



Trade Union Reform and Employment Rights Act 1993

1993 CHAPTER 19

PART I

TRADE UNIONS ETC.

Financial affairs of unions etc.

12 Disqualification of offenders.

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

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

- (1) A trade union shall secure that a person does not at any time hold a position in the union to which this section applies if—
 - (a) within the period of five years immediately preceding that time he has been convicted of an offence under subsection (1) or (5) of section 45, or
 - (b) within the period of ten years immediately preceding that time he has been convicted of an offence under subsection (4), (7), (8) or (9) of that section.
- (2) Subject to subsection (4), the positions to which this section applies are—
 - (a) member of the executive,
 - (b) any position by virtue of which a person is a member of the executive,
 - (c) president, and
 - (d) general secretary.
- (3) For the purposes of subsection (2)(a) “member of the executive” includes any person who, under the rules or practice of the union, may attend and speak at

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some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.

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

45C Remedies and enforcement.

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

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