

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 trade unions

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INTRODUCTION

This guide explains the statutory procedures to be followed in carrying out mergers between Northern Ireland-headquartered trade unions. Mergers between Northern Ireland- headquartered and Great Britain-headquartered trade unions are dealt with on page 16. 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 4.

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 unions to obtain independent legal advice, particularly if substantial funds or property are to be transferred from one union to another.

Transfer of engagements

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

Amalgamation

This is the merging by two or more unions of all their membership, property etc, to create a single new union.

Statutory procedures

The main purpose of the statutory procedures is to facilitate the merger process while ensuring that the trade union members concerned are fully informed about what the proposal entails and are given the opportunity to vote on it. The Certification Officer is responsible for ensuring that the procedures are carried out properly. His role is to approve certain documents, which have to be prepared by the unions taking part in the merger. He 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 for use by unions (see paragraphs 8-11 and 34-37 below): the circumstances of mergers vary too much. He has, however, produced model notices to members (see paragraphs 12-16 and 38-43 below), 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).

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GENERAL

1. Transfers of engagements and amalgamations of trade unions 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 trade unions whether they are listed under the Industrial Relations (NI) Order 1992 ("the 1992 Order") or not.

2. A transfer of engagements and an amalgamation are alternative methods by which trade unions 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 unions which are merging to decide whether a transfer of engagements or an amalgamation is appropriate for 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 union into the receiving union on the terms set out in the instrument of transfer. When the transfer takes effect, the transferring union ceases to exist. If it was listed under the 1992 Order, its name will be removed from the list, and if it had a certificate of independence, that certificate will be cancelled. The receiving union, however, continues in being with its legal identity unchanged. A transfer needs a favourable vote by the members of the transferring union only; the law does not require the members of the receiving union to vote on the matter. The legal requirements are explained in paragraphs 7-32 below.

4. The effect of an amalgamation is that two or more trade unions are merged, on the terms set out in the instrument of amalgamation, to form a new union with new rules. When the amalgamation takes effect, the new union comes into being and all the original unions cease to exist. If any of them were listed under the Order, their names will be removed from the list, and if any of them had a certificate of independence, that certificate will be cancelled. If each of the original unions was on the list, the name of the new union will automatically be added to the list, and if each of them held a current certificate of independence, the new union will automatically be issued with a certificate of independence. An amalgamation needs a favourable vote by the members of each of the unions involved. The legal requirements are explained in paragraphs 33-51 below.

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 of the notice(s) to members (see paragraph 7(i) below), together with copies of each union'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 date on which voting is proposed to commence. In practice unions 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 management committee of each union 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 unions 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 unions concerned have agreed the terms of the transfer, the essential stages of the procedure are:-

- (i) the unions prepare a draft of the instrument of transfer (paragraphs 8-11), and the transferring union prepares a draft of the notice to its members (paragraphs 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 unions appoint an independent scrutineer to supervise a postal ballot, and an independent person to store, distribute and count the votes (this person may be the scrutineer or some other person whose competence and independence cannot reasonably be called into question);
- (iii) the transferring union notifies its members of the scrutineer's appointment;
- (iv) the unions 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;
- (v) the transferring union issues the approved notice to reach members before voting begins on a resolution approving the instrument of transfer (paragraphs 17-23);
- (vi) following the voting, the transferring union sends members a copy of the scrutineer's report or notifies them of its contents (paragraph 24);
- (vii) if the vote is in favour of transfer, the receiving union adopts (if it has not done so already) any rule changes needed to carry out the transfer (paragraphs 25-26);
- (viii) the unions apply to the Certification Officer for registration of the instrument;

- (ix) the Certification Officer registers the instrument. He cannot do so until 6 weeks after the instrument (and the necessary accompanying documents - see paragraph 28) 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 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 unions. It cannot take effect until the members of the transferring union have passed a resolution approving it, and it has been registered. But if the transfer takes place, the rights of the transferring union's members in their new union 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 unions, 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 union 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 unions should be sent at the same time. It will save time if a draft of the notice to members (paragraphs 12-16) is sent for examination along with the draft instrument.

