



# Trade Union Act 2016

## CHAPTER 15

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Explanatory Notes have been produced to assist in the understanding of this Act and are available separately

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# Trade Union Act 2016

## CHAPTER 15

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# Trade Union Act 2016

## 2016 CHAPTER 15

An Act to make provision about industrial action, trade unions, employers' associations and the functions of the Certification Officer. [4th May 2016]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Introduction*

#### **1 Meaning of “the 1992 Act”**

In this Act “the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992.

### *Ballot thresholds for industrial action*

#### **2 Ballots: 50% turnout requirement**

- (1) In section 226 of the 1992 Act (requirement of ballot before action by trade union), in subsection (2)(a), after sub-paragraph (ii) insert—
  - “(iia) in which at least 50% of those who were entitled to vote in the ballot did so, and”.
- (2) Subsection (1) does not apply to any ballot opened before the day on which this section comes into force.

For this purpose a ballot is “opened” on the first day when a voting paper is sent to any person entitled to vote in the ballot.

### **3 Ballots: 40% support requirement in important public services**

- (1) In section 226 of the 1992 Act, in subsection (2)(a)(iii), for “the majority voting in the ballot” substitute “the required number of persons (see subsections (2A) to (2C))”.
- (2) After subsection (2) of that section insert—
  - “(2A) In all cases, the required number of persons for the purposes of subsection (2)(a)(iii) is the majority voting in the ballot.
  - (2B) There is an additional requirement where the majority of those who were entitled to vote in the ballot are at the relevant time normally engaged in the provision of important public services, unless at that time the union reasonably believes this not to be the case.
  - (2C) The additional requirement is that at least 40% of those who were entitled to vote in the ballot answered “Yes” to the question.
  - (2D) In subsection (2B) “important public services” has the meaning given by regulations made by statutory instrument by the Secretary of State.
  - (2E) Regulations under subsection (2D) may specify only services that fall within any of the following categories—
    - (a) health services;
    - (b) education of those aged under 17;
    - (c) fire services;
    - (d) transport services;
    - (e) decommissioning of nuclear installations and management of radioactive waste and spent fuel;
    - (f) border security.
  - (2F) No regulations shall be made under subsection (2D) unless a draft of them has been laid before Parliament and approved by a resolution of each House of Parliament.”
- (3) This section does not apply to any ballot opened before the day on which this section comes into force.

For this purpose a ballot is “opened” on the first day when a voting paper is sent to any person entitled to vote in the ballot.

#### *Electronic balloting*

### **4 Provision for electronic balloting: review and piloting scheme**

- (1) The Secretary of State shall commission an independent review, the report of which shall be laid before each House of Parliament, on the delivery of secure methods of electronic balloting for the purpose of ballots held under section 226 of the 1992 Act (requirement of ballot before action by trade union).
- (2) The use of pilot schemes shall be permitted to inform the design and implementation of electronic balloting before it is rolled out across union strike ballots.
- (3) The Secretary of State must consider the report and publish and lay before each House of Parliament his or her response to it.

- (4) For the purpose of preparing the response under subsection (3), the Secretary of State must consult relevant organisations including professionals from expert associations to seek their advice and recommendations.
- (5) The review under subsection (1) shall be commissioned within six months of the passing of this Act.

*Information requirements relating to industrial action*

**5 Information to be included on voting paper**

- (1) In section 229 of the 1992 Act (voting paper), after subsection (2A) insert—
  - “(2B) The voting paper must include a summary of the matter or matters in issue in the trade dispute to which the proposed industrial action relates.
  - (2C) Where the voting paper contains a question about taking part in industrial action short of a strike, the type or types of industrial action must be specified (either in the question itself or elsewhere on the voting paper).
  - (2D) The voting paper must indicate the period or periods within which the industrial action or, as the case may be, each type of industrial action is expected to take place.”
- (2) Subsection (1) does not apply to any ballot opened before the day on which this section comes into force.

For this purpose a ballot is “opened” on the first day when a voting paper is sent to any person entitled to vote in the ballot.

**6 Information to members etc about result of ballot**

- (1) In section 231 of the 1992 Act (information as to result of ballot), for the words after “all persons entitled to vote in the ballot” substitute “are told—
  - (a) the number of individuals who were entitled to vote in the ballot,
  - (b) the number of votes cast in the ballot,
  - (c) the number of individuals answering “Yes” to the question, or as the case may be, to each question,
  - (d) the number of individuals answering “No” to the question, or as the case may be, to each question,
  - (e) the number of spoiled or otherwise invalid voting papers returned,
  - (f) whether or not the number of votes cast in the ballot is at least 50% of the number of individuals who were entitled to vote in the ballot, and
  - (g) where section 226(2B) applies, whether or not the number of individuals answering “Yes” to the question (or each question) is at least 40% of the number of individuals who were entitled to vote in the ballot.”
- (2) Subsection (1) does not apply to any ballot opened before the day on which this section comes into force.

For this purpose a ballot is “opened” on the first day when a voting paper is sent to any person entitled to vote in the ballot.

## 7 Information to Certification Officer about industrial action etc

- (1) After section 32 of the 1992 Act (annual return) insert –

### “32ZA Details of industrial action etc to be included in annual return

- (1) If industrial action was taken during any return period in response to any inducement on the part of a trade union, the union’s return under section 32 for that period shall set out –
- (a) the nature of the trade dispute to which the industrial action related;
  - (b) the nature of the industrial action;
  - (c) when the industrial action was taken.
- (2) If a trade union held a ballot during any return period in respect of industrial action, the union’s return under section 32 for that period shall contain the information mentioned in section 231 (information as to result of ballot).
- (3) In this section “return period” means a period for which a trade union is required to send a return to the Certification Officer under section 32.”
- (2) Subsection (1) applies only to returns for periods that begin after the day on which this section comes into force.

### *Timing and duration of industrial action*

## 8 Two weeks’ notice to be given to employers of industrial action

- (1) In section 234A of the 1992 Act (notice to employers of industrial action), in subsection (4), for paragraph (b) substitute –
- “(b) ending with the 14th day before the starting date, or the seventh day before that date if the union and the employer so agree.
- In paragraph (b) “starting date” means the day, or the first of the days, specified in the relevant notice.”
- (2) Subsection (1) does not apply to any industrial action in relation to which the employer receives a relevant notice before the day on which this section comes into force.
- “Relevant notice” here has the same meaning as in section 234A of the 1992 Act (see subsection (3) of that section).

## 9 Expiry of mandate for industrial action

- (1) In section 234 of the 1992 Act (period after which ballot ceases to be effective), for subsection (1) substitute –
- “(1) Industrial action that is regarded as having the support of a ballot shall cease to be so regarded at the end of the period, beginning with the date of the ballot –
- (a) of six months, or

- (b) of such longer duration not exceeding nine months as is agreed between the union and the members' employer.
- (1A) Subsection (1) has effect –
  - (a) without prejudice to the possibility of the industrial action getting the support of a fresh ballot; and
  - (b) subject to the following provisions.”
- (2) Subsection (1) and paragraphs 13 and 14 of Schedule 4 do not apply to any industrial action the ballot for which opened before the day on which this section comes into force.  
For this purpose a ballot is “opened” on the first day when a voting paper is sent to any person entitled to vote in the ballot.

