



Department for
Business, Energy
& Industrial Strategy

PUBLIC SELECTION PROCESS

Organisations entitled to act as independent scrutineers and qualified independent persons for certain union matters

WITHDRAWN

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Summary of relevant law

1. Unions are required by statute to use the services of an independent qualified scrutineer when undertaking certain categories of ballot and election. Under the current law (Statutory Instrument 2010 No 436 in Great Britain; Statutory Rule 2010 No 78 in Northern Ireland), only solicitors, accountants qualified to be company auditors and named organisations are defined as qualified to undertake this role.
2. The Central Arbitration Committee (in Great Britain) and the Industrial Court (in Northern Ireland) are required by statute to use the services of qualified independent persons when carrying out trade union recognition and derecognition ballots. Under the current law (Statutory Instrument 2010 no 437 in Great Britain; Statutory Rule 2010 No 79 in Northern Ireland), only solicitors, accountants qualified to be company auditors and named organisations are defined as qualified to undertake this role.
3. The organisations named in the above legislation were identified following a public selection process inviting suitable candidates to apply. However, some time has since elapsed and the situation among organisations qualified to undertake ballot-related work may have changed. Furthermore, since 2010 new legislation has been introduced in Great Britain: the implementation of Part 3 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 established that scrutineers can act as assurers in the annual completion of unions' membership audit certificates on behalf of trade unions, while the Trade Union Act 2016 amended legal provisions concerning union balloting.
4. The Department for Business, Energy, and Industrial Strategy (BEIS) and the Northern Ireland Department for the Economy (DfE) are therefore running an open selection process to invite organisations to express their interest in offering such scrutineer services where they can demonstrate that they are suitably qualified.
5. In order to commence this public selection process, the departments are hereby inviting:
 - interested organisations currently not named in the lists to apply for inclusion; and
 - the currently named organisations able to complete scrutineer services to re-apply for inclusion in the list.

Background

6. Unions are required by law to use the services of an independent scrutineer when carrying out statutory ballots in four areas:

- industrial action ballots (involving more than 50 people);
- ballots to establish and periodically review a union's political fund;
- ballots concerning the amalgamation of unions; and
- elections to certain trade union positions.

These ballots must be postal.

7. The Central Arbitration Committee and the Industrial Court are required by law to use the services of a qualified independent person when carrying out statutory ballots in two areas:

- ballots under the statutory recognition and derecognition procedure to recognise a trade union for the purposes of collective bargaining
- ballots under the same statutory procedure to de-recognise a trade union which was recognised via the statutory recognition process

These ballots can be either postal or workplace, or a combination of both methods.

8. Scrutineers and qualified independent persons have certain statutory functions to perform in connection with these ballots. These centre on the supervision of the ballot or election. They must also produce a report after the ballot or election, which among other things gives the result of the vote and states whether the scrutineer or qualified independent person is satisfied that there are no reasonable grounds for believing that the ballot was conducted in contravention of the law. These functions are described in more detail in Annex A. It is also the usual practice for the scrutineer to act as the independent person who actually undertakes the ballot – that is, storing, distributing and counting ballot papers. Scrutineers are paid by the unions who hire their services. Unions are obliged to appoint only a solicitor, an auditor or one of the named organisations from the statutory list that they believe are independent and competent.

9. In respect of recognition and de-recognition ballots, qualified independent persons' fees are split equally between the employer and the trade union, though they are appointed to conduct ballots by the Central Arbitration Committee (in Great Britain), and the Industrial Court (in Northern Ireland). Unless using a solicitor or auditor, these bodies can appoint only those organisations from the statutory list that they believe are independent and competent. At the time of, or prior to, a recognition/ derecognition ballot, qualified independent persons can also be asked, at the request of a trade union, to send information to the workers concerned; the union alone is responsible for meeting the costs of these assignments.

10. In Great Britain, unions with over 10,000 or more members must appoint an assurer to complete an annual Membership Audit Certificate to be submitted to the Certification Office as part of a union's Annual Report. An assurer can be a solicitor, an accountant qualified to be company auditor or a scrutineer. The role of the assurer is to state whether, in its opinion, the union's system for compiling and maintaining its register of members was satisfactory for the purposes of complying with the trade union duty in relation to the compilation and maintenance of the union's register of members.

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Attributes sought

11. These positions are highly responsible ones and involve sensitive issues concerning industrial relations and trade union affairs. It is therefore essential that the departments appoint only those organisations which can show they have the full range of competencies and experiences needed.
12. In order to be named as an organisation able to provide services as a scrutineer or qualified independent person, organisations must be legally identifiable bodies. They must further satisfy the departments that they are:

Independent and impartial

- Applicants must show that they are not controlled by individual unions or potentially subject to undue commercial pressures from unions or employers.
- They must adhere to the highest standards of probity and professional objectivity. Although they are effectively 'hired' by the union, scrutineers must be able to highlight any wrong doing or problems with a ballot.

Competent

- Balloting requires attention to detail to ensure efficiency as well as to certify proper conduct. Successful applicants will need to show that they fully understand the pitfalls to be avoided, including any breach of data protection and confidentiality.
- They will also need to demonstrate an adequate knowledge of the law regarding trade union balloting, recognition and derecognition ballots, and the statutory functions assigned to scrutineers and qualified independent persons.

Adequately resourced

- Ballots and elections have to be held to tight timetables. Applicants will need to show that they have the staffing and other necessary resources to supervise and undertake postal and workplace balloting within the necessary time scales.
- An organisation's capability to supervise or run ballots across Great Britain (and/or, where relevant, within Northern Ireland) should also be described.

