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Trade Union and Labour Relations (Consolidation) Act 1992

1992 CHAPTER 52

PART I

TRADE UNIONS

CHAPTER IX

MISCELLANEOUS AND GENERAL PROVISIONS

Further provisions with respect to ballots

115 Payments towards expenditure in connection with secret ballots.

- (1) The Secretary of State may by regulations make a scheme providing for payments by the Certification Officer towards expenditure incurred by independent trade unions in respect of such ballots to which this section applies as may be prescribed by the scheme.
- (2) This section applies to a ballot if the purpose of the question to be asked (or if there is more than one such question, the purpose of any of them) is—
 - (a) to obtain a decision or ascertain the views of members of a trade union—
 - (i) as to the acceptance or rejection of a proposal made by an employer in relation to the contractual terms and conditions upon which, or the other incidents of the relationship whereby, a person works or provides services for the employer, or
 - (ii) as to the calling or ending of a strike or other industrial action;
 - (b) to carry out an election—
 - (i) provided for by the rules of a trade union, or
 - (ii) required by section 46 (duty to hold elections for certain offices),

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- or to elect a worker who is a member of a trade union to be a representative of other members also employed by his employer;
 - (c) to amend the rules of a trade union;
 - (d) to obtain a decision in accordance with Chapter VI on a political resolution within the meaning of that Chapter at a time when there is such a resolution in force in relation to the union;
 - (e) to obtain a decision in accordance with Chapter VII on a resolution to approve an instrument of amalgamation or transfer;
 - (f) any other purpose specified by order of the Secretary of State.
- (3) The scheme may include provision for payments to be made towards expenditure incurred in respect of arrangements to hold a ballot which is not proceeded with but which would have been a ballot to which this section applies if it had been held.
- (4) The circumstances in which and the conditions subject to which payments may be made under the scheme, and the amounts of the payments, shall be such as may be prescribed by the scheme; and the scheme shall include provision for restricting the cases in which payments are made to cases in which the ballot is so conducted as to secure, so far as reasonably practicable, that those voting do so in secret.
- (5) Regulations or an order under this section shall be made by statutory instrument; and—
- (a) a statutory instrument containing regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament; and
 - (b) no order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

116 Use of employer's premises for secret ballot.

- (1) Where an independent trade union which is recognised by an employer to any extent for the purposes of collective bargaining—
- (a) proposes to hold a ballot to which this section applies, and
 - (b) requests the employer to permit premises of his to be used for the purpose of giving workers employed by him who are members of the union a convenient opportunity of voting,
- the employer shall, so far as reasonably practicable, comply with that request.
- (2) This section applies to a ballot if—
- (a) as respects the purposes of the question (or one of the questions) to be voted upon, the ballot satisfies the requirements of a scheme under section 115, and
 - (b) the proposals for the conduct of the ballot are such as to secure, so far as reasonably practicable, that those voting do so in secret.
- (3) Subsection (1) does not apply where—
- (a) the ballot is one in which every person who is entitled to vote must be given a convenient opportunity to vote by post; or
 - (b) at the time the request is made the number of workers employed by the employer, added to the number employed by any associated employer, does not exceed 20.
- (4) A trade union which claims that an employer has failed to comply with a request made by the union in accordance with subsection (1), which it was reasonably practicable for him to comply with, may present a complaint to an industrial tribunal.

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- (5) The tribunal shall not entertain a complaint unless it is presented to the tribunal—
- (a) before the end of the period of three months beginning with the date of the failure, or
 - (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as the tribunal considers reasonable.
- (6) Where the tribunal finds that the complaint is well-founded, it shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the union of such amount as it considers just and equitable in all the circumstances having regard to the employer's failure and to any expenses incurred by the union in consequence of the failure.
- (7) The remedy of a union for failure to comply with a request under subsection (1) is by way of complaint to an industrial tribunal in accordance with this section, and not otherwise.

VALID FROM 06/04/2005

[^{F1}Union modernisation

Textual Amendments

- F1** S. 116A and preceding cross-heading inserted (6.4.2005) by [Employment Relations Act 2004](#) (c. 24), [ss. 55\(1\), 59\(2\)-\(4\)](#); S.I. 2005/872, [art. 4](#), Sch. (with arts. 6-21)

116A Provision of money for union modernisation

- (1) The Secretary of State may provide money to a trade union to enable or assist it to do any or all of the following—
- (a) improve the carrying out of any of its existing functions;
 - (b) prepare to carry out any new function;
 - (c) increase the range of services it offers to persons who are or may become members of it;
 - (d) prepare for an amalgamation or the transfer of any or all of its engagements;
 - (e) ballot its members (whether as a result of a requirement imposed by this Act or otherwise).
- (2) No money shall be provided to a trade union under this section unless at the time when the money is provided the union has a certificate of independence.
- (3) Money may be provided in such a way as the Secretary of State thinks fit (whether as grants or otherwise) and on such terms as he thinks fit (whether as to repayment or otherwise).
- (4) If money is provided to a trade union under this section, the terms on which it is so provided shall be deemed to include a prohibition (“a political fund prohibition”) on any of it being added to the political fund of the union.
- (5) If a political fund prohibition is contravened, the Secretary of State—

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- (a) is entitled to recover from the trade union as a debt due to him an amount equal to the amount of money added to the union's political fund in contravention of the prohibition (whether or not that money continues to form part of the political fund); and
 - (b) must take such steps as are reasonably practicable to recover that amount.
- (6) An amount recoverable under subsection (5) is a liability of the trade union's political fund.
- (7) Subsection (5) does not prevent money provided to a trade union under this section from being provided on terms containing further sanctions for a contravention of the political fund prohibition.]

