

BIS | Department for Business
Innovation & Skills

TRADE UNION POLITICAL FUNDS

A guide for trade unions, their
members and others

2010

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Introduction

A trade union wishing to spend money on party political activities must set up a separate political fund for financing any such expenditure. Trade unions must comply with certain statutory requirements in setting up and running such funds and union members have certain rights in relation to these requirements.

In particular, no member is obliged to contribute to a union's political fund.

This document is designed to give trade unions, their members and others a general understanding of the relevant statutory requirements, and rights given to members. It gives general guidance only and is not a substitute for professional legal advice. Authoritative interpretations of the law can only be given by the courts.

The contents of this document apply equally to men and to women but, for simplicity, the masculine pronoun is used throughout. "Court" means the High Court in England and Wales and the Court of Session in Scotland, except where otherwise indicated

Setting up a political fund

When does a union need a political fund?

A trade union needs a political fund only if it wants to use its funds for what the law defines as "political objects".

What are "political objects"?

"Political objects" cover what can broadly be described as electoral or other party political activities. They are defined as the expenditure of money:

- on any contribution to the funds of, or on the payment of any expenses incurred directly or indirectly by, a political party;
- on the provision of any service or property for use by or on behalf of any political party;
- in connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot by a union in connection with any election to a political office (that is the office of Member of Parliament, Member of the Scottish Parliament, Member of the Welsh Assembly, Member of the European Parliament, or member of a local authority, or any position within a political party);
- on the maintenance of any holder of a political office (as defined above);
- on the holding of any conference or meeting by or on behalf of a political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party (including any expenditure incurred in connection with the attendance of delegates or other participants); or
- on the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote or not to vote for a political party or candidate.

Expenditure for **any** purpose not included on this list, but allowable under the union's own rules, may be made out of its general, or some other, fund.

What must a union do if it wishes to set up a political fund?

If a trade union wishes to establish a political fund its members must approve a resolution adopting the "political objects" as an object of the union in a secret ballot. The rules for conducting that ballot must be adopted as rules of the union and approved by the Certification Officer for Trade Unions and Employers' Associations before the ballot takes place.

The Certification Officer will give his approval only if the political fund ballot rules meet certain requirements. In particular:

- entitlement to vote must be given to every member of the union;
- the ballot must be held by post **and**
- the ballot must be conducted and supervised by an independent scrutineer, in accordance with the requirements of the relevant law ¹.

An information pack outlining the procedure to be followed and giving model rules is available from the Certification Officer (whose address and telephone number is provided in Appendix 3 of this document).

What if the union fails to comply with the ballot rules approved by the Certification Officer?

If a trade union member believes that a political fund ballot has been, or will be, held by his union in a way that does not comply with the rules for holding the ballot approved by the Certification Officer, the member may complain either to the Certification Officer or to the court ².

Who can complain?

A complaint can be made by any member of the union. Where the ballot has already been held, a person must also have been a member of the union at the time the ballot was taken.

When can a complaint be made?

A complaint about a political fund ballot which has already been held must be made within a year of its result being announced by the union.

What happens when a complaint is made?

Whether a member complains to the Certification Officer or to the courts he will need to point to specific ways in which he believes the ballot did not comply, or would not comply, with the rules for that ballot approved by the Certification Officer.

What procedures are involved?

The Certification Officer's procedures are less formal than a court's and he is required to reach a decision on an application within six months if at all possible. He is also required to give the parties to the complaint an opportunity to present their case at a public hearing, though the parties can agree to the case being determined without a hearing.

¹ The detailed requirements relating to the conduct of the ballot and independent scrutiny are described in the sections of this document covering Independent scrutiny of political fund ballots, the independent person and duty of confidentiality.

² In either case the complaint would be on the ground that there has been a breach of the union's rule book

The timetable for hearing an application to a court is a matter for the court itself to determine. However, the court has the power to grant an interim order, which would prevent a union from setting up a political fund pending a full hearing of the case, and may be willing to consider an application on this basis very quickly.

A member who has complained to the Certification Officer is prevented from complaining to the court later on the same issue.

What happens if a complaint is upheld?

Both the Certification Officer and the court have the power to make an order to remedy any breach that has occurred.

