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STATUTORY INSTRUMENTS

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**1992 No. 807**

**The Industrial Relations (Northern Ireland) Order 1992**

**PART I**

**INTRODUCTORY**

**Title and commencement**

1.—(1) This Order may be cited as the Industrial Relations (Northern Ireland) Order 1992.

(2) This Order shall come into operation on such day or days as the Head of the Department of Economic Development may by order appoint.

(3) Without prejudice to Article 107(3), an order under paragraph (2) may contain such transitional and supplementary provisions as appear to the Head of the Department of Economic Development to be necessary or expedient.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954(1) shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“act” and “action” each includes omission and references to doing an act or taking action shall be construed accordingly;

“the Agency” means the Labour Relations Agency;

“the appointed day”, in any provision, means the day appointed under Article 1(2) for the coming into operation of that provision;

“the Certification Officer” means the Certification Officer for Northern Ireland;

“collective agreement” means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers' associations and relating to one or more of the matters mentioned in paragraph (4);

“collective bargaining” means negotiations relating to or connected with one or more of the matters mentioned in paragraph (4);

“the Commissioner” means the Northern Ireland Commissioner for the Rights of Trade Union Members;

“the Companies Order” means the Companies (Northern Ireland) Order 1986(2);

“conduct” includes statements and acts;

“contract of employment” means a contract of service or of apprenticeship, whether it is express or implied and (if it is express) whether it is oral or in writing;

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(1) 1954 c. 33 (N.I.)

(2) 1986 NI 6

“contravention”, in relation to any order of a court or other requirement, includes a failure to comply;

“the Department” means the Department of Economic Development;

“employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment, otherwise than in police service;

“employer”(subject to paragraph (3))—

- (a) where the reference is to an employer in relation to an employee, means the person by whom the employee is (or, in a case where the employment has ceased, was) employed; and
- (b) in any other case, means a person regarded in that person’s capacity as one for whom one or more workers work, or have worked or normally work or seek to work;

“employers' association” has the meaning assigned to it by Article 4(1) and (2);

“general secretary” , in relation to a trade union or employers' association, means the official of the union or association who holds the office of general secretary or, where there is no such office, who holds the office which is equivalent, or the nearest equivalent, to that of general secretary;

“independent trade union” means a trade union which—

- (a) is not under the domination or control of an employer or a group of employers or of one or more employers' associations; and
- (b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control;

and, in relation to a trade union, “independence” and “independent” shall be construed accordingly;

“individual proprietor” means an individual who is the owner of an undertaking;

“the Industrial Court” means the Industrial Court constituted under Article 91;

“the No. 1 Order” means the Industrial Relations (Northern Ireland) Order 1976(3);

“officer” , in relation to a trade union or an employers' association, includes any member of the governing body of that union or association and any trustee of any fund applicable for the purposes of that union or association;

“official” , in relation to a trade union, means any person who is an officer of the union or of a branch or section of the union or who (not being such an officer) is a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them, including any person so elected or appointed who is an employee of the same employer as the members, or one or more of the members, whom he is to represent;

“police service” means service—

- (a) as a member of the Royal Ulster Constabulary;
- (b) as a member of the Royal Ulster Constabulary Reserve;
- (c) in any other capacity by virtue of which a person has the powers or privileges of a constable;

“president” , in relation to a trade union or employers' association, means the official of the union or association who holds the office of president or, where there is no such office, who holds the office which is equivalent, or the nearest equivalent, to that of president;

“principal executive committee” , in relation to a trade union or employers' association, means the principal committee of the union or association exercising executive functions, by whatever name it is known;

“regulations” means regulations made by the Department;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954(4);

“strike” means any concerted stoppage of work;

“trade dispute”—

- (a) in Part XI, has the meaning assigned to it by Article 96;
- (b) in the other provisions of this Order, has the meaning assigned to it by paragraphs (4) to (7);

“trade union” has the meaning assigned to it by Article 3(1);

“worker” (subject to paragraph (3)) means an individual regarded in whichever (if any) of the following capacities is applicable to him, that is to say, as a person who works or normally works or seeks to work—

- (a) under a contract of employment; or
- (b) under any other contract (whether express or implied, and, if express, whether oral or in writing) whereby he undertakes to do or perform personally any work or services for another party to the contract who is not a professional client of his; or
- (c) in employment under or for the purposes of a Northern Ireland department or a department of the Government of the United Kingdom (otherwise than as a member of the naval, military or air forces of the Crown) in so far as any such employment does not fall within sub-paragraph (a) or (b),

otherwise than in police service.

(3) Without prejudice to the generality of the definitions in paragraph (2), in this Order—

- (a) “worker” includes an individual regarded in his capacity as one who works or normally works or seeks to work as a person providing general medical services, general dental services, general ophthalmic services or pharmaceutical services, in accordance with arrangements made by a Health and Social Services Board under Article 56, 61, 62 or 63 of the Health and Personal Social Services (Northern Ireland) Order 1972(5);
- (b) “employer” includes any Health and Social Services Board in accordance with whose arrangements a person provides or has provided or normally provides or seeks to provide any such service as aforesaid.

(4) In this Order (except Part XI) “trade dispute” means a dispute between workers and their employer which relates wholly or mainly to one or more of the following, that is to say—

- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
- (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
- (c) allocation of work or the duties of employment as between workers or groups of workers;
- (d) matters of discipline;
- (e) the membership or non-membership of a trade union on the part of a worker;
- (f) facilities for officials of trade unions;

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(4) 1954 c. 33 (N.I.)

(5) 1972 NI 14

- (g) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures.

(5) A dispute between a Minister of the Crown or Department of the Government of Northern Ireland and any workers shall, notwithstanding that the Minister or the Department is not the employer of those workers, be treated for the purposes of this Order (except Part XI) as a dispute between those workers and their employer if the dispute relates—

- (a) to matters which have been referred for consideration by a joint body on which, by virtue of any provision made by or under any statutory provision, that Minister or that Department is represented; or
- (b) to matters which cannot be settled without that Minister or that Department exercising a power conferred by or under any statutory provision.

(6) In paragraphs (4) and (5)—

“employment” includes any relationship whereby one person personally does work or performs services for another;

“worker”, in relation to a dispute with an employer, means—

- (a) a worker employed by that employer; or
- (b) a person who has ceased to be employed by that employer where—
  - (i) his employment was terminated in connection with the dispute; or
  - (ii) the termination of his employment was one of the circumstances giving rise to the dispute.

(7) There is a trade dispute for the purposes of this Order (except Part XI) even though it relates to matters occurring outside the United Kingdom, so long as the person or persons whose actions in the United Kingdom are said to be in contemplation or furtherance of a trade dispute relating to matters occurring outside the United Kingdom are likely to be affected in respect of one or more of the matters specified in paragraph (4) by the outcome of that dispute.

(8) An act, threat or demand done or made by one person or organisation against another which, if resisted, would have led to a trade dispute with that other, shall, notwithstanding that because that other submits to the act or threat or accedes to the demand no dispute arises, be treated for the purposes of this Order as being done or made in contemplation of a trade dispute with that other.

(9) For the purposes of this Order, a ballot or a contested election is held on the day or, in the case of a ballot or election in which votes may be cast on more than one day, the last day for the casting of votes in the ballot or election, being, in the case of a ballot or election in which votes are cast by the return of voting papers to a particular person, the last day for the return of those papers to that person; and an uncontested election is deemed to be held on the day on which it would have been held if it had been contested; and references in this Order to the date of a ballot or election are references to the day on which the ballot or election is held.

(10) For the purposes of this Order any two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control; and in this Order “associated employer” shall be construed accordingly.

(11) For the purposes of this Order it is immaterial whether the law which (apart from this Order) governs any person’s employment is the law of the United Kingdom, or of a part of the United Kingdom, or not.

## PART II

### DEFINITION, STATUS AND GENERAL REGULATION OF TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS

#### *Definition and status*

#### **Definition and status of trade union**

**3.—(1)** In this Order “trade union” means an organisation (whether permanent or temporary) which either—

- (a) consists wholly or mainly of workers of one or more descriptions and is an organisation whose principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers' associations; or
- (b) consists wholly or mainly of—
  - (i) constituent or affiliated organisations which fulfil the conditions specified in subparagraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions); or
  - (ii) representatives of such constituent or affiliated organisations;

and in either case is an organisation whose principal purposes include the regulation of relations between workers and employers or between workers and employers' associations, or include the regulation of relations between its constituent or affiliated organisations.

(2) A trade union shall not be, or be treated as if it were, a body corporate, but—

- (a) it shall be capable of making contracts;
- (b) all property belonging to the trade union shall be vested in trustees in trust for the union;
- (c) it shall be capable of suing and being sued in its own name, whether in proceedings relating to property or founded on contract or tort or any other cause of action whatsoever;
- (d) proceedings for any offence alleged to have been committed by it or on its behalf may be brought against it in its own name; and
- (e) any judgment, order or award made in proceedings of any description brought against the trade union shall be enforceable by way of enforcement order under the Judgments Enforcement (Northern Ireland) Order 1981<sup>(6)</sup>, punishment for contempt or otherwise, against any property held in trust for the trade union to the like extent and in the like manner as if the union were a body corporate.

(3) A trade union shall not be registered as a company under the Companies Order and accordingly any registration of a trade union under that Order (whenever effected) shall be void.

(4) A trade union shall not be registered under the Industrial and Provident Societies Act (Northern Ireland) 1969<sup>(7)</sup> or the Friendly Societies Act (Northern Ireland) 1970<sup>(8)</sup> and accordingly any registration of a trade union under either of those Acts (whenever effected) shall be void.

(5) The purposes of any trade union shall not, by reason only that they are in restraint of trade, be unlawful so as—

- (a) to make any member of the trade union liable to criminal proceedings for conspiracy or otherwise; or

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<sup>(6)</sup> 1981 NI 6  
<sup>(7)</sup> 1969 c. 24 (N.I.)  
<sup>(8)</sup> 1970 c. 31 (N.I.)

(b) to make any agreement or trust void or voidable;

nor shall any rule of a trade union be unlawful or unenforceable by reason only that it is in restraint of trade.

(6) Article 113 of the Judgments Enforcement (Northern Ireland) Order 1981<sup>(9)</sup> (sequestration order against company in contempt) shall apply to a trade union as it applies to a company.

### **Definition and status of employers' association**

4.—(1) Subject to paragraph (2), in this Order “employers' association” means an organisation (whether permanent or temporary) which either—

(a) consists wholly or mainly of employers or individual proprietors of one or more descriptions and is an organisation whose principal purposes include the regulation of relations between employers of that description or those descriptions and workers or trade unions; or

(b) consists wholly or mainly of—

(i) constituent or affiliated organisations which fulfil the conditions specified in subparagraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions); or

(ii) representatives of such constituent or affiliated organisations;

and in either case is an organisation whose principal purposes include the regulation of relations between employers and workers or between employers and trade unions, or include the regulation of relations between its constituent or affiliated organisations.

(2) References in this Order to an employers' association include references to a combination of employers and employers' associations.

(3) An employers' association may be either a body corporate or an unincorporated association.

(4) Where an employers' association is unincorporated—

(a) it shall be capable of making contracts;

(b) all property belonging to the employers' association shall be vested in trustees in trust for the association;

(c) it shall be capable of suing and being sued in its own name, whether in proceedings relating to property or founded on contract or tort or any other cause of action whatsoever;

(d) proceedings for any offence alleged to have been committed by it or on its behalf may be brought against it in its own name; and

(e) any judgment, order or award made in proceedings of any description brought against the employers' association shall be enforceable by way of enforcement order under the Judgments Enforcement (Northern Ireland) Order 1981<sup>(10)</sup>, punishment for contempt or otherwise, against any property held in trust for the employers' association to the like extent and in the like manner as if the association were a body corporate.

(5) Nothing in Article 665 of the Companies Order (associations of over 20 members for certain purposes must be incorporated or otherwise formed in special ways) shall be taken to prevent the formation of an employers' association which is neither registered as a company under that Order nor otherwise incorporated.

(6) The purposes of an unincorporated employers' association and, in so far as they relate to the regulation of relations between employers and workers or trade unions, the purposes of an employers'

<sup>(9)</sup> 1981 NI 6

<sup>(10)</sup> 1981 NI 6

association which is a body corporate, shall not, by reason only that they are in restraint of trade, be unlawful so as—

- (a) to make any member of the association liable to criminal proceedings for conspiracy or otherwise; or
- (b) to make any agreement or trust void or voidable;

nor shall any rule of an unincorporated employers' association or, in so far as it so relates, any rule of an employers' association which is a body corporate be unlawful or unenforceable by reason only that it is in restraint of trade.

(7) Article 113 of the Judgments Enforcement (Northern Ireland) Order 1981 (sequestration order against company in contempt) shall apply to an unincorporated employers' association as it applies to a company.

### *Listing and certification*

#### **Lists of trade unions and employers' associations**

5.—(1) The Certification Officer shall maintain a list of trade unions and a list of employers' associations containing the names of those organisations which are entitled to have their names entered therein under the following provisions of this Article.

(2) The Certification Officer shall enter in the list of trade unions or employers' associations, as the case may be, the name of every organisation of workers or of employers which immediately before the appointed day was registered (whether by that or any other name) in Northern Ireland as a trade union under the Trade Union Acts (Northern Ireland) 1871 to 1965, except an organisation which appears to him not to be a trade union or, as the case may be, employers' association within the meaning of this Order.

(3) Any organisation of workers or of employers, whenever formed, whose name is not entered in the relevant list may apply to the Certification Officer to have its name so entered and, subject to paragraph (5), the Certification Officer shall, if satisfied that the organisation is a trade union or employers' association and that paragraph (4) has been complied with, enter the name of that organisation in the relevant list.

(4) An application under paragraph (3) shall be made in such form and manner as the Certification Officer may require and be accompanied by a fee of £45 or such other fee as may be prescribed by regulations and also by—

- (a) a copy of the rules of the organisation;
- (b) a list of its officers;
- (c) the address of its head or main office; and
- (d) the name under which it is or is to be known.

(5) The Certification Officer shall not under paragraph (3) enter the name of an organisation in the relevant list if that name is—

- (a) the same as a name under which another organisation was registered as a trade union under the Trade Union Acts (Northern Ireland) 1871 to 1965 immediately before the appointed day or is for the time being entered in either list maintained under this Article or in either list maintained under section 8 of the Trade Union and Labour Relations Act 1974(11); or
- (b) a name so nearly resembling any such name as to be likely to deceive the public; or
- (c) for any other reason likely to deceive the public.

(6) If it appears to the Certification Officer, whether on application made to him or otherwise, that an organisation whose name is entered in the relevant list is not a trade union or employers' association he may remove its name from the relevant list, but shall not do so without giving the organisation notice of his intention to do so and without considering any representations made to him by the organisation during a period specified in the notice (being not less than 28 days beginning with the date of the notice).

(7) The Certification Officer shall remove the name of an organisation from the relevant list—

- (a) if he is requested by the organisation to do so; or
- (b) if he is satisfied that the organisation has ceased to exist.

(8) Any organisation aggrieved by the refusal of the Certification Officer to enter its name in the relevant list or by a decision of his to remove its name from that list may appeal, in accordance with Article 70(3), to the High Court; and on any such appeal the High Court, if satisfied that the name should be or remain so entered, shall declare that fact and give directions to the Certification Officer accordingly.

(9) The Certification Officer shall at all reasonable hours keep available for public inspection (free of charge) copies of the lists of trade unions and employers' associations, as for the time being in force, and a copy of each list shall be included in the annual report made by the Certification Officer under Article 69(7).

(10) The fact that the name of an organisation is included in the list of trade unions or employers' associations maintained under this Article shall be evidence that the organisation is a trade union or, as the case may be, an employers' association, and on the application of the organisation the Certification Officer shall issue it with a certificate that its name is included in the relevant list; and any document purporting to be such a certificate shall be evidence that the name of the organisation is entered in the relevant list.

(11) The fact that the name of an organisation is included in the list of trade unions or employers' associations maintained under section 8 of the Trade Union and Labour Relations Act 1974(12) shall be evidence that the organisation is a trade union or, as the case may be, an employers' association; and any document purporting to be a certificate issued under subsection (10) of that section shall be evidence that the name of the organisation is entered in the relevant list.

### **Certification as independent trade union**

6.—(1) Subject to paragraph (12), a trade union whose name is entered on the list of trade unions maintained under Article 5 may apply to the Certification Officer for a certificate that it is independent.

(2) An application under paragraph (1) shall be made in such form and manner as the Certification Officer may require and shall be accompanied by a fee of £305 or such other fee as may be prescribed by regulations.

(3) The Certification Officer shall maintain a record showing details of all applications made under paragraph (1) and shall keep it available for public inspection (free of charge) at all reasonable hours.

(4) If an application is made, or by virtue of paragraph (13) is treated as being made, by a trade union whose name is not entered on the list of trade unions maintained under Article 5, the Certification Officer shall refuse a certificate of independence and shall enter that refusal on the record maintained in accordance with paragraph (3).

(5) In the case of an application not falling within paragraph (4), the Certification Officer shall—

- (a) determine whether the applicant trade union is independent;



- (b) enter his decision and the date of his decision on the record maintained in accordance with paragraph (3); and
- (c) if he determines that the trade union is independent, issue a certificate accordingly, or, if he determines that it is not, give reasons for his decision.

(6) The Certification Officer shall not make any determination under paragraph (5) whether a trade union is independent until one month after the application has been entered on the record in accordance with paragraph (3), and before making such a determination he shall make such inquiries as he thinks fit and shall take into account any relevant information submitted to him by any person.

(7) The Certification Officer may at any time withdraw a certificate, in accordance with paragraph (8), if he is of the opinion that the trade union in question is no longer independent.

- (8) Where the Certification Officer proposes to withdraw a certificate under paragraph (7)—
  - (a) he shall notify the trade union concerned of the proposal;
  - (b) paragraphs (3), (5) and (6) shall apply (with appropriate modifications) to such a proposal as they apply to an application under paragraph (1); and
  - (c) the Certification Officer shall confirm or withdraw the certificate accordingly.

(9) A trade union aggrieved by the refusal of the Certification Officer to issue it with a certificate or by a decision of his to withdraw its certificate may appeal, in accordance with Article 70(3), to the High Court; and on any such appeal the High Court, if satisfied that the certificate should be issued or, as the case may be, should not be withdrawn, shall declare that fact and give directions to the Certification Officer accordingly.

(10) Where the name of an organisation is removed from the list of trade unions maintained under Article 5, the Certification Officer shall cancel any certificate of independence in force in respect of that organisation by entering on the record the fact that the organisation's name has been removed from the said list and that the certificate is accordingly cancelled.

(11) A certificate of independence which is in force, or, as the case may be, a refusal, withdrawal or cancellation of a certificate entered on the record, shall be conclusive evidence for all purposes that the trade union in question is, or, as the case may be, is not, independent; and a document purporting to be such a certificate or a certified copy of such an entry on the record, and to be signed by the Certification Officer or by any person authorised to act on his behalf, shall be taken to be such a certificate or a true copy of such an entry unless the contrary is proved.

(12) The preceding provisions of this Article do not apply to a trade union which has its head or main office in Great Britain, but a certificate of independence which is in force under section 8 of the Employment Protection Act 1975(13), or, as the case may be, a refusal, withdrawal or cancellation of a certificate entered on the record maintained under that section shall, in relation to such a trade union, be conclusive evidence for all purposes that the trade union in question is, or, as the case may be, is not, independent; and a document purporting to be such a certificate or a certified copy of such an entry on that record, and to be signed by the Certification Officer appointed under section 7 of that Act or by any person authorised to act on his behalf, shall be taken to be such a certificate or a true copy of such an entry unless the contrary is proved.

(13) If in any proceedings before any court, the Agency, the Industrial Court or an industrial tribunal a question arises as to whether a trade union is independent and there is no certificate of independence in force as mentioned in paragraph (11) or (12) and no refusal, withdrawal or cancellation of a certificate recorded as so mentioned in relation to that trade union—

- (a) the question shall not be decided in those proceedings, and those proceedings shall be stayed until a certificate has been issued or refused under this Article or, as the case may be, section 8 of the Employment Protection Act 1975; and

- (b) if the trade union in question does not have its head or main office in Great Britain, the body before whom the proceedings are stayed may refer the question as to the independence of that trade union to the Certification Officer who shall proceed in accordance with paragraphs (3) to (6) as if the reference were an application by that trade union.

### *Property*

#### **Property of trade unions and unincorporated employers' associations**

7.—(1) Sections 38 and 39 of the Trustee Act (Northern Ireland) 1958<sup>(14)</sup> (vesting of property on retirement of trustee or appointment of new trustee) shall, in their application to trustees in whom any property is vested in trust for a trade union or an unincorporated employers' association to which this paragraph applies, each have effect as if for any reference to a deed there were substituted a reference to an instrument in writing and as if in subsection (4) of section 39 of the said Act of 1958 paragraphs (a) and (c) were omitted.

(2) Paragraph (1) applies to a trade union and to an unincorporated employers' association whose name is (in either case) for the time being entered in the list of trade unions or of employers' associations under Article 5.

(3) An instrument in writing appointing a new trustee of a trade union or unincorporated employers' association to which paragraph (1) applies is referred to in this Article as an “instrument of appointment” and an instrument in writing discharging a trustee of such a union or association is referred to as an “instrument of discharge”; and for the purposes of this Article (and the sections of the Act of 1958 applied by paragraph (1)), where a trustee of such a union or association is appointed or discharged by a resolution taken by or on behalf of the union or association, the written record of the resolution shall be treated as if it were the instrument in writing appointing or, as the case may be, discharging that trustee.

(4) Where by any statutory provision the transfer of securities of any description is required to be effected or recorded by means of entries in a register, then, if—

- (a) there is produced to the person who is authorised or required to keep the register, a copy of an instrument of appointment or of an instrument of discharge which contains or has attached to it a list identifying the securities of that description held in trust for the union or association to which the instrument relates at the date of the appointment or discharge; and
- (b) it appears to that person that any of the securities so identified are included in the register kept by him,

he shall, notwithstanding anything in Article 193(1) or 368 of the Companies Order or any other statutory provision regulating the keeping of the register, make such entries as may be necessary to give effect to the instrument of appointment or of discharge.

(5) A document which purports to be a copy of an instrument of appointment or of an instrument of discharge containing or having attached to it such a list and to be certified to be a copy of such an instrument in accordance with paragraph (6) shall be taken to be a copy of such an instrument unless the contrary is proved.

(6) The certificate referred to in paragraph (5) shall be given by the president and general secretary of the union or association to which the instrument relates and, in the case of an instrument to which the list of securities is attached, shall appear both on the instrument and on the list.

(7) Nothing done for the purposes of or in pursuance of paragraph (4) shall be taken to affect any person with notice of any trust or to impose on any person a duty to inquire into any matter.

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(14) 1958 c. 23 (N.I.)

### **Use of trade union funds for indemnifying unlawful conduct**

8.—(1) It shall be unlawful for any of the property of a trade union to be applied—

- (a) in or towards the payment for any individual, or securing the payment for any individual, of any penalty which has been or may be imposed on him for a relevant offence or for contempt of court; or
- (b) in or towards the provision of anything for indemnifying any individual in respect of any penalty which has been or may be imposed on him for any such offence or for contempt of court.

(2) Where any property of a trade union is applied in contravention of paragraph (1) for the benefit of a particular individual on whom a penalty has been or may be imposed—

- (a) in the case of a payment, an amount equal to the amount of the payment shall be recoverable by the union from that individual; and
- (b) in the case of an application of property otherwise than by the making of a payment, that individual shall be liable to account to the union for the value of the property.

(3) A member of a trade union who claims that a failure by that union to bring or continue any proceedings by virtue of paragraph (2) is unreasonable may apply to the High Court for an authorisation under this paragraph; and where, on such an application, the High Court is satisfied that the failure is unreasonable, the court may make an order authorising the applicant to bring or continue the proceedings on the union's behalf and at the union's expense.

(4) In this Article—

“penalty”, in relation to a relevant offence, includes an order to pay compensation and an order for the forfeiture of any property, and references to the imposition of a penalty for an offence shall be construed accordingly;

“relevant offence” means any offence other than an offence for the time being designated by order made by the Department as an offence in relation to which this Article does not apply.

(5) Paragraph (1) shall be without prejudice to any statutory provision, rule of law or provision of the rules of a trade union which, apart from this Article, makes it unlawful for the property of a trade union to be applied in a particular way; and paragraphs (2) and (3) shall be without prejudice to any remedy available otherwise than under this Article to a trade union, the trustees of its property or any of its members in respect of any unlawful application of the union's property.

(6) In this Article and Article 9 “member” in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes any member of any of the constituent or affiliated organisations.

### **Remedy against trustees of trade union for unlawful use of property**

9.—(1) Subject to paragraph (2), a member of a trade union who claims that the trustees of the union's property—

- (a) have so carried out their functions, or are proposing so to carry out their functions, as to cause or permit any unlawful application of the union's property; or
- (b) have complied, or are proposing to comply, with any unlawful direction which has been or may be given, or purportedly given, to them under the rules of the union,

may apply to the High Court for an order under this Article.

