

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

2010 No. 436

**THE RECOGNITION AND DERECOGNITION BALLOTS (QUALIFIED PERSONS)
(AMENDMENT) ORDER 2010**

2010 No. 437

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instruments

2.1 The Trade Union Ballots and Elections (Independent Scrutineer Qualifications) (Amendment) Order 2010 (“the Independent Scrutineer Order”) and the Recognition and Derecognition Ballots (Qualified Persons) (Amendment) Order 2010 (“the Recognition Ballots Order”) name those organisations which have been assessed as capable of supervising certain ballots and elections under trade union law.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Trade unions are required by statute to use the services of independent qualified persons (known as scrutineers) when undertaking certain categories of ballots and elections. The Central Arbitration Committee (‘CAC’) is also required by statute to use the services of qualified independent persons when carrying out trade union recognition and derecognition ballots under the statutory procedure. Currently, only solicitors, accountants qualified to be company auditors and named organisations are defined as qualified to act as scrutineers.

4.2 The relevant categories of trade union ballot supervised by scrutineers are: ballots in advance of industrial action; ballots to start or maintain a trade union political fund; ballots on the amalgamation of trade unions; and elections for senior positions within trade unions.

4.3 Under powers conferred by sections 49(2)(a), 75(2)(a), 100A(2)(a) and 226B(2)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”), the Secretary of State may make an order specifying the conditions under which a person is qualified to act as an independent scrutineer for certain trade union ballots and elections, or nominating other persons whom the Secretary of State considers to be qualified. Similar powers are conferred by paragraphs 25(7)(a) and

117(9)(a) of Schedule A1 to 1992 Act in respect of qualifications to oversee statutory recognition and derecognition ballots.

4.4 The Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Order 1993¹ (“the 1993 Order”) and the Recognition and Derecognition Ballots (Qualified Persons) Order 2000² (“the 2000 Order”) are the principal Orders made under these powers. Subsequent amending Statutory Instruments³ substituted Article 7 of the 1993 Order and Article 4 of the 2000 Order in order to update the list of persons nominated by the Secretary of State as able to act as independent qualified persons. The present Orders, covered by this Explanatory Memorandum, supersede those previous amending instruments.

4.5 Additionally, Article 2(b) of the 2000 Order contained a reference to section 25 of the Companies Act 1989 which was repealed in April 2008 and replaced by the provisions contained in Part 42 of the Companies Act 2006. The reference in Article 2(b) has been amended by Article 2(a) of the Recognition Ballots Order to reflect this change.

5. Territorial Extent and Application

5.1 These Orders extend to Great Britain save that where the relevant ballot concerns the passing of a political resolution for the application of funds for political objects, the Independent Scrutineer Order extends to Northern Ireland in relation to trade unions active there that have their head or main offices located in Great Britain.

5.2 Separate, parallel Orders will be laid in Northern Ireland.

6. European Convention on Human Rights

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The 1993 Order and the 2000 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 Secretary of State. All those who supervise such elections and ballots undertaken by trade unions and the CAC have certain statutory duties. It is important that such persons are fully independent and competent. The Government is also mindful that trade unions and the CAC should be able to exercise some choice when selecting persons to carry out this work to ensure value for money and quality of service.

¹ S.I. 1993/1909.

² S.I. 2000/1306.

³ S.I. 2002/2267, S.I. 2002/2268

7.2 The lists were last revised in 2002. Since then, some of the named organisations have ceased to operate and other organisations have entered the balloting market. Therefore, a public competition was held in 2009 to ensure that the lists were refreshed and that listed organisations had the requisite independence, experience and resources necessary for undertaking balloting work. This exercise was conducted jointly with the Northern Ireland Department for Employment and Learning. Applications were assessed by a panel of officials, chaired by Rita Donaghy, the former chair of the Advisory, Conciliation and Arbitration Service (Acas). In relation to Great Britain, the panel's recommendations were then submitted to the Minister for Employment Relations and Postal Affairs to inform his decision about which applicant organisations should be selected.

7.3 In relation to Northern Ireland, the panel's recommendations were submitted to the Minister for Employment and Learning. The Department for Employment and Learning will be taking forward the separate Northern Ireland legislation in this matter.

- ***Consolidation***

7.4 None.

8. Consultation outcome

8.1 As these Orders do not impose any additional burdens on businesses, there was no consultation requirement in this matter and therefore no consultation was undertaken. However, as noted above, a public competition was carried out to identify and assess potential new candidates, and to ensure that existing named persons were still capable.

9. Guidance

9.1 Existing guidance on trade union law, which is published on the BIS website, will be updated to reflect the organisations entitled to carry out this work.

9.2 These lists will also be circulated to the CAC (for statutory recognition and derecognition ballots), and to the Trades Union Congress, who will assist in disseminating it to other trade unions (for the trade union ballots and elections listed in paragraph 4.2).

10. Impact

10.1 An Impact Assessment has not been prepared for these instruments, as they impose no regulatory obligation on the private or voluntary sectors.

11. Regulating small business

11.1 The legislation does not directly affect small businesses.

11.2 However, the statutory recognition and derecognition procedures apply to all employers employing twenty or more workers. It is therefore possible that the

workforce of some small businesses could be balloted by the CAC under those procedures, using a qualified independent person identified in the second of these two orders.

12. Monitoring & review

12.1 The Department will monitor developments in the specialist market for balloting services. As in the past, the Department would be prepared to run a further public competition after an appropriate passage of time to ensure that the lists remain up-to-date.

13. Contact

13.1 Bernard Carter at the Department for Business, Innovation and Skills tel: 0207 215 2760 or email: bernard.carter@bis.gsi.gov.uk can answer any queries regarding the instrument.