

Draft Regulations laid before Parliament under paragraph 8(4) of Schedule A4 to the Trade Union and Labour Relations (Consolidation) Act 1992, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2022 No. [000]

TRADE UNIONS

**The Trade Union (Power of the Certification Officer
to Impose Financial Penalties) Regulations 2022**

Made - - - - *****
Coming into force - - *1st April 2022*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 256D of, and paragraphs 6, 7 and 8 of Schedule A4 to, the Trade Union and Labour Relations (Consolidation) Act 1992⁽¹⁾.

A draft of this instrument was laid before Parliament in accordance with paragraph 8(4) of Schedule A4 to that Act and approved by resolution of each House of Parliament.

PART 1

Preliminary

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Trade Union (Power of the Certification Officer to Impose Financial Penalties) Regulations 2022.

(2) These Regulations come into force on 1st April 2022.

(3) These Regulations extend to England and Wales and Scotland.

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

(1) 1992 c.52. Section 256D and Schedule A4 were inserted by section 19(1) and (2) of, and Schedule 3 to, the Trade Union Act 2016 (c. 15).

PART 2

Financial Penalties for the purposes of Schedule A4 to the 1992 Act

Minimum penalties

2. The minimum amount that may be specified in a penalty order⁽²⁾ or conditional penalty order⁽³⁾ is £200.

Maximum penalties

3.—(1) The level of maximum penalty that may be specified in a penalty order or conditional penalty order where the person in default⁽⁴⁾ is an organisation is—

- (a) Level 1 in relation to enforcement orders⁽⁵⁾ made, or capable of being made, under—
 - (i) section 45C(5A) of the 1992 Act (order on failure by union to comply with duty to secure positions not held by certain offenders);
 - (ii) section 55(5A) of the 1992 Act (order on failure by union to comply with requirements about elections for certain positions);
 - (iii) section 72A(5) of the 1992 Act (order on failure by union to comply with restriction on applying union’s funds in the furtherance of political objects);
 - (iv) section 80(5A) of the 1992 Act (order on failure by union to comply with rules as to ballots on political resolutions);
 - (v) section 82(2A) of the 1992 Act (order on failure by union to comply with rules as to political fund);⁽⁶⁾
 - (vi) section 84A(5) of the 1992 Act (order on failure by union to provide required information to members about contributing to political fund);
- (b) Level 2 in relation to enforcement orders made, or capable of being made, under section 24B(6) or 25(5A) of the 1992 Act (order on failure by union to comply with duties regarding the register of members);
- (c) Level 3 in relation to enforcement orders made, or capable of being made, under—
 - (i) section 31(2B) of the 1992 Act (order on failure by union to comply with member’s request for access to accounting records);
 - (ii) section 32ZC(6) of the 1992 Act (order on failure by union to provide details of industrial action etc., or political expenditure, in annual return);
 - (iii) section 108B(3) of the 1992 Act (order on breach or threatened breach by union of rules on certain matters);
 - (iv) paragraph 5(1) of Schedule A3 to the 1992 Act (order on failure by union or other person to comply with investigatory requirements).

(2) A Level 1 maximum penalty is as follows—

(2) “Penalty order” has the meaning given by paragraph 2(2) of Schedule A4 to the 1992 Act.
 (3) “Conditional penalty order” has the meaning given by paragraph 2(3) of Schedule A4 to the 1992 Act.
 (4) “Person in default” has the meaning given by paragraph 1(2) of Schedule A4 to the 1992 Act.
 (5) “Enforcement order” has the meaning given by paragraph 1(1) of Schedule A4 to the 1992 Act.
 (6) Section 82(2A), as substituted by section 17(3) of, and paragraph 7(3) of Schedule 2 to, the 2016 Act provides: “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”.

