



Department
for Business
Innovation & Skills

**TRANSPARENCY OF LOBBYING,
NON-PARTY CAMPAIGNING AND
TRADE UNION ADMINISTRATION
ACT 2014**

**Guidance on Trade Union
Register of Members and
Membership Audit Certificate
requirements**

MARCH 2015

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Introduction

- 1.1. The purpose of this guidance is to explain the requirements placed on trade unions by section 24 of the Trade Union and Labour Relations (Consolidation) Act 1992 (henceforth “TULRCA”) and sections 24ZA to 24ZK, section 24A and section 24B of TULRCA which were introduced by Part 3 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (the Act).
- 1.2. Section 24(1) of TULRCA imposes a duty on trade unions in relation to their register of members.
- 1.3. Sections 24ZA to 24ZG build on this duty by introducing a new statutory duty on trade unions to supply an annual assurance to the Certification Officer (CO) in relation to the register of members. The annual assurance takes the form of a Membership Audit Certificate (MAC), which all unions need to supply to the CO irrespective of their size if they are required to make an annual return.
- 1.4. Sections 24ZH to 24ZK and sections 24A and 24B introduce new powers for the CO to ensure compliance with the section 24 duty and the new obligations introduced in relation to MACs and assurers.

Data Protection

- 2.1. The Data Protection Act applies to the Certification Officer, his inspectors and all assurers. Each will be required to use any personal data, including data on union members, consistently with the protections the Act contains. Individuals can be held legally liable if found to violate Data Protection provisions. The Information Commissioner has powers to enforce the data protection principles, and can impose substantial fines for some breaches.
- 2.2. In addition, there are confidentiality obligations so that an inspector appointed by the Certification Officer or assurers can only use or disclose information consistently with the exercise of functions in relation to the membership register or proceedings or where consent has been given.
- 2.3. The Certification Officer is also under a statutory duty to act consistently with right conferred by the European Convention of Human Rights.

Section 24 duty and Membership Audit Certificate

The section 24 duty

- 3.1. Section 24(1) of TULRCA requires a union to compile and maintain a register of members' names and addresses and, so far as is reasonably practicable, to secure that the entries in the register are accurate and kept up-to-date. This is referred to in this guidance as the "section 24 duty". Unions are not subject to this duty in their first year, or within a year of amalgamation.
- 3.2. It is important to note that the requirements in sections 24ZA to 24ZK and sections 24A and 24B do not alter the section 24 duty. Unions continue to be required to compile and maintain their membership register and to keep it accurate and up-to-date, so far as reasonably practicable. Similarly, the existing duty to keep a register of members only requires the union to compile and maintain a list of names and addresses. This remains unchanged.
- 3.3. In considering the section 24 duty previously the CO has said that the register does not have to be a single, centrally-located register. It may be a computer record. A register can be divided into parts, each of which is kept in separate places. In other words, each section or branch of a union may keep a register of their own members, though the union itself always remains responsible for the register as a whole.
- 3.4. The statutory duty only requires a union to maintain the names and addresses of its members. A union does not have to keep a record of a member's job title, branch or grade, etc. The address to be recorded can be the member's home address or any such other address that the member has requested the union in writing to treat as his postal address. Where a trade union does not have an address for a member it must ask for one. In order to help meet statutory obligations, unions could have in place a system which encourages members to notify it of any changes of address.

Reasonable practicability

- 3.5. The existing section 24 duty requiring unions to maintain a membership register that is up-to-date and accurate so far as reasonably practicable, has been interpreted by the CO in decisions made under section 25 of TULRCA. This relates to the right of a member to apply to the CO for a decision whether a union is complying with the section 24 duty. To help unions to comply with the section 24 duty, discussion of CO decisions on reasonable practicability is provided below.
- 3.6. A union needs to devote sufficient resources to the task and institute efficient systems for recording the necessary information and checking and updating the records from time to time. Whilst the primary responsibility for informing a union of a change of address lies with the member, the union must remind members to update their address details, as and when appropriate.

