



# Trade Union and Labour Relations (Consolidation) Act 1992

## 1992 CHAPTER 52

### PART I

#### TRADE UNIONS

### CHAPTER III

#### TRADE UNION ADMINISTRATION

##### *Register of members' names and addresses*

#### **24 Duty to maintain register of members' names and addresses.**

- (1) A trade union shall compile and maintain a register of the names and addresses of its members, and shall secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.
- (2) The register may be kept by means of a computer.
- (3) A trade union shall—
  - (a) allow any member, upon reasonable notice, to ascertain from the register, free of charge and at any reasonable time, whether there is an entry on it relating to him; and
  - (b) if requested to do so by any member, supply him as soon as reasonably practicable, either free of charge or on payment of a reasonable fee, with a copy of any entry on the register relating to him.

<sup>F1</sup>(4) .....

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- (5) For the purposes of this section a member's address means either his home address or another address which he has requested the union in writing to treat as his postal address.
- (6) The remedy for failure to comply with the requirements of this section is by way of application under section 25 (to the Certification Officer) or section 26 (to the court).

The making of an application to the Certification Officer does not prevent the applicant, or any other person, from making an application to the court in respect of the same matter.

#### Textual Amendments

F1 S. 24(4) repealed (30.8.1993) by 1993 c. 19, s. 51, Sch.10; S.I. 1993/1908, art. 2(1), Sch.1

#### [24A] <sup>F2</sup>Securing confidentiality of register during ballots.

- (1) This section applies in relation to a ballot of the members of a trade union on—
- an election under Chapter IV for a position to which that Chapter applies,
  - a political resolution under Chapter VI, and
  - a resolution to approve an instrument of amalgamation or transfer under Chapter VII.
- (2) Where this section applies in relation to a ballot the trade union shall impose the duty of confidentiality in relation to the register of members' names and addresses on the scrutineer appointed by the union for the purposes of the ballot and on any person appointed by the union as the independent person for the purposes of the ballot.
- (3) The duty of confidentiality in relation to the register of members' names and addresses is, when imposed on a scrutineer or on an independent person, a duty—
- not to disclose any name or address in the register except in permitted circumstances; and
  - to take all reasonable steps to secure that there is no disclosure of any such name or address by any other person except in permitted circumstances;
- and any reference in this Act to "the duty of confidentiality" is a reference to the duty prescribed in this subsection.
- (4) The circumstances in which disclosure of a member's name and address is permitted are—
- where the member consents;
  - where it is requested by the Certification Officer for the purposes of the discharge of any of his functions or it is required for the purposes of the discharge of any of the functions of an inspector appointed by him;
  - where it is required for the purposes of the discharge of any of the functions of the scrutineer or independent person, as the case may be, under the terms of his appointment;
  - where it is required for the purposes of the investigation of crime or of criminal proceedings.
- (5) Any provision of this Part which incorporates the duty of confidentiality as respects the register into the appointment of a scrutineer or an independent person has the effect

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of imposing that duty on the scrutineer or independent person as a duty owed by him to the trade union.

- (6) The remedy for failure to comply with the requirements of this section is by way of application under section 25 (to the Certification Officer) or section 26 (to the court).

The making of an application to the Certification Officer does not prevent the applicant, or any other person, from making an application to the court in respect of the same matter.]

#### Textual Amendments

**F2** S. 24A inserted (30.8.1993) by 1993 c. 19, s.6; S.I. 1993/1908, art. 2(1), Sch.1

## 25 Remedy for failure: application to Certification Officer.

- (1) A member of a trade union who claims that the union has failed to comply with any of the requirements of section 24 [<sup>F3</sup>or 24A] (duties with respect to register of members' names and addresses) may apply to the Certification Officer for a declaration to that effect.
- (2) On an application being made to him, the Certification Officer shall—
- make such enquiries as he thinks fit, and
  - where he considers it appropriate, give the applicant and the trade union an opportunity to be heard,
- and may make or refuse the declaration asked for.
- (3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.
- (4) Where he makes a declaration and is satisfied 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 that the union has agreed to take such steps, he shall specify those steps in the declaration.
- (5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.
- (6) In exercising his functions under this section the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.
- (7) Where he requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.
- [<sup>F4</sup>(8) The Certification Officer shall not entertain an application for a declaration as respects an alleged failure to comply with the requirements of section 24A in relation to a ballot to which that section applies unless the application is made before the end of the period of one year beginning with the last day on which votes could be cast in the ballot.]

