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Trade Union and Labour Relations (Consolidation) Act 1992

1992 CHAPTER 52

PART I

TRADE UNIONS

CHAPTER III

TRADE UNION ADMINISTRATION

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, [^{F1}statement for members,] accounts and audit), ^{F2} . . .
 - [^{F3}(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

- F1** 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**
- F2** Word in s. 43(1)(b) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F3** 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),
[^{F4}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),
[^{F4}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.
- [^{F5}(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

- F4** 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**
- F5** 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, [^{F6}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.

[^{F7}(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

- F6** 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**
- F7** 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**

[^{F8}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 [^{F9}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

F8 S 45A inserted (30.8.1993) by 1993 c. 19, s. 11(2); S.I. 1993/1908, art. 2(1), Sch. 1

F9 Words in s. 45A(6) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 85

[^{F10} 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

F10 S. 45B inserted (30.8.1993) by 1993 c. 19, s.12; S.I. 1993/1908, art. 2(1), Sch.1

[45C ^{F11} 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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- (a) shall, where he considers it appropriate, 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.
- (3) Where an application is made to the Certification Officer, the person who made that application, or any other person, is not prevented from making an application to the court in respect of the same matter.
- (4) If, after an application is made to the Certification Officer, an application in respect of the same matter is made to the court, the court shall have due regard to any declaration which has been made by the Certification Officer.
- (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.
- (6) Where an order has been made, 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.]

Textual Amendments

F11 S. 45C inserted (30.8.1993) by 1993 c. 19, s.12; S.I. 1993/1908, art. 2(1), **Sch.1**

VALID FROM 25/10/1999

[^{F12}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

F12 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)

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