



Trade Union Reform and Employment Rights Act 1993

1993 CHAPTER 19

PART I

TRADE UNIONS ETC.

Union elections and ballots

1 Election scrutineer to check register

(1) In the Trade Union and Labour Relations (Consolidation) Act 1992 (referred to in this Act as “the 1992 Act”), in section 49 (appointment of independent scrutineer for election)—

(a) after paragraph (a) of subsection (3) (terms of appointment of scrutineer) there shall be inserted—

“(aa) to—

(i) inspect the register of names and addresses of the members of the trade union, or

(ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with subsection (5A)(a),

whenever it appears to him appropriate to do so and, in particular, when the conditions specified in subsection (3A) are satisfied;”

(b) in paragraph (d) (scrutineer to retain custody of voting papers) of that subsection, after the words “purposes of the election” there shall be inserted the words “and the copy of the register supplied to him in accordance with subsection (5A)(a)” and after the words “of the papers” there shall be inserted the words “or copy”,

(c) after that subsection there shall be inserted—

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“(3A) The conditions referred to in subsection (3)(aa) are—

- (a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union or candidate who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and
- (b) that the scrutineer does not consider that the suspicion of the member or candidate is ill-founded.

(3B) In subsection (3A) “the appropriate period” means the period—

- (a) beginning with the first day on which a person may become a candidate in the election or, if later, the day on which the scrutineer is appointed, and
- (b) ending with the day before the day on which the scrutineer makes his report to the trade union.

(3C) The duty of confidentiality as respects the register is incorporated in the scrutineer’s appointment.”,

(d) after subsection (5) there shall be inserted—

“(5A) The trade union shall—

- (a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and
- (b) comply with any request made by the scrutineer to inspect the register.

(5B) Where the register is kept by means of a computer the duty imposed on the trade union by subsection (5A)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.”, and

(e) after subsection (7) there shall be inserted—

“(8) In this section “the relevant date” means—

- (a) where the trade union has rules determining who is entitled to vote in the election by reference to membership on a particular date, that date, and
- (b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the election.”.

(2) In section 52 of the 1992 Act (scrutineer’s report on election), after subsection (2) there shall be inserted—

“(2A) The report shall also state—

- (a) whether the scrutineer—
 - (i) has inspected the register of names and addresses of the members of the trade union, or
 - (ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with section 49(5A) (a),

- (b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or candidate or at his own instance,
 - (c) whether he declined to act on any such request, and
 - (d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date,
- but shall not state the name of any member or candidate who has requested such an inspection or examination.”

2 Counting of election votes etc. by independent person

- (1) After section 51 of the 1992 Act there shall be inserted—

“51A Counting of votes etc. by independent person

- (1) The trade union shall ensure that—
- (a) the storage and distribution of the voting papers for the purposes of the election, and
 - (b) the counting of the votes cast in the election,
- are undertaken by one or more independent persons appointed by the union.
- (2) A person is an independent person in relation to an election if—
- (a) he is the scrutineer, or
 - (b) he is a person other than the scrutineer and the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the election otherwise than competently or that his independence in relation to the union, or in relation to the election, might reasonably be called into question.
- (3) An appointment under this section shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any enactment or the occurrence of any unfairness or malpractice.
- (4) The duty of confidentiality as respects the register is incorporated in an appointment under this section.
- (5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.
- (6) The trade union—
- (a) shall ensure that nothing in the terms of an appointment under this section is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,
 - (b) shall ensure that a person appointed under this section 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

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into question the independence of the person appointed in relation to the union, and

- (c) shall comply with all reasonable requests made by a person appointed under this section for the purposes of, or in connection with, the carrying out of his functions.”.

(2) In section 52 of the 1992 Act (scrutineer’s report on election)—

- (a) in subsection (1), after paragraph (d) there shall be inserted “, and
 - (e) the name of the person (or of each of the persons) appointed under section 51A or, if no person was so appointed, that fact.”,
- (b) in subsection (2)(b), after the word “made” there shall be inserted “(whether by him or any other person)”, and
- (c) after subsection (2A) (which is inserted by section 1 above) there shall be inserted—

“(2B) Where one or more persons other than the scrutineer are appointed under section 51A, the statement included in the scrutineer’s report in accordance with subsection (2)(b) shall also indicate—

- (a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and
- (b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.”.

3 Political fund ballots

Schedule 1 to this Act (which makes in relation to political fund ballots provision corresponding to that made in relation to elections by sections 1 and 2 above) shall have effect.

4 Ballots for union amalgamations and transfers of engagements

For section 100 of the 1992 Act (requirement of resolution to approve instrument of amalgamation or transfer) there shall be substituted—

“100 Requirement of ballot on resolution

- (1) A resolution approving the instrument of amalgamation or transfer must be passed on a ballot of the members of the trade union held in accordance with sections 100A to 100E.
- (2) A simple majority of those voting is sufficient to pass such a resolution unless the rules of the trade union expressly require it to be approved by a greater majority or by a specified proportion of the members of the union.