Where a trade union refuses to comply with an order made by the Certification Officer, the applicant can apply to the court to enforce it as if it were an order of the court.

What happens if the ballot results in a majority 'yes' vote?

The trade union must adopt "political fund rules", and these must be approved by the Certification Officer.

These rules must safeguard the rights of members by:

- permitting individual members to **contract out** of contributing to the political fund;
- providing that no member who contracts out will be discriminated against within the union because he refuses to contribute to the political fund; **and**
- providing that contributing to the political fund shall not be made a condition for admission to the union.

The Certification Officer can provide "model political fund rules".

A union member can complain about breaches of "political fund rules" to the Certification Officer. The Certification Officer may make an order requiring the union to remedy any breach of its "political fund rules" which has occurred, and a member may apply to the County Court (or Sheriff Court in Scotland) for any such order to be enforced.

Operating a political fund

How is a political fund financed?

The union's political fund will normally be financed mainly, if not wholly, from contributions by members - the "political levy". Its collection can be arranged in two ways: (i) by means of a separate contribution to the political fund from members who are not "contracted out", or (ii) by making the levy a part of the normal union subscription and relieving those who are "contracted out" from paying that part. The "political fund rules" will state which of these methods is to be used.

A trade union must not at any time transfer into its political fund any money (or other assets) which do not represent either direct contributions to the political fund or property which accrues to the fund in the course of administering the fund's assets³. A member who believes that his union has failed to comply with these requirements may complain to the Certification Officer or the court.

³ If a previous authority for a union to spend money on political objects, which had lapsed, is re-established by a review ballot (see Reviewing the political fund), the union may not pay into the political fund any contributions which were received after the previous authority lapsed and before the new authority was established.

"Contracting out" of a political fund

How does a member "contract out"?

If its members vote to set up a political fund, the union must immediately inform all of them that:

- each member has a right to "contract out" of paying the political levy; **and**
- a form with which they can claim this right is available on personal application to, or by post from, the union's head office, any branch office, or from the Certification Officer.

A member wishing to "contract out" is not obliged to use an official exemption form. He may complete and send to his union a form which he has drawn up himself (whether it is typed or handwritten) provided that the form follows the outline given in Figure 1 or has the same effect. Whatever form is used, it is essential that the member sends it to the union if the notice is to be effective.

A member may "contract out" at any time. Where a member gives such notice within one month of his union setting up a political fund, then the exemption takes place immediately. In other cases, exemption takes effect from the beginning of the next calendar year. A member denied his right to "contract out" may complain to the Certification Officer, who will take the matter up with the union.

If the union continues to deny the member's right, the Certification Officer may issue a declaration against it which can be enforced through the County Court (in Scotland the Sheriff Court).

If the "political fund" levy is collected as part of the members' total union subscription, then the "political fund rules" must specify how much of the subscription is a contribution to the political fund. Any member who "contracts out" will therefore know exactly the amount of union dues of which he should be relieved.

Figure 1

<p>FORM OF EXEMPTION NOTICE Name of Trade Union POLITICAL FUND (EXEMPTION NOTICE)</p> <p>I give notice that I object to contributing to the Political Fund of the Union, and am in consequence exempt, in the manner provided for by Chapter VI of Part 1 of the Trade Union and Labour Relations (Consolidation) Act 1992, from contributing to that fund.</p> <p>A.B.</p> <p>Address.....</p> <p>.....day of.....20.....</p>
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What happens when "check-off" operates?

There are additional safeguards for members who pay their union subscriptions by "check-off" where the political levy forms part of or is collected with their subscriptions. ("Check-off" is the system under which the employer deducts trade union subscriptions from members' pay⁴).

An employer may deduct union subscriptions from a member by check-off if the member has signed and dated a written authorisation within the previous three years. The member is entitled to withdraw his authorisation at any time and if he does so, his employer has no right to deduct his subscriptions by check-off.

Note: A consent given before 23 June 1998 will lapse three years after it was signed unless it is extended, and will not cover any increase in subscription unless the worker is notified at least one month before the increase takes effect.

A union member who thinks his employer has deducted union subscriptions from him when he had not given an authorisation or his authorisation had expired has a right of complaint against his employer to an employment tribunal.

