

BIS | Department for Business
Innovation & Skills



Department for
**Employment
and Learning**

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**PUBLIC COMPETITION FOR
ORGANISATIONS TO SCRUTINISE
BALLOTS AND ELECTIONS UNDER
TRADE UNION LAW**

Information for interested organisations

September 2009

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**PUBLIC COMPETITION FOR ORGANISATIONS ENTITLED TO ACT AS
INDEPENDENT SCRUTINEERS FOR THE PURPOSES OF STATUTORY
TRADE UNION BALLOTS AND ELECTIONS, AND QUALIFIED
INDEPENDENT PERSONS FOR THE PURPOSES OF TRADE UNION
RECOGNITION AND DERECOGNITION BALLOTS.**

Summary of relevant law and competition

Unions are required by statute to use the services of independent qualified scrutineers when undertaking certain categories of ballot and election. Under the current law (Statutory Instrument 1993 No 1909 and Statutory Instrument 2002 No 2267 in Great Britain; Statutory Rule 1992 No 241 and Statutory Rule 2003 No 331 in Northern Ireland), only solicitors, accountants qualified to be company auditors and named organisations are defined as qualified to undertake this role.

The Central Arbitration Committee (in Great Britain) and the Industrial Court (in Northern Ireland) are required by statute to use the services of qualified independent persons when carrying out trade union recognition and derecognition ballots. Under the current law (Statutory Instrument 2000 No 1306 and Statutory Instrument 2002 No 2268 in Great Britain; Statutory Rule 2001 No 38 and Statutory Rule 2004 No 518 in Northern Ireland), only solicitors, accountants qualified to be company auditors and named organisations are defined as qualified to undertake this role.

The organisations named in the above legislation were appointed following public competitions to identify suitable candidates. However, some time has since elapsed and the situation among organisations qualified to undertake ballot-related work may have changed. The Department for Business, Innovation and Skills (BIS) and the Northern Ireland Department for Employment and Learning (DELNI) are therefore running a public competition to determine which organisations should now be named as qualified for these purposes. To initiate this public competition, the Departments are inviting organisations who are not named in the current lists to apply for inclusion. The Departments also invite the existing named organisations to re-apply for inclusion in the list.

Background

Unions are required by law to use the services of an independent scrutineer when carrying out statutory ballots in four areas:

- industrial action ballots (involving more than 50 people);
- ballots to establish and periodically review a union's political fund;
- ballots concerning the amalgamation of unions; and
- elections to certain trade union positions.

These ballots must be postal.

The Central Arbitration Committee and the Industrial Court are required by law to use the services of a qualified independent person when carrying out statutory ballots in two areas:

- ballots under the statutory recognition and derecognition procedure to recognise a trade union for the purposes of collective bargaining
- ballots under the same statutory procedure to derecognise a trade union which was recognised via the statutory recognition process

These ballots can be either postal or workplace, or a combination of both methods.

Scrutineers and qualified independent persons have certain statutory functions to perform in connection with these ballots. These centre on the supervision of the ballot or election. They must also produce a report after the ballot or election, which among other things gives the result of the vote and states whether the scrutineer or qualified independent person is satisfied that there are no reasonable grounds for believing that the ballot was conducted in contravention of the law. These functions are described in more detail in Annex A. It is also the usual practice for the scrutineer to act as the independent person who actually undertakes the ballot – that is, storing, distributing and counting ballot papers.

Scrutineers are paid by the unions who hire their services. Unions are obliged to appoint only those organisations from the statutory list whom they believe are independent and competent.

Qualified independent persons' fees are split equally between the employer and the trade union, though they are appointed to conduct ballots by the Central Arbitration Committee (in Great Britain), and the Industrial Court (in Northern Ireland). These bodies are obliged to appoint only those organisations from the statutory list whom they believe are independent and competent. At the time of, or prior to, a recognition/derecognition ballot, qualified independent persons can also be asked, at the request of a trade union, to send information to the workers concerned; the union alone is responsible for meeting the costs of these assignments.

Attributes sought

These positions are highly responsible ones and involve sensitive issues concerning industrial relations and trade union affairs. It is therefore essential that the Departments appoint only those organisations which can show they have the full range of competencies and experiences needed.

In order to qualify as scrutineer or qualified independent person, organisations must satisfy the Departments that they are:

- **Independent and impartial** - Applicants must show that they are not controlled by individual unions or potentially subject to undue commercial pressures from unions or employers. They must adhere to the highest standards of probity and professional objectivity. Although they are effectively 'hired' by the union, scrutineers must be able to highlight any wrong doing or problems with a ballot.
- **Competent** - Balloting requires attention to detail to ensure efficiency and proper conduct. Successful applicants will need to show that they fully understand the pitfalls to be avoided. They will also need to demonstrate an adequate knowledge of the law regarding trade union balloting, recognition and derecognition ballots, and the statutory functions assigned to scrutineers and qualified independent persons.
- **Adequately resourced** - Ballots and elections have to be held to tight timetables. Applicants will need to show that they have the staffing and other necessary resources to supervise and undertake postal and workplace balloting within the necessary time scales. An organisation's capability to supervise or run ballots across Great Britain (and/or, where relevant, within Northern Ireland) should also be described.
- **Adequately experienced** - Applicants will need to show that they have undertaken ballots efficiently and professionally. Alternatively, newly established organisations, or those organisations new to balloting, will need to show that they employ staff with such experience.

