STATUTORY INSTRUMENTS

1984 No. 1654

TRADE UNIONS

The Funds for Trade Union Ballots Regulations 1984

Made - - - -	*23rd October* 1984
Laid before Parliament	*5th November* 1984
Coming into Operation	*5th February* 1985

The Secretary of State in exercise of the powers conferred on him by section 1 of the Employment Act 1980(**a**) and of all other powers enabling him in that behalf hereby makes the following Regulations:—

Citation, commencement and application

1.— (1) These Regulations may be cited as the Funds for Trade Union Ballots Regulations 1984 and shall come into operation on 5th February 1985.

(2) Regulations 4 to 24 below shall apply to a ballot if the date of the ballot falls on or after 5th February 1985.

Application of the 1980 Regulations

2.— (1) Subject to paragraphs (2) and (3) below, the 1980 Regulations are to continue to apply to a ballot if the date of the ballot falls before 5th February 1985.

(2) Except as provided in paragraph (3) below, no application may be made under regulation 8(1) of the 1980 Regulations after 5th February 1985.

(3) An application may be made under regulation 8(1) of the 1980 Regulations in respect of a ballot if—

(a) the date of the ballot falls on or after 1st January 1984, but before 5th February 1985; and

(b) the application is made within six months of 5th February 1985.

Interpretation

3. In these Regulations—

"the 1913 Act" means the Trade Union Act 1913(**b**);

(**a**) 1980 c.42; section 1 was amended by section 20 of the Trade Union Act 1984 (c.49).
(**b**) 1913 (2 and 3 Geo. 5.) c.30.

"the 1964 Act" means the Trade Union (Amalgamations, etc.) Act 1964(**a**);

"the 1984 Act" means the Trade Union Act 1984(**b**);

"the 1980 Regulations" means the Funds for Trade Union Ballots Regulations 1980(**c**), as amended by the Funds for Trade Union Ballots (Amendment) Regulations 1982(**d**);

"contract of employment" means a contract of service or of apprenticeship, whether it is express or implied and (if it is express) whether it is oral or in writing;

"the date of the ballot" means, in the case of a ballot in which votes may be cast on more than one day, the last of those days;

"the Scheme" means the scheme made by these Regulations;

"strike" means any concerted stoppage of work;

"merchant seaman", "offshore worker", "overseas member", "post", "proper address", "section", "single transferable vote" and "working hours" have the same meanings respectively as in section 9(1) of the 1984 Act.

Scope of the Scheme

4. Subject to regulations 6 and 7 below, the Scheme applies to a ballot if—

(a) the purpose of the question, or of each of the questions, to be voted upon falls within the purposes mentioned in regulation 5 below; or

(b) the purpose of one or more of the questions to be voted upon falls within those purposes and each other question to be voted upon relates to the same issue as a question the purpose of which falls within those purposes.

5. The purposes referred to in regulation 4 above are—

(a) obtaining a decision or ascertaining the views of members of a trade union as to the calling or ending of a strike or other industrial action;

(b) carrying out an election—

(i) in relation to which section 2 of the 1984 Act is required to be satisfied; or

(ii) provided for by the rules of a trade union to the principal committee of the union exercising executive functions, by whatever name it is known; or

(iii) provided for by the rules of a trade union to the positions of president, chairman, secretary or treasurer of the union or to any position which the person elected will hold as an employee of the union.

(c) amending the rules of a trade union;

(d) obtaining a decision in accordance with the 1964 Act on a resolution to approve an instrument of amalgamation or transfer;

(**a**) 1964 c.24. (**b**) 1984 c.49. (**c**) S.I. 1980/1252. (**d**) S.I. 1982/1108.

(e) obtaining a decision on a resolution for the purposes of section 3 of the 1913 Act;

(f) obtaining a decision or ascertaining the views of members of a trade union as to the acceptance or rejection of a proposal made by an employer which relates in whole or in part to remuneration (whether in money or money's worth), hours of work, level of performance, holidays or pensions.

6. Notwithstanding anything in regulations 4 and 5 above, the Scheme does not apply to a ballot if—

(a) the purpose of any question to be voted upon is the obtaining of a decision of the kind mentioned in paragraph *(e)* of regulation 5 above; and

(b) the ballot is held at a time when there is no resolution in force in respect of the trade union under section 3 of the 1913 Act.

7. The Scheme applies only to ballots which are so conducted as to secure, so far as reasonably practicable, that those voting do so in secret.

Application for payments

8.— (1) An independent trade union claiming to have incurred expenditure on a ballot to which the Scheme applies may apply to the Certification Officer within six months of the date of the ballot for payments in respect of that ballot.

