

# **Certification Office**

for Trade Unions and Employers' Associations

## **INDEPENDENCE**

**A guide for trade unions wishing to  
apply for a certificate of independence**

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## **INTRODUCTION**

1. This guidance explains the procedure involved in an application by a trade union for a certificate of independence under section 6 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the Act”). It also deals with the granting of a certificate of independence to a new union created by the amalgamation of two or more trade unions currently holding certificates of independence. It is intended for guidance only and should not be regarded as a complete or authoritative statement of the law.

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## THE STATUTORY PROVISIONS

2. The definition of an independent trade union is contained at section 5 of the Act and reads as follows:

*"... 'independent trade union' means a trade union which -*

- (a) is not under the domination or control of an employer or a 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;..."*

3. Section 6 provides for applications for a certificate of independence to be made to the Certification Officer by a listed trade union in such form and manner as he may require and to be accompanied by the prescribed fee. It also obliges him to maintain a public record of all applications made. An unlisted trade union cannot apply.
4. The Certification Officer is not permitted to reach a decision on any application until at least one month after it has been entered in the record; before doing so, he has to make such enquiries as he thinks fit and to take into account any relevant information submitted by any person. If he determines that the applicant union is independent he will issue a certificate of independence; if not, he must give reasons for his decision. All decisions must be entered in the public record.
5. A trade union aggrieved by the Certification Officer's refusal to issue it with a certificate - but not a third party aggrieved by his decision to issue a certificate - may appeal to the Employment Appeal Tribunal on any question of law arising in the proceeding before, or arising from the Certification Officer's decision. The Tribunal, if satisfied that a certificate should be issued, will declare that fact and direct the Certification Officer accordingly.

6. The Certification Officer has the power to withdraw a certificate at any time if he is of the opinion that the trade union in question is no longer independent. He must notify the trade union of any proposal to do so and must follow a similar procedure to that laid down for new applications. The right of appeal mentioned above applies also to a decision to withdraw a certificate.
7. The granting or refusal of a certificate is conclusive evidence for all purposes of the independence or otherwise of a trade union. If the independence of a particular union has not been determined by these means and a question about it arises in proceedings before any court, the Employment Appeal Tribunal, the Central Arbitration Committee, ACAS or an employment tribunal, those proceedings must be stayed pending a decision by the Certification Officer and the body concerned may refer the question to him for decision.

### **MAKING AN APPLICATION**

8. There are two routes for a trade union to obtain a certificate of independence. For those trade unions that do not currently hold a certificate, the process is described in detail in the following paragraphs. In the case of trade unions that currently hold a certificate of independence and which are merging there are special provisions. These are described in paragraph 28.
9. Only a trade union whose name has been entered in the list of trade unions maintained by the Certification Officer under section 2 of the Act can apply for a certificate of independence. A trade union, other than one formed by amalgamation in the situation described in paragraph 28, wishing to apply for a certificate must do so on the prescribed form which may be obtained from the Certification Office at the address given in this booklet. Unions also need to submit a copy of their current rules and the latest annual return. The union should also submit any other documents, e.g. copies of procedure agreements, in support of the application. The statutory fee accompanying the application is reviewed from time to time and any change effected by statutory instrument. The current fee appears on the Certification Office website ([www.certoffice.org](http://www.certoffice.org)) or can be obtained by telephoning the Certification Office on 020 7210 3734.

