



# Trade Union and Labour Relations (Consolidation) Act 1992

## 1992 CHAPTER 52

### PART II

#### EMPLOYERS' ASSOCIATIONS

##### *Introductory*

#### **122 Meaning of “employers’ association”.**

- (1) In this Act an “employers’ association” means an organisation (whether temporary or permanent)—
  - (a) which consists wholly or mainly of employers or individual owners of undertakings of one or more descriptions and whose principal purposes include the regulation of relations between employers of that description or those descriptions and workers or trade unions; or
  - (b) which consists wholly or mainly of—
    - (i) constituent or affiliated organisations which fulfil the conditions in paragraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions), or
    - (ii) representatives of such constituent or affiliated organisations, and whose principal purposes include the regulation of relations between employers and workers or between employers and trade unions, or the regulation of relations between its constituent or affiliated organisations.
- (2) References in this Act to employers’ associations include combinations of employers and employers’ associations.

*Status: Point in time view as at 01/10/2009.*

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### *The list of employers’ associations*

#### **123 The list of employers’ associations.**

- (1) The Certification Officer shall keep a list of employers’ associations containing the names of—
  - (a) the organisations whose names were, immediately before the commencement of this Act, duly entered in the list of employers’ associations kept by him under section 8 of the <sup>M1</sup>Trade Union and Labour Relations Act 1974, and
  - (b) the names of the organisations entitled to have their names entered in the list in accordance with this Part.
- (2) The Certification Officer shall keep copies of the list of employers’ associations, as for the time being in force, available for public inspection at all reasonable hours free of charge.
- (3) A copy of the list shall be included in his annual report.
- (4) The fact that the name of an organisation is included in the list of employers’ associations is evidence (in Scotland, sufficient evidence) that the organisation is an employers’ association.
- (5) On the application of an organisation whose name is included in the list, the Certification Officer shall issue it with a certificate to that effect.
- (6) A document purporting to be such a certificate is evidence (in Scotland, sufficient evidence) that the name of the organisation is entered in the list.

#### **Marginal Citations**

**M1** 1974 c. 52.

#### **124 Application to have name entered in the list.**

- (1) An organisation of employers, whenever formed, whose name is not entered in the list of employers’ associations may apply to the Certification Officer to have its name entered in the list.
- (2) The application shall be made in such form and manner as the Certification Officer may require and shall be accompanied by—
  - (a) a copy of the rules of the organisation,
  - (b) a list of its officers,
  - (c) the address of its head or main office, and
  - (d) the name under which it is or is to be known,and by the prescribed fee.
- (3) If the Certification Officer is satisfied—
  - (a) that the organisation is an employers’ association,
  - (b) that subsection (2) has been complied with, and
  - (c) that entry of the name in the list is not prohibited by subsection (4),he shall enter the name of the organisation in the list of employers’ associations.

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- (4) The Certification Officer shall not enter the name of an organisation in the list of employers’ associations if the name is the same as that under which another organisation—
- (a) was on 30th September 1971 registered as a trade union under the Trade Union Acts 1871 to 1964,
  - (b) was at any time registered as an employers’ association or trade union under the <sup>M2</sup>Industrial Relations Act 1971, or
  - (c) is for the time being entered in the list of employers’ associations or in the list of trade unions kept under Chapter I of Part I of this Act,
- or if the name is one so nearly resembling any such name as to be likely to deceive the public.

**Marginal Citations**

M2 1971 c. 72.

**125 Removal of name from the list.**

- (1) If it appears to the Certification Officer, on application made to him or otherwise, that an organisation whose name is entered in the list of employers’ associations is not an employers’ association, he may remove its name from the list.
- (2) He shall not do so without giving the organisation notice of his intention and considering any representations made to him by the organisation within such period (of not less than 28 days beginning with the date of the notice) as may be specified in the notice.
- (3) The Certification Officer shall remove the name of an organisation from the list of employers’ associations if—
- (a) he is requested by the organisation to do so, or
  - (b) he is satisfied that the organisation has ceased to exist.