- 3.7. The following CO decisions on reasonable practicability may help unions to comply with the section 24 duty. In *Re Civil and Public Services' Association (1996)* the CO listed the steps routinely taken by a trade union to comply with the duty and concluded that they were 'very much the sort of actions that unions have to take in my judgement to satisfy the requirement to "secure so far as is reasonably practicable" that the register of members is accurate and up-to-date'.
- 3.8. These are:
- the membership application form contains a specifically designated box for 'the ballot address';
 - the union follows up applications for membership when no appropriate address was given;
 - similarly, if mail is returned undelivered to the union, the union is to check whether the member's address needs to be updated;
 - the union has regular membership verification exercises;
 - in its journal, the union regularly advertises the need for members to keep the union informed of their current balloting address; and
 - the union regularly reminds branch secretaries of the need to have up-to-date addresses.
- 3.9. In *Re Manufacturing, Science and Finance Union (1998)*, the CO held that the duty to maintain an up-to-date register meant that a union was under an obligation to operate a system for removing the names of those members who no longer wished to be members.
- 3.10. CO decisions determining **reasonable practicability** are made on a case by case basis. This is because what is reasonably practicable may vary from one union to another taking into account its circumstances such as its size, membership turnover, etc.

What is a Membership Audit Certificate (MAC)?

- 4.1. All unions subject to the section 24 duty are required to supply the CO with a MAC for each reporting period. A reporting period is a period in which the union is required to send an annual return to the CO.
- 4.2. Where a union has 10,000 or fewer members, the MAC will be a certificate signed by an authorised officer of the union which states his or her name and whether, to the best of that officer's knowledge and belief, the union has complied with the section 24 duty throughout the reporting period. The MAC is incorporated into the AR21 form which is available from the CO.
- 4.3. For unions with over 10,000 members, the union must appoint an assurer (see paragraphs 7.1 to 7.3 below). For these unions the MAC will be MAC which the assurer is required to provide the union for the period covered by the appointment.
- 4.4. Unions must submit the MAC to the CO along with their annual return. However, where an assurer provides a MAC that states that a union does not have a satisfactory membership system in place or that they have not been given the information necessary to give an assurance (see paragraphs 10.4 to 10.6 below), a

copy of the MAC must be sent to the CO as soon as is reasonably practicable after it is provided to the union.

- 4.5. If the terms of the contract with the assurer so provide, a union will have the opportunity to engage with the assurer before a qualified MAC is sent to the CO. It is anticipated that if a union is able to demonstrate that the certificate is inaccurate, they may be able to remedy it at that point.
- 4.6. The MAC will be publicly available to show whether a union's systems for complying with the section 24 duty is satisfactory. Unions already have to make their most recent annual return available on request, and the CO keeps copies of all annual returns for public inspection at all reasonable hours. The same obligations apply in relation to the MAC. As with the rights of access to audited returns, the union will be able to make a reasonable charge for supplying a copy of the MAC.

When must a union supply a MAC to the CO?

- 5.1. Unions will be required to submit a MAC, at the same time as their annual return (referred to as AR21), for the first full reporting year following 6th April 2015 and each year thereafter. Unions have 5 months after the end of their reporting year in which to submit their annual return for that year.
- 5.2. Unions can have different annual reporting years which can be any annual period as determined by each individual union. The period covered by the MAC must reflect the same period – whatever that may be. For example:

Unions using **calendar year** for the annual audit:

- Reporting year 1 January 2016 – 31 December 2016
- 5 month for AR21/MAC completion 1 January 2017 – 31 May 2017
- AR 21 (including MAC) due to CO 1 June 2017

Unions using **financial year** for the annual audit:

- Reporting year 1 April 2016 – 31 March 2017
- 5 month for AR21/MAC completion 1 April 2017 – 31 August 2017
- AR21 (including MAC) due to CO 1 Sept 2017

- 5.3. A template for the MAC will be available along with the template for the AR21 as provided by the CO. The [AR21](#) form used for annual returns and the MAC can be found online at the [CO web pages](#) on [GOV.UK](#).