### *Picketing*

## 10 Union supervision of picketing

- (1) In section 219 of the 1992 Act (protection from certain tort liabilities), in subsection (3), for the words after “actionable in tort” substitute “unless –
  - (a) it is done in the course of attendance declared lawful by section 220 (peaceful picketing), and
  - (b) in the case of picketing to which section 220A applies, the requirements in that section (union supervision of picketing) are complied with.”
- (2) After section 220 of the 1992 Act insert –
 

**“220A Union supervision of picketing**

  - (1) Section 220 does not make lawful any picketing that a trade union organises, or encourages its members to take part in, unless the requirements in subsections (2) to (8) are complied with.
  - (2) The union must appoint a person to supervise the picketing.
  - (3) That person (“the picket supervisor”) must be an official or other member of the union who is familiar with any provisions of a Code of Practice issued under section 203 that deal with picketing.
  - (4) The union or picket supervisor must take reasonable steps to tell the police –
    - (a) the picket supervisor’s name;
    - (b) where the picketing will be taking place;
    - (c) how to contact the picket supervisor.
  - (5) The union must provide the picket supervisor with a letter stating that the picketing is approved by the union.
  - (6) If an individual who is, or is acting on behalf of, the employer asks the picket supervisor for sight of the approval letter, the picket supervisor must show it to that individual as soon as reasonably practicable.
  - (7) While the picketing is taking place, the picket supervisor must –
    - (a) be present where it is taking place, or



- (b) be readily contactable by the union and the police, and able to attend at short notice.
- (8) While present where the picketing is taking place, the picket supervisor must wear something that readily identifies the picket supervisor as such.
- (9) In this section –
  - “approval letter” means the letter referred to in subsection (5);
  - “employer” means the employer to which the trade dispute relates;
  - “picketing” means attendance at or near a place of work, in contemplation or furtherance of a trade dispute, for the purpose of –
    - (a) obtaining or communicating information, or
    - (b) persuading any person to work or abstain from working.
- (10) In relation to picketing that two or more unions organise or encourage members to take part in –
  - (a) in subsection (2) “the union” means any one of those unions, and
  - (b) other references in this section to “the union” are to that union.”

*Application of funds for political objects*

## 11 Opting in by union members to contribute to political funds

- (1) For section 84 of the 1992 Act substitute –

### **“84 Contributions to political fund from members of the union**

- (1) It is unlawful to require a member of a trade union to make a contribution to the political fund of a trade union if –
  - (a) the member has not given to the union notice of the member’s willingness to contribute to that fund (an “opt-in notice”); or
  - (b) an opt-in notice given by the member has been withdrawn in accordance with subsection (2).
- (2) A member of a trade union who has given an opt-in notice may withdraw that notice by giving notice to the union (a “withdrawal notice”).
- (3) A withdrawal notice takes effect at the end of the period of one month beginning with the day on which it is given.
- (4) A member of a trade union may give an opt-in notice or a withdrawal notice –
  - (a) by delivering it (either personally or by an authorised agent or by post) at the head office or a branch office of the union;
  - (b) by sending it by e-mail to an address that the union has told its members can be used for sending such notices;
  - (c) by completing an electronic form provided by the union which sets out the notice, and sending it to the union by electronic means in accordance with instructions given by the union; or

- (d) by such other electronic means as may be prescribed.
- (5) In this Act “contributor”, in relation to the political fund of a trade union, means a member who has given to the union an opt-in notice that has not been withdrawn.”

(2) After that section insert –

**“84A Information to members about contributing to political fund**

- (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 notified of their right to give a withdrawal notice under section 84(2).
- (2) The notification may be given –
  - (a) by sending individual copies of it to members; or
  - (b) by any other means (whether by including the notification 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;and, in particular, the notification may be included with the statement required to be given by section 32A.
- (3) A trade union shall send to the Certification Officer a copy of the notification which is provided to its members in pursuance of this section as soon as is reasonably practicable after it is so provided.
- (4) Where the same form of notification is not provided to all the members of a trade union, the union shall send to the Certification Officer in accordance with subsection (3) a copy of each form of notification provided to any of them.
- (5) Where the Certification Officer is satisfied that a trade union has failed to comply with a requirement of this section, the Officer may make such order for remedying the failure as he thinks just under the circumstances.
- (6) Before deciding the matter the Certification Officer –
  - (a) may make such enquiries as the Officer thinks fit;
  - (b) must give the union, and any member of the union who made a complaint to the Officer regarding the matter, an opportunity to make written representations; and
  - (c) may give the union, and any such member as is mentioned in paragraph (b), an opportunity to make oral representations.”

(3) For section 85 of the 1992 Act substitute –

**“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.”
- (4) In section 82 of the 1992 Act (rules as to political fund), in subsection (1), for the word “and” at the end of paragraph (c) substitute—
- “(ca) that, if the union has a political fund, any form (including an electronic form) that a person has to complete in order to become a member of the union shall include—
    - (i) a statement to the effect that the person may opt to be a contributor to the fund, and
    - (ii) a statement setting out the effect of paragraph (c); and”.
- (5) The amendments made by subsections (1) to (4) apply only after the end of the transition period, and only to a person—
- (a) who after the end of that period joins a trade union that has a political fund, or
  - (b) who is a member of a trade union that has a political fund but did not have one immediately before the end of that period.
- (6) In subsection (5) “the transition period” means a period of not less than 12 months, starting on the day on which this section comes into force, specified by the Secretary of State in regulations made by statutory instrument.
- (7) Before making regulations under subsection (6) the Secretary of State must consult—
- (a) the Certification Officer, and
  - (b) all trade unions that have a political fund.
- (8) A statutory instrument containing regulations under subsection (6) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

## 12 Union’s annual return to include details of political expenditure

- (1) After section 32ZA of the 1992 Act (inserted by section 7 above) insert—
- “32ZB Details of political expenditure to be included in annual return**
- (1) This section applies where the expenditure of a trade union paid out of its political fund in any calendar year exceeds £2,000 in total.
  - (2) The union’s return for that year under section 32 must give the required information (see subsections (3) to (7)) for each category of expenditure paid out of its political fund; and for this purpose—
    - (a) expenditure falling within paragraph (a) of section 72(1) is one category of expenditure, expenditure falling within paragraph (b) of section 72(1) is another, and so on;
    - (b) expenditure not falling within section 72(1) is a further category of expenditure.

