

Northern Ireland Certification Office for Trade Unions and Employers' Associations

MERGERS

A guide to the statutory requirements
for transfers of engagements and
amalgamations of Northern Ireland
headquartered employers' associations

4th Floor James House Cromac Avenue Belfast BT7 2JA
Tel: 028 9023 7773 E-mail: info@nicertoffice.org.uk
Website: www.nicertoffice.org.uk

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INTRODUCTION

This guide explains the statutory procedures to be followed in carrying out mergers between unincorporated employers' associations headquartered in Northern Ireland. A merger may be a transfer of engagements or an amalgamation. The difference between the two is outlined below, and explained in more detail on page 3.

The guide is intended to assist officials and others in complying with the legal requirements governing mergers. However, its contents should not be regarded as an authoritative statement of the law, and it is advisable for employers' associations to obtain independent legal advice, particularly if substantial funds or property are to be transferred from one employers' association to another.

Transfer of engagements

This is the transfer of membership, property etc., from one employers' association (the "transferring association") to another (the "receiving association").

Amalgamation

This is the merging by two or more employers' associations of all their membership, property etc. to create a single new association.

Statutory procedures

The main purpose of the statutory procedures is to facilitate the merger process and at the while ensuring that the employers' association members concerned are fully informed about what the proposal entails and are given an opportunity to vote on it. The Certification Officer is responsible for seeing that the procedures are carried out properly. Their role is to approve certain documents which have to be prepared by the employers' associations taking part in the merger. He/She also deals with any complaints concerning the merger ballot made on grounds specified in the relevant statute.

It is impracticable for the Certification Officer to issue model instruments of transfer or amalgamation (see paragraphs 8-11 and 28-31 below) for use by employers' associations: the circumstances of mergers vary too much. He has, however, produced model notices to members (see paragraphs 12-16 and 32-37) and he and his staff are ready to assist with advice on most aspects of mergers. The Certification Officer should be informed as soon as the parties are in a position to take practical steps towards a merger, and ample time must be allowed for the completion of the statutory process (see paragraph 5 on page 4 for guidance on this point).

Northern Ireland Certification Office
4th Floor
James House
Cromac Avenue
Belfast BT7 2JA

GENERAL

1. Transfers of engagements and amalgamations of unincorporated employers' associations are governed by the Trade Union and Labour Relations (Northern Ireland) Order 1995 (as amended) ("the 1995 Order") and the Trade Union Regulations (Northern Ireland) 1965 (SR&O (NI) 1965 No. 232) ("the Regulations"). These provisions apply to all unincorporated employers' associations whether they are listed under the Industrial Relations (Northern Ireland) Order 1992 ("the 1992 Order") or not. The provisions of Part VI of the 1995 Order (Articles 73-89) relating to mergers of trade unions are, with some important exceptions concerning independent scrutiny, applied to mergers of employers' associations by the terms of Article 90 of that Order.
2. A transfer of engagements and an amalgamation are alternative methods by which employers' associations can merge, but they differ both in the procedure to be followed and in the end result. The differences are outlined below. It is up to the associations which are merging to decide whether a transfer of engagements or an amalgamation is appropriate to them, but this decision should be taken at an early stage in the negotiations.
3. The effect of a transfer of engagements is to transfer the members (and usually the property, funds, etc.) of the transferring employers' association into the receiving employers' association on the terms set out in the instrument of transfer. When the transfer takes effect the transferring association ceases to exist. If it was listed under the 1992 Order its name will be removed from the list; the receiving association, however, continues in being with its legal identity unchanged. A transfer needs a favourable vote by the members of the transferring association only; the law does not require the members of the receiving association to vote on the matter. The legal requirements are explained in paragraphs 7 to 26 below.
4. The effect of an amalgamation is that the two or more amalgamating employers' associations are merged, on the terms set out in the instrument of amalgamation, to form a new employers' association with new rules. Upon the amalgamation taking effect, all the amalgamating associations cease to exist. If any of them were listed under the 1992 Order, their names will be removed from the list. If each of the original associations was on the list, the name of the new association will automatically be added to the list. An amalgamation needs a favourable vote by the members of each of the employers' associations involved. The legal requirements are explained in paragraphs 27 to 46.
5. It is important to allow sufficient time for the merger procedures to be followed. Initial agreed drafts of the instrument of transfer or amalgamation, and the notice(s) to members, together with copies of each association's existing rules and drafts of new rules, or rule amendments, should be submitted to the Certification Office for informal approval at least 9 weeks before the proposed date on which voting is to commence. In practice, employers' associations should add to this the

time needed for signatures to be collected on the instrument (it must be signed by the Secretary and three members of the committee of management of each association involved before it can be submitted for formal approval), and also time for printing and distribution of the approved documents to members. Whenever possible, all relevant documents should be submitted together - this should save time and avoid unnecessary correspondence. If timing is important, a timetable should be worked out bearing these points in mind, in order to set realistic targets.