(2) A person shall not be entitled to make an application under paragraph (1) in a case relating to property which has already been unlawfully applied or to an unlawful direction that has already been complied with, unless he was a member of the union at the time when the property was applied or, as the case may be, the direction complied with.

(3) Subject to paragraph (4), where, on an application under paragraph (1), the High Court is satisfied that the claim is well-founded, the court shall make such order as it considers appropriate; and, without prejudice to the generality of its powers under this paragraph, the powers of the court on such an application shall include—

- (a) power to require the trustees of a trade union (if necessary, on behalf of the union) to take all such steps as may be specified in the order for protecting or recovering the property of the union;
  - (b) power to appoint a receiver of the property of a trade union;
  - (c) power to remove one or more of the trustees of any such property; and
  - (d) power to grant any such interlocutory relief as it considers appropriate.
- (4) Where the High Court makes an order under this Article—

- (a) in a case in which property of a trade union has been applied in contravention of the order of any court or in compliance with any direction given in contravention of the order of any court; or
- (b) in a case in which the trustees in question were proposing to apply property in contravention of the order of any court or to comply with any direction the giving of which was or, as the case may be, would have been in contravention of the order of any court,

the order of the court under this Article shall remove all the trustees except any trustee who satisfies the court that there is a good reason for allowing him to remain a trustee.

(5) This Article shall be without prejudice to any remedy available otherwise than under this Article in respect of any breach of trust by the trustees of a trade union's property.

#### *Records and returns*

#### **Duty to keep accounting records**

**10.**—(1) This Article applies to every trade union and every employers' association whose head or main office is situated in Northern Ireland except one which consists wholly or mainly of representatives of constituent or affiliated organisations (of the description referred to in Article 3(1)(b)(ii) or 4(1)(b)(ii)).

- (2) Every trade union and every employers' association to which this Article applies shall—
- (a) cause to be kept proper accounting records with respect to its transactions and its assets and liabilities; and
  - (b) establish and maintain a satisfactory system of control of its accounting records, its cash holdings and all its receipts and payments.

(3) For the purposes of sub-paragraph (a) of paragraph (2) proper accounting records shall not be taken to be kept with respect to the matters mentioned in that sub-paragraph if there are not kept such records as are necessary to give a true and fair view of the state of the affairs of the trade union or employers' association and to explain its transactions.

(4) Where a trade union or employers' association consists of or includes branches or sections, then—

- (a) any duty falling upon the union or association in relation to a branch or section under this Article shall be treated as having been discharged to the extent to which a branch or section discharges that duty instead of the union or association; and
- (b) any duty falling upon a branch or section under this Article by reason of its being a trade union or employers' association shall be treated as having been discharged to the extent

to which the union or association of which it is a branch or section discharges that duty instead of the branch or section.

### **Duties as to annual returns, auditors and members' superannuation schemes**

**11.**—(1) This Article applies to every trade union and every employers' association to which Article 10 applies except a union or association which has been in existence for less than 12 months.

(2) Every trade union and every employers' association to which this Article applies shall send the Certification Officer as respects every calendar year a return relating to its affairs.

(3) Every trade union and every employers' association to which this Article applies shall appoint an auditor or auditors to audit the accounts contained in its annual return.

(4) Every trade union and every employers' association to which this Article applies shall at the request of any person, supply him with a copy of its rules and of its most recent annual return either free of charge or on payment of a reasonable charge.

(5) The Certification Officer shall at all reasonable hours keep available for public inspection, either free of charge or on payment of a reasonable charge, copies of all annual returns sent to him under this Article.

(6) The provisions of Part I of Schedule 1 shall have effect with respect to the annual return and to the qualifications, appointment, removal and functions of auditors of trade unions and employers' associations to which this Article applies.

(7) The provisions of Part II of Schedule 1 shall have effect with respect to members' superannuation schemes maintained or to be maintained by trade unions or employers' associations to which this Article applies.

(8) Where a trade union or employers' association consists of or includes branches or sections, then—

- (a) any duty falling upon the union or association in relation to a branch or section under this Article or Schedule 1 shall be treated as having been discharged to the extent to which a branch or section discharges that duty instead of the union or association; and
- (b) any duty falling upon a branch or section under this Article or Schedule 1 by reason of its being a trade union or employers' association shall be treated as having been discharged to the extent to which the union or association of which it is a branch or section discharges that duty instead of the branch or section.

(9) Where an employers' association to which this Article applies is a company within the meaning of the Companies Order—

- (a) paragraph (3) above and the provisions of paragraphs 6 to 15 of Schedule 1 do not apply; and
- (b) the rights and powers conferred, and duties imposed, by paragraphs 16 to 21 of that Schedule belong to the auditors of the company appointed under Chapter V of Part XII of that Order.

### **Returns, etc., by trade unions and employers' associations outside Northern Ireland**

**12.**—(1) Any trade union or employers' association carrying on business in Northern Ireland and being a trade union or employers' association to which section 11 of the Trade Union and Labour Relations Act 1974(15) applies shall,—

- (a) within one month of the date on which it sends an annual return under subsection (2) of that section, send to the Certification Officer a copy, certified in such manner as the Certification Officer may require, of that annual return; and
- (b) before 1st June in every year, send to the Certification Officer a statement setting forth, in relation to the business carried on by the trade union or employers' association in Northern Ireland in the last preceding calendar year, such particulars of its receipts and payments, and such other information, as the Certification Officer may require.

(2) Any trade union or employers' association carrying on business in Northern Ireland but having its head or main office outside the United Kingdom shall, before 1st June in every year, send to the Certification Officer a statement setting forth, in relation to the business carried on in Northern Ireland in the last preceding calendar year, such particulars of its receipts and payments, and such other information, as the Certification Officer may require.

(3) Every trade union and employers' association carrying on business in Northern Ireland but not having its head or main office in Northern Ireland shall furnish to the Certification Officer, before 1st June in every year, the names and addresses of some one or more persons resident in Northern Ireland authorised to accept on its behalf service of process and any notices required to be served on it.

(4) Any process or notice required to be served on a trade union or employers' association to which paragraph (3) applies shall be sufficiently served if—

- (a) it is addressed to any person whose name has been furnished to the Certification Officer under that paragraph and left at, or sent by post to, the address which has been so furnished; or
- (b) where—
  - (i) any such trade union or employers' association makes default in furnishing to the Certification Officer the name and address of a person resident in Northern Ireland who is authorised to accept on its behalf service of process or notices; or
  - (ii) at any time all the persons whose names and addresses have been so furnished are dead, or have ceased to so reside, or refuse to accept service on behalf of the trade union or employers' association, or for any reason cannot be served,

it is left at, or sent by post to, any place where the business of the trade union or employers' association is carried on in Northern Ireland.

(5) The Certification Officer, if in any particular case he considers it appropriate to do so, may direct that the date before which a trade union or employers' association must comply with paragraph (1)(a) or (b), (2) or (3) shall be such other date (whether before or after that specified in paragraph (1)(a) or (b), (2) or (3)) as may be specified in the direction.

(6) The Certification Officer shall at all reasonable hours keep available for public inspection, either free of charge or on payment of a reasonable charge, copies of all documents sent to him under this Article.

(7) Paragraph (8) of Article 11 applies for the purposes of this Article as it applies for the purposes of Article 11.

## **Offences**

**13.**—(1) If a trade union or an employers' association refuses or wilfully neglects to perform a duty imposed on it by or under any of the provisions of Article 10 or 11 or 12 or Schedule 1 the trade union or employers' association shall be guilty of an offence.

(2) Subject to paragraph (3), any offence committed by a trade union or an employers' association under paragraph (1) shall be deemed to have been also committed by—

- (a) every officer of that trade union or employers' association who is bound by the rules of the union or association to discharge on its behalf the duty breach of which constitutes that offence; or
- (b) if there is no such officer, every member of the principal executive committee of the union or association.

(3) In any proceedings brought against an officer or member by virtue of paragraph (2) in respect of any breach of duty, it shall be a defence for him to prove that he had reasonable cause to believe, and did believe, that some other person who was competent to discharge that duty was authorised to discharge it instead of him and had discharged it or would do so.

(4) A person who wilfully alters or causes to be altered a document which is required for the purposes of any of the provisions of Article 10 or 11 or 12 or Schedule 1, with intent to falsify the document or to enable a trade union or employers' association to evade any of those provisions, shall be guilty of an offence.

(5) For every offence committed under this Article the trade union, employers' association or other person guilty of the offence shall be liable on summary conviction—

- (a) in the case of an offence under paragraph (1), to a fine not exceeding level 3 on the standard scale;
- (b) in the case of an offence under paragraph (4), to a fine not exceeding level 5 on the standard scale.

#### *Application of existing statutory provisions*

#### **Application of existing statutory provisions**

**14.** Any statutory provision passed or made before the appointed day which refers (or is to be construed as referring) to a trade union registered under the Trade Union Acts (Northern Ireland) 1871 to 1965 shall, on and after that day, have effect as if it referred to a trade union or employers' association within the meaning of this Order.

### **PART III**

#### **RESTRICTIONS ON LEGAL LIABILITY AND LEGAL PROCEEDINGS**

##### *Restrictions on legal liability*

#### **Acts in contemplation or furtherance of trade disputes**

**15.—(1)** An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable in tort on the ground only—

- (a) that it induces another person to break a contract or interferes or induces any other person to interfere with its performance; or
- (b) that it consists in his threatening that a contract (whether one to which he is a party or not) will be broken or its performance interfered with, or that he will induce another person to break a contract or to interfere with its performance.

(2) An agreement or combination by two or more persons to do or procure the doing of any act in contemplation or furtherance of a trade dispute shall not be actionable in tort if the act is one which, if done without any such agreement or combination, would not be actionable in tort.

(3) This Article is subject to Articles 16 to 20.

**Peaceful picketing**

16.—(1) Nothing in Article 15 shall prevent an act done in the course of picketing from being actionable in tort unless it is done in the course of attendance declared lawful by this Article.

- (2) It shall be lawful for a person in contemplation or furtherance of a trade dispute to attend—
- (a) at or near his own place of work; or
  - (b) if he is an official of a trade union, at or near the place of work of a member of that union whom he is accompanying and whom he represents,

for the purpose only of peacefully obtaining or communicating information, or peacefully persuading any person to work or abstain from working.

- (3) If a person works or normally works—
- (a) otherwise than at any one place; or
  - (b) at a place the location of which is such that attendance there for a purpose mentioned in paragraph (2) is impracticable,

his place of work for the purposes of that paragraph shall be any premises of his employer from which he works or from which his work is administered.

- (4) In the case of a worker who is not in employment where—
- (a) his last employment was terminated in connection with a trade dispute; or
  - (b) the termination of his employment was one of the circumstances giving rise to a trade dispute,

paragraph (2) shall in relation to that dispute have effect as if any reference to his place of work were a reference to his former place of work.

(5) A person who is an official of a trade union by virtue only of having been elected or appointed to be a representative of some of the members of the union shall be regarded for the purposes of paragraph (2) as representing only those members; but otherwise an official of a trade union shall be regarded for those purposes as representing all its members.

**Secondary action**

17.—(1) Nothing in Article 15 shall prevent an act from being actionable in tort on a ground specified in paragraph (1)(a) or (b) of that Article in any case where—

- (a) the contract concerned is not a contract of employment; and
- (b) one of the facts relied upon for the purpose of establishing liability is that there has been secondary action which is not action satisfying the requirements of paragraph (3), (4) or (5) of this Article.

(2) For the purposes of this Article there is secondary action in relation to a trade dispute when, and only when, a person—

- (a) induces another to break a contract of employment or interferes or induces another to interfere with its performance; or
- (b) threatens that a contract of employment under which he or another is employed will be broken or its performance interfered with, or that he will induce another to break a contract of employment or to interfere with its performance,

if the employer under the contract of employment is not a party to the trade dispute.

- (3) Secondary action satisfies the requirements of this paragraph if—
- (a) the purpose or principal purpose of the secondary action was directly to prevent or disrupt the supply during the dispute of goods or services between an employer who is a party to



- the dispute and the employer under the contract of employment to which the secondary action relates; and
- (b) the secondary action (together with any corresponding action relating to other contracts of employment with the same employer) was likely to achieve that purpose.
- (4) Secondary action satisfies the requirements of this paragraph if—
- (a) the purpose or principal purpose of the secondary action was directly to prevent or disrupt the supply during the dispute of goods or services between any person and an associated employer of an employer who is a party to the dispute; and
- (b) the goods or services are in substitution for goods or services which but for the dispute would have fallen to be supplied to or by the employer who is a party to the dispute; and
- (c) the employer under the contract of employment to which the secondary action relates is either the said associated employer or the other party to the supply referred to in sub-paragraph (a); and
- (d) the secondary action (together with any corresponding action relating to other contracts of employment with the same employer) was likely to achieve the purpose referred to in sub-paragraph (a).
- (5) Secondary action satisfies the requirements of this paragraph if it is done in the course of attendance declared lawful by Article 16—
- (a) by a worker employed (or, in the case of a worker not in employment, last employed) by a party to the dispute; or
- (b) by a trade union official whose attendance is lawful by virtue of paragraph (2)(b) of that Article.
- (6) In paragraphs (3)(a) and (4)(a)—
- (a) references to the supply of goods or services between two persons are references to the supply of goods or services by one to the other in pursuance of a contract between them subsisting at the time of the secondary action; and
- (b) references to directly preventing or disrupting the supply are references to preventing or disrupting it otherwise than by means of preventing or disrupting the supply of goods or services by or to any other person.
- (7) For the purposes of this Article an employer who is a member of an employers' association which is a party to a trade dispute shall by virtue of his membership be regarded as a party to the dispute if he is represented in the dispute by the association, but not otherwise.

### **Industrial action to enforce trade union membership**

**18.—**(1) Nothing in Article 15 shall prevent an act being actionable in tort in any case where the reason, or one of the reasons, for which the act is done is the fact or belief that a particular employer—

- (a) is employing, has employed or might employ a person who is not a member of any trade union, a person who is not a member of a particular trade union or a person who is not a member of one of a number of particular trade unions; or
- (b) is failing, has failed or might fail to discriminate against any such person.

(2) For the purposes of paragraph (1)(b) an employer discriminates against a person who is not a member of any trade union, of a particular trade union or, as the case may be, of one of a number of particular trade unions, if, but only if, he ensures that his conduct in relation to persons, or persons of any description, who are employed by him or who apply to be, or are, considered by him for employment or in relation to the provision of employment for such persons—

- (a) is different, in some or all cases, according to whether or not those persons are such members; and
  - (b) is more favourable to those who are.
- (3) In this Article—
- (a) references to an employer employing a person are references to a person acting in the capacity of the person for whom a worker works or normally works; and
  - (b) references to not being a member of a trade union include references to not being a member of a particular branch or section of that union and to not being a member of one of a number of particular branches or sections of that union.

### **Pressure to impose union membership or recognition requirements**

**19.**—(1) Nothing in Article 15 shall prevent an act being actionable in tort in any case where a person induces, or attempts to induce, another—

- (a) to incorporate in a contract to which that other person is a party, or proposed contract to which that other person intends to be a party, any term or condition which is, or would be, void by virtue of Article 27(1) or 28(1); or
- (b) to contravene Article 27(2) or 28(2);

and the act constitutes, or is one of a number of acts which together constitute, the inducement or attempted inducement.

(2) Nothing in Article 15 shall prevent an act which interferes with the supply (whether or not under a contract) of goods or services, or can reasonably be expected to have such an effect, being actionable in tort in any case where paragraph (3) is satisfied and one of the facts relied upon for the purpose of establishing liability is that any person has—

- (a) induced another to break a contract of employment or interfered or induced another to interfere with its performance; or
- (b) threatened that a contract of employment under which he or another is employed will be broken or its performance interfered with, or that he will induce another to break a contract of employment or to interfere with its performance.

(3) This paragraph is satisfied if—

- (a) the supplier of the goods or services is not the employer under the contract of employment mentioned in paragraph (2); and
- (b) the reason, or one of the reasons, for which the act is done is the fact or belief that the supplier does not, or that the supplier might not, recognise, negotiate or consult as mentioned in Article 28.

### **Industrial action authorised or endorsed by trade union without support of a ballot**

**20.**—(1) Nothing in Article 15 shall prevent an act done by a trade union without the support of a ballot from being actionable in tort (whether or not against the trade union) on the ground that it induced a person to break his contract of employment or to interfere with its performance.

(2) Nothing in Article 15 shall prevent an act done by a trade union from being actionable in tort (whether or not against the trade union) on the ground that it induced a person to break a commercial contract or to interfere with its performance where—

- (a) one of the facts relied upon for the purpose of establishing liability is that the union induced another person to break his contract of employment or to interfere with its performance; and

(b) by virtue of paragraph (1), nothing in Article 15 would prevent the act of inducement referred to in sub-paragraph (a) from being actionable in tort.

(3) Part VI has effect for determining whether an act shall be taken for the purposes of paragraph (1) as having been done with the support of a ballot.

(4) In this Article “commercial contract” means any contract which is not a contract of employment.

*Legal proceedings involving trade unions and employers' associations*

**Actions in tort against trade unions**

**21.**—(1) Where proceedings in tort are brought against a trade union—

- (a) on a ground specified in paragraph (1)(a) or (b) of Article 15; or
- (b) in respect of an agreement or combination by two or more persons to do or to procure the doing of an act which, if it were done without any such agreement or combination, would be actionable in tort on such a ground,

then, for the purpose of determining in those proceedings whether the union is liable in respect of the act in question, that act shall be taken to have been done by the union if, but only if, it was authorised or endorsed by a responsible person.

(2) For the purposes of this Article but subject to paragraph (3), an act shall not be taken to have been authorised or endorsed by a responsible person unless it was authorised or, as the case may be, endorsed—

- (a) by the principal executive committee;
- (b) by any other person who is empowered by the rules to authorise or, as the case may be, endorse acts of the kind in question;
- (c) by the president or general secretary;
- (d) by any other official of the union who is an employed official; or
- (e) by any committee of the union to whom an employed official regularly reports.

(3) An act shall not be taken, by virtue of paragraph (2)(d) or (e) to have been authorised or endorsed by a responsible person if—

- (a) that person was, at the time in question, prevented by the rules from authorising or endorsing acts of the kind in question; or
- (b) the act has been repudiated by the principal executive committee or by the president or general secretary.

(4) For the purposes of paragraph (3)(b), an act shall not be treated as repudiated unless—

- (a) it is repudiated as soon as is reasonably practicable after the purported authorisation or endorsement of the act has come to the knowledge of the principal executive committee or, as the case may be, of the president or general secretary; and
- (b) the person who purported to authorise or endorse the act has been notified in writing and without delay that it has been repudiated.

(5) An act shall not be treated as repudiated, notwithstanding paragraph (4), if at any time after the union concerned purported to repudiate it the principal executive committee or president or general secretary has behaved in a manner which is inconsistent with the purported repudiation.

(6) In this Article—

“employed official”, in relation to a union, means an official who is employed by it;

“rules” means the written rules of the union and any other written provisions forming part of the contract between a member and the other members.

(7) Where, for the purpose of any proceedings, an act is by virtue of this Article taken to have been done by a trade union nothing in this Article shall affect the liability of any other person in those or any other proceedings in respect of that act.

### **Limit on damages awarded against trade unions in actions in tort**

**22.**—(1) Subject to paragraph (2), in any proceedings in tort brought against a trade union the amount which may be awarded against the union by way of damages in those proceedings shall not exceed the appropriate limit.

(2) Paragraph (1) does not apply to any proceedings—

- (a) for any of the following resulting in personal injury to any person, that is to say negligence, nuisance or breach of duty;
- (b) without prejudice to sub-paragraph (a), for breach of duty in connection with the ownership, occupation, possession, control or use of property (whether real or personal); or
- (c) to any proceedings by virtue of Part II of the Consumer Protection (Northern Ireland) Order 1987(16) (product liability).

(3) The appropriate limit is—

- (a) £10,000, if the union has less than 5,000 members;
- (b) £50,000, if it has 5,000 or more members but less than 25,000 members;
- (c) £125,000, if it has 25,000 or more members but less than 100,000 members; and
- (d) £250,000, if it has 100,000 or more members.

(4) The Department may by order vary any of the sums for the time being specified in paragraph (3).

(5) In this Article—

“duty” means a duty imposed by any rule of law or by or under any statutory provision; and  
“personal injury” includes any disease and any impairment of a person’s physical or mental condition.

(6) In calculating for the purposes of this Article the number of members which a trade union has—

- (a) there shall be included members outside Northern Ireland; and
- (b) in any case where a trade union consists wholly or mainly of organisations or representatives of organisations, the members of those organisations shall be treated as members of the union.

### **Recovery of sums awarded in proceedings involving trade unions and employers' associations**

**23.**—(1) Where in any proceedings an amount is awarded by way of damages, costs or expenses—

- (a) against a trade union or employers' association;
- (b) against trustees in whom property is vested in trust for a trade union or employers' association, in their capacity as such and otherwise than in respect of a breach of trust on their part; or

(c) against members or officials of a trade union or employers' association on behalf of themselves and all of the members of the union or association,  
no part of that amount shall be recoverable by enforcement against any protected property.

(2) In this Article “protected property” means any property—

- (a) belonging to the trustees concerned otherwise than in their capacity as such;
- (b) belonging to any member of the union or association concerned otherwise than jointly or in common with the other members;
- (c) belonging to any official of the union or association concerned who is neither a member nor such a trustee;
- (d) comprised in a political fund of the union concerned; or
- (e) comprised in a provident benefits fund of the union concerned.

(3) In paragraph (2)—

“political fund” means a fund which is a political fund for the purposes of Part VIII and which is (and was at the time when the act in respect of which the proceedings are brought was done) subject to rules of the union which prevent property which is or has been comprised in the fund from being used for financing strikes or other industrial action;

“provident benefits” includes any payment, expressly authorised by the rules of the union, which is made to a member during sickness or incapacity from personal injury or while out of work, or to an aged member by way of superannuation, or to a member who has met with an accident or has lost his tools by fire or theft, and includes a payment in discharge or aid of funeral expenses on the death of a member or the wife of a member, or as provision for the children of a deceased member; and

“provident benefits fund” means a separate fund which is maintained in accordance with the rules of the union for the purpose only of providing provident benefits.

#### *Restrictions on powers of court*

#### **Court not to compel employee to work**

24. No court shall, whether by way of—

- (a) an order for specific performance of a contract of employment; or
- (b) an injunction restraining a breach or threatened breach of such a contract,

compel an employee to do any work or attend at any place for the doing of any work.

#### **Restrictions on grant of injunctions by court**

25.—(1) Where an application for an injunction is made to a court in the absence of the party against whom the injunction is sought or any representative of his, and that party claims, or in the opinion of the court would be likely to claim, that he acted in contemplation or furtherance of a trade dispute, the court shall not grant the injunction unless satisfied that all steps which in the circumstances were reasonable have been taken with a view to securing that notice of the application and an opportunity of being heard with respect to the application have been given to that party.

(2) Where an application is made to a court, pending the trial of an action, for an interlocutory injunction and the party against whom the injunction is sought claims that he acted in contemplation or furtherance of a trade dispute, the court shall, in exercising its discretion whether or not to grant the injunction, have regard to the likelihood of that party's succeeding at the trial of the action in

establishing the matter or matters which would, under any provision of Article 15 or 16 afford a defence to the action.

*Enforceability of collective agreements*

**Enforceability of collective agreements**

**26.**—(1) Subject to paragraph (3), any collective agreement (whether made before or after the coming into operation of this Article) shall be conclusively presumed not to have been intended by the parties to be a legally enforceable contract unless the agreement—

- (a) is in writing; and
- (b) contains a provision which (however expressed) states that the parties intended that the agreement shall be a legally enforceable contract.

(2) Any such agreement which satisfies the conditions in paragraph (1)(a) and (b) shall be conclusively presumed to have been intended by the parties to be a legally enforceable contract.

(3) If any such agreement is in writing and contains a provision which (however expressed) states that the parties intend that one or more parts of the agreement specified in that provision, but not the whole of the agreement, shall be a legally enforceable contract, then—

- (a) the specified part or parts shall be conclusively presumed to have been intended by the parties to be a legally enforceable contract; and
- (b) the remainder of the agreement shall be conclusively presumed not to have been intended by the parties to be such a contract, but a part of an agreement which by virtue of this sub-paragraph is not a legally enforceable contract may be referred to for the purpose of interpreting a part of that agreement which is such a contract.

(4) Notwithstanding anything in paragraphs (2) and (3), any terms of a collective agreement (whether made before or after the coming into operation of this Article) which prohibit or restrict the right of workers to engage in a strike or other industrial action, or have the effect of prohibiting or restricting that right, shall not form part of any contract between any worker and the person for whom he works unless the collective agreement—

- (a) is in writing; and
- (b) contains a provision expressly stating that those terms shall or may be incorporated in such a contract; and
- (c) is reasonably accessible at his place of work to the worker to whom it applies and is available for him to consult during working hours; and
- (d) is one where each trade union which is a party to the agreement is an independent trade union;

and unless the contract with that worker expressly or impliedly incorporates those terms in the contract.

