



Trade Union Act 1984

1984 CHAPTER 49

PART I

SECRET BALLOTS FOR TRADE UNION ELECTIONS

1 Duty of trade union to hold elections for certain positions

- (1) Subject to the following provisions of this Part of this Act, it shall be the duty of every trade union (notwithstanding anything in its rules) to secure—
 - (a) that every person who is a voting member of the principal executive committee of the union holds that position by virtue of having been elected as such a member at an election in relation to which section 2 of this Act has been satisfied; and
 - (b) that no person remains such a member for a period of more than five years without being re-elected at such an election.
- (2) Where a person is a voting member of the principal executive committee of a trade union by virtue of holding some other position in that union, subsection (1) above shall apply as if references to a voting member of that committee were references to the holder of that other position.
- (3) Where a person—
 - (a) was a voting member of the principal executive committee of a trade union immediately before an election; and
 - (b) is not elected at that election as such a member or, as the case may be, as the holder of a position in the union by virtue of which the holder is such a member;

nothing in this section shall be taken to require the union to prevent him from continuing to be such a member, or continuing to hold that position, at any time before the expiry of such period (not exceeding six months) as may reasonably be required for effect to be given to the result of the election.

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- (4) Any term or condition upon which a person is employed by a trade union shall be disregarded in so far as it would otherwise prevent the union from complying with any provision of this Part.
- (5) In this section " principal executive committee ", in relation to a trade union, means the principal committee of the trade union exercising executive functions, by whatever name it is known.
- (6) Nothing in this Part shall affect the validity of anything done by the principal executive committee of a trade union.
- (7) For the purposes of this section a person is a voting member of the principal executive committee of a trade union if he is entitled in his own right to attend meetings of the committee and to vote on matters on which votes are taken by the committee (whether or not he is entitled to attend all such meetings or to vote on all such matters or in all circumstances).

2 Requirements to be satisfied in relation to elections

- (1) Entitlement to vote at the election must be accorded equally to all members of the trade union in question other than those who belong to a class—
 - (a) which is, or which falls within, one or other of the classes mentioned in subsection (2) below ; and
 - (b) all the members of which are excluded by the rules of the union from voting at the election.
- (2) The classes are—
 - (a) members who are not in employment;
 - (b) members who are in arrears in respect of any subscription or contribution due to the union;
 - (c) members who are apprentices, trainees or students or new members of the union.
- (3) Where the conditions mentioned in subsection (4) below are satisfied, nothing in subsection (1) above shall be taken to prevent a trade union from restricting entitlement to vote at an election to members of the union who fall within—
 - (a) a class determined by reference to any trade or occupation ;
 - (b) a class determined by reference to any geographical area;
 - (c) a class which is by virtue of the rules of the union treated as a separate section within the union ; or
 - (d) a class determined by reference to any combination of the matters mentioned in paragraphs (a), (b) and (c) above.
- (4) The conditions are that—
 - (a) entitlement to vote is restricted by the rules of the union;
 - (b) no member of the union is denied entitlement to vote at all elections held for the purposes of this Part otherwise than by virtue of belonging to a class mentioned in subsection (1) above.
- (5) The method of voting must be by the marking of a voting paper by the person voting.
- (6) Every person who is entitled to vote at the election must—