Adequately experienced

- Applicants will need to show that they have undertaken ballots competently, efficiently and professionally.
- Alternatively, newly established organisations, or those organisations new to balloting, will need to show that they employ staff with such experience.

How to apply

Applications should be made in writing to the address given below. In their applications, organisations should clearly set out and explain how they meet the selection criteria outlined above.

Organisations should clearly state which of the four lists (scrutineers or the Central Arbitration Committee in Great Britain, or scrutineers or the Industrial Court in Northern Ireland) they are applying, or re-applying, to join.

Applications should contain the CVs on those individuals who lead within their organisations on balloting work.

Applications should also contain the names and addresses of two referees, preferably from organisations which have used the balloting services of the applicant organisation.

The public selection process is launched on Thursday 23rd February 2017. Applications will need to reach BEIS by Wednesday 22nd March 2017. Shortlisted applicants will be invited for interview at the BEIS HQ building in London during week commencing 24th April 2017. The interviewing panel will consist of a BEIS official, a Department for Employment (Northern Ireland) official, an official of the Central Arbitration Committee and an independent panel member.

Following the interviewing stage, the panel will make recommendations to BEIS and Department for Employment Ministers who will make the final decisions relating to Great Britain and Northern Ireland, respectively.

If the outcome of this public competition necessitates changes to any or all of the current legislation, then BEIS and Department for Employment are committed to make those changes as speedily as possible.

Applications and enquiries should be made to:

Labour Markets Directorate
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET
labourmarket.consultations@beis.gov.uk

Annex A: List of supplementary sources

The functions of the independent scrutineer are very similar for each of the four areas of statutory ballots (industrial action ballots, trade union elections, ballots regarding political funds, and mergers between trade unions), and for recognition and derecognition ballots.

However, there are some differences between them. A distinction is also drawn in legislation between the independent scrutineer who has supervisory duties and produces a report on the ballot, and the independent person who is retained to assist with the ballot, i.e. storing, distributing and counting voting papers. It is usual for the independent scrutineer also to act as the independent person. However, if they are not, it is for the scrutineer to oversee the work of the independent person.

The following sources provide greater detail on the types of ballots which the independent scrutineer will oversee. They also provide information on the overall legal context within which the ballot is placed, as well as describing the role and functions of both the scrutineer and the independent person, and the relatively new role of assurers.

Industrial action

Great Britain: The legislation covering industrial action is to be found in the Trade Union and Labour Relations (Consolidation) Act 1992, primarily in sections 226-235. Some changes were introduced by the Employment Relations Act 1999. However, the 1999 Act did not change the law relating to scrutineers and independent persons.

Guidance issued by the former DTI (now BEIS) can be found on the Gov.uk website via the following address: www.gov.uk/government/publications/code-of-practice-industrial-action-ballots-and-notice-to-employers--2

Northern Ireland: The legislation covering the requirement of a ballot before industrial action is to be found in the Trade Union and Labour Relations (NI) Order 1995, Articles 104-119.

Guidance issued by DfE can be found on their website via the following address: www.economy-ni.gov.uk/publications/code-practice-industrial-action-ballots-and-notice-employers

Trade union executive elections

Great Britain: The legislation for this can be found in the Trade Union and Labour Relations (Consolidation) Act 1992 sections 49-546A (as amended by the Trade Union Act 2016).

Guidance on trade union elections can be found on the Gov.uk website via the following address: www.gov.uk/government/publications/trade-union-executive-elections-guide-for-trade-unions-and-their-members

Northern Ireland: The legislation for this can be found in the Trade Union and Labour Relations (NI) Order 1995 Articles 12-28.

Guidance issued by DfE on trade union elections can be found on the nidirect website via the following address: www.nidirect.gov.uk/articles/trade-union-elections

Trade union political funds

Great Britain: The legislation is contained in the Trade Union and Labour Relations (Consolidation) Act 1992 sections 75-81.

Guidance on trade union political funds and political fund ballots can be accessed on the Gov.uk website via the following address: www.gov.uk/government/publications/trade-union-political-funds

Northern Ireland: The legislation is contained in the Trade Union and Labour Relations (NI) Order 1995 Articles 47-56.

Guidance issued by DfE on political funds can be found on the nidirect website via the following address: www.nidirect.gov.uk/articles/trade-union-subscriptions

Trade union mergers

Great Britain: The law relating to these statutory ballots can be found in sections 97-100E of the Trade Union and Labour Relations (Consolidation) Act 1992.

Northern Ireland: The legislation for this can be found in the Trade Union and Labour Relations (NI) Order 1995 Articles 73-87.

Trade union recognition and derecognition ballots

Great Britain: The law relating to recognition and derecognition ballots can be found in Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992.

Guidance on trade union recognition can be found on the Gov.uk website via the following address: www.gov.uk/government/publications/trade-union-recognition-cac-guidance

Northern Ireland: The law relating to recognition and derecognition ballots can be found in Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995.

A DfE booklet on recognition and derecognition ballots is available via the following address: www.economy-ni.gov.uk/publications/code-practice-access-and-unfair-practices-during-recognition-and-derecognition-ballots

Annual assurance in relation to systems maintaining union membership lists

Great Britain: Guidance for assurers in order to complete annual assurance on behalf of Trade Unions that their systems for maintaining their membership list accurate and up to date, are adequate.

www.gov.uk/government/publications/trade-union-register-of-members-new-requirements

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The logo consists of the letters 'OGL' in a bold, black, sans-serif font. The 'O' and 'G' are connected, and the 'L' is separate.

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