



Trade Union Reform and Employment Rights Act 1993

1993 CHAPTER 19

PART I

TRADE UNIONS ETC.

Financial affairs of unions etc.

8 Annual return to contain additional information

In section 32(3) of the 1992 Act (contents of annual return)—

- (a) after paragraph (a) there shall be inserted—
 - “(aa) details of the salary paid to and other benefits provided to or in respect of—
 - (i) each member of the executive,
 - (ii) the president, and
 - (iii) the general secretary,by the trade union during the period to which the return relates,” and
- (b) after paragraph (c) there shall be inserted “, and
- (d) in the case of a trade union required to maintain a register by section 24, a statement of the number of names on the register as at the end of the period to which the return relates and the number of those names which were not accompanied by an address which is a member’s address for the purposes of that section;”.

9 Statement to members following annual return

After section 32 of the 1992 Act there shall be inserted—

“32A Statement to members following annual return

- (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 provided with the statement required by this section by any of the methods allowed by subsection (2).
- (2) Those methods are—
 - (a) the sending of individual copies of the statement to members; or
 - (b) any other means (whether by including the statement 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.
- (3) The statement required by this section shall specify—
 - (a) the total income and expenditure of the trade union for the period to which the return relates,
 - (b) how much of the income of the union for that period consisted of payments in respect of membership,
 - (c) the total income and expenditure for that period of any political fund of the union, and
 - (d) the salary paid to and other benefits provided to or in respect of—
 - (i) each member of the executive,
 - (ii) the president, and
 - (iii) the general secretary,by the trade union during that period.
- (4) The requirement imposed by this section is not satisfied if the statement specifies anything inconsistent with the contents of the return.
- (5) The statement—
 - (a) shall also set out in full the report made by the auditor or auditors of the union on the accounts contained in the return and state the name and address of that auditor or of each of those auditors, and
 - (b) may include any other matter which the union considers may give a member significant assistance in making an informed judgment about the financial activities of the union in the period to which the return relates.
- (6) The statement—
 - (a) shall also include the following statement—

“A member who is concerned that some irregularity may be occurring, or have occurred, in the conduct of the financial affairs of the union may take steps with a view to investigating further, obtaining clarification and, if necessary, securing regularisation of that conduct.

The member may raise any such concern with such one or more of the following as it seems appropriate to raise it with: the officials of the union, the trustees of the property of the union, the auditor

or auditors of the union, the Certification Officer (who is an independent officer appointed by the Secretary of State) and the police.

Where a member believes that the financial affairs of the union have been or are being conducted in breach of the law or in breach of rules of the union and contemplates bringing civil proceedings against the union or responsible officials or trustees, he may apply for material assistance from the Commissioner for the Rights of Trade Union Members and should, in any case, consider obtaining independent legal advice.”; and

- (b) may include such other details of the steps which a member may take for the purpose mentioned in the statement set out above as the trade union considers appropriate.
- (7) A trade union shall send to the Certification Officer a copy of the statement which is provided to its members in pursuance of this section as soon as is reasonably practicable after it is so provided.
- (8) Where the same form of statement is not provided to all the members of a trade union, the union shall send to the Certification Officer in accordance with subsection (7) a copy of each form of statement provided to any of them.
- (9) If at any time during the period of two years beginning with the day referred to in subsection (1) any member of the trade union requests a copy of the statement required by this section, the union shall, as soon as practicable, furnish him with such a copy free of charge.”.

10 Investigation of financial affairs

After section 37 of the 1992 Act there shall be inserted—

“Investigation of financial affairs

37A Power of Certification Officer to require production of documents etc

- (1) The Certification Officer may at any time, if he thinks there is good reason to do so, give directions to a trade union, or a branch or section of a trade union, requiring it to produce such relevant documents as may be specified in the directions; and the documents shall be produced at such time and place as may be so specified.
- (2) The Certification Officer may at any time, if he thinks there is good reason to do so, authorise a member of his staff or any other person, on producing (if so required) evidence of his authority, to require a trade union, or a branch or section of a trade union, to produce forthwith to the member of staff or other person such relevant documents as the member of staff or other person may specify.
- (3) Where the Certification Officer, or a member of his staff or any other person, has power to require the production of documents by virtue of subsection (1) or (2), the Certification Officer, member of staff or other person has the like power to require production of those documents from any person who appears

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to the Certification Officer, member of staff or other person to be in possession of them.