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- (a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees ; and
 - (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.
- (7) So far as is reasonably practicable, every person who is entitled to vote at the election must—
 - (a) have sent to him, at his proper address and by post, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates; and
 - (b) be given a convenient opportunity to vote by post.
- (8) The ballot shall be conducted so as to secure that—
 - (a) so far as is reasonably practicable, those voting do so in secret;
 - (b) the result of the election is determined solely by counting the number of votes cast directly for each candidate at the election by those voting (nothing in this paragraph being taken to prevent the system of voting used for the election being the single transferable vote); and
 - (c) the votes given at the election are fairly and accurately counted (any inaccuracy in counting being disregarded for the purposes of this paragraph if it is accidental and on a scale which could not affect the result of the election).
- (9) No member of the trade union in question shall be unreasonably excluded from standing as a candidate at the election.
- (10) No candidate at the election shall be required, whether directly or indirectly, to be a member of a political party.
- (11) A member of a trade union shall not be taken to have been unreasonably excluded from standing as a candidate at the election if he has been excluded on the ground that he belongs to a class all the members of which are excluded by the rules of the union.
- (12) For the purposes of subsection (11) above, any rule which provides for a class to be determined by reference to those members which the union chooses to exclude from so standing shall be disregarded.
- (13) A trade union which has overseas members may choose whether or not to accord any of those members entitlement to vote at the election; and nothing in the preceding provisions of this section shall apply in relation to any overseas member or in relation to any vote cast by such a member.
- (14) Nothing in this section shall be taken to require a ballot to be held at an uncontested election.

3 Modification of section 2 requirements

- (1) Where a trade union proposes to hold an election and is satisfied that there are no reasonable grounds for believing that the requirements of section 2 of this Act would not be satisfied in relation to that election if subsection (7) of that section were to apply as modified by this section, it may proceed as if for paragraphs (a) and (b) of subsection (7) there were substituted—
 - “(a) have made available to him—
 - (i) immediately before, immediately after, or during his working hours ; and

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(ii) at his place of work or at a place which is more convenient for him;

or be supplied with, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates ; and

(b) be given—

(i) a convenient opportunity to vote by post (but no other opportunity to vote);

(ii) an opportunity to vote immediately before, immediately after, or during, his working hours and at his place of work or at a place which is more convenient for him (but no other opportunity); or

(iii) as alternatives, both of those opportunities (but no other opportunity).”.

4 Register of members' names and addresses

(1) It shall be the duty of every trade union—

(a) to compile, by the date appointed under section 22(3) of this Act, and thereafter maintain a register of the names and proper addresses of its members ; and

(b) to secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.

(2) The register may be kept by means of a computer.

(3) Any duty falling upon a branch under this section by reason of its being a trade union shall be treated as having been discharged to the extent to which the union of which it is a branch has discharged that duty instead of the branch.

5 Remedy for failure to comply with Part I

(1) Any person who claims that a trade union has failed to comply with one or more of the provisions of this Part may apply to the Certification Officer or to the court for a declaration to that effect if—

(a) in a case where the application relates to an election which has been held, he was a member of the trade union at the date when the election was held and is such a member at the time when the application is made; and

(b) in any other case, he is a member of the union at the time when the application is made.

(2) An application relating to an election which has been held must be made before the expiry of the period of one year beginning with the date on which the result of the election is announced by the trade union.

(3) On an application under this section the Certification Officer or, as the case may be, the court may make or refuse to make the declaration asked for.

(4) A declaration made under this section shall specify the provisions with which the trade union has failed to comply.

(5) Where the court makes such a declaration it shall also make an enforcement order unless it considers that to do so would be inappropriate.

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- (6) In this section " enforcement order " means an order which imposes on the trade union one or more of the requirements mentioned in subsection (7) below.
- (7) The requirements are—
- (a) to secure the holding of such an election as may be specified in the order ;
 - (b) to take such other steps to remedy the declared failure as may be so specified ;
 - (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same, or any similar, kind as that of the declared failure does not arise on the part of the trade union.
- (8) In making an enforcement order which requires the union to hold a fresh election, in any case where the application relates to an election which has been held, the court shall (unless it considers that it would be inappropriate to do so in the particular circumstances of the case) require the fresh election to be conducted—
- (a) in accordance with such provisions as may be made by the order; and
 - (b) with a postal ballot (that is to say, as if section 3 were omitted from this Part).
- (9) An enforcement order under this section which imposes requirements by virtue of paragraph (a) or (b) of subsection (7) above shall be so expressed as to require the trade union to comply with those requirements before the expiry of such period as the court considers appropriate.
- (10) The remedy of any person for a failure of a trade union to comply with one or more of the provisions of this Part shall be by way of application under this section and not otherwise.
- (11) Where an enforcement order has been made, any person who satisfies the requirements of subsection (12) below shall be entitled to enforce obedience to the order as if he had made the application in pursuance of which the order was made.
- (12) The requirements are that—
- (a) he is a member of the union at the time when the proceedings to enforce obedience to the order are begun; and
 - (b) he was such a member at the time when the order was made.
- (13) The court having jurisdiction for the purposes of this section shall be the High Court or, in Scotland, the Court of Session.

