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# Trade Union and Labour Relations (Consolidation) Act 1992

## 1992 CHAPTER 52

### PART I

#### TRADE UNIONS

#### CHAPTER IV

##### ELECTIONS FOR CERTAIN POSITIONS

##### *Requirements to be satisfied with respect to elections*

#### **47 Candidates.**

- (1) No member of the trade union shall be unreasonably excluded from standing as a candidate.
- (2) No candidate shall be required, directly or indirectly, to be a member of a political party.
- (3) A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union.

But a rule which provides for such a class to be determined by reference to whom the union chooses to exclude shall be disregarded.

#### **48 Election addresses.**

- (1) The trade union shall—

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- (a) provide every candidate with an opportunity of preparing an election address in his own words and of submitting it to the union to be distributed to the persons accorded entitlement to vote in the election; and
  - (b) secure that, so far as reasonably practicable, copies of every election address submitted to it in time are distributed to each of those persons by post along with the voting papers for the election.
- (2) The trade union may determine the time by which an election address must be submitted to it for distribution; but the time so determined must not be earlier than the latest time at which a person may become a candidate in the election.
  - (3) The trade union may provide that election addresses submitted to it for distribution—
    - (a) must not exceed such length, not being less than one hundred words, as may be determined by the union, and
    - (b) may, as regards photographs and other matter not in words, incorporate only such matter as the union may determine.
  - (4) The trade union shall secure that no modification of an election address submitted to it is made by any person in any copy of the address to be distributed except—
    - (a) at the request or with the consent of the candidate, or
    - (b) where the modification is necessarily incidental to the method adopted for producing that copy.
  - (5) The trade union shall secure that the same method of producing copies is applied in the same way to every election address submitted and, so far as reasonably practicable, that no such facility or information as would enable a candidate to gain any benefit from—
    - (a) the method by which copies of the election addresses are produced, or
    - (b) the modifications which are necessarily incidental to that method,
 is provided to any candidate without being provided equally to all the others.
  - (6) The trade union shall, so far as reasonably practicable, secure that the same facilities and restrictions with respect to the preparation, submission, length or modification of an election address, and with respect to the incorporation of photographs or other matter not in words, are provided or applied equally to each of the candidates.
  - (7) The arrangements made by the trade union for the production of the copies to be so distributed must be such as to secure that none of the candidates is required to bear any of the expense of producing the copies.
  - (8) No-one other than the candidate himself shall incur any civil or criminal liability in respect of the publication of a candidate's election address or of any copy required to be made for the purposes of this section.

#### **49 Appointment of independent scrutineer.**

- (1) The trade union shall, before the election is held, appoint a qualified independent person ("the scrutineer") to carry out—
  - (a) the functions in relation to the election which are required under this section to be contained in his appointment; and
  - (b) such additional functions in relation to the election as may be specified in his appointment.

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- (2) A person is a qualified independent person in relation to an election 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 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.

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 and distribution of the voting papers and to whom the voting papers are returned by those voting;
  - (b) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see section 52);
  - (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 election—
    - (i) until the end of the period of one year beginning with the announcement by the union of the result of the election; and
    - (ii) if within that period an application is made under section 54 (complaint of failure to comply with election requirements), until the Certification Officer or the court authorises him to dispose of the papers.
- (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.
- (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.

## 50 Entitlement to vote.

- (1) Subject to the provisions of this section, entitlement to vote shall be accorded equally to all members of the trade union.

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(2) The rules of the union may exclude entitlement to vote in the case of all members belonging to one of the following classes, or to a class falling within one of the following—

- (a) members who are not in employment;
- (b) members who are in arrears in respect of any subscription or contribution due to the union;
- (c) members who are apprentices, trainees or students or new members of the union.

(3) The rules of the union may restrict entitlement to vote to members who fall within—

- (a) a class determined by reference to a trade or occupation,
- (b) a class determined by reference to a geographical area, or
- (c) a class which is by virtue of the rules of the union treated as a separate section within the union,

or to members who fall within a class determined by reference to any combination of the factors mentioned in paragraphs (a), (b) and (c).

The reference in paragraph (c) to a section of a trade union includes a part of the union which is itself a trade union.

(4) Entitlement may not be restricted in accordance with subsection (3) if the effect is that any member of the union is denied entitlement to vote at all elections held for the purposes of this Chapter otherwise than by virtue of belonging to a class excluded in accordance with subsection (2).

## 51 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,
- (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 election, and
- (c) be marked with its number.

(3) Every person who is entitled to vote at the election 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 at the election must—

- (a) have 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, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates; and
- (b) be given a convenient opportunity to vote by post.

(5) The ballot shall be conducted so as to secure that—

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- (a) so far as is reasonably practicable, those voting do so in secret, and
- (b) the votes given at the election 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 election.

- (6) The ballot shall be so conducted as to secure that the result of the election is determined solely by counting the number of votes cast directly for each candidate.
- (7) Nothing in subsection (6) shall be taken to prevent the system of voting used for the election being the single transferable vote, that is, a vote capable of being given so as to indicate the voter's order of preference for the candidates and of being transferred to the next choice—
  - (a) when it is not required to give a prior choice the necessary quota of votes, or
  - (b) when, owing to the deficiency in the number of votes given for a prior choice, that choice is eliminated from the list of candidates.

VALID FROM 30/08/1993

#### **[51A] <sup>F1</sup>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

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- 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

**F1** S. 51A inserted (30.8.1993) by 1993 c. 19, s. 2(1); S.I. 1993/1908, art. 2(1), Sch. 1

## 52 Scrutineer's report.

- (1) The scrutineer's report on the election shall state—
- (a) the number of voting papers distributed for the purposes of the election,
  - (b) the number of voting papers returned to the scrutineer,
  - (c) the number of valid votes cast in the election for each candidate, and
  - (d) the number of spoiled or otherwise invalid voting papers returned.
- (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 election,
  - (b) that the arrangements made with respect to the production, storage, distribution, return or other handling of the voting papers used in the election, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and
  - (c) that 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.
- (3) The trade union shall not publish the result of the election until it has received the scrutineer's report.
- (4) The trade union shall within the period of three months after it receives the report either—
- (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.

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### **53 Uncontested elections.**

Nothing in this Chapter shall be taken to require a ballot to be held at an uncontested election.

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