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#### Textual Amendments

- F3** Words in s. 25(1) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 40(a)**; S.I. 1993/1908, art. 2(1), **Sch.1**
- F4** S. 25(8) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 40(b)**; S.I. 1993/1908, art. 2(1), **Sch.1**

## 26 Remedy for failure: application to court.

- (1) A member of a trade union who claims that the union has failed to comply with any of the requirements of section 24 [<sup>F5</sup>or 24A] (duties with respect to register of members' names and addresses) may apply to the court for a declaration to that effect.
- (2) If an application in respect of the same matter has been made to the Certification Officer, the court shall have due regard to any declaration, reasons or observations of his which are brought to its notice.
- (3) If the court makes a declaration it shall specify in it the provisions with which the trade union has failed to comply.
- (4) Where the court makes a declaration it shall also, unless it considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—
  - (a) to take such steps to remedy the declared failure, within such period, as may be specified in the order;
  - (b) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.
- (5) Where an enforcement order has been made, any 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 he had made the application on which the order was made.
- (6) Without prejudice to any other power of the court, the court may on an application under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.
- [<sup>F6</sup>(7) The court shall not entertain an application for a declaration as respects an alleged failure to comply with the requirements of section 24A in relation to a ballot to which that section applies unless the application is made before the end of the period of one year beginning with the last day on which votes could be cast in the ballot.]

#### Textual Amendments

- F5** Words in s. 26(1) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 41(a)**; S.I. 1993/1908, art. 2(1), **Sch.1**
- F6** S. 26(7) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 41(b)**; S.I. 1993/1908, art. 2(1), **Sch.1**

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### *Duty to supply copy of rules*

#### **27 Duty to supply copy of rules.**

A trade union shall at the request of any person supply him with a copy of its rules either free of charge or on payment of a reasonable charge.

### *Accounting records*

#### **28 Duty to keep accounting records.**

- (1) A trade union shall—
  - (a) cause to be kept proper accounting records with respect to its transactions and its assets and liabilities, and
  - (b) establish and maintain a satisfactory system of control of its accounting records, its cash holdings and all its receipts and remittances.
- (2) Proper accounting records shall not be taken to be kept with respect to the matters mentioned in subsection (1)(a) unless there are kept such records as are necessary to give a true and fair view of the state of the affairs of the trade union and to explain its transactions.

#### **29 Duty to keep records available for inspection.**

- (1) A trade union shall keep available for inspection from their creation until the end of the period of six years beginning with the 1st January following the end of the period to which they relate such of the records of the union, or of any branch or section of the union, as are, or purport to be, records required to be kept by the union under section 28.

This does not apply to records relating to periods before 1st January 1988.

- (2) In section 30 (right of member to access to accounting records)—
  - (a) references to a union's accounting records are to any such records as are mentioned in subsection (1) above, and
  - (b) references to records available for inspection are to records which the union is required by that subsection to keep available for inspection.
- (3) The expiry of the period mentioned in subsection (1) above does not affect the duty of a trade union to comply with a request for access made under section 30 before the end of that period.

#### **30 Right of access to accounting records.**

- (1) A member of a trade union has a right to request access to any accounting records of the union which are available for inspection and relate to periods including a time when he was a member of the union.

In the case of records relating to a branch or section of the union, it is immaterial whether he was a member of that branch or section.

