



Department
for Business
Innovation & Skills

**TRANSPARENCY OF LOBBYING,
NON-PARTY CAMPAIGNING AND
TRADE UNION ADMINISTRATION
BILL**

**Certification of trade union
membership details: discussion
paper**

JULY 2013

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1. Introduction

1. On 17 July 2013, the Government introduced into Parliament the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill. The Bill includes measures to deliver assurance that union membership records are kept accurate and up to date through providing an annual membership audit certificate to the Certification Officer and by giving the Certification Officer powers to require production of relevant documents and to appoint inspectors to investigate. Trade union activity has the potential to affect the daily lives of members and non-members. Unions should be able to visibly demonstrate that they know who their members are and can communicate with them.
2. The Government's announcement, the Bill and the Explanatory Notes can be found at <http://services.parliament.uk/bills/>
3. At the same time as the Bill was introduced, Vince Cable, the Secretary of State for Business, Innovation and Skills said that he would seek views on the effective implementation of the measures on trade union membership records as well as on what guidance should be provided to ensure that unions can meet the new requirements, with the help of employers where needed. Employers already have a duty to disclose information that is material collective bargaining but the new requirements may have consequences for the kind of information unions may request from employers.
4. This document discusses the provisions in the Bill and invites your views on implementation so that they are fair, proportionate and workable. Details on how to respond are provided at the end of the document.

Issued: 17 July 2013

Respond by: 16 August 2013

Enquiries to: discussion.tuadmin@bis.gsi.gov.uk

This document is particularly relevant to employers, trade unions and their members, independent scrutineers, solicitors, accountants and auditors.

2. Current position and reason for change

5. As membership organisations, it is important that trade union decisions reflect the will of all their members. Knowing who their members are and being able to engage them is intrinsic to a union's democratic accountability.
6. The Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) reflects this by including under Section 24(1) a duty to maintain a register of members' names and addresses that is, so far as reasonably practicable, accurate and up-to-date.
7. However, at present complaints to the Certification Officer (CO) about the register can only be made by trade union members and no-one else. In addition, members only have a right to see whether and how their own details are recorded. This means it is difficult for members to make a complaint in relation to the accuracy of the membership register as a whole. The CO can investigate and issue a declaration and/or enforcement order against the individual union but that process will be limited to the member's complaint.
8. Trade union activity has the potential to affect the daily lives of members and non-members. The general public should be confident that voting papers and other communications are reaching union members so that they have the opportunity to participate, even if they choose not to exercise it. As a result, unions also have a responsibility to give public assurance that they are keeping up-to-date registers.
9. Government has decided therefore to revisit the formal requirements surrounding unions' existing responsibility to keep their records up to date. Unions should be able to visibly demonstrate that they know who their members are and can communicate with them.

3. The Government's changes

10. This chapter should be read in conjunction with Part 3 of the Transparency of Lobbying etc Bill and the accompanying Explanatory Notes.

Overview

11. There will be a statutory obligation on unions to provide an annual membership audit certificate to the CO alongside their annual return.
12. We are also giving powers to the CO to require production of relevant documents and to appoint inspectors to investigate. The CO will be able to issue declarations and enforcement orders for non-compliance with duties relating to the register. The CO may also make orders to require a trade union or person to cooperate with an inspector's investigation.
13. For trade unions with more than 10,000 members, the membership audit certificate will need to be completed by an assurer (who is to be a qualified independent person). Smaller trade unions will be able to self-certify. However, the CO powers will apply to all unions, regardless of size.
14. The new requirements will not apply to newly created trade unions less than one year old.
15. Unions will continue to determine through their rules who is a member. It will also be for unions to decide how they hold their membership register, whether that be electronic or paper-based and to decide how they collect their membership subscriptions.
16. The changes will extend to England, Scotland and Wales, but not to Northern Ireland.

Membership Audit Certificate

17. All unions will be required to supply to the CO a Membership Audit Certificate (MAC). The MAC is intended to provide an assurance that the union has complied with its duties under s24(1) TULRCA (duty to maintain register of members' names and addresses).
18. For unions of more than 10,000 members, the MAC is the certificate which an assurer is required to provide. The assurer must provide an opinion on whether the trade union's system for compiling and maintaining the register was satisfactory and whether they have received the information and explanations needed from the union. For other unions the MAC is a certificate signed by an officer of the trade union.
19. All certificates will be available for public inspection through the CO. Trade unions will have to supply a copy of their latest certificate on request either free of charge or for a reasonable fee.

Assurer (a qualified independent person)

20. As noted, there will be a duty on unions with more than 10,000 members to appoint a qualified independent person to act as an assurer.

21. As the quality of the assurance will rely on the assurer's credibility, we believe that it should be a recognised professional, such as a solicitor, accountant or auditor or an independent scrutineer from the statutory list of scrutineers able to monitor trade union ballots. It would be for each union to select and contract with the assurer.
22. There are some statutory requirements in relation to the appointment and removal of an assurer and in relation to the rights of the assurer. A duty of confidentiality with regard to the register is to be incorporated in the assurer's appointment.