**126 Appeal against decision of Certification Officer.**

- (1) An organisation aggrieved by the refusal of the Certification Officer to enter its name in the list of employers’ associations, or by a decision of his to remove its name from the list, may appeal to the Employment Appeal Tribunal [<sup>F1</sup>on any appealable question].
- (2) <sup>F2</sup> .....
- (3) [<sup>F3</sup>For the purposes of this section, an appealable question is any question of law arising in the proceedings before, or arising from the decision of, the Certification Officer.

**Textual Amendments**

- F1** Words in s. 126(1) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 51(2)(a), 59(2)-(4); S.I. 2005/872, art. 4, Sch. (with arts. 6-21)
- F2** S. 126(2) repealed (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 51(2)(b), 57(2), 59(2)-(4), Sch. 2; S.I. 2005/872, art. 4, Sch. (with arts. 6-21)

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**F3** Words in s. 126(3) substituted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 51(2)(c), 59(2)-(4)**; S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

### *Status and property of employers’ associations*

#### **127 Corporate or quasi-corporate status of employers’ associations.**

- (1) An employers’ association may be either a body corporate or an unincorporated association.
- (2) Where an employers’ association is unincorporated—
  - (a) it is capable of making contracts;
  - (b) it is capable of suing and being sued in its own name, whether in proceedings relating to property or founded on contract or tort or any other cause of action; and
  - (c) proceedings for an offence alleged to have been committed by it or on its behalf may be brought against it in its own name.

<sup>F4</sup>(3) .....

#### **Textual Amendments**

**F4** [S. 127\(3\)](#) repealed (21.12.2002) by [S.I. 2002/3203](#), **art. 4**

#### **128 Exclusion of common law rules as to restraint of trade.**

- (1) The purposes of an unincorporated employers’ association and, so far as they relate to the regulation of relations between employers and workers or trade unions, the purposes of an employers’ association which is a body corporate are not, by reason only that they are in restraint of trade, unlawful so as—
  - (a) to make any member of the association liable to criminal proceedings for conspiracy or otherwise, or
  - (b) to make any agreement or trust void or voidable.
- (2) No rule of an unincorporated employers’ association or, so far as it relates to the regulation of relations between employers and workers or trade unions, of an employers’ association which is a body corporate, is unlawful or unenforceable by reason only that it is in restraint of trade.

#### **129 Property of unincorporated employers’ associations, &c.**

- (1) The following provisions of Chapter II of Part I of this Act apply to an unincorporated employers’ association as in relation to a trade union—
  - (a) section 12(1) and (2) (property to be vested in trustees),
  - (b) section 13 (vesting of property in new trustees), and
  - (c) section 14 (transfer of securities held in trust for trade union).
- (2) In sections 13 and 14 as they apply by virtue of subsection (1) the reference to entry in the list of trade unions shall be construed as a reference to entry in the list of employers’ associations.

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- (3) Section 19 (application of certain provisions relating to <sup>F5</sup> . . . friendly societies) applies to any employers’ association as in relation to a trade union.

#### Textual Amendments

**F5** Words in s. 129(3) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 333

### 130 Restriction on enforcement of awards against certain property.

- (1) Where in any proceedings an amount is awarded by way of damages, costs or expenses—
- (a) against an employers’ association,
  - (b) against trustees in whom property is vested in trust for an employers’ association, in their capacity as such (and otherwise than in respect of a breach of trust on their part), or
  - (c) against members or officials of an employers’ association on behalf of themselves and all of the members of the association,
- no part of that amount is recoverable by enforcement against any protected property.
- (2) The following is protected property—
- (a) property belonging to the trustees otherwise than in their capacity as such;
  - (b) property belonging to any member of the association otherwise than jointly or in common with the other members;
  - (c) property belonging to an official of the association who is neither a member nor a trustee.