6. A transfer of engagements or an amalgamation will have particular implications for employers' associations which have a political fund. These should be considered in the preliminary stages of a merger. Guidance on the issues involved can be obtained from the Certification Office.

TRANSFER OF ENGAGEMENTS

Essential stages

7. After the employers' associations concerned have agreed the terms of the transfer, the essential stages of the procedure are:-

- (i) the associations prepare a draft of the instrument of transfer (paragraphs 8-11) and the transferring association prepares a draft of the notice to its members (paragraph 12-16). It is advisable at this stage to discuss the terms of the instrument and notice with the Certification Office and seek informal approval;
- (ii) the associations submit the final version of the instrument, signed as in paragraph 11 below, and the final version of the notice, for the formal approval of the Certification Officer;
- (iii) the transferring association issues the approved notice to reach members at least seven days before voting begins on a resolution approving the instrument of transfer (paragraphs 17-18);
- (iv) if the vote is in favour of the transfer, the receiving association adopts (if it has not done so already) any rule changes needed to carry out the transfer (paragraphs 19-20);
- (v) the associations apply to the Certification Officer for registration of the instrument (paragraphs 21-25);
- (vi) the Certification Officer registers the instrument of transfer. He cannot do so until 6 weeks after the instrument and application are sent to him. This is the earliest date on which the instrument can take effect,

though it may take effect later if the instrument so specifies. If a complaint is made to the Certification Officer, they cannot register the instrument until the complaint is finally determined or withdrawn.

The instrument of transfer

8. The instrument of transfer contains the terms of the transfer which have been agreed between the governing bodies of the two employers' associations. It cannot take effect until the members of the transferring association have passed a resolution approving it and it has been registered. But if the transfer takes place the rights of the transferring association's members in their new association will depend on the terms of the instrument. Careful drafting of these is therefore of great importance.

9. Appendix A sets out in detail what the law requires to be included in an instrument of transfer. The instrument may also cover other matters which have been agreed between the governing bodies of the two employers' associations, but it must include the matters in Appendix A.

10. The instrument must be formally approved by the Certification Officer before members of the transferring association vote on it. An unsigned draft should be sent to the Certification Office for consideration before applying for formal approval. Copies of the rules of both employers' associations should be sent at the same time. It will save time if a draft of the notice to members (paragraphs 12-16) is also sent for examination along with the draft instrument.

11. In most cases, there will need to be some discussion of the draft documents between representatives of the employers' associations and staff of the Certification Office. In some cases further drafts may be needed. When the draft instrument has been informally agreed with the Certification Office, two copies of it should be signed by the Secretary and three members of the governing body of each association. The two signed copies (originals, not photocopies) should then be sent to the Certification Officer for his formal approval, along with form CO(NI)6 and the statutory fee. The Certification Officer will return one copy endorsed 'Approved'. Details of the current statutory fee may be obtained by telephoning the Certification Office on 028 9023 7773.

Notice to members

12. The transferring employers' association must prepare a notice, which must be formally approved by the Certification Officer, explaining the transfer proposals to its members. This notice must either set out the instrument of transfer in full or "give an account of it sufficient to enable those receiving the notice to form a reasonable judgement of the main effects of the proposed ... transfer" (Article

75(2)(b) of the 1995 Order). In practice it is almost always simpler if the first option is followed and the full text of the instrument is attached to and forms part of the notice. If the notice does not set out the instrument in full, it must state where copies of the full instrument may be inspected.

13. The notice must state when voting will begin and when it will end. The law does not lay down a minimum period for voting but it does require that all members of the transferring association be equally entitled to vote. The period will therefore depend to some extent on the arrangements made for the return of voting papers and the geographical location of members. In practice, some members may return papers before the first date for voting, and it is usual for the notice to add, after the statement of the official voting period, that any papers received before the commencement of voting will be treated as if they had been received at the commencement.

14. The Certification Officer has produced a model "Notice to Members" for use in a transfer of engagements. This is reproduced at Appendix B. The "Notice to Members" may contain other information in addition to that shown in the model but must not contain any statement making a recommendation or expressing an opinion about the proposed transfer.

15. When the draft notice has been informally agreed with the Certification Office, the transferring association should send two copies for formal approval by the Certification Officer. This can be done at the same time as formal approval is sought for the instrument, or at a later date. However the notice cannot be approved before the instrument is approved, because the instrument will either form part of the notice or at least be summarised in it. The Certification Officer will return one copy of the notice endorsed 'Approved'.

16. The transferring employers' association is responsible for issuing the approved notice to reach its members at least seven days before voting is to begin. It is therefore essential that formal approval is obtained well in advance. Other requirements of the law as to the method of voting are set out in paragraphs 17 and 18.