Powers of the Certification Officer

23. The CO is to be given powers:
 - to require documents to be produced where he thinks there is good reason to do so;
 - to appoint an inspector to investigate where it appears there are circumstances suggesting that the union has failed to comply with its duties in relation to the register of members.
24. The CO will be able to act on his own authority and may take into account information brought to his attention by union members or third parties.
25. We expect that, in the great majority of cases, it will be members of the CO's staff who will carry out the investigation. However, there may be circumstances where the CO considers the investigation warrants external expertise – for example, where the investigation is complex or its scale is significant.

Compliance

26. Should the CO find that a union has not kept its membership record in accordance with the duty in section 24(1) of TULRCA, or if there is a breach of the duties to provide a membership audit certificate, appoint an assurer or in relation to the appointment and removal of assurers, he will be able to make a declaration or a declaration and enforcement order as appropriate.
27. Similarly, where a union or person refuses to supply relevant documents or otherwise refuses to co-operate with an investigation, the CO will be able to order compliance with the requirement.
28. Orders made by the CO will be treated as an order of the High Court (or Court of Session in Scotland). There is to be a route of appeal on a point of law to the Employment Appeal Tribunal (EAT).

Transition

29. Commencement of the trade union administration provisions in the Bill will be by Order. We do not intend that there should be retrospective application to reporting years that have already started when the legislation comes into force.

Role of the employer

30. Employers who have recognised a union for the purposes of collective bargaining are already under a duty to disclose information which is material to the collective bargaining process (section 181, TULRCA). However, we are keen to learn whether

the new requirements on unions will have consequences for the kind of information unions will request from employers.

Guidance

31. We intend to produce guidance to assist unions and employers when the new provisions come into force. We would welcome suggestions of what you would like to see included.

Impact

32. We would like to know the cost and benefit implications of the changes for unions, their members and employers. We have also produced an initial assessment of the equalities impact. This can be found at:

<https://www.gov.uk/government/publications/trade-union-membership-records-equality-impact-assessment>

5. Questions

Q 1. Confidentiality and Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. **If you do not want your response published or released then make sure you tick the appropriate box.**

- Yes, I would like you to publish or release my response
- No, I don't want you to publish or release my response

Q 2. Your name.....

Q 3. What organisation do you represent (if any)?

.....

Q 4. E-mail address

Q 5. If you are representing an organisation, what type of organisation is it?

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

Q 6. If you are responding on behalf of a trade union, approximately how many members does your union have?

	0-500
	500-1,000
	1,000-5,000
	5,000-10,000
	10,000-25,000
	25,000-50,000
	50,000-250,000
	250,000+

Section 1 Membership records

Q 7. How do you obtain membership details?

Q 8. How do you store your membership records?

Q 9. How do you keep membership details up-to-date?

Q 10. Have you encountered problems that mean membership records are not up-to-date?

Yes **No**

If yes, what were they?

Q 11. Will these changes impact on how you collect and maintain membership data?

Yes **No**

If yes, how?

Q 12. Will our proposals have any impact on how you collect membership subscriptions?

Yes

No

If yes, how?

Section 2 Independent third party assurer

Q 13. Do you agree with the role and duties of the assurer set out in the Bill?

Yes

No

If not, why not?

Q14. Do you agree with our proposal that a solicitor, accountant, auditor or scrutineer should act as the assurer?

Yes

No

If not, who do you think should do it? Why?

Section 3 Impact on unions

Q 15. What will be the costs and benefits to unions?

Q 16. What is your estimate of any additional costs in meeting the proposed annual assurance requirements in relation to membership records?

Q 17. Where do those costs come from?

Section 4 Impact on members

Q 18. What will be the costs and benefits to union members?

Section 5 Impact on employers

Q 19. What consequences do these proposals have for employers? Why do these consequences arise?

Q 20. What types of questions do unions ask employers in relation to union membership?

Q 21. As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record? Why would you respond to the requests in this way?

Section 6 Compliance

Q 22. What is your view of the remedies for non-compliance with the clauses?

Q 23. Will unions need time to prepare before the new requirements come into force?

Yes

No

Why?

Section 7 Guidance

Q 24. In a guidance document, what information would you find helpful in relation to the proposals?

Section 8 Other

Q 25. Do you have any comments on any other aspect of the provisions on Trade Union Administration in the Bill?

Q 26. Do you have any comments on the initial assessment of impact in the accompanying Equalities Impact Assessment (EQIA)?

6. How to respond

33. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the response form and, where applicable, how the views of members were assembled. We are seeking your views by **16 August 2013**.
34. For your ease, you can reply online at: <https://www.surveymonkey.com/s/85WLFZF>
35. Response forms can be emailed to discussion.tuadmin@bis.gsi.gov.uk.
36. Alternatively, you can send written responses to:

Louise Nixey
Labour Market Directorate
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

37. You may make copies of this document without seeking permission. An electronic version can be found at:
<https://www.gov.uk/government/consultations/transparency-of-lobbying-non-party-campaigning-and-trade-union-administration-bill-certification-of-trade-union-membership-details-discussion-paper>

Confidentiality and Data Protection

38. Information provided in response to this document, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
39. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

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