(5) Paragraph (4) shall have effect notwithstanding any provision to the contrary in any agreement (including a collective agreement or a contract with any worker).

*Union membership or recognition requirements in contracts*

**Prohibition on union membership requirements**

**27.**—(1) Any term or condition of a contract for the supply of goods or services is void in so far as it purports—

- (a) to require that the whole, or some part, of the work done for the purposes of the contract is to be done only by persons who are not members of trade unions or not members of a particular trade union; or
  - (b) to require that the whole, or some part, of such work is to be done only by persons who are members of trade unions or members of a particular trade union.
- (2) A person contravenes this paragraph if, on the ground of union membership, he—
- (a) fails, in a case where he maintains (in whatever form) a list of approved suppliers of goods or services or a list of persons from whom tenders for the supply of goods or services may be invited, to include the name of a particular person in that list;
  - (b) terminates a contract for the supply of goods or services; or
  - (c) does, in relation to a proposed contract for the supply of goods or services, any of the acts mentioned in paragraph (3).
- (3) The acts are—
- (a) excluding a particular person from the group of persons from whom tenders for the supply of the goods or services are invited;
  - (b) failing to permit a particular person to submit such a tender;
  - (c) otherwise determining not to enter into a contract with a particular person for the supply of the goods or services.
- (4) For the purposes of paragraph (2)(a), a person (the “first person”) fails to include the name of another person (the “supplier”) in a list, on the ground of union membership, if the ground, or one of the grounds, for failing to include his name is either—
- (a) that, if the supplier were to enter into a contract with the first person for the supply of goods or services, work to be done for the purposes of the contract would, or would be likely to, be done by persons who were not members of trade unions or of a particular trade union; or
  - (b) that, if the supplier were to enter into such a contract, work to be done for the purposes of the contract would, or would be likely to, be done by persons who were members of trade unions or of a particular trade union.
- (5) For the purposes of paragraph (2)(b), a person terminates a contract on the ground of union membership if the ground, or one of the grounds, for terminating it is either—
- (a) that work done, or to be done, for the purposes of the contract has been, or is likely to be, done by persons who are not members of trade unions or of a particular trade union; or
  - (b) that work done, or to be done, for the purposes of the contract has been, or is likely to be, done by persons who are members of trade unions or of a particular trade union.
- (6) For the purposes of paragraph (2)(c), a person does an act on the ground of union membership if the ground, or one of the grounds, on which he does that act is either—
- (a) that, if the proposed contract were entered into with the person referred to in paragraph (3), work to be done for the purposes of the contract would, or would be likely to, be done by persons who are not members of trade unions or of a particular trade union; or
  - (b) that, if the proposed contract were entered into with that person, work to be done for the purposes of the contract would, or would be likely to, be done by persons who are members of trade unions or of a particular trade union.
- (7) Paragraph (2) does not create an offence but the obligation to comply with it is a duty owed to each of the following—
- (a) in a case falling within paragraph (2)(a), the person referred to in paragraph (4) as the supplier;
  - (b) in a case falling within paragraph (2)(b), any other party to the contract;

(c) in a case falling within paragraph (2)(c), the person referred to in paragraph (3); and  
 (d) in any case, any other person who may be adversely affected by its contravention;  
 and any breach of that duty shall be actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).

### **Prohibition on union recognition requirements**

**28.**—(1) Any term or condition of a contract for the supply of goods or services is void in so far as it purports to require any party to the contract—

- (a) to recognise one or more trade unions (whether or not named in the contract) for the purpose of negotiating on behalf of workers, or any class of worker, employed by him; or
- (b) to negotiate or consult with, or with any official of, one or more trade unions (whether or not so named).

(2) A person contravenes this paragraph if, on the ground of union exclusion, he acts in a manner falling within paragraph (2)(a), (b) or (c) of Article 27.

(3) For the purposes of paragraph (2), a person acts on the ground of union exclusion if the ground or one of the grounds for his action is that the person against whom it is taken does not, or is not likely to, recognise, negotiate or consult as mentioned in paragraph (1).

(4) Paragraph (2) does not create an offence but the obligation to comply with it is a duty owed to each of the following—

- (a) the person against whom the action is taken; and
- (b) any other person who may be adversely affected by the contravention,

and any breach of that duty shall be actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).

## **PART IV**

### **RIGHTS OF TRADE UNION MEMBERS**

#### **Right not to be unreasonably excluded or expelled from trade union membership**

**29.**—(1) This Article applies to employment by an employer with respect to which it is the practice, in accordance with a union membership agreement, for the employee to belong to a specified trade union or one of a number of specified trade unions.

(2) Every person who is, or is seeking to be, in employment to which this Article applies shall have the right—

- (a) not to have an application for membership of a specified trade union unreasonably refused;
- (b) not to be unreasonably expelled from a specified trade union.

(3) The rights conferred by paragraph (2) are in addition to and not in substitution for any right which exists apart from that paragraph; and, without prejudice to any remedy for infringement of any such other right, the remedies for infringement of a right conferred by that paragraph shall be those provided by the following provisions of this Article and Article 30.

(4) A complaint may be presented to an industrial tribunal against a trade union by a person that an application by him for membership of the union has been unreasonably refused, or that he has been unreasonably expelled from the union, in contravention of paragraph (2).

(5) On a complaint under this Article, the question whether a trade union has acted reasonably or unreasonably shall be determined in accordance with equity and the substantial merits of the



case, and in particular a union shall not be regarded as having acted reasonably only because it has acted in accordance with the requirements of its rules or unreasonably only because it has acted in contravention of them.

(6) A tribunal shall not entertain a complaint under this Article unless it is presented to the tribunal before the end of the period of six months beginning with the date of the refusal or expulsion, as the case may be, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of six months.

(7) Where a tribunal finds that a complaint under this Article is well-founded, the tribunal shall make a declaration to that effect.

(8) Without prejudice to Article 31 of the Industrial Training (Northern Ireland) Order 1984(17) (appeal to Court of Appeal on a point of law), an appeal shall lie to the High Court on any question of fact arising from any decision of, or arising in any proceedings before, an industrial tribunal under this Article.

(9) For the purposes of this Article and Article 30—

- (a) if an application for membership of a trade union has been neither granted nor rejected before the end of the period within which it might reasonably have been expected to be granted if it was to be granted, the application shall be treated as having been refused on the last day of that period; and
- (b) if under the rules of a trade union any person ceases to be a member of the union on the happening of an event specified in the rules, he shall be treated as having been expelled from the union.

(10) In this Article “union membership agreement” has the same meaning as in the No. 1 Order and any reference in this Article or Article 30 to a trade union includes a reference to a branch or section of a trade union.

(11) Any provision in an agreement shall be void in so far as it purports to exclude or limit the operation of, or to preclude any person from presenting a complaint or making an application under, this Article or Article 30; but this paragraph shall not apply to an agreement to refrain from instituting or continuing proceedings where the Agency has taken action in accordance with Article 62(2) or (5) of the No. 1 Order.

### **Compensation for infringement of right under Article 29**

**30.**—(1) A person who has made a complaint against a trade union under Article 29 which has been declared to be well-founded may make an application to an industrial tribunal for an award of compensation to be paid to him by the union.

(2) An industrial tribunal shall not entertain an application for compensation under this Article if it is made before the end of the period of four weeks beginning with the date of the declaration under Article 29 or after the end of the period of six months beginning with that date.

(3) Subject to the following provisions of this Article, the amount of compensation awarded on an application under this Article—

- (a) if at the time when the application is made the applicant has been admitted or re-admitted to membership of the union against which he made the complaint, shall be such as the tribunal considers appropriate for the purpose of compensating the applicant for the loss sustained by him in consequence of the refusal or expulsion which was the subject of his complaint; and

(b) if at that time he has not been so admitted or re-admitted, shall be such as the tribunal considers just and equitable in all the circumstances.

(4) In determining the amount of compensation to be awarded under this Article, the industrial tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of Northern Ireland.

(5) Where the industrial tribunal finds that the refusal or expulsion which was the subject of the applicant's complaint was to any extent caused or contributed to by any action of the applicant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

(6) Subject to paragraph (8), the amount of compensation awarded by an industrial tribunal under paragraph (3)(a) shall not exceed the aggregate of—

- (a) an amount equal to thirty times the limit for the time being imposed by Article 35(4) of the No. 1 Order (maximum amount of a week's pay for purpose of calculating basic award in unfair dismissal cases); and
- (b) an amount equal to the limit for the time being imposed by Article 37 of that Order (maximum compensatory award in such cases).

(7) Subject to paragraph (8), the amount of compensation awarded by an industrial tribunal under paragraph (3)(b) shall not exceed the aggregate of—

- (a) the amount referred to in paragraph (6)(a);
- (b) the amount referred to in paragraph (6)(b); and
- (c) an amount equal to fifty-two times the limit for the time being imposed by Article 32(8) of the No. 1 Order (maximum amount of a week's pay for purpose of calculating additional award of compensation in unfair dismissal cases),

and shall not be less than the amount for the time being specified in Article 34(5A) of that Order (minimum basic award in certain cases of unfair dismissal).

(8) In determining the amount of any compensation to be awarded against a trade union on an application under this Article, any reduction or increase which is required to be made by virtue of paragraph (6) or (7) shall be made—

- (a) before any reduction is made by virtue of paragraph (4) or (5); and
- (b) before any reduction is made on account of sums already paid by the union by way of compensation in respect of the subject matter of the application;

and, accordingly, where the case so requires, the reductions mentioned in sub-paragraphs (a) and (b) shall be applied to the maximum or, as the case may be, minimum award under paragraph (6) or (7).

### **Right to terminate membership of trade union**

**31.** In every contract of membership of a trade union, whether made before or after the appointed day, there shall be implied a term conferring a right on the member, on giving reasonable notice and complying with any reasonable conditions, to terminate his membership of the union.

### **Right to a ballot before industrial action**

**32.—**(1) A member of a trade union who claims that the union has, without the support of a ballot, authorised or endorsed any industrial action in which members of the union (including that member) are likely to be, or have been, induced by the union to take part or to continue to take part may apply to the High Court for an order under this Article.

(2) Where, on an application under this Article, the High Court is satisfied—

- (a) that a trade union has, without the support of a ballot, authorised or endorsed any industrial action;
- (b) that (whether or not the action has already commenced) members of the union are likely to be, or have been, induced by the union to take part or to continue to take part in that action; and
- (c) that the members of the union who are likely to be, or have been, so induced include the applicant,

the court shall make such order as it considers appropriate for requiring the union to take steps (including the withdrawal of any relevant authorisation or endorsement) for ensuring that there is no, or no further, inducement of members of the union to take part or to continue to take part in that action and that no such member engages in any conduct after the making of the order by virtue of having been induced before the making of the order to take part or to continue to take part in the action.

(3) For the purposes of this Article a trade union has authorised or endorsed any industrial action if there has been—

- (a) such an authorisation or endorsement of an act which has been done for inducing any member of the union to take part or to continue to take part in that action; or
- (b) such an authorisation of any proposed act for inducing such a member to take part or to continue to take part in that action,

as requires that member, or if the act were done would require that member, to be treated for the purposes of this Article as induced by the union to take part or, as the case may be, to continue to take part in that action.

(4) For the purposes of this Article a person shall be treated as induced by a trade union to take part or to continue to take part in any industrial action if he is subjected to such an inducement to take part or to continue to take part in that action as is or (if it constituted an inducement to break a contract of employment or to interfere with the performance of such a contract) would be taken, for the purposes of any such proceedings as are mentioned in Article 21(1) to have been done by the union.

(5) For the purposes of an application under this Article an authorisation or endorsement by a trade union of any industrial action is without the support of a ballot unless—

- (a) the trade union has held one or more ballots in respect of that action;
- (b) the applicant has been accorded entitlement to vote in the ballot or, as the case may be, in one of them;
- (c) Article 45 has been satisfied in relation to the ballot in which the applicant was accorded entitlement to vote;
- (d) the majority voting in that ballot have answered “Yes”—
  - (i) in the case of action which consists in a strike, to a question (however framed) which requires the person answering it to say, by answering “Yes” or “No”, whether he is prepared to take part or, as the case may be, to continue to take part in a strike;
  - (ii) in the case of action which consists in action short of a strike, to a question (however framed) which requires the person answering it to say, by answering “Yes” or “No”, whether he is prepared to take part or, as the case may be, to continue to take part in such action;
  - (iii) in the case of action which consists in action to which both of the questions mentioned in heads (i) and (ii) are applicable, to the question or questions applicable to that part of the action in which the applicant is likely to be, or has been, induced to take part or to continue to take part; and

- (e) the first authorisation or endorsement of that industrial action and, in the case of any action which has been authorised rather than endorsed, the commencement of the action occurred or is likely to occur at a time after the date on which that ballot was held and before the end of the period of four weeks beginning with that date.
- (6) Without prejudice to any power conferred on the High Court otherwise than by virtue of this Article, the court shall have power, on an application under this Article, to grant any such interlocutory relief as it considers appropriate.
- (7) In this Article references to an inducement, in relation to a member of a trade union, include references to an inducement which is or would be ineffective, whether because of that member's unwillingness to be influenced by it or for any other reason.
- (8) In this Article and the following provisions of this Part "member", in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes any member of any of the constituent or affiliated organisations.
- (9) In this Article "industrial action" means any strike or other industrial action by persons employed under contracts of employment.
- (10) Nothing in this Article shall be construed as requiring a trade union to hold separate ballots for the purposes of this Article and for the purposes of Part VI.

**Right not to be denied access to the courts, etc.**

**33.**—(1) Notwithstanding anything in the rules of any trade union or in the practice of any court, where—

- (a) a person who is or has been a member of a trade union commences proceedings in any court with respect to any relevant matter;
- (b) that person has previously made a valid application to the union for that matter to be submitted for determination or conciliation in accordance with the union's rules; and
- (c) those proceedings are commenced after the end of the period of six months beginning with the day on which the union received the application,

the rules requiring or allowing that matter to be so submitted and the fact that any steps remain to be taken for the purposes of, or in connection with, the determination or conciliation of that matter shall be regarded for all purposes as irrelevant to any question whether those proceedings should be dismissed, stayed or adjourned.

(2) If a court is satisfied in any proceedings with respect to any relevant matter that any delay in the taking of steps for the purposes of, or in connection with, the determination or conciliation of that matter in accordance with the rules of any trade union was attributable to the unreasonable conduct of the person who commenced the proceedings, the court may, in relation to those proceedings, treat the period of six months specified in sub-paragraph (c) of paragraph (1) as extended by such further period as the court considers appropriate.

(3) Where any person has made an invalid application to a trade union for any relevant matter to be submitted for determination or conciliation in accordance with the union's rules, the application shall be deemed to be valid for the purposes of paragraph (1) unless the union informs that person, before the end of the period of twenty-eight days beginning with the day on which the union received the application, of all the respects in which the application contravened the requirements of those rules.

(4) For the purposes of this Article a matter is a relevant matter, in relation to a person who is or has been a member of a trade union, if—

- (a) it is required or allowed under the rules of the union to be submitted for determination or conciliation in accordance with those rules; and

- (b) a provision of the rules purporting to provide for such a determination or conciliation to be that person's only remedy in respect of that matter has no effect or, as the case may be, would have no effect if there were one.
- (5) In this Article—
  - (a) references, in relation to a trade union, to its rules include references to any arbitration or other agreement entered into in pursuance of any requirement imposed by or under the rules of the union; and
  - (b) references to the taking of steps for the purposes of, or in connection with, the determination or conciliation of any matter which has been submitted for determination or conciliation in accordance with the rules of a trade union include references to the taking of any steps for the purposes of, or in connection with, any appeal, review or reconsideration under those rules of any determination or award made on that submission.
- (6) This Article shall be without prejudice to any statutory provision or rule of law by virtue of which a court would, apart from this Article, disregard any rules of a trade union, or any such fact as is mentioned in paragraph (1), when determining whether to exercise any jurisdiction of the court or when determining how to exercise any such jurisdiction.

### **Right not to be unjustifiably disciplined**

**34.—**(1) An individual who is or has at any time been a member of a trade union shall have the right not to be unjustifiably disciplined by that union.

(2) For the purposes of this Article and Articles 35 and 36 an individual who is disciplined by a trade union is unjustifiably disciplined if the actual or supposed conduct which constitutes the reason, or one of the reasons, for disciplining him is—

- (a) conduct falling within paragraph (3); or
  - (b) something which is believed by the union to amount to any such conduct.
- (3) Conduct by an individual falls within this paragraph if—
- (a) it consists in a failure to participate in or support any strike or other industrial action (whether by members of the trade union in question or by others) or indicates opposition to, or a lack of support for, any such strike or industrial action;
  - (b) it consists in a failure to contravene, for any purpose connected with any such strike or other industrial action, any requirement imposed on that individual by or under a contract of employment or any other agreement between that individual and a person for whom he works or normally works;
  - (c) it consists in the making (whether by the bringing of proceedings or otherwise) of any assertion that the union, any official or representative of the union or any trustee of any of the union's property has contravened, or is proposing to contravene, any requirement which is, or is thought to be, imposed by or under the rules of the union or any other agreement or by or under any statutory provision (including this Order) or rule of law;
  - (d) it consists in encouraging or assisting any person to perform an obligation imposed on that person by a contract of employment or any other agreement between that person and a person for whom he works or normally works or to make or to attempt to vindicate any such assertion as is mentioned in sub-paragraph (c);
  - (e) it involves the Commissioner or the Certification Officer being consulted or asked to provide advice or assistance with respect to any matter whatever or involves any other person being consulted or asked to provide advice or assistance with respect to a matter which forms, or might form, the subject matter of any such assertion as is mentioned in sub-paragraph (c);

- (f) it consists in a contravention of any requirement imposed by or in consequence of any determination constituting an infringement of the right under this Article of that individual or of any other individual; or
- (g) it consists in proposing to engage in conduct falling within any of sub-paragraphs (a) to (f) or in doing anything preparatory or incidental to engaging in any such conduct;

but an act or statement by any individual does not fall within this paragraph by reason of its being comprised in conduct falling within any of sub-paragraphs (a) to (g) if it is shown that that act or statement is one in respect of which individuals would be disciplined by the union irrespective of whether their acts or statements were in connection with conduct falling within any of sub-paragraphs (a) to (f).

(4) An individual who has been disciplined by a trade union shall not be treated for the purposes of this Article and Articles 35 and 36 as having been unjustifiably disciplined if it is shown—

- (a) that the reason or one of the reasons for disciplining him was that he made any such assertion as is mentioned in paragraph (3)(c) or encouraged or assisted any other person to make or to attempt to vindicate any such assertion;
- (b) that that assertion was false and that, in making it or, as the case may be, in encouraging or assisting any other person to make or to attempt to vindicate it, that individual acted either in the belief that it was false or otherwise in bad faith; and
- (c) that there was no other reason for disciplining him or that the only other reasons were reasons in respect of which he does not fall to be treated for those purposes as having been unjustifiably disciplined.

(5) For the purposes of this Article and Articles 35 and 36 an individual is disciplined by a trade union if a determination is made, or purportedly made, under the rules of the union or is made by an official of the union or by a number of persons including such an official—

- (a) that that individual should be expelled from the union or from any branch or section of the union;
- (b) that that individual should pay any sum to the union, to any branch or section of the union or to any other person whatever;
- (c) that sums tendered by that individual in respect of any obligation to pay subscriptions or other sums to the union, or to any branch or section of the union, should be treated as unpaid or as paid for a different purpose;
- (d) that that individual should be deprived (whether indefinitely or for a specified period and whether in all circumstances or only in particular circumstances) of, or of access to, any of the benefits, services or facilities which would otherwise be provided or made available to him by virtue of his membership of the union, or of any branch or section of the union;
- (e) that another trade union, or a branch or section of another trade union, should be encouraged or advised not to accept that individual as a member; or
- (f) that that individual should be subjected to any other detriment.

(6) In this Article “representative”, in relation to a trade union, means any person acting or purporting to act—

- (a) in his capacity as a member of the union; or
- (b) on the instructions or advice of a person acting or purporting to act in that capacity or in the capacity of an official of the union.

(7) The right conferred by this Article is in addition to (and not in substitution for) any right which exists otherwise than by virtue of this Article; and, without prejudice to any remedy for the infringement of any such other right and subject to paragraph (8), the only remedies for any infringement of the right conferred by this Article shall be those provided by Articles 35 and 36.

(8) Where a determination made in infringement of any individual's right under this Article requires the payment of any sum or the performance of any other obligation, no person shall be entitled in any proceedings to rely on that determination for the purpose of recovering that sum or of enforcing that obligation.

#### **Complaint of infringement of right under Article 34**

**35.**—(1) An individual who claims that he has been unjustifiably disciplined by a trade union may present a complaint against the union to an industrial tribunal that his right under Article 34 has been infringed.

(2) A tribunal shall not entertain a complaint presented by any individual against a trade union under this Article unless it is presented to the tribunal before the end of the period of three months beginning with the date of the making of the determination which the individual claims constituted an infringement of his right or within such further period as the tribunal considers reasonable in a case where it is satisfied as to one or both of the matters mentioned in paragraph (3).

(3) The matters referred to in paragraph (2) are—

- (a) that it was not reasonably practicable for the complaint to be presented before the end of the period of three months; and
- (b) that any delay in the making of the complaint is wholly or partly attributable to any reasonable attempt, otherwise than under this Article, to appeal against the determination to which the complaint relates or to have that determination reconsidered or reviewed.

(4) Where, on a complaint presented by any individual against a trade union under this Article, the tribunal finds that that individual has been unjustifiably disciplined by that union, the tribunal shall make a declaration that the complaint is well-founded.

(5) Where an individual who is, or is seeking to be, in employment to which Article 29 applies is refused membership of, or is expelled from, a trade union in pursuance of a determination which constitutes an infringement of his right under Article 34—

- (a) that individual shall not be entitled to present any complaint under this Article in respect of that determination; but
- (b) the refusal or expulsion shall be regarded as unreasonable for the purposes of Article 29.

(6) Any provision in an agreement shall be void in so far as it purports—

- (a) to exclude or limit the right conferred by Article 34 or the operation of this Article or Article 36; or
- (b) to preclude any individual from presenting a complaint under this Article or from making an application under Article 36,

but this paragraph shall not apply to an agreement to refrain from instituting or continuing proceedings where the Agency has taken action in accordance with Article 62(2) or (5) of the No. 1 Order.

#### **Further remedies for infringement of right under Article 34**

**36.**—(1) An individual whose complaint against a trade union under Article 35 has been declared to be well-founded may make an application to an industrial tribunal for one or both of the following, that is to say—

- (a) an award of compensation to be paid to him by the union; and
- (b) an order that the union pay to him an amount equal to any sum which he has paid in pursuance of a determination falling within paragraph (5)(b) of Article 34.

(2) An industrial tribunal shall not entertain an application under this Article if it is made before the end of the period of four weeks beginning with the date of the declaration under Article 35 or after the end of the period of six months beginning with that date.

(3) Subject to the following provisions of this Article, the amount of compensation awarded on an application under this Article shall be such as the industrial tribunal considers just and equitable in all the circumstances.

(4) In determining the amount of compensation to be awarded under this Article, the industrial tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of Northern Ireland.

(5) Where the industrial tribunal finds that the infringement which is the subject matter of the application was to any extent caused or contributed to by any action of the applicant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

(6) The amount of compensation awarded against a trade union on an application under this Article shall not exceed the aggregate of—

- (a) an amount equal to thirty times the limit for the time being imposed by Article 35(4) of the No. 1 Order (maximum amount of a week's pay for purpose of calculating basic award in unfair dismissal cases); and
- (b) an amount equal to the limit for the time being imposed by Article 37 of that Order (maximum compensatory award in such cases),

and, in the case of an application to which paragraph (7) applies shall not be less than the amount for the time being specified in Article 34(5A) of that Order (minimum basic award in certain cases of unfair dismissal).

(7) This paragraph applies to an application under this Article if at the time when the application is made—

- (a) the determination constituting the infringement of the applicant's right under Article 34 has not been revoked; or
- (b) the trade union in question has failed to take all such steps as are necessary for securing the reversal of anything done for the purpose of giving effect to that determination.

(8) In determining the amount of any compensation to be awarded against a trade union on an application under this Article any reduction or increase which is required to be made by virtue of paragraph (6) shall be made—

- (a) before any reduction is made by virtue of paragraph (4) or (5); and
- (b) before any reduction is made on account of sums already paid by the union by way of compensation in respect of the determination to which the application relates or in respect of anything done for the purpose of giving effect to that determination;

and, accordingly, where the case so requires, the reductions mentioned in sub-paragraphs (a) and (b) shall be applied to the maximum or, as the case may be, minimum award under paragraph (6).

### **Right to inspect union's accounting records**

**37.**—(1) It shall be the duty of a trade union to keep its accounting records available for inspection in pursuance of this Article from their creation until the end of the period of six years beginning with the 1st January following the end of the period to which the records relate.

