

**EXPLANATORY MEMORANDUM TO**  
**THE MEMBERSHIP AUDIT CERTIFICATE (QUALIFIED INDEPENDENT PERSON)**  
**(SPECIFIED CONDITIONS) ORDER 2015**

**2015 No. 716**

**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 instrument**

2.1 From 6 April 2015 trade unions that have a statutory duty to maintain a register of their members will also be under a statutory duty to supply annually an audit certificate in relation to that duty. Where the trade union has more than 10,000 members the audit certificate will be supplied by an assurer appointed by the union. An assurer must be a qualified independent person and this Order sets the conditions which must be fulfilled for a person to be a qualified independent person.

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

3.1 Whilst the 21-day rule has been complied with, we regret that the opportunity for parliamentary scrutiny is limited by part of the 21-day period falling after prorogation of Parliament. The 6<sup>th</sup> April 2015 entry-in-force date meets the Common Commencement Date, and implements the provisions of Part 3 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act (“the Act”). A consultation entitled “Trade Union Assured Register of Members” invited views on who could be a qualified independent person and so eligible to be an assurer. The Government response to the consultation was published on 12<sup>th</sup> March, together with guidance. The Order is laid subsequent to this.

**4. Legislative Background**

4.1 The Trade Union and Labour Relations (Consolidation) Act 1992 (“TULRCA”) places a duty on trade unions to compile and maintain a register of its members’ names and addresses and ensure that the entries on the register are kept accurate and up-to-date, so far as reasonably practicable.

4.2 Part 3 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act (“the Act”) amended TULRCA and places a new statutory obligation on unions to provide annual assurance, by way of membership audit certificate (“MAC”) to the Certification Officer. Where the trade union has more than 10,000 members this obligation is met by the union appointing an assurer who is under a statutory duty to supply the MAC. A trade union can only appoint a qualified independent person to be an assurer. Section 24ZB(3) of TULRCA provides that the Secretary of State can specify qualified independent persons by name or can specify the conditions which a qualified independent

person must meet. This Order specifies the conditions that a qualified independent person must meet.

## **5. Territorial Extent and Application**

5.1 This instrument extends and applies to Great Britain.

## **6. European Convention on Human Rights**

6.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

## **7. Policy Background**

- What is being done and why

7.1 Part 3 of the Act introduced new provisions into TULRCA which create new statutory obligations on trade unions to supply annual certification of their compliance with the duty to compile and maintain a register of their members' names and addresses. It also introduces new powers for the Certification Officer to investigate and to determine whether a breach of these obligations has taken place and to impose sanctions for breach. These changes were introduced to create an effective statutory mechanism of assurance that trade unions' membership registers are accurate and up-to-date, as far as reasonably practicable. The obligations in relation to MACs and assurers will be brought into force on 6<sup>th</sup> April 2015 by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (Commencement No. 2) Order 2015. The Certification Officer's powers of investigation and enforcement will come into force on 1<sup>st</sup> June 2016.

7.2 The MAC for unions with 10,000 or fewer members will be provided by an officer of that union. However, unions with over 10,000 members are likely to have more complex membership records and there is likely to be a greater level of public interest. Accordingly these unions are required to appoint an assurer to prepare and supply the MAC for the union.

7.3 A trade union can only appoint a qualified independent person as an assurer. This Order determines a person must be a solicitor, auditor or a person who is specified as qualified to be a scrutineer by the Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Order 1993 (as amended) to be a qualified independent person.

## **8. Consultation outcome**

8.1 The Government consulted on the proposed implementation of Part 3 of the Act for a 10 week period between 26 September 2014 and 4 December 2014. This consultation entitled "Trade Union Assured Register of Members" received 27 responses from trade unions with more than 10,000 members, a federated trade union, the legal community and

a union with 10,000 or fewer members, amongst others. The Government's consultation and response document are available on the gov.uk<sup>1</sup> website.

8.2 Out of 27 responses received, 26 stated that they wanted solicitors, auditors and scrutineers to be able to act as an assurer.

## **9. Guidance**

9.1 Guidance for unions and potential assurers on the duty to maintain an accurate and up-to-date membership register, the process and timing of the annual assurance has been published on the gov.uk website.

## **10. Impact**

10.1 A full impact assessment was prepared for this instrument. It was considered fit for purpose by the Regulatory Policy Committee which awarded it a green rating. An Equality Assessment was also completed which concluded that there will be no significant equality or discriminatory impacts as a result of this measure.

## **11. Regulating small business**

11.1 This instrument will have no impact on small businesses as it merely sets out which independent qualified persons are able to act as an assurer on behalf of unions.

## **12. Monitoring & review**

12.1 The Government has committed to a review of the implementation of Part 3 of the Act four years after the first Membership Audit Certificate is submitted to the Certification Officer. This has been set out in the Impact Assessment which is laid alongside this instrument.

## **13. Contact**

13.1 Marleen Jannink at the Department for Business Innovation and Skills can answer any queries regarding the instrument. Marleen can be contacted on 020 7215 3135 or [marleen.jannink@bis.gsi.gov.uk](mailto:marleen.jannink@bis.gsi.gov.uk)

---

<sup>1</sup> <https://www.gov.uk/government/consultations/trade-unions-assured-registers-of-members>