100A Appointment of independent scrutineer

- (1) The trade union shall, before the ballot is held, appoint a qualified independent person (“the scrutineer”) to carry out—
 - (a) the functions in relation to the ballot which are required under this section to be contained in his appointment; and

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- (b) such additional functions in relation to the ballot as may be specified in his appointment.
- (2) A person is a qualified independent person in relation to a ballot if—
- (a) he satisfies such conditions as may be specified for the purposes of this section by order of the Secretary of State or is himself so specified; and
 - (b) the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

An order under paragraph (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (3) The scrutineer’s appointment shall require him—
- (a) to be the person who supervises the production of the voting papers and (unless he is appointed under section 100D to undertake the distribution of the voting papers) their distribution and to whom the voting papers are returned by those voting;
 - (b) to—
 - (i) inspect the register of names and addresses of the members of the trade union, or
 - (ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with subsection (9)(a), whenever it appears to him appropriate to do so and, in particular, when the conditions specified in subsection (4) are satisfied;
 - (c) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see section 100E);
 - (d) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and
 - (e) to retain custody of all voting papers returned for the purposes of the ballot and the copy of the register supplied to him in accordance with subsection (9)(a)—
 - (i) until the end of the period of one year beginning with the announcement by the union of the result of the ballot; and
 - (ii) if within that period a complaint is made under section 103 (complaint as regards passing of resolution), until the Certification Officer or Employment Appeal Tribunal authorises him to dispose of the papers or copy.
- (4) The conditions referred to in subsection (3)(b) are—
- (a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and
 - (b) that the scrutineer does not consider that the member’s suspicion is ill-founded.
- (5) In subsection (4) “the appropriate period” means the period—
- (a) beginning with the day on which the scrutineer is appointed, and

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- (b) ending with the day before the day on which the scrutineer makes his report to the trade union.
- (6) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.
- (7) The trade union shall ensure that nothing in the terms of the scrutineer's appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer's independence in relation to the union into question.
- (8) The trade union shall, before the scrutineer begins to carry out his functions, either—
 - (a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or
 - (b) take all such other steps for notifying members of the name of the scrutineer 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.
- (9) The trade union shall—
 - (a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and
 - (b) comply with any request made by the scrutineer to inspect the register.
- (10) Where the register is kept by means of a computer the duty imposed on the trade union by subsection (9)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.
- (11) The trade union shall 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.
- (12) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.
- (13) In this section "the relevant date" means—
 - (a) where the trade union has rules determining who is entitled to vote in the ballot by reference to membership on a particular date, that date, and
 - (b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the ballot.

100B Entitlement to vote

Entitlement to vote in the ballot shall be accorded equally to all members of the trade union.

100C Voting

- (1) The method of voting must be by the marking of a voting paper by the person voting.
- (2) Each voting paper must—
 - (a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned, and
 - (b) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot, and
 - (c) be marked with its number.
- (3) Every person who is entitled to vote in the ballot must—
 - (a) be allowed to vote without interference or constraint, and
 - (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.
- (4) 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 another 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.
- (5) No voting paper which is sent to a person for voting shall have enclosed with it any other document except—
 - (a) the notice which, under section 99(1), is to accompany the voting paper,
 - (b) an addressed envelope, and
 - (c) a document containing instructions for the return of the voting paper, without any other statement.
- (6) The ballot shall be conducted so as to secure that—
 - (a) so far as is reasonably practicable, those voting do so in secret, and
 - (b) the votes given in the ballot are fairly and accurately counted.

For the purposes of paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the ballot.

100D Counting of votes etc. by independent person

- (1) The trade union shall ensure that—
 - (a) the storage and distribution of the voting papers for the purposes of the ballot, and
 - (b) the counting of the votes cast in the ballot,are undertaken by one or more independent persons appointed by the trade union.
- (2) A person is an independent person in relation to a ballot if—
 - (a) he is the scrutineer, or

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- (b) he is a person other than the scrutineer and the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.
- (3) An appointment under this section shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any enactment or the occurrence of any unfairness or malpractice.
- (4) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.
- (5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.
- (6) The trade union—
 - (a) shall ensure that nothing in the terms of an appointment under this section is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,
 - (b) shall ensure that a person appointed under this section 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 into question the independence of the person appointed in relation to the union, and
 - (c) shall comply with all reasonable requests made by a person appointed under this section for the purposes of, or in connection with, the carrying out of his functions.

