



An Roinn Gnó,  
Fiontar agus Nuálaíochta  
Department of Business,  
Enterprise and Innovation

# **Review of the registration requirements provided for in the Trade Union Acts 1871-1990**



# Review of the registration requirements provided for in the Trade Union Acts 1871-1990

## Background

The Department of Business, Enterprise and Innovation is seeking views on the modernisation and consolidation of legislation regarding the registration of Trade Unions in Ireland. The registration requirements for Trade Unions are currently found in the Trade Union Acts 1871-1990<sup>1</sup>.

The Department is committed to the continuous improvement of legislation, aiming to simplify the regulatory environment and to streamline both service delivery and administrative processes. It is important that legislation is periodically reviewed to ensure that its original objectives are still valid and being achieved, and to ensure clarity and accessibility for individuals, business and civil society groups alike. In this regard, it is considered necessary to update the legislation governing the registration of Trade Unions.

The Registrar of Friendly Societies is responsible for the registration and general regulation of Trade Unions. The Registry of Friendly Societies (RFS) aim to provide for an efficient system of registration which is accessible, modern and most importantly, user friendly.

To achieve this aim, the RFS have taken steps to move from a heavily paper based office to a fully electronic system with capabilities to manage the Register electronically and increase efficiency in document processing and provision. RFS Online<sup>2</sup> was launched in December 2018 allowing customers of the RFS to:

- Create a new entity online
- File an Annual Return online
- File amendments online including partial and full rule amendments
- Make online payments for filings
- Avail of reduced fees for electronic filings

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<sup>1</sup> The Trade Union Act 1871, Trade Union (Amendment) Act 1876, Trade Union Act 1913, Trade Union Act 1941, Trade Union Act 1975 and Industrial Relations Act 1990

<sup>2</sup> <https://rfs.cro.ie/login>

- Order documents online
- Have access to an online portal to manage filings and get reminders

This is reflective of the commitment of the RFS to meet the shifting expectations of customers through innovative approaches to the provision of services.

To support this development, it is the Department's intention to consolidate all provisions relating to the registration requirements of Trade Unions and their relationship with the RFS into a single standalone Trade Union Registration Act. It is envisaged that this will simplify all processes from initial registration to the filing of annual returns and provide a clear guide as to the statutory filing requirements for Trade Unions in one location thus minimising the burden of compliance for Trade Unions across Ireland.

## **The existing registration and post-registration requirements for Trade Unions**

### **Registration requirements**

The Trade Union Act 1871 provides that to register a trade union the following steps must be completed;

- The application to register a trade union and printed copies of the rules, together with a list of the titles and names of the officers, which must consist of at least seven members, must be sent to the Registrar.
- The rules must as a minimum contain the matters required to be provided for by the First Schedule of the Trade Union Act 1871.
- The rules and application form are submitted to the Registrar for examination, accompanied by the prescribed fee.
- The name of the Trade Union must be approved by the Registrar whose role it is to ensure the proposed name is not too similar to that of another Trade Union or likely to mislead the public.
- Once the rules are found to be in accordance with statute, the union is registered.

### **Post registration requirements**

Once a Trade Union is registered, they are required to notify or file the following with the Registrar;

- A trade union must file an annual return, made up to 31 December, and submit the return to the Registrar by the following 1 June. The return must be accompanied by a set of accounts, which should be audited by a fit and proper person.
- Should a trade union amend or partially amend any of its rules, it must apply to the Registrar to have the amendment registered. The Registrar will register the amendment once satisfied that it is in accordance with statute.
- If a trade union changes its registered office, it must notify the Registrar.
- A trade union may amalgamate with or transfer its engagements to another trade union in accordance with the provisions of the Trade Union Act 1975. The instrument of amalgamation and notice must be submitted to the Registrar.
- Any trade union which changes its name must register this change with the Registrar. The change of name does not take effect until registered.

A full list of registration and post registration requirements, along with the accompanying forms can be found at Appendix 1 and 2 respectively.

### **Submissions or comments are invited in respect of the questions listed below:**

#### **Minimum number of members**

Section 6 of the Trade Union Act 1871 provides that in order to register a Trade Union, a minimum of seven members must have subscribed to the rules of the union as well as complying with all other registration requirements as set out in the Act.

It should be noted that the Trade Union Act 1941 requires any body of persons which wishes to carry on negotiations on the fixing of wages or other conditions of employment to hold a negotiation licence granted by the Minister for Business, Enterprise and Innovation.

