

## Trade Union Independence

***A trade union which is on the list of trade unions may apply for a certificate of independence. Independence is defined as meaning independence from an employer or group of employers. This chapter discusses independence and explains how such applications are dealt with and their outcome.***

### The statutory provisions

2.1 Section 5 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) defines an independent trade union as:

“... a trade union which –

- (a) *is not under the domination or control of an employer or group of employers or of one or more employers’ associations, and*
- (b) *is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control”.*

2.2 The procedure for determining the independence of trade unions is provided for in section 6 of the 1992 Act. A union must be listed (see Chapter 1) before it can apply for a certificate of independence. A fee is payable on application (see Appendix 10). The Certification Officer keeps a public record of all applications for such certificates and their outcome. She may not take a decision on an application until at least one month after it has been entered in the record. A notice that an application has been received is placed on the ‘News’ page of the Certification Officer’s website, [www.gov.uk/certificationofficer](http://www.gov.uk/certificationofficer), and is normally published in the London Gazette and/or the Edinburgh Gazette as appropriate. The Certification Officer must take into account any relevant information submitted by any person and is required to give reasons if a certificate of independence is refused. A union which has been refused a certificate of independence has a right of appeal on a point of law to the Employment Appeal Tribunal (EAT).

2.3 Where two or more trade unions, each with a certificate of independence, amalgamate, a certificate of independence will automatically be issued to the new union when the instrument of amalgamation is registered by the Certification Officer. The newly amalgamated union will, however, have its certificate of independence removed if it does not send certain prescribed information to the Certification Officer within

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<sup>1</sup>In *Squibb UK Staff Association v Certification Officer* ([1979] 2 All ER 452, [1979] IRLR 75, CA), it was held that the word “liable” in this context should be interpreted as implying “vulnerability to interference” rather than “likelihood of interference”.

six weeks of the date the amalgamation takes effect or such longer period as the Certification Officer may specify. The information to be sent to the Certification Officer is a copy of the rules of the new union, a list of its officers and the address of its head or main office, together with the prescribed fee (see Appendix 10).

- 2.4 The Certification Officer may withdraw a certificate of independence at any time if she is of the opinion that the trade union concerned is no longer independent. As in the case of a refusal, a trade union aggrieved by a decision to withdraw its certificate has a right of appeal on a point of law to the EAT.
- 2.5 Once the Certification Officer has determined that a trade union is independent and has issued a certificate, that certificate remains valid until it is withdrawn by the Certification Officer or is cancelled. This applies even to certificates issued under legislation in force prior to its consolidation into the 1992 Act.
- 2.6 The 1992 Act provides that, where a question as to the independence of a particular union arises in proceedings before the courts, employment tribunals, Central Arbitration Committee or the EAT and no certificate has been issued or refused, those proceedings may not continue until that question has been decided by the Certification Officer. The granting of a certificate by the Certification Officer, or its refusal, is conclusive evidence for all purposes that the union is or, as the case may be, is not independent. This position was considered by the Court of Appeal in the case of *Bone v North Essex Partnership NHS Foundation Trust* [2014] IRLR 635. The Court of Appeal held that a certificate of independence was retrospective in its effect for a reasonable period before the date of the certificate.

### **Criteria**

- 2.7 The principal criteria which have been used by the Certification Officer in determining whether or not an applicant union satisfies the statutory definition are explained in the Office's booklet *Guidance for trade unions wishing to apply for a certificate of independence*. These appear under the headings: history, membership base, organisation and structure, finance, employer-provided facilities and negotiating record. A copy of the guidance can be found on the Certification Officer's website and is available on request from the Office. The Certification Officer's decision is strictly bound by the statutory definition, having regard to the circumstances as a whole. Other considerations, such as the effect the issue of a certificate might have on employment relations, may not be taken into account.

### **Applications, decisions, reviews and appeals**

- 2.8 During the reporting period two applications for certificates of independence were received. The first application was received from United Voices of the World on 1 April 2017. The Certification Officer granted it a certificate of independence on 21 August 2017. The second application was received from the National House Building Council Staff Association on 9 November 2017. The Certification Officer granted it a certificate of independence on 7 March 2018.

- 2.9 A certificate of independence was issued to National Education Union, a new union formed by the amalgamation of two unions, Association of Teachers and Lecturers and National Union of Teachers, which already held certificates of independence.
- 2.10 No formal reviews of existing certificates of independence were undertaken during the period.
- 2.11 Four certificates of independence were cancelled because the unions concerned ceased to exist, three of which were a result of a merger. These were:
- Ellington Branch of the North East Area of the National Union of Mineworkers  
Staff Union West Bromwich Building Society\*  
Association of Teachers and Lecturers\*  
National Union of Teachers\*
- (\* unions marked with an asterisk ceased to exist as the result of a merger)
- 2.12 On 31 March 2018 there were 92 unions which held certificates of independence.