⁴ For further information on the "check-off", including the arrangements for extending existing consents, see: The payment of union subscriptions through the check-off. To withdraw consent to the check-off, a worker must write to his employer notifying him that he no longer wishes to have check-off deductions made. He must allow the employer reasonable time to stop the deductions.

Further, an employer must stop collecting political contributions by "check-off" from any union member who notifies him in writing that he:

- is already exempt from paying political contributions, **or**
- has notified his union of his wish to "contract out".

If an employer then:

- refuses to reduce the level of that member's check-off deduction by the amount of the political fund levy, **or**
- cancels his check-off deduction altogether while continuing to operate the system for other members of the union,

the member may apply to the County Court (or the Sheriff Court in Scotland) for a declaration that the employer's action is unlawful. The County Court may make such an order as it considers appropriate to ensure that the employer does not continue with such action.

Where the County Court has made such a declaration, the union member can also obtain a **refund** of any political fund subscriptions deducted unlawfully. To do so, the member may apply to an employment tribunal for:

- a declaration that unlawful deductions have been made **and**
- an order requiring the employer to refund the money unlawfully deducted.

The application to a tribunal should be made within three months of the date of payment of the wages from which the deduction was made. A tribunal may, however, agree to deal with a complaint made outside the three-month period if it considers that it was not reasonably practicable for the time limit to be met.

Reviewing the political fund

Can the union maintain its political fund indefinitely?

A properly conducted ballot gives a union the ability to set up and maintain a political fund for up to ten years.

If the union wishes to retain the fund beyond that time it must re-ballot its members (i.e. hold a "review ballot"). If a trade union with a political fund fails to hold a review ballot within ten years of the fund being set up its authority to spend money on political objects automatically lapses at the end of that period.

The procedures which the union must follow for any review ballot are the same as those for a ballot to set up the fund as described in the Setting up a political fund section of this guidance⁵. The member's right to complain about any breach of the balloting rules and his means of doing so are also the same.

What happens where a review ballot is held but members vote against continuing a fund?

Where a majority of union members voting in a political fund review ballot decide that their union should no longer spend money on "political objects", the union **must**:

- take such steps as are necessary to ensure that the collection of political contributions ceases as soon as is reasonably practicable;
- pay any political contributions collected in the meantime into a fund other than the union's political fund;
- refund any political contributions collected in the meantime to individual union members if requested by them to do so;
- stop all spending on political objects within six months of the date of the ballot⁶ (or immediately if the political fund is in deficit).

However, the law allows a union to transfer money from its political fund into other funds of the union if it chooses to do so⁷.

⁵ With the exception that a union may choose not to give overseas members entitlement to vote.

⁶ The "date of the ballot" means the last day on which votes may be cast.

⁷ A union may make such a transfer without being in breach of trust or its rulebook. Alternatively, the union may retain its political fund but only for expenditure on matters other than political objects, and providing that this would not put the union in breach of trust or of the rulebook.

There are special provisions for complaints about failures to take steps to stop the collection of political contributions. In such circumstances a union member may apply to the court for a declaration that his union has failed to satisfy the statutory requirements. The court can also make an order setting out action which the union must take to put right its infringement and a time limit will normally be set within which the union must take that action.

What happens if members vote in favour of the fund in a review ballot?

Where approval is given for the trade union to continue spending money on political objects, the union **must** inform all its members:

- that each member has a right to "contract out" of paying the "political levy" **and**
- a form with which to claim this right is available (by personal application or by post) from the union's branch or head office, or from the Certification Officer⁸.

⁸ As explained in the "Contracting out" of a political fund section, a member may claim this right by completing a form which follows the outline given in Figure 1.

Unlawful expenditure on political objects

A union member may complain if his union spends money from its general fund (or any fund other than a political fund) on "political objects"⁹. A member may also complain if his union spends money on "political objects" without a political fund resolution being in force, or without approved political fund rules.

Expenditure on "political objects" from the general fund will be a breach of the union's "political fund rules" and a member's right of complaint is the same as for any other breach of the political fund rules. The member may complain to the Certification Officer who, if he considers a breach has occurred, may make an order for remedying it which may then be enforced in the County Court (in Scotland the Sheriff Court).

