



Department for
Business, Energy
& Industrial Strategy

TRADE UNION POLITICAL FUNDS

A guide for trade unions, their members and others



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Introduction

A trade union (“union”) wishing to spend money on party political activities must set up a separate political fund for financing any such expenditure. Trade unions must comply with the statutory requirements set out in the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) as amended by the Trade Union Act 2016 (“the 2016 Act”) in setting up and running such funds and union members have certain rights in relation to these requirements.

In particular, no member is obliged to contribute to a union's political fund should they not wish to do so.

The provisions of the legislation on political funds apply to unincorporated employers' associations as well as trade unions. However for the sake of simplicity this document refers throughout to trade unions only. This document gives general guidance only and is not a substitute for professional legal advice. Authoritative interpretations of the law can only be given by the courts.

Changes made by the 2016 Act to trade union political funds

The amendments made to the 1992 Act by the 2016 Act apply only to new members joining a union and to new political funds set up on or after 1 March 2018 (“new members”)¹. Existing members of a union and existing political funds established before 1 March 2018 (“existing members”) will continue to be subject to the current provisions in the 1992 Act, which are not amended. For example, existing members can continue to automatically contribute to funds unless they choose to exempt themselves.

Under the changes made by the 2016 Act, new members will be subject to the following.

- A member will not be able to contribute to the political fund unless they have given notice of their willingness to contribute to that fund (an “opt-in” notice).
- A member who has given an opt-in notice may withdraw the notice by giving a withdrawal notice at any time.
- A withdrawal notice takes effect within one month of it being given to the union.
- Opt-in and withdrawal notices may be delivered by post or by hand or using email or other electronic means, in accordance with instructions given by the trade union.
- On or after 1 March 2018, unions must notify members on an annual basis of their right to submit a withdrawal notice. The notification must be given within 8 weeks of the date of the union's annual return (AR21 form) to the Certification Officer for Trade Unions and Employers' Associations (“Certification Officer”). It may be given with the annual statement to members (made under section 32A of the 1992 Act) or by any other means the union chooses to use to communicate with members on matters of importance. Good practice would also be to remind members of their right to withdraw in relevant communications.

¹ The Trade Union Act 2016 (Political Funds) (Transition Period) Regulations 2017 which came into force on 1 March 2017 provides that the relevant provisions come into force after a transition period of 12 months which starts on 1 March 2017.

- The union shall send the Certification Officer a copy of the notification or a copy of each notification if they are different. If the Certification Officer finds, after giving the union an opportunity to make representations, that a union has failed to comply with this requirement they may make an enforcement order to remedy the failure as they think just under the circumstances. In due course in accordance with the changes to the Certification Officer's powers, they will also be able to impose financial penalties in respect of the failure.
- After 1 March 2018 a union's application form for members joining a union with a political fund must include a statement to the effect that a member may choose to contribute to the political fund and that a member will not suffer any detriment should he choose not to contribute.

Setting up a political fund

When does a union need a political fund?

A trade union needs a political fund only if it wants to use its funds for what the law defines as "political objects".

What are "political objects"?

"Political objects" cover what can broadly be described as electoral or other party political activities. Section 72 of the 1992 Act defines political objects as the expenditure of money:

- a) on any contribution to the funds of, or on the payment of any expenses incurred directly or indirectly by, a political party;
- b) on the provision of any service or property for use by or on behalf of any political party;
- c) in connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot by a union in connection with any election to a political office (that is the office of Member of Parliament, Member of the Scottish Parliament, Member of the Welsh Assembly, Member of the European Parliament, or member of a local authority, or any position within a political party);
- d) on the maintenance of any holder of a political office (as defined above);
- e) on the holding of any conference or meeting by or on behalf of a political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party (including any expenditure incurred in connection with the attendance of delegates or other participants); or
- f) on the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote or not to vote for a political party or candidate.

Expenditure for any purpose not included on this list, but allowable under the union's own rules, may be made out of its general, or some other, fund.

What must a union do if it wishes to set up a political fund?

If a union wishes to establish a political fund its members must approve a resolution adopting the "political objects" as an object of the union in a secret ballot. The rules for conducting that ballot must be adopted as rules of the union and approved by the Certification Officer before the ballot takes place.

The Certification Officer will give their approval only if the political fund ballot rules meet certain requirements. In particular:

- entitlement to vote must be given to every member of the union;
- the ballot must be held by post; and

- the ballot must be conducted and supervised by an independent scrutineer, in accordance with the requirements of the relevant law².

