

EXPLANATORY MEMORANDUM TO
THE TRADE UNION BALLOTS AND ELECTIONS (INDEPENDENT
SCRUTINEER QUALIFICATIONS) ORDER (NORTHERN IRELAND) 2010

S.R. 2010 No. 78

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Employment and Learning (the "Department") to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 15(2), 49(2), 77(2) and 106(2) of The Trade Union and Labour Relations (Northern Ireland) Order 1995 (the "1995 Order") and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The 1995 Order requires trade unions to use the services of a qualified independent person, known as a 'scrutineer', when undertaking statutory ballots in the following four jurisdictions: election of union officials, i.e. general secretary; president; and executive member; application of funds for political objects; union mergers; and industrial action.
- 2.2. The 1995 Order provides that a scrutineer must fulfil conditions specified by the Department and be a person whose competence and independence could not reasonably be called into question. It allows the Department to define a scrutineer as someone who is listed, or satisfies certain conditions. This Statutory Rule will replace the provisions of the Trade Union Elections and Ballots (Independent Scrutineer Qualifications) Order (Northern Ireland) 1992 (S.R. 1992 No. 241) (the "principal Order") and update the list of persons specified by name in line with the outcome of the joint competition (See 3.1). It will also revoke the principal Order and the Trade Union Election and Ballots (Independent Scrutineer Qualifications) (Amendment) Order (Northern Ireland) 2003 (S.R. 2003 No. 331) (the "2003 Order"), which previously updated the list of persons specified by name in the principal Order.

3. Background

- 3.1. The principal Order and the 2003 Order specify the categories of those qualified to supervise certain elections and ballots under trade union law, and contain the lists of persons nominated to do so by the Department. All those who supervise such elections and ballots undertaken by trade unions have certain statutory duties. It is important that such persons are fully independent and competent. The list of persons specified by name to act as a scrutineer was last updated in 2003. Since then, some of the named organisations have ceased to operate and other organisations have entered the balloting market. In light of this, the Department for Employment and Learning and the Department of Business, Innovation and Skills (BIS) held a joint competition on 9 and 10 November 2009 to update the list of scrutineers and ensure that the listed organisations had the requisite

independence, experience and resources necessary for undertaking balloting work.

- 3.2. After a recent internal review of the principal Order, the Department is aware that it may not properly extend to all four ballot and elections jurisdictions. In light of this, the principal Order and the 2003 Order will be revoked and replaced by this Statutory Rule which will also update the list of persons specified by name in line with the outcome of the joint competition.

4. Consultation

- 4.1. Consultation was not undertaken as there was no change in policy. However, as noted above, a public competition was carried out to identify and assess potential new candidates, and to ensure that existing named persons had the requisite independence, experience and resources necessary for undertaking balloting work. The professional bodies representing individuals satisfying the criteria to act as qualified persons, including the Law Society of Northern Ireland, the Institute of Chartered Accountants in Ireland and the Association of Chartered Certified Accountants, were contacted regarding their continued inclusion within the relevant legislation and have agreed to this.

5. Equality Impact

- 5.1. Since there is no change to existing policy and the Statutory Rule only replicates the provisions of the existing scrutineer Order and updates the list of persons specified by name, an Equality Impact Assessment was not considered necessary.

6. Regulatory Impact

- 6.1. An Impact Assessment has not been prepared for this Statutory Rule, as it does not impose any additional regulatory obligation on the private or voluntary sectors.

7. Financial Implications

- 7.1. None

8. Section 24 of the Northern Ireland Act 1998

- 8.1. Not applicable.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. This Statutory Rule mirrors the provisions of the GB Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Order 1993 (Amendment) Order 2010 in relation to updating the list of bodies specified by name as being qualified to be appointed as an independent scrutineer to supervise certain trade union elections and ballots. In light of the advice, from DSO, that the 1992 Order does not properly extend to all four ballot and election jurisdictions, the statutory rule will also contain additional provisions which will replace and revoke the principal Order and the 2003 Order.

11. Additional Information

11.1. Not applicable.