6 Proceedings before Certification Officer: supplementary provisions

- (1) Where the Certification Officer makes a declaration under section 5 of this Act and is satisfied that—
- (a) steps have been taken by the union with a view to remedying the declared failure or securing that a failure of the same, or any similar, kind as that of the declared failure does not arise on the part of the union ; or
 - (b) the union has agreed to take such steps ;
- the Certification Officer shall, in making the declaration, specify those steps.
- (2) On an application to him under section 5, the Certification Officer (whether or not he makes a declaration) shall give reasons for his decision in writing ; and any such reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

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- (3) The making of an application to the Certification Officer under section 5 shall not be taken to prevent the applicant, or any other person, from making a subsequent application to the court under that section in respect of the same matter.
- (4) Where such a subsequent application is made, the court shall have due regard to any declaration, reasons or observations of the Certification Officer in the proceedings before him which are brought to the notice of the court in the proceedings before it.
- (5) On an application made to him under section 5, the Certification Officer shall—
 - (a) make such enquiries as he thinks fit; and
 - (b) where he considers it appropriate, give the applicant and the trade union an opportunity to be heard.
- (6) The Certification Officer may regulate the procedure to be followed on applications to him under section 5.
- (7) In exercising his functions under this section the Certification Officer shall ensure, so far as is reasonably practicable, that every application made to him under section 5 is determined within six months.
- (8) Where the Certification Officer requests any person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and shall, unless he considers that in all the circumstances of the case it would be inappropriate to do so, proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

7 Exemption for certain trade unions

- (1) This Part does not apply to any trade union which—
 - (a) falls within section 28(1)(b) of the 1974 Act (unions which consist wholly or mainly of, or of representatives of, constituent or affiliated organisations); and
 - (b) has no members (other than such representatives) who are individuals.
- (2) Subsection (1)(b) above shall not apply where—
 - (a) a trade union has members ("special members") who are individuals but who are not such representatives as are mentioned in subsection (1)(a) above; and
 - (b) the conditions mentioned in subsection (3) below are satisfied.
- (3) The conditions are that—
 - (a) all of the special members are merchant seamen ;
 - (b) a majority of the special members are ordinarily resident outside the United Kingdom.
- (4) This Part does not apply to a trade union at any time when the conditions mentioned in subsection (5) below are satisfied in relation to it.
- (5) The conditions are that—
 - (a) the trade union was formed after the commencement of this Part; and
 - (b) not more than one year has elapsed since its formation.
- (6) In subsection (5) above "formed" includes formed by amalgamation under the 1964 Act.

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- (7) Where a trade union is formed otherwise than by amalgamation under the 1964 Act, the date of its formation shall be taken, for the purposes only of this section, to be the date on which the first members of its principal executive committee are first appointed or, as the case may be, elected to that committee.
- (8) Where one trade union (the "transferring union") has transferred its engagements to another trade union (the "receiving union") then, during the period of one year beginning with the date of the transfer, this Part shall not apply in relation to any person who—
 - (a) was a member of the principal executive committee of the transferring union immediately before the transfer; and
 - (b) became a member of the principal executive committee of the receiving union in accordance with the instrument of transfer.