- (4) Where such a person claims a lien on documents produced by him, the production is without prejudice to the lien.
- (5) The power under this section to require the production of documents includes power—
 - (a) if the documents are produced—
 - (i) to take copies of them or extracts from them, and
 - (ii) to require the person by whom they are produced, or any person who is or has been an official or agent of the trade union, to provide an explanation of any of them; and
 - (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (6) In subsections (1) and (2) “relevant documents”, in relation to a trade union or a branch or section of a trade union, means accounting documents, and documents of any other description, which may be relevant in considering the financial affairs of the trade union.
- (7) A person shall not be excused from providing an explanation or making a statement in compliance with a requirement imposed under subsection (5) on the ground that to do so would tend to expose him to proceedings for an offence; but an explanation so provided or statement so made may only be used in evidence against the person by whom it is made or provided—
 - (a) on a prosecution for an offence under section 45(9) (false explanations and statements), or
 - (b) on a prosecution for some other offence where in giving evidence the person makes a statement inconsistent with it.

37B Investigations by inspectors

- (1) The Certification Officer may appoint one or more members of his staff or other persons as an inspector or inspectors to investigate the financial affairs of a trade union and to report on them in such manner as he may direct.
- (2) The Certification Officer may only make such an appointment if it appears to him that there are circumstances suggesting—
 - (a) that the financial affairs of the trade union are being or have been conducted for a fraudulent or unlawful purpose,
 - (b) that persons concerned with the management of those financial affairs have, in connection with that management, been guilty of fraud, misfeasance or other misconduct,
 - (c) that the trade union has failed to comply with any duty imposed on it by this Act in relation to its financial affairs, or
 - (d) that a rule of the union relating to its financial affairs has not been complied with.
- (3) Where an inspector is, or inspectors are, appointed under this section it is the duty of all persons who are or have been officials or agents of the trade union—

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- (a) to produce to the inspector or inspectors all relevant documents which are in their possession,
 - (b) to attend before the inspector or inspectors when required to do so, and
 - (c) otherwise to give the inspector or inspectors all assistance in connection with the investigation which they are reasonably able to give.
- (4) Where any person (whether or not within subsection (3)) appears to the inspector or inspectors to be in possession of information relating to a matter which he considers, or they consider, to be relevant to the investigation, the inspector or inspectors may require him—
 - (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 he is reasonably able to give;and it is the duty of the person to comply with the requirement.
- (5) In subsections (3) and (4) “relevant documents”, in relation to an investigation of the financial affairs of a trade union, means accounting documents, and documents of any other description, which may be relevant to the investigation.
- (6) A person shall not be excused from providing an explanation or making a statement in compliance with subsection (3) or a requirement imposed under subsection (4) on the ground that to do so would tend to expose him to proceedings for an offence; but an explanation so provided or statement so made may only be used in evidence against the person by whom it is provided or made—
 - (a) on a prosecution for an offence under section 45(9) (false explanations and statements), or
 - (b) on a prosecution for some other offence where in giving evidence the person makes a statement inconsistent with it.

37C Inspectors' reports etc

- (1) An inspector or inspectors appointed under section 37B—
 - (a) may, and if so directed by the Certification Officer shall, make interim reports, and
 - (b) on the conclusion of their investigation shall make a final report, to the Certification Officer.
- (2) Any report under subsection (1) shall be written or printed, as the Certification Officer directs.
- (3) An inspector or inspectors appointed under section 37B may at any time, and if so directed by the Certification Officer shall, inform the Certification Officer of any matters coming to his or their knowledge as a result of the investigation.
- (4) The Certification Officer may direct an inspector or inspectors appointed under section 37B to take no further steps in the investigation, or to take only such further steps as are specified in the direction, if—