An information pack outlining the procedure to be followed and giving model rules is available from the Certification Officer (whose address and telephone number is provided in [Appendix 2](#) of this document).

What if the union fails to comply with the ballot rules approved by the Certification Officer?

If a union member believes that a political fund ballot has been, or will be, held by his union in a way that does not comply with the rules for holding the ballot approved by the Certification Officer, the member may complain either to the Certification Officer or to the County Court (or Sheriff Court in Scotland)³.

Section 17(3) and Schedule 2 of the 2016 Act amend the 1992 Act to enable the Certification Officer to exercise certain powers without an application or complaint by a member having to be made. In line with other changes brought in by the 2016 Act once it is fully implemented, the Certification Officer will be able to take action of their own accord, in relation to a potential breach of political fund requirements.

Who can complain?

A complaint can be made by any member of the union. Where the ballot has already been held, a person must also have been a member of the union at the time the ballot was taken.

When can a complaint be made?

A complaint about a political fund ballot which has already been held must be made within a year of its result having been announced by the union.

What happens when a complaint is made?

Whether a member complains to the Certification Officer or to the courts he will need to point to specific ways in which he believes the ballot did not comply, or would not comply, with the rules for that ballot approved by the Certification Officer. As we have said, the Certification Officer may also in future investigate a breach of their own accord. They will have the power to issue a declaration and/or enforcement order. The Certification Officer's enforcement orders are treated as orders of the court and failure to comply with these is contempt of court. Under the changes made by the 2016 Act once it is fully implemented, the Certification Officer will also have the power to issue a financial penalty or a conditional financial penalty.

² The detailed requirements relating to the conduct of the ballot and independent scrutiny are described in the sections of this document covering Independent scrutiny of political fund ballots, the independent person and duty of confidentiality.

³ In either case the complaint would be on the ground that there has been a breach of the union's rule book. The Trade Union Act 2016 enables the Certification Officer to exercise certain powers without the need to receive an application or complaint from a member.

What procedures are involved?

The Certification Officer's procedures are less formal than a court's and they are required to reach a decision on an application within six months if possible. They are also required to give the parties to the complaint an opportunity to present their case at a public hearing, though the parties can agree to the case being determined without a hearing.

The timetable for hearing an application to a court is a matter for the court itself to determine. However, the court has the power to grant an interim order, which would prevent a union from setting up a political fund pending a full hearing of the case, and may be willing to consider an application on this basis very quickly.

A member who has complained to the Certification Officer is prevented from complaining to the court later on the same issue.

What happens if a complaint is upheld?

Both the Certification Officer and the court have the power to make an order to remedy any breach that has occurred.

Where a trade union refuses to comply with an order made by the Certification Officer, the applicant can apply to the court to enforce it as if it were an order of the court.

What happens if the ballot results in a majority 'yes' vote?

When a ballot approves the establishment of a political fund, the union must adopt "political fund rules", and these must be approved by the Certification Officer. The Certification Officer has issued political funds guidance for unions and it can be accessed at:

www.gov.uk/government/publications/political-funds-guidance-on-the-provisions-in-the-trade-union-act-2016

For existing members:

The political fund rules must reflect the requirements under the 1992 Act without reference to the changes made by section 11 of the 2016 Act. The rules must safeguard their rights by:

- permitting individual members to **contract out** of contributing to the political fund;
- providing that no member who contracts out will be discriminated against within the union because he refuses to contribute to the political fund; and
- providing that contributing to the political fund shall not be made a condition for admission to the union.

For new members:

The rules of the union must also safeguard their rights and provide that:

- new members are automatically exempt from contributing to the political fund unless they have 'opted-in';
- members who do not opt in will not be subject to any detriment within the union because of their refusal to contribute to the political fund;
- contributing to the political fund shall not be made a condition for admission to membership of the union;
- members must be sent annual notifications to remind them of their right to withdraw their opt-in. The notification must be sent by the end of the period of eight weeks after the union sends its annual return to the Certification Officer. A copy or copies of the notifications shall be sent to the Certification Officer;
- new members who join a union must be told on the application forms used to join the union that they have a choice to opt in and that they will not suffer any detriment should they decide not to opt in; and
- members will be able to use email, post or agents, or an electronic form provided by the union, to opt in or to withdraw an opt-in.