- (3) For expenditure falling within section 72(1)(a), (b) or (e) the required information is –
  - (a) the name of each political party in relation to which money was expended;
  - (b) the total amount expended in relation to each one.
- (4) For expenditure falling within section 72(1)(c) the required information is –
  - (a) each election to a political office in relation to which money was expended;
  - (b) in relation to each election –
    - (i) the name of each political party to which money was paid, and the total amount paid to each one;
    - (ii) the name of each other organisation to which money was paid, and the total amount paid to each one;
    - (iii) the name of each candidate in relation to whom money was expended (or, where money was expended in relation to candidates in general of a particular political party, the name of the party), and the total amount expended in relation to each one (excluding expenditure within sub-paragraph (i) or (ii));
    - (iv) the total amount of all other expenditure incurred.
- (5) For expenditure falling within section 72(1)(d) the required information is –
  - (a) the name of each holder of a political office on whose maintenance money was expended;
  - (b) the total amount expended in relation to each one.
- (6) For expenditure falling within section 72(1)(f) the required information is –
  - (a) the name of each organisation to which money was paid, and the total amount paid to each one;
  - (b) the name of each political party or candidate that people were intended to be persuaded to vote for, or not to vote for, and the total amount expended in relation to each one (excluding expenditure within paragraph (a)).
- (7) For expenditure not falling within section 72(1) the required information is –
  - (a) the nature of each cause or campaign for which money was expended, and the total amount expended in relation to each one;
  - (b) the name of each organisation to which money was paid (otherwise than for a particular cause or campaign), and the total amount paid to each one;
  - (c) the total amount of all other money expended.
- (8) The Secretary of State may by regulations made by statutory instrument amend subsection (1) by substituting a different amount, which may not be less than £2,000, for the amount for the time being specified in that subsection.

- (9) Regulations under subsection (8) that substitute a higher amount shall be subject to annulment in pursuance of a resolution of either House of Parliament.
  - (10) No regulations under subsection (8) that substitute a lower amount shall be made unless a draft of them has been laid before Parliament and approved by a resolution of each House of Parliament.
  - (11) Where, because of a direction under section 32(4)(a), a trade union is required to send a return for a period other than a calendar year –
    - (a) this section has effect as if references to a calendar year were references to that period; and
    - (b) if that period is more or less than a year, subsection (1) has effect as if the amount specified in it were proportionately increased or reduced.
  - (12) In this section “candidate”, “electors” and “political office” have the same meaning as in section 72.”
- (2) In section 131(1) of the 1992 Act (administrative provisions applying to employers’ associations), after “section 32(1), (2), (3)(a), (b) and (c) and (4) to (6)” insert “, section 32ZB”.
  - (3) In section 135(3) of the 1992 Act (administrative provisions not applying to certain federated employers’ associations), in paragraph (c), after “section 32(1), (2), (3)(a), (b) and (c) and (4) to (6)” insert “, section 32ZB”.
  - (4) Subsections (1) to (3) apply only to returns for periods that begin after the day on which this section comes into force.

*Facility time and check-off*

### 13 Publication requirements

After section 172 of the 1992 Act insert –

**“172A Publication requirements in relation to facility time**

- (1) A Minister of the Crown may by regulations made by statutory instrument require relevant public sector employers to publish any information within subsection (3).
- (2) An employer is a relevant public sector employer if the employer –
  - (a) is a public authority specified, or of a description specified, in the regulations, and
  - (b) has at least one employee who is a relevant union official.
- (3) The information that is within this subsection is information relating to facility time for relevant union officials including, in particular –
  - (a) how many of an employer’s employees are relevant union officials, or relevant union officials within specified categories;
  - (b) the total amount spent by an employer in a specified period on paying relevant union officials for facility time, or for specified categories of facility time;
  - (c) the percentage of an employer’s total pay bill for a specified period spent on paying relevant union officials for facility time, or for specified categories of facility time;

- (d) the percentage of the aggregate amount of facility time taken by an employer's relevant union officials in a specified period that was attributable to specified categories of duties or activities;
  - (e) information relating to facilities provided by an employer for use by relevant union officials in connection with facility time.
- (4) In subsection (3) "specified" means specified in the regulations.
- (5) The regulations may make provision –
  - (a) as to the times or intervals at which the information is to be published;
  - (b) as to the form in which the information is to be published.
- (6) The regulations may make different provision for different employers or different categories of employer.
- (7) In this section a "relevant union official" means –
  - (a) a trade union official;
  - (b) a learning representative of a trade union, within the meaning given by section 168A(11);
  - (c) a safety representative appointed under regulations made under section 2(4) of the Health and Safety at Work etc. Act 1974.
- (8) In this section "facility time" means time off taken by a relevant union official that is permitted by the official's employer under –
  - (a) section 168, section 168A or section 170(1)(b);
  - (b) section 10(6) of the Employment Relations Act 1999;
  - (c) regulations made under section 2(4) of the Health and Safety at Work etc. Act 1974.
- (9) The regulations may provide, in relation to a body or other person that is not a public authority but has functions of a public nature and is funded wholly or mainly from public funds, that the body or other person is to be treated as a public authority for the purposes of subsection (2).
- (10) The regulations may make provision specifying the person or other entity that is to be treated for the purposes of this section as the employer of a relevant union official who is employed by the Crown.
- (11) The regulations may –
  - (a) deem a category of persons holding an office or employment under the Crown (or two or more such categories taken together) to be an entity for the purposes of provision made under subsection (10);
  - (b) make different provision under subsection (10) for different categories of persons holding an office or employment under the Crown.
- (12) No regulations containing provision made by virtue of subsection (9) shall be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House.

- (13) Regulations under this section to which subsection (12) does not apply shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

#### 14 Reserve powers

After section 172A of the 1992 Act (inserted by section 13 above) insert –

##### “172B Reserve powers in relation to facility time

- (1) After the end of the period of three years beginning with the day on which the first regulations under section 172A come into force, a Minister of the Crown may exercise the reserve powers (see subsection (3)) if the Minister considers it appropriate to do so having regard to –
- (a) information published by employers in accordance with publication requirements;
  - (b) the cost to public funds of facility time in relation to each of those employers;
  - (c) the nature of the various undertakings carried on by those employers;
  - (d) any particular features of those undertakings that are relevant to the reasonableness of the amount of facility time;
  - (e) any other matters that the Minister thinks relevant.
- (2) The reserve powers may not be exercised so as to apply to any particular employer unless –
- (a) a Minister of the Crown has given notice in writing to the employer –
    - (i) setting out the Minister’s concerns about the amount of facility time in the employer’s case, and
    - (ii) informing the employer that the Minister is considering exercising the reserve powers in relation to that employer;
  - (b) the employer has had a reasonable opportunity to respond to the notice under paragraph (a) and to take any action that may be appropriate in view of the concerns set out in it;
- and the powers may not be exercised until after the end of the period of 12 months beginning with the day on which the notice under paragraph (a) was given.
- (3) The reserve powers are powers to make regulations –
- (a) applying to relevant public sector employers on whom the publication requirements were imposed, and
  - (b) containing any provision that the Minister considers appropriate for the purpose of ensuring that, in each period specified by the regulations, the percentage of an employer’s total pay bill spent on paying relevant union officials for facility time does not exceed a percentage that is so specified.
- (4) The regulations may, in particular, make provision restricting rights of relevant union officials to facility time by amending or otherwise modifying any of the following –
- (a) section 168 or 168A;
  - (b) section 10 of the Employment Relations Act 1999;