Voting

17. A resolution approving an instrument of transfer must be passed on a ballot of the members of the transferring association, and every person who is entitled to vote in the ballot must be allowed to vote without interference or constraint. The method of voting must be by the marking of a voting paper by the person voting. A simple majority of those voting is sufficient to pass a resolution approving an instrument of transfer unless the rules of the association expressly require it to be approved by a greater majority or by a specified proportion of the members (Article 76(2) of the 1995 Order).

18. It will usually be convenient to enclose a voting paper with the notice to members or attach it in the form of a tear-off slip.

Altering the rules of the receiving employers' association

19. The receiving employers' association may need to alter its rules in order to give effect to the terms of the instrument. For example, the instrument may provide that the existing contributions and benefits of members of the transferring association, or some of them, are to be preserved after the transfer, or that the members of the transferring association are to have special rights of representation within the receiving association. The rules of the receiving association may need alteration in order to give effect to such provisions.

20. Under Article 83 of the 1995 Order the governing body of the receiving association may, by memorandum in writing, alter the association's rules so far as is necessary to give effect to provisions in the instrument of transfer. It may do so notwithstanding anything in the receiving association's rules, unless those rules expressly provide that Article 83 is not to apply (paragraph 47). Any alteration of rules made under Article 83 must be explained in the instrument of transfer (see Appendix A) and will not take effect unless or until the instrument takes effect. The receiving association can actually make the alterations to its rules at any time after the Certification Officer has approved the instrument (though it may be prudent for it to wait until the ballot result is known) and before he registers it. The alterations cannot be made after registration, because the Certification Officer must be satisfied before registration that the receiving association's rules are in conformity with the terms of the instrument. For the same reason it is advisable to consult the Certification Office in advance about the wording of any alteration of rules.

Registration of the instrument

21. If the ballot is in favour of the transfer, the employers' associations may apply for registration of the instrument.

22. The application should be made on form CO(NI)10, accompanied by:

- (i) two copies of the instrument of transfer;
- (ii) two copies of any amendments to the rules of the receiving employers' association adopted since the date of application for approval of the instrument;
- (iii) evidence of how those rules have been adopted (e.g. a minute of the relevant rules revision meeting or a copy of a written Article 83 memorandum);

- (iv) a statutory declaration on form CO(NI)11 by the Secretary of the transferring employers' association;
- (v) a statutory declaration on form CO(NI)12 by the Secretary of the receiving employers' association.

The Certification Office will supply copies of forms CO(NI)10, 11 and 12, at the time the notice to members is approved (paragraph 15 above).

23. The Certification Officer cannot register the instrument earlier than six weeks after the application for registration is sent to him. Before or during those six weeks a member of the transferring association may submit a complaint on any of the grounds stated in paragraph 48 below, which are concerned mainly with voting arrangements. If the Certification Officer receives such a complaint the instrument cannot be registered until the complaint has been finally determined or withdrawn.

24. As the time for making complaints ends six weeks from the date of application for registration of the instrument, the Certification Officer can require employers' associations to take special steps to publicise the fact that the application has been made. He must do so within seven days of receiving the application.

25. After registering the instrument the Certification Officer will return one copy endorsed 'Registered' to the receiving association.

Action after registration

26. If the name of the transferring association is on the list of employers' associations maintained under Article 5 of the 1992 Order, the Certification Officer will remove it from the list as soon as the transfer takes effect. A final return on the transferring association's financial and other resources etc. in the period up to the date of transfer must be submitted on its behalf. Membership and funds will subsequently be accounted for within the annual return of the receiving association.

AMALGAMATION

Essential Stages

27. After the employers' associations concerned have agreed the terms of the amalgamation, the essential stages of the procedure are:-

- (i) the associations prepare a draft of both the instrument of amalgamation, including the name of the new association (paragraphs 28-31), and the notices to members (paragraphs 32-37). It is advisable at this stage to discuss the terms of the instrument and notices with the Certification Office and seek informal approval;
- (ii) the associations submit the final version of the instrument, signed as in paragraph 31 below, and the final version of the notices to members, for the formal approval of the Certification Officer;
- (iii) the associations issue the approved notices to reach their members at least seven days before voting begins on a resolution approving the instrument of amalgamation (paragraph 38);
- (iv) if the vote is in favour of the amalgamation, the associations complete the rules of the amalgamated association, if this has not already been done (paragraph 39);
- (v) the associations apply to the Certification Officer for registration of the instrument; (paragraphs 40-41);
- (vi) the Certification Officer registers the instrument of amalgamation. He cannot do so until six weeks after the instrument and the application are sent to him. This is the earliest date on which the instrument can take effect, though it may take effect later if the instrument so specifies. If a complaint is made to the Certification Officer, he/she cannot register the instrument until the complaint is finally determined or withdrawn.

The instrument of amalgamation

28. Before the statutory procedure can begin, the governing bodies of the employers' associations concerned must have agreed between themselves on the terms of amalgamation which they will put before their members. The instrument of amalgamation is the document setting out those agreed terms. The instrument cannot take effect until a resolution approving it has been passed by the members of each association and it has been registered. But if the amalgamation takes place it will be governed by the terms of the instrument and the rules of the amalgamated

association will have to conform to those terms. Careful drafting of the instrument is therefore of great importance.