A union member can complain about breaches of "political fund rules" to the Certification Officer. The Certification Officer may make an order requiring the union to remedy any breach of its "political fund rules" which has occurred, and a member may apply to the County Court (or Sheriff Court in Scotland) for any such order to be enforced. Under the changes made by the 2016 Act once it is fully implemented, the Certification Officer may also investigate a matter of their own accord, and will also have the power to issue a financial penalty, or conditional financial penalty.

Operating a political fund

How is a political fund financed?

The union's political fund will normally be financed mainly, if not wholly, from contributions by members.

For existing members:

In relation to existing members, section 85 of the 1992 Act (as originally part of the 1992 Act) provides that the union is required to either collect a separate amount for the political fund from members or relieve members who are not contributors from the payment of the appropriate portion of any periodical contribution required from members towards the expenses of the union. In the latter case, the rules of the union need to provide:

- a) that relief shall be given as far as possible to all members who are exempt on the occasion of the same periodical payment; and
- b) for enabling each member of the union to know what portion (if any) of any periodical contribution payable by the member is a contribution to the political fund.

For new members:

Section 85 of the 1992 Act (as inserted by the 2016 Act) provides that a trade union is required to either collect a separate amount for the political fund from members or relieve members who are not contributors from the payment of the appropriate portion of any periodical contribution required from members towards the expenses of the union. In the latter case, the rules of the union need to provide:

- a) that relief shall be given as far as possible to all members who are not contributors on the occasion of the same periodical payment; and
- b) for enabling each member of the union to know what portion (if any) of any periodical contribution payable by the member is a contribution to the political fund.

A union must not at any time transfer into its political fund any money (or other assets) which do not represent either direct contributions to the political fund or property which accrues to the fund in the course of administering the fund's assets⁴. A member who believes that his union has failed to comply with these requirements may complain to the Certification Officer or the court. Under the amendments made by the 2016 Act, the Certification Officer may also investigate such matters of their own accord.

⁴ If a previous authority for a union to spend money on political objects, which had lapsed, is re-established by a review ballot (see [Reviewing the political fund](#)), the union may not pay into the political fund any contributions which were received after the previous authority lapsed and before the new authority was established.

"Contracting out" of a political fund for existing members of a union political fund

How does an existing member "contract out"?

An existing member may "contract out" at any time and is not obliged to use an official exemption form. He may complete and send to his union a form which he has drawn up himself (whether it is typed or handwritten) provided that the form follows the outline given in Figure 1 or has the same effect. Membership renewal forms and communications could clearly state the right to contract out and provide the requisite outline of a form to facilitate that choice. Whatever form is used, it is essential that the member sends it to the union if the notice is to be effective.

Where members vote to review an existing political fund, the union must immediately inform its existing members that:

- they have the right to "contract out" of paying a contribution to the political fund ; and
- a form with which they can claim this right is available on personal application to, or by post from, the union's head office, any branch office, or from the Certification Officer.

Where an existing member gives such notice within one month of his union reviewing their political fund, then the exemption takes place immediately. In other cases, exemption takes effect from the beginning of the next calendar year. A member denied his right to "contract out" may complain to the Certification Officer, who will take the matter up with the union.

If the union continues to deny the member's right, the Certification Officer may issue a declaration against it and an enforcement order, which can be enforced through the County Court (in Scotland the Sheriff Court). Under the amendments made to the 1992 Act by the 2016 Act once fully implemented, the Certification Officer will also have the power to issue a financial penalty or conditional financial penalty to ensure rapid compliance.

If the political fund contribution is collected as part of the members' total union subscription, then the political fund rules must specify how much of the subscription is a contribution to the political fund. Any existing member who "contracts out" will therefore know exactly the amount of union dues of which he should be relieved.

Figure 1

<p>FORM OF EXEMPTION NOTICE</p> <p>Name of Trade Union</p> <p>POLITICAL FUND (EXEMPTION NOTICE)</p> <p>I give notice that I object to contributing to the Political Fund of the Union, and am in consequence exempt, in the manner provided for by Chapter VI of Part 1 of the Trade Union and Labour Relations (Consolidation) Act 1992, from contributing to that fund.</p> <p>A.B.</p> <p>Address.....</p> <p>.....day of.....20.....</p>
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"Opting in" to a political fund for new members of a union political fund

The amendments made by the 2016 Act to the 1992 Act in relation to the payment of contributions by members to a political fund only apply to new members. See page 3 above under ["Changes made by the 2016 Act to trade union political funds"](#).

How does a new member "opt in"?