- (c) regulations made under section 2(4) of the Health and Safety at Work etc. Act 1974.
- (5) The regulations may make provision as to the calculation of working time, of paid facility time, or of an employer's total pay bill.
- (6) The regulations may impose requirements on employers in relation to whom the reserve powers are exercised to publish any further information that the Minister considers appropriate.
- (7) Where requirements are imposed under subsection (6) the regulations may make provision –
  - (a) as to the times or intervals at which the further information is to be published;
  - (b) as to the form in which the further information is to be published.
- (8) The regulations may provide that some or all of their provisions do not apply –
  - (a) in cases specified by the regulations, or
  - (b) if a person specified in the regulations is satisfied that conditions that are so specified are met.
- (9) The regulations may confer power on a Minister of the Crown, by notice in writing to a particular employer, to suspend the application of the regulations to that employer for such period and to such extent as the Minister may specify in the notice.
- (10) The regulations may –
  - (a) make provision in relation to any or all of the employers in relation to which the reserve powers are exercisable;
  - (b) make different provision for different employers or different categories of employer;
  - (c) make transitional provision in connection with the coming into force of any provision of the regulations;
  - (d) make consequential provision amending or otherwise modifying section 170, contracts of employment or collective agreements.
- (11) In this section –
  - (a) “publication requirements” means requirements imposed under section 172A or subsection (6);
  - (b) “relevant public sector employer” has the same meaning as in section 172A, read with any regulations made under subsection (9) of that section;
  - (c) “relevant union official” and “facility time” have the same meaning as in section 172A.
- (12) Subsections (10) and (11) of section 172A apply for the purposes of this section as they apply for the purposes of that section.
- (13) Regulations under this section shall be made by statutory instrument.
- (14) No regulations under this section shall be made unless a draft of them has been laid before Parliament and approved by a resolution of each House of Parliament.”



**15 Restriction on deduction of union subscriptions from wages in public sector**

- (1) After section 116A of the 1992 Act insert—

*“Deduction of trade union subscriptions from wages*

**116B Restriction on deduction of union subscriptions from wages in public sector**

- (1) A relevant public sector employer may make deductions from its workers’ wages in respect of trade union subscriptions only if—
- (a) those workers have the option to pay their trade union subscriptions by other means, and
  - (b) arrangements have been made for the union to make reasonable payments to the employer in respect of the making of the deductions.
- (2) Payments are “reasonable” for the purposes of subsection (1) if the employer is satisfied that the total amount of the payments is substantially equivalent to the total cost to public funds of making the deductions.
- (3) An employer is a relevant public sector employer if the employer is a public authority specified, or of a description specified, in regulations made by a Minister of the Crown.
- (4) A Minister of the Crown may by regulations provide, in relation to a body or other person that is not a public authority but has functions of a public nature and is funded wholly or mainly from public funds, that the body or other person is to be treated as a public authority for the purposes of this section.
- (5) Regulations under this section may make provision specifying the person or other entity that is to be treated for the purposes of this section as the employer of a person who is employed by the Crown.
- (6) The regulations may—
- (a) deem a category of persons holding an office or employment under the Crown (or two or more such categories taken together) to be an entity for the purposes of provision made under subsection (5);
  - (b) make different provision under subsection (5) for different categories of persons holding an office or employment under the Crown.
- (7) Regulations under this section may—
- (a) make different provision for different purposes;
  - (b) make transitional provision in connection with the coming into force of any provision of the regulations;
  - (c) make consequential provision amending or otherwise modifying contracts of employment or collective agreements.
- (8) Regulations under this section are to be made by statutory instrument.
- (9) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

- (10) In this section—
- “trade union subscriptions” means payments to a trade union in respect of a worker’s membership of the union;
  - “wages” has the same meaning as in Part 2 of the Employment Rights Act 1996 (see section 27);
  - “worker” has the same meaning as in that Act.”
- (2) In section 296 of that Act (meaning of “worker” and related expressions), in subsection (3), after “68(4),” insert “116B(10),”.

*Certification Officer*

**16 Certification Officer not subject to ministerial direction**

In section 254 of the 1992 Act (the Certification Officer), at the end of subsection (2) insert “(but is not subject to directions of any kind from any Minister of the Crown as to the manner in which he is to exercise his functions)”.

**17 Investigatory powers etc**

- (1) After section 256B of the 1992 Act insert—
- “256C Investigatory powers**
- Schedule A3 (Certification Officer: investigatory powers) shall have effect.”
- (2) After Schedule A2 to the 1992 Act insert, as Schedule A3, the Schedule set out in Schedule 1 to this Act.
- (3) Schedule 2, which makes amendments to the 1992 Act to enable the Certification Officer to exercise certain powers without an application or complaint being made to the Officer, has effect.

**18 Enforcement by Certification Officer of new annual return requirements**

- (1) After section 32ZB of the 1992 Act (inserted by section 12 above) insert—
- “32ZC Enforcement of sections 32ZA and 32ZB 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 32ZA or 32ZB, 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 requiring the union to take such steps to remedy the declared failure, within such period, as may be specified in the order.
  - (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 by the Officer 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.”
- (2) Subsection (1) applies only to returns for periods that begin after the day on which this section comes into force.
  - (3) In section 45 of the 1992 Act (offences), in subsection (1), for “sections 32” substitute “section 32 (but not sections 32ZA and 32ZB) and sections 32A”.
  - (4) In section 45D of that Act (appeals from Certification Officer), after “31” insert “, 32ZC”.

**19 Further powers of Certification Officer where enforcement order made**

- (1) After section 256C of the 1992 Act (inserted by section 17 above) insert –

**“256D Power to impose financial penalties**

Schedule A4 (Certification Officer: power to impose financial penalties) shall have effect.”

- (2) After Schedule A3 to the 1992 Act (inserted by section 17 above) insert, as Schedule A4, the Schedule set out in Schedule 3 to this Act.
- (3) Subsections (1) and (2) do not apply in relation to any acts or omissions of a trade union or other person occurring before this section comes into force.
- (4) The provisions of the 1992 Act set out below (which provide for certain orders made by the Certification Officer to be enforceable in the same way as orders of the court) are amended as shown.