29. The Certification Officer cannot approve the draft instrument of amalgamation unless it complies with the 1965 Regulations (see Appendix C) and the proposed name of the new association complies with Articles 74(3) and 74(4) of the 1995 Order (see Appendix D). The instrument may cover other matters which have been agreed between the governing bodies of the employers' associations, but it must include the matters in Appendices C and D.

30. The instrument must be formally approved by the Certification Officer before members vote on it. An unsigned draft should be sent to the Certification Officer for consideration before applying for formal approval. Copies of the current rules of each association should be sent at the same time. It will save time if drafts of the notices to members (paragraphs 32-37) are also sent for examination along with the draft instrument.

31. In most cases, there will need to be some discussion of the draft documents and the proposed name between representatives of the associations and staff of the Certification Office. In some cases further drafts may be needed. When the draft instrument has been agreed with the Certification Office, two copies of it should be signed by the Secretary and three members of the governing body of each association. The two signed copies (originals, not photocopies) should then be sent to the Certification Officer for his formal approval, along with form CO(NI) 8 and the statutory fee. The Certification Officer will return one copy endorsed 'Approved'. Details of the current statutory fee may be obtained by telephoning the Certification Office on 028 9023 7773.

Notice to members

32. Each employers' association concerned must prepare a notice, which must be formally approved by the Certification Officer, explaining the amalgamation proposals to its members. One association's notice may differ from another's provided each complies with the requirements set out in the following paragraphs.

33. The notice must either set out the instrument of amalgamation in full, or "give an account of it sufficient to enable those receiving the notice to form a reasonable judgement of the main effects of the proposed amalgamation" (Article 75(2)(b)) of the 1995 Order). In practice, it is almost always simpler if the first option is followed and the full text of the instrument is attached to and forms part of the notice. If the notice does not set out the instrument in full, it must state where copies of the full instrument may be inspected.

34. The notice must indicate when voting will begin and when it will end. The law does not lay down a minimum period for voting but it does require that all members

must be equally entitled to vote. The period will therefore depend to some extent on the arrangements made for the return of voting papers and the geographical location of members. In practice some members may return papers before the first date for voting and it is usual for the notice to add, after the statement of the official voting period, that any papers received before the commencement of voting will be treated as if they had been received at the commencement.

35. The Certification Officer has produced a model "Notice to Members" for use in an amalgamation. This is reproduced at Appendix E. The notices to members may contain other information in addition to that shown in the model but must not contain any statement making a recommendation or expressing an opinion about the proposed amalgamation.

36. When its draft notice has been informally agreed with the Certification Office, each employers' associations concerned should send two copies for the formal approval of the Certification Officer. This can be done at the same time as formal approval is sought for the instrument, or at a later date. However the notices cannot be approved before the instrument is approved, because the instrument will either form part of the notices or at least be summarised in them. The Certification Officer will return one copy of each of the notices endorsed 'Approved'.

37. Each association is responsible for issuing its approved notice to reach its members at least seven days before voting is to begin. It is therefore essential that formal approval is obtained well in advance.

Voting

38. The conditions applying to voting on a transfer of engagements (paragraphs 17 and 18 above) also apply to voting on an amalgamation.

Completion of the rules of the amalgamated employers' association

39. If all the employers' associations vote in favour of amalgamation, rules for the amalgamated association should be completed (if this has not already been done). These rules must be consistent with the instrument of amalgamation, otherwise the Certification will not be able to register the instrument. It is advisable therefore to send the rules to the Certification Office before applying for registration of the instrument, so that any problems can be dealt with in advance.

Registration of the instrument

40. Once the Certification Office has indicated that the proposed rules are consistent with the instrument, application may be made for registration of the

instrument. This application should be made on form CO(NI)13 accompanied by:

- (i) a statutory declaration on form CO(NI)14 by the Secretary of each of the employers' associations;
- (ii) two copies of the instrument of amalgamation;
- (iii) two copies of the rules, both signed by the Secretaries of each of the amalgamating employers' associations.

The Certification Office will supply copies of forms CO(NI) 13 and 14 at the time the notices to members are approved (paragraph 36).

41. The Certification Officer cannot register the instrument earlier than six weeks after the application for registration is sent to him. Before or during those six weeks a member of any of the employers' associations concerned may complain to him on any of the grounds stated in paragraph 48 below, which are concerned mainly with voting arrangements. If the Certification Officer receives such a complaint he cannot register the instrument until the complaint has been finally determined or withdrawn. Since the time for making a complaint ends six weeks from the date of application for registration of the instrument, the Certification Officer can require the associations to take special steps to publicise the fact that the application has been made (paragraph 24). He must do so within seven days of receiving the application. After registering the instrument the Certification Officer will return one copy of the instrument endorsed 'Registered'.

