



Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014

2014 CHAPTER 4

PART 3

TRADE UNIONS' REGISTERS OF MEMBERS

40 Duty to provide membership audit certificate

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended as follows.
- (2) After section 24 (duty to maintain register of members' names and addresses) insert—

“24ZA Duty to provide membership audit certificate

- (1) A trade union required to maintain a register of the names and addresses of its members by section 24 must send to the Certification Officer a membership audit certificate in relation to each reporting period.
- (2) In this section and in sections 24ZB to 24ZF, a “reporting period” means a period in relation to which the union is required by section 32 to send an annual return to the Certification Officer.
- (3) The union must send the membership audit certificate in relation to a reporting period to the Certification Officer at the same time as it sends to the Officer its annual return under section 32 in relation to that period.
- (4) In the case of a trade union required by section 24ZB to appoint an assurer in relation to a reporting period, the “membership audit certificate” in relation to that period is the certificate which the assurer is required to provide to the union in relation to that period pursuant to that appointment.

- (5) In any other case, the “membership audit certificate” in relation to a reporting period is a certificate which—
 - (a) must be signed by an officer of the trade union who is authorised to sign on its behalf,
 - (b) must state the officer’s name, and
 - (c) must state whether, to the best of the officer’s knowledge and belief, the union has complied with its duties under section 24(1) throughout the reporting period.
- (6) A trade union must, at a person’s request, supply the person with a copy of its most recent membership audit certificate either free of charge or on payment of a reasonable charge.
- (7) The Certification Officer must at all reasonable hours keep available for public inspection, either free of charge or on payment of a reasonable charge, copies of all membership audit certificates sent to the Officer under this section.”
- (3) In section 44(4) (discharge of duties in case of union having branches or sections), at the appropriate place in the list insert—
 “section 24ZA (duty to provide membership audit certificate),”.
- (4) In section 118 (federated trade unions), after subsection (4) insert—
 “(4A) In the case of a federated trade union which, by virtue of subsection (4), is not required to send an annual return to the Certification Officer under section 32, section 24ZA (duty to provide membership audit certificate) applies as if section 32 does apply to the union.”

41 Duty to appoint an assurer etc

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended as follows.
- (2) After section 24ZA (which is inserted by section 40) insert—

“24ZB Duty to appoint an assurer

- (1) A trade union required to maintain a register of the names and addresses of its members by section 24 must, in relation to each reporting period, appoint a qualified independent person to be an assurer in relation to that period.
- (2) There is incorporated in the assurer’s appointment a duty which the assurer owes to the trade union—
 - (a) to provide to the union a membership audit certificate in relation to the reporting period which accords with the requirements of section 24ZD, and
 - (b) to carry out such enquiries as the assurer considers necessary to enable the assurer to provide that certificate.
- (3) A person is a “qualified independent person” if—
 - (a) the person either satisfies such conditions as may be specified for the purposes of this section by order of the Secretary of State or is specified by name in such an order, and

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- (b) the trade union has no grounds for believing that—
 - (i) the person will carry out an assurer's functions otherwise than competently, or
 - (ii) the person's independence in relation to the union might reasonably be called into question.
- (4) None of the following may act as an assurer—
 - (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.
- (5) This section does not apply to a trade union in relation to a reporting period if the number of its members at the end of the preceding reporting period did not exceed 10,000.
- (6) Any order under this section is to be made by statutory instrument and is to be subject to annulment in pursuance of a resolution of either House of Parliament.

24ZC Appointment and removal of an assurer

- (1) The rules of every trade union to which section 24ZB applies must contain provision for the appointment and removal of an assurer.

But the following provisions have effect notwithstanding anything in the rules.
- (2) An assurer must not be removed from office except by resolution passed at a general meeting of the members of the union or of delegates of its members.
- (3) A person duly appointed as an assurer in relation to a reporting period must be reappointed as assurer in relation to the following reporting period, unless—
 - (a) a resolution has been passed at a general meeting of the trade union appointing somebody else instead or providing expressly that the person is not to be re-appointed,
 - (b) the person has given notice to the union in writing of the person's unwillingness to be re-appointed,
 - (c) the person is not qualified for the appointment in accordance with section 24ZB, or
 - (d) the person has ceased to act as assurer by reason of incapacity.
- (4) But a person need not automatically be re-appointed where—
 - (a) the person is retiring,
 - (b) notice has been given of an intended resolution to appoint somebody else instead, and
 - (c) that resolution cannot be proceeded with at the meeting because of the death or incapacity of the proposed replacement.