<i>Provision</i>	<i>Amendment</i>
In section 24B (enforcement of sections 24 to 24ZC by Certification Officer), subsection (12)	after “enforced” insert “by the Officer”
In section 25 (remedy for failure: application to Certification Officer), subsection (10)	after “enforced” insert “(by the Certification Officer, the applicant or a person mentioned in subsection (5B))”
In section 31 (remedy for failure to comply with request for access), subsection (5)	after “enforced” insert “(by the Certification Officer or the applicant)”
In section 45C (remedies and enforcement), subsection (9)	after “enforced” insert “(by the Certification Officer, the applicant or a person mentioned in subsection (6))”
In section 55 (application to Certification Officer), subsection (9)	after “enforced” insert “(by the Certification Officer, the applicant or a person mentioned in subsection (5C))”
In section 72A (application of funds in breach of section 71), subsection (9)	after “enforced” insert “(by the Certification Officer, the applicant or a person mentioned in subsection (8))”
In section 80 (application to Certification Officer), subsection (9)	after “enforced” insert “(by the Certification Officer, the applicant or a person mentioned in subsection (5C))”
In section 82 (rules as to political fund), subsection (4B)	after “enforced” insert “(by the Certification Officer, the complainant or a person mentioned in subsection (4A))”
In section 108B (declarations and orders), subsection (8)	after “enforced” insert “(by the Certification Officer, the applicant or a person mentioned in subsection (7))”

## 20 Power to impose levy

- (1) After section 257 of the 1992 Act insert –

### “257A Levy payable to Certification Officer

- (1) The Secretary of State may by regulations make provision for the Certification Officer to require trade unions and employers’ associations (“relevant organisations”) to pay a levy to the Officer.
- (2) The regulations must require the Certification Officer, in determining the amounts to be levied, to aim to ensure that the total amount levied over any period of three years does not exceed the total amount of the Officers’s expenses over that period that are referable to specified functions of the Officer.
- (3) The regulations may make provision for determining what things count as expenses of the Certification Officer for the purposes of provision made by virtue of subsection (2), and may in particular provide for the expenses to be treated as including –
  - (a) expenses incurred by ACAS in providing staff, accommodation, equipment and other facilities under section 254(5), or
  - (b) expenses in respect of which payments are made under section 255(1) or (2).
- (4) The regulations may provide for the Certification Officer to determine the amount of levy payable by a relevant organisation by reference to specified criteria, which may include –
  - (a) the number of members or the amount of income that the organisation has;
  - (b) whether the organisation is –
    - (i) a federated trade union,
    - (ii) a trade union that is not a federated trade union,
    - (iii) a federated employers’ association, or
    - (iv) an employers’ association that is not a federated employers’ association;
  - (c) the different proportions of the Officer’s expenses that are referable to –
    - (i) functions in relation to federated trade unions,
    - (ii) functions in relation to trade unions that are not federated trade unions,
    - (iii) functions in relation to federated employers’ associations, and
    - (iv) functions in relation to employers’ associations that are not federated employers’ associations.
- (5) The regulations may provide –
  - (a) for the levy not to be payable, or for a reduced amount to be payable, in specified cases or in cases determined by the Certification Officer in accordance with the regulations;
  - (b) for the intervals at which the levy is to be paid;
  - (c) for interest to be payable where a payment is not made by the required date;
  - (d) for an amount levied to be recoverable by the Certification Officer as a debt.

- (6) The regulations may contain such incidental, supplementary or transitional provisions as appear to the Secretary of State to be necessary or expedient.
  - (7) In this section –
    - “federated employers’ association” has the same meaning as in section 135;
    - “federated trade union” has the same meaning as in section 118;
    - “specified” means specified in the regulations.
  - (8) Before making regulations under this section the Secretary of State must consult relevant organisations and ACAS.
  - (9) No regulations under this section shall be made unless a draft of them has been laid before Parliament and approved by a resolution of each House of Parliament.
  - (10) The Certification Officer shall pay into the Consolidated Fund amounts received by virtue of this section.”
- (2) In section 258 of that Act (annual reports and accounts), after subsection (1) insert –
- “(1A) A report under this section shall include details of –
- (a) amounts levied by the Certification Officer by virtue of section 257A in the year in question, and
  - (b) how the amounts were determined.”

## **21 Rights of appeal not limited to questions of law**

In each of the following provisions of the 1992 Act, for “on any question of law arising” substitute “on any question arising” –

- (a) section 45D (appeal from Certification Officer on question arising in proceedings etc under section 24B, 24C, 25, 31, 32ZC or 45C);
- (b) section 56A (appeal from Certification Officer on question arising in proceedings etc under section 55);
- (c) section 95 (appeal from Certification Officer on question arising in proceedings etc under Chapter 6 of Part 1);
- (d) section 104 (appeal from Certification Officer on question arising in proceedings etc under section 103);
- (e) section 108C (appeals from Certification Officer on question arising in proceedings etc under Chapter 7A of Part 1).

### *General*

## **22 Minor and consequential amendments**

Schedule 4 (minor and consequential amendments) has effect.

## **23 Financial provision**

There is to be paid out of money provided by Parliament any increase attributable to this Act in the sums payable under any other Act out of money so provided.

**24 Extent**

An amendment or repeal made by this Act has the same extent as the enactment to which it relates.

**25 Commencement**

- (1) This Act, apart from sections 23 to 26 (which come into force on the day on which this Act is passed), comes into force on whatever day or days the Secretary of State appoints by regulations made by statutory instrument.
- (2) Regulations under this section may include saving, transitional or transitory provision.

**26 Short title**

This Act may be cited as the Trade Union Act 2016.

## SCHEDULES

### SCHEDULE 1

Section 17

#### CERTIFICATION OFFICER: INVESTIGATORY POWERS: SCHEDULE TO BE INSERTED INTO THE 1992 ACT

#### “SCHEDULE A3

Section 256C

#### CERTIFICATION OFFICER: INVESTIGATORY POWERS

#### *Introduction*

- 1 (1) The following are “relevant obligations” for the purposes of this Schedule—
  - (a) any of the requirements of section 24(1) (duties regarding the register of members);
  - (b) the requirement of section 45B (duty to secure positions not held by certain offenders);
  - (c) any of the requirements of Chapter 4 of Part 1 (elections for certain positions);
  - (d) the restriction in section 71 on the application of a trade union’s funds in the furtherance of political objects;
  - (e) any of the requirements of Chapter 6 of Part 1 about compliance with rules as to ballots on political resolutions;
  - (f) any of the requirements of a trade union’s rules made in pursuance of section 82 (rules as to political fund);
  - (g) any of the requirements of sections 99 to 100E (ballots on amalgamations or transfers);
  - (h) any requirement of a conditional penalty order made under Schedule A4.
- (2) In relation to the relevant obligations listed in sub-paragraph (1)(d) to (g) as they apply to unincorporated employers’ associations by virtue of section 132 or 133, this Schedule applies to an unincorporated employers’ association as in relation to a trade union.
- (3) In its application to an unincorporated employers’ association, this Schedule has effect—
  - (a) with any necessary modifications, and
  - (b) with such modifications as may be prescribed.



*Power of Certification Officer to require production of documents etc*

- 2 (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 documents that in the opinion of the Certification Officer or authorised person may be relevant to whether the trade union has failed to comply with a relevant obligation.  
Such documents may in particular include, in the case of a requirement of section 24(1), the register of the names and addresses of the union’s members.
- (3) Directions under sub-paragraph (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 sub-paragraph (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 paragraph 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 sub-paragraph (5)(a)(iii), “agent” includes an assurer appointed by the trade union under section 24ZB.
- (7) For supplementary provision, see paragraph 6.