The Minister will only grant a license when satisfied that all conditions prescribed by the Act have been met. The conditions include an obligation on a Trade Union to demonstrate that both at the date of its application for a negotiation licence and over the 18-month period before the date of its application, it had not less than 1,000 members resident in the State.

Therefore, while a Trade Union may be registered with a minimum of 7 members, it cannot negotiate pay, or terms and conditions of employment on behalf of its members without maintaining the minimum of 1,000 members required to hold a negotiation licence.

### Question 1

**Should the number of members required to register a trade union be:**

- (i) **Increased;**
- (ii) **Decreased;**
- (iii) **Maintained at seven.**

**Please provide reasons for your answer.**

### The registered office

Under the Trade Union Act 1871, Trade Unions are required to maintain a registered office. This is an address to which all communications and notices may be addressed. The Registrar must be informed of changes to the registered office.

However, there is no requirement under the Act for a Trade Union's registered office to be within the State.

### Question 2

**Please set out your views on whether Trade Unions should be required to maintain a registered office in the State.**

### Annual returns

Section 16 of the Trade Union Act 1871 provides that an annual return in the prescribed form must be forwarded to the Registrar by 1<sup>st</sup> June each year. The legislation does not stipulate who should make the annual return.

Currently, the annual return must set out the following information:

- The registered office
- Number of members

- Breakdown of membership
- Details of officers in receipt of monies
- Details of the management committee and trustees
- Donations made for political purposes
- A copy of the audited accounts
- A copy of the auditor's special report (if any)
- A copy of the current rules

A copy of the prescribed form for making an annual return is contained at Appendix 2.

The Act further provides that every Trade Union, and officer thereof, which fails to comply with this obligation, shall be liable for a penalty not exceeding €1,000. Should a person wilfully provide false information, or make an omission on the annual return, they will be liable for a penalty not exceeding €2,500 for each offence.

The table below outlines the current compliance rate of Trade Unions in filing their annual return. In 2017 less than 40% of Trade Unions filed their annual return on time.

Year	Due to File	Ontime	Within Year	Year(s) Later	Not filed
2017	56	21	12	0	23
2016	56	27	8	7	14
2015	54	22	14	9	9
2014	54	21	16	10	7
2013	54	27	10	10	7
2012	54	19	17	11	7
2011	54	24	14	11	5
2010	53	29	14	8	2
2009	53	23	16	12	2
2008	53	28	13	10	2

### Question 3

**Please set out your views on what should be contained in the annual return and who should be responsible for making it.**

### Question 4

**Please set out your views as to how the compliance rate in relation to filing annual returns might be improved.**

### Audited Accounts

Section 11 of the Trade Union Act of 1871 states that an audit of a trade union shall be 'by some fit and proper person or persons'.

The legal framework for auditors and auditing has developed significantly since this 19<sup>th</sup> Century Act. Therefore, it is proposed to update the Act by deleting the reference to fit and proper person and replacing it with a statutory auditor as defined in section 2 of the Companies Act 2014;

“statutory auditor” means an individual or a firm (within the meaning of Part 27) that stands approved as a statutory auditor or statutory audit firm, as the case may be, under Part 27, and includes a firm registered in accordance with section 1465.

This would not change the requirement for an audit of a Trade Union nor the type of audit that must be carried out.

The Department notes that a number of Trade Unions already provide for their accounts to be audited by a statutory auditor as per their own rules.

#### Question 5

**Please set out your views on whether section 11 should be amended to require a Trade Union to have its accounts audited by a statutory auditor.**

### E-filing

The RFS continuously aim to improve the services they provide to customers by reducing costs and streamlining administrative processes. In December 2017 the RFS began a major IT project designed to provide an up to date filing environment for entities registered by it. The new online portal was launched on 6th December 2018. It is now possible to register a new application online and entities registered by the RFS can file certain commonly filed documents, including annual returns, change of address and amendment to rules.

The electronic forms are available on an optional basis as there is no provision in the Trade Union Acts 1871-1990 to allow the Registrar to require documents to be filed electronically.