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- (a) it appears to the Certification Officer that matters have come to light in the course of the investigation which suggest that a criminal offence has been committed and those matters have been referred to the appropriate prosecuting authority, or
 - (b) it appears to the Certification Officer appropriate to do so in any other circumstances.
- (5) Where an investigation is the subject of a direction under subsection (4), the inspector or inspectors shall make a final report to the Certification Officer only where the Certification Officer directs him or them to do so at the time of the direction under that subsection or subsequently.
- (6) The Certification Officer shall publish a final report made to him under this section.
- (7) The Certification Officer shall furnish a copy of such a report free of charge—
- (a) to the trade union which is the subject of the report,
 - (b) to any auditor of that trade union or of any branch or section of the union, if he requests a copy before the end of the period of three years beginning with the day on which the report is published, and
 - (c) to any member of the trade union if—
 - (i) he has complained to the Certification Officer that there are circumstances suggesting any of the states of affairs specified in section 37B(2)(a) to (d),
 - (ii) the Certification Officer considers that the report contains findings which are relevant to the complaint, and
 - (iii) the member requests a copy before the end of the period of three years beginning with the day on which the report is published.
- (8) A copy of any report under this section, certified by the Certification Officer to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report; and a document purporting to be a certificate of the Certification Officer under this subsection shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

37D Expenses of investigations

- (1) The expenses of an investigation under section 37B shall be defrayed in the first instance by the Certification Officer.
- (2) For the purposes of this section there shall be treated as expenses of an investigation, in particular, such reasonable sums as the Certification Officer may determine in respect of general staff costs and overheads.
- (3) A person who is convicted on a prosecution instituted as a result of the investigation may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

37E Sections 37A and 37B: supplementary

- (1) Where—

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- (a) a report of the auditor or auditors of a trade union, or a branch or section of a trade union, on the accounts audited by him or them and contained in the annual return of the union, or branch or section—
 - (i) does not state without qualification that the accounts give a true and fair view of the matters to which they relate, or
 - (ii) includes a statement in compliance with section 36(4), or
 - (b) a member of a trade union has complained to the Certification Officer that there are circumstances suggesting any of the states of affairs specified in section 37B(2)(a) to (d),
the Certification Officer shall consider whether it is appropriate for him to exercise any of the powers conferred on him by sections 37A and 37B.
- (2) If in a case where a member of a trade union has complained as mentioned in subsection (1)(b) the Certification Officer decides not to exercise any of the powers conferred by those sections he shall, as soon as reasonably practicable after making a decision not to do so, notify the member of his decision and, if he thinks fit, of the reasons for it.
- (3) Nothing in section 37A or 37B—
- (a) requires or authorises anyone to require the disclosure by a person of information which he 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 except, if he is a lawyer, the name and address of his client, or
 - (b) requires or authorises anyone to require the production by a person of a document which he would in such an action be entitled to refuse to produce on such grounds.
- (4) Nothing in section 37A or 37B requires or authorises anyone to require the disclosure of information or the production of documents in respect of which the person to whom the requirement would relate owes an obligation of confidence by virtue of carrying on the business of banking unless—
- (a) the person to whom the obligation is owed is the trade union, or any branch or section of the union, concerned or a trustee of any fund concerned, or
 - (b) the person to whom the obligation of confidence is owed consents to the disclosure or production.
- (5) In sections 37A and 37B and this section—
- (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.”.

11 Offences

- (1) In section 45 of the 1992 Act (offences), for subsection (5) there shall be substituted—
- “(5) If a person contravenes any duty, or requirement imposed, under section 37A (power of Certification officer to require production of documents etc.) or 37B (investigations by inspectors) he commits an offence.

- (6) In any proceedings brought against a person in respect of a contravention of a requirement imposed under section 37A(3) or 37B(4) to produce documents it is a defence for him to prove—
- (a) that the documents were not in his possession, and
 - (b) that it was not reasonably practicable for him to comply with the requirement.
- (7) If an official or agent of a trade union—
- (a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of, a document relating to the financial affairs of the trade union, or
 - (b) makes, or is privy to the making of, a false entry in any such document,
- he commits an offence unless he proves that he had no intention to conceal the financial affairs of the trade union or to defeat the law.
- (8) If such a person fraudulently—
- (a) parts with, alters or deletes anything in any such document, or
 - (b) is privy to the fraudulent parting with, fraudulent alteration of or fraudulent deletion in, any such document,
- he commits an offence.
- (9) If a person in purported compliance with a duty, or requirement imposed, under section 37A or 37B to provide an explanation or make a statement—
- (a) provides or makes an explanation or statement which he knows to be false in a material particular, or
 - (b) recklessly provides or makes an explanation or statement which is false in a material particular,
- he commits an offence.”.