*Investigation by inspectors*

- 3 (1) If the Certification Officer has reasonable grounds to suspect that a trade union has failed to comply with a relevant obligation, the

Officer may appoint one or more members of the Officer's staff or other persons as an inspector or inspectors –

- (a) to investigate whether the union has failed to comply with such an obligation, and
- (b) to report to the Officer in such manner as the Officer may direct.

(2) 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.

(3) “Relevant documents” means documents that in the opinion of the inspector or inspectors may be relevant to whether the trade union has failed to comply with a relevant obligation.

Such documents may in particular include, in the case of a requirement of section 24(1), the register of the names and addresses of the union's members.

(4) Where a person who is not a member of the Certification Officer's staff is appointed as an inspector under this paragraph, 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.

(5) 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.

(6) 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.

(7) For supplementary provision, see paragraph 6.

*Inspectors' reports etc*

- 4 (1) An inspector or inspectors appointed under paragraph 3 –
- (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 sub-paragraph (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 sub-paragraph (1)(c) to make a final report to the Certification Officer unless the Officer so directs.

*Enforcement of paragraphs 2 and 3 by Certification Officer*

- 5 (1) Where the Certification Officer is satisfied that a trade union or any other person has failed to comply with any requirement imposed under paragraph 2 or 3, 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 paragraph 2 or 3 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 paragraph 2 or 3, 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 –
- (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 paragraph may be enforced by the Officer in the same way as an order of the High Court or the Court of Session.

*Supplementary*

- 6 (1) Nothing in this Schedule requires or authorises anyone to require—
- (a) the disclosure by a person of information which the person 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, 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 paragraph 2 or 3 to disclose the name and address of the lawyer’s client if that information may be relevant to whether a trade union has failed to comply with a requirement of section 24(1).
- (3) A person is not excused from providing an explanation or making a statement in compliance with a requirement imposed under paragraph 2(5) or 3(2) 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 be used in evidence against the person by whom it is provided or made on a prosecution for an offence only where, in giving evidence, the person makes a statement inconsistent with it.
- (5) In this Schedule—
- (a) references to documents include information recorded in any form;
  - (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.”

SCHEDULE 2

Section 17

CERTIFICATION OFFICER: EXERCISE OF POWERS WITHOUT APPLICATION ETC

*Duty to secure positions not held by certain offenders*

- 1 (1) Section 45C of the 1992 Act (remedies and enforcement) is amended as follows.
- (2) In subsection (1), for “effect.” substitute “effect; but the Certification Officer may also exercise the powers under this section where no application is made under this section.”

- (3) After that subsection insert –
- “(1A) Where an application is made to the Certification Officer under this section, the Officer must ensure that, so far as is reasonably practicable, it is determined within six months of being made.”
- (4) For subsection (2) substitute –
- “(2) Where the Certification Officer is satisfied that a trade union has failed to comply with the requirement of section 45B, the Officer may make a declaration to that effect.
- (2A) Before deciding the matter the Certification Officer –
- (a) may make such enquiries as the Officer thinks fit,
  - (b) must give the union and the applicant (if any) an opportunity to make written representations, and
  - (c) may give the union and the applicant (if any) an opportunity to make oral representations.
- (2B) The Certification Officer must give reasons for the Officer’s decision in writing.”
- (5) In subsection (6), for “the application on which the order was made” substitute “an application under this section”.
- (6) In subsection (7) omit “of the application”.

*Elections for certain positions*

- 2 (1) Section 54 of the 1992 Act (remedy for failure to comply with requirements: general) is amended as follows.
- (2) For subsection (1) substitute –
- “(1) A person alleging a failure on the part of a trade union to comply with any of the requirements of this Chapter may apply for –
- (a) a declaration under section 55 (by the Certification Officer),
  - or
  - (b) a declaration under section 56 (by the court);
- but the Certification Officer may also exercise the powers under section 55 where no application is made.”
- (3) In subsection (2), for the words before paragraph (a) substitute “An application for a declaration under section 55 or 56 may be made only –”.
- 3 (1) Section 55 of the 1992 Act (application to Certification Officer) is amended as follows.
- (2) In the heading, for “Application to” substitute “Powers of”.
- (3) For subsections (1) and (2) substitute –
- “(1) Where the Certification Officer is satisfied that a trade union has failed to comply with any of the requirements of this Chapter, either –
- (a) on an application by a person having a sufficient interest (see section 54(2)), or
  - (b) without any such application having been made,

the Officer may make a declaration to that effect.

- (2) Before deciding the matter the Certification Officer –
  - (a) may make such enquiries as the Officer thinks fit,
  - (b) must give the union and the applicant (if any) an opportunity to make written representations, and
  - (c) may give the union and the applicant (if any) an opportunity to make oral representations.”
- (4) In subsection (5C), for “the application on which the order was made” substitute “an application under this section”.
- (5) In subsection (7) omit “of the application”.

*Application of a trade union’s funds in the furtherance of political objects*

- 4 (1) Section 72A of the 1992 Act (application of funds in breach of section 71) is amended as follows.
  - (2) In subsection (1), for “so.” substitute “so; but the Certification Officer may also exercise the powers under this section where no application is made.”
  - (3) After that subsection insert –

“(1A) Where an application is made under subsection (1), the Certification Officer must ensure that, so far as is reasonably practicable, it is determined within six months of being made.”
  - (4) For subsection (2) substitute –

“(2) Where the Certification Officer is satisfied that a trade union has applied its funds in breach of section 71, the Officer may make a declaration to that effect.

(2A) Before deciding the matter the Certification Officer –
    - (a) may make such enquiries as the Officer thinks fit,
    - (b) must give the union and the applicant (if any) an opportunity to make written representations, and
    - (c) may give the union and the applicant (if any) an opportunity to make oral representations.

(2B) The Certification Officer –
    - (a) must give reasons for the Officer’s decision in writing, and
    - (b) may make written observations on any matter arising from, or connected with, the proceedings.”
  - (5) In subsection (6) omit “of the application”.
  - (6) In subsection (8), for “the application on which the order was made” substitute “an application under this section”.

*Compliance with political ballot rules*

- 5 (1) Section 79 of the 1992 Act (remedy for failure to comply with ballot rules: general) is amended as follows.

- (2) For subsection (1) substitute –
- “(1) A person alleging 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 for a declaration under section 80 (by the Certification Officer) or section 81 (by the court); but the Certification Officer may also exercise the powers under section 80 where no application is made.”
- (3) In subsection (2), for “those sections” substitute “section 80 or 81”.
- 6 (1) Section 80 of the 1992 Act (application to Certification Officer) is amended as follows.
- (2) In the heading, for “Application to” substitute “Powers of”.
- (3) For subsections (1) and (2) substitute –
- “(1) Where the Certification Officer is satisfied, either on an application by a person having a sufficient interest (see section 79(2)) or without any such application having been made, 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, the Officer may make a declaration to that effect.
- (2) Before deciding the matter the Certification Officer –
- (a) may make such enquiries as the Officer thinks fit,
  - (b) must give the union and the applicant (if any) an opportunity to make written representations, and
  - (c) may give the union and the applicant (if any) an opportunity to make oral representations.”
- (4) In subsection (5C), for “the application on which the order was made” substitute “an application under this section”.
- (5) In subsection (7) omit “of the application”.