8 Exemption for certain persons nearing retirement

- (1) Section 1(1)(b) of this Act does not apply to any voting member of the principal executive committee of a trade union at any time when the conditions mentioned in subsection (2) below are satisfied in relation to him.
- (2) The conditions are that—
 - (a) he holds his position as such a member by virtue of having been elected (whether as such a member or as the holder of another position in the union) at an election in relation to which section 2 of this Act has been satisfied;
 - (b) he is—
 - (i) in the case of a person who has been elected as such a member, a full-time employee of the union by virtue of being such a member ; or
 - (ii) in the case of a person who has been elected as the holder of another position in the union by virtue of which he is such a member, a full-time employee of the union by virtue of holding that other position;
 - (c) he will reach retirement age within five years;
 - (d) he is entitled under the rules of the union to continue as the holder of the position in question until retirement age without standing for re-election ;
 - (e) he has been a full-time employee of the union for a period (which need not be continuous) of at least ten years; and
 - (f) the period between the day on which the election referred to in paragraph (a) above took place and the day immediately preceding that on which paragraph (c) above is first satisfied does not exceed five years.
- (3) For the purposes of this section "retirement age", in relation to any person, means the earlier of—
 - (a) the age fixed by, or in accordance with, the rules of the union for him to retire from the position in question; or
 - (b) the age which is for the time being pensionable age for the purpose of the Social Security Act 1975.
- (4) Where the election referred to in paragraph (a) of subsection (2) above was held before the commencement of this Part, that paragraph shall apply as if it did not require section 2 of this Act to be satisfied in relation to that election.

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9 Interpretation of Part I and transitional provision

(1) In this Part—

" the 1964 Act " means the Trade Union (Amalgamations, etc.) Act 1964;

" the 1974 Act " means the Trade Union and Labour Relations Act 1974;

" the Certification Officer " means the officer appointed under section 7 of the Employment Protection Act 1975 ;

" merchant seaman " means a person whose employment, or the greater part of it, is carried out on board seagoing ships;

" offshore worker " means any person in employment to which section 127 of the Employment Protection Act 1975 (employment for purposes of activities in territorial or other offshore waters) applies, other than one who is in such employment in any area where the law of Northern Ireland applies ;

" overseas member ", in relation to a trade union, means a member of the union (other than a merchant seaman or offshore worker) who is outside Great Britain throughout the period during which votes may be cast;

" post " means a postal service which—

(a) is provided by the Post Office or under a licence granted under section 68 of the British Telecommunications Act 1981; or

(b) does not infringe the exclusive privilege conferred on the Post Office by section 66(1) of that Act only by virtue of an order made under section 69 of that Act;

" principal executive committee " has the meaning given in section 1(5) of this Act;

" proper address ", in relation to any member of a trade union, means his home address or any other address which he has requested the union in writing to treat as his postal address ;

" section ", in relation to a trade union, includes any part of the union which is itself a trade union ;

" single transferable vote " means a vote capable of being—

(a) given so as to indicate the voter's order of preference for the candidates ; and

(b) transferred to the next choice—

(i) when it is not required to give a prior choice the necessary quota of votes ; or

(ii) when, owing to the deficiency in the number of votes given for a prior choice, that choice is eliminated from the list of candidates ;

" trade union " has the same meaning as it has in the 1974 Act by virtue of section 28 ;

" voting member " shall be construed in accordance with section 1(7) of this Act; and

" working hours ", in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

(2) For the purposes of this Part, the date on which a contested election is held is, in the case of a ballot in which votes may be cast on more than one day, the last of those days.

(3) Where a voting member of the principal executive committee of a trade union was elected as such a member, or as the case may be as the holder of a relevant position,

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at an election held within the period of five years ending with the commencement of this Part—

- (a) section 1(1)(a) of this Act shall have effect, as if it did not require section 2 of this Act to be satisfied in relation to that election; and
 - (b) the period of five years mentioned in section 1(1)(b) shall be calculated from the date of that election.
- (4) In subsection (3) above "relevant position" means a position in the union by virtue of which the holder is a voting member of the principal executive committee of the union.