## **ACTION BY THE CERTIFICATION OFFICE**

10. When an application is received it is entered in the public record and a notice is published on the Certification Office website ([www.certoffice.org](http://www.certoffice.org)), in the London Gazette and (where appropriate) in the Edinburgh Gazette. The notice advises that any representations about the application should be made within a month of the appearance of the notice. During the waiting period required by the Act, the union's rules and the financial and other information enclosed with the application are examined by the Office.
11. If objections are received they are forwarded to the applicant union, which has the right of reply. The objector's identity is revealed to the applicant union unless the Certification Officer decides that the circumstances are such that it should not be so disclosed. Objections usually come from other trade unions, though a few have been received from individuals.
12. A detailed investigation of each application is carried out. The investigation, may involve a visit usually carried out by a team of two, involving a visit to officials of the applicant union at its offices or at their place of work for detailed discussions. Before the visit, documents such as minutes of meetings of the union's Executive Committee and of joint negotiating meetings with management are requested from the applicant union and examined. During the visit enquiries are made in relation to any points of objections raised and further questions asked that have arisen as a result of the initial scrutiny. Where necessary, the investigating team pursues enquiries at branch as well as head office level and in the case of single company or single employer unions they normally talk separately with a representative of management in order to assess the employers' attitude.
13. The information collected in this way provides the factual basis on which the decision is taken. If the Certification Officer considers that the applicant union does not meet the requirements of the statutory definition, its application is refused; if he considers that it does, a certificate of independence is issued.

14. As soon as the decision has been taken, the applicant union and any objectors are notified.

## **CRITERIA**

15. The Act does not lay down criteria which the Certification Officer must follow in applying the definition; attempts have been made in Parliament to write these into the legislation but seemingly without success. Under the Industrial Relations Act 1971 both the Registrar of Trade Unions and Employers' Associations and the Commission on Industrial Relations had responsibilities for determining the independence of trade unions and the experience of the latter, in particular, remains relevant and valuable up to a point. However, the definition in the 1971 Act was narrower than the present one and less rigorous, since it took into account only actual domination or control by an employer and not liability to interference.<sup>1</sup> This is an important and significant difference.
16. It needs to be emphasised that the Certification Officer's function is confined to answering the question "Does this union come within the statutory definition or not?". The legislation does not require him - or indeed enable him - to take other considerations into account, for example, the effect which the issue of a certificate might have on employment relations or on established negotiating machinery, or whether the development of a new trade union in a particular area is desirable or not. Nor does it allow him to take account of the effectiveness of the union in negotiation as an issue distinct from independence.
17. The following paragraphs set out the principal criteria which the Office uses in applying the statutory definition to individual applications.

### **History**

18. Sometimes evidence is found that the union began with employer support and encouragement, or even as a creature of management. If that evidence relates to the recent past it is a powerful argument against the granting of a certificate.

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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'.

But experience indicates that over time some unions can and do evolve from a dependent to an independent state; and the decision must, of course, be based on the facts as they are at the time of the investigation and not as they were several years ago.

### **Membership Base**

19. From the outset the Office has taken the view that a union whose membership is confined to the employees of one employer is, on the face of it, more vulnerable to employer interference than a broadly based union. This is less likely to be a critical factor for a large, well-established union backed up by strong resources than for a small, weak, newly-founded trade union. In fact, certificates have been issued to a number of single company unions which appear on all the available evidence to be capable of withstanding any pressure which might be brought to bear on them by the employer. Experience has confirmed that a narrow membership base may make the union's task of proving its independence more difficult but that it does not make it impossible.

### **Organisation and Structure**

20. It is necessary to examine these both as they are set out in the union's rule book and as they work in practice. The main requirement is that the union should be organised in a way which enables the members to play a full part in the decision-making process and excludes any form of employer involvement or influence in the union's internal affairs. Particular attention is paid to whether employers or senior employees, especially those at or immediately below board level, are eligible to belong to the union and, if so, whether there are suitable restrictions on the part which they can play in its affairs.

### **Finance**

21. While it is exceptional to find evidence of a direct subsidy from employer sources, a union with weak finances and inadequate reserves is obviously more likely to be vulnerable to employer interference than one whose financial position is strong. Particular attention is therefore paid to such questions as the main sources of the union's income, whether this matches its expenditure, the level of its subscription rate and the state of its reserves.