Action after registration

42. If the name of any of the amalgamating associations is on the list of employers' associations maintained under section 5 of the 1995 Order, the Certification Officer will remove it from the list as soon as the amalgamation takes effect.

43. A final return on financial and other resources etc. in the period up to the date of amalgamation will need to be submitted on behalf of each amalgamating association

44. If each of the amalgamating associations was on the list, the Certification Officer will add the name of the new association to the list. To remain on the list the new association must supply the Certification Officer with a copy of the rules of the association, a list of its officers and the address of its head office, together with the statutory fee, within six weeks of the instrument taking effect (or within such longer period as the Certification Officer may at his discretion decide).

45. If any of the amalgamating associations was not on the list, the new association may apply for its name to be entered on the list. Such an application can't be made after the instrument of amalgamation has been registered and must be accompanied by the statutory fee. Details of the current statutory fee for listing may be obtained by telephoning the Certification Office on 028 9023 7773.

46. An annual return will not be due from the new association until it has been in existence for at least 12 months. Thereafter the normal annual return cycle will apply, i.e. a return will be due by 1 June each year covering the previous calendar year. Individual guidance will be given by the Certification Office.

VARIATIONS FROM THE STATUTORY PROVISIONS

47. In the following respects an employers' association may, if it wishes, impose different (and, in general, stricter) conditions than those provided for by the legislation:

- (i) it may adopt a rule which expressly provides that a resolution approving an instrument of transfer or amalgamation must be passed by more than a simple majority of those voting or by some specified proportion of the members (Article 76 of the 1995 Order) - paragraph 17 above;
- (ii) in a transfer of engagements, the receiving association may adopt a rule which expressly disapplies Article 83 of the 1995 Order (this would mean that its governing body would not have the power to make alterations to its rules by memorandum in writing, in order to give effect to provisions of the instrument of transfer) - paragraph 20 above.

The word 'expressly', as used above and in Articles 76 and 83 of the 1995 Order, is generally taken to mean that these Articles will apply unless the rules of the employers' association state specifically that they are not to apply. These are the only instances in which an employers' association can modify the effect of the statutory provisions relating to a proposed merger. In all other respects the statutory provisions must be followed and will override anything to the contrary in the association's rules.

COMPLAINTS TO THE CERTIFICATION OFFICER

48. A member of an employers' association who claims that the association -

- (i) has failed to comply with any of the requirements of Articles 75, 76, 78, 79(1) and 79(3) (a) of the 1995 Order or
- (ii) has, in connection with a resolution approving an instrument of amalgamation or transfer, failed to comply with any rule relating to the passing of the resolution,

may complain to the Certification Officer (Article 84 of the 1995 Order).

49. Any complaint must be made before the end of the period of six the expiry of the six weeks beginning with the date on which the application for registration of the instrument of amalgamation or transfer is sent to the Certification Officer. If the Certification Officer receives such a complaint, he cannot register the instrument until the complaint has been finally determined or withdrawn.

50. On receiving a complaint the Certification Officer:

- (i) shall give the complainant and the employers' association an opportunity of being heard; and
- (ii) if he finds the complaint to be justified -
 - (a) he shall make a declaration to that effect; and
 - (b) he may make an order specifying the steps which must be taken before he/she will entertain any application to register the instrument.

The Certification Officer must give a written or oral statement of the reasons for his decision.

51. The complainant or the employers' association may appeal to the Court of Appeal on any question of law arising in any proceedings before, or from any decision of, the Certification Officer relating to a complaint under Article 84 of the 1995 Order.

GREAT BRITAIN

52. The merger provisions of the 1995 Order do not extend to Great Britain, but the Order does apply with certain modifications to a transfer of engagements or amalgamation between a Great Britain employers' association and an employers' association in Northern Ireland. Such a transfer or amalgamation will not be effective under the law of Northern Ireland unless the instrument has been registered under the Order. A 'Great Britain employers' association' means for this purpose an employers' association listed by the Great Britain Certification Officer or an unlisted employers' association whose principal office is in Great Britain. If a merger involving a Great Britain employers' association is contemplated, the Certification Officer should be informed; further details of the procedures to be followed will be provided.

CONTENTS OF THE INSTRUMENT OF TRANSFER

The provisions of Schedule 2 to the Regulations (SR&O (NI) 1965 No. 232) prescribing the contents of an instrument of transfer are set out below in bolder type. The regulations refer to the “transferor” and “transferee”, but these terms have been replaced in these notes by the terms “transferring” (for transferor) and “receiving” (for transferee). Additional explanatory notes have also been added.

1. The instrument shall state that it is an instrument of transfer of the engagements of the organisation named therein as the transferring organisation to the organisation named therein as the receiving organisation, and that upon the coming into operation of the instrument the members of the transferring organisation will become members of the receiving organisation and be subject to that organisation's rules.