For all new members who have joined or members of a union where a new political fund is established on or after 1 March 2018 unions must provide that:

- Members are legally exempt from contributing to their union's political fund. Any member who wants to contribute to the political fund must "opt in". Opt-in notices may be delivered by post or by hand or using e-mail or other electronic means the union has told members they can use.

Where a new member does not opt in or, having opted-in subsequently opts-out, he is exempt from contributing to the political fund.

Where a new member withdraws their opt-in, then the notice of withdrawal must take effect within one month of it being given to the union.

A new member denied his right to 'opt in', or who finds that a political fund deduction is being made from his deduction subscription where he has not opted-in, may complain to the Certification Officer who will take the matter up with the union.

If the union continues not to follow the member's request to contribute or not to contribute, the Certification Officer may issue a declaration against it and an enforcement order which can be enforced through the County Court (in Scotland the Sheriff Court). Under the changes made by the 2016 Act, the Certification Officer will also have the power to issue a financial penalty, or conditional financial penalty.

What happens when "check-off" operates?

There are additional safeguards for members who pay their union subscriptions by "check-off" where the political levy forms part of or is collected with their subscriptions. ("Check-off" is the system under which the employer deducts trade union subscriptions from members' pay⁵).

An employer may deduct union subscriptions from a member by check-off if the member has signed and dated a written authorisation within the previous three years. The member is entitled to withdraw his authorisation at any time and if he does so, his employer has no right to deduct his subscriptions by check-off. To withdraw consent to check-off, a worker must write to his employer notifying him that he no longer wishes to have check-off deductions made. He must allow the employer reasonable time to stop the deductions.

⁵ Section 15 of the Trade Union Act (Restriction on deduction of union subscriptions from wages in public sector) will also place requirements on relevant public sector employers in relation to their provision of Check Off. The ability of these employers to offer check-off will be subject to this new legislative requirement.

Note: A consent given before 23 June 1998 will lapse three years after it was signed unless it is extended, and will not cover any increase in subscription unless the worker is notified at least one month before the increase takes effect.

A union member who thinks his employer has deducted union subscriptions from him when he had not given an authorisation or his authorisation had expired has a right of complaint against his employer to an employment tribunal.

The application to an employment tribunal should be made within three months of the date of payment of the wages from which the deduction was made. A tribunal may, however, agree to deal with a complaint made outside the three-month period if it considers that it was not reasonably practicable for the time limit to be met.

Further, an employer must stop collecting political contributions by "check-off" from any union member who notifies him in writing that he:

- is already exempt or opted-out from paying political contributions, *or*
- has notified his union of his wish to "contract out".

If an employer then:

- refuses to reduce the level of that member's check-off deduction by the amount of the political fund contribution, *or*
- cancels his check-off deduction altogether while continuing to operate the system for other members of the union,

the member may apply to the County Court (or the Sheriff Court in Scotland) for a declaration that the employer's action is unlawful. The County Court may make such an order as it considers appropriate to ensure that the employer does not continue with such action.

Where the County Court has made such a declaration, the union member can also obtain a refund of any political fund subscriptions deducted unlawfully. To do so, the member may apply to an employment tribunal for:

- a declaration that unlawful deductions have been made *and*
- an order requiring the employer to refund the money unlawfully deducted.

Reviewing the political fund

Can the union maintain its political fund indefinitely?

A properly conducted ballot gives a union the ability to set up and maintain a political fund for up to ten years.

If the union wishes to retain the fund beyond that time it must re-ballot its members (i.e. hold a "review ballot"). If a union with a political fund fails to hold a review ballot within ten years of the fund being set up its authority to spend money on political objects automatically lapses at the end of that period.

The procedures which the union must follow for any review ballot are the same as those for a ballot to set up the fund as described in the [Setting up a political fund](#) section of this guidance⁶. The member's right to complain about any breach of the balloting rules and his means of doing so are also the same.

What happens where a review ballot is held but members vote against continuing a fund?

Where a majority of union members voting in a political fund review ballot decide that their union should no longer spend money on "political objects", the union *must*:

- take such steps as are necessary to ensure that the collection of political contributions ceases as soon as is reasonably practicable;
- pay any political contributions collected in the meantime into a fund other than the union's political fund;
- refund any political contributions collected in the meantime to individual union members if requested by them to do so;
- stop all spending on political objects within six months of the date of the ballot⁷ (or immediately if the political fund is in deficit).

However, the law allows a union to transfer money from its political fund into other funds of the union if it chooses to do so⁸.

