

SCHEDULE 2

Regulation 19

REQUIREMENTS FOR BALLOTS HELD UNDER REGULATION 19

Ballot arrangements

1. Ballots held under regulation 19 must comply with the requirements specified in paragraph 2.
2. The requirements referred to in paragraph 1 are that –
 - (a) the ballot must comprise a single ballot but may instead, if the employer so decides, comprise separate ballots of employees in such constituencies as the employer may decide where the employer considers that if separate ballots were to be held for those constituencies, the information and consultation representatives to be elected would better reflect the interests of the employees as a whole than if a single ballot were held;
 - (b) if, at any point, it becomes clear that the number of people standing as candidates in the ballot is equal to or fewer than the relevant number of information and consultation representatives (as defined in regulation 19(3)), the obligation on the employer to hold the ballot in regulation 19 will cease and the candidates referred to above will become the information and consultation representatives;
 - (c) all employees of the undertaking on the day on which the votes may be cast in the ballot, or if the votes may be cast on more than one day, on the first day of those days, must be given an entitlement to vote in the ballot;
 - (d) any employee who is an employee of the undertaking at the latest time at which a person may become a candidate in the ballot is entitled to stand in the ballot as a candidate as an information and consultation representative;
 - (e) the employer must, in accordance with paragraph 6, appoint an independent ballot supervisor to supervise the conduct of the ballot;
 - (f) after the employer has formulated proposals as to the arrangements for the ballot and before he has published the final arrangements under sub-paragraph (g) he must, so far as reasonably practicable, consult with employees' representatives or, if no such representatives exist, the employees, on the proposed arrangements for the ballot; and
 - (g) the employer must publish the final arrangements for the ballot in such manner as to bring them to the attention of, so far as reasonably practicable, his employees and, where they exist, the employees' representatives.
3. Any employee or an employees' representative who believes that the arrangements for the ballot are defective may, within a period of 21 days beginning on the date on which the employer published the final arrangements under paragraph 2(g), present a complaint to the Industrial Court.
4. Where the Industrial Court finds the complaint well-founded it shall make a declaration to that effect and may make an order requiring the employer to modify the arrangements he has made for the ballot or to satisfy the requirements in sub-paragraphs (a) to (g) of paragraph 2.
5. An order under paragraph 4 shall specify the modifications to the arrangements which the employer is required to make and the requirements he must satisfy.
6. A person is an independent ballot supervisor for the purposes of paragraph 2(e) if the employer reasonably believes that he will carry out any functions conferred on him in relation to the ballot competently and has no reasonable grounds for believing that his independence might reasonably be called into question.
7. For the purposes of paragraph 3 the arrangements for the ballot are defective if any of the requirements specified in sub-paragraphs (a) to (g) of paragraph 2 are not satisfied.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Conduct of the ballot

8. The employer must –
 - (a) ensure that a ballot supervisor appointed under paragraph 2(e) carries out his functions under this Schedule and that there is no interference with his carrying out of those functions; and
 - (b) comply with all reasonable requests made by a ballot supervisor for the purposes of or in connection with the carrying out of those functions.
9. A ballot supervisor's appointment shall require that he –
 - (a) supervises the conduct of the ballot he is being appointed to supervise, in accordance with the arrangements for the ballot published by the employer under paragraph 2(g) or, where appropriate, in accordance with the arrangements as required to be modified by an order made under paragraph 4;
 - (b) does not conduct the ballot before the employer has satisfied the requirement specified in paragraph 2(g) and –
 - (i) where no complaint has been presented under paragraph 3, before the expiry of 21 days beginning with the date on which the employer published his arrangements under paragraph 2(g); or
 - (ii) where a complaint has been presented under paragraph 3, before the complaint has been determined and, where appropriate, the arrangements have been modified as required by an order made as a result of the complaint;
 - (c) conducts the ballot so as to secure that –
 - (i) so far as reasonably practicable, those entitled to vote are given the opportunity to do so;
 - (ii) so far as reasonably practicable, those entitled to stand as candidates are given the opportunity to stand;
 - (iii) so far as reasonably practicable, those voting are able to do so in secret; and
 - (iv) the votes given in the ballot are fairly and accurately counted.
10. As soon as reasonably practicable after the date of the ballot, the ballot supervisor must publish the results of the ballot in such manner as to make them available to the employer and, so far as reasonably practicable, the employees entitled to vote in the ballot and the persons who stood as candidates in the ballot.
11. A ballot supervisor shall publish a report (“an ineffective ballot report”) where he considers (whether or not on the basis of representations made to him by another person) that –
 - (a) any of the requirements referred to in paragraph 2 was not satisfied with the result that the outcome of the ballot would have been different; or
 - (b) there was interference with the carrying out of his functions or a failure by the employer to comply with all reasonable requests made by him with the result that he was unable to form a proper judgement as to whether each of the requirements referred to in paragraph 2 was satisfied in the ballot.
12. Where a ballot supervisor publishes an ineffective ballot report the report must be published within a period of one month commencing on the date on which the ballot supervisor publishes the results of the ballot under paragraph 10.
13. A ballot supervisor must publish an ineffective ballot report in such manner as to make it available to the employer and, so far as reasonably practicable, the employees entitled to vote in the ballot and the persons who stood as candidates in the ballot.

14. Where a ballot supervisor publishes an ineffective ballot report the outcome of the ballot shall be of no effect and –

- (a) if there has been a single ballot or an ineffective ballot report has been published in respect of every separate ballot, the outcome of the ballot or ballots shall be of no effect and the employer shall again be under the obligation in regulation 19;
- (b) if there have been separate ballots and sub-paragraph (a) does not apply –
 - (i) the employer shall arrange for the separate ballot or ballots in respect of which an ineffective ballot report has been issued to be reheld in accordance with regulation 19; and
 - (ii) no such ballot shall have effect until it has been reheld and no ineffective ballot report has been published in respect of it.

15. All costs relating to the holding of the ballot, including payments made to a ballot supervisor for supervising the conduct of the ballot, shall be borne by the employer (whether or not an ineffective ballot report has been made).