EXPLANATORY MEMORANDUM TO

THE TRADE UNION BALLOTS AND ELECTIONS (INDEPENDENT SCRUTINEER QUALIFICATIONS) (AMENDMENT) ORDER 2017

2017 No. 877

AND

THE RECOGNITION AND DERECOGNITION BALLOTS (QUALIFIED PERSONS) (AMENDMENT) ORDER 2017

2017 No. 878

1. Introduction

1.1 This explanatory memorandum has been prepared by The Department for Business, Energy and Industrial Strategy 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 2017 ("the Independent Scrutineer Order") and the Recognition and Derecognition Ballots (Qualified Persons) (Amendment) Order 2017 ("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 Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As these instruments are subject to the negative procedure and have not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

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 specified by the Secretary of State are considered as independent persons 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 mergers of trade unions; and elections for senior positions within trade unions.

4.3 Under powers conferred by sections 49(2), 75(2), 100A(2) and 226B(2) 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 Al to the1992 Act in respect of qualifications to oversee statutory recognition and derecognition ballots.

4.4 The Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Order 1993[1] ("the 1993 Order") and the Recognition and Derecognition Ballots (Qualified Persons) Order 2000[2] ("the 2000 Order") are the principal Orders made under these powers. Subsequent amending Statutory Instruments 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.

5. Extent and Territorial Application

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

5.2 The territorial application of these Orders is the same as their extent, as stated in paragraph 5.1.

5.3 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, amended by S.I. 2002/2267 and S.I. 2010/436.
[2] S.I. 2000/1306, amended by S.I. 2002/2268 and S.I. 2010/437.

7.2 The lists were last revised in 2010. Since then, some of the named organisations have ceased to provide such services and other organisations have entered the balloting market. Therefore, a public competition was held in February 2017 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 the Economy (DfE). Applications were assessed by a panel of representatives from this department, DfE, the CAC and the Certification Office. In relation to Great Britain, the panel's recommendations were submitted to the Minister for Small Business, Consumers and Corporate Responsibility to inform her decision about which organisations should be included in the lists.

7.3 In relation to Northern Ireland, the panel's recommendations were submitted to the Minister for the Economy to be taken forward separately in Northern Ireland legislation as appropriate.

Consolidation

7.4 The Department does not plan to produce consolidated versions of the 1993 Order and the 2000 Order, but will update guidance published on Gov.uk as referred to in paragraph 9 below.

8. Consultation outcome

8.1 A public competition was carried out to identify and assess potential new candidates, and to ensure that existing named persons, who applied to be relisted, were still capable.

9. Guidance

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

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for these instruments.

11. Regulating small business

11.1 The legislation does not directly affect activities undertaken by 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 call for potential qualified independent parties to ensure that the lists remain up-to-date.

13. Contact

13.1 Ian Jordan at the Department for Business, Energy and Industrial Strategy, telephone: 020 7215 0209 or email: ian.jordan@beis.gov.uk, can answer any queries regarding these instruments.