There are special provisions for complaints about failures to take steps to stop the collection of political contributions. In such circumstances a union member may apply to the court for a declaration that his union has failed to satisfy the statutory requirements. The court can also make an order setting out action which the union must take to put right its infringement and a time limit will normally be set within which the union must take that action.

⁶ With the exception that a union may choose not to give overseas members entitlement to vote.

⁷ The "date of the ballot" means the last day on which votes may be cast.

⁸ A union may make such a transfer without being in breach of trust or its rulebook. Alternatively, the union may retain its political fund but only for expenditure on matters other than political objects, and providing that this would not put the union in breach of trust or of the rulebook.

What happens if members vote in favour of the fund in a review ballot?

Where approval is given for the union to continue spending money on political objects, the union must inform all its existing members (members who joined the union before 1 March 2018):

- that each member has a right to "contract out" of paying the political fund; and
- a form with which to claim this right is available (by personal application or by post) from the union's branch or head office, or from the Certification Officer⁹.

⁹ As explained in the ["Contracting out" of a political fund](#) section, a member may claim this right by completing a form which follows the outline given in Figure 1.

Political fund expenditure and reporting to the Certification Officer

Section 12 of the 2016 Act has amended the 1992 Act to provide that where a union spends **more than £2,000 per annum from its political fund**, the union is required to publish details of their political expenditure. The new provision in section 32ZB of the 1992 Act requires the information to be provided in the trade union's annual return (sent to the Certification Officer under section 32 of the 1992 Act). The new provisions apply to annual returns for reporting years which commence after 1 March 2017.

The information should provide:

- The total amount paid to each party, organisation or candidate (as appropriate) within each category of spending as set out in section 72(1) (a) to (f) of the 1992 Act¹⁰. In addition, unions are required to provide information about any expenditure from the political fund which does not fall into the categories set out in section 72(1).

What is the required information under each category of spending?

The required information for each category is different depending on the category.

1. Section 72(1) (a), (b) or (e) of the 1992 Act covers the provision of funds, the provision of a service or property to a political party or the holding of a conference or a meeting which is connected to a political party. For these categories the information to be given is:

- the name of each political party to which money is paid and;
- the total amount to each political party for the year.

Therefore, if in one year a union pays for its members to attend a party conference and also pays for members to attend a different meeting of the same party, then the union should provide the total expenditure on all conferences and meetings for that year and identify that the monies were paid to the party in question.

If, in the same year, a union also pays for members to attend conferences or meetings for another political party, then the union must provide the name of that political party and the total annual spend on conferences and meetings for that party.

2. Section 72(1) (c) - This section relates to spending on elections to a political office, the registration of electors, the candidature of a person or the holding of any ballot. The information unions should provide here is:

- the information about the election concerned (for example, the local council elections in May 2016);
- the name of each political party or organisation to which monies are paid;
- the details of the total spend to each party or organisation for the year.

¹⁰ Page 5 of this guidance sets out the [categories of expenditure](#) in section 72(1)(a) to (f) of the 1992 Act.

The information must be provided in relation to money paid to both political parties and other, third party organisations. For example, if there is a campaign for the registration of voters, payment may be made to an organisation which campaigns to increase electoral registration. In those circumstances the unions must provide the name of the organisation and the total amount per annum paid to that organisation. If money is given directly to a candidates' office, then the name of the candidate should be provided (see new section 32ZB (4)(b)(iii)).

Where under section 72(1)(c) money is spent in general on candidates of a particular party, for example in a General Election, there will be no need to provide the names of all the candidates, but rather just the name of the political party or organisation to which monies are paid. Again, information must be provided about the total amount spent on each political party or organisation. That information excludes information already provided under section 32ZB(4)(b)(i) or (ii).

In addition, if there is any other expenditure under this category which is not already covered, then that should also be provided.

3. Section 72(1) (d) – this category relates to spending on the maintenance of a political office. For this category, unions should provide:

- details of the names of the holders of the office and
- the total amount spent on each per annum.

4. Section 72(1) (f) - the production and distribution of materials which seek to persuade people to vote or not to vote for a political party or candidate. For this category unions must provide:

- the details of the organisation which may have received monies for these purposes and
- the total amount paid to each one (section 32ZB(6)(a)).

Where money is not actually paid to an organisation, but monies are spent directly by unions to persuade people to vote or not to vote for a particular candidate or party, then unions should give the details of each party or candidate being supported or not being supported as the case may be, and again, the total spend on each per annum. If that information has already been provided under section 32ZB (6) (a) then it does not need to be provided again.

