



# Employment Act 1988

## 1988 CHAPTER 19

### PART I

#### TRADE UNIONS

##### *Provisions as to ballots and elections*

#### **12 Extension to non-voting positions of duty to hold elections**

- (1) In subsections (1) to (3) of section 1 of the 1984 Act (duty to hold election of voting members of a trade union's principal executive committee), the word "voting", wherever it occurs, shall be omitted; and after subsection (6) of that section there shall be inserted the following subsections—

“(6A) For the purposes of this section a person is a member of the principal executive committee of a trade union if he is a voting member of that union's principal executive committee or, except in the case of a special register body and subject to subsection (6C) below, if—

- (a) that person is, under the rules of the union, a member, other than a voting member, of that committee (whether by virtue of his holding any position in the union or otherwise); or
- (b) that person may, under the rules or practice of the union, attend and speak at some or all of the meetings of that committee 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 committee in carrying out its functions.

(6B) Notwithstanding anything in the rules or practice of any trade union, the persons who hold the following positions in a trade union which is not a special register body shall (if the rules of the union do not otherwise provide for them to be members of the union's principal executive committee) be deemed for the purposes of this section to be members of that committee by virtue of subsection (6A)(b) above, that is to say—

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- (a) the position of president of the union or, in the case of a union with no such position, any equivalent position; and
- (b) the position of general secretary of the union, or in the case of a union with no such position, the position in the union which is the equivalent, or nearest equivalent, to that of general secretary.

(6C) For the purposes of this section where any person who holds in any trade union any such position as is mentioned in paragraph (a) or (b) of subsection (6B) above—

- (a) is, in respect of that position, neither a voting member of the principal executive committee of the union nor 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 up that position; and
- (c) has held neither that position nor any other position so mentioned at any time in the period of twelve months ending with the day before he took up that position,

that position shall not be regarded for the purposes of this section as a position by virtue of holding which that person is a member of that committee or is deemed under that subsection to be such a member.”

(2) Without prejudice to section 7(4) to (8) of the 1984 Act (Part I not to apply to a trade union for a year after its formation), where—

- (a) by virtue of any election (including one held before the coming into force of this subsection) a person is a member of a trade union’s principal executive committee at a time after the coming into force of this subsection when that trade union amalgamates with, or transfers its engagements to, another union under the Trade Union (Amalgamations, etc.) Act 1964;
- (b) under the instrument of amalgamation or transfer, that person becomes a member of the principal executive committee of the trade union formed by the amalgamation or, as the case may be, of the union to which the engagements are transferred (whether by taking up the same position as he held in the amalgamating or transferring union or by taking up any other position); and
- (c) under Part I of the 1984 Act or the following provisions of this section that person would have been entitled, at the time of the amalgamation or transfer, to continue for any period, without being re-elected, to be a member of the principal executive committee mentioned in paragraph (a) above or, as the case may be, to hold the position by virtue of which he was such a member,

Part I of that Act shall not apply in relation to that person to the union formed by the amalgamation or, as the case may be, to the union to which the engagements are transferred until the end of the period mentioned in paragraph (c) above.

(3) Where a person to whom the provisions of section 1 of the 1984 Act are extended by virtue of subsection (1) above was elected as a member of a trade union’s principal executive committee, or to any position in respect of which those provisions are so extended to him, at an election held within the period of five years ending with the coming into force of this section—

- (a) the amendment made by that subsection shall not have the effect of requiring section 2 of that Act (requirements as to elections) to be satisfied in relation to that election; and
- (b) the period of five years mentioned in subsection (1)(b) of the said section 1 shall be calculated in relation to that person from the date of that election.

(4) The reference in subsection (3) above to an election held within the period of five years ending with the coming into force of this section does not include a reference to an election in which the only persons entitled to vote were persons who at the time of the election were members of the principal executive committee of the trade union in question.

(5) Where at the coming into force of this section any person—

- (a) holds any full-time position as an employee of a trade union, being a position in respect of which (but for this subsection) the provisions of section 1 of the 1984 Act would be extended to him by virtue of subsection (1) above;
- (b) is entitled under the rules of the union to hold that position, without any renewal of his contract of employment, until he reaches retirement age;
- (c) will reach retirement age within two years; and
- (d) has been a full-time employee of the union for a period (which need not be continuous) of at least ten years,

then the amendment made by that subsection shall not have the effect of extending those provisions to that person in respect of that position except in so far as he continues to hold it after reaching retirement age.