#### *Administration of employers’ associations*

### 131 Administrative provisions applying to employers’ associations.

- (1) The following provisions of Chapter III of Part I of this Act apply to an employers’ association as in relation to a trade union—
- section 27 (duty to supply copy of rules),
  - section 28 (duty to keep accounting records),
  - [<sup>F6</sup>section 32(1), (2), (3)(a), (b) and (c) and (4) to (6) and sections 33 to 37] (annual return, accounts and audit),
  - <sup>F7</sup>sections 37A to 37E (investigation of financial affairs),
  - sections 38 to 42 (members’ superannuation schemes),
  - section 43(1) (exemption for newly-formed organisations),
  - section 44(1),(2) and (4) (discharge of duties in case of organisation having branches or sections), and
  - [<sup>F8</sup>sections 45 and 45A] (offences).
- (2) Sections 33 to 35 (appointment and removal of auditors) do not apply to an employers’ association which is registered as a company under [<sup>F9</sup>the Companies Act 2006]; and

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sections 36 and 37 (rights and duties of auditors) apply to the auditors appointed by such an association under <sup>F10</sup>. . . [<sup>F11</sup> Chapter 2 of Part 16 of [<sup>F12</sup>that Act]].

#### Textual Amendments

- F6** Words in s. 131(1) substituted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 64(a)**; S.I. 1993/1908, art. 2(3), **Sch. 3**
- F7** Words in s. 131(1) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 64(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F8** Words in s. 131(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 64(c)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F9** Words in s. 131(2) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 134(4)(a)** (with art. 10)
- F10** Words in s. 131(2) repealed (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(2), Sch. 1 para. 188, **Sch. 2** (with arts. 6, 11, 12)
- F11** Words in s. 131(2) inserted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 74** (with art. 12)
- F12** Words in s. 131(2) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 134(4)(b)** (with art. 10)

#### *Application of funds for political objects*

### 132 Application of funds for political objects.

[<sup>F13</sup>(1) Subject to subsections (2) to (5), the]provisions of Chapter VI of Part I of this Act (application of funds for political objects) apply to an unincorporated employers’ association as in relation to a trade union.

[<sup>F14</sup>(2) Subsection (1) does not apply to these provisions—

- (a) section 72A;
- (b) in section 80, subsections (5A) to (5C) and (8) to (10);
- (c) in section 81, subsection (8).

(3) In its application to an unincorporated employers’ association, section 79 shall have effect as if at the end of subsection (1) there were inserted—

“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.”

(4) In its application to an unincorporated employers’ association, section 80(2)(b) shall have effect as if the words “where he considers it appropriate,” were inserted at the beginning.

(5) In its application to an unincorporated employers’ association, section 81 shall have effect as if after subsection (1) there were inserted—

“(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.”]

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#### Textual Amendments

- F13** Words in s. 132 substituted and s. 132 renumbered as 132(1) (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **20(1)(2)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)
- F14** S. 132(2)-(5) inserted (25.10.1999) by 1999 c. 26, S. 29, Sch. 6 paras. 1, **20(3)**; S.I. 1999/2830, art. 2(1), **Sch. 1 para. I** (with Sch. 3 para. 5)

### *Amalgamations and similar matters*

#### [<sup>F15</sup>133 Amalgamations and transfers of engagements.

- (1) Subject to subsection (2), the provisions of Chapter VII of Part I of this Act (amalgamations and similar matters) apply to unincorporated employers' associations as in relation to trade unions.
- (2) In its application to such associations that Chapter shall have effect—
- (a) as if in section 99(1) for the words from "that every" to "accompanied by" there were substituted the words "that, not less than seven days before the ballot on the resolution to approve the instrument of amalgamation or transfer is held, every member is supplied with",
- (b) as if the requirements imposed by sections 100A to 100E consisted only of those specified in sections 100B and 100C(1) and (3)(a) together with the requirement that every member must, so far as is reasonably possible, be given a fair opportunity of voting,<sup>F16</sup> . . .
- [ as if the references in sections 101A and 101B to the list of trade unions were  
<sup>F17</sup>(ba) to the list of employers' associations, and]
- (c) with the omission of sections 101(3) [<sup>F18</sup>, 101A(3) and (4)] [<sup>F19</sup>, 103(2A) and (6) to (9)] and 107.