(2) An application under paragraph (1) above shall be made in such form and shall be accompanied, or subsequently supported, by such other documents as the Certification Officer may require.

(3) Where a ballot ("the first ballot") has been held and set aside (whether as the result of an enforcement order made under section 5(5) of the 1984 Act, or otherwise) and another ballot ("the second ballot") has been, or is to be, held in its place—

(a) the Certification Officer (if he is aware of those circumstances) shall take no further action under these Regulations in relation to any application that has already been made under paragraph (1) above in respect of the first ballot; and

(b) no application may be made under paragraph (1) above—

(i) in respect of the first ballot; or

(ii) in respect of the second ballot if a payment has been made under regulations 14 to 18 below in respect of the first ballot.

9.— (1) If the Certification Officer is satisfied that an application under paragraph (1) of regulation 8 above is in respect of a ballot to which the Scheme applies he shall proceed in accordance with the following regulations.

(2) Where the Certification Officer—

(a) is aware of the institution of any legal proceedings relating to a ballot

in respect of which an application has been made under paragraph (1) of regulation 8 above; and

(b) considers that any issue relevant to his duties in relation to that application may be raised in those proceedings;

he shall take no further action under these Regulations in relation to that application until those proceedings have been finally determined.

(3) For the purposes of paragraph (2) above, proceedings shall be taken to have been finally determined when any appeal in respect of such proceedings has been determined, withdrawn or abandoned or when the time for appealing has expired without an appeal having been brought.

Conditions to be satisfied if payment is to be made

10. Except as permitted by regulation 13 or regulation 24 below, the Certification Officer shall not make any payments under regulations 14 to 18 below if—

(a) on consideration of any matter which has come to his notice, he is of the opinion that any of the conditions—

(i) mentioned in regulation 11 below (which are applicable to all ballots); or

(ii) mentioned in regulation 12 below (which are applicable to specific questions asked in ballots);

have not been satisfied; or

(b) any assurance he requests from the trade union relating to the said conditions is not given.

11. The conditions (applicable to all ballots) referred to in regulation 10*(a)*(i) above are—

(a) that the method of voting was by the marking of a voting paper by the person voting;

(b) that every person who was entitled to vote in the ballot was—

(i) allowed to vote without interference from, or constraint imposed by, the trade union or any of its members, officials or employees; and

(ii) so far as was reasonably practicable, enabled to do so without incurring any direct cost to himself;

(c) that, so far as was reasonably practicable, every person who was entitled to vote—

(i) had sent to him, at his proper address and by post, a voting paper; and

(ii) was given a convenient opportunity to vote by post;

(d) where the votes on any question have not been counted, that the decision not to count them was taken because of a change in circumstances occurring after the first day on which voting papers were made available or supplied to persons entitled to vote which materially affected the issue to which the question related;

(e) where the votes on any question have been counted, that the ballot was conducted so as to secure that the votes given in the ballot were fairly and accurately counted (any inaccuracy in counting being disregarded for the purposes of this paragraph if it was accidental and on a scale which did not affect the result of the ballot);

(f) that the ballot was conducted so as to secure that the result of the ballot was determined solely by counting the number of votes cast directly by those voting (this condition shall not be taken not to have been satisfied by reason only that the system of voting used was the single transferable vote).

12. The conditions (applicable to specific questions) referred to in regulation 10*(a)*(ii) above are—

(a) in the case of a question the purpose of which falls within paragraph *(a)* of regulation 5 above—

(i) that entitlement to vote on that question was accorded equally to any members of the trade union who it was reasonable at the time of the ballot for the union to believe would be called upon to take part in the industrial action in question and any members who were taking part in the industrial action, and to no others;

(ii) that no person who was a member of the union at the time when the ballot was held was—

(A) denied entitlement to vote on that question; and

(B) subsequently called upon by the union, before or in the course of the industrial action in respect of which the question was asked, to take part in the industrial action in question;

(b) in the case of a question the purpose of which falls within paragraph *(a)* of regulation 5 above, that, except where the trade union did not induce any person entitled to vote to break his contract of employment or to interfere with its performance, the voting paper contained—

(i) where the industrial action was, or included, a strike, a question (however framed) which required the voter to say, by answering "Yes" or "No", whether he was prepared to take part, or as the case may be to continue to take part, in a strike involving him in a breach of his contract of employment; or

(ii) in any other case, a question (however framed) which required the voter to say, by answering "Yes" or "No", whether he was prepared to take part, or as the case may be to continue to take part, in industrial action falling short of a strike but involving him in a breach of his contract of employment;

