

Draft Regulations laid before Parliament under paragraph 8(4) of Schedule A4 to the Trade Union & Labour Relations (Consolidation) Act 1992, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

201X No. XXXX

TRADE UNIONS

**[DRAFT]The Trade Union (Financial Penalties) Regulations
[201*]**

Made - - - - - ***
Coming into force - - - - - ***

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 256D of, and paragraphs 6, 7 and 8 of Schedule A4 to, the Trade Union and Labour Relations (Consolidation) Act 1992(a).

A draft of this instrument was laid before Parliament in accordance with paragraph 8(4) of Schedule A4 of that Act and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Trade Union (Financial Penalties) Regulations [201*] and come into force on [****].

(2) In these Regulations “the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992.

Minimum penalties

2. The minimum amount that may be specified in a penalty order or conditional penalty order is £200.

Maximum penalties

3.—(1) The level of maximum penalty that may be specified in a penalty order or conditional penalty where the person in default is an organisation is—

(a) Level 1 in relation to enforcement orders made under—

- (i) section 45C(5A) of the 1992 Act (order on failure by union to comply with duty to secure positions not held by certain offenders);
- (ii) section 55(5A) of the 1992 Act (order on failure by union to comply with requirements about elections for certain positions);

(a) 1992 c.52. Section 256D and Schedule A4 were inserted by section 19(1) and (2) of, and Schedule 3 to, the Trade Union Act 2016 (c. 15).

- (iii) section 72A(5) of the 1992 Act (order on failure by union to comply with restriction on applying union's funds in the furtherance of political objects);
- (iv) section 80(5A) of the 1992 Act (order on failure by union to comply with rules as to ballots on political resolutions);
- (v) section 82(3) of the 1992 Act (order on failure by union to comply with rules as to political fund);
- (b) Level 2 in relation to enforcement orders made under section 24B(6) or 25(5A) of the 1992 Act (order on failure by union to comply with duties regarding the register of members);
- (c) Level 3 in relation to enforcement orders made under—
 - (i) section 31(2B) of the 1992 Act (order on failure by union to comply with member's request for access to accounting records);
 - (ii) section 32ZC(6) of the 1992 Act (order on failure by union to provide details of industrial action etc., or political expenditure, in annual return);
 - (iii) section 108B(3) of the 1992 Act (order on breach or threatened breach by union of rules on certain matters);
 - (iv) paragraph 5(1) of Schedule A3 of the 1992 Act (order on failure by union or other person to comply with investigatory requirements).

(2) A Level 1 maximum penalty is as follows—

<i>Number of members of organisation</i>	<i>Maximum amount</i>
Less than 100,000	£10,000
100,000 or more	£20,000

(3) A Level 2 maximum penalty is as follows—

<i>Number of members of organisation</i>	<i>Maximum amount</i>
Less than 100,000	£5,000
100,000 or more	£10,000

(4) A Level 3 maximum penalty is as follows—

<i>Number of members of organisation</i>	<i>Maximum amount</i>
Less than 100,000	£2,500
100,000 or more	£5,000

(5) In paragraphs (2) to (4), references to the number of members of an organisation are references to the number of members of the organisation on the day the Certification Officer makes the penalty order or the conditional penalty order.

(6) The maximum amount that may be specified in a penalty order or conditional penalty order relating to an enforcement order under paragraph 5(1) of Schedule A3 to the 1992 Act, where the person in default is an individual, is £1,000.

(7) Where a trade union is in whole or part an association or combination of other unions, these Regulations apply to that union as if the individual members of the component unions were members of that union and not of the component unions.

(8) Where an employers' association is in whole or part an association or combination of other associations, these Regulations apply to that association as if the individual members of the component associations were members of that association and not of the component associations.

Interest and recovery

4.—(1) This regulation applies if all or part of a penalty is unpaid by the relevant day.

(2) The unpaid amount of a penalty shall carry interest—

- (a) at the rate specified in section 17 of the Judgments Act 1838 on the relevant day,
 - (b) until the time when the amount of interest calculated under this Regulation equals the amount of the penalty.
- (3) The relevant day is—
- (a) if there is no appeal under paragraph 5 of Schedule A4 to the 1992 Act then—
 - (i) the date specified in the penalty order; or
 - (ii) in the case of a conditional penalty order, the date specified in a further order the Certification Officer makes in accordance with paragraph 3(3) of Schedule A4 to the 1992 Act;
 - (b) if there is an appeal then the date when the appeal is withdrawn or finally determined.
- (4) The unpaid amount of a penalty and any interest is recoverable—
- (a) in England and Wales on the order of a court, as if payable under a court order,
 - (b) in Scotland, as a civil debt.
- (5) In the case of an appeal under paragraph 5 of Schedule A4 to the 1992 Act the penalty and any interest is not recoverable until the appeal has been withdrawn or finally determined.

Date

Name
Title
Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 256D of, and Schedule A4 to, the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) gives the Certification Officer the power to impose financial penalties where the Certification officer has the power to issue an enforcement order. Such enforcement orders correspond to various failures to comply with statutory obligations by trade unions or employer associations.

These Regulations set out the maximum and minimum financial penalty amounts that may be specified by the Certification Officer in any penalty order, or conditional penalty order, by reference both to the type of enforcement order and, in the case of an organisation, the number of members it has.

The minimum amount that may be specified by the Certification Officer in a penalty order, or conditional penalty order is £200 (regulation 2).

Regulation 3 sets out the maximum amount that the Certification Officer may specify in a penalty order or conditional penalty order. Where an order is made against an organisation, the maximum is set by reference to three different levels. Each different level of maximum penalty corresponds to a specific enforcement order, as assigned by paragraph (1) of that regulation. Consequently, the Certification Officer may specify a maximum financial penalty of:

- a) £20,000 for an organisation that has 100,000 members or more in respect of an enforcement order subject to a maximum penalty at Level 1, or £10,000 in respect of organisation with a membership of less than 100,000 (paragraph (2));
- b) £10,000 for an organisation that has 100,000 members or more in respect of an enforcement order subject to a maximum penalty at Level 2, or £5,000 in respect of organisation with a membership of less than 100,000 (paragraph (3));
- c) £5,000 for an organisation that has 100,000 members or more in respect of an enforcement order subject to a maximum penalty at Level 3, or £2,500 in respect of organisation with a membership of less than 100,000 (paragraph (4)).

Where an order is made against an individual for failure to comply with the Certification Officer’s investigatory requirements, paragraph (6) sets out that the maximum amount that may be specified for a penalty is £1,000.

Regulations 4 provides for interest and recovery of unpaid penalties.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Business, Energy and Industrial Strategy and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.