



Employment Relations Act 2004

2004 CHAPTER 24

PART 5

THE CERTIFICATION OFFICER

48 Striking out by Certification Officer of applications or complaints

After section 256 of the 1992 Act, insert—

“256ZA Striking out

- (1) At any stage of proceedings on an application or complaint made to the Certification Officer, he may—
 - (a) order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,
 - (b) order anything in the application or complaint, or in any response, to be amended or struck out on those grounds, or
 - (c) order the application or complaint, or any response, to be struck out on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or complainant or (as the case may be) respondent has been scandalous, vexatious, or unreasonable.
- (2) The Certification Officer may order an application or complaint made to him to be struck out for excessive delay in proceeding with it.
- (3) An order under this section may be made on the Certification Officer's own initiative and may also be made—
 - (a) if the order sought is to strike out an application or complaint, or to amend or strike out anything in an application or complaint, on an application by the respondent, or

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- (b) if the order sought is to strike out any response, or to amend or strike out anything in any response, on an application by the person who made the application or complaint mentioned in subsection (1).
- (4) Before making an order under this section, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.
- (5) Subsection (4) shall not be taken to require the Certification Officer to send a notice under that subsection if the party against whom it is proposed that the order under this section should be made has been given an opportunity to show cause orally why the order should not be made.
- (6) Nothing in this section prevents the Certification Officer from making further provision under section 256(1) about the striking out of proceedings on any application or complaint made to him.
- (7) An appeal lies to the Employment Appeal Tribunal on any question of law arising from a decision of the Certification Officer under this section.
- (8) In this section—
 - “response” means any response made by a trade union or other body in the exercise of a right to be heard, or to make representations, in response to the application or complaint;
 - “respondent” means any trade union, or other body, that has such a right.”

49 Restriction of proceedings orders: proceedings before Certification Officer

- (1) Section 33 of the Employment Tribunals Act 1996 (c. 17) (restriction of proceedings orders) is amended in accordance with subsections (2) to (7).
- (2) In subsection (1)(a), after “whether”, where it first occurs, insert “before the Certification Officer,”.
- (3) In subsection (1)(b), after “whether” insert “before the Certification Officer,”.
- (4) In subsection (2)(a), after “instituted” insert “before the Certification Officer,”.
- (5) In subsection (2)(b), after “him”, where it first occurs, insert “before the Certification Officer,”.
- (6) In subsection (2)(c), after “proceedings” insert “before the Certification Officer,”.
- (7) In subsection (4)—
 - (a) after “proceedings”, where it first occurs, insert “before the Certification Officer,”; and
 - (b) for “the process of the tribunal in question” substitute “process”.
- (8) In section 42 of that Act (interpretation), in subsection (1), after the definition of “appointed member” insert—
 - ““Certification Officer” shall be construed in accordance with section 254 of the Trade Union and Labour Relations (Consolidation) Act 1992,”.

- (9) In section 256A of the 1992 Act (power of Certification Officer to refuse to entertain applications and complaints made by vexatious litigants), in subsection (4) (definition of “vexatious litigant” for the purposes of that section) omit paragraph (a).

50 Amalgamations: approval, listing and certification

- (1) In section 98 of the 1992 Act (approval of instrument of amalgamation or transfer) for subsection (2) substitute—

“(2) If the Certification Officer is satisfied—

- (a) that an instrument of amalgamation complies with the requirements of any regulations in force under this Chapter, and
- (b) that he is not prevented from approving the instrument of amalgamation by subsection (3),

he shall approve the instrument.

- (3) The Certification Officer shall not approve an instrument of amalgamation if it appears to him that the proposed name of the amalgamated union is the same as the name 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 a trade union or employers' association under the Industrial Relations Act 1971, or
- (c) is for the time being entered in the list of trade unions or in the list of employers' associations,

or if the proposed name is one so nearly resembling any such name as to be likely to deceive the public.

- (4) Subsection (3) does not apply if the proposed name is the name of one of the amalgamating unions.

- (5) If the Certification Officer is satisfied that an instrument of transfer complies with the requirements of any regulations in force under this Chapter, he shall approve the instrument.”

- (2) After section 101 of that Act insert—

“101A Listing and certification after amalgamation

- (1) Subsection (2) applies if when an instrument of amalgamation is registered by the Certification Officer under this Chapter each of the amalgamating unions is entered in the list of trade unions.

(2) The Certification Officer shall—

- (a) enter, with effect from the amalgamation date, the name of the amalgamated union in the list of trade unions, and
- (b) remove, with effect from that date, the names of the amalgamating unions from that list.

- (3) Subsection (4) applies if when an instrument of amalgamation is registered by the Certification Officer under this Chapter each of the amalgamating unions has a certificate of independence which is in force.

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- (4) The Certification Officer shall issue to the amalgamated trade union, with effect from the amalgamation date, a certificate that the union is independent.
- (5) In this section “the amalgamation date” means the date on which the instrument of amalgamation takes effect.

101B Supply of information by amalgamated union

- (1) If an instrument of amalgamation is registered under this Chapter by the Certification Officer and the amalgamated union is entered in the list of trade unions in accordance with section 101A, that union shall send to him, in such manner and form as he may require—
- (a) a copy of the rules of the union,
 - (b) a list of its officers, and
 - (c) the address of its head or main office.
- (2) The information required to be sent under subsection (1) must be accompanied by any fee prescribed for the purpose under section 108.
- (3) The information must be sent—
- (a) before the end of the period of six weeks beginning with the date on which the instrument of amalgamation takes effect, or
 - (b) if the Certification Officer considers that it is not reasonably practicable for the amalgamated union to send it in that period, before the end of such longer period, beginning with that date, as he may specify to the amalgamated union.
- (4) If any of subsections (1) to (3) are not complied with by the amalgamated union, the Certification Officer shall remove its name from the list of trade unions.”
- (3) In section 133(2) of the 1992 Act (modifications of Chapter 7 of Part 1 in its application to amalgamations of unincorporated employers' associations)—
- (a) omit “and” at the end of paragraph (b) and after that paragraph insert—
 - “(ba) as if the references in sections 101A and 101B to the list of trade unions were to the list of employers' associations, and”;
 - and
 - (b) in paragraph (c), after “101(3)” insert “, 101A(3) and (4)”.
- (4) In section 298 of that Act (definitions for the purposes of the Act) at the appropriate place insert—
- ““certificate of independence” means a certificate issued under—
- (a) section 6(6), or
 - (b) section 101A(4);”
- (5) In section 299 of that Act (index of defined terms), at the appropriate place insert—

“certificate of independence

section 298.”

- (6) In each of paragraphs 6, 35(4)(a), 44(4)(a), 60(4), 134(1)(b) and 138 of Schedule A1 to that Act (requirements for union to be independent) for the words “under section 6 that it is independent” substitute “of independence”.

51 Restriction of grounds of appeal from Certification Officer

- (1) In section 9 of the 1992 Act (appeal against decision of Certification Officer relating to the list of trade unions or a certificate of independence)—
- (a) at the end of each of subsections (1) and (2), insert “on any appealable question”;
 - (b) omit subsection (3); and
 - (c) in subsection (4), for “The rights of appeal conferred by this section extend to any question of fact or law” substitute “For the purposes of this section, an appealable question is any question of law”.
- (2) In section 126 of the 1992 Act (appeal against decision of Certification Officer relating to the list of employers' associations)—
- (a) at the end of subsection (1), insert “on any appealable question”;
 - (b) omit subsection (2); and
 - (c) in subsection (3), for “The right of appeal conferred by this section extend to any question of fact or law” substitute “For the purposes of this section, an appealable question is any question of law”.