

Elections for Certain Positions

The Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) requires that certain officers and all members of a trade union’s executive committee must be elected by postal ballot. If they seek to remain in that position for more than five years they must be re-elected. This chapter deals with the statutory provisions governing elections. As explained in chapter 9, the Certification Officer also has powers to deal with breaches of a union’s own rules governing elections and certain other matters.

The statutory provisions

- 8.1 A trade union must ensure that no-one takes up a position as a member of its executive committee, or as its general secretary without having been elected to that position. Nor may anyone remain in such a position for more than five years without having been re-elected to it. There are, however, exemptions in respect of amalgamations, newly formed unions, special register bodies and officers nearing retirement. Elections are required to be by postal ballot of the members of the union, conducted in accordance with the relevant provisions in the 1992 Act.
- 8.2 Individual trade union members, and candidates in the election, have the statutory right to apply to the Certification Officer, or to the court (but not to both in respect of the same complaint), for a declaration that their trade union has failed to comply with one or more of the relevant provisions of the 1992 Act. The Certification Officer will determine any such application and will give written reasons for her decision. Such reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.
- 8.3 The 1992 Act also provides that where the Certification Officer makes a declaration she shall also, unless she considers that to do so would be inappropriate, make an enforcement order imposing on the union one or more of the following requirements –
- (a) to secure the holding of an election in accordance with the order.
 - (b) to take such other steps to remedy the declared failure as the Certification Officer may specify in the order.
 - (c) to abstain from such acts as the Certification Officer specifies with a view to securing that a failure of the same, or similar kind, does not occur in the future.
- 8.4 The 1992 Act also requires the Certification Officer to give the claimant and the trade union concerned an opportunity to be heard before the Certification Officer determines an application and makes, or refuses, the declaration sought. All hearings before the Certification Officer are held in public.

- 8.5 Section 256(2) of the 1992 Act requires the Certification Officer to make provision about the disclosure or otherwise of the identity of an individual who has made, or is proposing to make, any application or complaint. The 1992 Act requires that if the application or complaint relates to a trade union, the individual's identity is to be disclosed to the union unless the Certification Officer thinks the circumstances are such that it should not be disclosed.
- 8.6 The Certification Officer has made provision under section 256 of the 1992 Act to the effect that the identity of an individual who proposes to make an application or complaint will not generally be disclosed to the union, unless or until the application or complaint is accepted. When an application or complaint is accepted, the Certification Officer will generally disclose the individual's identity to the union (and others as the Certification Officer thinks fit) unless it is decided that the circumstances are such that it should not be disclosed. The Certification Officer makes that decision on a case by case basis. Fear of denigration will not of itself normally justify non-disclosure. The provision made by the Certification Officer under section 256 of the 1992 Act is on the Guidance and Forms section of the Certification Officer's website, www.gov.uk/certificationofficer.
- 8.7 When a hearing is held, certain expenses incurred by claimants and their necessary witnesses attending the hearings may be reimbursed by the Office at the discretion of the Certification Officer. During the reporting period such payments amounted to £1,262.85.
- 8.8 Appeals on any question of law arising in proceedings before or arising from any decision of the Certification Officer may be made to the Employment Appeal Tribunal (EAT).
- 8.9 If it is decided that there has been a breach of the statutory provisions, the declaration made by the Certification Officer must state any steps which the union has taken or has agreed to take to remedy the breach or prevent such a breach from occurring in the future.
- 8.10 A person cannot complain to the Certification Officer if he or she has applied to the court in respect of the same matter even if the person subsequently withdraws his or her application to the court. Similarly, once an application has been made to the Certification Officer the claimant may not then apply to the court. Where an application to the Certification Officer is made by a different person alleging the same failures which had been considered and determined by the court, the Certification Officer is required to have due regard to any declaration, order, observations or reasons made or given by the court which are brought to the notice of the Certification Officer.

Applications and decisions

- 8.11 In the period 1 April 2017 to 31 March 2018, the Certification Officer received an application consisting of 10 complaints relating to the position of General Secretary of the Unite the Union. The Certification Officer appointed His Honour Jeffrey

Burke QC to hear the case. A directions hearing was held on 26 January 2018. A preliminary hearing to determine complaint one was held on 27 March 2018. The decision was issued on 4 May 2018; the ACO did not uphold the complaint. An appeal by the applicants to the EAT was dismissed on 12 June 2018.

- 8.12 During the period 1 April 2015 to 31 March 2017, Certification Officer received multiple applications regarding the election of the General Secretary of UNISON. In total five members of the union made applications relating to the same issues. There were two hearings (6 October 2016 and between 19 December 2016 and 21 December 2016). The Certification Officer appointed Her Honour Judge Mary Stacy to hear the case. The applications totalled 16 complaints. These were made up of two breaches of statute (one alleged breach of section 49(4) and one alleged breach of section 49(6) of the Trade Union and Labour Relations (Consolidation) Act 1992 which deals the appointment of independent scrutineer) and 14 breaches of rule. The decision was issued on 22 May 2017. The Assistant Certification Officer upheld one complaint of breach of union rule but did not deem it appropriate to make an enforcement order on the basis that it would be disproportionately punitive, in response to the breach found, to order the General Secretary election to be run again. An appeal by the applicants to the EAT was dismissed on 8 February 2018.