- (2) Where such access is requested the union shall—

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- (a) make arrangements with the member for him to be allowed to inspect the records requested before the end of the period of twenty-eight days beginning with the day the request was made,
  - (b) allow him and any accountant accompanying him for the purpose to inspect the records at the time and place arranged, and
  - (c) secure that at the time of the inspection he is allowed to take, or is supplied with, any copies of, or of extracts from, records inspected by him which he requires.
- (3) The inspection shall be at a reasonable hour and at the place where the records are normally kept, unless the parties to the arrangements agree otherwise.
- (4) An “accountant” means a person who is eligible for appointment as a company auditor under section 25 of the <sup>M1</sup>Companies Act 1989.
- (5) The union need not allow the member to be accompanied by an accountant if the accountant fails to enter into such agreement as the union may reasonably require for protecting the confidentiality of the records.
- (6) Where a member who makes a request for access to a union’s accounting records is informed by the union, before any arrangements are made in pursuance of the request—
- (a) of the union’s intention to charge for allowing him to inspect the records to which the request relates, for allowing him to take copies of, or extracts from, those records or for supplying any such copies, and
  - (b) of the principles in accordance with which its charges will be determined,
- then, where the union complies with the request, he is liable to pay the union on demand such amount, not exceeding the reasonable administrative expenses incurred by the union in complying with the request, as is determined in accordance with those principles.
- (7) In this section “member”, in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes a member of any of the constituent or affiliated organisations.

#### Marginal Citations

M1 1989 c. 40.

### 31 Remedy for failure to comply with request for access.

- (1) A person who claims that a trade union has failed in any respect to comply with a request made by him under section 30 may apply to the court.
- (2) Where the court is satisfied that the claim is well-founded, it shall make such order as it considers appropriate for ensuring that that person—
  - (a) is allowed to inspect the records requested,
  - (b) is allowed to be accompanied by an accountant when making the inspection of those records, and
  - (c) is allowed to take, or is supplied with, such copies of, or of extracts from, the records as he may require.

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- (3) Without prejudice to any other power of the court, the court may on an application under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.

### *Annual return, accounts and audit*

## **32 Annual return.**

- (1) A trade union shall send to the Certification Officer as respects each calendar year a return relating to its affairs.
- (2) The annual return shall be in such form and be signed by such persons as the Certification Officer may require and shall be sent to him before 1st June in the calendar year following that to which it relates.
- (3) The annual return shall contain—
- (a) the following accounts—
    - (i) revenue accounts indicating the income and expenditure of the trade union for the period to which the return relates,
    - (ii) a balance sheet as at the end of that period, and
    - (iii) such other accounts as the Certification Officer may require,
 each of which must give a true and fair view of the matters to which it relates,
  - [<sup>F7</sup>(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,]
  - (b) a copy of the report made by the auditor or auditors of the trade union on those accounts and such other documents relating to those accounts and such further particulars as the Certification Officer may require,<sup>F8</sup> . . .
  - (c) a copy of the rules of the trade union as in force at the end of the period to which the return relates [<sup>F9</sup>, 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;]
- and shall have attached to it a note of all the changes in the officers of the union and of any change in the address of the head or main office of the union during the period to which the return relates.
- (4) The Certification Officer may, if in any particular case he considers it appropriate to do so—
- (a) direct that the period for which a return is to be sent to him shall be a period other than the calendar year last preceding the date on which the return is sent;
  - (b) direct that the date before which a return is to be sent to him shall be such date (whether before or after 1st June) as may be specified in the direction.
- (5) A trade union shall at the request of any person supply him with a copy of its most recent return either free of charge or on payment of a reasonable charge.

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- (6) The Certification Officer shall at all reasonable hours keep available for public inspection either free of charge or on payment of a reasonable charge, copies of all annual returns sent to him under this section.
- [<sup>F10</sup>(7) For the purposes of this section and section 32A “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.]

#### Textual Amendments

- F7** S. 32(3)(aa) inserted (1.1.1994) by 1993 c. 19, s. 8(a); S.I. 1993/1908, art. 2(3), **Sch. 3**
- F8** Word in s. 32(3) repealed (1.1.1994) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1993/1908, art. 2(3), **Sch. 3**
- F9** S. 32(3)(d) and the word preceding it inserted (1.1.1994) by 1993 c. 19, s. 8(b); S.I. 1993/1908, art. 2(3), **Sch.3**
- F10** S. 32(7) inserted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para.42**; S.I. 1993/1908, art. 2(3), **Sch. 3**

#### [<sup>F11</sup>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



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- (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.]