Unions with 10,000 or fewer members

- 6.1. For unions which have 10,000 members or fewer at the end of their preceding reporting period, section 24ZA of TULRCA requires that the MAC must be signed by an officer of the trade union who is authorised to sign on its behalf. In other words, such smaller unions will not have to appoint an assurer (see section 8) nor are they required to change their union rules to deal with such an appointment.
- 6.2. The officer will need to state that, to the best of their knowledge and belief, the union has complied with the section 24 duty throughout the reporting period and submit the MAC to the CO. The officer will be named in the MAC and will need to sign the MAC. The sections of the AR21 relating to a union's annual return and the MAC must be submitted to the CO at the same time. The union must identify such an officer early enough in the reporting year that they can carry out the work to give the assurance required.
- 6.3. The section 24 duty has been in place since 1984 and all unions should be aware of its requirements. Information on previous CO decisions on what is reasonably practicable has been provided in paragraphs 3.5 to 3.10 above. All unions can use this information to help them comply with the section 24 duty.
- 6.4. Should a union declare in its annual return that its membership has exceeded 10,000 members, it will need to take measures, including changing its union rules, to appoint an assurer to provide independent assurance of its membership for the following reporting year. A union with membership numbers close to the threshold and where there is a possibility it may need to appoint an assurer in the future, may wish to consider amending their union rules to allow for the appointment of an assurer at the earliest opportunity.

Unions with more than 10,000 members

- 7.1. Unions that are required to file annual returns must appoint a qualified independent person to be an assurer (the assurer) for each reporting period in which they have more than 10,000 members. The assurer will be required to provide the union with a MAC. Where unions include overseas members as part of their total membership figures in their annual return to the CO, then those members are to be included in the membership threshold (i.e. more than 10,000) to appoint an assurer.
- 7.2. Whether or not a union is required to appoint an assurer will be based upon the membership figure submitted in the previous annual report. In other words, the duty to appoint an assurer will only be activated if the number of members in the previous annual report is over the 10,000 membership threshold.
- 7.3. A union with over 10,000 members must have rules containing provisions on the appointment and removal of an assurer. This mirrors existing requirements to amend union rules relating to the appointment and removal of auditors (section 35 of TULRCA). Union rule books should not conflict with the statutory provisions which will have effect notwithstanding anything set out in a union's rules.

Assurers

Appointment of an assurer

- 8.1. As explained above, unions that have over 10,000 members in a reporting period must appoint an assurer to provide a MAC for that period.
- 8.2. Where unions are required to appoint an assurer, such an appointment should be made early enough so that the assurer can carry out the work to give the assurance required. Unions may wish to appoint an assurer at the beginning of a new reporting year once it's clear from the annual report filed with the CO that they will have more than 10,000 members.
- 8.3. The [xxx] Regulations 2015 determine who can be appointed as an assurer. It will be for a union to choose the assurer it will appoint from the persons who meet the criteria in the Regulations. The appointment confers a duty on the assurer to the trade union to provide a MAC after carrying out such enquiries as the assurer considers necessary. The assurer has a statutory duty of confidentiality in respect of the union's register of members and is bound by the provisions of the Data Protection Act (see section 2 above).
- 8.4. An assurer, once appointed, cannot be removed from office except by resolution passed at a general meeting of the members of the union or of delegates of its members. This mirrors the statutory processes set out in relation to the appointment and removal of auditors set out in section 35 of TULRCA.
- 8.5. Furthermore, a person appointed as an assurer in relation to a reporting period must be re-appointed for the following reporting period unless:
 - a resolution has been passed at a general meeting of the trade union expressly stating that they are not to be re-appointed or appointing someone else instead
 - they have given notice that they do not wish to be re-appointed
 - they no longer meet the qualifications for appointment, or
 - they are no longer able to act as an assurer due to incapacity.
- 8.6. However, a union does not have to automatically re-appoint an assurer where
 - notice has been given of an intended resolution to appoint somebody else instead and
 - that resolution cannot be proceeded with at the general meeting because of the death or incapacity of the proposed replacement.
 - they are retiring
- 8.7. When making the appointment, a union must have no grounds for believing either (a) that the person or organisation appointed will carry out the assurer's functions otherwise than competently or (b) that their independence may be reasonably called into question. An officer or employee of the trade union any of its branches cannot act as an assurer. Neither can a person who is a partner of, or in the employment of, or who employs such an officer or employee.