(c) in the case of a question the purpose of which falls within paragraph *(a)* of regulation 5 above, that as soon as was reasonably practicable after the holding of the ballot, the trade union took such steps as were reasonably necessary to ensure that all persons entitled to vote on that question were informed of the number of—

(i) votes cast on that question;

(ii) individuals voting in favour of that question;

(iii) individuals voting against that question; and

(iv) spoiled voting papers;

(d) in the case of a question the purpose of which falls within paragraph *(b)* of regulation 5 above, that, subject to regulation 13(5) below, entitlement to vote at the election was accorded equally to all members of the trade union in question other than those mentioned in regulation 13(3) below;

(e) in the case of a question the purpose of which falls within paragraph *(b)* of regulation 5 above, that the voting papers either listed the candidates at the election or were accompanied by a separate list of those candidates;

(f) in the case of a question the purpose of which falls within paragraph *(c)* of regulation 5 above, that any requirements in the rules of the trade union as to entitlement to vote were complied with;

(g) in the case of a question the purpose of which falls within paragraph *(d)* of regulation 5 above, that entitlement to vote on that question was accorded to members as required by the condition in section 1(2)*(a)* of the 1964 Act;

(h) in the case of a question the purpose of which falls within paragraph *(e)* of regulation 5 above, that entitlement to vote on that question was accorded equally to all members of the trade union;

(i) in the case of a question the purpose of which falls within paragraph *(f)* of regulation 5 above, that only persons who were union members and were affected by the proposal were entitled to vote on that question.

13.— (1) Where paragraph (2) of this regulation applies, the Certification Officer shall proceed as if for sub-paragraphs (i) and (ii) of paragraph *(c)* of regulation 11 above there were substituted—

"(i) had made available to him—

(A) immediately before, immediately after, or during, his working hours, and

(B) at his place of work or at a place which was more convenient for him;

or was supplied with, a voting paper; and

(ii) was given a convenient opportunity to vote by post (but no other opportunity to vote);".

(2) This paragraph applies to a ballot if either—

(a) the ballot contains a question the purpose of which falls within paragraphs *(a)* or *(f)* of regulation 5 above; or

(b) the date of the ballot falls before 1st October 1985.

(3) The members referred to in regulation 12*(d)* above (in respect of whom the condition therein need not have been satisified) are those who belonged to a class—

(a) which was, or which fell within, one or other of the classes mentioned in paragraph (4) of this regulation; and

(b) all the members of which were excluded by the rules of the union from voting at the election.

(4) The classes are—

(a) members who are not in employment;

(b) members who are in arrears in respect of any subscription or contribution due to the union;

(c) members who are apprentices, trainees or students or new members of the union.

(5) Where the conditions mentioned in paragraph (6) of this regulation were satisfied, the condition in regulation 12*(d)* above shall not be taken not to have been satisfied by reason only that the trade union restricted entitlement to vote at the election to members of the union who fell within—

(a) a class determined by reference to any trade or occupation;

(b) a class determined by reference to any geographical area;

(c) a class which was by virtue of the rules of the union treated as a separate section within the union; or

(d) a class determined by reference to any combination of the matters mentioned in paragraphs *(a)*, *(b)* and *(c)* above.

(6) The conditions are that—

(a) entitlement to vote was restricted by the rules of the union;

(b) no member of the union is denied entitlement to vote at all elections held for the purposes of Part I of the 1984 Act otherwise than by virtue of belonging to a class mentioned in paragraph (3) above.

Payments towards stationery and printing expenditure

14.— (1) The Certification Officer shall make a payment towards the expenditure incurred by the trade union on stationery and printing in respect of—

(a) voting papers, envelopes for sending out and returning voting papers and any additional envelopes used for the purpose of helping to secure the secrecy of the voting;

(b) that part of any material enclosed with the voting papers which explains the matter to which the question to be voted upon relates or the procedure for voting.

(2) The amount of the payment referred to in paragraph (1) above shall, if the Certification Officer considers the expenditure incurred to have been reasonable, be the amount spent or, if he considers the expenditure incurred to have been unreasonable, the amount which he considers would have been reasonable.

Payments towards postal costs

15. The Certification Officer shall make a payment towards the postal expenditure incurred by the trade union in sending by post to the persons

entitled to vote the voting papers, envelopes and material referred to in regulation 14 above in respect of which a payment is payable.

16. The Certification Officer shall make a payment towards the postal expenditure incurred by the trade union in paying for the persons entitled to vote to return their voting papers by post.