*Rules as to political fund*

- 7 (1) Section 82 of the 1992 Act (rules as to political fund) is amended as follows.
- (2) In subsection (2), for “Officer.” substitute “Officer; but the Officer may also exercise the powers under this section where no complaint under this section is made.”
- (3) For subsections (2A) and (3) substitute –
- “(2A) Where the Certification Officer is satisfied that a breach has been committed, the Officer may make such order for remedying the breach as he thinks just under the circumstances.

- (3) Before deciding the matter the Certification Officer –
  - (a) may make such enquiries as the Officer thinks fit,
  - (b) must give a representative of the union and the complainant (if any) an opportunity to make written representations, and
  - (c) may give a representative of the union and the complainant (if any) an opportunity to make oral representations.”
- (4) In subsection (3A) omit “of the application”.
- (5) In subsection (4A), for “the complaint on which it was made” substitute “a complaint under this section”.

*Ballots on amalgamations or transfers*

- 8 (1) Section 103 of the 1992 Act (complaints as to passing of resolution) is amended as follows.
  - (2) In the heading, for “Complaints” substitute “Powers of Certification Officer”.
  - (3) In subsection (1), for “Officer.” substitute “Officer; but the Officer may also exercise the powers under this section where no complaint under this section is made.”
  - (4) Omit subsection (2A).
  - (5) In subsection (3), for the words before paragraph (a) substitute “Where the Certification Officer is satisfied that there has been a failure such as is mentioned in paragraph (a) or (b) of subsection (1)–”.
  - (6) After that subsection insert –
    - “(3A) Before deciding the matter the Certification Officer –
      - (a) may make such enquiries as the Officer thinks fit,
      - (b) must give the union and the complainant (if any) an opportunity to make written representations, and
      - (c) may give the union and the complainant (if any) an opportunity to make oral representations.”
  - (7) In subsection (4) omit “on a complaint”.
  - (8) In subsection (6) omit “of the application”.
  - (9) In subsection (8), for “the complaint on which the order was made” substitute “a complaint under this section”.



## SCHEDULE 3

Section 19

CERTIFICATION OFFICER: POWER TO IMPOSE FINANCIAL PENALTIES:  
SCHEDULE TO BE INSERTED INTO THE 1992 ACT

## “SCHEDULE A4

Section 256D

## CERTIFICATION OFFICER: POWER TO IMPOSE FINANCIAL PENALTIES

*Introduction*

- 1 (1) In this Schedule “enforcement order” means an order made by the Certification Officer under any of the following provisions of this Act—
- (a) section 24B(6) or 25(5A) (order on failure by union to comply with duties regarding the register of members);
  - (b) section 31(2B) (order on failure by union to comply with member’s request for access to accounting records);
  - (c) section 32ZC(6) (order on failure by union to provide details of industrial action etc, or political expenditure, in annual return);
  - (d) section 45C(5A) (order on failure by union to comply with duty to secure positions not held by certain offenders);
  - (e) section 55(5A) (order on failure by union to comply with requirements about elections for certain positions);
  - (f) section 72A(5) (order on failure by union to comply with restriction on applying union’s funds in the furtherance of political objects);
  - (g) section 80(5A) (order on failure by union to comply with rules as to ballots on political resolutions);
  - (h) section 82(2A) (order on failure by union to comply with rules as to political fund);
  - (i) section 84A(5) (order on failure by union to provide required information to members about contributing to political fund);
  - (j) section 108B(3) (order on breach or threatened breach by union of rules on certain matters);
  - (k) paragraph 5(1) of Schedule A3 (order on failure by union or other person to comply with investigatory requirements).
- (2) In this Schedule “the person in default” means the trade union against which, or other person against whom, an enforcement order is or could be made.
- (3) A reference in this Schedule to taking steps includes a reference to abstaining from acts.

*Power to impose financial penalties*

- 2 (1) Where the Certification Officer—
- (a) makes an enforcement order, or
  - (b) has power to make an enforcement order but does not do so,

the Officer may make a penalty order or a conditional penalty order against the person in default.

- (2) A “penalty order” is an order requiring the person in default to pay a penalty of a specified amount to the Certification Officer by a specified date.
- (3) A “conditional penalty order” is an order requiring the person in default to pay a penalty of a specified amount to the Certification Officer by a specified date unless the person takes specified steps by a specified date or within a specified period.
- (4) Where the Certification Office makes both an enforcement order and a conditional penalty order, the steps specified in the conditional penalty order may, but need not, be the same as those that the enforcement order requires the person in default to take.
- (5) In this paragraph “specified” means specified in the penalty order or conditional penalty order.

#### *Enforcement of conditional penalty order*

- 3 (1) This paragraph applies where the Certification Officer has made a conditional penalty order.
- (2) If the Certification Officer is satisfied that the steps specified in the order have been taken by the date or within the period specified, the Officer must notify the person in default that the penalty is not payable.
- (3) If the Certification Officer is not so satisfied, and the penalty has not been paid by the required date, the Officer must make a further order requiring payment of –
  - (a) the amount originally ordered, or
  - (b) where sub-paragraph (4) applies, a lesser amount specified in the further order.
- (4) This sub-paragraph applies where it appears to the Certification Officer that –
  - (a) steps specified in the conditional penalty order have to some extent been taken, or have been taken (to any extent) but not by the date or within the period specified, and
  - (b) it would be just to reduce the amount of the penalty for that reason.
- (5) An order under this paragraph may require payment immediately or by a specified date.

#### *Representations*

- 4 Before making a penalty order or a conditional penalty order, or an order under paragraph 3, the Certification Officer –
  - (a) must inform the person in default of the grounds on which the Officer proposes to make the order,
  - (b) must give that person an opportunity to make written representations, and

- (c) may give that person an opportunity to make oral representations.

### *Appeals*

- 5 A person in default may appeal to the Employment Appeal Tribunal against a decision of the Certification Officer under this Schedule on the ground that—
- (a) it was based on an error of fact,
  - (b) it was wrong in law, or
  - (c) it was unreasonable,
- or on such other grounds as may be prescribed.

### *Amount of penalty*

- 6 (1) The amount specified in a penalty order or a conditional penalty order—
- (a) may not be less than the minimum amount set by regulations, and
  - (b) may not be more than the maximum amount set by regulations.
- (2) Different amounts may be set by regulations—
- (a) in relation to different enforcement orders,
  - (b) by reference to whether the person in default is an individual or an organisation, and
  - (c) in the case of an organisation, by reference to the number of members that it has.
- (3) But—
- (a) no minimum amount set by regulations may be less than £200, and
  - (b) no maximum amount set by regulations may be more than £20,000.
- (4) Regulations may amend sub-paragraph (3)(a) or (b) by substituting a different amount.