How to apply

Applications should be made in writing to the address given below. In their applications, organisations should explain how they meet the selection criteria outlined above.

Organisations should clearly state which of the four lists (two each for Great Britain and Northern Ireland) they are applying or re-applying to join.

Applications should also contain the CVs on those individuals who lead within their organisations on balloting work.

Applications should also contain the names and addresses of two referees, preferably from organisations which have used the balloting services of the applicant organisation.

The public competition is launched on 24 September 2009. Applications will need to reach BIS by 23 October 2009. Shortlisted applicants will be invited for interview at the BIS HQ building in London in November. The interviewing panel will consist of a BIS official, a DELNI official, an official of the Central Arbitration Committee and it will be chaired by Rita Donaghy, an independent panel member.

The panel will make recommendations to BIS and DELNI Ministers who will make the final decisions relating to GB and NI, respectively.

If the outcome of this public competition necessitates changes to any or all of the current legislation, then BIS and DELNI are committed to make those changes as speedily as possible.

Applications and enquiries should be made to:

Glenn Harrison
Employment Relations Directorate
Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET

020 7215 0945

Glenn.Harrison@bis.gsi.gov.uk

Annex A: List of supplementary sources

The functions of the independent scrutineer are very similar for both the four areas of statutory ballots (industrial action ballots, trade union elections, ballots regarding political funds, and mergers between trade unions), and for recognition and derecognition ballots.

However, there are some differences between them. A distinction is also drawn in legislation between the independent scrutineer who has supervisory duties and produces a report on the ballot, and the independent person who is retained to assist with the ballot, i.e. storing, distributing and counting voting papers. It is usual for the independent scrutineer also to act as the independent person. However, if they are not, it is for the scrutineer to oversee the work of the independent person.

The following sources provide greater detail on the types of ballots which the independent scrutineer will oversee. They also provide information on the overall legal context within which the ballot is placed, as well as describing the role and functions of both the scrutineer and the independent person.

General information on trade union ballots can be found on Directgov via the following address: <http://alturl.com/on8u>

Northern Irish law on trade union ballots and recognition ballots is broadly similar to the law in Great Britain.

Industrial action

Great Britain: The legislation covering industrial action is to be found in the Trade Union and Labour Relations (Consolidation) Act 1992, primarily in sections 226-235. Some changes were introduced by the Employment Relations Act 1999. However, the 1999 Act did not change the law relating to scrutineers and independent persons.

Guidance issued by the former DTI (now a part of BIS) can be found on the BIS website via the following address: <http://alturl.com/xe84>

Northern Ireland: The legislation covering the requirement of a ballot before industrial action is to be found in the Trade Union and Labour Relations (NI) Order 1995, Articles 104-119.

Guidance issued by DELNI can be found on their website via the following address: <http://alturl.com/ta6n>

Trade union executive elections

Great Britain: The legislation for this can be found in the Trade Union and Labour Relations (Consolidation) Act 1992 sections 49-54.

Guidance on trade union elections can be found on the BIS website via the following address: <http://alturl.com/67y2>

Northern Ireland: The legislation for this can be found in the Trade Union and Labour Relations (NI) Order 1995 Articles 15-21.

General information on trade union executive elections is available on Directgov. Information on elections can be accessed via <http://alturl.com/ymdg> and information on casting votes can be accessed via <http://alturl.com/xgrx>

Trade union political funds

Great Britain: The legislation is contained in the Trade Union and Labour Relations (Consolidation) Act 1992 sections 75-81.

Northern Ireland: The legislation is contained in the Trade Union and Labour Relations (NI) Order 1995 Articles 49-56.

Guidance on trade union political funds and political fund ballots can be accessed on the BIS website via the following address: <http://alturl.com/5sp5>

Guidance issued by DELNI on political funds can be found on their website via the following address: <http://alturl.com/idyd>

Trade union mergers

Great Britain: The law relating to these statutory ballots can be found in sections 97-100E of the Trade Union and Labour Relations (Consolidation) Act 1992.

Northern Ireland: The legislation for this can be found in the Trade Union and Labour Relations (NI) Order 1995 Articles 73-81.

Trade union recognition and derecognition ballots

Great Britain: The law relating to recognition and derecognition ballots can be found in Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992.

Guidance on trade union recognition can be found on the Business Link website via the following address: <http://alturl.com/65rm>

The former DTI (now part of BIS) produced a booklet on trade union recognition ballots which can be accessed via: <http://alturl.com/6fpf>

Further guidance is available from the Central Arbitration Committee via the following address: <http://alturl.com/cnt4>

Northern Ireland: The law relating to recognition and derecognition ballots can be found in Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995.

Guidance on trade union recognition can be found on the nibusinessinfo website via the following address: <http://alturl.com/e3au>

Further guidance is available from the Industrial Court's website regarding statutory recognition via <http://alturl.com/47f7> and regarding statutory derecognition via <http://alturl.com/umhi>

A DELNI booklet on recognition and derecognition ballots is available via the following address: <http://alturl.com/pciq>