#### Textual Amendments

**F11** S. 32A inserted (1.1.1994) by 1993 c. 19, s.9; S.I. 1993/1908, art. 2(3), Sch.3

### 33 Duty to appoint auditors.

- (1) A trade union shall in respect of each accounting period appoint an auditor or auditors to audit the accounts contained in its annual return.
- (2) An “accounting period” means any period in relation to which it is required to send a return to the Certification Officer.

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### 34 Eligibility for appointment as auditor.

- (1) A person is not qualified to be the auditor or one of the auditors of a trade union unless he is eligible for appointment as a company auditor under section 25 of the <sup>M2</sup>Companies Act 1989.
- (2) Two or more persons who are not so qualified may act as auditors of a trade union in respect of an accounting period if—
  - (a) the receipts and payments in respect of the union’s last preceding accounting period did not in the aggregate exceed £5,000,
  - (b) the number of its members at the end of that period did not exceed 500, and
  - (c) the value of its assets at the end of that period did not in the aggregate exceed £5,000.
- (3) Where by virtue of subsection (2) persons who are not qualified as mentioned in subsection (1) act as auditors of a trade union in respect of an accounting period, the Certification Officer may (during that period or after it comes to an end) direct the union to appoint a person who is so qualified to audit its accounts for that period.
- (4) The Secretary of State may by regulations—
  - (a) substitute for any sum or number specified in subsection (2) such sum or number as may be specified in the regulations; and
  - (b) prescribe what receipts and payments are to be taken into account for the purposes of that subsection.

Any such regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) None of the following shall act as auditor of a trade union—
  - (a) an officer or employee of the trade union or of any of its branches or sections;
  - (b) a person who is a partner of, or in the employment of, or who employs, such an officer or employee;
  - (c) a body corporate.

F12  
...

#### Textual Amendments

**F12** In s. 34(5), the second sentence repealed (30.8.1993) by 1993 c. 19, ss. 49(1), 51, Sch. 7 para. 18, Sch.10; S.I. 1993/1908 art. 2(1), Sch. 1

#### Marginal Citations

**M2** 1989 c. 40.

### 35 Appointment and removal of auditors.

- (1) The rules of every trade union shall contain provision for the appointment and removal of auditors.  
But the following provisions have effect notwithstanding anything in the rules.
- (2) An auditor of a trade union shall not be removed from office except by resolution passed at a general meeting of its members or of delegates of its members.

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- (3) An auditor duly appointed to audit the accounts of a trade union shall be re-appointed as auditor for the following accounting period, unless—
- (a) a resolution has been passed at a general meeting of the trade union appointing somebody instead of him or providing expressly that he shall not be re-appointed, or
  - (b) he has given notice to the trade union in writing of his unwillingness to be re-appointed, or
  - (c) he is ineligible for re-appointment, or
  - (d) he has ceased to act as auditor by reason of incapacity.
- (4) Where notice has been given of an intended resolution to appoint somebody in place of a retiring auditor but the resolution cannot be proceeded with at the meeting because of the death or incapacity of that person, or because he is ineligible for the appointment, the retiring auditor need not automatically be re-appointed.
- (5) The references above to a person being ineligible for appointment as auditor of a trade union are to his not being qualified for the appointment in accordance with [<sup>F13</sup>subsections (1) to (4)] of section 34 or being precluded by [<sup>F13</sup>subsection (5)] of that section from acting as its auditor.
- (6) The Secretary of State may make provision by regulations as to the procedure to be followed when it is intended to move a resolution—
- (a) appointing another auditor in place of a retiring auditor, or
  - (b) providing expressly that a retiring auditor shall not be re-appointed,
- and as to the rights of auditors and members of the trade union in relation to such a motion.
- Any such regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Where regulations under subsection (6)—
- (a) require copies of any representations made by a retiring auditor to be sent out, or
  - (b) require any such representations to be read out at a meeting,
- the court, on the application of the trade union or of any other person, may dispense with the requirement if satisfied that the rights conferred on the retiring auditor by the regulations are being abused to secure needless publicity for defamatory matter.
- (8) On such an application the court may order the costs or expenses of the trade union to be paid, in whole or in part, by the retiring auditor, whether he is a party to the application or not.