24ZD Requirements of assurer's membership audit certificate

- (1) For the purposes of section 24ZB(2)(a) the requirements of a membership audit certificate in relation to a reporting period provided by an assurer are as follows.

- (2) The certificate must state the name of, and be signed by, the assurer.
- (3) The certificate must state—
 - (a) whether, in the assurer’s opinion, the trade union’s system for compiling and maintaining the register of the names and addresses of its members was satisfactory for the purposes of complying with the union’s duties under section 24(1) throughout the reporting period, and
 - (b) whether, in the assurer’s opinion, the assurer has obtained the information and explanations which the assurer considers necessary for the performance of the assurer’s functions.
- (4) If the certificate states that—
 - (a) in the assurer’s opinion, the trade union’s system for compiling and maintaining the register was not satisfactory for the purposes of complying with the union’s duties under section 24(1) throughout the reporting period, or
 - (b) in the assurer’s opinion, the assurer has failed to obtain the information and explanations which the assurer considers necessary for the performance of the assurer’s functions,the certificate must state the assurer’s reasons for making that statement.
- (5) In the case of a failure to obtain information or explanations as described in subsection (4)(b), the certificate must also—
 - (a) provide a description of the information or explanations requested or required which have not been obtained, and
 - (b) state whether the assurer required that information or those explanations from the union’s officers, or officers of any of its branches or sections, under section 24ZE.
- (6) The reference in subsection (2) to signature by the assurer is, where that office 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.

24ZE Rights of assurer

- (1) An assurer appointed by a trade union under section 24ZB—
 - (a) has a right of access at all reasonable times to the register of the names and addresses of the union’s members and to all other documents which the assurer considers may be relevant to whether the union has complied with any of the requirements of section 24(1), and
 - (b) is entitled to require from the union’s officers, or the officers of any of its branches or sections, such information and explanations as the assurer considers necessary for the performance of the assurer’s functions.
- (2) In subsection (1) references to documents include information recorded in any form.

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24ZF Duty to inform the Certification Officer

If an assurer provides a membership audit certificate in relation to a reporting period to a trade union which states that, in the assurer’s opinion—

- (a) the union’s system for compiling and maintaining the register was not satisfactory for the purposes of complying with the union’s duties under section 24(1) throughout that period, or
- (b) the assurer has failed to obtain the information and explanations which the assurer considers necessary for the performance of the assurer’s functions,

the assurer must send a copy of the certificate to the Certification Officer as soon as is reasonably practicable after it is provided to the union.

24ZG Duty of confidentiality

- (1) The duty of confidentiality as respects the register is incorporated in an assurer’s appointment by a trade union under section 24ZB.
- (2) The duty of confidentiality as respects the register is a duty which the assurer owes to the union—
 - (a) not to disclose any name or address in the register of the names and addresses of the union’s members 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 another person except in permitted circumstances.
- (3) The circumstances in which disclosure of a member’s name or address is permitted are—
 - (a) where the member consents,
 - (b) where it is required or requested by the Certification Officer for the purposes of the discharge of any of the Officer’s functions,
 - (c) where it is required for the purposes of the discharge of any of the functions of an inspector appointed by the Officer,
 - (d) where it is required for the purposes of the discharge of any of the functions of the assurer, or
 - (e) where it is required for the purposes of the investigation of crime or criminal proceedings.”
- (3) In section 24A(3) (securing confidentiality of register during ballots), after “duty of confidentiality”” insert “, in the context of a scrutineer or independent person,”.
- (4) In section 44(4) (discharge of duties in case of union having branches or sections), at the appropriate place in the list insert—
“sections 24ZB and 24ZC (duty to appoint an assurer etc),”.
- (5) In section 299 (index of defined expressions), in the entry for “the duty of confidentiality”, after “confidentiality” insert “, in the context of a scrutineer or independent person”.

42 Investigatory powers

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended as follows.
- (2) After section 24ZG (which is inserted by section 41) insert—