5. Finally unions should also provide details of any other expenditure from the political fund which falls outside the categories in section 72(1). The union must provide information about:

- the nature of each cause or campaign which is being funded and the total amount paid to each one per annum.
- details of any organisation to which monies were paid (if not already covered by details of the cause or campaign), and
- the total amount paid to each one.

The total of any other expenditure not already covered must be provided. Therefore, if a union provides money to a charitable or campaigning organisation, that donation would be covered under this category.

Unlawful expenditure on political objects

A union member may complain if his union spends money from its general fund (or any fund other than a political fund) on "political objects"¹¹. A member may also complain if his union spends money on "political objects" without a political fund resolution being in force, or without approved political fund rules.

Expenditure on "political objects" from the general fund will be a breach of the union's "political fund rules" and a member's right of complaint is the same as for any other breach of the political fund rules. The member may complain to the Certification Officer who, if they consider a breach has occurred, may make an order for remedying it which may then be enforced in the County Court (in Scotland the Sheriff Court).

As we have said, under the changes made to the 1992 Act by the 2016 Act, the Certification Officer will also be able to investigate the above of their own accord where there are reasonable grounds to do so. Should the Certification Officer find against a union or employer association, they will also have the power in future to issue a financial penalty, or conditional financial penalty, to ensure rapid compliance.

¹¹ The position is the same when the political fund is in deficit. A union may not pay off a political fund debt from any of its funds other than its political fund.

Independent scrutiny of political fund ballots

The law:

- requires that union political fund ballots which are required to be held by statute must be supervised by an independent scrutineer appointed by the union;
- sets out the requirements a union needs to satisfy in appointing an independent scrutineer, what the appointment must require the scrutineer to do, certain matters which must be contained in the scrutineer's report, and the arrangements for circulating that report to union members; and
- gives the Secretary of State power to specify by statutory order those bodies which may act as independent scrutineers and the qualifying conditions which other scrutineers must meet.

What must the union do?

The union must:

- before the ballot takes place, appoint a qualified independent scrutineer to carry out the functions described below and any additional functions it wishes;
- ensure that nothing in the scrutineer's terms of appointment, or in any additional functions which the union requires him to perform, could cast reasonable doubt on his independence from the union;
- before the scrutineer begins to carry out his functions, either (i) send a notice stating the scrutineer's name to every member of the union to whom it is reasonably practicable to do so, or (ii) take whatever steps to notify members of the scrutineer's name as is the practice of the union when matters of general interest are brought to the attention of members;
- impose a duty of confidentiality (see section on [Duty of confidentiality](#)) on the scrutineer;
- supply to the scrutineer a copy of the register containing the names and addresses of those who are entitled to vote in the political fund ballot. (Where the register is held on computer, the union must supply the copy in computerised form - for example on a USB stick - if the scrutineer prefers it this way and give him access to a computer, at any time during the period he is required to retain the copy, so that he can read it);
- comply with any request made by the scrutineer to inspect the union register as it stands at any particular time;
- ensure that the scrutineer carries out the functions he is appointed to carry out and that there is no interference with his carrying out of those functions which could cast reasonable doubt on his independence from the union; and
- comply with all reasonable requests made by the scrutineer in connection with the carrying out of his functions.

Who can be an independent scrutineer?

The section provides that an independent scrutineer must:

- be specified, or satisfy conditions set out by the Secretary of State, in a statutory instrument¹² and
- be someone whom the union has no reason to believe will carry out his functions incompetently or could reasonably have his independence in relation to the union or the election called into question.

The general qualifications which must be satisfied to be eligible to act as an independent scrutineer of trade union political fund ballots are set out in [Appendix 1](#). Unions are free to appoint either a specified body or an individual or firm which satisfies the general conditions. Both the list of specified bodies and the qualifying conditions may be revised from time to time by Statutory Order made by the Secretary of State.

What must the independent scrutineer do?

The independent scrutineer must be required by the union to:

- supervise the production of all the voting papers used in the ballot;
- supervise the distribution of the voting papers used in the ballot - unless the scrutineer is also the independent person (see section on [The independent person](#)) and is therefore responsible himself for their distribution;
- be the person to whom the voting papers are returned by the union members who take part in the ballot;
- inspect the union's membership register, whenever he considers it appropriate to do so and, in particular, when a union member or candidate requests that he do so¹³. The scrutineer does not, however, have to act on a request that he considers to be ill-founded;
- take whatever steps he considers necessary to enable him to produce a report on the conduct of the ballot (see below);
- make that report to the union as soon as reasonably practicable after the closing date for the return of voting papers;
- retain custody of all returned voting papers, and the copy of the register with which the union has supplied him (see above), for a period of one year following the announcement of the result of the ballot or, if a complaint is made about the conduct of the ballot, for any longer period that the Certification Officer or a court may require; *and*
- carry out any additional functions that the union requires him to undertake.