### *Early or late payment, and enforcement*

- 7 (1) In relation to orders under this Schedule requiring payment of penalties, regulations may make provision for—
- (a) early payment discounts;
  - (b) the payment of interest or other financial penalties for late payment;
  - (c) enforcement.
- (2) Provision made by virtue of sub-paragraph (1)(b) must secure that the interest or other financial penalties for late payment do not in total exceed the amount of the penalty itself.
- (3) Provision made by virtue of sub-paragraph (1)(c) may include—

- (a) provision for the Certification Officer to recover the penalty, and any interest or other financial penalty for late payment, as a debt;
- (b) provision for the penalty, and any interest or other financial penalty for late payment, to be recoverable, on the order of a court, as if payable under a court order.

*Regulations*

- 8 (1) Regulations may make provision that is incidental or supplementary to that made by this Schedule.
- (2) Regulations under this Schedule may include transitional or consequential provision.
- (3) Regulations under this Schedule shall be made by the Secretary of State by statutory instrument.
- (4) No regulations under paragraph 6 or 7 or this paragraph shall be made unless a draft of them has been laid before Parliament and approved by a resolution of each House of Parliament.

*Payment of penalties etc into Consolidated Fund*

- 9 The Certification Officer shall pay into the Consolidated Fund amounts received –
- (a) under penalty orders and conditional penalty orders (including orders under paragraph 3), and
  - (b) by way of interest and other financial penalties for late payment in relation to such orders.”

## SCHEDULE 4

Section 22

## MINOR AND CONSEQUENTIAL AMENDMENTS

*Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)*

- 1 Omit section 24C and sections 24ZH to 24ZK of the 1992 Act (which are superseded by the inserted Schedule set out in Schedule 1 to this Act).
- 2 In section 25 of the 1992 Act (remedy for failure: application to Certification Officer) in subsection (6A), for “section 24ZH or 24ZI” substitute “paragraph 2 or 3 of Schedule A3”.
- 3 In section 45D of the 1992 Act (appeals from Certification Officer) –
- (a) omit “24C,”;
  - (b) after “45C” insert “or paragraph 5 of Schedule A3”.
- 4 In section 62 of the 1992 Act (right to a ballot before industrial action), for subsection (2) substitute –
- “(2) For this purpose the question whether industrial action is regarded as having the support of a ballot shall be determined in accordance with section 226(2).”

- 5 In section 71 of the 1992 Act (restriction on use of funds for political objects), in subsection (1)(b), for sub-paragraph (ii) substitute –  
“(ii) the making of contributions to that fund by members.”.
- 6 (1) Section 82 of the 1992 Act (rules as to political fund) is amended as follows.  
(2) In subsection (1), for paragraph (b) substitute –  
“(b) that a member of the union who is not a contributor (see section 84) shall not be under any obligation to contribute to the political fund;”.
- (3) In subsection (1)(c), for “being so exempt” substitute “not being a contributor”.
- 7 (1) Section 86 of the 1992 Act is amended as follows.  
(2) For the heading substitute “**Employer not to deduct contributions where member gives certificate**”.
- (3) In subsection (1), for paragraphs (a) and (b) substitute “, he is not a contributor to the fund,”.
- 8 In section 91 of the 1992 Act (rules to cease to have effect), in subsection (4), for the words before paragraph (a) substitute “A member of a trade union who has at any time not been a contributor to its political fund shall not for that reason –”.
- 9 (1) Section 94 of the 1992 Act (overseas members of trade union) is amended as follows.  
(2) In subsection (1) omit paragraph (b) and the word “and” at the end of paragraph (a).  
(3) In subsection (2) omit the words after “the rules”.
- 10 In section 118 of the 1992 Act (federated trade unions), in subsection (7), for “not exempt from the obligation to contribute” substitute “contributors”.
- 11 In section 135 of the 1992 Act (federated employers’ associations), in subsection (4), for “not exempt from the obligation to contribute” substitute “contributors”.
- 12 In section 226 of the 1992 Act (requirement of ballot before action by trade union), in subsection (2)(a), omit the word “and” at the end of sub-paragraph (ii).
- 13 In section 233 of the 1992 Act (calling of industrial action with support of ballot), for subsections (1) to (3) substitute –  
“(1) Industrial action shall be regarded as having the support of a ballot only if –  
(a) it is called by a person specified or of a description specified in the voting paper for the ballot in accordance with section 229(3), and  
(b) there was no call by the trade union to take part or continue to take part in industrial action to which the ballot relates, or any authorisation or endorsement by the union of any such industrial action, before the date of the ballot.”

- 14 In section 234 of the 1992 Act (period after which ballot ceases to be effective) –
- (a) in subsection (3) omit the words after paragraph (b);
  - (b) in subsection (6) omit the second sentence.
- 15 (1) Section 254 of the 1992 Act (the Certification Officer) is amended as follows.
- (2) In subsection (5A) omit “Subject to subsection (6),”.
  - (3) Omit subsection (6).
- 16 In section 256 of the 1992 Act (procedure before the Certification Officer), in subsection (1)(c), for the words after “declaration or” substitute “order under section 24B, 32ZC, 45C, 55, 72A, 80, 82 or 103 or under paragraph 5 of Schedule A3”.
- 17 After section 297 of the 1992 Act insert –

**“297A Meaning of “voting”**

For the purposes of this Act, the number of persons voting in a ballot includes those who return ballot papers that are spoiled or otherwise invalid.”

- 18 In section 298 of the 1992 Act (minor definitions: general), at the appropriate place insert –
- ““legal professional privilege”, as respects Scotland, means confidentiality of communications;”.
- 19 In section 299 of the 1992 Act (index of defined expressions), at the appropriate places insert –

“contributor (in relation to the political fund of a trade union)	section 84(5)”
“legal professional privilege (as respects Scotland)	section 298”
“voting	section 297A”

*Trade Union and Labour Relations (Northern Ireland) Order 1995 (S.I. 1995/1980 (N.I. 12))*

- 20 (1) Article 71 of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (S.I. 1995/1980 (N.I. 12)) (application to Great Britain unions and members) is amended as follows.
- (2) In paragraph (3) –
    - (a) for “exempt from the obligation to contribute” substitute “not a contributor”;
    - (b) for “so exempt” substitute “not a contributor to that fund”.
  - (3) Omit paragraph (5)(b).

*Consequential repeals*

- 21 In consequence of the amendments made by this Act, omit the following –

- (a) in the Trade Union Reform and Employment Rights Act 1993, paragraph 47(b) of Schedule 8;
- (b) in the Employment Relations Act 1999, paragraph 10 of Schedule 3 and paragraphs 17(2) and 18(2) of Schedule 6;
- (c) in the Employment Relations Act 2004, section 24(2) and paragraph 14 of Schedule 1.