

**Northern Ireland Certification Office
for Trade Unions and Employers' Associations**

**GUIDANCE FOR TRADE UNIONS
WISHING TO APPLY FOR A
CERTIFICATE OF INDEPENDENCE**

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INTRODUCTION

1. This booklet explains the procedure involved in an application by a trade union for a certificate of independence under Article 6 of the Industrial Relations (Northern Ireland) Order 1992 (“the 1992 Order”). 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 each of which already holds a current certificate. It is intended for guidance, but it should not be regarded as a complete or authoritative statement of the law.

THE STATUTORY PROVISIONS

2. The definition of an independent trade union is contained in Article 2(2) of the 1992 Order 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;...”

and in relation to a trade union, “independence” and “independent” shall be construed accordingly.

3. The procedure for determining whether a trade union is independent according to this definition is laid down in Article 6 of the 1992 Order. That Article provides for listed trade unions (see paragraph 9 below) to apply for a certificate of independence to the Certification Officer in such form and manner as he may require, enclosing the prescribed fee. The Certification Officer must 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, and before making his decision he must make such enquiries as he thinks fit and 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 may appeal to the High Court on a question of law arising in the proceedings before the Certification Officer, or from his decision.
6. The Certification Officer has 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 if he proposes to withdraw its certificate and must follow a similar procedure to that laid down for new applications (paragraph 4 above). A trade union whose certificate is withdrawn has a right of appeal to the High Court on a point of law.
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 union has not been determined by the Certification Officer and a question about it arises in proceedings before any court, the Labour Relations Agency, the Industrial Court or an Industrial Tribunal, those proceedings must be stayed until the Certification Officer decides the matter. The body whose proceedings are stayed may refer the question to him and he will treat the reference as if it were an application by the trade union.

MAKING AN APPLICATION

8. The process by which trade unions may obtain a certificate of independence is described in paragraphs 9 to 26 below. There is a simpler procedure for new trade unions formed by the merger of two or more trade unions which already hold a certificate of independence. This is described in paragraph 27.

9. Only a trade union whose name has been entered in the list of trade unions maintained by the Certification Officer under Article 5 of the 1992 Order is allowed to apply for a certificate of independence. Application must be made on the prescribed form, which may be obtained from the Certification Office at the address given in this booklet. Unions are asked to enclose, with their application, a copy of their current rules and the latest annual return if not already submitted. They should also submit any other relevant 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 is given effect by statutory rule. The current fee appears on the Certification Office website (www.nicertoffice.org.uk) or can be ascertained by telephoning the Certification Office on 028 9023 7773.

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.nicertoffice.org.uk) and in the Belfast Gazette. Any representations about the application are to be made within a month of the appearance of the notice. During the minimum one-month waiting period laid down by the 1992 Order, 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. Objections usually come from other trade unions, but they can be made by individuals.

12. Applications usually require a detailed investigation – invariably so, if relevant objections are received. The investigation, which is normally carried out by a team of two, involves a visit to officials of the applicant union at its offices or at their place of work for detailed discussions. Documents such as minutes of meetings of the union’s Executive Committee and of joint negotiating meetings with management are requested and examined in advance of the visit. During the visit enquiries are made to follow up points raised by objectors or revealed by 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, will 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 Certification Officer makes his decision. If he considers that the applicant union meets the requirements of the statutory definition, he issues a certificate; if he considers that it does not, he refuses the application. The union and any objectors are notified of the decision as soon as it is taken. If it is a refusal, the Certification Officer sets out his reasons in a letter to the union.
14. A union whose application is refused may wish to discuss the reasons before deciding whether to appeal; such a request is usually met, without prejudice to any subsequent legal proceedings.

CRITERIA

15. The Certification Officer’s function is confined to answering the question “Does this union come within the definition of independence given in the 1992 Order or not?” The legislation does not require him - or indeed allow him - to take other considerations into account; for example, the effect that the issue of a certificate might have on employment relations or on established negotiating machinery, or the desirability or otherwise of a new trade union in a particular area, or the performance of the union in negotiation, as judged against standard measures of effectiveness not connected with independence.

16. Six main criteria are used by used by the Certification Officer in determining whether applications satisfy the statutory definition. These criteria are not themselves laid down by the Order. They are discussed in paragraphs 17 to 24 below.

History

17. 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 grant of a certificate. But experience shows 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 application and not as they were at some earlier period.

Membership Base

18. The Office takes 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 and potentially capable of withstanding any pressure which might be brought to bear on it by the employer, than it would be for a small, weak, newly-founded trade union. A narrow membership base may make the union's task of proving its independence more difficult, but it does not make it impossible.

Organisation and Structure

19. It is necessary to examine these not only as they are set out in the union's rule book, but also 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 decision-making 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

20. While it is exceptional to find evidence of a direct subsidy from employer sources, it is clear that a union with weak finances and inadequate reserves is 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 adequacy of its subscription rate and the state of its reserves.

Employer-provided Facilities

21. An employer may provide a union with facilities in the form of premises, time off and office or other services. 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 at 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.
22. The provision of facilities by employers is a common practice, but in the context of independence its significance may vary according to circumstances. A distinction can properly be drawn between, on the one hand, a broadly-based union which could continue to function even if an employer withdrew facilities from one or more of its branches and, on the other, 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

23. 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 it represents.
24. 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

25. 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 judgement 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.
26. As a statutory authority, the Certification Officer must work within the limits set by Parliament. It is no part of his function to express views, either critical or supportive, on 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 WHERE THE AMALGAMATING UNIONS ALREADY HOLD A CERTIFICATE OF INDEPENDENCE

27. 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 the Certification Office guidance booklet "*Mergers: a guide to the statutory requirements for transfers of engagements and amalgamations of trade unions*"), the new union will 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 and head office address, together with the prescribed fee, within 6 weeks, or if that is not reasonably practicable, within such further period as the Certification Officer determines. Failure to meet any one of these requirements will result in the trade union being removed from the list and its certificate of independence being cancelled.

CONCLUSION

28. Certification Office staff are willing to discuss any of the matters covered in this booklet and they can be contacted on the number shown on the front cover.

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The following publications are also available, free of charge, from the Certification Office. They are also available to be downloaded or printed from the Certification Officer's website, www.nicertoffice.org.uk

The Certification Officer's Annual Reports.

Mergers: A Guide to the statutory requirements for transfers of engagements and amalgamations of trade unions.

Mergers: A Guide to the statutory requirements for transfers of engagements and amalgamations of employers' associations.

Guidance for Trade Unions and Employers' Associations wishing to establish a political fund.

A guide to political fund review ballots.

Financial Irregularities in Trade Unions and Employers' Associations - The approach of the Certification Officer.

Guidance for Trade Unions wishing to apply for a Certificate of Independence.

A Guide to making a Complaint to the Certification Officer.

Guidance on Procedure at hearings.

The Department for Employment and Learning has produced guides on various aspects of trade union legislation, which can be obtained from any jobcentre or downloaded from the Department's website www.delni.gov.uk .