(2) Where—

- (a) at a time when a trade union is required under paragraph (1) to keep any accounting records available for inspection, any person who is a member of the union makes a request to the union to be allowed access to any of those records; and



- (b) none of the records that are the subject matter of the request relates to a period other than one which includes a time when that person was a member of the union,

it shall be the duty of the union to comply with the request in accordance with paragraph (3) and, if the period mentioned in paragraph (1) expires before the request is complied with, to continue to keep those records available for inspection by that person until the request is complied with.

- (3) The trade union shall perform its duty to comply with a request under paragraph (2)—

- (a) by making arrangements with the person who made the request for that person to be allowed, before the end of the period of twenty-eight days beginning with the day on which the request was made, to inspect the records which are the subject matter of the request;
- (b) by allowing that person and any accountant who may accompany him for the purpose to inspect those records at the time and place arranged; and
- (c) by securing that at the time of the inspection that person is allowed to take, or is supplied with, such copies of, or of extracts from, any records inspected by him as he may require.

(4) Except where the parties to any arrangements made under paragraph (3) otherwise agree, an inspection under any such arrangements of any accounting records shall be at a reasonable hour and at the place where the records are normally kept.

(5) A trade union shall not be required to allow a person inspecting any accounting records under this Article to be accompanied by an accountant if the accountant fails to enter into such agreement as the union may reasonably require for protecting the confidentiality of the records.

- (6) Where—

- (a) a trade union complies with a request made by any person under paragraph (2); and
- (b) that person had been informed by the union, before any arrangements were made in pursuance of that request—
  - (i) of the union's intention to charge for allowing that person to inspect the records to which the request relates, for allowing that person to take any copies of, or of extracts from, those records or for supplying any such copies; and
  - (ii) of the principles in accordance with which its charges will be determined,

that person shall be liable to pay to the union on demand such amount, not exceeding the reasonable administrative expenses incurred by the union in complying with the request, as is determined in accordance with the principles of which that person was so informed.

(7) Any person who claims that a trade union has failed in any respect to comply with a request made by that person under paragraph (2) may apply to the High Court for an order under this Article; and where, on such an application, the court is satisfied that a trade union has failed to comply with any such request, the court shall make such order as it considers appropriate for ensuring that that person—

- (a) is allowed to inspect the records which are the subject matter of the request;
- (b) is allowed to be accompanied by an accountant when making an inspection of those records; and
- (c) is allowed to take, or is supplied with, such copies of, or of extracts from, those records as he may require.

(8) Without prejudice to any power conferred on the High Court otherwise than by virtue of this Article, the court shall have power, on an application under this Article, to grant any such interlocutory relief as it considers appropriate.

(9) Article 13 shall apply in relation to the duties to keep accounting records available for inspection which are imposed on trade unions by paragraphs (1) and (2) as it applies in relation to the duties imposed on trade unions by Articles 10, 11 and 12.

(10) In this Article—

- (a) references to accounting records, in relation to a trade union, are references to such of the documentary and non-documentary accounting records of that union, or of any branch or section of that union, as are, or purport to be, records which are required to be kept by the union under Article 10 and which relate to any period beginning after 31st December 1991;
- (b) references to a trade union do not include references to a trade union falling within sub-paragraph (b) of Article 3(1) which consists wholly of constituent or affiliated organisations, of representatives of such organisations or of such organisations together with representatives of constituent or affiliated organisations; and
- (c) references to an accountant, in relation to the inspection of any accounting records, are references to any person who, at the time of the inspection, is qualified under paragraph 6 of Schedule 1 to be the auditor of a trade union.

(11) Nothing in this Article shall be construed as preventing a duty to comply with a request made in relation to the accounting records of a branch or section of a trade union from arising where the request is made by a person who, although he was a member of the union at the time of his request and at a time during the period to which the records relate, was not a member of that branch or section at one or both of those times.

#### **Right to require employer to stop deductions of union subscriptions**

**38.**—(1) Where any person (“the employee”) has certified to his employer—

- (a) that there has been or will be, as from a particular date, such a termination of his membership of any trade union as is within the knowledge of the union; or
- (b) that any notice which he has given to a trade union for the purpose of terminating his membership of that union has expired or will expire on a particular date,

the employer shall ensure that no amount representing a payment to the union in respect of the employee’s membership after that date of that union is deducted from emoluments payable by the employer to the employee.

(2) Paragraph (1) does not apply in relation to emoluments paid—

- (a) before the first day following the giving of the certificate on which it is reasonably practicable for the employer to give effect, in compliance with that paragraph, to a variation of the net amount of emoluments payable to the employee; or
- (b) after the employee notifies his employer that the certificate is withdrawn.

(3) Notwithstanding anything in any contract between the employee and the employer, or in any agreement or consent signified by the employee, a deduction made in contravention of this Article shall in all cases be treated for the purposes of Part II of the Wages (Northern Ireland) Order 1988(18) as a deduction in contravention of Article 3 of that Order.

## PART V

### DISCLOSURE OF INFORMATION

#### **General duty of employers to disclose information**

**39.**—(1) For the purposes of all the stages of collective bargaining between an employer and representatives of an independent trade union about matters and in relation to descriptions of workers

in respect of which the trade union is recognised by that employer, it shall be the duty of the employer, subject to Article 40, to disclose to those representatives on request all such information relating to his undertaking as is in his possession, or that of any associated employer, and is both—

- (a) information without which the trade union representatives would be to a material extent impeded in carrying on with him such collective bargaining; and
- (b) information which it would be in accordance with good industrial relations practice that he should disclose to them for the purposes of collective bargaining.

(2) In this Part—

“recognised”, in relation to a trade union, means recognised by an employer to any extent for the purpose of collective bargaining;

“representative”, in relation to a trade union, means an official or other person authorised by the trade union to carry on such collective bargaining as is referred to in paragraph (1).

(3) Where a request for information is made by trade union representatives under this Article, the request shall, if the employer so requests, be in writing or be confirmed in writing.

(4) In determining, for the purposes of paragraph (1)(b), what would be in accordance with good industrial relations practice, regard shall be had to the relevant provisions of any Code of Practice issued by the Agency under Article 90, but not so as to exclude any other evidence of what that practice is.

(5) Where an employer is required by virtue of this Article to disclose any information to trade union representatives, the disclosure of it shall, if they so request, be in writing or be confirmed in writing.

(6) Except as provided by paragraph (7), any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Part;
- (b) to preclude any person from making any reference, claim or complaint under this Part.

(7) Paragraph (6) does not apply to any agreement such as is referred to in Article 43(6)(b) or (c) to the extent that it varies or supersedes an award under that Article.

### **Restrictions on general duty under Article 39**

**40.**—(1) No employer shall, by virtue of Article 39, be required to disclose—

- (a) any information the disclosure of which would be against the interests of national security, public safety or public order; or
- (b) any information which he could not disclose without contravening a prohibition imposed by or under a statutory provision; or
- (c) any information which has been communicated to the employer in confidence, or which the employer has otherwise obtained in consequence of the confidence reposed in him by another person; or
- (d) any information relating specifically to an individual, unless he has consented to its being disclosed; or
- (e) any information the disclosure of which would cause substantial injury to the employer’s undertaking for reasons other than its effect on collective bargaining; or
- (f) any information obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings;

and in formulating the provisions of any Code of Practice under Article 90 relating to the disclosure of information, the Agency shall have regard to the provisions of this paragraph.

- (2) In the performance of his duty under Article 39 an employer shall not be required—
- (a) to produce, or allow inspection of, any document (other than a document prepared for the purpose of conveying or confirming the information) or to make a copy of or extracts from any document; or
  - (b) to compile or assemble any information where the compilation or assembly would involve an amount of work or expenditure out of reasonable proportion to the value of the information in the conduct of collective bargaining.

(3) In the application of this Article in relation to Crown employment in accordance with Article 105(3), the reference in paragraph (1)(e) to the employer's undertaking shall be construed as a reference to the national interest.

### **Complaint of failure to disclose information**

**41.**—(1) An independent trade union may refer to the Agency, in writing in such form as the Agency may require, a complaint that an employer has failed to disclose to representatives of that trade union information which he was required to disclose to them by Article 39, or to confirm any such information in writing in accordance with paragraph (5) of that Article.

(2) If on receipt of such a complaint the Agency is of the opinion that the complaint is reasonably likely to be settled by conciliation, it shall seek to promote a settlement of the matter.

(3) Where the complaint is not settled or withdrawn and the Agency is of the opinion that—

- (a) the complaint is not reasonably likely to be settled by conciliation; or
- (b) that further attempts at conciliation are unlikely to result in a settlement,

the Agency shall refer the complaint to the Industrial Court.

(4) The Industrial Court shall hear and determine the complaint and shall make a declaration stating whether it finds the complaint well-founded, wholly or in part, and stating the reasons for its finding.

(5) On the hearing of a complaint under this Article any person who the Industrial Court considers has a proper interest in the complaint shall be entitled to be heard by the Court, but a failure to accord a hearing to a person other than the trade union and employer directly concerned shall not affect the validity of any decision of the Court in those proceedings.

(6) If the Industrial Court finds the complaint wholly or partly well-founded, the declaration shall specify—

- (a) the information in respect of which the Court finds that the complaint is well-founded;
- (b) the date (or, if more than one, the earliest date) on which the employer refused or failed to disclose, or, as the case may be, to confirm in writing, any of the information specified under sub-paragraph (a); and
- (c) a period (not being less than one week from the date of the declaration) within which the employer ought to disclose, or, as the case may be, to confirm in writing, the information specified under sub-paragraph (a).

(7) On a hearing of a complaint under this Article a certificate signed by or on behalf of the Secretary of State and certifying that a particular request for information could not be complied with except by disclosing information the disclosure of which would have been against the interests of national security, public safety or public order shall be conclusive evidence of that fact; and a document which purports to be such a certificate shall be taken to be such a certificate unless the contrary is proved.

### **Further complaint arising from failure to disclose information**

**42.**—(1) At any time after the expiration of the period specified in a declaration under Article 41(6)(c) the trade union may refer to the Agency in writing in such form as the Agency may require, a complaint (hereafter in this Article and Article 43 referred to as a “further complaint”) that the employer has failed to disclose, or, as the case may be, to confirm in writing, to representatives of that union information specified in the declaration under Article 41(6)(a).

(2) On receipt of a further complaint the Agency shall refer the complaint to the Industrial Court which shall proceed to hear and determine the complaint and shall make a declaration stating whether it finds the complaint well-founded, wholly or in part, and stating the reasons for its finding.

(3) On the hearing of a further complaint under this Article any person who the Industrial Court considers has a proper interest in the complaint shall be entitled to be heard by the Court, but a failure to accord a hearing to a person other than the trade union and employer directly concerned shall not affect the validity of any decision of the Court in those proceedings.

(4) If the Industrial Court finds the further complaint wholly or partly well-founded the declaration shall specify the information in respect of which the Court finds that the complaint is well-founded.

### **Determination of claim and award**

**43.**—(1) On or after referring a further complaint under Article 42, the trade union may refer to the Agency in writing, a claim in respect of one or more descriptions of employees (but not workers who are not employees) specified in the claim that their contracts should include the terms and conditions specified in the claim and the Agency shall refer the claim to the Industrial Court.

(2) The right to refer a claim under paragraph (1) shall expire, or, as the case may be, a claim so referred shall be treated as withdrawn, if at any time before the Industrial Court makes an award under this Article the employer discloses, or, as the case may be, confirms in writing, to representatives of the trade union the information specified in the declaration under Article 41(6)(a) or, as the case may be, Article 42(4).

(3) If the Industrial Court finds, or has found, the further complaint wholly or partly well-founded, it may, after hearing the parties, make an award that in respect of any description of employees specified in the claim the employer shall, from a specified date, observe either—

- (a) the terms and conditions specified in the claim; or
- (b) other terms and conditions which the Court considers appropriate.

(4) The date specified in an award under paragraph (3) may be a date earlier than that on which the award is made but shall not be earlier than the date specified in accordance with Article 41(6)(b) in the declaration made by the Industrial Court on the original complaint.

(5) An award under paragraph (3) shall be made only in respect of a description of employees, and shall comprise only terms and conditions relating to matters, in respect of which the trade union making the claim is recognised by the employer.

(6) Any terms and conditions which by an award under this Article the employer is required to observe in respect of employees of his shall have effect as part of the contract of employment of any such employee, as from the date specified in the award, except in so far as they are superseded or varied—

- (a) by a subsequent award under this Article;
- (b) by a collective agreement between the employer and the union for the time being representing that employee; or

- (c) by express or implied agreement between the employee and the employer so far as that agreement effects an improvement in any terms and conditions having effect by virtue of the award.

(7) Where—

- (a) by virtue of any statutory provision, other than one contained in this Article, providing for minimum remuneration or terms and conditions, a contract of employment is to have effect as modified by an award, order or other instrument under that statutory provision; and
- (b) by virtue of an award under this Article any terms and conditions are to have effect as part of that contract,

that contract shall have effect in accordance with that award, order or other instrument or in accordance with the award under this Article, whichever is the more favourable, in respect of any terms and conditions of that contract, to the employee.

(8) No award shall be made under this Article in respect of any terms and conditions of employment which are fixed by virtue of any statutory provision.

## PART VI

### SECRET BALLOTS BEFORE INDUSTRIAL ACTION

#### **Ballots authorising or endorsing industrial action**

**44.**—(1) For the purposes of paragraph (1) of Article 20, an act shall be taken as having been done with the support of a ballot if, but only if—

- (a) the requirements set out in paragraph (2) are satisfied; or
- (b) in the case of an act done in contemplation or furtherance of a trade dispute involving members both in Great Britain and in Northern Ireland, had the act taken place in Great Britain, it would be taken for the purposes of section 10(1) of the Trade Union Act 1984<sup>(19)</sup> as having been so done.

(2) The requirements mentioned in paragraph (1)(a) are—

- (a) that the trade union has held a ballot in respect of the strike or other industrial action in the course of which the breach or interference referred to in that paragraph occurred;
- (b) that the majority of those voting in the ballot have answered “Yes” to the appropriate question;
- (c) that the first authorisation or endorsement of any relevant act, and in the case of an authorisation the relevant act itself, took place after the date on which the ballot was held and before the expiry of the period of four weeks beginning with that date; and
- (d) that Article 45 has been satisfied in relation to the ballot.

(3) Where—

- (a) any person has been induced by an act to break his contract of employment or to interfere with its performance; and
- (b) separate ballots have been held by virtue of Article 45(2) in relation to the strike or industrial action in the course of which that act has induced the breach or interference,

then paragraph (2) shall be construed, in relation to the inducement of that breach or interference, as making provision which, in the case of sub-paragraph (b) of that paragraph, requires only that the majority voting in the ballot for that person’s place of work have answered “Yes” to the appropriate

<sup>(19)</sup> 1984 c. 49

question and, in the case of sub-paragraphs (c) and (d), does not impose any requirements in relation to any other ballot.

(4) Subject to paragraph (5), in this Part references to the appropriate question are references to whichever of the questions set out in paragraph (6) of Article 45 is applicable to the strike or other industrial action in question.

(5) Where both the questions mentioned in paragraph (4) are applicable in relation to any industrial action, an act inducing a breach or interference such as is mentioned in paragraph (1) of Article 20 shall be treated as an act for the purposes of which the requirement of sub-paragraph (b) of paragraph (2) is satisfied if, but only if, that sub-paragraph (or, as the case may be, that sub-paragraph as it has effect by virtue of paragraph (3)) is satisfied in relation to the question applicable to that part of the action in the course of which the breach or interference occurred.

### **Requirements to be satisfied in relation to ballots authorising or endorsing industrial action**

**45.—**(1) Entitlement to vote in the ballot must be accorded—

- (a) equally, to all those members of the trade union who it is reasonable at the time of the ballot for the union to believe will be induced to take part or, as the case may be, to continue to take part in the strike or other industrial action; and
- (b) to no others.

(2) Subject to paragraph (3), where the members who it is reasonable at the time of the ballot for the union to believe will be induced as mentioned in paragraph (1) have different places of work—

- (a) a separate ballot in relation to which the requirements of this Article are satisfied must be held for each place of work (instead of one ballot of all those members); and
- (b) paragraph (1) shall have effect so as to require entitlement to vote in the ballot held for each place of work to be accorded to such of those members as the union reasonably believes to be members having that place as their place of work, and to no other persons.

(3) Paragraph (2) shall not apply in relation to a ballot if at the time of the ballot it is reasonable for the trade union to believe and it does believe—

- (a) that all the members who are accorded entitlement to vote in the ballot have the same place of work;
- (b) that there is, in relation to each of the members of the union who is accorded entitlement to vote in the ballot, some factor (whether or not the same factor) which—
  - (i) relates to the terms or conditions of that member's employment or to the occupational description which is applicable to that member in his employment;
  - (ii) is a factor which that member has in common with one or more of the other members of the union who are accorded that entitlement; and
  - (iii) in a case where there are individuals employed by the same employer as that member who are members of the union but are not accorded that entitlement, is neither a factor which that member has in common with any of those individuals nor a factor which individuals employed by that employer have in common as a consequence of having the same place of work; or

- (c) that the condition specified in sub-paragraph (b) would be satisfied if any overseas members accorded entitlement to vote in the ballot were disregarded.

(4) Where a person who was a member of a trade union at the time when a ballot was held for the purposes of this Part—

- (a) was denied entitlement to vote in the ballot; and

- (b) is induced by the union to take part or, as the case may be, to continue to take part in the strike or other industrial action,

this Article shall be taken not to have been satisfied in relation to that ballot.

(5) The method of voting in the ballot must be by the marking of a voting paper by the person voting and the following statement must (without being qualified or commented upon by anything else on the voting paper) appear on every voting paper, namely—

“If you take part in a strike or other industrial action, you may be in breach of your contract of employment.”.

(6) The voting paper must contain at least one of the following questions—

- (a) a question (however framed) which requires the person answering it to say, by answering “Yes” or “No”, whether he is prepared to take part or, as the case may be, to continue to take part in a strike;
- (b) a question (however framed) which requires the person answering it to say, by answering “Yes” or “No”, whether he is prepared to take part or, as the case may be, to continue to take part in action short of a strike.

(7) Every person who is entitled to vote in the ballot must—

- (a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees; and
- (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.

(8) So far as is reasonably practicable, every person who is entitled to vote in the ballot must—

- (a) have made available to him—
  - (i) immediately before, immediately after, or during his working hours; and
  - (ii) at his place of work or at a place which is more convenient for him;
 or be supplied with, a voting paper; and
- (b) be given—
  - (i) a convenient opportunity to vote by post (but no other opportunity to vote);
  - (ii) an opportunity to vote immediately before, immediately after, or during his working hours and at his place of work or at a place which is more convenient for him (but no other opportunity); or
  - (iii) as alternatives, both of those opportunities (but no other opportunity).

(9) The ballot must be conducted so as to secure that—

- (a) so far as is reasonably practicable, those voting do so in secret; and
- (b) the votes given in the ballot are fairly and accurately counted (any inaccuracy in counting being disregarded for the purposes of this sub-paragraph if it is accidental and on a scale which could not affect the result of the ballot).

(10) As soon as is reasonably practicable after the holding of the ballot, the trade union shall take such steps as are reasonably necessary to ensure that all persons entitled to vote in the ballot are informed of the number of—

- (a) votes cast in the ballot;
- (b) individuals answering “Yes” to the question or, as the case may be, to each question;
- (c) individuals answering “No” to the question or, as the case may be, to each question; and
- (d) spoiled voting papers.



(11) A trade union which has overseas members may choose whether or not to accord any of those members entitlement to vote in a ballot; and nothing in paragraphs (4) to (9) shall apply in relation to any overseas member or in relation to any vote cast by any such member.

(12) Where overseas members have voted in the ballot, paragraph (10) shall be read as requiring the information in question to be provided to all those entitled to vote in the ballot other than overseas members and to distinguish between overseas members and other members.

## **Interpretation of Part VI**

**46.—**(1) In this Part—

“authorisation or endorsement” means an authorisation or endorsement of an act which, by virtue of Article 21, causes the act to be taken, for the purposes mentioned in that Article, to have been done by the trade union;

“merchant seaman” means a person whose employment, or the greater part of it, is carried out on board seagoing ships;

“offshore worker” means any person in employment to which section 127 of the Employment Protection Act 1975<sup>(20)</sup> (employment for purposes of activities in territorial or other offshore waters) applies, other than one who is in such employment in any area where the law of Great Britain applies;

“overseas member”, in relation to a trade union, means a member of the union (other than a merchant seaman or offshore worker) who is outside Northern Ireland throughout the period during which votes may be cast;

“place of work”, in relation to any person who is employed, means the premises occupied by his employer at or from which that person works or, where he does not work at or from any such premises or works at or from more than one set of premises, the premises occupied by his employer with which his employment has the closest connection;

“post” means a postal service which—

(a) is provided by the Post Office or under a licence granted under section 68 of the British Telecommunications Act 1981<sup>(21)</sup>; or

(b) does not infringe the exclusive privilege conferred on the Post Office by section 66(1) of that Act only by virtue of an order made under section 69 of that Act;

“relevant act” means an act (done in the course of the action mentioned in Article 44(2)(a)) of inducing a person to break his contract of employment or to interfere with its performance; and

“working hours”, in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

(2) In this Part any reference to a breach or interference occurring in the course of a strike or other industrial action includes a reference to a breach or interference which, taken together with any corresponding action relating to other contracts of employment, constitutes that action.

(3) In this Part references to an inducement, in relation to a member of a trade union, include references to an inducement which is or would be ineffective, whether because of that member’s unwillingness to be influenced by it or for any other reason.

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<sup>(20)</sup> 1975 c. 71

<sup>(21)</sup> 1981 c. 38

## PART VII

### SECRET BALLOTS FOR TRADE UNION ELECTIONS

#### **Duty of trade union to hold elections for certain positions**

47.—(1) Subject to the following provisions of this Part, it shall be the duty of every trade union (notwithstanding anything in its rules) to secure—

- (a) that every person who is a member of the principal executive committee of the union holds that position by virtue of having been elected as such a member at an election in relation to which Articles 48, 49 and 50 have been satisfied; and
- (b) that no person remains such a member for a period of more than five years without being re-elected at such an election.

(2) Where a person is a member of the principal executive committee of a trade union by virtue of holding some other position in that union, paragraph (1) shall apply as if references to a member of that committee were references to the holder of that other position.

(3) Where a person—

- (a) was a member of the principal executive committee of a trade union immediately before an election; and
- (b) is not elected at that election as such a member or, as the case may be, as the holder of a position in the union by virtue of which the holder is such a member,

nothing in this Article shall be taken to require the union to prevent him from continuing to be such a member, or continuing to hold that position, at any time before the expiry of such period (not exceeding six months) as may reasonably be required for effect to be given to the result of the election.

(4) Any term or condition upon which a person is employed by a trade union shall be disregarded in so far as it would otherwise prevent the union from complying with any provision of this Part.

(5) Nothing in this Part shall affect the validity of anything done by the principal executive committee of a trade union.

(6) For the purposes of this Article a person is a member of the principal executive committee of a trade union if he is a voting member of that union's principal executive committee or, subject to paragraph (8), if—

- (a) that person is, under the rules of the union, a member, other than a voting member, of that committee (whether by virtue of his holding any position in the union or otherwise); or
- (b) that person may, under the rules or practice of the union, attend and speak at some or all of the meetings of that committee otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the committee in carrying out its functions.

(7) Notwithstanding anything in the rules or practice of any trade union, the persons who hold the following positions in a trade union shall (if the rules of the union do not otherwise provide for them to be members of the union's principal executive committee) be deemed for the purposes of this Article to be members of that committee by virtue of paragraph (6)(b), that is to say—

- (a) the position of president of the union; and
- (b) the position of general secretary of the union.

(8) For the purposes of this Article where any person who holds in any trade union any such position as is mentioned in sub-paragraph (a) or (b) of paragraph (7)—

- (a) is, in respect of that position, neither a voting member of the principal executive committee of the union nor an employee of the union;
- (b) holds that position for a period which under the rules of the union cannot end more than thirteen months after he took up that position; and
- (c) has held neither that position nor any other position so mentioned at any time in the period of twelve months ending with the day before he took up that position,

that position shall not be regarded for the purposes of this Article as a position by virtue of holding which that person is a member of that committee or is deemed under that paragraph to be such a member.

(9) For the purposes of this Article a person is a voting member of the principal executive committee of a trade union if he is entitled in his own right to attend meetings of the committee and to vote on matters on which votes are taken by the committee (whether or not he is entitled to attend all such meetings or to vote on all such matters in all circumstances).

### **General requirements to be satisfied in relation to elections**

**48.**—(1) Entitlement to vote at the election must be accorded equally to all members of the trade union in question other than those who belong to a class—

- (a) which is, or which falls within, one or other of the classes mentioned in paragraph (2); and
- (b) all the members of which are excluded by the rules of the union from voting at the election.