11. In most cases, some discussion of the draft documents is necessary, and this may require a meeting between representatives of the unions 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 Officer, two copies of it should be signed by the Secretary and three members of the governing body of each trade union. The two signed copies (originals, not photocopies) should then be sent to the Certification Officer for his formal approval, along with form CO(N1)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 union 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 union 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 union should send two copies of it 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 union is responsible for issuing the approved notice to its members. Since the voting paper will be issued along with the notice (see paragraph 21 below), it is essential that formal approval of the notice is obtained well in advance of the proposed voting period. Other requirements of the law as to the method of voting are set out in paragraphs 17 to 23.

Voting

17. A resolution approving the instrument of transfer must be passed in a fully postal ballot of the members of the transferring union. Before the ballot is held the trade union must appoint a qualified independent person ("the scrutineer") to carry out certain functions in relation to it.

18. The scrutineer's duties include supervising the production of the ballot papers, inspecting the union's register of members' names and addresses and compiling a report on the ballot for the trade union. In addition, a trade union must ensure that one or more independent persons undertake the storage and distribution of the voting papers and the counting of the votes cast in the ballot. In this context, a person is an independent person if he is either the scrutineer or a person whose independence in relation to the union cannot reasonably be called into question. (See Article 80(2) of the 1995 Order).

19. 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 trade union expressly require it to be approved by a greater majority or by a specified proportion of the members of the union. (Article 76(2) of the 1995 Order).

20. The union must notify its members of the name of the scrutineer before he/she begins to carry out the required functions. In addition, the voting paper sent to members must state the name of the scrutineer and clearly specify the address to which, and the date by which, it is to be returned. Each voting paper must be given a unique number from a series of consecutive whole numbers, and have this number printed on it.

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

22. Every person who is entitled to vote in the ballot must:

- (a) be allowed to vote without interference or constraint;
- (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself;
- (c) so far as is reasonably practicable, have a voting paper sent to him/her by post (or by some other means if he so requests for reasons of personal safety) at his/her home address or another address which he/she has requested the trade union in writing to treat as his/her postal address; and
- (d) be given a convenient opportunity to vote by post.

23. The only items to be enclosed with the voting paper are the notice to members, a return addressed pre-paid envelope and a document containing instructions for the return of the voting paper.

24. The union must not publish the result of the ballot until it has received the scrutineer's report. Within three months of receiving the report, the union must either send a copy to every member to whom it is reasonably practicable to do so, or notify members of its contents by such other means as it normally uses to bring matters of general interest to their attention.

Altering the rules of the receiving trade union

25. The receiving union 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 union, or some of them, are to be preserved after the transfer, or that the members of the transferring union

are to have special rights of representation within the receiving union. The rules of the receiving union may need to be changed to accommodate such provisions.

26. Under Article 83 of the 1995 Order the governing body of the receiving union may, by memorandum in writing, alter the union'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 union's rules, unless those rules expressly provide that Article 83 is not to apply (see paragraph 53 below). Any alteration of rules made under Article 83 must be explained in the instrument (see Appendix A) and will not take effect unless or until the instrument of transfer takes effect. The receiving union can actually make the alteration to its rules at any time after the Certification Officer approves the instrument (though it may be prudent to wait until the ballot result is known) and before he registers it. The alteration cannot be made after registration, because the Certification Officer must be satisfied before registration that the receiving union'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

27. If the ballot result is in favour of the transfer, then after the transferring union has sent its members the scrutineer's report or notified them of its contents (see paragraph 24 above), the unions may apply for registration of the instrument.

28. 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 union adopted since the date of application for approval of the instrument;
- (iii) evidence that such amendments have been properly made (e.g. a minute of the relevant rules revision meeting/conference or a copy of a written Article 83 memorandum);
- (iv) a copy of the scrutineer's report;
- (v) evidence that copies of the scrutineer's report, or notification of its contents, have been sent to members of the transferring union;
- (vi) a statutory declaration on form CO(NI)11 by the Secretary of the transferring union;

- (vii) a statutory declaration on form CO(NI)12 by the Secretary of the receiving union.

The Certification Office will supply copies of the relevant forms, at the time the notice to members is approved (paragraph 15 above).

29. 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 union may complain to him on any of the grounds stated in paragraph 54 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.

30. As the time for making complaints ends six weeks from the date of application for registration of the instrument, the Certification Officer can require unions to take special steps to publicise the fact of the application. He must do so within seven days of receipt of the application.