(6) In this section—

“principal executive committee” has the same meaning as in Part I of the 1984 Act; and

“retirement age” has the same meaning as in section 8 of that Act;

and references in this section to a person being a member of a trade union’s principal executive committee shall be construed, including in relation to a time before the coming into force of this section, in accordance with section 1 of the 1984 Act, as amended by this section.

### **13 Election addresses**

(1) The requirements which are to be satisfied for the purposes of Part I of the 1984 Act (elections for certain positions) shall, in relation to any election held after the coming into force of this section, include the requirements of subsection (2) below.

(2) The trade union in question must—

- (a) subject to subsection (3) below, provide every candidate in the election with an opportunity of preparing an election address in his own words and of submitting it to the union to be distributed to the persons who are accorded entitlement to vote in the election;
- (b) so far as reasonably practicable, secure that copies of every election address submitted to the union before such time as it may have determined are distributed by the sending of a copy of each such address, with the voting paper for the election, by post to each of those persons at his proper address;
- (c) make such arrangements for the production of the copies to be so distributed as secure that none of the candidates is required to bear any of the expense of producing those copies;
- (d) secure that no modification of any election address so submitted is made by any person in any copy of the address to be distributed except, subject to paragraphs (e) and (f) below, at the request or with the consent of the candidate or where the modification is necessarily incidental to the method adopted for producing that copy;

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- (e) secure that the same method of producing copies is applied in the same way to every election address so submitted and, so far as reasonably practicable, that no such facility or information as would enable a candidate to gain any benefit from—
    - (i) the method by which copies of the election addresses are produced; or
    - (ii) the modifications which are necessarily incidental to that method,
 is provided to any candidate without being provided equally to all the others; and
  - (f) so far as reasonably practicable, secure that the same facilities and restrictions with respect to the preparation, submission, length or modification of an election address and with respect to the incorporation in any such address of a photograph or of any other matter not in words are provided or applied equally to each of the candidates.
- (3) Subject to subsection (2)(f) above, a trade union may for the purposes of this section provide that election addresses submitted to it for distribution—
- (a) must not exceed such length, not being less than one hundred words, as may be determined by the union; and
  - (b) may incorporate only such photographs and other matter not in words as the union may determine.
- (4) A time determined for the purposes of subsection (2) above as the time by which election addresses for an election must be submitted to the union shall be no earlier than the latest time at which a person may become a candidate in that election.
- (5) No person other than the candidate himself shall be subject to any civil or criminal liability in respect of any publication of a candidate’s election address, or of any copy of such an address, which is required to be made for the purposes of this section.
- (6) In this section “post” and “proper address” have the same meanings as in Part I of the 1984 Act.

#### **14 Requirement of postal ballot for certain ballots and elections**

- (1) In section 4 of the 1913 Act (approval of rules for ballots to be taken on the application of trade union funds for political purposes), for subsection (1D) (which allows for non-postal ballots) there shall be substituted the following subsection—

“(1D) So far as is reasonably practicable every person who is entitled to vote in the ballot must—

- (a) have a voting paper sent to him by post at his home address or any other address which he has requested the trade union in writing to treat as his postal address; and
- (b) be given a convenient opportunity to vote by post.”;

and the approval which is required under the said section 4 to be given in relation to any ballot taken after the coming into force of this subsection shall be an approval given after the coming into force of this subsection.

- (2) Section 3 of the 1984 Act (which allows for non-postal ballots in the elections required to be held for certain union positions) shall cease to have effect.