(2) The classes are—

- (a) members who are not in employment;
- (b) members who are in arrears in respect of any subscription or contribution due to the union;
- (c) members who are apprentices, trainees or students or new members of the union.

(3) Where the conditions mentioned in paragraph (4) are satisfied, nothing in paragraph (1) shall be taken to prevent a trade union from restricting entitlement to vote at an election to members of the union who fall within—

- (a) a class determined by reference to any trade or occupation;
- (b) a class determined by reference to any geographical area;
- (c) a class which is by virtue of the rules of the union treated as a separate section within the union; or
- (d) a class determined by reference to any combination of the matters mentioned in subparagraphs (a), (b) and (c).

(4) The conditions are that—

- (a) entitlement to vote is restricted by the rules of the union;
- (b) no member of the union is denied entitlement to vote at all elections held for the purposes of this Part otherwise than by virtue of belonging to a class mentioned in paragraph (1).

(5) The method of voting must be by the marking of a voting paper by the person voting; and each voting paper—

- (a) must clearly specify the address to which, and the date by which, the voting paper is to be returned;
- (b) must be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the election; and
- (c) must be marked with its number.

- (6) Every person who is entitled to vote at the election must—
- (a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees; and
  - (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.
- (7) So far as is reasonably practicable, every person who is entitled to vote at the election must—
- (a) have sent to him, at his proper address and by post, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates; and
  - (b) be given a convenient opportunity to vote by post.
- (8) Where, for the purpose of personal safety, a member of a trade union requests the union in writing to send a voting paper to him by some means other than by post then, in relation to that member, paragraph (7)(a) shall have effect with the substitution for the reference to post of a reference to that other means.
- (9) The ballot must be conducted so as to secure that—
- (a) so far as is reasonably practicable, those voting do so in secret;
  - (b) the result of the election is determined solely by counting the number of votes cast directly for each candidate at the election by those voting (nothing in this sub-paragraph being taken to prevent the system of voting used for the election being the single transferable vote); and
  - (c) the votes given at the election are fairly and accurately counted (any inaccuracy in counting being disregarded for the purposes of this sub-paragraph if it is accidental and on a scale which could not affect the result of the election).
- (10) No member of the trade union in question shall be unreasonably excluded from standing as a candidate at the election.
- (11) No candidate at the election shall be required, whether directly or indirectly, to be a member of a political party.
- (12) A member of a trade union shall not be taken to have been unreasonably excluded from standing as a candidate at the election if he has been excluded on the ground that he belongs to a class all the members of which are excluded by the rules of the union.
- (13) For the purposes of paragraph (12), any rule which provides for a class to be determined by reference to those members which the union chooses to exclude from so standing shall be disregarded.
- (14) A trade union which has overseas members may choose whether or not to accord any of those members entitlement to vote at the election; and nothing in the preceding provisions of this Article shall apply in relation to any overseas member or in relation to any vote cast by such a member except, in the case of paragraphs (5) to (9), where the union has chosen to accord that member entitlement to vote at the election.
- (15) Nothing in this Article shall be taken to require a ballot to be held at an uncontested election.

### **Requirements as to election address**

- 49.**—(1) The trade union in question must—
- (a) subject to paragraph (2), provide every candidate in the election with an opportunity of preparing an election address in his own words and of submitting it to the union to be distributed to the persons who are accorded entitlement to vote in the election;
  - (b) so far as reasonably practicable, secure that copies of every election address submitted to the union before such time as it may have determined are distributed by the sending of a

copy of each such address, with the voting paper for the election, to each of those persons at his proper address;

- (c) make such arrangements for the production of the copies to be so distributed as secure that none of the candidates is required to bear any of the expense of producing those copies;
- (d) secure that no modification of any election address so submitted is made by any person in any copy of the address to be distributed except, subject to sub-paragraphs (e) and (f), at the request or with the consent of the candidate or where the modification is necessarily incidental to the method adopted for producing that copy;
- (e) secure that the same method of producing copies is applied in the same way to every election address so submitted and, so far as reasonably practicable, that no such facility or information as would enable a candidate to gain any benefit from—
  - (i) the method by which copies of the election addresses are produced; or
  - (ii) the modifications which are necessarily incidental to that method,is provided to any candidate without being provided equally to all the others; and
- (f) so far as reasonably practicable, secure that the same facilities and restrictions with respect to the preparation, submission, length or modification of an election address and with respect to the incorporation in any such address of a photograph or of any other matter not in words are provided or applied equally to each of the candidates.

(2) Subject to paragraph (1)(f), a trade union may for the purposes of this Article provide that election addresses submitted to it for distribution—

- (a) must not exceed such length, not being less than one hundred words, as may be determined by the union; and
- (b) may incorporate only such photographs and other matter not in words as the union may determine.

(3) A time determined for the purposes of paragraph (1) as the time by which election addresses for an election must be submitted to the union shall be no earlier than the latest time at which a person may become a candidate in that election.

(4) No person other than the candidate himself shall be subject to any civil or criminal liability in respect of any publication of a candidate's election address, or of any copy of such an address, which is required to be made for the purposes of this Article.

### **Requirements as to independent scrutiny**

**50.**—(1) The trade union in question—

- (a) must, before the election is held, appoint a qualified independent person (“the scrutineer”) to carry out—
  - (i) the functions in relation to the election which are required under paragraph (3) to be contained in the scrutineer's appointment; and
  - (ii) such additional functions in relation to that election as may be specified in his appointment;
- (b) must ensure that nothing in the terms of the scrutineer's appointment, or in any additional functions specified in that appointment, is such as to make it reasonable for any person to call the scrutineer's independence in relation to the union into question;
- (c) must ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer's independence in relation to the union into question; and

- (d) must comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.
- (2) For the purposes of this Article a person is a qualified independent person in relation to an election if—
- (a) he satisfies such conditions as may be specified for the purposes of this sub-paragraph in an order made by the Department or is himself so specified; and
  - (b) the trade union in question has no grounds for believing either that he will carry out any functions conferred on him in relation to the election otherwise than competently or that his independence in relation to the union, or in relation to the election, might reasonably be called into question.
- (3) An appointment for the purposes of this Article shall require the scrutineer—
- (a) to be the person who supervises the production and distribution, for the purposes of the election, of all the voting papers and the person to whom those voting papers are returned by those voting;
  - (b) to take such steps as appear to him to be appropriate for the purpose of enabling him to make the report mentioned in paragraph (4);
  - (c) as soon as reasonably practicable after the last date for the return of voting papers, to make that report to the trade union in question; and
  - (d) to retain custody of all voting papers returned for the purposes of the election—
    - (i) until the end of the period of one year beginning with the announcement by the union of the result of the election; and
    - (ii) where within that year any application is made under Article 52 with respect to that election, for the period after the end of that year until the Certification Officer or the High Court authorises the disposal of the papers.
- (4) The report referred to in paragraph (3) is a report with respect to the election stating—
- (a) the number of voting papers distributed for the purposes of the election;
  - (b) the number of voting papers returned to the scrutineer;
  - (c) the number of valid votes cast in the election for each candidate;
  - (d) the number of spoiled or otherwise invalid voting papers returned;
  - (e) whether the scrutineer is satisfied as to each of the matters specified in paragraph (5); and
  - (f) if he is not satisfied as to any of those matters, the particulars of his reasons for not being satisfied as to that matter.
- (5) The matters mentioned in paragraph (4)(e) are—
- (a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any statutory provision in relation to the election;
  - (b) that the arrangements made with respect to the production, storage, distribution, return or other handling of the voting papers used in the election, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur; and
  - (c) that the scrutineer has been able to carry out his functions without any such interference as is mentioned in paragraph (1)(c).
- (6) The trade union in question must not publish the result of the election until it has received such a report as is mentioned in paragraph (4) from the scrutineer; and the union must—
- (a) within the period of three months after it receives the report—

- (i) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
  - (ii) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention;
- (b) ensure that any copy sent or notification given for the purposes of sub-paragraph (a) is accompanied by a statement that the union will, on request, supply any member of the union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification; and
- (c) so supply any member of the union who makes a request to the union to be supplied and pays such fee (if any) as has been notified to him.

### **Register of members' names and addresses**

**51.**—(1) It shall be the duty of every trade union—

- (a) to compile, by the day appointed for the coming into operation of Article 47, and thereafter maintain a register of the names and proper addresses of its members; and
- (b) to secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.

(2) The register may be kept by means of a computer.

(3) It shall be the duty of every trade union—

- (a) free of charge and at any reasonable time, to allow a member of the union who gives the union reasonable notice of his intention to do so to ascertain from the register whether there is an entry on the register relating to that member; and
- (b) if requested to do so by any member of the union, to supply that member, as soon as reasonably practicable after receiving the request and either free of charge or on payment of a reasonable fee, with a copy of any such entry.

(4) Any duty falling upon a branch under this Article by reason of its being a trade union shall be treated as having been discharged to the extent to which the union of which it is a branch has discharged that duty instead of the branch.

### **Remedy for failure to comply with this Part**

**52.**—(1) Any person who claims that a trade union has failed to comply with one or more of the provisions of this Part may apply to the Certification Officer or to the High Court for a declaration to that effect if—

- (a) in a case where the application relates to an election which has been held, he was a member of the trade union at the date when the election was held and is such a member at the time when the application is made; and
- (b) in any other case, he is a member of the union at the time when the application is made.

(2) An application relating to an election which has been held must be made before the expiry of the period of one year beginning with the date on which the result of the election is announced by the trade union.

(3) On an application under this Article the Certification Officer or, as the case may be, the High Court may make or refuse to make the declaration asked for.

(4) A declaration made under this Article shall specify the provisions with which the trade union has failed to comply.

(5) Where the High Court makes such a declaration it shall also make an enforcement order unless it considers that to do so would be inappropriate.

(6) In this Article “enforcement order” means an order which imposes on the trade union one or more of the requirements mentioned in paragraph (7).

(7) The requirements are—

- (a) to secure the holding of such an election as may be specified in the order;
- (b) to take such other steps to remedy the declared failure as may be so specified;
- (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same, or any similar, kind as that of the declared failure does not arise on the part of the trade union.

(8) In making an enforcement order which requires the union to hold a fresh election, in any case where the application relates to an election which has been held, the High Court shall (unless it considers that it would be inappropriate to do so in the particular circumstances of the case) require the fresh election to be conducted in accordance with this Part and with such other provisions as may be made by the order.

(9) An enforcement order under this Article which imposes requirements by virtue of subparagraph (a) or (b) of paragraph (7) shall be so expressed as to require the trade union to comply with those requirements before the expiry of such period as the court considers appropriate.

(10) Without prejudice to any power conferred on the High Court otherwise than by virtue of this Article, the court shall have power, on an application under this Article, to grant any such interlocutory relief as it considers appropriate.

(11) The remedy of any person for a failure of a trade union to comply with one or more of the provisions of this Part shall be by way of application under this Article and not otherwise.

(12) Where an enforcement order has been made, any person who satisfies the requirements of paragraph (13) shall be entitled to enforce obedience to the order as if he had made the application in pursuance of which the order was made.

(13) The requirements are that—

- (a) he is a member of the union at the time when the proceedings to enforce obedience to the order are begun; and
- (b) he was such a member at the time when the order was made.

(14) The requirements of paragraph (1) or (13) that a person making an application under this Article in relation to an election or seeking to enforce obedience to an enforcement order in relation to an election must be or have been a member of the union at a particular time shall not apply where the person who makes the application or seeks to enforce obedience to the order is or was a candidate in the election.

### **Proceedings before Certification Officer: supplementary provisions**

**53.**—(1) Where the Certification Officer makes a declaration under Article 52 and is satisfied that—

- (a) steps have been taken by the union with a view to remedying the declared failure or securing that a failure of the same, or any similar, kind as that of the declared failure does not arise on the part of the union; or
- (b) the union has agreed to take such steps,

the Certification Officer shall, in making the declaration, specify those steps.



(2) On an application to him under Article 52, the Certification Officer (whether or not he makes a declaration) shall give reasons for his decision in writing; and any such reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

(3) The making of an application to the Certification Officer under Article 52 shall not be taken to prevent the applicant, or any other person, from making a subsequent application to the High Court under that Article in respect of the same matter.

(4) Where such a subsequent application is made, the High Court shall have due regard to any declaration, reasons or observations of the Certification Officer in the proceedings before him which are brought to the notice of the court in the proceedings before it.

(5) On an application made to him under Article 52, the Certification Officer shall—

- (a) make such enquiries as he thinks fit; and
- (b) where he considers it appropriate, give the applicant and the trade union an opportunity to be heard.

(6) In exercising his functions under this Article the Certification Officer shall ensure, so far as is reasonably practicable, that every application made to him under Article 52 is determined within six months.

(7) Where the Certification Officer requests any person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and shall, unless he considers that in all the circumstances of the case it would be inappropriate to do so, proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

### **Exemptions for certain trade unions**

**54.**—(1) This Part does not apply to any trade union which—

- (a) falls within Article 3(1)(b) (unions which consist wholly or mainly of, or of representatives of, constituent or affiliated organisations); and
- (b) has no members (other than such representatives) who are individuals.

(2) This Part does not apply to a trade union at any time when the conditions mentioned in paragraph (3) are satisfied in relation to it.

(3) The conditions are that—

- (a) the trade union was formed after the coming into operation of this Part; and
- (b) not more than one year has elapsed since its formation.

(4) In paragraph (3) “formed” includes formed by amalgamation under Part X.

(5) Where a trade union is formed otherwise than by amalgamation under Part X, the date of its formation shall be taken, for the purposes only of this Article, to be the date on which the first members of its principal executive committee are first appointed or, as the case may be, elected to that committee.

(6) Where one trade union (the “transferring union”) has transferred its engagements to another trade union (the “receiving union”) then, during the period of one year beginning with the date of the transfer, this Part shall not apply in relation to any person who—

- (a) was a member of the principal executive committee of the transferring union immediately before the transfer; and
- (b) became a member of the principal executive committee of the receiving union in accordance with the instrument of transfer.

(7) Without prejudice to paragraphs (2) to (6), where—

- (a) by virtue of any election (including one held before the coming into operation of this Part) a person is a member of a trade union's principal executive committee at a time after the coming into operation of this Part when that trade union amalgamates with, or transfers its engagements to, another union under Part X;
- (b) under the instrument of amalgamation or transfer, that person becomes a member of the principal executive committee of the trade union formed by the amalgamation or, as the case may be, of the union to which the engagements are transferred (whether by taking up the same position as he held in the amalgamating or transferring union or by taking up any other position); and
- (c) under any provision of this Part that person would have been entitled, at the time of the amalgamation or transfer, to continue for any period, without being re-elected, to be a member of the principal executive committee mentioned in sub-paragraph (a) or, as the case may be, to hold the position by virtue of which he was such a member,

this Part shall not apply in relation to that person to the union formed by the amalgamation or, as the case may be, to the union to which the engagements are transferred until the end of the period mentioned in sub-paragraph (c).

### **Exemptions for certain persons nearing retirement**

**55.**—(1) Article 47(1)(b) does not apply to any member of the principal executive committee of a trade union at any time when the conditions mentioned in paragraph (2) are satisfied in relation to him.

(2) The conditions are that—

- (a) he holds his position as such a member by virtue of having been elected (whether as such a member or as the holder of another position in the union) at an election in relation to which Articles 48, 49 and 50 have been satisfied;
- (b) he is—
  - (i) in the case of a person who has been elected as such a member, a full-time employee of the union by virtue of being such a member; or
  - (ii) in the case of a person who has been elected as the holder of another position in the union by virtue of which he is such a member, a full-time employee of the union by virtue of holding that other position;
- (c) he will reach retirement age within five years;
- (d) he is entitled under the rules of the union to continue as the holder of the position in question until retirement age without standing for re-election;
- (e) he has been a full-time employee of the union for a period (which need not be continuous) of at least ten years; and
- (f) the period between the day on which the election referred to in sub-paragraph (a) took place and the day immediately preceding that on which sub-paragraph (c) is first satisfied does not exceed five years.

(3) For the purposes of this Article “retirement age”, in relation to any person, means the earlier of—

- (a) the age fixed by, or in accordance with, the rules of the union for him to retire from the position in question; or
- (b) the age which is for the time being pensionable age for the purpose of the Social Security (Northern Ireland) Act 1975(22).

(4) Where the election referred to in sub-paragraph (a) of paragraph (2) was held before the coming into operation of this Part, that paragraph shall apply as if it did not require Articles 48, 49 and 50 to be satisfied in relation to that election.

### **Interpretation of Part VII**

**56.**—(1) In this Part “member”, in relation to a trade union’s principal executive committee, shall be construed in accordance with Article 47(6) to (8);

“overseas member”, in relation to a trade union, has the same meaning as in Part VI;

“post” has the same meaning as in Part VI;

“proper address”, in relation to any member of a trade union, means his home address or any other address which he has requested the union in writing to treat as his address;

“section”, in relation to a trade union, includes any part of the union which is itself a trade union;

“single transferable vote” means a vote capable of being—

- (a) given so as to indicate the voter’s order of preference for the candidates; and
- (b) transferred to the next choice—
  - (i) when it is not required to give a prior choice the necessary quota of votes; or
  - (ii) when, owing to the deficiency in the number of votes given for a prior choice, that choice is eliminated from the list of candidates;

“voting member” shall be construed in accordance with Article 47(9).

(2) Where a member of the principal executive committee of a trade union was elected as such a member, or as the case may be as the holder of a relevant position, at an election held within the period of five years ending with the coming into operation of this Part—

- (a) Article 47(1)(a) shall have effect, as if it did not require Articles 48, 49 and 50 to be satisfied in relation to that election; and
- (b) the period of five years mentioned in Article 47(1)(b) shall be calculated from the date of that election.

(3) In paragraph (2) “relevant position” means a position in the union by virtue of which the holder is a member of the principal executive committee of the union.

(4) The reference in paragraph (2) to an election held within the period of five years ending with the coming into operation of this Part does not include a reference to an election in which the only persons entitled to vote were persons who at the time of the election were members of the principal executive committee of the trade union in question.

(5) This Part applies only to a trade union which has its head or main office in Northern Ireland.

## **PART VIII**

### **POLITICAL FUNDS AND OBJECTS**

#### **Restriction on application of funds for certain political purposes**

**57.**—(1) The funds of a trade union shall not be applied, either directly or in conjunction with any other trade union, association, or body, or otherwise indirectly, in the furtherance of the political objects to which this Article applies (without prejudice to the furtherance of any other political objects), unless the furtherance of those objects has been approved as an object of the union by

a resolution for the time being in force passed, on a ballot of the members of the union held in accordance with this Part for the purpose, by a majority of the members voting.

(2) Where such a resolution as is mentioned in paragraph (1) (in this Part referred to as “a resolution”) is in force, the funds of a trade union shall not be applied as so mentioned unless rules of the union, to be approved by the Certification Officer are in force complying with the requirements of Article 58 and providing—

- (a) that any payments in the furtherance of those objects are to be made out of a separate fund (in this Part referred to as “the political fund”) of the union; and
- (b) that a member who is not a contributor to the political fund of the union shall not be excluded from any benefits of the union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union (except in relation to the control or management of the political fund) by reason of his not being a contributor and that contribution to the political fund of the union shall not be made a condition for admission to the union.

(3) If any member of a trade union alleges that he is aggrieved by a breach of any rule made in pursuance of this Article, he may complain to the Certification Officer, and the Certification Officer, after giving the complainant and the union an opportunity of being heard, may, if he considers that such a breach has been committed, make such order for remedying the breach as he thinks just under the circumstances.

(4) Any order of the Certification Officer under paragraph (3) may, on being registered in the county court, be enforced as if it had been an order of the county court.

(5) The political objects to which this Article applies are the expenditure of money—

- (a) on any contribution to the funds of, or on the payment of any expenses incurred directly or indirectly by, a political party;
- (b) on the provision of any service or property for use by or on behalf of any political party;
- (c) in connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot by the union in connection with any election to a political office;
- (d) on the maintenance of any holder of a political office;
- (e) on the holding of any conference or meeting by or on behalf of a political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party;
- (f) on the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate.

(6) Where a person attends a conference or meeting as a delegate or otherwise as a participator in the proceedings, any expenditure incurred in connection with his attendance as such shall, for the purposes of paragraph (5)(e), be taken to be expenditure incurred on the holding of the conference or meeting.

(7) In determining, for the purposes of paragraph (5), whether a trade union has incurred expenditure of a kind mentioned in that paragraph, no account shall be taken of the ordinary administrative expenses of the union.

(8) A resolution shall take effect as if it were a rule of the union and may be rescinded in the same manner and subject to the same provisions as such a rule.

(9) A resolution shall, if it has not previously been rescinded, cease to have effect—

- (a) on the expiry of the period of ten years beginning with the date of the ballot on which it was passed; or

(b) if a ballot is held before the expiry of that period and the result of the ballot is that a new resolution is not passed, on the expiry of the period of two weeks beginning with the date of the ballot.

(10) Where a trade union holds a ballot at a time when a resolution (the “old resolution”) is in force in respect of that union and the result of the ballot is that a new resolution is passed, the old resolution shall be treated as rescinded on the passing of the new resolution.

(11) Where two or more trade unions have amalgamated under Part X and by virtue of Article 78(4) the amalgamated union is treated as having passed a resolution immediately after the amalgamation, that resolution shall, for the purposes of paragraph (9), be treated as having been passed on the date of the earliest of the ballots on which the resolutions in force immediately before the amalgamation with respect to the amalgamating unions were passed.

(12) The provisions of this Part as to the application of the funds of a union for political purposes shall apply to a union which is of the description referred to in Article 3(1)(b)(i) as if the individual members of the constituent or affiliated organisations were the members of that union and not the organisations; but nothing in this Part shall prevent any such constituent or affiliated organisation from collecting from any of its members who are contributors on behalf of the union any contributions to the political fund of the union.

(13) An appeal shall lie, in accordance with Article 70(4), to the Court of Appeal on any question of law arising in any proceedings before, or arising from any decision of, the Certification Officer under this Article.

(14) In this Article—

“candidate” means a candidate for election to a political office and includes a prospective candidate;

“contribution”, in relation to the funds of a political party, includes any fee payable for affiliation to, or membership of, the party and any loan made to the party;

“electors” means electors at any election to a political office;

“film” has the same meaning as in Schedule 1 to the Films Act 1985(23);

“political office” means the office of member of the Assembly, member of Parliament, member of the Assembly of the European Communities or member of a district council or any position within a political party.

### **Contributions to the political fund from members of the union**

**58.**—(1) It shall not be lawful to require any member of a trade union to make any contribution to the political fund of a trade union unless he —

(a) has given to the union notice in writing of his willingness to contribute to that fund; and

(b) has not withdrawn that notice in accordance with paragraph (2).

(2) A member of a trade union who has given notice under paragraph (1)(a) may withdraw that notice by giving written notice of withdrawal to the union.

(3) A notice under paragraph (1)(a) and a notice of withdrawal under paragraph (2) may be given to a trade union—

(a) by being delivered at the head office or a branch office of the union;

(b) by being so delivered personally or by any authorised agent or by post;

and any such notice of withdrawal shall take effect for the purposes of this Part as from 1st January next following the giving of that notice to the union.

(4) All contributions to the political fund of a trade union from members of the trade union who are contributors to the fund shall be levied and made separately from any contributions to the other funds of the trade union.

(5) In this Part “contributor”, in relation to the political fund of a trade union, means a member who has given to the union the notice referred to in paragraph (1)(a) and not withdrawn it.

### **Approval of rules**

**59.**—(1) A ballot for the purposes of this Part shall be held in accordance with rules of the union to be approved for the purpose by the Certification Officer, but the Certification Officer shall not approve any such rules unless he is satisfied that the requirements of Article 60 would be satisfied in relation to a ballot held by the union in accordance with those rules.

(2) Where it is proposed to hold a ballot, paragraph (1) has effect so as to require the rules of the trade union to be approved in relation to the proposed ballot notwithstanding that approval has been given under that paragraph in relation to a ballot previously held by that union.

(3) Where a resolution is in force with respect to a trade union—

- (a) rules made by the union for the purpose of complying with paragraph (1) in relation to a proposed ballot may provide for overseas members of the union not to be accorded entitlement to vote in the ballot;
- (b) if rules have been made by virtue of sub-paragraph (a), the Certification Officer shall not withhold his approval under paragraph (1) on the ground that the rule in question makes such provision in relation to overseas members of the union as is mentioned in that sub-paragraph.

(4) If the Certification Officer is satisfied, and certifies, that rules for the purpose of a ballot under this Part or rules made for other purposes of this Part which require approval by him have been approved by a majority of members of a trade union voting for the purpose, or by a majority of delegates of such a trade union voting at a meeting called for the purpose, those rules shall have effect as rules of the union, notwithstanding that the provisions of the rules of the union as to the alteration of rules or the making of new rules have not been complied with.

(5) An appeal shall lie, in accordance with Article 70(4), to the Court of Appeal on any question of law arising in any proceedings before, or arising from any decision of, the Certification Officer under this Article.