#### Question 6

**Please set out your views on the introduction of an enabling provision in the legislation to allow for mandatory e-filing of submissions to the RFS.**

**Question 7**

**Please set out your views on who should be responsible for making the various submissions to the RFS. (Forms C – X as set out in Appendix 2)**

**Removing Trade Unions from the register**

Section 8 of the Trade Union Amendment Act 1876 provides that the Registrar may withdraw or cancel a certificate of registration in the following cases:

- At the request of the Trade Union;
- Should the certificate of registration have been obtained by fraud or mistake;
- Registration of the Trade Union has become void under section 6 of the Trade Union Act 1871;
- The Trade Union has wilfully, and after notice from the Registrar, violated any of the provisions of the Trade Union Acts; or
- The Trade Union has ceased to exist.

In the event that the Registrar cancels a certificate of registration, the Trade Union will cease to enjoy the privileges of being a registered Trade Union and will lose their negotiation licence.

**Question 8**

**What factors do you think should be considered in cancelling or removing Trade Unions from the register?**

**Additional Comments**

The Department is committed to meaningful engagement with stakeholders and would ask respondents to this consultation to highlight any issues which may not have been already captured.

**Question 9**

**Please provide any other comments you wish to inform the development and direction of policy on the registration of Trade Unions and their relationship with the RFS.**

### **Deadline for Submissions**

The deadline for submissions or comments on this review is 5pm, Tuesday 10 September 2019.

Submissions should be sent to: tara.keane@dbei.gov.ie

Postal address: Tara Keane  
Company Law  
Department of Business, Enterprise and Innovation  
Earlsfort Centre,  
Lower Hatch St  
Dublin 2  
D02 PW01

When making your submission please provide the name of the individual, firm or organisation making the submission; contact details and briefly describe your interest in this subject matter.

### **Freedom of Information Act 2014 and Publication of Submissions**

The Department will make public on its website all submissions received under this consultation. Your attention is also drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Act 2014. Therefore, should you consider that any information you provide is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with you regarding information identified by you as sensitive before publishing or otherwise disclosing it.

### **General Data Protection Regulation**

Respondents should note that the General Data Protection Regulation ('GDPR') entered into force in Ireland on 25th May 2018 and it is intended to give individuals more control over their personal data. The key principles under the Regulation are as follows:

- Lawfulness, fairness and transparency;
- Purpose Limitation;
- Data minimisation;
- Accuracy;
- Storage Limitation;
- Integrity and confidentiality, and

- Accountability.

The Department of Business, Enterprise and Innovation is subject to the provisions of the Regulation in relation to personal data collected by it from 25 May 2018. Any personal information which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 to 2018.

**5 July 2019**

## List of Questions

### Question 1

Should the number of members required to register a trade union be:

- (i) Increased;
- (ii) Decreased;
- (iii) Maintained at seven.

Please provide reasons for your answer.

### Question 2

Please set out your views on whether Trade Unions should be required to maintain a registered office in the State.

### Question 3

Please set out your views on what should be contained in the annual return and who should be responsible for making it.

### Question 4

Please set out your views as to how the compliance rate in relation to filing annual returns might be improved.

### Question 5

Please set out your views on whether section 11 should be amended to require a Trade Union to have its accounts audited by a statutory auditor.

### Question 6

Please set out your views on the introduction of an enabling provision in the legislation to allow for mandatory e-filing of submissions to the RFS.

### Question 7

Please set out your views on who should be responsible for making the various submissions to the RFS. (Forms C – X as set out in Appendix 2)

**Question 8**

**What factors do you think should be considered in cancelling or removing Trade Unions from the register?**

**Question 9**

**Please provide any other comments you wish to inform the development and direction of policy on the registration of Trade Unions and their relationship with the RFS.**

## Appendix 1

### Registration Requirements

The Trade Union Act 1871 provides that in order to register a trade union the following steps must be completed;

- The application to register a trade union and printed copies of the rules, together with a list of the titles and names of the officers, which must consist of at least seven members, shall be sent to the Registrar.
- The rules must as a minimum contain the matters required to be provided for by the First Schedule of the Trade Union Act 1871. The Schedule has been extended to include the requirement that the rules of every Trade Union must contain certain provisions relating to balloting in respect of strikes and other industrial action as per section 14(5) of the Industrial Relations Act 1990. Authorised Trade Unions are further required by section 12(1)(a) of the Trade Union Act 1941 to include in their rules “provisions specifying the conditions of entry into and cessation of membership”.
- The rules, application form and fee are submitted to the Registrar for examination.
- No trade union shall be registered under a name identical with that by which any other existing trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public.
- Once the rules are found to be in accordance with statute, the union is registered.