#### Textual Amendments

**F13** Words in s. 35(5) substituted (30.8.1993) by 1993 c. 19, s. 49(1), Sch. 7 para. 19(a)(b); S.I. 1993/1908 art. 2(1), Sch.1

### 36 Auditors' report.

- (1) The auditor or auditors of a trade union shall make a report to it on the accounts audited by him or them and contained in its annual return.

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- (2) The report shall state whether, in the opinion of the auditor or auditors, the accounts give a true and fair view of the matters to which they relate.
- (3) It is the duty of the auditor or auditors in preparing their report to carry out such investigations as will enable them to form an opinion as to—
  - (a) whether the trade union has kept proper accounting records in accordance with the requirements of section 28,
  - (b) whether it has maintained a satisfactory system of control over its transactions in accordance with the requirements of that section, and
  - (c) whether the accounts to which the report relates agree with the accounting records.
- (4) If in the opinion of the auditor or auditors the trade union has failed to comply with section 28, or if the accounts do not agree with the accounting records, the auditor or auditors shall state that fact in the report.

### 37 Rights of auditors.

- (1) Every auditor of a trade union—
  - (a) has a right of access at all times to its accounting records and to all other documents relating to its affairs, and
  - (b) is entitled to require from its officers, or the officers of any of its branches or sections, such information and explanations as he thinks necessary for the performance of his duties as auditor.
- (2) If an auditor fails to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of an audit, he shall state that fact in his report.
- (3) Every auditor of a trade union is entitled—
  - (a) to attend any general meeting of its members, or of delegates of its members, and to receive all notices of and other communications relating to any general meeting which any such member or delegate is entitled to receive, and
  - (b) to be heard at any meeting which he attends on any part of the business of the meeting which concerns him as auditor.

*[<sup>F14</sup>Investigation of financial affairs]*

#### Textual Amendments

**F14** Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, s.10; S.I. 1993/1908, art. 2(1), Sch.1

### <sup>F15</sup>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)

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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 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.]

#### Textual Amendments

**F15** Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, s.10; S.I. 1993/1908, art. 2(1), Sch.1

#### [<sup>F16</sup>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,

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- (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—
- (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.]

#### Textual Amendments

**F16** Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, s.10; S.I. 1993/1908, art. 2(1), Sch.1

#### [<sup>F17</sup>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,



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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—
  - (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.]

#### Textual Amendments

**F17** Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, s. 10; S.I. 1993/1908, art. 2(1), Sch.1

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### [<sup>F18</sup>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.]

#### Textual Amendments

**F18** Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, s. 10; S.I. 1993/1908, art. 2(1), Sch. 1

### [<sup>F19</sup>37E Sections 37A and 37B: supplementary.

- (1) Where—
  - (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—



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- (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.]

#### Textual Amendments

**F19** Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, s.10; S.I. 1993/1908, art. 2(1), Sch. 1

### *Members' superannuation schemes*

#### **38 Members' superannuation schemes: separate fund to be maintained.**

- (1) In the following provisions a “members' superannuation scheme” means any scheme or arrangement made by or on behalf of a trade union (including a scheme or arrangement shown in the rules of the union) in so far as it provides—
- (a) for benefits to be paid by way of pension (including any widows' or children's pensions or dependants' pensions) to or in respect of members or former members of the trade union, and
  - (b) for those benefits to be so paid either out of the funds of the union or under an insurance scheme maintained out of those funds.
- (2) A trade union shall not maintain a members' superannuation scheme unless it maintains a separate fund for the payment of benefits in accordance with the scheme.
- A “separate fund” means a fund separate from the general funds of the trade union.

#### **39 Examination of proposals for new scheme.**

- (1) A trade union shall not begin to maintain a members' superannuation scheme unless, before the date on which the scheme begins to be maintained—
- (a) the proposals for the scheme have been examined by an appropriately qualified actuary, and
  - (b) a copy of a report made to the trade union by the actuary on the results of his examination of the proposals, signed by the actuary, has been sent to the Certification Officer.
- (2) The actuary's report shall state—
- (a) whether in his opinion the premium or contribution rates will be adequate,
  - (b) whether the accounting or funding arrangements are suitable, and
  - (c) whether in his opinion the fund for the payment of benefits will be adequate.
- (3) A copy of the actuary's report shall, on the application of any of the union's members, be supplied to him free of charge.