- 8.8. Apart from these statutory requirements, other terms of the appointment can be agreed by the union and its assurer. For instance, unions will be free to agree with their assurer, subject to compliance with the compulsory elements of the appointment, the detail behind the assurance process depending on individual union circumstances, e.g. membership rules and individual record-keeping systems. Unions and assurers could agree terms which specify that an assurer should raise any concerns with the union first so that these can be discussed and possibly resolved before the assurer completes the MAC. Similarly, a union and assurer can agree when the process will happen – either at the end of the reporting year or throughout. Whilst the assurer will need sufficient time to assess a union's systems for maintaining its membership list, a contract could stipulate the period by which a final MAC should be presented to the union so that the union can send it to the CO at the same time as its annual report.

Eligibility to be an assurer

- 9.1. An assurer can be one of the following recognised independent, qualified persons:
- solicitors;
 - auditors; or
 - persons who are qualified to act as scrutineers under the Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Order 1993.

Role of the assurer and duties

- 10.1. The role of the assurer is to provide a MAC which must state whether, in the assurer's opinion, the union's system for compiling and maintaining its register of members was satisfactory for the purposes of complying with the section 24 duty throughout the reporting period.
- 10.2. The assurer must also state whether, in their opinion, they were able to obtain all the information or explanations needed to carry out his task.
- 10.3. The assurer has a statutory right of access to information to ensure that the MAC is accurate. This means that the assurer must have access at reasonable times to the register of members and other documents necessary to fulfil their functions. The assurer can also ask any of the union's officers, from any branch or section, to provide the information and the explanations required.
- 10.4. The assurer has a duty to inform the CO if it provides to a union a MAC that states the union's system for compiling and maintaining the names and addresses of its members unsatisfactory for the purpose of complying with the section 24 duty or if information is not provided. Having carried out whatever enquiries are necessary, an assurer must provide a MAC to the union which the union will need to submit to the CO with its annual return.
- 10.5. Where an assurer is not confident that a union has a satisfactory membership system in place and produces a negative MAC stating this, the assurer must also send a copy to the CO as soon as is reasonably practicable after it is provided to the union. If the terms of the contract with the assurer so provide, a union will have the opportunity to engage with the assurer before a qualified MAC is sent to the CO.

- 10.6. The assurer must state in the MAC their reasons for issuing a negative certificate. Likewise, if the assurer has not received the information they think necessary to supply the certificate, they must explain what information they requested and did not receive.

Assessment of compliance with the section 24 duty

- 11.1. In essence, the assurer will need to assess whether a union's systems for compiling and maintaining a register of members' names and addresses are satisfactory to comply with the section 24 duty i.e. that its register is, so far as is reasonably practicable, accurate and up-to-date. In order to do so, the assurer will need to access information so that the MAC is accurate.
- 11.2. Though unions are statutorily required to comply with the above requests from the assurer, there are clear safeguards in the Act that ensure that member data, including names and addresses, is treated as confidential. Such details cannot be disclosed without members' permission, unless required by the CO, inspector or assurer to complete their duties, or as part of a criminal investigation or proceedings.
- 11.3. It is important to recognise that there may be good reason as to why there are occasional inaccuracies in membership registers (for instance, high membership turnover, failure of members to notify a union of change of address, etc.). In making his assessment, the assurer should consider the guidance on reasonable practicability and the CO decisions set out under section 3 above. Assurers should bear in mind that reasonable practicability will vary from one union to another taking into account its circumstances such as its size, membership turnover, etc.
- 11.4. In order to make their assessment, an assurer will need to ask the union for information to ensure that the MAC is accurate. This guidance does not seek to specify exactly what information may be relevant. This may vary, depending how a union defines a member, and how it maintains its records. The union will need to agree terms directly with the assurer. It is important to note that the union does not have to provide information to the assurer unless it is relevant to the register of members' names and addresses.
- 11.5. However, an assurer may want to check how the union collects data from new joiners, how they remind members about keeping records up-to-date, the ease with which members can notify changes and how quickly changes are made. We would expect that an assurer will be interested in the data cleansing processes larger unions use for electronic databases.
- 11.6. Assurers do not need to check the accuracy of every single member record in order to produce a MAC. This would present a disproportionate cost burden to unions, and would be inconsistent with standard practice in comparable checks, for example of audited accounts.