We suggest that this can be achieved by using the following paragraphs, which also cover the requirement set out in paragraph 2(iv) below.

1. “This instrument of transfer of the engagements of ... (hereinafter called “the transferring association”) to ... (hereinafter called “the receiving association”) shall, if duly approved by a resolution of the members of the transferor association, take effect on ... or the date of registration of this instrument whichever is the later (hereinafter called “the effective date”) [see note to paragraph 2 below].
2. On the effective date the members of the transferring association will become members of the receiving association and be subject to that association's rules.”

Note also that section 73(2) of the 1995 Order states that “[an unincorporated employer's association] may transfer its engagements to another [association] which undertakes to fulfil those engagements ...” The application form for registration of the instrument of transfer (CO(NI)10) must include a statement regarding the manner in which the receiving association has given such an undertaking. It is not a requirement of the Regulations that the undertaking should be given in the instrument of transfer. It is for the parties to decide how the undertaking should be given. However, they may wish to consider whether it would be convenient to include the undertaking as an additional clause in the instrument of transfer.

2. The instrument shall:

- (i) **state what contributions and benefits will be applicable to members of the transferring organisation under the receiving organisation's rules;**

- (ii) if members of the transferring organisation are to be allocated to a branch or section or to branches or sections of the receiving organisation, give particulars of such allocation or the method by which it is to be decided;
- (iii) state whether before registration of the instrument the receiving organisation's rules are to be altered in their application to members of the transferring organisation and, if so, the effect of any alterations;
- (iv) without prejudice [to the registration of the instrument – Article 82 of the 1995 Order], state the date on which the instrument is to take effect.

If the rights of the former members of the transferring association are to differ in any way from the rights of the receiving association's other members, the rules of the receiving association may need alteration to so provide before the instrument can be registered. (For example, if they are to retain some or all of their present contribution and benefit scales or if they are to form a branch or branches of their own within the receiving association, or are to be subject to any special conditions). The nature of any such proposed alterations of rules must be explained in the instrument, and the instrument cannot be registered until the alterations are made. The power given to the receiving association's governing body to make such alterations is explained in paragraphs 19 and 20 of this Guide.

The instrument cannot take effect earlier than the date of its registration (Article 82 of the 1995 Order). It may provide that it is to take effect on the date of registration, or that it is to take effect on a specified date. If a date is specified, it is advisable to add such words as 'or on the date of registration of this instrument whichever is the later'. This will guard against unforeseen delays due, for example, to a complaint being made by a member to the Certification Officer or to difficulty in altering the receiving association's rules so as to conform with the instrument.

3. The instrument shall specify any property held for the benefit of the transferring organisation or for the benefit of a branch of the transferring organisation which is not to be vested in the appropriate trustees as defined [in Article 86 of the 1995 Order], and shall state the proposed disposition of any such property.

This requirement follows from section Article 86 of the 1995 Order. By law all property of an unincorporated employers' association is to be vested in trustees. Article 86 provides that, on a transfer of engagements, all trust property held for the benefit of the transferring association or its branches will vest automatically in "the appropriate trustees" without any conveyance or assignment, except –

- (a) property excepted by the instrument of transfer from the operation of Article 86, and
- (b) stocks and securities in public funds (which need the usual transfers of title).

This automatic vesting takes place on the effective date of the instrument - unless the appropriate trustees have not been appointed at that time, in which case it will be deferred until they are appointed.

The "appropriate trustees" are the trustees of the receiving employers' association in every case except one. That case concerns any property which is to be held for a branch of the receiving association, and "the appropriate trustees" of that property are the trustees of that branch. However, even in that case if the rules of the receiving association provide that such branch property is to be held by the trustees of the receiving association itself then the appropriate trustees will be the trustees of the receiving association.

The result is that the property of the transferring association (except public stocks and securities) will transfer automatically unless there is a statement about it in the instrument of transfer. Nothing need be said in the instrument about any property which the parties are content to allow to vest in the trustees of the receiving association. Nor is it required to say anything about property which is intended to be vested in the trustees of a branch of the receiving association for the benefit of that branch (since they are the "appropriate trustees" for that property). Nevertheless, if any property is to be held for the benefit of a branch, it is advisable, for the sake of clarity, to specify the property and the branch in the instrument.

If any property of the transferring association is intended to be transferred to any recipient other than the "appropriate trustees", then that property must be specified in the instrument, and the instrument must also state what is to be done with it. An example might be a proposal to transfer certain property into a special trust fund for members or officials of the transferring association who have already retired.

4. The instrument shall be signed by three members of the committee of management or other governing body, and the secretary, of each of the organisations.

Before the instrument is signed it is usual and advisable to send the Certification Office an unsigned draft for examination in case revisions are necessary before it can be approved. When the draft has been cleared with the Certification Office, two copies should be signed by the persons indicated above and the originals, not photocopies, sent for the formal approval of the Certification Officer who will return one copy endorsed 'Approved'.