### Trade Union Act 1871

#### Section 6 Registry of trade unions:

*Any seven or more members of a trade union may by subscribing their names to the rules of the union, and otherwise complying with the provisions of this Act with respect to registry, register such trade union under this Act, provided that if any one of the purposes of such trade union be unlawful such registration shall be void.*

#### Section 13 Regulations for the registry:

*With respect to the registry, under this Act, of a trade union, and of the rules thereof, the following provisions shall have effect;*

- (1) *An application to register the trade union and printed copies of the rules, together with a list of the titles and names of the officers, shall be sent to the registrar under this Act:*

- (2) The registrar, upon being satisfied that the trade union has complied with the regulations respecting registry in force under this Act, shall register such trade union and such rules:*
- (3) No trade union shall be registered under a name identical with that by which any other existing trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public:*
- (4) Where a trade union applying to be registered has been in operation for more than a year before the date of such application, there shall be delivered to the registrar before the registry thereof a general statement of the receipts, funds, effects, and expenditure of such trade union in the same form, and showing the same particulars as if it were the annual general statement required as hereinafter mentioned to be transmitted annually to the registrar:*
- (5) The registrar upon registering such trade union shall issue a certificate of registry, which certificate, unless proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of this Act with respect to registry have been complied with:*
- (6) [The Minister for Jobs, Enterprise, and Innovation] may from time to time make regulations respecting registry under this Act, and respecting the seal (if any) to be used for the purpose of such registry, and the forms to be used for such registry, and the inspection of documents kept by the registrar under this Act, and respecting the fees, if any, to be paid on registry not exceeding the fees specified in the second schedule to this Act, and generally for carrying this Act into effect.*

### **Post Registration Requirements**

Once a Trade Union is registered, they are required to notify or file the following with the Registrar;

- A trade union must make an annual return, made up to 31 December, and submit the return to the Registrar by the following 1 June and the return must be accompanied by the audited accounts. A trade union must have its accounts audited each year by "some fit and proper person or persons".
- If a trade union amends or partial amends any of its rules, it must apply to the Registrar to have the amendment registered. The Registrar will register the amendment when satisfied that it is in accordance with statute.
- If a trade union changes its registered office, it must notify the Registrar.
- A trade union may amalgamate with or transfer its engagements to another trade union in accordance with the provisions of the Trade Union Act 1975.

- A trade union may change its name in accordance with section 12 of the Trade Union Act 1975. A change of name by a trade union shall not take effect until it is registered by the Registrar.

### **Trade Union Act 1871**

#### **Section 16** Annual returns to be prepared as registrar may direct:

*A general statement of the receipts, funds, effects, and expenditure of every trade union registered under this Act shall be transmitted to the registrar before the first day of June in every year, and shall show fully the assets and liabilities at the date, and the receipts and expenditure during the year preceding the date to which it is made out, of the trade union; and shall show separately the expenditure in respect of the several objects of the trade union, and shall be prepared and made out up to such date, in such form, and shall comprise such particulars, as the registrar may from time to time require; and every member of, and depositor in, any such trade union shall be entitled to receive, on application to the treasurer or secretary of that trade union, a copy of such general statement, without making any payment for the same.*

*Together with such general statement there shall be sent to the registrar a copy of all alterations of rules and new rules and changes of officers made by the trade union during the year preceding the date to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date.*

*Every trade union which fails to comply with or acts in contravention of this section, and also every officer of the trade union so failing, shall each be liable to a penalty not exceeding five pounds for each offence.*

*Every person who wilfully makes or orders to be made any false entry in or any omission from any such general statement, or in or from the return of such copies of rules or alterations of rules, shall be liable to a penalty not exceeding fifty pounds for each offence.*

### **Trade Union Act, 1975**

#### **Section 3** Conditions for amalgamations or transfers:

*(1) The conditions referred to in section 2 are the following:*

*(a) every member of the union shall be entitled to vote on the resolution and the voting shall be by secret ballot*

*(b) every member of the union shall be allowed to vote without interference or constraint and, so far as is reasonably possible, shall be given a fair opportunity of voting;*

*(c) the method of voting shall consist of the marking of a voting paper by the person voting;*

*(d) the union shall take all reasonable steps to ensure that, not less than seven days before voting on the resolution begins, every member of the union has received a notice in writing complying with subsection (3);*