<i>Number of members of organisation</i>	<i>Maximum amount</i>
Less than 100,000	£10,000
100,000 or more	£20,000

(3) A Level 2 maximum penalty is as follows—

<i>Number of members of organisation</i>	<i>Maximum amount</i>
Less than 100,000	£5,000
100,000 or more	£10,000

(4) A Level 3 maximum penalty is as follows—

<i>Number of members of organisation</i>	<i>Maximum amount</i>
Less than 100,000	£2,500
100,000 or more	£5,000

(5) Where a trade union is in whole or part an association or combination of other unions, these Regulations apply to that union as if the individual members of the component unions were members of that union and not of the component unions.

(6) Where an employers' association is in whole or part an association or combination of other associations, these Regulations apply to that association as if the individual members of the component associations were members of that association and not of the component associations.

(7) For the purposes of paragraphs (2) to (4), the number of members of an organisation refers to—

- (a) the number of members identified in the most recent annual return sent by the organisation to the Certification Officer under section 32 of the 1992 Act⁽⁷⁾, if the organisation has sent a return that includes such information; or
- (b) in the absence of such a return, the number of members the Certification Officer reasonably believes the organisation has on the day the Certification Officer makes the penalty order or the conditional penalty order.

(8) The maximum amount that may be specified in a penalty order or conditional penalty order relating to an enforcement order made, or capable of being made, under paragraph 5(1) of Schedule A3 to the 1992 Act, where the person in default is an individual, is £1,000.

Recovery of financial penalties

4.—(1) This regulation applies if all or part of a penalty is unpaid by the relevant payment date.

(2) In this regulation, the relevant payment date is—

- (a) if there is no appeal under paragraph 5 of Schedule A4 to the 1992 Act then—
 - (i) the date specified in the penalty order; or
 - (ii) in the case of a conditional penalty order, the date specified in a further order the Certification Officer makes in accordance with paragraph 3(3) of Schedule A4 to the 1992 Act;
- (b) if there is an appeal then the date when the appeal is withdrawn or finally determined.

(7) Section 32 applies to employers' associations by virtue of section 131 of the 1992 Act.

(3) Where any amount of a penalty is unpaid by the relevant payment date, that unpaid amount is recoverable as a civil debt due to the Certification Officer.

Date

Name
Minister for Small Business, Consumers and
Labour Markets
Department for Business, Energy and Industrial
Strategy

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set the minimum and maximum amounts of financial penalties the Certification Officer may specify in a penalty order or conditional penalty order.

Section 256D of, and Schedule A4 to, the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) give the Certification Officer the power to impose financial penalties where the Certification Officer makes an enforcement order or has the power to make an enforcement order but does not do so. Such enforcement orders are available in relation to certain statutory obligations breached by trade unions or employers’ associations.

These Regulations set out the minimum and maximum financial penalty amounts that may be specified by the Certification Officer in any penalty order, or conditional penalty order, by reference both to the statutory obligation that has been breached and, in the case of an organisation, the number of members it has.

The minimum amount that may be specified by the Certification Officer in a penalty order, or conditional penalty order, is £200 (regulation 2).

Regulation 3 sets out the maximum amount that the Certification Officer may specify in a penalty order or conditional penalty order. Where an order is made against an organisation, the maximum is set by reference to three different levels, according to the nature of the statutory obligation that has been breached. For each level, there is one maximum penalty for organisations with less than 100,000 members, and another for organisations with 100,000 members or more. The maximum penalties set in these provisions range from £2,500 to £20,000.

Where an order is made against an individual for failure to comply with the Certification Officer’s investigatory requirements, the maximum amount that may be specified for a penalty is £1,000 (regulation 3(8)).

Section 256D of, and Schedule A4 to, the 1992 Act are inserted by virtue of section 19(1) and (2) of the Trade Union Act 2016. Section 19(3) of the Trade Union Act 2016 provides that subsections 19(1) and (2) do not apply in relation to any acts or omissions of a trade union or other person occurring before the section comes into force. Accordingly, the Certification Officer’s powers to impose financial penalties under Schedule A4 to the 1992 Act and these Regulations only apply to acts or omissions of a trade union or other person occurring on or after 1st April 2022.

A final impact assessment has been published alongside these Regulations. The annual impact on costs to the business and voluntary sectors is expected to be very low, well below £1 million.