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#### **40 Periodical re-examination of existing schemes.**

- (1) Where a trade union maintains a members' superannuation scheme, it shall arrange for the scheme to be examined periodically by an appropriately qualified actuary and for a report to be made to it by the actuary on the result of his examination.
- (2) The examination shall be of the scheme as it has effect at such date as the trade union may determine, not being more than five years after the date by reference to which the last examination or, as the case may be, the examination of the proposals for the scheme was carried out.
- (3) The examination shall include a valuation (as at the date by reference to which the examination is carried out) of the assets comprised in the fund maintained for the payment of benefits and of the liabilities falling to be discharged out of it.
- (4) The actuary's report shall state—
  - (a) whether in his opinion the premium or contribution rates are adequate,
  - (b) whether the accounting or funding arrangements are suitable, and
  - (c) whether in his opinion the fund for the payment of benefits is adequate.
- (5) A copy of the report, signed by the actuary, shall be sent to the Certification Officer.
- (6) The trade union shall make such arrangements as will enable the report to be sent to the Certification Officer within a year of the date by reference to which the examination was carried out.
- (7) A copy of the actuary's report shall, on the application of any of the union's members, be supplied to him free of charge.

#### **41 Powers of the Certification Officer.**

- (1) The Certification Officer may, on the application of a trade union—
  - (a) exempt a members' superannuation scheme which the union proposes to maintain from the requirements of section 39 (examination of proposals for new scheme), or
  - (b) exempt a members' superannuation scheme which the union maintains from the requirements of section 40 (periodical re-examination of scheme),
 if he is satisfied that, by reason of the small number of members to which the scheme is applicable or for any other special reasons, it is unnecessary for the scheme to be examined in accordance with those provisions.
- (2) An exemption may be revoked if it appears to the Certification Officer that the circumstances by reason of which it was granted have ceased to exist.
- (3) Where an exemption is revoked under subsection (1)(b), the date as at which the next periodical examination is to be carried out under section 40 shall be such as the Certification Officer may direct.
- (4) The Certification Officer may in any case direct that section 40 (periodical re-examination of schemes) shall apply to a trade union with the substitution for the reference to five years of a reference to such shorter period as may be specified in the direction.

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#### **42 Meaning of “appropriately qualified actuary”.**

In sections 39 and 40 an “appropriately qualified actuary” means a person who is either—

- (a) a Fellow of the Institute of Actuaries, or
- (b) a Fellow of the Faculty of Actuaries,

or is approved by the Certification Officer on the application of the trade union as a person having actuarial knowledge.

#### *Supplementary*

#### **43 Newly-formed trade unions.**

(1) The following provisions of this Chapter do not apply to a trade union which has been in existence for less than twelve months—

- (a) section 27 (duty to supply copy of rules),
- (b) sections 32 to 37 (annual return, [<sup>F20</sup>statement for members,] accounts and audit), <sup>F21</sup> . . .

[<sup>F22</sup>(ba) sections 37A to 37E (investigation of financial affairs), and]

- (c) sections 38 to 42 (members’ superannuation schemes).

(2) Sections 24 to 26 (register of members’ names and addresses) do not apply to a trade union until more than one year has elapsed since its formation (by amalgamation or otherwise).

For this purpose the date of formation of a trade union formed otherwise than by amalgamation shall be taken to be the date on which the first members of the executive of the union are first appointed or elected.

#### **Textual Amendments**

**F20** Words in s. 43(1)(b) inserted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 43(a)**; S.I. 1993/1908, art. 2(3), **Sch. 3**

**F21** Word in s. 43(1)(b) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

**F22** S. 43(1)(ba) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 43(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

#### **44 Discharge of duties in case of union having branches or sections.**

(1) The following provisions apply where a trade union consists of or includes branches or sections.

(2) Any duty falling upon the union in relation to a branch or section under the provisions of—

section 28 (duty to keep accounting records),

[<sup>F23</sup>sections 32 and 33 to 37] (annual return, accounts and audit), or

sections 38 to 42 (members’ superannuation schemes),

shall be treated as discharged to the extent to which a branch or section discharges it instead of the union.