*(e) not less than seven days before voting on the resolution begins, the union shall cause to be published in at least one daily newspaper published in the State notice (in such form as may be prescribed by regulations made by the Minister for Industry and Commerce under section 13) of the holding of the vote.*

*(2) Before a resolution to approve an instrument of amalgamation or transfer is voted on by the members of a trade union, the trade union shall satisfy the Registrar that the steps it proposes to take comply with subsection (1) (d).*

*(3) The notice referred to in subsection (1) (d) shall—*

*(a) either set out in full the relevant instrument or give sufficient account of it to enable a recipient of the notice to form a reasonable judgment of the main effects of the proposed amalgamation or transfer*

*(b) state, if it does not set out the instrument in full, where copies of the instrument may be inspected*

*(c) comply with any regulations under this Act, and*

*(d) be approved by the Registrar on being satisfied that it complies with the foregoing requirements of this subsection.*

*(4) The relevant instrument shall comply with the requirements of any regulations under this Act for the time being in force and relating thereto.*

**Section 6** Registration of instrument of amalgamation or transfer:

*An instrument of amalgamation or transfer shall not take effect before it has been registered by the Registrar under this Act, and shall not be so registered before the expiration of a period of six weeks beginning with the date on which an application for its registration is lodged with the Registrar.*

**Section 12** Change of name of Trade Union:

*(1) Subject to this section, a trade union may change its name by any method of doing so expressly provided for by its rules or, if its rules do not expressly provide for a method of doing so, by adopting in accordance with its rules an alteration of the provision in them which gives the union its name.*

*(2) A change of name by a trade union shall not take effect until it is registered by the Registrar under this Act, and the Registrar shall not register a change of name if it appears to him that registration of the union under the proposed new name would be contrary to section 13 (3) of the Trade Union Act, 1871 .*

*(3) Where a trade union changes its name the change of name shall not affect any right or obligation of the union or of any of its members, and, notwithstanding the change of name, any pending legal proceedings may be continued by or against the trustees of the union or any other officer of the union who can sue or be sued on its behalf.*

**Trade Union Act, 1871**

**Section 15** Registered office of trade unions:

*Every trade union registered under this Act shall have a registered office to which all communications and notices may be addressed; if any trade union under this Act is in operation for seven days without having such an office, such trade union and every officer thereof shall each incur a penalty not exceeding five pounds for every day during which it is so in operation.*

*Notice of the situation of such registered office, and of any change therein, shall be given to the registrar and recorded by him: until such notice is given the trade union shall not be deemed to have complied with the provisions of this Act.*

**Trade Union Act, 1913**

**Section 4** Approval of rules:

*(1) A ballot for the purposes of this Act shall be taken in accordance with rules of the union to be approved for the purpose, whether the union is registered or not, by the Registrar of Friendly Societies, but the Registrar of Friendly Societies shall not approve any such rules unless he is satisfied that every member has an equal right, and, if reasonably possible, a fair opportunity of voting, and that the secrecy of the ballot is properly secured.*

*(2) If the Registrar of Friendly Societies is satisfied, and certifies, that rules for the purpose of a ballot under this Act or rules made for other purposes of this Act which require approval by the Registrar, have been approved by a majority of members of a trade union, whether registered or not, voting for the purpose, or by a majority of delegates of such a trade union voting at a meeting called for the purpose, those rules shall have effect as rules of the union, notwithstanding that the provisions of the rules of the union as to the alteration of rules or the making of new rules have not been complied with.*

## Appendix 2

### Trade Union Forms

- A.R. 21 – Annual Return
- Form C – Application to register a partial alteration of rules of a trade union
- Form D – Declaration accompanying alteration of rules
- Form F – Application to register a complete alteration of rules
- Form J – Request to withdraw or cancel certificate of registry
- Form M – Notice of change of registered office of a trade union
- Form N – Application for registration of change of name
- Form O – Declaration to accompany application for approval of change of name
- Form S – Notice of dissolution of a trade union
- Form T – Application for registration of instrument of amalgamation
- Form U – Statutory declaration on application for registration of instrument of amalgamation
- Form V – Application for registration of instrument of transfer of engagements
- Form W – Statutory declaration on behalf of transferor union in support of application for registration of instrument of transfer of engagements
- Form X – Statutory declaration on behalf of transferee union in support of application for registration of instrument of transfer of engagements