

The date for eligibility is set in the rules in Chapter 3.

The rule is:

Chapter 3
Party Conference
Clause I.
Delegations

4.
 - F. All delegates must have been individual members of the Party for at least 12 months at the closing date set for the receipt of names of delegates (see III.1.E below).

The date for eligibility is therefore 12 months based on the closing date for receipt of names of delegates. The timetable for receipt of names and address is dealt with in Chapter 3 Clause III, 1, E.

Clause III

1.
 - E. The timetable for the receipt of names and addresses of delegates appointed by affiliated organisations and CLPs shall be determined by the NEC and submitted to the affiliated organisations and CLPs with the notice convening the conference. In the case of a special conference session called under Clause III.1.A above, the NEC shall also determine a date by which such names and addresses shall be submitted.

The original Conference notice was issued by the General Secretary Iain McNicol in February 2017. The date for receipt of the names of delegates was notified to CLPs along with the original formal notice of the convening of the conference as being determined to be Friday 23rd June 2017. The last date for the beginning of a delegate's eligible membership would have been 23rd June 2016.

However, on 18th April 2017 Prime Minister Theresa May called a snap general election which took place on the 8th June 2017. As a consequence of this and in order, sensibly, that Labour party members could concentrate on working for electoral victory the dates for nomination and receipt of Conference delegates was determined by the NEC to be changed to 7th July 2017. The obvious application of Chapter 3, Clause I, 4, F is that if the timetable for the receipt of the names of delegates has been varied then as an automatic consequence the appropriate date for the calculation of a period of 12 months membership of the Party is concomitantly altered. This would make the correct beginning eligibility date for 12 months Party membership to be 7th July 2016.

As these dates are clearly under the rules in chapter 3 directly linked it is incorrect to attempt to sever them and apply a different date for receipt of names of delegates and the correct 12-month eligibility period.

However, a further complication does seem to arise. The NEC have seemingly exercised a discretion to vary the dates for the timetable for receipt of names delegates. It is not clear that any discretion to vary these dates is available to the NEC in the rules in Chapter 3. The power to set the date for receipt of names is in Clause III 1, E:

“The timetable for the receipt of names and addresses of delegates appointed by affiliated organisations and CLPs shall be determined by the NEC and submitted to the affiliated organisations and CLPs with the notice convening the conference.”

This sub clause would seem to require that the notified timetable of dates for receipt of names of delegates must be determined by the NEC and then communicated to CLPs etc at the same time as the original notice convening Conference. It could be suggested that no clear discretionary authority exists under this sub clause to allow the NEC to determine a varied timetable once the formal notice convening Conference has been issued.

This does seem though to lead to a somewhat unreasonable result. The Court of Appeal in *Evangelou v McNicol* [2016] EWCA Civ 817 stated:

“The intentions of the parties to a contract will be ascertained by reference to what a reasonable person having all the background which would have been available to the parties would have understood the language in the contract to mean, and it does so by focusing on the meaning of the words in the contract in their documentary and factual context.”

And further:

“the clearer the natural meaning of the centrally relevant words, the more difficult it is to justify departing from it.”

“The court will more readily and properly depart from the words of a contract where their meaning is unclear or ambiguous, or where giving them their natural and ordinary meaning would lead to a very unreasonable result. As to the latter, while it is illegitimate for a court to force on the words of a contract a meaning which they cannot fairly bear, in *Wickman Machine Tool Sales Ltd v L Schuler AG* [1974] AC 235 Lord Diplock stated (at 251) that:

“The fact that a particular construction leads to a very unreasonable result must be a relevant consideration. The more unreasonable the result, the more necessary it is that they shall make that intention abundantly clear”.

“In both categories of case the court will consider the relevant context, being concerned to identify the intention of the parties by reference to “what a reasonable person having all background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean.”

In the light of this Court Judgement it may be possible to interpret the sub clause at Clause III 1, E as being intended to include a possibility of the NEC determining an adjusted timetable and submitting it after the original notice convening Conference. This could be argued to be a correct interpretation of the contractual parties’ intention but equally the language does appear at first sight to be unambiguous and whilst creating a difficulty does not necessarily lead to a very unreasonable result.

In considering the proper interpretation of the provisions of Chapter 3 Clause III, 1, E the existence of this power to amend the rules in Chapter 3 contained in Chapter 1, Clause VI, 2 would suggest that the sub Clause in Chapter 3 Clause III, 1, E is not in fact intended to have a stand-alone discretionary power for the NEC to vary the timetable for notice as it would be in addition to a similar discretionary authority already contained in Chapter 1, Clause VI, 2.

Clause VI.

Labour Party Conference

1. The work of the Party shall be under the direction and control of Party conference, which shall itself be subject to the constitution and standing orders of the Party. Party conference shall meet regularly once in every year and also at such other times as it may be convened by the NEC.
2. **The rules for the convening and operation of Party conference are contained in chapter 3 of these rules which may be amended by decision of the NEC, subject to ratification by Party conference.** Party conference and special sessions of Party conference in these rules are referred to as 'Party conference' and these rules (except where the context otherwise requires) shall apply thereto.

Sub clause 2 grants a discretion to the NEC to make variations to the rules "for the convening and operation of Party conference" as detailed in Chapter 3. Any decision made by the NEC to make amendment to these rules is subject to a later ratification by Party Conference in order for it to be valid.

It seems clear that the NEC can exercise a discretion under this sub clause to amend the rules regarding the timetable for receipt of the names of delegates subject to a later ratification by Party Conference. However as previously stated the amendment of the Chapter 3 rule setting the date for receipt of delegates and varying it from the 23rd June 2017 to the 7th July 2017 is then inextricably linked to the setting of the 12 month minimum period of membership required in Chapter 3 and would as a direct consequence of the amendment of the receipt date to 7th July 2017 have also moved to the 7th July 2016.

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