



# Employment Relations Act 2004

## 2004 CHAPTER 24

### PART 6

#### MISCELLANEOUS

#### **52 Additional case in which election for president of union not required**

(1) Section 46 of the 1992 Act (requirement to hold elections for certain positions in trade unions) is amended as follows.

(2) In subsection (2), omit the words after paragraph (d).

(3) After subsection (4) insert—

“(4A) This Chapter also does not apply to the position of president if—

- (a) the holder of that position was elected or appointed to it in accordance with the rules of the union,
- (b) at the time of his election or appointment as president he held a position mentioned in paragraph (a), (b) or (d) of subsection (2) by virtue of having been elected to it at a qualifying election,
- (c) it is no more than five years since—
  - (i) he was elected, or re-elected, to the position mentioned in paragraph (b) which he held at the time of his election or appointment as president, or
  - (ii) he was elected to another position of a kind mentioned in that paragraph at a qualifying election held after his election or appointment as president of the union, and
- (d) he has, at all times since his election or appointment as president, held a position mentioned in paragraph (a), (b) or (d) of subsection (2) by virtue of having been elected to it at a qualifying election.”

(4) In subsection (5), at the beginning, insert “In subsection (4)”.

(5) After subsection (5) insert—

“(5A) In subsection (4A) “qualifying election” means an election satisfying the requirements of this Chapter.

(5B) The “requirements of this Chapter” referred to in subsections (1) and (5A) are those set out in sections 47 to 52 below.”

### **53 Removal of rule preventing appointment of body corporate as auditor**

(1) In section 34(5) of the 1992 Act (persons not to act as auditor of a trade union), omit paragraph (c).

(2) In section 36 of that Act (auditor’s report), after subsection (1) insert—

“(1A) The report shall state the names of, and be signed by, the auditor or auditors.”

(3) After subsection (4) of that section add—

“(5) Any reference in this section to signature by an auditor is, where the office of auditor is held by a body corporate or partnership, to signature in the name of the body corporate or partnership by an individual authorised to sign on its behalf.”

(4) In section 37 of that Act (rights of auditors), after subsection (3) add—

“(4) In the case of an auditor which is a body corporate or partnership, its right to attend or be heard at a meeting is exercisable by an individual authorised by it to act as its representative at the meeting.”

### **54 Means of voting in ballots and elections**

(1) The Secretary of State may by order provide, in relation to any description of ballot or election authorised or required by the 1992 Act, that any ballot or election of that description is to be conducted by such one or more permissible means as the responsible person determines.

(2) A “permissible means” is a means of voting that the order provides is permissible for that description of ballot or election.

(3) “The responsible person” is a person specified, or of a description specified, by the order.

(4) An order under this section may—

(a) include provision about the determinations that may be made by the responsible person, including provision requiring specified factors to be taken into account, or specified criteria to be applied, in making a determination;

(b) allow the determination of different means of voting for voters in different circumstances;

(c) allow a determination to be such that voters have a choice of means of voting.

(5) The means that an order specifies as permissible means must, in the case of any description of ballot or election, include (or consist of) postal voting.

(6) An order under this section may—

(a) include supplemental, incidental and consequential provisions;

(b) make different provision for different cases or circumstances.

- (7) An order under this section may—
- (a) modify the provisions of the 1992 Act;
  - (b) exclude or apply (with or without modifications) any provision of that Act;
  - (c) make provision as respects any ballot or election conducted by specified means which is similar to any provision of that Act relating to ballots or elections.
- (8) The power to make an order under this section is exercisable by statutory instrument.
- (9) No order may be made under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (10) The Secretary of State shall not make an order under this section which provides that a means of voting is permissible for a description of ballot or election unless he considers—
- (a) that a ballot or election of that description conducted by that means could, if particular conditions were satisfied, meet the required standard; and
  - (b) that, in relation to any ballot or election of that description held after the order comes into force, the responsible person will not be permitted to determine that that means must or may be used by any voters unless he has taken specified factors into account or applied specified criteria.
- (11) In specifying in an order under this section factors to be taken into account or criteria to be applied by the responsible person, the Secretary of State must have regard to the need for ballots and elections to meet the required standard.
- (12) For the purposes of subsections (10) and (11) a ballot or election meets “the required standard” if it is such that—
- (a) those entitled to vote have an opportunity to do so;
  - (b) votes cast are secret;
  - (c) the risk of any unfairness or malpractice is minimised.
- (13) In this section “specified” means specified in an order under this section.

## **55 Provision of money for trade union modernisation**

- (1) Before section 117 of the 1992 Act (and before the cross-heading immediately preceding that section) insert—

### *“Union modernisation*

#### **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;

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*Status: This is the original version (as it was originally enacted).*

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- (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.”
- (2) In section 118 of that Act (federated trade unions), after subsection (7) add—
- “(8) In the application of section 116A to a federated trade union, subsection (2) of that section shall be omitted.”