“24ZH Power of Certification Officer to require production of documents etc

- (1) If the Certification Officer thinks there is good reason to do so, the Officer—
- (a) may give directions to a trade union, or a branch or section of a trade union, requiring it to produce such relevant documents as are specified in the directions;
 - (b) may authorise a member of the Officer’s staff or any other person (“an authorised person”), on producing (if so required) evidence of that authority, to require a trade union, or a branch or section of a trade union, to produce immediately to the authorised person such relevant documents as that person specifies.
- (2) “Relevant documents”, in relation to a trade union or a branch or section of a trade union, means—
- (a) the register of the names and addresses of the trade union’s members, and
 - (b) documents of any other description which the Certification Officer or authorised person considers may be relevant to whether the union has failed to comply with any of the requirements of section 24(1) (duties regarding the register of members).
- (3) Directions under subsection (1)(a) must specify the time and place at which the documents are to be produced.
- (4) Where the Certification Officer, or an authorised person, has power to require the production of documents by virtue of subsection (1), the Officer or authorised person has the like power to require production of those documents from any person who appears to the Officer or authorised person to be in possession of them.
- (5) The power under this section to require the production of documents includes the power—
- (a) if the documents are produced—
 - (i) to take copies of them or extracts from them;
 - (ii) to require the person by whom they are produced to provide an explanation of any of them;
 - (iii) to require any person who is or has been an official or agent of the trade union to provide an explanation of any of them;
 - (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of the person’s knowledge and belief, where they are.
- (6) For the purposes of subsection (5)(a)(iii), “agent” includes an assurer appointed by the trade union under section 24ZB.
- (7) For supplementary provision, see section 24ZK.

24ZI Investigations by inspectors

- (1) The Certification Officer may appoint one or more members of the Officer’s staff or other persons as an inspector or inspectors to—
 - (a) investigate whether a trade union has failed to comply with any of the requirements of section 24(1) (duties regarding the register of members), and
 - (b) report to the Officer in such manner as the Officer may direct.
- (2) The Certification Officer may only make such an appointment if it appears to the Officer that there are circumstances suggesting that the union has failed to comply with a requirement of section 24(1), [24ZA](#) or [24ZB](#) (duties etc relating to the register of members).
- (3) Where any person appears to the inspector or inspectors to be in possession of information relating to a matter considered by the inspector or inspectors to be relevant to the investigation, the inspector or inspectors may require the person—
 - (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 the person is reasonably able to give.
- (4) “Relevant documents” means—
 - (a) the register of the names and addresses of the trade union’s members, and
 - (b) documents of any other description which the inspector or inspectors consider may be relevant to whether the union has failed to comply with any of the requirements of section 24(1).
- (5) Where a person who is not a member of the Certification Officer’s staff is appointed as an inspector under this section, there is incorporated in the appointment the duty of confidentiality as respects the register of the names and addresses of the trade union’s members.
- (6) The duty of confidentiality as respects that register is a duty which the inspector owes to the Certification Officer—
 - (a) not to disclose any name or address in the register of the names and addresses of the union’s members 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 another person except in permitted circumstances.
- (7) The circumstances in which disclosure of a member’s name or address is permitted are—
 - (a) where the member consents,
 - (b) where it is required or requested by the Certification Officer for the purposes of the discharge of any of the Officer’s functions,

- (c) where it is required for the purposes of the discharge of any of the functions of the inspector or any other inspector appointed by the Officer,
- (d) where it is required for the purposes of the discharge of any of the functions of an assurer appointed under section 24ZB, or
- (e) where it is required for the purposes of the investigation of crime or criminal proceedings.

(8) For supplementary provision, see section 24ZK.

24ZJ Inspectors’ reports etc

- (1) An inspector or inspectors appointed under section 24ZI—
 - (a) may make interim reports to the Certification Officer,
 - (b) must make such reports if so directed by the Officer, and
 - (c) on the conclusion of the investigation, must make a final report to the Officer.
- (2) A report under subsection (1) must be in writing.
- (3) An inspector or inspectors—
 - (a) may at any time inform the Certification Officer of any matters coming to their knowledge as a result of the investigation, and
 - (b) must do so if the Officer so directs.
- (4) The Certification Officer may direct an inspector or inspectors—
 - (a) to take no further steps in the investigation, or
 - (b) to take only such further steps as are specified in the direction.
- (5) Where such a direction is made, the inspector or inspectors are not required under subsection (1)(c) to make a final report to the Certification Officer unless the Officer so directs.

24ZK Sections 24ZH and 24ZI: supplementary

- (1) Nothing in section 24ZH or 24ZI requires or authorises anyone to require—
 - (a) the disclosure by a person of information which the person would in an action in the court be entitled to refuse to disclose on grounds of legal professional privilege, or
 - (b) the production by a person of a document which the person would in such an action be entitled to refuse to produce on such grounds.
- (2) But a lawyer may be required under section 24ZH or 24ZI to disclose the name and address of the lawyer’s client.
- (3) A person is not excused from providing an explanation or making a statement in compliance with a requirement imposed under section 24ZH(5) or 24ZI(3) on the ground that to do so would tend to expose the person to proceedings for an offence.
- (4) But an explanation so provided or a statement so made may only be used in evidence against the person by whom it is provided or made on a prosecution

for an offence where, in giving evidence, the person makes a statement inconsistent with it.