### **Requirements as to ballot under this Part**

**60.**—(1) The requirements referred to in Article 59(1) are those set out in paragraphs (2) to (13).

(2) Entitlement to vote in the ballot must be accorded equally to all members of the trade union.

(3) The method of voting must be by the marking of a voting paper by the person voting and each voting paper—

- (a) must clearly specify the address to which, and the date by which, the voting paper is to be returned;
- (b) must be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot; and
- (c) must be marked with its number.

(4) Every person who is entitled to vote in the ballot must—

- (a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees; and

- (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.
- (5) So far as is reasonably practicable every person who is entitled to vote in the ballot must —
  - (a) have a voting paper sent to him by post at his proper address; and
  - (b) be given a convenient opportunity to vote by post.
- (6) Where, for the purpose of personal safety, a member of a trade union requests the union in writing to send a voting paper to him by some means other than by post then, in relation to that member, paragraph (5)(a) shall have effect with the substitution for the reference to post of a reference to that other means.
- (7) The ballot must be conducted so as to secure that—
  - (a) so far as is reasonably practicable, those voting do so in secret; and
  - (b) the votes given in the ballot are fairly and accurately counted (any inaccuracy in counting being disregarded for the purposes of this sub-paragraph if it is accidental and on a scale which could not affect the result of the ballot).
- (8) The trade union in question—
  - (a) must, before the ballot is held, appoint a qualified independent person (“the scrutineer”) to carry out—
    - (i) the functions in relation to the ballot which are required under paragraph (10) to be contained in the scrutineer’s appointment; and
    - (ii) such additional functions in relation to that ballot as may be specified in his appointment;
  - (b) must ensure that nothing in the terms of the scrutineer’s appointment, or in any additional functions specified in that appointment, is such as to make it reasonable for any person to call the scrutineer’s independence in relation to the union into question;
  - (c) must ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer’s independence in relation to the union into question; and
  - (d) must comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.
- (9) For the purposes of this Article a person is a qualified independent person in relation to a ballot if—
  - (a) he satisfies such conditions as may be specified for the purposes of this sub-paragraph in an order made by the Department or is himself so specified; and
  - (b) the trade union in question has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.
- (10) An appointment for the purposes of this Article shall require the scrutineer—
  - (a) to be the person who supervises the production and distribution, for the purposes of the ballot, of all the voting papers and the person to whom those voting papers are returned by those voting;
  - (b) to take such steps as appear to him to be appropriate for the purpose of enabling him to make the report mentioned in paragraph (11);
  - (c) as soon as reasonably practicable after the last date for the return of voting papers, to make that report to the trade union in question; and

- (d) to retain custody of all voting papers returned for the purposes of the ballot—
  - (i) until the end of the period of one year beginning with the announcement by the union of the result of the ballot; and
  - (ii) where within that year any application is made under Article 61 with respect to that ballot, for the period after the end of that year until the Certification Officer or the High Court authorises the disposal of the papers.
- (11) The report referred to in paragraph (10) is a report with respect to the ballot stating—
  - (a) the number of voting papers distributed for the purposes of the ballot;
  - (b) the number of voting papers returned to the scrutineer;
  - (c) the number of valid votes cast in the ballot for each proposition;
  - (d) the number of spoiled or otherwise invalid voting papers returned;
  - (e) whether the scrutineer is satisfied as to each of the matters specified in paragraph (12); and
  - (f) if he is not satisfied as to any of those matters, the particulars of his reasons for not being satisfied as to that matter.
- (12) The matters mentioned in paragraph (11)(e) are—
  - (a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any statutory provision in relation to the ballot;
  - (b) that the arrangements made with respect to the production, storage, distribution, return or other handling of the voting papers used in the ballot, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purposes of minimising the risk that any unfairness or malpractice might occur; and
  - (c) that the scrutineer has been able to carry out his functions without any such interference as is mentioned in paragraph (8)(c).
- (13) The trade union in question must not publish the result of the ballot until it has received such a report as is mentioned in paragraph (11) from the scrutineer; and the union must—
  - (a) within the period of three months after it receives the report—
    - (i) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
    - (ii) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention;
  - (b) ensure that any copy sent or notification given for the purposes of sub-paragraph (a) is accompanied by a statement that the union will, on request, supply any member of the union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification; and
  - (c) so supply any member of the union who makes a request to the union to be supplied and pays such fee (if any) as has been notified to him.

### **Remedy with respect to ballots**

- 61.—**(1) A person who claims—
- (a) that any ballot for the purposes of this Part has been held otherwise than in accordance with rules approved for the purpose by the Certification Officer under Article 59; or
  - (b) that there has been a failure, in relation to any proposed ballot for those purposes, to comply with any rules approved under that Article in relation to that proposed ballot,



may apply to the Certification Officer or to the High Court for a declaration that the ballot has been so held or that there has been such a failure.

(2) A person shall not make an application under paragraph (1) unless he is a member of the trade union in question at the time of the application and, in the case of an application by virtue of sub-paragraph (a) of that paragraph, was such a member at the time when the ballot was held.

(3) An application under paragraph (1) in respect of any ballot shall not be made at any time after the end of the period of one year beginning with the day on which the result of the ballot is announced by the trade union in question.

(4) The provisions of paragraphs (3) to (13) of Article 52 and the provisions of Article 53 shall apply in relation to an application under paragraph (1) as they apply in relation to an application under the said Article 52, but with the necessary modifications, that is to say, as if—

- (a) for any reference to an election there were substituted a reference to a ballot for the purposes of this Part;
- (b) for the reference in paragraph (8) of the said Article 52 to Part VII there were substituted a reference to rules approved under Article 59; and
- (c) for the reference in paragraph (11) of the said Article 52 to the remedy for a failure to comply with one or more of the provisions of Part VII there were substituted a reference to the remedy—
  - (i) for the holding of a ballot for the purposes of this Part otherwise than in accordance with rules approved under the said Article 59; or
  - (ii) for a failure, in relation to any proposed ballot for those purposes, to comply with rules so approved.

#### **Assets and liabilities of political fund**

**62.**—(1) At any time when there is a resolution in force with respect to a trade union, no property shall be added to the union's political fund other than—

- (a) sums representing contributions made to the fund by members of the union or by any person other than the union itself; and
- (b) property which accrues to the fund in the course of administering the assets of the fund.

(2) At any time when there is no resolution in force with respect to a trade union which has a political fund—

- (a) subject to Article 63(5), no property shall be added to the fund other than that which accrues to the fund in the course of administering the assets of the fund;
- (b) no rule of the union shall be taken to require any member of the union to contribute to the fund;
- (c) the union may, notwithstanding any of its rules or any trusts on which the political fund is held, transfer the whole or any part of the fund to such other fund of the union as it thinks fit.

(3) No liability of a political fund shall be discharged out of any other fund of the trade union (whether or not any asset of that other fund has been charged in connection with that liability).

(4) Paragraph (3) shall have effect notwithstanding any term or condition on which any liability was incurred.

#### **Position where resolution has ceased to have effect**

**63.**—(1) Where on the holding of a ballot a resolution has ceased to have effect by virtue of paragraph (9) of Article 57, in the circumstances mentioned in sub-paragraph (b) of that paragraph,

the trade union may at any time before the expiry of the period of six months beginning with the date on which the ballot was held make payments out of the political fund as if the resolution were still in force.

(2) Nothing in paragraph (1) shall be taken to authorise any payment which would cause the political fund to be in deficit or would increase any deficit in the fund.

(3) On a resolution ceasing to have effect, the trade union—

- (a) shall take such steps as are necessary to ensure that the collection of contributions to the political fund is discontinued as soon as is reasonably practicable; and
- (b) may, notwithstanding any of its rules, pay any such contribution which is received by it after the date of cessation into any of its other funds.

(4) Where a resolution has ceased to have effect but the trade union has continued to collect contributions to the political fund from any of its members, it shall pay to any member who applies to it for a refund of his contribution the amount collected from him by way of such a contribution after the date of cessation.

(5) Where a resolution has ceased to have effect, any contributions to the political fund paid to the union or to any person on behalf of the union, before the date of cessation, may be paid into the political fund notwithstanding Article 62(2)(a).

(6) Where a resolution has ceased to have effect, any provision made by any rule of the trade union for the purpose of complying with this Part shall cease to have effect—

- (a) in a case where the resolution has ceased to have effect by virtue of paragraph (9) of Article 57 in the circumstances mentioned in sub-paragraph (b) of that paragraph, on the date on which the period of six months beginning with the date on which the ballot was held expires; and
- (b) in any other case, on the date of cessation.

(7) Nothing in paragraph (6) shall be taken to affect—

- (a) any provision made by any rule of the union which is required to enable the union's political fund to be administered at a time when there is no resolution in force with respect to the union;
- (b) the operation of Article 57(3) in relation to any breach occurring before the date on which the rule in question ceased to have effect.

(8) Where a resolution has ceased to have effect, a member of the trade union who has at any time not been a contributor to the political fund of the union shall not, by reason of his not having been a contributor, be—

- (a) excluded from any benefits of the union; or
- (b) placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union (except in relation to the control or management of the political fund).

(9) Where, at any time after a resolution has ceased to have effect—

- (a) the trade union holds a ballot; and
- (b) the result of the ballot is that a new resolution is passed,

no property which immediately before the date of the ballot was held by or on behalf of the union otherwise than in its political fund, and no sums representing any such property, shall be added to that fund.

(10) Where a resolution ceases to have effect but immediately afterwards there is a new resolution in force with respect to the trade union, the cessation of the old resolution shall be disregarded for the purposes of this Article.

(11) In this Article “date of cessation” means the date on which the resolution which was last in force ceased to have effect.

#### **Remedy for failure to comply with Article 63(3)(a)**

**64.**—(1) Any person who claims that a trade union has failed to comply with Article 63(3)(a) may apply to the High Court for a declaration to that effect if he is a member of the union at the time when the application is made.

(2) Where, on an application under this Article, the High Court is satisfied that a trade union has failed to comply with Article 63(3)(a) it may, if it considers it appropriate to do so in order to secure that the collection of contributions to the political fund is discontinued, make an order requiring the union to take, within such time as may be specified in the order, such steps as may be so specified.

(3) Where an order has been made under this Article, any person who satisfies the requirements of paragraph (4) shall be entitled to enforce obedience to the order as if he had made the application in pursuance of which the order was made.

(4) The requirements are that—

(a) he is a member of the union at the time when proceedings to enforce obedience to the order are begun; and

(b) he was such a member at the time when the order was made.

(5) The remedy of any person for a failure of a trade union to comply with Article 63(3)(a) shall be by way of application under this Article and not otherwise; but nothing in this paragraph shall be taken to prejudice the right of any person to recover any sum payable to him by the union under Article 63(4).

#### **Collection of union dues by employer**

**65.**—(1) Where any person who is a member of a trade union which has a political fund has certified in writing to his employer that, or to the effect that, he is not a contributor to the fund, the employer to whom the certificate was given shall ensure that no amount representing a contribution to the political fund of the union is deducted by him from emoluments payable to the member.

(2) Paragraph (1) does not apply—

(a) before the first day, following the giving of the certificate, on which it is reasonably practicable for the employer to comply with it; or

(b) after the certificate is withdrawn.

(3) Where an employer—

(a) refuses (otherwise than to the extent required by paragraph (1)) to deduct any union dues from emoluments payable to any person who has given a certificate to him under this Article; but

(b) continues to deduct union dues from emoluments payable to other members of the union, he shall be taken to have failed to comply with this Article unless he satisfies the county court that his refusal is not attributable to the giving of that certificate or otherwise connected with the duty imposed by paragraph (1).

(4) Where, on an application made by a person who claims that his employer has failed to comply with this Article in deducting or refusing to deduct any amount from emoluments payable to him, the county court is satisfied that there has been such a failure it shall make a declaration to that effect.

(5) Where the county court makes such a declaration it may, if it considers it appropriate to do so in order to secure that the failure is not repeated, make an order requiring the employer to take,

within such time as may be specified in the order, such steps in relation to emoluments payable by him to the applicant as may be so specified.

(6) This Article shall apply to a member of a trade union which has its head or main office outside Northern Ireland as if—

- (a) for references in paragraph (1) to a political fund there were substituted references to a political fund within the meaning of the Trade Union Act 1913<sup>(24)</sup>; and
- (b) in paragraph (1) for the words “not a contributor” there were substituted the words “exempt from the obligation to contribute”.

### **Transitional provisions**

**66.**—(1) Where a resolution under section 3 of the Trade Union Act 1913<sup>(25)</sup> is in force with respect to a trade union immediately before the appointed day, that resolution and any rule of the union made and approved in pursuance of that section which is in force at that time shall notwithstanding the repeal of that section by this Order continue to have effect as if—

- (a) it were a resolution passed under or, as the case may be, a rule made and approved in pursuance of Article 57; and
- (b) for any reference to the political objects to which section 3 applied there were substituted a reference to the political objects to which Article 57 applies.

(2) For the purposes of Article 57<sup>(9)</sup> any resolution to which paragraph (1) applies which was passed more than nine years before the appointed day shall be deemed to have been passed nine years before that day.

(3) If the Certification Officer is satisfied, and certifies, that rules made for the purposes of complying with the provisions of Article 59<sup>(1)</sup> have been approved by the principal executive committee of a trade union, those rules shall have effect as rules of the trade union for the purposes of Article 59<sup>(1)</sup> as it applies in relation to the first review, notwithstanding that the provisions of the rules of the union as to the alteration of rules or the making of new rules have not been complied with.

(4) Paragraph (3) applies only where a resolution under section 3 of the Trade Union Act 1913 was in force with respect to the union immediately before the appointed day.

(5) In paragraph (3) “first review” means a ballot which—

- (a) is held before the expiry of the period of one year beginning with the appointed day; and
- (b) is the first ballot held during that period.

(6) Article 62<sup>(3)</sup> shall not have effect in relation to any liability incurred before the day on which this Order is made.

### **Relationship of Part VIII and the Trade Union Act 1913**

**67.**—(1) Subject to Article 65<sup>(6)</sup> and to paragraphs (3) to (5), the preceding provisions of this Part apply only to a trade union which has its head or main office in Northern Ireland; and, accordingly, the Trade Union Act 1913 shall cease to have effect in relation to any such trade union.

(2) The amendments and repeals to the Trade Union Act 1913 contained in—

- (a) Schedules 8 and 9 to the Industrial Relations Act 1971<sup>(26)</sup>;
- (b) Schedules 3 and 5 to the Trade Union and Labour Relations Act 1974<sup>(27)</sup>;

<sup>(24)</sup> 1913 c. 30

<sup>(25)</sup> 1913 c. 30

<sup>(26)</sup> 1971 c. 72

<sup>(27)</sup> 1974 c. 52

(c) Part IV of Schedule 16 and Schedule 18 to the Employment Protection Act 1975<sup>(28)</sup>; and  
(d) Schedule 16 to the Employment Protection (Consolidation) Act 1978<sup>(29)</sup>,  
shall have effect in Northern Ireland for the purpose of the application of that Act of 1913 to such trade unions as have their head or main offices outside Northern Ireland.

(3) The rules of any such trade union made in pursuance of section 3 of the Trade Union Act 1913<sup>(30)</sup> shall, in so far as they apply to members of the union in Northern Ireland,—

- (a) comply with the requirements of Article 58; and
- (b) in so far as they so comply, be subject to the approval of the Certification Officer.

(4) Every member of a trade union which has its head or main office outside Northern Ireland who—

- (a) has not delivered to the union the notice referred to in Article 58(1)(a); or
- (b) has delivered such a notice but has withdrawn it in accordance with Article 58(2),

shall be deemed for the purposes of the Trade Union Act 1913 to be a member who is exempt from the obligation to contribute to the political fund of the union; and references in that Act to a member who is so exempt shall be construed accordingly.

(5) Article 57(3) and (4) shall apply in relation to rules of a trade union approved—

- (a) by the Certification Officer under paragraph (3)(b); or
- (b) before the coming into operation of this Article, by the officer appointed to perform in Northern Ireland the functions of registrar of friendly societies,

as they apply in relation to rules made in pursuance of Article 57; and Article 59(4) shall apply to any rules to be approved by the Certification Officer under paragraph (3)(b).

(6) An appeal shall lie, in accordance with Article 70(4), to the Court of Appeal on any question of law arising in any proceedings before, or arising from any decision of, the Certification Officer under this Article.

### **Interpretation of Part VIII**

**68.**—(1) In this Part—

“contributor”, in relation to the political fund of a trade union, has the meaning given by Article 58(5);

“overseas member” has the same meaning as in Part VI;

“the political fund” has the meaning given by Article 57(2);

“post” has the same meaning as in Part VI;

“proper address” has the same meaning as in Part VII;

“resolution” has the meaning given by Article 57(2).

(2) References in this Part to the holding of a ballot, other than the reference in Article 57(5), are to the holding of a ballot for the purposes of this Part.

(3) This Part applies with the necessary modifications in relation to an unincorporated employers' association as it applies in relation to a trade union.

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<sup>(28)</sup> 1975 c. 71  
<sup>(29)</sup> 1978 c. 44  
<sup>(30)</sup> 1913 c. 30

## PART IX

### THE CERTIFICATION OFFICER AND THE COMMISSIONER FOR THE RIGHTS OF TRADE UNION MEMBERS

#### *The Certification Officer for Northern Ireland*

#### **The Certification Officer for Northern Ireland**

**69.**—(1) The Department shall, after consultation with the Agency, appoint an officer to be known as the Certification Officer for Northern Ireland (in this Order referred to as “the Certification Officer”).

(2) The Certification Officer shall not be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(3) The Agency shall—

- (a) provide for the Certification Officer the requisite staff (from among the Agency’s officers and servants) and the requisite accommodation, equipment and other facilities; and
- (b) pay to the Certification Officer such remuneration and travelling and other allowances as may be determined by the Department with the approval of the Department of Finance and Personnel.

(4) The Department may pay, or make provision for paying, to, or in respect of, the Certification Officer such pension, allowance or gratuity on his death or retirement as the Department may, with the approval of the Department of Finance and Personnel, determine.

(5) The Agency shall pay to the Certification Officer such sums as he may require for the making of payments in pursuance of any scheme made by the Department under Article 70(2).

(6) Where a person ceases to be the Certification Officer otherwise than on the expiry of his term of office, and it appears to the Department that there are special circumstances which make it right for him to receive compensation, the Department may make him a payment of such amount as the Department may, with the approval of the Department of Finance and Personnel, determine.

(7) The Certification Officer shall, as soon as reasonably practicable after the end of each financial year, make a report of his activities during that year to the Agency and the Department and the Department shall lay before the Assembly a copy of every report received by it under this paragraph.

(8) The functions of the Certification Officer may, if for any reason he is unable to act or during any vacancy in his office, be discharged by a person nominated for that purpose by the Department.

(9) The Certification Officer shall take custody of all annual returns, accounts, copies of rules and other documents submitted, for the purposes of the Trade Union Acts (Northern Ireland) 1871 to 1965, to the officer appointed to perform in Northern Ireland the functions of registrar of friendly societies and which are, immediately before the appointed day, in the custody of that officer.

(10) The Certification Officer shall keep available for public inspection (either free of charge or on payment of a reasonable charge) at all reasonable hours such of the documents referred to in paragraph (9) as are, or were, available for public inspection in pursuance of any of the Acts referred to in that paragraph.

(11) In the Northern Ireland Assembly Disqualification Act 1975(31) in Part III of Schedule 1 (other disqualifying offices), there shall be inserted (at the appropriate place) the following entry—

“Certification Officer for Northern Ireland.”.

### **Procedure before, and appeals from, Certification Officer**

**70.**—(1) Except in relation to matters as to which express provision is made by or under any statutory provision, the Certification Officer may regulate the procedure to be followed—

- (a) on any application or complaint made to him; or
- (b) where his approval is sought with respect to any matter;

and, without prejudice to the generality of the power conferred by this paragraph, the provision made by the Certification Officer in exercise of that power shall include such provision as he considers appropriate for restricting the circumstances in which the identity of an individual who has made, or is proposing to make, any such application or complaint is disclosed to any person.

(2) The Department, with the approval of the Department of Finance and Personnel, may by scheme make provision for the payment by the Certification Officer to any persons of such sums as may be specified in or determined under the scheme in respect of expenses incurred by those persons for the purposes of, or in connection with, their attendance at hearings held by the Certification Officer in the course of carrying out his functions.

(3) The High Court shall hear appeals on questions of fact or law arising in any proceedings before, or arising from any decision of, the Certification Officer under Article 5 or 6.

(4) The Court of Appeal shall hear appeals on questions of law arising in any proceedings before, or arising from any decision of, the Certification Officer under Article 57, 59, 67 or 77.

### *The Northern Ireland Commissioner for the Rights of Trade Union Members*

### **The Northern Ireland Commissioner for the Rights of Trade Union Members**

**71.**—(1) The Department shall appoint an officer to be known as the Northern Ireland Commissioner for the Rights of Trade Union Members (in this Order referred to as “the Commissioner”) whose function shall be to provide assistance to persons under Article 72.

(2) The provisions of Schedule 2 shall have effect with respect to the Commissioner.

(3) Neither the Commissioner nor any member of his staff shall, in his capacity as such, be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

### **Assistance by the Commissioner**

**72.**—(1) Subject to the following provisions of this Article, where, in relation to any proceedings to which this Article applies, an individual who is an actual or prospective party to those proceedings applies to the Commissioner for assistance under this Article, the Commissioner shall, as soon as reasonably practicable after receiving the application, consider the application and decide whether and to what extent to grant it.

(2) It shall be the duty of the Commissioner, as soon as reasonably practicable after making any decision under paragraph (1)—

- (a) if he has decided to provide assistance—
  - (i) to notify the applicant of his decision, stating the extent of the assistance to be provided; and
  - (ii) to give the applicant a choice, subject to any restrictions specified in the notification, as to the financial arrangements to be made in connection with the provision of the assistance; and
- (b) if he has decided not to grant the application, to notify the applicant of the decision and, if he thinks fit, of the reasons for his decision.

(3) Assistance by the Commissioner under this Article may include—

- (a) the making of arrangements for, or for the Commissioner to bear the costs of, the giving of any advice or assistance by a solicitor or counsel; and
- (b) the making of arrangements for, or for the Commissioner to bear the costs of, the representation of the applicant or the provision to him of such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring an end to any proceedings;

but nothing in this Article shall affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend and address the court in any proceedings.

(4) The matters to which the Commissioner may have regard in determining whether, and to what extent, to grant an application under this Article shall include, in particular—

- (a) whether the case raises a question of principle;
- (b) whether it is unreasonable, having regard to the complexity of the case, to expect the applicant to deal with the case unaided; and
- (c) whether, in the opinion of the Commissioner, the case involves a matter of substantial public interest.

(5) Where—

- (a) an application for assistance under this Article is made in relation to any proceedings or prospective proceedings consisting in, or arising out of, an application for an order of the High Court under Article 52 or 61;
- (b) the Certification Officer has already made a declaration under that Article with respect to the subject matter of the proceedings or, as the case may be, prospective proceedings; and
- (c) it appears to the Commissioner that the applicant for assistance would (if assisted) have a reasonable prospect of securing the making of such an order in those proceedings,

the Commissioner shall grant the application for assistance to the extent that he considers necessary for securing, so far as reasonably practicable, that all such steps as he considers appropriate (including, where appropriate, the taking of another ballot or the holding of another election) are taken by the trade union in question for the purpose of remedying the failure specified in the declaration and of ensuring that a failure of the same, or a similar, kind does not arise on the part of the union.

(6) The power of the Commissioner to provide assistance to a prospective applicant to the High Court under Article 52 or 61 shall not entitle the Commissioner to provide assistance with the making of an application to the Certification Officer.

(7) This Article applies to any proceedings or prospective proceedings to the extent that they consist in, or arise out of—

- (a) an application to the High Court under Article 9, 32, 37, 52 or 61;
- (b) an application to the High Court under Article 8(3) or any other proceedings brought by virtue of that Article;
- (c) proceedings brought by virtue of Article 57 with respect to the unlawful application of the funds of any trade union;
- (d) such other proceedings, being proceedings against a trade union, an official of a trade union or the trustees of the property of a trade union, as may be specified in an order made by the Department subject to affirmative resolution.



### **Provisions supplementary to Article 72**

**73.**—(1) Without prejudice to the power of the Commissioner to enter into any such agreement as he thinks fit as to the terms on which assistance under Article 72 is provided, where the Commissioner grants an application under that Article to any person who for the purposes of the application—

- (a) has made any statement which he knew to be false in a material particular; or
- (b) has recklessly made any statement which was false in a material particular,

the Commissioner shall be entitled to recover from that person an amount equal to any sums paid by him to that person, or any other person, by way of assistance provided in pursuance of the grant of that application.

(2) Where the Commissioner provides assistance under Article 72 in relation to any proceedings, it shall be his duty to do so on such terms, or to make such other arrangements, as will secure that any person against whom those proceedings have been or are commenced is informed that assistance has been or is being provided by the Commissioner in relation to the proceedings.