Exceptions and adaptations for certain bodies

117 Special register bodies.

- (1) In this section a “special register body” means an organisation whose name appeared in the special register maintained under section 84 of the ^{M1}Industrial Relations Act 1971 immediately before 16 September 1974, and which is a company registered under the ^{M2}Companies Act 1985 or is incorporated by charter or letters patent.
- (2) The provisions of this Part apply to special register bodies as to other trade unions, subject to the following exceptions and adaptations.
- (3) In Chapter II (status and property of trade unions)—
 - (a) in section 10 (quasi-corporate status of trade unions)—
 - (i) subsections (1) and (2) (prohibition on trade union being incorporated) do not apply, and
 - (ii) subsection (3) (prohibition on registration under certain Acts) does not apply so far as it relates to registration as a company under the ^{M3}Companies Act 1985;
 - (b) section 11 (exclusion of common law rules as to restraint of trade) applies to the purposes or rules of a special register body only so far as they relate to the regulation of relations between employers or employers' associations and workers;
 - (c) sections 12 to 14 (vesting of property in trustees; transfer of securities) do not apply; and
 - (d) in section 20 (liability of trade union in certain proceedings in tort) in subsection (7) the reference to the contract between a member and the other members shall be construed as a reference to the contract between a member and the body.
- (4) Sections 33 to 35 (appointment and removal of auditors) do not apply to a special register body which is registered as a company under the Companies Act 1985; and sections 36 and 37 (rights and duties of auditors) apply to the auditors appointed by such a body under Chapter V of Part XI of that Act.
- (5) Chapter IV (elections for certain union position) only applies to—
 - (a) the position of voting member of the executive, and
 - (b) any position by virtue of which a person is a voting member of the executive.

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In this subsection “voting member of the executive” has the meaning given by section 46(5).

Marginal Citations

- M1 1971 c. 72.
- M2 1985 c. 6.
- M3 1985 c. 6.

118 Federated trade unions.

- (1) In this section a “federated trade union” means a trade union which consists wholly or mainly of constituent or affiliated organisations, or representatives or such organisations, as described in paragraph (b) of the definition of “trade union” in section 1.
- (2) The provisions of this Part apply to federated trade unions subject to the following exceptions and adaptations.
- (3) For the purposes of section 22 (limit on amount of damages) as it applies to a federated trade union, the members of such of its constituent or affiliated organisations as have their head or main office in Great Britain shall be treated as members of the union.
- (4) The following provisions of Chapter III (trade union administration) do not apply to a federated trade union which consists wholly or mainly of representatives of constituent or affiliated organisations—
 - (a) section 27 (duty to supply copy of rules),
 - (b) section 28 (duty to keep accounting records),
 - (c) sections 32 to 37 (annual return, accounts and audit), and
 - (d) sections 38 to 42 (members’ superannuation schemes).
- (5) Sections 29 to 31 (right of member to access to accounting records) do not apply to a federated trade union which has no members other than constituent or affiliated organisations or representatives of such organisations.
- (6) Sections 24 to 26 (register of members’ names and addresses) and Chapter IV (elections for certain trade union positions) do not apply to a federated trade union—
 - (a) if it has no individual members other than representatives of constituent or affiliated organisations, or
 - (b) if its individual members (other than such representatives) are all merchant seamen and a majority of them are ordinarily resident outside the United Kingdom.

For this purpose “merchant seaman” means a person whose employment, or the greater part of it, is carried out on board sea-going ships.

- (7) The provisions of Chapter VI (application of funds for political objects) apply to a trade union which is in whole or part an association or combination of other unions as if the individual members of the component unions were members of that union and not of the component unions.

But nothing in that Chapter prevents a component union from collecting contributions on behalf of the association or combination from such of its members as are not exempt from the obligation to contribute to the political fund of the association or combination.

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Interpretation

119 Expressions relating to trade unions.

In this Act, in relation to a trade union—

“branch or section”, except where the context otherwise requires, includes a branch or section which is itself a trade union;

“executive” means the principal committee of the union exercising executive functions, by whatever name it is called;

“general secretary” means the official of the union who holds the office of general secretary or, where there is no such office, holds an office which is equivalent, or (except in section 14(4)) the nearest equivalent, to that of general secretary;

“officer” includes—

- (a) any member of the governing body of the union, and
- (b) any trustee of any fund applicable for the purposes of the union;

“official” means—

- (a) an officer of the union or of a branch or section of the union, or
- (b) a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them,

and includes a person so elected or appointed who is an employee of the same employer as the members or one or more of the members whom he is to represent;

“president” means the official of the union who holds the office of president or, where there is no such office, who holds an office which is equivalent, or (except in section 14(4) or Chapter IV) the nearest equivalent, to that of president; and

“rules”, except where the context otherwise requires, includes the rules of any branch or section of the union.

120 Northern Ireland unions.

In this Part a “Northern Ireland union” means a trade union whose principal office is situated in Northern Ireland.

121 Meaning of “the court”.

In this Part “the court” (except where the reference is expressed to be to the county court or sheriff court) means the High Court or the Court of Session.

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