⁹ The position is the same when the political fund is in deficit. A union may not pay off a political fund debt from any of its funds other than its political fund.

Independent scrutiny of political fund ballots

The law:

- requires that union political fund ballots which are required to be held by statute must be supervised by an independent scrutineer appointed by the union;
- sets out the requirements a union needs to satisfy in appointing an independent scrutineer, what the appointment must require the scrutineer to do, certain matters which must be contained in the scrutineer's report, and the arrangements for circulating that report to union members **and**
- gives the Secretary of State power to specify by statutory order bodies which may act as independent scrutineers and the qualifying conditions which other scrutineers must meet.

What must the union do?

The union must:

- before the ballot takes place, appoint a qualified independent scrutineer to carry out the functions described below and any additional functions it wishes;
- ensure that nothing in the scrutineer's terms of appointment, or in any additional functions which the union requires him to perform, could cast reasonable doubt on his independence from the union;
- before the scrutineer begins to carry out his functions, either (i) send a notice stating the scrutineer's name to every member of the union to whom it is reasonably practicable to do so, or (ii) take whatever steps to notify members of the scrutineer's name as is the practice of the union when matters of general interest are brought to the attention of members;
- impose a duty of confidentiality (see section on Duty of confidentiality) on the scrutineer;
- supply to the scrutineer a copy of the register containing the names and addresses of those who are entitled to vote in the political fund ballot. (Where the register is held on computer, the union must supply the copy in computerised form - for example on a disk - if the scrutineer prefers it this way and give him access to its computer, at any time during the period he is required to retain the copy, so that he can read it);
- comply with any request made by the scrutineer to inspect the union register as it stands at any particular time;
- ensure that the scrutineer carries out the functions he is appointed to carry out and that there is no interference with his carrying out of those functions

which could cast reasonable doubt on his independence from the union
and

- comply with all reasonable requests made by the scrutineer in connection with the carrying out of his functions.

Who can be an independent scrutineer?

The section provides that an independent scrutineer must:

- be specified, or satisfy conditions set out by the Secretary of State, in a statutory instrument **and**
- be someone who the union has no reason to believe will carry out his functions incompetently or could reasonably have his independence in relation to the union or the election called into question.

The bodies which have been specified as eligible for appointment as scrutineers are listed in Appendix 1 and the general qualifying conditions are set out in Appendix 2. Unions are free to appoint **either** a specified body **or** an individual or firm which satisfies the general conditions. Both the list of specified bodies and the qualifying conditions may be revised from time to time by Statutory Order made by the Secretary of State.

What must the independent scrutineer do?

The independent scrutineer must be required by the union to:

- supervise the production of all the voting papers used in the ballot;
- supervise the distribution of the voting papers used in the ballot - unless the scrutineer is also the independent person (see section on The independent person) and is therefore responsible himself for their distribution;
- be the person to whom the voting papers are returned by the union members who take part in the ballot;
- inspect the union's membership register, whenever he considers it appropriate to do so and, in particular, when a union member or candidate requests that he do so ¹⁰. The scrutineer does not, however, have to act on a request that he considers to be ill-founded;
- take whatever steps he considers necessary to enable him to produce a report on the conduct of the ballot (see below);

¹⁰ Such a request must be made within the period beginning with the day on which the scrutineer is appointed and ending with the day before the day on which the scrutineer makes his report to the trade union.

- make that report to the union as soon as reasonably practicable after the closing date for the return of voting papers;
- retain custody of all returned voting papers, and the copy of the register with which the union has supplied him (see above), for a period of one year following the announcement of the result of the ballot or, if a complaint is made about the conduct of the ballot, for any longer period that the Certification Officer or a court may require **and**
- carry out any additional functions that the union requires him to undertake.

The scrutineer must also have regard to the duty of confidentiality (see section on Duty of confidentiality) that the union must impose upon him (and which is also automatically incorporated into his appointment).

The union is free to specify the exact nature of any additional functions so long as these do not conflict with the functions described above. A union could, for example, require the scrutineer to carry out all parts of the balloting process.

What must be included in the independent scrutineer's report?