100E Scrutineer's report

- (1) The scrutineer's report on the ballot shall state—
 - (a) the number of voting papers distributed for the purposes of the ballot,
 - (b) the number of voting papers returned to the scrutineer,
 - (c) the number of valid votes cast in the ballot for and against the resolution,
 - (d) the number of spoiled or otherwise invalid voting papers returned, and
 - (e) the name of the person (or of each of the persons) appointed under section 100D or, if no person was so appointed, that fact.
- (2) The report shall also state whether the scrutineer is satisfied—
 - (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,
 - (b) that the arrangements made (whether by him or any other person) with respect to the production, storage, distribution, return or other handling of the voting papers used in the ballot, and the arrangements for the counting of the votes, included all such security arrangements as were

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reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and

- (c) that he has been able to carry out his functions without any such interference as would make it reasonable for any person to call his independence in relation to the union into question;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.

- (3) The report shall also state—

- (a) whether the scrutineer—
 - (i) has inspected the register of names and addresses of the members of the trade union, or
 - (ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with section 100A(9)
 - (a),
- (b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or at his own instance,
- (c) whether he declined to act on any such request, and
- (d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date,

but shall not state the name of any member who has requested such an inspection or examination.

- (4) Where one or more persons other than the scrutineer are appointed under section 100D, the statement included in the scrutineer's report in accordance with subsection (2)(b) shall also indicate—

- (a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and
- (b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.

- (5) The trade union shall not publish the result of the ballot until it has received the scrutineer's report.

- (6) The trade union shall within the period of three months after it receives the report—

- (a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
- (b) 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.

- (7) Any such copy or notification shall be accompanied by a statement that the union will, on request, supply any member of the trade 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.

- (8) The trade union shall so supply any member of the union who makes such a request and pays the fee (if any) notified to him.”.

5 Ballots for union amalgamations and transfers of engagements: notice not to include influential material

In section 99 of the 1992 Act (notice relating to proposed amalgamation or transfer), after subsection (3), there shall be inserted—

- “(3A) The notice shall not contain any statement making a recommendation or expressing an opinion about the proposed amalgamation or transfer.”.

6 Confidentiality of trade union’s register of members’ names and addresses

After section 24 of the 1992 Act there shall be inserted—

“24A Securing confidentiality of register during ballots

- (1) This section applies in relation to a ballot of the members of a trade union on—
- (a) an election under Chapter IV for a position to which that Chapter applies,
 - (b) a political resolution under Chapter VI, and
 - (c) a resolution to approve an instrument of amalgamation or transfer under Chapter VII.

- (2) Where this section applies in relation to a ballot the trade union shall impose the duty of confidentiality in relation to the register of members’ names and addresses on the scrutineer appointed by the union for the purposes of the ballot and on any person appointed by the union as the independent person for the purposes of the ballot.

- (3) The duty of confidentiality in relation to the register of members’ names and addresses is, when imposed on a scrutineer or on an independent person, a duty—

- (a) not to disclose any name or address in the register except in permitted circumstances; and
- (b) to take all reasonable steps to secure that there is no disclosure of any such name or address by any other person except in permitted circumstances;

and any reference in this Act to “the duty of confidentiality” is a reference to the duty prescribed in this subsection.

- (4) The circumstances in which disclosure of a member’s name and address is permitted are—

- (a) where the member consents;
- (b) where it is requested by the Certification Officer for the purposes of the discharge of any of his functions or it is required for the purposes of the discharge of any of the functions of an inspector appointed by him;
- (c) where it is required for the purposes of the discharge of any of the functions of the scrutineer or independent person, as the case may be, under the terms of his appointment;

(d) where it is required for the purposes of the investigation of crime or of criminal proceedings.

(5) Any provision of this Part which incorporates the duty of confidentiality as respects the register into the appointment of a scrutineer or an independent person has the effect of imposing that duty on the scrutineer or independent person as a duty owed by him to the trade union.

(6) The remedy for failure to comply with the requirements of this section is by way of application under section 25 (to the Certification Officer) or section 26 (to the court).

The making of an application to the Certification Officer does not prevent the applicant, or any other person, from making an application to the court in respect of the same matter.”.

7 Ballots: repeal of provisions for financial assistance and use of employers' premises

(1) Sections 115 and 116 of the 1992 Act (financial assistance towards expenditure on certain ballots and obligations of employers to make premises available) shall cease to have effect.

(2) No application under regulations under section 115 (whether made before or after its repeal) shall be entertained by the Certification Officer in relation to expenditure in respect of a ballot if the date of the ballot falls after 31 March 1996 or in respect of arrangements to hold a ballot which is not proceeded with if the date of the ballot would have fallen after that date; but, for the purposes of applications made after (as well as before) the repeal in relation to expenditure not excluded by this subsection, the regulations shall continue in force notwithstanding the repeal.

(3) In subsection (2) above, the “date of the ballot” means, in the case of a ballot in which votes may be cast on more than one day, the last of those days.

(4) Subsection (1) above shall come into force on 1 April 1996.