Certification Officer's powers

Certification Officer - providing documents

- 12.1. The CO has powers to require the production of union documents, including the register of members, which the CO considers may be relevant to the duties in relation to the register of members, where the CO considers that there is good reason to do so. The CO or any inspector appointed by the CO, can ask anyone who may have documents relevant to the investigation to supply these. They may also ask individuals to attend meetings and to co-operate with their enquiries.
- 12.2. Though unions will be statutorily required to comply with the above requests from the CO, assurer or inspector, there are clear safeguards in TULRCA that ensure that member data is treated as confidential and can only be disclosed for specified purposes or with consent.
- 12.3. The CO and any inspector appointed will be bound by comprehensive legal safeguards. They can only access data specifically required for the performance of their functions in relation to the register and the audit requirements under TULRCA.
- 12.4. Furthermore, existing Data Protection rules will continue to apply to union membership data. The CO, assurers and inspectors will also be bound by these rules in accessing any other personal data under their powers from TULRCA. Also, under TULRCA as amended by the Act, names or addresses of union members cannot be disclosed without their permission, unless required by the CO, inspector or assurer to complete their duties, or as part of a criminal investigation or proceedings.

Certification Officer investigation

- 13.1. The Act confers additional powers on the CO that mirror those the CO already has in relation to accounting records. The CO also has powers to appoint inspector(s) to conduct investigations in relation to membership records that are analogous to those they already have for financial records.
- 13.2. This means that the CO will be able to appoint an inspector if it appears to them that there are circumstances suggesting that a union is not in compliance with the section 24 duty, the duty to provide a MAC, or the duty to appoint an assurer. These circumstances may arise, for example, on receipt of a qualified MAC from an assurer, a complaint from a member, or where they are otherwise made aware of circumstances by a third party that there are circumstances suggesting that a union may not be in compliance.
- 13.3. The CO can only appoint an inspector where there are circumstances suggesting that the union is not complying with its duties in relation to the membership register or the new assurance requirements. The CO can only request information where there is good reason to do so. The tests of circumstances to suggest good reason to investigate are consistent with other parts of TULRCA and the CO has been applying them in relation to financial records for many years.

- 13.4. It will be for the CO to make an initial assessment of any allegations to ensure that they merit further action.

Role of the inspector

- 13.5. Should the CO decide to launch an investigation, they will be able to appoint an inspector to investigate. The inspector can be either a member of the CO's staff or an appropriate third party, chosen by the CO. The ability to appoint a third party gives the CO discretion to identify an inspector with specific expertise or to simply appoint additional resource.
- 13.6. What the inspector does will depend on the circumstances suggesting a union is not complying with its duties.
- 13.7. The inspector will then report their findings on the conclusion of their investigation to the CO, unless they are directed not to do so. The CO can redirect or terminate an investigation and will decide what action to take on the inspector's findings.

Enforcement orders

- 13.8. Should a union or person fail to cooperate with a request for documents or an investigation, the CO may in some circumstances make an order requiring compliance, where it is reasonably practical to do so, after giving the union or person an opportunity to be heard. If the CO makes such an order, it will be treated as though it is an order of the court.

The order will specify the duties and requirements that have not been complied with and a specified period of compliance with the order. Failure to comply with this order will be contempt of court.

- 13.9. Should the CO find that a union is in breach of its duties under section 24, or the new assurance requirements, the CO may issue a declaration specifying the union's non-compliance and their reasons for making this declaration after enquiries have been made and having given the union an opportunity to make representations. Unless it is considered inappropriate to do so, the CO will also issue an enforcement order specifying how the union should remedy the failures identified and, where appropriate, the date by which this should be done.
- 13.10. Furthermore, the CO will also have the power to proceed and make a declaration in a case where information they have asked for in that process has not been provided by a specified date.
- 13.11. Declarations and enforcement orders issued by the CO can be appealed to the Employment Appeal Tribunal (EAT) on a point of law.



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This publication is available from www.gov.uk/bis

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BIS/15/142