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

Action after registration

32. If the name of the transferring union is on the list of trade unions maintained under Article 5 of the Industrial Relations (NI) Order 1992, the Certification Officer will remove it from the list as soon as the transfer takes effect. At the same time, if the transferring union holds a certificate of independence, that certificate will be cancelled. A final return on the transferring union's finances and resources 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 union.

AMALGAMATION

Essential Stages

33. After the unions concerned have agreed the terms of the amalgamation, the essential stages of the procedure are: -

- (i) the unions prepare a draft of both the instrument of amalgamation (paragraphs 34-37) and the notices to members (paragraphs 38-43). 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 unions appoint an independent scrutineer to supervise a postal ballot, and an independent person to store, distribute and count the votes (this person may be the scrutineer or a person other than the

scrutineer whose competence and independence cannot reasonably be called into question);

- (iii) the unions notify members of the scrutineer's appointment;
- (iv) the unions submit the final version of the instrument, signed as in paragraph 37 below, and the final version of the notices to members, for the formal approval of the Certification Officer;
- (v) the unions issue the approved notices before voting begins on a resolution approving the instrument of amalgamation (paragraph 44);
- (vi) following the voting, the unions send members a copy of the scrutineer's report or notify them of its contents (paragraph 24);
- (vii) if the vote is in favour of amalgamation, the unions complete the rules of the amalgamated union, if this has not already been done (paragraph 45);
- (viii) the unions apply to the Certification Officer for registration of the instrument;
- (ix) the Certification Officer registers the instrument of amalgamation. He cannot do so until six weeks after the instrument and the application are sent to the Certification Office. 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 cannot register the instrument until the complaint is finally determined or withdrawn.

The instrument of amalgamation

34. Before the statutory procedure can begin, the governing bodies of the unions concerned must have agreed between themselves on the terms of amalgamation that 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 union and the instrument 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 union will have to conform to those terms. Careful drafting of the instrument is therefore of great importance.

35. Appendix C to this guide sets out in detail what the law requires to be included in an instrument of amalgamation. The instrument may cover other matters which have been agreed between the governing bodies of the unions, but it must include the matters in Appendix C. The name of the new union must comply with Article 74(3) and (4) of the 1995 Order (see Appendix D). The name of the new union may be the same as the name of one of the amalgamating unions.

36. 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 union should be sent at the same time. It will save time if drafts of the notices to members (paragraphs 38-43) are sent for examination along with the draft instrument.

37. In most cases, some discussion of the draft documents is necessary, and this may require a meeting between representatives of the unions 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 trade union. 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

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

39. 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.

40. The notice to 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 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.

41. The Certification Officer has produced a model "Notice to Members" for use in an amalgamation. This is reproduced at Appendix E. The "Notice to Members" of each of the unions involved 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.

42. When each draft notice has been informally agreed with the Certification Office, the organisations concerned should each 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 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'.

43. The unions are responsible for sending the approved notices to their members. It is essential that formal approval is obtained well in advance of the proposed voting period, since the notice will have the voting paper attached or enclosed.

Voting

44. All that is said in paragraphs 17 to 24 about voting on a transfer of engagements applies to voting on an amalgamation. The method of voting must in every case satisfy the conditions quoted in paragraphs 21-24.

Completion of the rules of the amalgamated trade union

45. If all the unions vote in favour of amalgamation, rules for the amalgamated union should be completed (if this has not already been done). These rules must be consistent with the instrument of amalgamation; otherwise the Certification Officer 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

46. When the Certification Office has indicated that the rules are consistent with the instrument, and provided that the unions have sent their members copies of the scrutineer's report or notified them of its contents, application may be made for registration of the instrument. The application should be made on form CO(NI)13 accompanied by:

- (i) two copies of the instrument of amalgamation;
- (ii) two copies of the rules, both signed by the Secretaries of each of the amalgamating unions;
- (iii) a copy of the scrutineer's report;
- (iv) evidence that copies of the scrutineer's report, or notification of its contents, have been sent to members of the unions;

- (v) a statutory declaration on form CO(NI)14 by the Secretary of each of the unions;

The Certification Office will supply copies of the relevant forms at the time the notices are approved (paragraph 42).

47. 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 unions involved may complain to him on any of the grounds stated in paragraph 54, 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, the Certification Officer can require the unions to take special steps to publicise the fact that the application has been made. He must do this within seven days of receipt of the application.