### **Employer-provided Facilities**

22. These may take the form of premises, time off and office or other services provided by the employer. In the case of single company unions, the normal practice is to cost these items in order to get a rough idea of the extent of the union's reliance on them in financial terms. But it is not just a question of finance. It is also necessary to look at the administrative convenience of having facilities provided by the employer, even if they are paid for, and how easy or difficult the union would find it to cope on its own if they were withdrawn. The greater the union's reliance on such facilities the more vulnerable it must be to employer interference.
23. The provision of facilities is, of course, common practice among a number of employers, but in the context of independence its significance may vary according to circumstances. A distinction can properly be drawn between a broadly-based union which could continue to function even if an employer withdrew facilities from one or more of its branches and a single company union which might well find it difficult or even impossible to carry on at all if such action were taken by the company which employs its entire membership.

### **Negotiating Record**

24. This is almost always an important consideration. While a weak record does not itself indicate dependence, a strong record in negotiation may outweigh other factors unfavourable to the union's case. In assessing the record, account must be taken of such factors as the particular environment in which the union operates - for example, the kind of employer with whom it negotiates and the traditions and attitudes of the employees whom it represents.
25. This is the point at which independence and effectiveness overlap. The two concepts are not of course identical. A union is not necessarily dependent just because it cannot supply its members with the full range of services which major unions normally provide. But it is equally clear that an effective union is more likely to be independent than an ineffective one.

## **THE CERTIFICATION OFFICER'S DECISION**

26. No single factor listed above can be decisive by itself. It is necessary to look at the whole nature and circumstances of the union and then make a judgment about whether or not it satisfies the statutory definition. Because there is no convenient yardstick which can supply a ready-made answer there must often be a subjective element in the decision, especially where the arguments for and against independence are finely balanced.
  
27. As a statutory authority, the Certification Officer has to work within the limits set by Parliament. It is no part of his function either to defend or to criticise the policy embodied in the legislation. His function is a quasi-judicial one; it is his duty to examine all applications impartially and objectively; if he refuses an application, he must give reasons for doing so; and those reasons must be firmly based on the concept of independence as defined in the legislation and be able to be tested on appeal.

## **PROCEDURE FOR AMALGAMATING UNIONS WHICH ALREADY HOLD A CERTIFICATE OF INDEPENDENCE**

28. Where two or more trade unions are amalgamating and they each hold a certificate of independence the procedure is more straightforward. As long as the amalgamation meets the statutory requirements (see Mergers: a guide to the statutory requirements for transfers of engagements and amalgamations of trade unions (2011)) the new union shall be automatically listed from the amalgamation date. The new union will also be given a Certificate of Independence from the amalgamation date. The new union must provide the Certification Officer with its rules, list of officers, head office address together with the prescribed fee within 6 weeks, or if it is not reasonably practicable within such further period as the Certification Officer determines. Failure to do so will result in the trade union being removed from the list and its certificate of independence being cancelled.

## **CONCLUSION**

29. This guidance sets out, briefly, the procedures and practices by which an application for a certificate of independence is considered by the Certification Officer. Certification Office staff are willing to discuss any of the points outlined here and they can be contacted on the number shown on the front cover.

### PUBLICATIONS

The following Certification Office booklets are available to be printed or downloaded from the Certification Officer's website: [www.certoffice.org](http://www.certoffice.org). Printed copies may also be obtained free of charge from the Office.

- Mergers: a guide to the statutory requirements for transfers of engagements and amalgamations of trade unions (2011)
- Mergers: a guide to the statutory requirements for transfers of engagements and amalgamation of employers' associations (2011)
- Independence: a guide for trade unions wishing to apply for a certificate of independence (2011)
- Political Funds: a guide for trade unions and employers' associations wishing to establish a political fund (2011)
- Political Funds: a guide to review ballots (2011)
- Financial Irregularities in trade unions and employers' associations: the approach of the Certification Officer in exercising his powers of investigation (2011)
- Complaints: guidance on making a complaint against a trade union (2010)
- Complaints: provision made by the Certification Officer relating to the disclosure of the identity of claimants (2011)
- Complaints: guidance on the procedure at to formal hearings of the Certification Officer (2010)
- Annual Reports of the Certification Officer
- The Certification Officer's Publication Scheme (2011)