(2) After that section there shall be inserted—

“45A Penalties and prosecution time limits

- (1) A person guilty of an offence under section 45 is liable on summary conviction—
- (a) in the case of an offence under subsection (1) or (5), to a fine not exceeding level 5 on the standard scale;
 - (b) in the case of an offence under subsection (4), (7), (8) or (9), to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.
- (2) Proceedings for an offence under section 45(1) relating to the duty imposed by section 32 (duty to send annual return to Certification Officer) may be commenced at any time before the end of the period of three years beginning with the date when the offence was committed.
- (3) Proceedings for any other offence under section 45(1) may be commenced—
- (a) at any time before the end of the period of six months beginning with the date when the offence was committed, or

- (b) at any time after the end of that period but before the end of the period of twelve months beginning with the date when evidence sufficient in the opinion of the Certification Officer or, in Scotland, the procurator fiscal, to justify the proceedings came to his knowledge;
but no proceedings may be commenced by virtue of paragraph (b) after the end of the period of three years beginning with the date when the offence was committed.
- (4) For the purposes of subsection (3)(b), a certificate signed by or on behalf of the Certification Officer or the procurator fiscal which states the date on which evidence sufficient in his opinion to justify the proceedings came to his knowledge shall be conclusive evidence of that fact.
- (5) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.
- (6) For the purposes of this section—
 - (a) in England and Wales, proceedings are commenced when an information is laid, and
 - (b) in Scotland, subsection (3) of section 331 of the Criminal Procedure (Scotland) Act 1975 (date of commencement of proceedings) applies as it applies for the purposes of that section.”.

12 Disqualification of offenders

After section 45A of the 1992 Act (which is inserted by section 11 above) there shall be inserted—

“45B Duty to secure positions not held by certain offenders

- (1) A trade union shall secure that a person does not at any time hold a position in the union to which this section applies if—
 - (a) within the period of five years immediately preceding that time he has been convicted of an offence under subsection (1) or (5) of section 45, or
 - (b) within the period of ten years immediately preceding that time he has been convicted of an offence under subsection (4), (7), (8) or (9) of that section.
- (2) Subject to subsection (4), the positions to which this section applies are—
 - (a) member of the executive,
 - (b) any position by virtue of which a person is a member of the executive,
 - (c) president, and
 - (d) general secretary.
- (3) For the purposes of subsection (2)(a) “member of the executive” includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.

- (4) This section does not apply to the position of president or general secretary if the holder of that position—
- (a) is not, in respect of that position, either a voting member of the executive or an employee of the union,
 - (b) holds that position for a period which under the rules of the union cannot end more than thirteen months after he took it up, and
 - (c) has not held either position at any time in the period of twelve months ending with the day before he took up that position.
- (5) In subsection (4)(a) “a voting member of the executive” means a person entitled in his own right to attend meetings of the executive and to vote on matters on which votes are taken by the executive (whether or not he is entitled to attend all such meetings or to vote on all such matters or in all circumstances).

45C Remedies and enforcement

- (1) A member of a trade union who claims that the union has failed to comply with the requirement of section 45B may apply to the Certification Officer or to the court for a declaration to that effect.
- (2) On an application being made to him, the Certification Officer—
- (a) shall, where he considers it appropriate, give the applicant and the trade union an opportunity to be heard,
 - (b) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,
 - (c) may make or refuse the declaration asked for, and
 - (d) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.
- (3) Where an application is made to the Certification Officer, the person who made that application, or any other person, is not prevented from making an application to the court in respect of the same matter.
- (4) If, after an application is made to the Certification Officer, an application in respect of the same matter is made to the court, the court shall have due regard to any declaration which has been made by the Certification Officer.
- (5) Where the court makes a declaration it shall also, unless it considers that it would be inappropriate, make an order imposing on the trade union a requirement to take within such period as may be specified in the order such steps to remedy the declared failure as may be so specified.
- (6) Where an order has been made, any person who is a member of the trade union and was a member at the time the order was made is entitled to enforce the order as if he had made the application on which the order was made.”.