17. Subject to regulation 18 below, the amount of the payments referred to in regulations 15 and 16 above shall be—

(a) to the extent that second class post or a cheaper postal means was used, the amount spent on such use;

(b) to the extent that a means more expensive than second class post was used, the amount which would have been spent if second class post had been used, or, if the Certification Officer considers the use of the more expensive means to have been reasonable in the circumstances, the amount spent on such use.

18. If the Certification Officer considers that additional postal expenditure has been incurred by the use of paper of a greater quantity or heavier quality than is reasonable, a payment made under regulation 15 or 16 above shall not include the amount of the additional postal expenditure so incurred.

Provisions as to payments

19. The Certification Officer shall not make any payments until the expiration of a period of six weeks beginning with whichever is the last of the following dates—

(a) the date on which the results relating to the questions asked in the ballot in respect of which the votes were counted have been made available to the persons entitled to vote;

(b) the date on which an application is made under regulation 8 above;

(c) in the case of a ballot containing a question the purpose of which falls within paragraph *(a)* of regulation 5 above, the date on which the industrial action, in respect of which the question was asked, ended;

(d) in the case of a ballot containing a question the purpose of which falls within paragraph *(d)* of regulation 5 above, where the amalgamating or transferor trade union has passed a resolution approving the instrument of amalgamation or transfer and an application has been made to register the instrument or the Certification Officer has reason to believe that such an application will be made, the date of registration of the instrument or, if a complaint is made under section 4 of the 1964 Act and the Certification Officer makes an order under subsection (3) of that section specifying steps which must be taken before he will entertain any application to register the instrument, the date on which the order is made.

20. All payments shall be made to the applicant trade union.

Arrangements to hold ballots

21.— (1) The Scheme applies to arrangements to hold a ballot which is not proceeded with if voting papers have been made available or supplied to persons entitled to vote before the decision not to proceed with the ballot is taken.

(2) Where the Scheme applies by virtue of this regulation, these Regulations shall have effect with such modifications as may be appropriate.

Special provisions as to amalgamations and transfers of engagements

22. If an amalgamating or transferor trade union has passed a resolution approving an instrument of amalgamation or transfer under section 1 of the 1964 Act which is registered and, having incurred expenditure in respect of a ballot, has either made an application under regulation 8 above before the date of registration of the instrument, or, being eligible to make such an application, has not done so before that date, and the amalgamated or transferee trade union is an independent trade union, then—

(a) with effect from the date of registration of the instrument the amalgamated or transferee trade union shall be treated for the purposes of the Scheme other than regulations 10 to 13 above as if, in a case where an application under regulation 8 has been made before that date, it were the applicant trade union and in that case and the case where no such application has been made it had incurred the expenditure in respect of the ballot;

(b) an assurance following a request by the Certification Officer pursuant to regulation 10*(b)* above shall be treated as being given by the amalgamating or transferor trade union if given by a person who was an officer of that union immediately before the date of registration of the instrument.

Special provisions as to section 2 of the Employment Act 1980

23. If on a complaint presented under section 2 of the Employment Act 1980 in respect of a ballot an industrial tribunal has made an award of compensation to be paid to a trade union and the Scheme applies to that ballot, the Certification Officer shall on an application under regulation 8 above reduce the total of the payments made under regulations 14 to 18 above by so much of the award as he considers relates to the expenditure in respect of which payments are to be made under those regulations.

Special provisions as to overseas members

24.— (1) Paragraph (2) of this regulation does not apply in the case of a ballot containing a question the purpose of which falls within paragraph *(d)* of regulation 5 above.

(2) Where the Certification Officer is of the opinion—

(a) that any of the conditions mentioned in regulations 11 and 12 above have not been satisfied in respect of overseas members, or any overseas member; and

(b) that the conditions mentioned in those regulations have been satisfied in all other respects;

he may, subject to paragraph (3) below, make payments under regulations 14 to 18 above, notwithstanding regulation 10 above.

(3) Where paragraph (2) above applies, no payment under regulations 14 to 18 above may include any amount in respect of expenditure incurred in relation to the overseas member or members mentioned in paragraph (2) above.

Tom King,
Secretary of State for Employment

23rd October 1984.

EXPLANATORY NOTE

(*This Note is not part of the Regulations.*)

These Regulations, which come into operation on 5th February 1985, set out a scheme under which the Certification Officer will make payments to independent trade unions in respect of postal, printing and stationery expenditure incurred in holding secret postal ballots for certain purposes; these purposes are set out in regulation 5.

The Regulations, which are in place of the Funds for Trade Union Ballots Regulations 1980 (as amended), apply where the date of the ballot falls on or after 5th February 1985.

Subject to the provisions in regulation 2, the 1980 Regulations (as amended) are to continue to apply where the date of the ballot falls before 5th February 1985.

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