¹² In broad terms, the current order (SI 1993 No.1909) covers practising solicitors, qualified accountants and named bodies.

¹³ Such a request must be made within the period beginning with the day on which the scrutineer is appointed and ending with the day before the day on which the scrutineer makes his report to the trade union.

The scrutineer must also have regard to the duty of confidentiality (see section on [Duty of confidentiality](#)) that the union must impose upon him (and which is also automatically incorporated into his appointment).

The union is free to specify the exact nature of any additional functions so long as these do not conflict with the functions described above. A union could, for example, require the scrutineer to carry out all parts of the balloting process.

What must be included in the independent scrutineer's report?

The independent scrutineer's report on the ballot must state:

- the number of voting papers distributed;
- the number of voting papers returned to the scrutineer;
- the number of valid votes cast for and against the resolution;
- the number of returned voting papers which were spoiled or otherwise invalid;
- the name of the independent person appointed to undertake the storage, distribution and counting of ballot papers (see section on [The independent person](#)) or, if no independent person was appointed, state that fact.

The report must also state:

- whether the scrutineer inspected the register of names and addresses of the members of the trade union;
- if he did make an inspection, whether in each case he was acting on a request by a member of the trade union or candidate or at his own instance;
- whether he declined to act on a request to inspect the register; and
- whether any inspection of the register 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.

However, his report must not state the name of any member who requested that he make an inspection of the register.

The report is also required to state whether the independent scrutineer is satisfied that:

- there are no reasonable grounds for believing that the conduct of the ballot contravened any legislative requirements;
- security arrangements for the production, storage, distribution, return or other handling of the voting papers and for the counting of them were, so far as reasonably practicable, sufficient to minimise the risk of any unfairness or malpractice;
- he was able to carry out his functions without any interference which would cast reasonable doubt on his independence from the union; and
- the performance of the independent person or persons was satisfactory (where one or more persons other than the scrutineer are appointed to be an independent person).

If he is not satisfied on the above matters, the scrutineer's report is required to explain why that is the case.

Can members see the scrutineer's report?

Having received the report, the union must within three months:

- either send a copy to every member of the union to whom it is reasonably practicable to do so, or notify the contents of the report to members in whatever way is normal when matters of general interest to all members need to be brought to their attention;
- ensure that any copy of the report sent out or notification of its contents is accompanied by a statement that the union will, on request, supply any union member with a copy of the report either free of charge or on payment of a reasonable fee which has been specified by the union; and
- supply a copy of the report to any member who requests one and pays any specified fee.

Who can complain?

Any union member who believes that the union has not complied, or is not complying, with the statutory requirements concerning independent scrutiny may complain to the Certification Officer or to the court¹⁴. Under the 2016 Act, the Certification Officer will also be able in future to investigate upon receipt of a representation of a third party or where circumstances come to their attention that a breach may have occurred.

¹⁴ For further information about the complaints procedure in respect of independent scrutiny see: [Trade union executive elections - Regulatory Guidance](#).

The independent person

The law:

- requires that some aspects of a union political fund ballot which is required to be held by statute must be carried out by an "independent person" appointed by the union; and
- sets out the requirements that must be satisfied in appointing an independent person.

What must the union do?

The union must:

- appoint one or more independent persons to carry out the duties described below;
- require the independent person to carry out his functions in such a way as to minimise the risk of any illegality, unfairness, or malpractice occurring;
- impose a duty of confidentiality (see section on [Duty of confidentiality](#)) on the independent person;
- ensure that nothing in an independent person's terms of appointment could call into question his independence from the union;
- ensure that an independent person carries out his functions and that there is no interference with his doing so that could call into question his independence from the union; and
- comply with all reasonable requests made by an independent person in connection with the carrying out of his functions.

Who can be an "independent person"?

The law provides that a person is qualified to act as an independent person if:

- he is the scrutineer, or
- he is a person other than the scrutineer and the trade union has no grounds for believing either that i) he will carry out his functions incompetently or ii) his independence in relation to the union could reasonably be called into question.

What must the independent person do?

