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Trade Union and Labour Relations (Consolidation) Act 1992

1992 CHAPTER 52

PART I

TRADE UNIONS

CHAPTER VI

APPLICATION OF FUNDS FOR POLITICAL OBJECTS

Political resolution

73 Passing and effect of political resolution.

- (1) A political resolution must be passed by a majority of those voting on a ballot of the members of the trade union held in accordance with this Chapter.
- (2) A political resolution so passed shall take effect as if it were a rule of the union and may be rescinded in the same manner and subject to the same provisions as such a rule.
- (3) If not previously rescinded, a political resolution shall cease to have effect at the end of the period of ten years beginning with the date of the ballot on which it was passed.
- (4) Where before the end of that period a ballot is held on a new political resolution, then—
 - (a) if the new resolution is passed, the old resolution shall be treated as rescinded, and
 - (b) if it is not passed, the old resolution shall cease to have effect at the end of the period of two weeks beginning with the date of the ballot.

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74 Approval of political ballot rules.

- (1) A ballot on a political resolution must be held in accordance with rules of the trade union (its “political ballot rules”) approved by the Certification Officer.
- (2) Fresh approval is required for the purposes of each ballot which it is proposed to hold, notwithstanding that the rules have been approved for the purposes of an earlier ballot.
- (3) The Certification Officer shall not approve a union’s political ballot rules unless he is satisfied that the requirements set out in—
 - section 75 (appointment of independent scrutineer),
 - section 76 (entitlement to vote),
 - section 77 (voting),^{F1} . . .^{F2} section 77A (counting of votes etc. by independent person), and]
 - section 78 (scrutineer’s report),
 would be satisfied in relation to a ballot held by the union in accordance with the rules.

Textual Amendments

- F1** Word in s. 74(3) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F2** Words in s. 74(3) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para.1**; S.I. 1993/1908, art. 2(1), **Sch.1**

75 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
 - (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 [^{F3}of the voting papers and (unless he is appointed under section 77A to undertake the distribution of the voting papers) their distribution] and to whom the voting papers are returned by those voting;
 - ^{F4}(aa) to—

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- (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) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see section 78);
 - (c) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and
 - (d) to retain custody of all voting papers returned for the purposes of the ballot [^{F5}and the copy of the register supplied to him in accordance with subsection (5A)(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 an application is made under section 79 (complaint of failure to comply with ballot rules), until the Certification Officer or the court authorises him to dispose of the papers [^{F6}or copy].
- [^{F7}(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 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.
- (3B) In subsection (3A) “the appropriate period” means the period—
- (a) beginning with 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.]
- (4) 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.
 - (5) 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.
- [^{F8}(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

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(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.]

(6) 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.

(7) 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.

[^{F9}(8) 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.]

Textual Amendments

F3 Words in s. 75(3)(a) substituted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F4 S. 75(3)(aa) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F5 Words in s. 75(3)(d) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(c)(i)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F6 Words in s. 75(3)(d)(ii) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(c)(ii)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F7 S. 75(3A)-(3C) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(d)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F8 S. 75(5A)(5B) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(e)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F9 S. 75(8) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(f)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

76 Entitlement to vote.

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

77 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

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- (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 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.
- (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) 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.

[^{F10}77A 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 union.
- (2) A person is an independent person in relation to a ballot 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 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 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,

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- (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.]

Textual Amendments

F10 S. 77A inserted (30.8.1993) by 1993 c. 19, s. 3, Sch. 1 para.3; S.I. 1993/1908, art. 2(1), Sch. 1

78 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,^{F11} . . .
 - (d) the number of spoiled or otherwise invalid voting papers returned [^{F12}and.
 - (e) the name of the person (or of each of the persons) appointed under section 77A 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 [^{F13}(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 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 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.

[^{F14}(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 75(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 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

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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.

- (2B) Where one or more persons other than the scrutineer are appointed under section 77A, 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) The trade union shall not publish the result of the ballot until it has received the scrutineer's report.
- (4) 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.
- (5) Any such copy or notification shall be 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.
- (6) 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.

Textual Amendments

- F11** Word in s. 78(1)(c) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F12** S.78(1)(e) and word preceding it inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 4(a)**; S.I. 1993/1908, art. 2(1), **Sch.1**
- F13** Words in s. 78(2)(b) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 4(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F14** S. 78(2A)(2B) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 4(c)**; S.I. 1993/1908, art. 2(1), **Sch.1**

79 Remedy for failure to comply with ballot rules: general.

- (1) The remedy for—
- (a) the taking by a trade union of a ballot on a political resolution otherwise than in accordance with political ballot rules approved by the Certification Officer, or
 - (b) the failure of a trade union, in relation to a proposed ballot on a political resolution, to comply with the political ballot rules so approved,
- is by way of application under section 80 (to the Certification Officer) or 81 (to the court).

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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.

- (2) An application under those sections may be made only by a person who is a member of the trade union and, where the ballot has been held, was a member at the time when it was held.

References in those sections to a person having a sufficient interest are to such a person.

- (3) No such application may be made after the end of the period of one year beginning with the day on which the union announced the result of the ballot.

80 Application to Certification Officer.

- (1) A person having a sufficient interest (see section 79(2)) who claims that a trade union—

- (a) has held a ballot on a political resolution otherwise than in accordance with political ballot rules approved by the Certification Officer, or
- (b) has failed in relation to a proposed ballot on a political resolution to comply with political ballot rules so approved,

may apply to the Certification Officer for a declaration to that effect.

- (2) On an application being made to him, 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,

and may make or refuse the declaration asked for.

- (3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.

- (4) Where he makes a declaration and is satisfied that 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 does not occur in future, or that the union has agreed to take such steps, he shall in making the declaration specify those steps.

- (5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

- (6) In exercising his functions under this section the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.

- (7) Where he requests a 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 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.

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81 Application to court.

- (1) A person having a sufficient interest (see section 79(2)) who claims that a trade union—
 - (a) has held a ballot on a political resolution otherwise than in accordance with political ballot rules approved by the Certification Officer, or
 - (b) has failed in relation to a proposed ballot on a political resolution to comply with political ballot rules so approved,may apply to the court for a declaration to that effect.
- (2) If an application in respect of the same matter has been made to the Certification Officer, the court shall have due regard to any declaration, reasons or observations of his which are brought to its notice.
- (3) If the court makes the declaration asked for, it shall specify in the declaration the provisions with which the trade union has failed to comply.
- (4) Where the court makes a declaration it shall also, unless it considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—
 - (a) to secure the holding of a ballot in accordance with the order;
 - (b) to take such other steps to remedy the declared failure as may be specified in the order;
 - (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.The court shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union must comply with the requirements of the order.
- (5) Where the court makes an order requiring the union to hold a fresh ballot, the court shall (unless it considers that it would be inappropriate to do so in the particular circumstances of the case) require the ballot to be conducted in accordance with the union's political ballot rules and such other provisions as may be made by the order.
- (6) Where an enforcement order has been made, any person who is a member of the union and was a member at the time the order was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.
- (7) Without prejudice to any other power of the court, the court may on an application under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.

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