## **15 Independent scrutiny of certain ballots and elections**

- (1) In relation to ballots taken and elections held after the coming into force of this section—
- (a) the requirements as to which the Certification Officer is to be satisfied under subsection (1) of section 4 of the 1913 Act (ballots on the application of funds for political purposes); and
  - (b) the requirements which are to be satisfied for the purposes of Part I of the 1984 Act (elections for certain positions),
- shall include the requirements of subsections (2) to (7) below.
- (2) The trade union in question—
- (a) must, before the ballot is taken or the election held, appoint a qualified independent person (“the scrutineer”) to carry out—
    - (i) the functions in relation to the ballot or election which are required under subsection (4) below to be contained in the scrutineer’s appointment; and
    - (ii) such additional functions in relation to that ballot or election as may be specified in his appointment;
  - (b) must ensure that nothing in the terms of the scrutineer’s appointment, or in any additional functions specified in that appointment, is such as to make it reasonable for any person to call the scrutineer’s independence in relation to the union into question;
  - (c) must ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer’s independence in relation to the union into question; and
  - (d) must comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.
- (3) For the purposes of this section a person is a qualified independent person in relation to a ballot or election if—
- (a) he satisfies such conditions as may be specified for the purposes of this paragraph in an order made by the Secretary of State or is himself so specified; and
  - (b) the trade union in question has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot or election otherwise than competently or that his independence in relation to the union, or in relation to the ballot or election, might reasonably be called into question;
- and the power to make an order under paragraph (a) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) An appointment for the purposes of this section shall require the scrutineer—
- (a) to be the person who supervises the production and distribution, for the purposes of the ballot or election, of all the voting papers and the person to whom those voting papers are returned by those voting;
  - (b) to take such steps as appear to him to be appropriate for the purpose of enabling him to make the report mentioned in subsection (5) below;
  - (c) as soon as reasonably practicable after the last date for the return of voting papers, to make that report to the trade union in question; and

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- (d) to retain custody of all voting papers returned for the purposes of the ballot or election—
  - (i) until the end of the period of one year beginning with the announcement by the union of the result of the ballot or election; and
  - (ii) where within that year any application is made under section 16 below or section 5 of the 1984 Act with respect to that ballot or election, for the period after the end of that year until the Certification Officer or the court authorises the disposal of the papers.
- (5) The report referred to in subsection (4) above is a report with respect to the ballot or election stating—
  - (a) the number of voting papers distributed for the purposes of the ballot or election;
  - (b) the number of voting papers returned to the scrutineer;
  - (c) the number of valid votes cast in the ballot or election for each proposition or candidate;
  - (d) the number of spoiled or otherwise invalid voting papers returned;
  - (e) whether the scrutineer is satisfied as to each of the matters specified in subsection (6) below; and
  - (f) if he is not satisfied as to any of those matters, the particulars of his reasons for not being satisfied as to that matter.
- (6) The matters mentioned in subsection (5)(e) above are—
  - (a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the ballot or election;
  - (b) that the arrangements made with respect to the production, storage, distribution, return or other handling of the voting papers used in the ballot or election, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur; and
  - (c) that the scrutineer has been able to carry out his functions without any such interference as is mentioned in subsection (2)(c) above.
- (7) The trade union in question must not publish the result of the ballot or election until it has received such a report as is mentioned in subsection (5) above from the scrutineer; and the union must—
  - (a) within the period of three months after it receives the report—
    - (i) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
    - (ii) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention;
  - (b) ensure that any copy sent or notification given for the purposes of paragraph (a) above is accompanied by a statement that the union will, on request, supply any member of the union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification; and
  - (c) so supply any member of the union who makes a request to the union to be supplied and pays such fee (if any) as has been notified to him.

- (8) Section 6A of the 1913 Act (application of sections 3 to 6 of that Act to employers' associations) shall apply to the provisions of this section, in so far as they relate to the requirements mentioned in subsection (1)(a) above, as it applies to sections 3 to 6 of, and the Schedule to, that Act.