[Model Notice]

Proposed
Transfer of Engagements
under the
Trade Union and Labour Relations ((Northern Ireland) Order 1995 (as amended))

NOTICE TO MEMBERS
of the

What is this notice about?

It is proposed that your employers' association [insert name] should merge with [insert name] ("the receiving employers' association") by means of a transfer of engagements, in accordance with Part VI of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (as amended).

You are now being given the opportunity to vote on whether this should happen. *[Your vote is important?]* The merger can only take place if **[the majority of members who vote/[%] of the members who vote/[%] of the members]** vote in favour. In this ballot only members of your employers' association are entitled to vote.

Terms of the merger

The full terms under which the merger will take place are set out in the attached *instrument of transfer of engagements* ("the instrument") which is part of this notice *[and which you should read before voting?]*.

If the merger takes place, your employers' association will no longer be a separate employers' association, and you will automatically become a member of the receiving employers' association, from the date the Certification Officer registers *the instrument* **[or the date set out in the instrument, if this falls after the day of registration]**.

Voting

Your voting paper is **[enclosed with] [attached to]** this Notice.

Voting begins on **[insert date]** and your voting paper must be returned by **[insert date]** if it is to count. Voting papers returned before voting begins will be treated as having been received on the day voting began.

This *notice* and *the instrument* have been approved by the Certification Officer.

CONTENTS OF THE INSTRUMENT OF AMALGAMATION

The provisions of Schedule 1 to the Regulations (SR&O (NI) 1965 No. 232) prescribing the contents of an instrument of amalgamation are set out below in bolder type. Some explanatory notes have been added.

1. The instrument shall state that it is an instrument of amalgamation between the organisations named therein as the amalgamating organisations, and that upon the coming into operation of the instrument the members of the amalgamating organisations will become members of the amalgamated organisation and be subject to that organisation's rules.

We suggest that this can be achieved by using the following paragraphs, which also cover the name requirement in paragraph 3(i) and the date requirement in paragraph 5 below.

1. "This instrument of amalgamation made between ... and ... [names of employers' associations] (hereinafter called "the amalgamating associations") shall, if duly approved by a resolution of the members of each of the amalgamating associations, take effect on ... or the date of registration of this instrument whichever is the later (hereinafter called "the effective date") [see note to paragraph 5 below].
2. The employers' association which is to result from this amalgamation (hereinafter called "the amalgamated association") shall be known as
3. On the effective date the members of each of the amalgamating associations will become members of the amalgamated association and be subject to that association's rules."

2. The instrument shall either set out the proposed rules of the amalgamated organisation or state who are the persons authorised to draw up those rules.

3. If the instrument does not set out the proposed rules, it shall contain a summary of what those rules will provide with respect to the following matters:

- (i) the name and principal purposes of the amalgamated organisation;
- (ii) the conditions of admission to membership;
- (iii) the structure of the amalgamated organisation;

- (iv) **the method of appointing and removing its governing body and principal officials and of altering its rules;**
- (v) **the contributions and benefits applicable to members of the amalgamating organisations.**

Regarding (v), if the contributions and benefits of members of any of the amalgamating associations are not to change from those operating before amalgamation that should be stated in the instrument. Otherwise, the rates of contributions and benefits payable in the new association should be set out in the instrument with any special conditions or qualifications also shown.

4. The instrument shall specify any property held for the benefit of any of the amalgamating organisations or for the benefit of a branch of any of those organisations which is not to be vested in the appropriate trustees as defined [in Article 86 of the 1995 Order], and shall state the proposed disposition of any such property.

This requirement follows from Article 86 of the 1995 Order. In law all property of an unincorporated employers' association is to be vested in trustees. Article 86 provides that, on an amalgamation, all trust property held for the benefit of the amalgamating associations or their branches will vest automatically in "the appropriate trustees" without any conveyance or assignment), except -

- (a) property excepted by the instrument of amalgamation from the operation of Article 86, and
- (b) stocks and securities in public funds (which need the usual transfers of title).

This automatic vesting takes place on the effective date of the instrument - unless the appropriate trustees have not been appointed at that time, in which case it will be deferred until they are appointed.

The "appropriate trustees" are the trustees of the amalgamated association in every case except one. That case concerns any property which is to be held for a branch of the amalgamated association, and "the appropriate trustees" of that property are the trustees of that branch. However, even in that case if the rules of the amalgamated association provide that such branch property is to be held by the trustees of the amalgamated association itself then the appropriate trustees will be the trustees of the amalgamated employers' association.

The result is that the property of the amalgamating associations (except public stocks and securities) will transfer automatically unless there is a statement about it in the

instrument of amalgamation. Nothing need be said in the instrument about any property which the parties are content to allow to vest in the trustees of the amalgamated association. Nor is anything required to be said about property which is intended to be vested in the trustees of the amalgamated association for the benefit of that branch (since they are the "appropriate trustees" for that property). Nevertheless, if any property is to be held for the benefit of a branch, it is advisable for the sake of clarity to specify the property and the branch in the instrument.