(3) In every case where assistance provided by the Commissioner under Article 72 extends to assistance with respect to the conduct of any proceedings to which that Article applies, that assistance shall include an agreement under which the Commissioner is required (subject only to such exceptions as may have been contained in the notification under paragraph (2) of that Article of the Commissioner’s decision on the application) to indemnify the applicant for so much of any liability of the applicant to pay any amount in respect of costs or expenses to any other person as arises by virtue of any judgment or order of the court in the proceedings in relation to which the assistance is provided.

(4) In so far as expenses are incurred by the Commissioner in providing the applicant with assistance under Article 72 the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules of court) shall constitute a first charge for the benefit of the Commissioner—

- (a) on any costs which, by virtue of a judgment or order of the court, are payable to the applicant by any other person in respect of the matter in connection with which the assistance is provided; and
- (b) on any sum payable to the applicant under any compromise or settlement arrived at in connection with that matter to avoid or bring an end to any proceedings.

(5) In this Article “the applicant”, in relation to any assistance under Article 72, means the individual on whose application under that Article that assistance is provided.

## **PART X**

### **AMALGAMATIONS, ETC.**

#### **Conditions for amalgamations and transfers of engagements of trade unions**

**74.**—(1) Subject to this Article—

- (a) two or more trade unions may amalgamate and become one trade union, with or without a division or dissolution of the funds of any one or more of those unions, but shall not do so unless, in the case of each of the amalgamating unions, a resolution which approves an instrument of amalgamation approved by the Certification Officer has been passed on a ballot held in a manner which satisfies the conditions specified in paragraph (2);
- (b) a trade union may transfer its engagements to any other trade union which undertakes to fulfil those engagements, but shall not do so unless, in the case of the transferor union, a

resolution which approves an instrument of transfer approved by the Certification Officer has been passed on a ballot held in a manner which satisfies the conditions specified in paragraph (2).

- (2) The conditions referred to in paragraph (1) are the following, that is—
- (a) every member of the union must be entitled to vote in the ballot;
  - (b) every member of the union must be allowed to vote without interference or constraint and must, so far as is reasonably possible, be given a fair opportunity of voting;
  - (c) the method of voting must involve the marking of a voting paper by the person voting;
  - (d) all reasonable steps must have been taken by the union to secure that, not less than 14 days before voting on the resolution begins, every member of the union is supplied with a notice in writing approved for the purpose by the Certification Officer.
- (3) The notice referred to in paragraph (2)(d)—
- (a) shall either set out in full the instrument of amalgamation or transfer to which the resolution relates, or give an account of it sufficient to enable those receiving the notice to form a reasonable judgment of the main effects of the proposed amalgamation or transfer; and
  - (b) if it does not set out the instrument in full, shall state where copies of the instrument may be inspected by those receiving the notice;

and both the instrument and the notice shall comply with the requirements of any regulations for the time being in force under this Part.

- (4) Before a resolution to approve an instrument of amalgamation or transfer is voted on by the members of a trade union—
- (a) that instrument; and
  - (b) the notice proposed to be supplied to members of the union in accordance with paragraph (2)(d),

shall be submitted to the Certification Officer, and the Certification Officer shall approve them respectively on being satisfied that they comply with the requirements of paragraph (3).

(5) An instrument of amalgamation or transfer shall not take effect before it has been registered by the Certification Officer under this Part, and shall not be so registered before the expiration of a period of six weeks beginning with the date on which an application for its registration is sent to the Certification Officer.

(6) No such amalgamation or transfer as is mentioned in paragraph (1) shall prejudice any right of any creditor of any trade union party thereto.

### **Manner of voting on, and majority required for, resolution**

**75.**—(1) Article 74 shall apply in relation to every amalgamation or transfer of engagements notwithstanding anything in the rules of any of the trade unions concerned or in the following provisions of this Article.

(2) For the purposes of the passing of a resolution to approve an instrument of amalgamation or transfer, the principal executive committee of a trade union shall, unless the rules of that union expressly provide that this paragraph shall not apply in relation to that union, have power, notwithstanding anything in the rules of the union, to arrange for a ballot of the members of that union to be held in any manner which that committee thinks fit.

(3) Subject to paragraph (4), where, in the case of a trade union, a ballot is held (whether under arrangements made under paragraph (2) or under provisions in the rules of the union) on a resolution to approve an instrument of amalgamation or transfer, a simple majority of the votes recorded shall be

sufficient to pass the resolution, notwithstanding anything in the rules of the union and, in particular, notwithstanding anything in those rules which, but for this paragraph, would require the resolution—

- (a) to be passed by a majority greater than a simple majority; or
- (b) to be voted on by not less than a specified proportion of the members of the union.

(4) The provisions of paragraph (3) shall not apply in the case of a union whose rules expressly provide that that paragraph shall not apply in relation to that union.

### **Power to alter rules of transferee union for purposes of transfer of engagements**

76. Where a trade union proposes to transfer its engagements to another trade union, and an alteration of the rules of the transferee union is necessary to give effect to provisions in the instrument of transfer, the principal executive committee of the transferee union shall, unless the rules of that union expressly provide that this Article shall not apply in relation to that union, have power, notwithstanding anything in the rules of that union, by memorandum in writing to alter the rules of that union so far as is necessary to give effect to those provisions; but an alteration of the transferee union's rules under this Article shall not take effect unless or until the instrument of transfer takes effect.

### **Complaint to Certification Officer as regards passing of resolution**

77.—(1) A member of a trade union which passes or purports to pass a resolution approving an instrument of amalgamation or transfer may complain to the Certification Officer on one or more of the following grounds, that is—

- (a) that the manner in which the ballot on the resolution was held did not satisfy the conditions specified in Article 74(2); or
- (b) where that ballot was held under arrangements made under Article 75(2), that the manner in which it was held was not in accordance with the arrangements; or
- (c) where that ballot was held under provisions in the rules of the union, that the manner in which it was held was not in accordance with those rules; or
- (d) that the votes recorded did not have the effect of passing the resolution.

(2) A complaint under this Article may be made at any time before, but shall not be made after, the expiration of a 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; and where a complaint is made under this Article, the Certification Officer shall not register the instrument under this Part before the complaint is finally determined.

(3) Where a complaint is made under this Article, the Certification Officer may either dismiss it or, if after giving the complainant and the trade union an opportunity of being heard he finds the complaint to be justified, may either—

- (a) so declare, but make no order under this paragraph thereon; or
- (b) make an order specifying the steps which must be taken before he will entertain any application to register the instrument of amalgamation or transfer, as the case may be.

(4) It shall be the duty of the Certification Officer to furnish a statement, either written or oral, of the reasons for any decision which he gives on a complaint under this Article.

(5) The Certification Officer may from time to time by order vary any order made under paragraph (3), and after making an order under that paragraph in relation to an instrument of amalgamation or transfer shall not entertain any application to register that instrument unless he is satisfied that the steps specified in the order (or, where the order has been varied, in the order as varied) have been taken.

(6) Subject to paragraph (7), the validity of a resolution approving an instrument of amalgamation or transfer shall not be questioned in any legal proceedings whatsoever (except proceedings before the Certification Officer under this Article or any proceedings arising out of such proceedings) on any ground on which a complaint could be, or could have been, made to the Certification Officer under this Article.

(7) An appeal shall lie, in accordance with Article 70(4), at the instance of the complainant or the trade union, to the Court of Appeal on any question of law arising in any proceedings before, or arising from any decision of, the Certification Officer under this Article.

(8) The Arbitration Act (Northern Ireland) 1937(32) does not apply to proceedings on a complaint under this Article.

(9) For the purposes of this Article a complaint which is withdrawn shall be deemed to be finally determined at the time when it is withdrawn.

### **Disposal of property on amalgamation or transfer**

**78.**—(1) Subject to this Article, where an instrument of amalgamation or transfer takes effect, the property held—

- (a) for the benefit of any of the amalgamating unions or for the benefit of a branch of any of those unions, by the trustees of the union or branch; or
- (b) for the benefit of the transferor trade union or for the benefit of a branch of the transferor trade union, by the trustees of the union or branch,

shall without any conveyance or assignment vest, on the instrument taking effect, or on the appointment of the appropriate trustees, whichever is the later, in the appropriate trustees.

(2) Paragraph (1) shall not apply—

- (a) to property excepted from the operation of this Article by the instrument of amalgamation or transfer; or
- (b) to stocks and securities in the public funds of Northern Ireland or the United Kingdom.

(3) In this Article “the appropriate trustees” means—

- (a) in the case of any property to be held for the benefit of a branch of the amalgamated union or for the benefit of a branch of the transferee union, the trustees of that branch, unless the rules of the amalgamated or transferee union provide that the property to be so held shall be held by the trustees of the union; and
- (b) in any other case, the trustees of the amalgamated or transferee union.

(4) If, in the case of an amalgamation of two or more trade unions each qualified under Article 57 to operate such a fund as is mentioned in paragraph (2)(a) of that Article, the rules of the amalgamated union in force immediately after the amalgamation include such rules as are required by that Article, that union is to be treated for the purposes of that Article as having immediately after the amalgamation passed such a resolution as is mentioned in paragraph (1) of that Article, with power to rescind it under paragraph (8) thereof.

### **Change of name of trade union**

**79.**—(1) Subject to this Article, a trade union may change its name by any method of doing so expressly provided for by its rules or, if its rules do not expressly provide for a method of doing so, by adopting in accordance with its rules an alteration of the provision in them which gives the union its name.

(2) If the name of a trade union is for the time being entered in the list of trade unions under Article 5, a change of its name shall not take effect until approved by the Certification Officer under this Part; and the Certification Officer shall not approve a change of name if it appears to him that the proposed new name is the same as one entered in either of the lists under that Article as the name of another trade union or employers' association or is a name so nearly resembling such a name as to be likely to deceive the public.

(3) Where a trade union changes its name, the change of name shall not affect any right or obligation of the union or of any of its members, and any pending legal proceedings may be continued by or against the union or the trustees of the union notwithstanding its change of name.

### **Regulations**

**80.**—(1) The Department may make regulations as respects—

- (a) applications to the Certification Officer under this Part;
- (b) the registration under this Part of any document or matter;
- (c) the inspection of documents kept by the Certification Officer under this Part;
- (d) the charging of fees in respect of such matters, and of such amounts, as may, with the approval of the Department of Finance and Personnel, be prescribed by the regulations;

and generally for carrying this Part into effect.

(2) Regulations under this Article may in particular—

- (a) require any application for the registration of an instrument of amalgamation or transfer or a change of name to be accompanied by such statutory declarations or other documents as may be specified in the regulations;
- (b) make provision as to the form or content of any document required by this Part or by the regulations to be sent or submitted to the Certification Officer and the manner in which any such document is to be signed or authenticated;
- (c) authorise the Certification Officer to require notice to be given or published in such manner as he may direct of the fact that an application for registration of an instrument of amalgamation or transfer has been or is to be made to him.

### **Interpretation of Part X**

**81.**—(1) In this Part—

“the amalgamating unions” and “the amalgamated union”, in relation to a proposed amalgamation, mean respectively the trade unions proposing to amalgamate and the trade union which is to result from the proposed amalgamation;

“Great Britain union” has the meaning assigned to it by paragraph (4);

“the transferor trade union” and “the transferee trade union”, in relation to a proposed transfer of engagements, mean respectively the trade union proposing to transfer its engagements and the trade union proposing to accept them.

(2) Subject to paragraph (3), this Part applies only to a trade union which has its head or main office in Northern Ireland.

(3) This Part shall have effect in relation to amalgamations and transfers of engagements to which both a trade union having its head or main office in Northern Ireland and a Great Britain union are parties subject to the modifications specified in Schedule 3.

(4) In this Part “Great Britain union” means a trade union within the meaning of the Trade Union and Labour Relations Act 1974(33), being either—

- (a) a union whose name is for the time being entered in the list of trade unions under section 8 of that Act; or
- (b) a union whose name is not so entered, but whose head or main office is situated in England, Wales or Scotland.

(5) This Part applies with the necessary modifications to an unincorporated employers' association as it applies to a trade union.

## PART XI

### MACHINERY FOR PROMOTING IMPROVEMENT OF INDUSTRIAL RELATIONS

#### *The Labour Relations Agency*

#### **Constitution of the Labour Relations Agency**

**82.**—(1) There shall continue to be a body called the Labour Relations Agency (in this Order referred to as “the Agency”).

(2) The constitution of the Agency shall be as provided in that behalf in Part I of Schedule 4, and the supplementary provisions contained in Part II of that Schedule shall have effect with respect to the Agency.

#### **General function of the Agency**

**83.**—(1) It shall be the duty of the Agency to promote the improvement of industrial relations, and in particular to encourage the extension of collective bargaining and the development and, where necessary, the reform of collective bargaining machinery.

(2) Without prejudice to the generality of paragraph (1), the Agency shall exercise such functions as are conferred on it by or under the following provisions of this Order and by any other statutory provision.

#### **Functions of the Agency in relation to trade disputes**

**84.**—(1) Where the Agency apprehends that a trade dispute may occur it may take all steps which it considers appropriate for avoiding such trade dispute.

(2) Where a trade dispute exists the Agency may—

- (a) inquire into the causes and circumstances of the trade dispute;
- (b) form a view on the matter in dispute;
- (c) express, either publicly or to the parties to the dispute, the view it has formed on the matter in dispute;
- (d) assist the parties to the trade dispute to achieve a settlement of the dispute by conciliation or otherwise;
- (e) at any time, with the agreement of the parties, refer the matter for settlement to the arbitration of—

- (i) one or more persons appointed by the Agency; or
  - (ii) the Industrial Court;
- (f) at any time, with the agreement of the parties, refer the matter to one or more persons appointed by the Agency to inquire into the matter and report to the Agency thereon;
- (g) if it is satisfied that no appropriate agreed procedures for negotiation or the settlement of disputes exist between the parties, at any time, with the agreement of the parties, refer the dispute to a committee appointed in accordance with paragraph (3) whose function shall be to—
- (i) inquire into the causes and circumstances of the dispute; and
  - (ii) seek the agreement of the parties to the dispute as to how it may be settled.
- (3) The committee referred to in paragraph (2)(g) shall consist of—
- (a) a chairman appointed by the Agency; and
  - (b) such equal number of representatives of each party to the trade dispute as the Agency may determine.
- (4) In exercising its functions under paragraph (2)(d), the Agency shall have regard to the desirability of encouraging the parties to a dispute to use any appropriate agreed procedures for negotiation or the settlement of disputes.
- (5) In exercising its functions under paragraph (2)(e), the Agency shall consider the likelihood of the dispute being settled by conciliation and, where there exist appropriate agreed procedures for negotiation or the settlement of disputes, shall not refer a matter for settlement to arbitration under that sub-paragraph unless those procedures have been used and have failed to result in a settlement or unless, in the opinion of the Agency, there is a special reason which justifies arbitration under that sub-paragraph as an alternative to those procedures.
- (6) For the purpose of exercising its powers under paragraph (2)(e)(i) the Agency may maintain a register of persons who, having regard to their knowledge and experience, would, in the opinion of the Agency, be suitable for appointment by the Agency as arbitrators.
- (7) Nothing in paragraph (2) prejudices the operation of any other statutory provision conferring on a person or body a power to refer any matter connected with a trade dispute to arbitration or for inquiry or the right of the parties to the dispute to establish at any time appropriate procedures for negotiation or the settlement of disputes.
- (8) The Agency may pay to persons appointed under paragraph (2)(e)(i) or (f) or (3)(a) such fees and such allowances for expenses as the Agency, with the approval of the Department and the Department of Finance and Personnel, may determine.
- (9) The Arbitration Act (Northern Ireland) 1937(34) shall not apply to any arbitration under this Article.

### **Notification of procedural agreements**

- 85.**—(1) The Agency may request an employer to submit to it copies, or particulars, of procedural agreements to which he is a party and may receive and record such procedural agreements or particulars thereof.
- (2) The Agency, after examining any procedural agreement or the particulars of any procedural agreement submitted to it under paragraph (1) may make such inquiries and seek such further information concerning that procedural agreement as the Agency thinks fit.

(3) In this Article “procedural agreement” means so much of a collective agreement as provides for procedures for the conduct of relations between workers or their representatives and employers and includes (without prejudice to the generality of the foregoing) so much of such an agreement as relates to—

- (a) machinery for consultation with regard to, or for the settlement by negotiation or arbitration of, terms and conditions of employment;
- (b) machinery for consultation with regard to, or for the settlement by negotiation or arbitration of, other questions arising between an employer or group of employers and one or more workers or trade unions;
- (c) negotiating rights;
- (d) facilities for officials of trade unions or other organisations of workers;
- (e) procedures relating to dismissal;
- (f) procedures relating to matters of discipline other than dismissal;
- (g) procedures relating to grievances of individual workers;
- (h) disclosure of information;
- (i) redundancy;
- (j) health and safety at work; and
- (k) promotion.

### **Review of collective bargaining arrangements**

**86.**—(1) The Agency may review existing arrangements for the conduct of collective bargaining and may make recommendations to trade unions, employers and employers' associations concerning the introduction of arrangements for the conduct of collective bargaining or the improvement of existing arrangements.

(2) The Agency may review progress towards the institution of suitable arrangements for the conduct of collective bargaining and may send reports concerning such progress to appropriate trade unions, employers and employers' associations.

### **Industrial relations training**

**87.**—(1) The Agency may—

- (a) review arrangements for industrial relations training in Northern Ireland;
- (b) advise employers, trade unions and the Department on training needs;
- (c) make recommendations to employers, trade unions, the Department and other interested bodies as to how training needs may best be met and in so doing may devise and propose training programmes;
- (d) co-ordinate by agreement, the activities of employers, employers' associations, trade unions and other interested bodies in the provision of industrial relations training in order to secure the most advantageous use of training resources for the fulfilment of identified training needs;
- (e) review progress in the fulfilment of identified training needs; and
- (f) obtain information about, and encourage the utilisation of developments in, training methods and techniques in respect of industrial relations training.

(2) The Department may make a grant of such amount as the Department, with the approval of the Department of Finance and Personnel, may determine towards defraying the expenses incurred by any undertaking or organisation in connection with industrial relations training.



(3) In this Article “industrial relations training” means training in any matter pertaining to the conduct of industrial relations.

### **Industrial relations research**

**88.**—(1) Where the Agency thinks fit, or at the request of the Department, an employer, an employers' association or a trade union, the Agency may conduct research into any question relating to industrial relations generally or to industrial relations in any particular industry or in any particular undertaking or part of an undertaking.

(2) The findings of any research under paragraph (1) together with any advice given by the Agency in connection with those findings, may be published by the Agency if—

- (a) it appears to the Agency that publication is desirable for the improvement of industrial relations, either generally or in relation to the specific question into which research was made; and
- (b) after sending a draft of the findings to, and taking into account the views of, all the parties appearing to the Agency to be concerned, the Agency thinks fit.

(3) The Department may make a grant of such amount as the Department, with the approval of the Department of Finance and Personnel, may determine towards defraying the expenses incurred by any undertaking or organisation in connection with—

- (a) the conduct of research into any question relating to industrial relations generally or to industrial relations in any particular industry or in any particular undertaking or part of an undertaking; and
- (b) the giving of advice based on such research.

### **Industrial relations advice**

**89.**—(1) Where the Agency thinks fit, it may give advice on any matter pertaining to the conduct of industrial relations or employment policies to any employer, employers' association, worker, trade union or other body.

(2) Where the Agency thinks fit, it may provide to employers, employers' associations, workers, trade unions and other interested bodies information relating to good industrial relations practice or employment policies.

(3) The Agency may publish—

- (a) general advice on any matter pertaining to the conduct of industrial relations or employment policies; and
- (b) general information relating to industrial relations or to employment policies.

(4) Where the Agency thinks fit, it may—

- (a) give advice to any employer, employers' association, worker, trade union or other body or person;
- (b) publish general advice; and
- (c) publish general information,

with respect to the rights, duties, liabilities and responsibilities under the law of employers, employers' associations, workers and trade unions.

(5) References in this Article to employment policies are to such policies only in so far as they relate to or are connected with industrial relations.

## Codes of Practice

**90.**—(1) The Agency may issue Codes of Practice containing such practical guidance as the Agency thinks fit for the purpose of promoting the improvement of industrial relations.

(2) Without prejudice to the generality of paragraph (1), the Agency shall, in one or more Codes of Practice, provide practical guidance on the following matters—

- (a) the disclosure of information, in accordance with Articles 39 and 40, by employers to trade union representatives for the purpose of collective bargaining;
- (b) the time off to be permitted by an employer—
  - (i) to a trade union official in accordance with Article 37 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(35), including guidance on the circumstances in which a trade union official is to be permitted to take time off under that Article in respect of duties connected with industrial action; and
  - (ii) to a trade union member in accordance with Article 38 of that Order, including guidance on the question whether, and the circumstances in which, a trade union member is to be permitted to take time off under that Article for trade union activities connected with industrial action.

(3) When the Agency proposes to issue a Code of Practice, it shall prepare and publish a draft of that Code, shall consider any representations made to it about the draft and may modify the draft accordingly.

(4) If the Agency determines to proceed with the draft, it shall transmit the draft to the Department which shall—

- (a) if it approves of the draft, lay it before the Assembly; and
- (b) if it does not approve of the draft, publish details of its reasons for withholding approval.

(5) In the case of a draft Code of Practice containing practical guidance on the matters referred to in paragraph (2)(a) or (b), if the draft is approved by resolution of the Assembly the Agency shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Department may by order appoint.

(6) In the case of a draft Code of Practice not containing such practical guidance, if, within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before the Assembly of a new draft.

(7) If no such resolution is passed as is referred to in paragraph (6), the Agency shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Department may by order appoint.

(8) If the Agency is of the opinion that the provisions of a Code of Practice to be issued under the preceding provisions of this Article will supersede the whole or part of a Code previously issued by it under this Article or by the Department under Article 95, it shall in the new Code state that on the day on which the new Code comes into effect in pursuance of an order under paragraph (5) or (7) the old Code or a specified part of it shall cease to have effect (subject to any transitional provisions or savings made by the order).

(9) The Agency may from time to time revise the whole or any part of a Code of Practice issued under this Article and issue that revised Code, and, subject to paragraph (10), paragraphs (3) to (7) shall apply (with appropriate modifications) to such a revised Code as they apply to the first issue of a Code.

(10) A Code of Practice issued under this Article may be revised by the Agency in accordance with paragraphs (11) to (13) for the purpose of bringing it into conformity with statutory provisions coming into operation after the Code was issued by the making of consequential amendments and the omission of obsolete passages.

(11) Where the Agency proposes to revise a Code under paragraph (10), it shall transmit a draft of the revised Code to the Department which shall—

- (a) if it approves of the draft, lay it before the Assembly; and
- (b) if it does not approve of the draft, publish details of its reasons for withholding approval.

(12) If, within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before the Assembly of a new draft.

(13) If no such resolution is passed as is referred to in paragraph (12), the Agency shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Department may by order appoint.

(14) A Code of Practice issued under this Article may be revoked by an order made by the Department; but no such order shall be made—

- (a) except at the request of the Agency; and
- (b) unless a draft of the order has been laid before and approved by resolution of the Assembly.

(15) If the Agency requests the Department to revoke a Code of Practice issued under this Article and the Department decides not to do so, the Department shall publish details of its reasons for withholding approval.

(16) A failure on the part of any person to observe any provision of a Code of Practice issued under this Article shall not of itself render him liable to any proceedings; but in any proceedings before an industrial tribunal or the Industrial Court—

- (a) any such Code shall be admissible in evidence; and
- (b) any provision of the Code which appears to the tribunal or Industrial Court to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

(17) Without prejudice to Article 107(3), an order under paragraph (5), (7), (13) or (14) may contain such transitional provisions or savings as appear to the Department to be necessary or expedient in connection with the Code of Practice thereby brought into operation or (as the case may be) revoked.

### *The Industrial Court*

#### **Constitution of the Industrial Court**

**91.**—(1) There shall continue to be an Industrial Court which shall consist of—

- (a) an independent president appointed by the Head of the Department; and
- (b) other members appointed by the Head of the Department, being persons appearing to him to be experienced in industrial relations.

(2) The members appointed under paragraph (1)(b) shall include some persons whose experience is as representatives of employers and some persons whose experience is as representatives of workers.

(3) The members of the Court shall hold and vacate office in accordance with their terms of appointment.

(4) The functions of the president may, if he is for any reason unable to act or during any vacancy in his office, be discharged by an independent person nominated for that purpose by the Head of the Department.

(5) The Department shall pay to the members of the Court such remuneration and such travelling and other allowances as may be determined by the Department with the approval of the Department of Finance and Personnel and may pay to any other persons such allowances as the Department may, with the approval of the Department of Finance and Personnel, determine for the purposes of, or in connection with, their attendance at proceedings of the Court.

(6) For the purposes of discharging any of its functions, the Court shall consist of such of the members of the Court as the president may direct.

(7) Where the president sits as a member of the Court he shall be chairman of the Court, and in any other case the chairman of the Court shall be such other member as the Head of the Department may direct.

(8) The functions of the Court shall be performed on behalf of the Crown, but the Court shall not be subject to directions of any kind from any Minister of the Crown or Northern Ireland department as to the manner in which it is to exercise any of its functions.

