

# EMPLOYMENT RELATIONS ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 5: the Certification Officer**

#### *Sections 48 and 49*

#### **Amalgamations: approval; listing and certification**

344. Under the 1992 Act, the CO may grant a listed trade union a certificate of independence. Where two (or more) unions merge to become one newly amalgamated union, the amalgamating unions cease to exist as separate trade unions. They are removed from the list of trade unions held by the CO, and their certificates of independence (if they had one) are cancelled. The newly formed union would then be required to apply for listing and a new certificate.
345. *Section 50* provides that on the amalgamation of two or more listed unions in accordance with Part I Chapter VII of the 1992 Act, the amalgamated union will automatically be listed by the CO, subject to the provision of specified information. Where all the amalgamating unions held a certificate of independence, a certificate of independence will automatically be issued to the new union.
346. *Subsection (1)* amends section 98 of the 1992 Act by replacing the existing subsection (2). The new subsection sets out the requirements to be satisfied before an instrument of amalgamation can be approved by the CO. The instrument must comply with the requirements of any regulations in force under the Chapter. Further, the name of the new union must not be one already listed; this requirement is based on the requirement in section 3 of the 1992 Act which prohibits a union from being listed with such a name. However, the CO can approve an instrument of amalgamation where the name of the new union is the same as that of one of the amalgamating unions.
347. *Subsection (2)* inserts new sections after section 101 of the 1992 Act. New section 101A provides that where the amalgamating unions are already listed when the CO registers their instrument of amalgamation, then he must enter the name of the newly amalgamated union on the list of trade unions. He must also remove the old names. The change to the list will have effect from the date of amalgamation. New sections 101A(3) and (4) provide for the automatic issue of a certificate of independence to the amalgamated union, where both or all of the original unions had such a certificate in force at the time of the amalgamation.
348. New section 101B(1) and (2) provide that once a newly amalgamated union is registered and listed by the CO, it must send him the information set out in subsection (1) and the applicable fee. Under subsection (3) both must be sent within 6 weeks (or longer if the CO directs) from the date on which the instrument takes effect. If the union fails to comply with these requirements the CO must remove it from the list of trade unions. *Section 50(3)* applies the new provisions in 101A and 101B to unincorporated employers' associations, and amends cross references.