- (5) In this section and in sections 24ZH and 24ZI—
- (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.”
- (3) In section 24A(4)(b) (securing confidentiality of register during ballots), after “where it is” insert “required or”.

43 Enforcement

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended as follows.
- (2) After section 24A (securing confidentiality of register during ballots) insert—

“24B Enforcement of sections 24 to 24ZC by Certification Officer

- (1) Where the Certification Officer is satisfied that a trade union has failed to comply with any of the requirements of section 24, 24ZA, 24ZB or 24ZC (duties etc relating to the register of members), the Officer may make a declaration to that effect.
- (2) Before making such a declaration, the Certification Officer—
- (a) may make such enquiries as the Officer thinks fit,
 - (b) must give the union an opportunity to make written representations, and
 - (c) may give the union an opportunity to make oral representations.
- (3) If the Certification Officer makes a declaration it must specify the provisions with which the union has failed to comply.
- (4) Where the Certification Officer makes a declaration and is satisfied—
- (a) 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
 - (b) that the union has agreed to take such steps,
- the Officer must specify those steps in the declaration.
- (5) Where a declaration is made, the Certification Officer must give reasons in writing for making the declaration.
- (6) Where a declaration is made, the Certification Officer must also make an enforcement order unless the Officer considers that to do so would be inappropriate.
- (7) An “enforcement order” 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.
- (8) Where, having given the union an opportunity to make written representations under subsection (2)(b), the Certification Officer determines not to make a declaration under subsection (1), the Officer must give the union notice in writing of that determination.
- (9) Where the Certification Officer requests a person to provide information to the Officer in connection with enquiries under this section, the Officer must specify the date by which that information is to be provided.
- (10) Where the information is not provided by the specified date, the Certification Officer must proceed with determining whether to make a declaration under subsection (1) unless the Officer considers that it would be inappropriate to do so.
- (11) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.
- (12) An enforcement order made by the Certification Officer under this section may be enforced in the same way as an order of the court.
- (13) Where an enforcement order has been made, a 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 the order had been made on an application by that person.

24C Enforcement of sections 24ZH and 24ZI by Certification Officer

- (1) Where the Certification Officer is satisfied that a trade union or any other person has failed to comply with any requirement imposed under—
 - (a) section 24ZH (power of Certification Officer to require production of documents etc), or
 - (b) section 24ZI (investigations by inspectors),
 the Officer may make an order requiring the trade union or person to comply with the requirement.
- (2) Before making such an order, the Certification Officer must give the trade union or person an opportunity to be heard.
- (3) In the case of a failure to comply with a requirement imposed under section 24ZH or 24ZI to produce a document, the Certification Officer may make an order only if the Officer is satisfied that—
 - (a) the document is in the possession of the union or person, and
 - (b) it is reasonably practicable for the union or person to comply with the requirement.
- (4) In the case of a failure to comply with any other requirement imposed under section 24ZH or 24ZI, the Certification Officer may make an order only if the Officer is satisfied that it is reasonably practicable for the union or person to comply with the requirement.
- (5) The order must specify—

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- (a) the requirement with which the trade union or person has failed to comply, and
 - (b) the date by which the trade union or person must comply.
- (6) An order made by the Certification Officer under this section may be enforced in the same way as an order of the court.”
- (3) In section 24(6) (remedies for failure to comply with that section), after “court” insert “; see also the powers of the Certification Officer under section 24B to make a declaration and an enforcement order”.
- (4) In section 25 (remedy for failure: application to the Certification Officer), after subsection (6) insert—
 - “(6A) For the purposes of subsection (6) the circumstances in which it is not reasonably practicable to determine an application within that time frame may include, in particular, where delay is caused by the exercise of the powers under section 24ZH or 24ZI (powers to require production of documents etc and to appoint inspectors).”
- (5) In section 26 (remedy for failure: application to the court), after subsection (8) insert—
 - “(9) Where a person applies under this section in relation to an alleged failure and the Certification Officer has made a declaration regarding that failure under section 24B, the court must have due regard to the declaration and any order, observations or reasons made or given by the Officer under that section regarding that failure and brought to the court’s notice.”
- (6) In section 45D (appeals from Certification Officer), after “section” insert “24B, 24C,”.
- (7) In section 256(1) (procedure before the Certification Officer)—
 - (a) omit the “or” at the end of paragraph (a), and
 - (b) in paragraph (b) after “matter” insert “, or
 - (c) determining whether to make a declaration or enforcement order under section 24B or an order under section 24C”.