as a company under the Companies Act 1985; and sections 36 and 37 (rights and duties of auditors) apply to the auditors appointed by such a body under Chapter V of Part XI of that Act.
- (5) [^{F165}Sections 45B and 45C (disqualification) and Chapter IV (elections) apply only] to—
 - (a) the position of voting member of the executive, and
 - (b) any position by virtue of which a person is a voting member of the executive.

In this subsection “voting member of the executive” has the meaning given by section 46(5).

Textual Amendments

F165 Words in s. 117(5) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.61**; S.I. 1993/1908, art. 2(1), **Sch. 1**

Marginal Citations

M18 1971 c. 72.

M19 1985 c. 6.

M20 1985 c. 6.

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118 Federated trade unions.

- (1) In this section a “federated trade union” means a trade union which consists wholly or mainly of constituent or affiliated organisations, or representatives or such organisations, as described in paragraph (b) of the definition of “trade union” in section 1.
- (2) The provisions of this Part apply to federated trade unions subject to the following exceptions and adaptations.
- (3) For the purposes of section 22 (limit on amount of damages) as it applies to a federated trade union, the members of such of its constituent or affiliated organisations as have their head or main office in Great Britain shall be treated as members of the union.
- (4) The following provisions of Chapter III (trade union administration) do not apply to a federated trade union which consists wholly or mainly of representatives of constituent or affiliated organisations—
 - (a) section 27 (duty to supply copy of rules),
 - (b) section 28 (duty to keep accounting records),
 - (c) sections 32 to 37 (annual return, [^{F166}statement for members,] accounts and audit), ^{F167} . . .
 - [^{F168}(ca) sections 37A to 37E (investigation of financial affairs), and]
 - (d) sections 38 to 42 (members’ superannuation schemes).
- (5) Sections 29 to 31 (right of member to access to accounting records) do not apply to a federated trade union which has no members other than constituent or affiliated organisations or representatives of such organisations.
- (6) Sections 24 to 26 (register of members’ names and addresses) and Chapter IV (elections for certain trade union positions) do not apply to a federated trade union—
 - (a) if it has no individual members other than representatives of constituent or affiliated organisations, or
 - (b) if its individual members (other than such representatives) are all merchant seamen and a majority of them are ordinarily resident outside the United Kingdom.

For this purpose “merchant seaman” means a person whose employment, or the greater part of it, is carried out on board sea-going ships.

- (7) The provisions of Chapter VI (application of funds for political objects) apply to a trade union which is in whole or part an association or combination of other unions as if the individual members of the component unions were members of that union and not of the component unions.

But nothing in that Chapter prevents a component union from collecting contributions on behalf of the association or combination from such of its members as are not exempt from the obligation to contribute to the political fund of the association or combination.

Textual Amendments

F166 Words in s. 118(4)(c) inserted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 62(a)**; S.I. 1993/1908, art. 2(3), **Sch.3**

F167 Word in s. 118(4)(c) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch.**

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F168 S. 118(4)(ca) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 62(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

Interpretation

119 Expressions relating to trade unions.

In this Act, in relation to a trade union—

[^{F169}“agent” means a banker or solicitor of, or any person employed as an auditor by, the union or any branch or section of the union;]

“branch or section”, except where the context otherwise requires, includes a branch or section which is itself a trade union;

“executive” means the principal committee of the union exercising executive functions, by whatever name it is called;

[^{F169}“financial affairs” means affairs of the union relating to any fund which is applicable for the purposes of the union (including any fund of a branch or section of the union which is so applicable);]

“general secretary” means the official of the union who holds the office of general secretary or, where there is no such office, holds an office which is equivalent, or (except in section 14(4)) the nearest equivalent, to that of general secretary;

“officer” includes—

- (a) any member of the governing body of the union, and
- (b) any trustee of any fund applicable for the purposes of the union;

“official” means—

- (a) an officer of the union or of a branch or section of the union, or
- (b) a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them,

and includes a person so elected or appointed who is an employee of the same employer as the members or one or more of the members whom he is to represent;

“president” means the official of the union who holds the office of president or, where there is no such office, who holds an office which is equivalent, or (except in section 14(4) or Chapter IV) the nearest equivalent, to that of president; and

“rules”, except where the context otherwise requires, includes the rules of any branch or section of the union.

Textual Amendments

F169 Definitions inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.63**; S.I. 1993/1908, art. 2(1), **Sch. 1**

120 Northern Ireland unions.

In this Part a “Northern Ireland union” means a trade union whose principal office is situated in Northern Ireland.

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121 Meaning of “the court”.

In this Part “the court” (except where the reference is expressed to be to the county court or sheriff court) means the High Court or the Court of Session.

Status:

Point in time view as at 01/12/2001. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

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