If any property of an amalgamating association is intended to be transferred to any recipient other than the "appropriate trustees", that property must be specified in the instrument, and the instrument must also state what is to be done with it. An example might be a proposal to transfer certain property into a special trust fund for members or officials of one of the amalgamating associations who have already retired.

5. Without prejudice [to the registration of the instrument – Article 82 of the 1995 Order], the instrument shall state the date on which it is to take effect.

The instrument cannot take effect earlier than the date of its registration (Article 82 of the 1995 Order). It may provide that it is to take effect on the date of registration, or that it is to take effect on a specified date. If a date is specified, it is advisable to add such words as 'or on the date of registration of this instrument whichever is the later'. This will guard against unforeseen delays due, for example, to a complaint by a member to the Certification Officer or to difficulty in drawing up the rules of the amalgamated association.

6. The instrument shall be signed by three members of the committee of management or other governing body, and the secretary, of each of the amalgamating organisations.

Before the instrument is signed it is usual and advisable to send the Certification Office an unsigned draft for examination in case revisions are necessary before it can be approved. When the draft has been cleared by the Certification Office, two copies should be signed by the persons indicated and the originals, not photocopies, sent for the formal approval of the Certification Officer, who will return one copy endorsed 'Approved'.

APPENDIX D

THE NAME OF THE NEW AMALGAMATED ASSOCIATION

If the name of a new association, formed from an amalgamation, is to be added to the Certification Officer's list of employers' associations it must comply with the provisions of sections 74(3) and 74(4) of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (as amended). Those provisions are applied to employers' associations by Article 90 of that Order and are set out below.

Article 74

(3) The Certification Officer shall not approve an instrument of amalgamation if it appears to him that the proposed name of the amalgamated [employers' association] is the same as the name under which another organisation –

- (a) was on 30th June 1992 registered as a trade union under the Trade Union Acts (Northern Ireland 1871 to 1965, or**
- (b) is for the time being entered in the list of trade unions or in the list of employers' associations kept under the 1992 Order or under the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52),**

or if the proposed name is one so nearly resembling any such name as to be likely to deceive the public

(4) Subsection (3) does not apply if the proposed name is the name of one of the amalgamating [associations].

This means that the proposed name of the new association must be submitted to the Certification Officer prior to approval of an instrument of amalgamation for his confirmation that it satisfies these provisions.

By section 74(4) of the 1995 Order the name of the new association may be the name of one of the amalgamating associations.

[Model Notice]

Proposed Amalgamation under the Trade Union and Labour Relations (Northern Ireland) Order 1995 (as amended)

NOTICE TO MEMBERS of the

What is this notice about?

It is proposed that your employers' association [insert name] should merge with [insert names] by means of an amalgamation, in accordance with Part VI of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (as amended).

You are now being given the opportunity to vote on whether this should happen. [Your vote is important.?] The merger can only take place if each of the unions, in their separate ballots, vote in favour either by a simple majority in favour or by a majority in accordance with the employers' association's rule book where this is stated.

Terms of the merger

The full terms under which the merger will take place are set out in the attached *instrument of amalgamation* ("the instrument") which is part of this notice [and which you should read before voting?].

If the merger takes place, your employers' association and the other employers' association[s] involved in the merger will no longer exist as separate employers' associations and a new employers' association will be formed. You will automatically become a member of the new employers' association, formed as a result of the merger, from the date the Certification Officer registers *the instrument* [or the date set out in *the instrument*, if this falls after the day of registration].

Voting

Your voting paper is [enclosed with and attached to] this Notice.

Voting begins on [insert date] and your voting paper must be returned by [insert date] if it is to count. Voting papers returned before voting begins will be treated as having been received on the day voting began.

This notice and *the instrument* have been approved by the Certification Officer for Trade Unions and Employers' Associations.

PUBLICATIONS

The following publications are available, free of charge, from the Certification Office. They are also available on the Certification Officer's website, www.nicertoffice.org.uk

The Certification Officer's Annual Report;

Mergers: A guide to the statutory requirements for transfers of engagements and amalgamations of trade unions;

Mergers: A guide to the statutory requirements for transfers of engagements and amalgamations of employers' association;

Guidance for Trade Unions and Employers' Associations wishing to establish a political fund;

A guide to political fund review ballots;

Financial Irregularities in Trade Unions and Employers' Associations: The approach of the Certification Officer in exercising his powers of investigation.

Guidance for Trade Unions wishing to apply for a certificate of independence;

A Guide to making a complaint to the Certification Officer

Guidance on Procedure at hearings

The Department for The Economy has produced guides on various aspects of trade union legislation, which can be found or downloaded from the Department's website <https://www.economy-ni.gov.uk>.