



**ASLEF's Response to the BEIS Consultation on the Certification  
Officer's enforcement powers – May 2017**

1. The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train driver's union representing approximately 20,000 members in train operating companies and freight companies as well as London Underground and light rail systems.
  
2. ASLEF opposes the new investigative and enforcement powers given to the certification officer by the Trade Union Act and believes they represent an unjustified and disproportionate interference in the democratic processes and affairs of trade unions. They also fall well short of the international standards set by the ILO and may contravene ILO convention 87 and the European Convention on Human Rights. The new regulations put the CO in the position of being complainant, investigator, prosecutor and judge when considering the activities unions. Our view is that this is totally unacceptable and a clear conflict of interest.
  
3. ASLEF believes that trade unions should have been consulted before the introduction of the draft regulations to parliament and that the guidance should state that the CO should only investigate where there is compelling evidence of a case to answer. It is also important that the CO engages with unions at a national level and not regionally. National officials are best placed to ensure the safe and secure use of data.

4. ASLEF strongly opposes any introduction of financial penalties for unions and individuals. Unions are already amongst the most regulated organisations in the UK and face more red tape and bureaucracy than in any other comparable western democracy. No other civil society organisations face such a level of scrutiny. Nonetheless British unions have a strong track record of compliance with a hugely onerous administrative framework. We believe the introduction of new financial penalties is disproportionate and unnecessary.
  
5. British trade unions are not alone in expressing these concerns. The new powers for the CO were scrutinised and criticised by the Committee on the Application of Standards at the ILO Conference in Geneva in June 2016 who explained that the UK government should “define the power of the certification authority in such a way that it will not be in contradiction with the provisions of Convention No. 87 and provide information regarding the status of the proposal to increase the powers of this Authority.”
  
6. In addition, in their report issued on 8 February 2017, the ILO Committee of Experts, which is responsible for assessing government’s compliance with ILO Conventions, expressed “its concern that the Act does appear to significantly expand the investigatory and enforcement powers of the Certification Officer, including in cases where no application has been made. The Committee invites the Government to review the impact of these provisions with the social partners concerned with a view to ensuring that workers’ and employers’ organizations can effectively exercise their rights to organize their administration and activities and formulate their programmes without interference from the public authorities.”
  
7. The changes fundamentally change the role of the CO. Rather than being an officer who adjudicates disputes between unions and members, it instead becomes an enforcement agency. The CO will now be able to investigate unions without a member complaint and at the behest of an

employer, political party or campaign group. ASLEF believes that this opens the door to the possibility of malicious, politically or commercially minded allegations.

8. The powers handed to the CO are unique and have no parallel elsewhere in civil society dispute adjudication. ASLEF does not believe that the inclusion of a full right of appeal to the Employment Appeal Tribunal on issues of the facts and the merits of a case and the reasonableness of the CO's decision are adequate to address these human rights concerns.
9. Notwithstanding our opposition to financial penalties ASLEF believes that, in the event of their introduction, the reduction for smaller unions with membership under 100,000 in membership should be greater than 50%. Many unions are significantly smaller than even 100,000 in membership and therefore would be hit disproportionately by such a penalty, even if it is 50% lower.
10. ASLEF believes that the government has still not made the case for these new powers and believes they represent a political attack on organised labour. If the government is to proceed further along this path, far more dialogue with unions and a greater understanding of how they internally function is required.

Mick Whelan  
General Secretary  
77 St John Street  
London  
EC1M 4NN