The independent scrutineer's report on the ballot must state:

- the number of voting papers distributed;
- the number of voting papers returned to the scrutineer;
- the number of valid votes cast for and against the resolution;
- the number of returned voting papers which were spoiled or otherwise invalid;
- the name of the independent person appointed to undertake the storage, distribution and counting of ballot papers (see section on The independent person) or, if no independent person was appointed, state that fact.

The report must also state:

- whether the scrutineer inspected the register of names and addresses of the members of the trade union;
- if he did make an inspection, whether in each case he was acting on a request by a member of the trade union or candidate or at his own instance;
- whether he declined to act on a request to inspect the register **and**
- whether any inspection of the register revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up to date.

However, his report must not state the name of any member who requested that he make an inspection of the register.

The report is also required to state whether the independent scrutineer is satisfied that:

- there are no reasonable grounds for believing that the conduct of the ballot contravened any legislative requirements;
- security arrangements for the production, storage, distribution, return or other handling of the voting papers and for the counting of them were, so far as reasonably practicable, sufficient to minimise the risk of any unfairness or malpractice;
- he was able to carry out his functions without any interference which would cast reasonable doubt on his independence from the union;
- the performance of the independent person or persons was satisfactory (where one or more persons other than the scrutineer are appointed to be an independent person).

If he is not satisfied on the above matters, the scrutineer's report is required to explain why that is the case.

Can members see the scrutineer's report?

Having received the report, the union must:

- within three months:
- **either** send a copy to every member of the union to whom it is reasonably practicable to do so, or notify the contents of the report to members in whatever way is normal when matters of general interest to all members need to be brought to their attention;
- ensure that any copy of the report sent out or notification of its contents is accompanied by a statement that the union will, on request, supply any union member with a copy of the report either free of charge or on payment of a reasonable fee which has been specified by the union;
- supply a copy of the report to any member who requests one and pays any specified fee.

Who can complain?

Any union member who believes that the union has not complied, or is not complying, with the statutory requirements concerning independent scrutiny may complain to the Certification Officer or to the court¹¹.

¹¹ For further information about the complaints procedure in respect of independent scrutiny see: Trade union executive elections - Regulatory Guidance.

The independent person

The law:

- requires that some aspects of a union political fund ballot which is required to be held by statute must be carried out by an "independent person" appointed by the union;
- sets out the requirements that must be satisfied in appointing an independent person.

What must the union do?

The union must:

- appoint one or more independent persons to carry out the duties described below;
- require the independent person to carry out his functions in such a way as to minimise the risk of any illegality, unfairness, or malpractice occurring;
- impose a duty of confidentiality (see section on Duty of confidentiality) on the independent person;
- ensure that nothing in an independent person's terms of appointment could call into question his independence from the union;
- ensure that an independent person carries out his functions and that there is no interference with his doing so that could call into question his independence from the union
- comply with all reasonable requests made by an independent person in connection with the carrying out of his functions.

Who can be an "independent person"?

The law provides that a person is qualified to act as an independent person if:

- he is the scrutineer, or
- he is a person other than the scrutineer and the trade union has no grounds for believing either that i) he will carry out his functions incompetently or ii) his independence in relation to the union could reasonably be called into question.

What must the independent person do?

The independent person (or persons) must be required by the union to:

- undertake the storage and distribution of the political fund ballot voting papers;
- count the votes cast in the ballot;

- send the voting papers back to the scrutineer (where the independent person doing the counting is not himself the scrutineer) as soon as reasonably practicable after the counting has been completed;

The independent person must also have regard to the duty of confidentiality which the union must impose on him, and which is automatically incorporated into the terms of his appointment.

Who can complain?

Any union member who believes that the union has not complied, or is not complying, with the statutory requirements concerning the appointment of the independent person may complain to the Certification Officer or to the court¹².

The procedures for complaint are the same as those described in the section on Setting up a political fund.

¹² For further information about the complaints procedure in respect of independent scrutiny see Trade union executive elections - Regulatory Guidance.

Duty of confidentiality

The law:

- requires a union to impose a duty of confidentiality in respect of the union's register on the independent scrutineer and independent person appointed to carry out functions in respect of union political fund ballots;
- automatically incorporates the duty of confidentiality into the appointment of the scrutineer.