## **16 Remedy with respect to ballot on use of funds for political purposes**

- (1) A person who claims—
- (a) that any ballot for the purposes of the 1913 Act (which relates to ballots on the use of funds for political purposes) has been taken otherwise than in accordance with rules approved for the purpose by the Certification Officer under section 4 of that Act; or
  - (b) that there has been a failure, in relation to any proposed ballot for those purposes, to comply with any rules approved under that section in relation to that proposed ballot,
- may apply to the Certification Officer or to the court for a declaration that the ballot has been so taken or that there has been such a failure.
- (2) A person shall not make an application under subsection (1) above unless he is a member of the trade union in question at the time of the application and, in the case of an application by virtue of paragraph (a) of that subsection, was such a member at the time when the ballot was taken.
- (3) An application under subsection (1) above in respect of any ballot shall not be made at any time after the end of the period of one year beginning with the day on which the result of the ballot is announced by the trade union in question.
- (4) The provisions of subsections (3) to (13) of section 5 of the 1984 Act and the provisions of section 6 of that Act (which relate to an application with respect to a failure by a trade union to comply with the requirements of that Act in relation to an election) shall apply in relation to an application under subsection (1) above as they apply in relation to an application under the said section 5, but with the necessary modifications, that is to say, as if—
- (a) for any reference to an election there were substituted a reference to a ballot for the purposes of the 1913 Act;
  - (b) for the reference in subsection (8) of the said section 5 to section 2 of the 1984 Act there were substituted a reference to rules approved under section 4 of the 1913 Act; and
  - (c) for the reference in subsection (10) of the said section 5 to the remedy for a failure to comply with one or more of the provisions of Part I of the 1984 Act or, in relation to an election, with one or more of the provisions of sections 13 and 15 above there were substituted a reference to the remedy—
    - (i) for the taking of a ballot for the purposes of the 1913 Act otherwise than in accordance with rules approved under the said section 4; or
    - (ii) for a failure, in relation to any proposed ballot for those purposes, to comply with rules so approved.
- (5) Section 6A of the 1913 Act (application of sections 3 to 6 of that Act to employers' associations) shall apply to this section as it applies to sections 3 to 6 of, and the Schedule to, that Act.

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## 17 **Ballots on industrial action affecting different places of work**

(1) After subsection (1) of section 11 of the 1984 Act (requirements as to ballots with respect to industrial action) there shall be inserted the following subsections—

“(1A) Subject to subsection (1B) below, where the members who it is reasonable at the time of the ballot for the union to believe will be induced as mentioned in subsection (1) above have different places of work—

- (a) a separate ballot in relation to which the requirements of this section are satisfied must be held for each place of work (instead of one ballot of all those members); and
- (b) subsection (1) above shall have effect so as to require entitlement to vote in the ballot held for each place of work to be accorded to such of those members as the union reasonably believes to be members having that place as their place of work, and to no other persons.

(1B) Subsection (1A) above shall not apply in relation to a ballot if at the time of the ballot it is reasonable for the trade union to believe and it does believe—

- (a) that all the members who are accorded entitlement to vote in the ballot have the same place of work;
- (b) that there is, in relation to each of the members of the union who is accorded entitlement to vote in the ballot, some factor (whether or not the same factor) which—
  - (i) relates to the terms or conditions of that member’s employment or to the occupational description which is applicable to that member in his employment;
  - (ii) is a factor which that member has in common with one or more of the other members of the union who are accorded that entitlement; and
  - (iii) in a case where there are individuals employed by the same employer as that member who are members of the union but are not accorded that entitlement, is neither a factor which that member has in common with any of those individuals nor a factor which individuals employed by that employer have in common as a consequence of having the same place of work;

or

- (c) that the condition specified in paragraph (b) above would be satisfied if any overseas members accorded entitlement to vote in the ballot were disregarded.”

(2) Accordingly, after subsection (3) of section 10 of that Act (conditions to be fulfilled for act to be treated as with the support of a ballot) there shall be inserted the following subsection—

“(3A) Where—

- (a) any person has been induced by an act to break his contract of employment or to interfere with its performance; and
- (b) separate ballots have been held by virtue of section 11(1A) of this Act in relation to the strike or industrial action in the course of which that act has induced the breach or interference,

then subsection (3) above shall be construed, in relation to the inducement of that breach or interference, as making provision which, in the case of



paragraph (b) of that subsection, requires only that the majority voting in the ballot for that person’s place of work have answered “Yes” to the appropriate question and, in the case of paragraphs (c) and (d), does not impose any requirements in relation to any other ballot.”

- (3) In subsection (5) of section 10 of that Act (interpretation of Part II), after the definition of “the date of the ballot” there shall be inserted the following definition—

““place of work”, in relation to any person who is employed, means the premises occupied by his employer at or from which that person works or, where he does not work at or from any such premises or works at or from more than one set of premises, the premises occupied by his employer with which his employment has the closest connection;”.

## **18 Codes of practice as to ballots and elections**

- (1) In subsection (1) of section 3 of the Employment Act 1980 (codes of practice for the purpose of promoting the improvement of industrial relations), at the end there shall be inserted the words “or of promoting what appear to him to be desirable practices in relation to the conduct by trade unions of ballots and elections.”

- (2) After subsection (8) of that section there shall be inserted the following subsection—

“(9) In this section “trade union” has the same meaning as in the 1974 Act.”