The independent person (or persons) must be required by the union to:

- undertake the storage and distribution of the political fund ballot voting papers;
- count the votes cast in the ballot; and
- send the voting papers back to the scrutineer (where the independent person doing the counting is not himself the scrutineer) as soon as reasonably practicable after the counting has been completed.

The independent person must also have regard to the duty of confidentiality which the union must impose on him, and which is automatically incorporated into the terms of his appointment.

Who can complain?

Any union member who believes that the union has not complied, or is not complying, with the statutory requirements concerning the appointment of the independent person may complain to the Certification Officer or to the court¹⁵. Under the changes made by the 2016 Act, the Certification Officer will also be able in future to investigate upon receipt of a representation of a third party or where circumstances come to his attention that a breach may have occurred.

The procedures for complaint are the same as those described in the section on [Setting up a political fund](#).

¹⁵ For further information about the complaints procedure in respect of independent scrutiny see: [Trade union executive elections - Regulatory Guidance](#).

Duty of confidentiality

The law:

- requires a union to impose a duty of confidentiality in respect of the union's register on the independent scrutineer and independent person appointed to carry out functions in respect of union political fund ballots; and
- ensures the duty of confidentiality is automatically incorporated into the appointment of the scrutineer.

What is the duty of confidentiality?

It is a duty not to disclose, and to take all reasonable steps to ensure that no-one else discloses, any name or address on the union's register of members' names and addresses, except in certain permitted circumstances.

The permitted circumstances are:

- where the member concerned consents;
- where disclosure is requested by the Certification Officer in the discharge of his functions or required by an inspector appointed by them;
- where disclosure is required to discharge the functions of the scrutineer or independent person; or
- where disclosure is required for the purposes of criminal investigation or proceedings.

Who can complain?

Any union member or candidate in an election who believes that the union has not complied, or is not complying, with the statutory requirement to impose the duty of confidentiality may complain to the Certification Officer or to the court¹⁶. Under the changes made by the 2016 Act, the Certification Officer will also be able in future to investigate upon receipt of a representation of a third party or where circumstances come to their attention that a breach may have occurred.

The procedures for complaint are the same as those described in the section on [Setting up a political fund](#).

¹⁶ For further information about the complaints procedure in respect of the duty of confidentiality see: [Trade union executive elections - Regulatory Guidance](#).

Appendix 1: General qualifying conditions

General qualifications which must be satisfied to be eligible to act as an independent scrutineer of trade union political fund ballots

The general qualifications which must be satisfied to be eligible to act as an independent scrutineer of trade union political fund ballots include those contained in Statutory Instrument No.1993/1909: ("the Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Order 1993"). It allows unions to appoint certain persons to act as an independent scrutineer provided that the person concerned is:

- a solicitor with a current practising certificate issued from the Law Society of England and Wales¹⁷ or the Law Society of Scotland;
- an individual who is qualified to be an auditor of a trade union by virtue of section 34(1) of the Trade Union and Labour Relations (Consolidation) Act 1992. (This provides that anyone qualified to be a statutory auditor under Part 42 of the Companies Act 2006 may act as an auditor of a trade union);
- a partnership in which every partner falls within one of the two categories above; or
- a person (usually a corporate body) specified by name as qualified for appointment.

An individual or partnership will not be eligible to act as an independent scrutineer if he or a partner has been a member, officer¹⁸ or employee of the union proposing to hold the ballot in the 12 months preceding the date of the ballot.

An individual or partnership will not be eligible to act as an independent scrutineer if, in performing the functions required of a scrutineer as set out in the relevant legislation in respect of any ballot held after **1 February 1989**, he or a partner knowingly used, or permitted to be used, the services of a member, officer or employee of the union whose ballot was being scrutinised.

The Trade Union Ballots and Elections (Independent Scrutineer Qualifications) (Amendment) Order 2017. (**Statutory Instrument No. 2017/877**) amends the 1993 order by replacing the list of bodies specified by name as being qualified for appointment.

¹⁷ In England and Wales, the practical process of issuing practising certificates to solicitors is undertaken by the Solicitors Regulation Authority, an independent regulatory body of the Law Society (www.sra.org.uk)

¹⁸ For the purposes of appointment as an independent scrutineer, an auditor is not regarded as an officer of a union.

Appendix 2: Certification Officer

Certification Officer

The address of the Certification Officer for Trade Unions and Employers' Associations is:

Lower Ground Floor
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX

Email: info@certoffice.org

Tel: 020 7210 3734

Fax: 020 7210 3612

Further information about the powers and functions of the Certification Officer can be obtained direct from their office.



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