What is the duty of confidentiality?

It is a duty not to disclose, and to take all reasonable steps to ensure that no-one else discloses, any name or address on the union's register of members' names and addresses, except in certain permitted circumstances.

The permitted circumstances are:

- where the member concerned consents;
- where disclosure is requested by the Certification Officer in the discharge of his functions or required by an inspector appointed by him;
- where disclosure is required to discharge the functions of the scrutineer or independent person;
- where disclosure is required for the purposes of criminal investigation or proceedings.

Who can complain?

Any union member or candidate in an election who believes that the union has not complied, or is not complying, with the statutory requirement to impose the duty of confidentiality may complain to the Certification Officer or to the court¹³.

The procedures for complaint are the same as those described in the section on Setting up a political fund.

¹³ For further information about the complaints procedure in respect of the duty of confidentiality see Trade union executive elections - Regulatory Guidance.

Appendix 1

Bodies specified by the Secretary of State as being qualified to undertake independent scrutiny of trade union political fund ballots

Association of Electoral Administrators
PO Box 201
South Eastern
Liverpool
L16 5HH
<http://www.aea-elections.co.uk>

DRS Data Services Limited
1 Danbury Court
Linford Wood
Milton Keynes
Buckinghamshire
MK14 6LR
<http://www.drs.co.uk>

Electoral Reform Services Limited
The Election Centre
33 Clarendon Road
Hornsey
London
N8 ONW
<http://www.erbs.co.uk>

Involvement and Participation Association
42 Colebrooke Row
London
N1 8AF
<http://www.ipa-involve.com>

Opt2Vote Limited
25D Bishop Street
Londonderry
Northern Ireland
BT48 6PR
<http://www.opt2vote.com>

Popularis Limited
6 De Montfort Mews
Leicester
LE1 7EU
<http://www.popularis.org>

Appendix 2

General qualifications which must be satisfied to be eligible to act as an independent scrutineer of trade union political fund ballots

The general qualifications which must be satisfied to be eligible to act as an independent scrutineer of trade union political fund ballots include those contained in Statutory Instrument No.1993/1909: ("the Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Order 1993"). They allow unions to appoint certain persons to act as an independent scrutineer provided that the person concerned is:

- a solicitor with a current practising certificate issued from the Law Society of England and Wales¹⁴ or the Law Society of Scotland;
- an individual who is qualified to be an auditor of a trade union by virtue of section 34(1) of the Trade Union and Labour Relations (Consolidation) Act 1992. (This provides that anyone qualified to be a statutory auditor under Part 42 of the Companies Act 2006 may act as an auditor of a trade union);
- a partnership in which every partner falls within one of the two categories above; or
- a person (usually a corporate body) specified by name as qualified for appointment.

An individual or partnership will not be eligible to act as an independent scrutineer if he or a partner has been a member, officer¹⁵ or employee of the union proposing to hold the ballot in the 12 months preceding the date of the ballot.

An individual or partnership will not be eligible to act as an independent scrutineer if, in performing the functions required of a scrutineer as set out in the relevant legislation in respect of any ballot held after **1 February 1989**, he or a partner knowingly used, or permitted to be used, the services of a member, officer or employee of the union whose ballot was being scrutinised.

The Trade Union Ballots and Elections (Independent Scrutineer Qualifications) (Amendment) Order 2010. (**Statutory Instrument No. 2010/437**) amends the 1993 order by replacing the list of bodies specified by name as being qualified for appointment.

¹⁴ In England and Wales, the practical process of issuing practising certificates to solicitors is undertaken by the Solicitors Regulation Authority, an independent regulatory body of the Law Society (www.sra.org.uk).

¹⁵ For the purposes of appointment as an independent scrutineer, an auditor is not regarded as an officer of a union.

Appendix 3

Certification Officer

The address of the Certification Officer for Trade Unions and Employers' Associations is:

22nd Floor
Euston Tower
286 Euston Road
London
NW1 3JJ
E-mail: info@certoffice.org
Tel: 020 7210 3734
Fax: 020 7210 3612

Further information about the powers and functions of the Certification Officer can be obtained direct from his office.