### **Procedure of the Industrial Court**

**92.**—(1) The Department may make, or authorise the Industrial Court to make, rules regulating the procedure of the Court and such rules may provide—

- (a) for references in certain cases to a single member of the Court;
- (b) for the Court to sit in two or more divisions;
- (c) for the Court to sit with assessors;
- (d) for the Court, or any division of the Court, to act notwithstanding any vacancy in its number;
- (e) for enabling questions as to the interpretation of any award to be settled without any fresh reference;
- (f) for the cases in which persons may appear by counsel or solicitor in proceedings before the Court.

(2) Except as provided by rules under paragraph (1)(f), no person shall be entitled to appear in any proceedings before the Court by counsel or solicitor.

(3) If in any case the Court cannot reach a unanimous decision on its award, the chairman shall decide the matter acting with the full powers of an umpire.

(4) Where any trade dispute referred to the Court under Article 84(2)(e) involves questions as to wages or as to hours of work or otherwise as to the terms and conditions of or affecting employment which are regulated by any statutory provision, the Court shall not make any award which is inconsistent with that statutory provision.

(5) The Arbitration Act (Northern Ireland) 1937(36) shall not apply to any reference to the Court.

(6) Subject to paragraphs (1) to (5), the Court shall determine its own procedure.

### *Courts of inquiry*

#### **Court of inquiry into trade dispute**

**93.**—(1) Where any trade dispute exists or is apprehended, the Head of the Department may—

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(36) 1937 c. 8 (N.I.)

- (a) inquire into the causes and circumstances of the dispute; and
  - (b) if he thinks fit, refer the matters appearing to him to be connected with or relevant to the dispute to a court of inquiry appointed under paragraph (2).
- (2) For the purpose of a reference under paragraph (1)(b), the Head of the Department may appoint a court of inquiry consisting of—
- (a) one person; or
  - (b) a chairman and such other persons as the Head of the Department thinks fit.
- (3) The Department shall pay to the members of a court of inquiry such remuneration and such travelling and other allowances as may be determined by the Department with the approval of the Department of Finance and Personnel and may pay to any other persons such allowances as the Department may, with the approval of the Department of Finance and Personnel, determine for the purposes of, or in connection with, their attendance at proceedings of a court of inquiry.
- (4) A court of inquiry appointed under paragraph (2)(b) may act notwithstanding any vacancy in its number.
- (5) A court of inquiry shall, either in public or in private at its discretion, inquire into the matters referred to it.
- (6) Subject to paragraph (9), a court of inquiry shall report to the Head of the Department on any matters referred to it and may, if it thinks fit, make interim reports.
- (7) Any report of a court of inquiry made to the Head of the Department under paragraph (6) shall be laid before the Assembly.
- (8) Subject to paragraph (9), the Head of the Department may publish, in such manner as he thinks fit, any information obtained or conclusions arrived at by the court of inquiry as a result of or in the course of its inquiry.
- (9) There shall not be included in any report made under paragraph (6) or any publication under paragraph (8) any information obtained by the court of inquiry in the course of its inquiry as to any trade union or employers' association or as to any individual business carried on by a person, firm or business which is not available otherwise than through evidence given at the inquiry, except with the consent of the general secretary of the trade union or employers' association or of the person, firm or company in question.

### **Procedure of court of inquiry**

- 94.**—(1) The Head of the Department may make rules regulating the procedure of a court of inquiry appointed under Article 93 and such rules may provide—
- (a) for the summoning of witnesses;
  - (b) for the quorum of a court of inquiry appointed under Article 93(2)(b);
  - (c) for the appointment of committees;
  - (d) for enabling the court of inquiry to call for such documents as the court may determine to be relevant to the subject matter of the inquiry;
  - (e) for the cases in which persons may appear by counsel or solicitor in proceedings before the court of inquiry.
- (2) Except as provided by rules under paragraph (1)(e), no person shall be entitled to appear in any proceedings before a court of inquiry by counsel or solicitor.
- (3) A court of inquiry may, if and to such extent as may be authorised by rules under this Article, by order require any person who appears to the court to have any knowledge of the subject matter of the inquiry—

- (a) to furnish, in writing or otherwise, such particulars in relation thereto as the court may require; and
  - (b) where necessary, to attend before the court and give evidence on oath.
- (4) A court of inquiry may administer, or authorise any person to administer, an oath for the purposes of paragraph (3)(b).

*Issue by Department of Codes of Practice*

**Issue by Department of Codes of Practice**

**95.**—(1) The Department may issue Codes of Practice containing such practical guidance as the Department thinks fit for the purpose of promoting the improvement of industrial relations or of promoting what appear to it to be desirable practices in relation to the conduct by trade unions of ballots and elections.

(2) The Department shall, after consultation with the Agency, prepare and publish a draft of any Code of Practice that it proposes to issue under this Article.

(3) The Department shall consider any representations made to it about a draft prepared under paragraph (2) and may modify the draft accordingly.

(4) If the Department determines to proceed with the draft the Department shall lay it before the Assembly.

(5) If the draft is approved by resolution of the Assembly, the Department shall issue the Code in the form of the draft and the Code shall come into operation on such day as the Department may by order appoint.

(6) If the Department is of the opinion that the provisions of a Code of Practice to be issued under the preceding provisions of this Article will supersede the whole or part of a Code previously issued by the Department under this Article or by the Agency under Article 90, the Department shall in the new Code state that on the day on which the new Code comes into operation in pursuance of an order under paragraph (5) the old Code or a specified part of it shall cease to have effect (subject to any transitional provisions or savings made by the order).

(7) The Department may from time to time revise the whole or any part of a Code of Practice issued under this Article and issue that revised Code, and, subject to paragraph (8), paragraphs (2) to (5) shall apply (with appropriate modifications) to such a revised Code as they apply to the first issue of a Code.

(8) A Code of Practice issued under this Article may be revised by the Department in accordance with paragraphs (9) to (11) for the purpose of bringing it into conformity with statutory provisions coming into operation after the Code was issued by the making of consequential amendments and the omission of obsolete passages.

(9) Where the Department proposes to revise a Code under paragraph (8), it shall lay a draft of the revised Code before the Assembly.

(10) If, within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before the Assembly of a new draft.

(11) If no such resolution is passed as is referred to in paragraph (10), the Department shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Department may by order appoint.

(12) A Code of Practice issued under this Article may be revoked by an order made by the Department; but no such order shall be made unless a draft of the order has been laid before and approved by resolution of the Assembly.

(13) A failure on the part of any person to observe any provision of a Code of Practice issued under this Article shall not of itself render him liable to any proceedings; but in any proceedings before a court or industrial tribunal or the Industrial Court—

- (a) any such Code shall be admissible in evidence; and
- (b) any provision of the Code which appears to the court, tribunal or Industrial Court to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

(14) Without prejudice to Article 107(3), an order under paragraph (5), (11) or (12) may contain such transitional provisions or savings as appear to the Department to be necessary or expedient in connection with the Code of Practice thereby brought into operation or (as the case may be) revoked.

*Meaning of “trade dispute” in Part XI*

**Meaning of “trade dispute” in Part XI**

**96.**—(1) In this Part “trade dispute” means a dispute between employers and workers, or between workers and workers, which is connected with one or more of the following, that is to say—

- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
- (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
- (c) allocation of work or the duties of employment as between workers or groups of workers;
- (d) matters of discipline;
- (e) the membership or non-membership of a trade union on the part of a worker;
- (f) facilities for officials of trade unions;
- (g) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures.

(2) A dispute between a Minister of the Crown or Department of the Government of Northern Ireland and any workers shall, notwithstanding that the Minister or the Department is not the employer of those workers, be treated for the purposes of this Part as a dispute between an employer and those workers if the dispute relates—

- (a) to matters which have been referred for consideration by a joint body on which, by virtue of any provision made by or under any statutory provision, that Minister or that Department is represented; or
- (b) to matters which cannot be settled without that Minister or that Department exercising a power conferred by or under any statutory provision.

(3) There is a trade dispute for the purposes of this Part even though it relates to matters occurring outside Northern Ireland.

(4) A dispute to which a trade union or employers' association is a party shall be treated for the purposes of this Part as a dispute to which workers or, as the case may be, employers are parties.

(5) In this Article—

“employment” includes any relationship whereby one person personally does work or performs services for another;

“worker”, in relation to a dispute to which an employer is a party, includes any worker even if not employed by that employer.

## PART XII

### MISCELLANEOUS AND SUPPLEMENTARY

#### *Employee’s individual rights*

#### **Written statements of terms of employment**

**97.**—(1) Section 4 of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965<sup>(37)</sup> (particulars of terms of employment) shall be amended as follows.

(2) In subsection (1A)—

- (a) for “subsections (1B) and (1C)” there shall be substituted “subsections (1C) and (1D)”;
- (b) the words from “and any reference in” to the end shall cease to have effect.

(3) The following subsection shall be inserted after subsection (1C)—

“(1D) The note which, by virtue of subsection (1A), is required to be included in a statement given to an employee under subsection (1) need not comply with the following provisions of subsection (1A), namely—

- (a) paragraph (a);
- (b) in paragraph (b), sub-paragraph (i) and the words following sub-paragraph (ii) so far as relating to sub-paragraph (i); and
- (c) paragraph (c),

if on the date when the employee’s employment began the relevant number of employees was less than twenty; and in this subsection “the relevant number of employees”, in relation to an employee, means the number of employees employed by his employer added to the number of employees employed by any associated employer.”

(4) In subsection (6A) for “section 4(1)” where it twice occurs there shall be substituted “subsection (1)”.

(5) The following subsection shall be inserted after subsection (6B)—

“(6C) Any reference in subsection (4), (6) or (6A) to the terms of employment which were to be, or were, included or referred to in a statement given under subsection (1) shall be construed as including a reference to any other matters falling within subsections (1) and (1A) of which particulars were to be given by that statement.”

(6) The following subsection shall be substituted for subsection (7)—

“(7) No statement need be given under subsection (1) where—

- (a) the employee’s employment began not more than six months after the end of earlier employment with the same employer;
- (b) a statement under that subsection, and any information subsequently required under subsection (4), was duly given to the employee in respect of his earlier employment; and

(37) 1965 c. 19 (N.I.)



- (c) the terms of his present employment are the same as those of his earlier employment and any other matters falling within subsection (1A) of which particulars were to be given by that statement are also unchanged, but without prejudice to the operation of subsection (4) if there is subsequently a change in his terms of employment or in any of those matters.”.
- (7) In subsection (8)(c) for “section 4(1A)” there shall be substituted “subsection (1A)”.
- (8) The following subsection shall be inserted after subsection (8)—
  - “(8A) If on the date when the employee’s employment began the relevant number of employees was less than twenty, any reference in subsection (8)(c) to such a note as is there mentioned shall be construed as including a reference to such a note as is mentioned in subsection (1A) as it has effect with the omission of the provisions specified in subsection (1D)(a) to (c); and in this subsection “the relevant number of employees” has the meaning given by subsection (1D).”.

#### **Time off for trade union duties**

**98.**—(1) In Article 37(1) of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(**38**) (duty of employer to permit employee who is an official of an independent trade union recognised by employer to take time off to carry out certain trade union duties)—

- (a) the following sub-paragraph shall be substituted for sub-paragraph (a)—
  - “(a) to carry out—
    - (i) any duties of his, as such an official, which are concerned with negotiations with the employer that are related to or connected with any matters which fall within Article 2(4) of the Industrial Relations (Northern Ireland) Order 1992 and in relation to which the trade union is recognised by the employer; or
    - (ii) any other duties of his, as such an official, which are concerned with the performance, on behalf of employees of the employer, of any functions that are related to or connected with any matters falling within that provision and that the employer has agreed may be so performed by the trade union; or”;
- (b) in sub-paragraph (b)(i), for “those duties” there shall be substituted “any such duties as are mentioned in sub-paragraph (a)”.

(2) Paragraph (1) shall not affect the continued operation of Article 37 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(**39**) in a case where—

- (a) permission to take time off under Article 37 of that Order was requested before the coming into operation of paragraph (1); and
- (b) the time off in question was to begin not later than the end of the period of six weeks beginning with the coming into operation of that paragraph.

#### **Period of employment necessary to qualify for statement of reasons for dismissal**

**99.**—(1) In Article 48(2) of the No. 1 Order (employee not entitled to written statement of reasons for dismissal unless continuously employed for six months), for “six months” there shall be substituted “not less than two years”.

- (2) The following paragraph shall be inserted after paragraph (2) of Article 48 of that Order—

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(38) 1976 NI 28

(39) 1976 NI 28

“(2A) The Department may by order add to, vary, revoke or exclude the operation of paragraph (2).”.

(3) In Article 80(2) of that Order (orders) after “37A(7),” there shall be inserted “48(2A),”.

### **Industrial tribunal procedure**

**100.**—(1) In Article 59 of the No. 1 Order (procedure of industrial tribunals) in paragraph (2) the following sub-paragraph shall be substituted for sub-paragraph (d)—

“(d) for enabling an industrial tribunal, on the application of any party to proceedings before it or of its own motion, to order such discovery or inspection of documents, or the furnishing of such further particulars, as might be ordered by a county court on an application by a party to proceedings before it;”.

(2) In that Article the following paragraphs shall be inserted after paragraph (2)—

“(2A) The regulations may include provision—

(a) for authorising a preliminary consideration of proceedings before an industrial tribunal (“a pre-hearing review”) to be carried out—

(i) by such person as may be determined by or in accordance with the regulations; or

(ii) if so determined in accordance with the regulations, by the tribunal itself; and

(b) for enabling such powers to be exercised in connection with a pre-hearing review as may be prescribed by the regulations.

(2B) The regulations may in particular include provision—

(a) for authorising any person or tribunal carrying out a pre-hearing review under the regulations to make, in circumstances specified in the regulations, an order requiring a party to the proceedings in question, if he wishes to continue to participate in those proceedings, to pay a deposit of an amount not exceeding £150;

(b) for prescribing—

(i) the manner in which the amount of any such deposit is to be determined in any particular case;

(ii) the consequences of non-payment of any such deposit; and

(iii) the circumstances in which any such deposit, or any part of it, may be refunded to the party who paid it, or be paid over to another party to the proceedings.

(2C) The Department may by order substitute for the sum specified in paragraph (2B)

(a) such other sum as is specified in the order.”.

(3) In Article 80 of the No. 1 Order (regulations and orders) the following paragraph shall be inserted after paragraph (2)—

“(2A) An order under Article 59(2C) shall be subject to negative resolution.”.

### **Action by an employer to enforce membership of union**

**101.** The following provisions (which enable an employer to take action in certain circumstances to enforce trade union membership) shall cease to have effect, namely—

(a) Article 22A(3) to (13) of the No. 1 Order;

- (b) Article 33(5) and (6) of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(40).

### *Ballots*

#### **Payments in respect of secret ballots**

**102.**—(1) The Department may by regulations make a scheme (in this Article referred to as “the scheme”) providing for payments by the Certification Officer towards expenditure incurred by independent trade unions in respect of such ballots to which this Article applies as may be prescribed by the scheme.

(2) This Article applies to a ballot if the purpose of the question to be voted upon (or if there is more than one such question, the purpose of any of them) falls within the purposes mentioned in paragraph (3).

(3) The purposes referred to in paragraph (2) are—

- (a) obtaining a decision or ascertaining the views of members of a trade union as to the calling or ending of a strike or other industrial action;
- (b) carrying out an election provided for by the rules of a trade union or in relation to which Article 48 is required to be satisfied;
- (c) electing a worker who is a member of a trade union to be a representative of other members also employed by his employer;
- (d) amending the rules of a trade union;
- (e) obtaining a decision on a resolution for the purposes of Article 57;
- (f) obtaining a decision in accordance with Part X on a resolution to approve an instrument of amalgamation or transfer;
- (g) obtaining a decision or ascertaining the views of members of a trade union as to the acceptance or rejection of a proposal made by an employer in relation to the contractual terms and conditions upon which or the other incidents of a relationship whereby a person works or provides services for the employer;

and such other purposes as the Department may specify by order made subject to affirmative resolution.

(4) Notwithstanding anything in paragraphs (2) and (3), this Article does not apply to any ballot held by a trade union, if—

- (a) the purpose of any question to be voted upon is the obtaining of a decision of the kind mentioned in sub-paragraph (e) of paragraph (3); and
- (b) the ballot is held at a time when there is no resolution in force in respect of that union under Article 57.

(5) The scheme may include provision for payments to be made towards expenditure incurred by an independent trade union in respect of arrangements to hold a ballot which is not proceeded with but which, if it had been held, would have been a ballot to which this Article applies.

(6) The circumstances in which and the conditions subject to which payments may be made under the scheme, and the amounts of the payments, shall be such as may be prescribed by or determined in accordance with the scheme; and the scheme shall include provision for restricting the cases in which payments are made to cases in which the ballot is so conducted as to secure, so far as reasonably practicable, that those voting do so in secret.

(7) The Department shall pay to the Certification Officer such sums as he may require for making payments under the scheme.

### **Secret ballots on employer's premises**

**103.**—(1) Subject to paragraph (3), where an independent trade union proposes that a relevant ballot be held and requests an employer to permit premises of his to be used for the purpose of giving workers employed by him who are members of the union a convenient opportunity of voting, the employer shall, so far as reasonably practicable, comply with the request unless the ballot is one in which every person who is entitled to vote must be given a convenient opportunity to vote by post.

(2) A ballot is a relevant ballot for the purposes of this Article if—

- (a) as respects the purpose of the question (or one of the questions) to be voted upon, the ballot satisfies the requirements of a scheme under Article 102; and
- (b) the proposals for the conduct of the ballot are such as to secure, so far as reasonably practicable, that those voting do so in secret.

(3) Paragraph (1) shall not apply where, at the time the request is made,—

- (a) the union is not recognised by the employer to any extent for the purpose of collective bargaining; or
- (b) the number of workers employed by the employer, added to the number employed by any associated employer, does not exceed twenty.

(4) A trade union may present a complaint to an industrial tribunal that it has made a request in accordance with paragraph (1) and that it was reasonably practicable for the employer to comply with it, but that he has failed to do so.

(5) An industrial tribunal shall not entertain a complaint under this Article unless it is presented to the tribunal before the end of the period of three months beginning with the date of the failure, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of three months.

(6) Where a tribunal finds that a complaint under this Article is well-founded, the tribunal shall make a declaration to that effect, and may make an award of compensation to be paid by the employer to the union which shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to comply with the request and to any expenses incurred by the union in consequence of the failure.

(7) The remedy of a trade union for a failure to comply with a request made in accordance with paragraph (1) shall be by way of a complaint under this Article and not otherwise.

(8) In this Article "post" has the same meaning as in Part VI.

### *Nominations by members of trade union*

### **Nominations by members of trade union**

**104.**—(1) Regulations may make provision—

- (a) for enabling members of trade unions who are not under sixteen years of age to nominate a person or persons to become entitled, on the death of the person making the nomination, to the whole or part of any money payable on his death out of the funds of the trade union of which he is a member; and
- (b) for enabling any money payable out of the funds of a trade union on the death of a member of the trade union, to an amount not exceeding £5,000, to be paid or distributed on his

death (whether in accordance with such a nomination or otherwise) without letters of administration or probate of any will.

- (2) Any regulations made in accordance with paragraph (1)(a)—
- (a) may include provision as to the manner in which nominations may be made and as to the manner in which nominations may be varied or revoked; and
  - (b) may provide that, subject to such exceptions as may be prescribed, no nomination made by a member of a trade union shall be valid if at the date of the nomination the person nominated is an officer or employee of the trade union or is otherwise connected with the trade union in such manner as may be prescribed.

(3) Regulations made in accordance with paragraph (1)(a) may, without prejudice to Article 107(3), include provision for securing, to such extent and subject to such conditions as may be prescribed, that nominations made under the Trade Union Act Amendment Act 1876<sup>(41)</sup> shall have effect as if made under the regulations and may be varied or revoked accordingly.

(4) In paragraphs (2) and (3) “prescribed” means prescribed by regulations made in accordance with paragraph (1).

(5) Paragraph (1)(b) shall be included among the provisions with respect to which the Department of Finance and Personnel may make an order under section 6(1) of the Administration of Estates (Small Payments) Act (Northern Ireland) 1967<sup>(42)</sup> substituting, for references to the amount for the time being provided for, references to such higher amount as may be specified in the order.

*Crown employees and contracts, etc.*

**Crown employees and contracts, etc.**

**105.**—(1) Where any person holds any office or employment under the Crown on terms which do not constitute a contract of employment between that person and the Crown, those terms shall nevertheless be deemed to constitute such a contract for the purposes of—

- (a) the law relating to the liability in tort of any person who commits an act which—
  - (i) induces another person to break any contract, interferes with the performance of any contract or induces any other person to interfere with the performance of any contract; or
  - (ii) consists in a threat that a contract will be broken or its performance interfered with or that any person will be induced to break a contract or to interfere with its performance; and
- (b) any statutory provision (including a provision of this Order) which refers, whether in relation to contracts generally or only in relation to contracts of employment, to any such act.

(2) Articles 27 and 28 shall bind the Crown.

(3) Articles 38, 39, 40, 41 and 65 (except paragraph (5)) and Part XI shall have effect in relation to Crown employment and to persons in Crown employment as they have effect in relation to other employment and to other employees.

(4) Paragraphs (2) to (5) of Article 62 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976<sup>(43)</sup> shall apply in relation to paragraph (3) as if that paragraph were contained in paragraph (1) of the said Article 62.

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<sup>(41)</sup> 1876 c. 22

<sup>(42)</sup> 1967 c. 5 (N.I.)

<sup>(43)</sup> 1976 NI 28

*Fair Employment***Amendments to the Fair Employment (Northern Ireland) Acts**

**106.**—(1) In Part III of the Fair Employment (Northern Ireland) Act 1976<sup>(44)</sup> after section 32 there shall be inserted the following section—

**“Restrictions on contracting out.**

**32A.**—(1) Except as provided by subsection (2), any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Part; or
- (b) to preclude any person from presenting a complaint to the Tribunal under section 24.

(2) Subsection (1) shall not apply to any agreement to refrain from instituting or continuing any proceedings before the Tribunal where the Labour Relations Agency has taken action in accordance with section 25(1) or (2).”.

(2) Section 32A of the Fair Employment (Northern Ireland) Act 1976<sup>(45)</sup> (as inserted by paragraph (1)) applies in relation to agreements made before as well as after the coming into operation of that paragraph.

(3) In section 6 of the Fair Employment (Northern Ireland) Act 1989<sup>(46)</sup> for subsection (3) there shall be substituted the following subsection—

“(3) Where a direction is made under subsection (2) that any matters shall be heard and determined by the Tribunal, then—

- (a) for the purpose of complying with that direction, the Tribunal shall, in relation to those matters, have the jurisdiction, and may exercise all the powers, of an industrial tribunal;
- (b) neither Article 29(2) of the Industrial Relations (Northern Ireland) Order 1976 nor Article 63(3) of the Sex Discrimination (Northern Ireland) Order 1976 shall apply in relation to the hearing and determination of those matters by the Tribunal;
- (c) Article 61 of the Industrial Relations (Northern Ireland) Order 1976 (recovery of, and interest on, sums awarded by industrial tribunals) shall apply in relation to any sum payable in pursuance of a decision of the Tribunal in relation to any such matters as it applies in relation to a sum payable in pursuance of a decision of an industrial tribunal; and
- (d) Article 31 of the Industrial Training (Northern Ireland) Order 1984 (appeals against decisions of industrial tribunals) shall apply in relation to a decision of the Tribunal in relation to any such matters as it applies in relation to a decision of an industrial tribunal.”.

*Supplementary***Orders and regulations**

**107.**—(1) Subject to paragraph (2), all orders and regulations under this Order shall be subject to negative resolution.

(2) Paragraph (1) does not apply to an order under Article 1(2), 72(7), 90(14), 95(12) or 102(3).

<sup>(44)</sup> 1976 c. 25

<sup>(45)</sup> 1976 c. 25

<sup>(46)</sup> 1989 c. 32

(3) Regulations and orders under this Order may contain incidental, supplementary and transitional provisions.

#### **Amendments, revocations and repeals**

**108.**—(1) The statutory provisions set out in Schedule 5 shall have effect subject to the amendments specified in that Schedule, being—

- (a) in the case of those specified in Part I of that Schedule, minor amendments and amendments consequential on this Order; and
- (b) in the case of those specified in Part II of that Schedule, amendments designed to facilitate, or otherwise desirable in connection with, the consolidation of statutory provisions relating to the individual rights of employees.

(2) In the Labour Relations Agency (Additional Functions) Order (Northern Ireland) 1977<sup>(47)</sup> the following provisions are hereby revoked, namely—

- (a) Article 4;
- (b) the Schedule, except paragraphs 5, 6(13) and 7(2).

(3) The statutory provisions set out in Schedule 6 are hereby repealed to the extent specified in the third column of that Schedule.

*G. I. de Deney*  
Clerk of the Privy Council