48. After registering the instrument the Certification Officer will return one copy of the instrument endorsed 'Registered'.

Action after registration

49. If the name of any of the amalgamating unions is on the list of trade unions maintained under Article 5 of the Industrial Relations (NI) Order 1992 then, as soon as the amalgamation takes effect, the Certification Officer will remove it from the list. If an amalgamating union holds a certificate of independence then that certificate will be cancelled at the same time. A final return on finances and resources in the period up to the date on which the amalgamation took effect will need to be submitted on behalf of each amalgamating union

50. If each of the amalgamating unions was on the list, the Certification Officer will add the name of the new union to the list. Similarly if each of the amalgamating unions held a current certificate of independence at the time the instrument is registered, the Certification Officer will issue the new union with a certificate of independence. To remain on the list and retain its certificate of independence the new union must supply the Certification Officer with a copy of the union rules, 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 decide.

51. If any of the amalgamating unions was not on the list, the new union may apply for its name to be entered on the list. Such an application can be made after the instrument of amalgamation has been registered and must be accompanied by payment of the statutory fee. Having been listed, the new union may apply for a certificate of independence on payment of the statutory fee. Details of the current statutory fees for listing and a certificate of independence are on the Certification

Officer's website, www.nicertoffice.org.uk, or may be obtained by telephoning the Certification Office on 028 90237773.

52. An annual return will not be due from the new union until it has been in existence for at least 12 months. Thereafter the normal 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

53. In the following respects unions may, if they wish, impose different (and, in general, stricter) conditions than those provided for by the legislation:

- (i) a union 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);
- (ii) in a transfer of engagements, the receiving union may adopt a rule expressly disapplying 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).

The word 'expressly', as used above and in the Articles 76 and 83 of the 1995 Order, is generally taken to mean that these Articles will apply unless the rules of the union state explicitly that they are not to apply. These are the only instances in which a union 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 union's r

COMPLAINTS TO THE CERTIFICATION OFFICER

54. A member of a union who claims that the union

- (i) has failed to comply with any of the requirements of Articles 75 to 81 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).

55. Any complaint must be made before the end of the period of six weeks beginning with the date on which an 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 shall not register the instrument until the complaint has been finally determined or withdrawn.

56. On receiving a complaint the Certification Officer

- (i) shall make such enquiries as he thinks fit; and
- (ii) if, after giving the complainant and the trade union an opportunity of being heard, he finds the complaint to be justified -
 - (a) shall make a declaration to that effect; and
 - (b) may make an order specifying the steps which must be taken before he will entertain any application to register the instrument.

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

57. The complainant or the trade union 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

58. 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 union and a union 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 union' means for this purpose a union listed by the Great Britain Certification Officer or an unlisted union whose principal office is in Great Britain. If a merger involving a Great Britain union 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 prescribing the contents of an instrument of transfer (SR&O (NI) 1965 No.232) are set out below in bolder type. The regulations refer to the "transferor" and "transferee" but these terms have been replaced here by the terms "transferring" (for transferor) and "receiving" (for transferee). Some explanatory notes have also been added.

1. The instrument shall state that it is an instrument of transfer of the engagements of the union named therein as the transferring union to the union named therein as the receiving union, and that upon the coming into operation of the instrument the members of the transferring union will become members of the receiving union and be subject to that union'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 union") to ... (hereinafter called "the receiving union") shall, if duly approved by a resolution of the members of the transferring union, take effect on ... or the date of registration of this instrument whichever is the later (hereinafter called "the effective date"). *[see note (b) to paragraph 2 below]*
2. On the effective date the members of the transferring union will become members of the receiving union and be subject to that union's rules."

Note also that Article 73(2) of the 1995 Order states that "a trade union may transfer its engagements to another trade union 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 union 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 union under the receiving union's rules;**
- (ii) **if members of the transferring union are to be allocated to a branch or section or to branches or sections of the receiving union, give**

particulars of such allocation or the method by which it will be decided;

- (iii) state whether before registration of the instrument the receiving union's rules are to be altered in their application to members of the transferring union, and, if so, the effect of any such 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.
-
- (a) If the rights of the former members of the transferring union are to differ in any way from the rights of the receiving union's other members, the rules of the receiving union 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 union, 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 union's governing body to make such alterations is explained in paragraph 26 of this Guide.
 - (b) 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 altering the receiving union's rules so as to conform with the instrument.