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- (3) In sections 29 to 31 (right of member to access to accounting records) references to a branch or section do not include a branch or section which is itself a trade union.
- (4) Any duty falling upon a branch or section by reason of its being a trade union under—  
section 24 (register of members' names and addresses),  
section 28 (duty to keep accounting records),  
[<sup>F23</sup>sections 32 and 33 to 37] (annual return, accounts and audit), or  
section 38 to 42 (members' superannuation schemes),  
shall be treated as discharged to the extent to which the union of which it is a branch or section discharges the duty instead of it.
- [<sup>F24</sup>(5) Where the duty falling on a trade union under section 32 to send to the Certification Officer a return relating to its affairs is treated as discharged by the union by virtue of subsection (2) or (4) of this section, the duties imposed by section 32A in relation to the return shall be treated as duties of the branch or section of the union, or the trade union of which it is a branch or section, by which that duty is in fact discharged.]

#### Textual Amendments

**F23** Words in s. 44(2)(4) substituted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 44(a)**; S.I. 1993/1908, art. 2(3), **Sch. 3**

**F24** S. 44(5) inserted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 44(b)**; S.I. 1993/1908, art. 2(3), **Sch.3**

#### 45 Offences.

- (1) If a trade union refuses or wilfully neglects to perform a duty imposed on it by or under any of the provisions of—  
section 27 (duty to supply copy of rules),  
sections 28 to 30 (accounting records),  
sections 32 to 37 (annual return, [<sup>F25</sup>statement for members,] accounts and audit), or  
sections 38 to 42 (members' superannuation schemes),  
it commits an offence.
- (2) The offence shall be deemed to have been also committed by—  
(a) every officer of the trade union who is bound by the rules of the union to discharge on its behalf the duty breach of which constitutes the offence, or  
(b) if there is no such officer, every member of the general committee of management of the union.
- (3) In any proceedings brought against an officer or member by virtue of subsection (2) in respect of a breach of duty, it is a defence for him to prove that he had reasonable cause to believe, and did believe, that some other person who was competent to discharge that duty was authorised to discharge it instead of him and had discharged it or would do so.
- (4) A person who wilfully alters or causes to be altered a document which is required for the purposes of any of the provisions mentioned in subsection (1), with intent to falsify the document or to enable a trade union to evade any of those provisions, commits an offence.

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- [<sup>F26</sup>(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.]

#### Textual Amendments

**F25** Words in s. 45(1) inserted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para.45**; S.I. 1993/1908, art. 2(3), **Sch.3**

**F26** S. 45(5)-(9) substituted (30.8.1993) for s. 45(5) by 1993 c. 19, s. 11(1); S.I. 1993/1908, art. 1(2), **Sch. 1**

#### [45A <sup>F27</sup>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

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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 <sup>M3</sup>Criminal Procedure (Scotland) Act 1975 (date of commencement of proceedings) applies as it applies for the purposes of that section.]

#### Textual Amendments

**F27** S 45A inserted (30.8.1993) by 1993 c. 19, s. 11(2); S.I. 1993/1908, art. 2(1), Sch. 1

#### Marginal Citations

**M3** 1975 c. 21.

### [<sup>F28</sup>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

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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).]

#### Textual Amendments

**F28** S. 45B inserted (30.8.1993) by 1993 c. 19, s.12; S.I. 1993/1908, art. 2(1), Sch.1

### [45C <sup>F29</sup> 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.]

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#### Textual Amendments

**F29** S. 45C inserted (30.8.1993) by 1993 c. 19, s.12; S.I. 1993/1908, art. 2(1), Sch.1

VALID FROM 25/10/1999

#### [<sup>F30</sup> 45D Appeals from Certification Officer.

An appeal lies to the Employment Appeal Tribunal on any question of law arising in proceedings before or arising from any decision of the Certification Officer under section 25, 31 or 45C.]

#### Textual Amendments

**F30** S. 45D inserted (25.10.1999) by 1999 c. 26 s. 29, Sch. 6 paras. 1, 8; S.I. 1999/2830, art. 2(1), Sch. 1 Pt. I (with Sch. 3 para. 4)



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