#### Textual Amendments

- F15** S. 133 substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 65**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F16** Word in s. 133(2)(b) repealed (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 50(3)(a), 57(2), 59(2)-(4), **Sch. 2**; S.I. 2005/872, art. 4, Sch. (with arts. 6-21)
- F17** S. 133(2)(ba) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 50(3)(a), 59(2)-(4); S.I. 2005/872, art. 4, Sch. (with arts. 6-21)
- F18** Words in s. 133(2)(c) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 50(3)(b), 59(2)-(4); S.I. 2005/872, art. 4, Sch. (with arts. 6-21)
- F19** Words in s. 133(2)(c) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **21**; S.I. 1999/2830, art. 2(1), **Sch. 1 para. I** (with Sch. 3 para. 5)

#### 134 Change of name of employers' association.

- (1) An unincorporated employers' association may change its name by any method expressly provided for by its rules or, if its rules do not expressly provide for a method of doing so, by adopting in accordance with its rules an alteration of the provision in them which gives the association its name.

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- (2) If the name of an employers' association, whether incorporated or unincorporated, is entered in the list of employers' associations a change of name shall not take effect until approved by the Certification Officer.
- (3) The Certification Officer shall not approve a change of name if it appears to him that the proposed new name—
  - (a) is the same as one entered in the list as the name of another employers' association, or
  - (b) is the same as one entered in the list of trade unions kept under Part I of this Act,
 or is a name so nearly resembling such a name as to be likely to deceive the public.
- (4) A change of name by an unincorporated employers' association does not affect any right or obligation of the association or any of its members; and any pending legal proceedings may be continued by or against the association, the trustees of the association or any other officer of the association who can sue or be sued on its behalf notwithstanding its change of name.
- (5) The power conferred by section 108 (power to make regulations for carrying provisions into effect) applies in relation to this section as in relation to a provision of Chapter VII of Part I.

### *General*

#### **135 Federated employers' associations.**

- (1) In this section a "federated employers' association" means a employers' association which consists wholly or mainly of constituent or affiliated organisations, or representatives or such organisations, as described in paragraph (b) of the definition of "employers' association" in section 122.
- (2) The provisions of Part I applied by this Part to employers' associations apply to federated employers' associations subject to the following exceptions and adaptations.
- (3) The following provisions of Chapter III of Part I (administration) do not apply to a federated employers' association 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) [F20]section 32(1), (2), (3)(a), (b) and (c) and (4) to (6) and sections 33 to 37] (annual return, accounts and audit), F21 . . .
  - [F22](ca) sections 37A to 37E (investigation of financial affairs), and]
  - (d) sections 38 to 42 (members' superannuation schemes).
- (4) The provisions of Chapter VI of Part I (application of funds for political objects) apply to a employers' association which is in whole or part an association or combination of other associations as if the individual members of the component associations were members of that association and not of the component associations.

But nothing in that Chapter prevents a component association from collecting contributions on behalf of the association or combination from such of its members as



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are not exempt from the obligation to contribute to the political fund of the association or combination.

#### Textual Amendments

- F20** Words in s. 135(3)(c) substituted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 66(a)**; S.I. 1993/1908, art. 2(3), **Sch.3**
- F21** Word in s. 135(3)(c) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F22** S. 135(3)(ca) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 66(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

### 136 Meaning of “officer” of employers’ association.

In this Act “officer”, in relation to an employers’ association, includes—

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

**Status:**

Point in time view as at 01/10/2009.

**Changes to legislation:**

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