3. The instrument shall specify any property held for the benefit of the transferring union or for the benefit of a branch of the transferring union 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 a trade union 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 union 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

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

The result is that the property of the transferring union (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 union. Neither is it required to say anything about property which is intended to be vested in the trustees of a branch of the receiving union 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 reasons of clarity, to specify the property and the branch in the instrument.

If any property of the transferring union 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 union 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 unions.

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 above and the originals, not photocopies, sent for the formal approval of the Certification Officer, who will return one copy endorsed 'Approved'.

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 union **[insert name]** should merge with **[insert name]** ("the receiving union") 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 postal ballot only members of your union 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 union will no longer be a separate union, and you will automatically become a member of the receiving union, 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.

You are asked to complete and return the voting paper, in the envelope provided, to the independent scrutineer of the ballot, **[insert name and address]**. 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.

CONTENTS OF THE INSTRUMENT OF AMALGAMATION

The provisions of Schedule 1 to the Regulations prescribing the contents of an instrument of amalgamation (SR&O(NI) 1965 No.232) 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 unions named therein as the amalgamating unions, and that upon the coming into operation of the instrument the members of the amalgamating unions will become members of the amalgamated union and be subject to that union'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 unions] (hereinafter called "the amalgamating unions") shall, if duly approved by a resolution of the members of each of the amalgamating unions, 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 trade union which is to result from this amalgamation (hereinafter called "the amalgamated union") shall be known as
 3. On the effective date the members of each of the amalgamating unions will become members of the amalgamated union and be subject to that union's rules."
- 2. The instrument shall either set out the proposed rules of the amalgamated union 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 union;
- (ii) the conditions of admission to membership;
- (iii) the organisation of the amalgamated union, including the method of appointing and removing its governing body and other principal officers and of altering its rules;

- (iv) the contributions and benefits applicable to members of the amalgamating unions.

Regarding (iv), if the contributions and benefits of members of any of the amalgamating unions 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 union 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 unions or for the benefit of a branch of any of those unions 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 a trade union is to be vested in trustees. Article 86 provides that, on an amalgamation all trust property held for the benefit of the amalgamating unions 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, when it will be deferred until they are appointed.

The "appropriate trustees" are the trustees of the amalgamated union in every case except one. That case concerns any property which is to be held for a branch of the amalgamated union; "the appropriate trustees" of that property are then the trustees of that branch.

However, even in that case if the rules of the amalgamated union provide that such branch property is to be held by the trustees of the amalgamated union itself then the appropriate trustees will be the trustees of the amalgamated union.

The result is that the property of the amalgamating unions (except public stocks and securities) will transfer automatically unless anything is stated 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 union. Nor is anything required to be said about property which is intended to be vested in the trustees of the amalgamated union 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 reasons of clarity to specify the property and the branch in the instrument.

If any property of an amalgamating union 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 unions who have already retired.

5. Without prejudice [to 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 union.

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 unions.

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 agreed **two copies should be signed** in the manner indicated and the originals, not photocopies, sent for the formal approval of the Certification Officer who will return one copy endorsed 'Approved'.

THE NAME OF THE NEW UNION

If the name of a new union formed as a result of amalgamation is to be added to the Certification Officer's list of trade unions, it must comply with the provisions of Article 74 (3) and (4) of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (as amended). These provisions 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 union is the same as the name under which another organisation –

- (a) was on 30 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) Paragraph (3) does not apply if the proposed name is the name of one of the amalgamating unions.

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

By Article 74(4) the name of the new union may be the name of one of the amalgamating unions.

[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 union **[insert name]** should merge with **[insert name(s)]** 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 postal ballots, vote in favour either by a simple majority or by a majority in accordance with the union'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 union and the other union(s) involved in the merger will no longer exist as separate unions and a new union will be formed. You will automatically become a member of the new union 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][attached to]** this Notice.

Voting begins on **[insert date]** and your voting paper must be returned by **[insert date]** if it is to count.

You are asked to complete and return the voting paper in the envelope provided to the independent scrutineer of the ballot, **[insert name and address]**. 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.

CERTIFICATION OFFICE PUBLICATIONS

The following publications are also available, free of charge, from the Certification Office. They are also available to be downloaded or printed from 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' associations.

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.

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>.