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## STATUTORY INSTRUMENTS

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# 1992 No. 807

## The Industrial Relations (Northern Ireland) Order 1992

### 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>F1</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 [<sup>F2</sup>the Companies Act 2006] and accordingly any registration of a trade union under [<sup>F3</sup>that Act] (whenever effected) shall be void.

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(4) A trade union shall not be registered under [<sup>F4</sup>the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969]<sup>F5</sup> or the Friendly Societies Act (Northern Ireland) 1970<sup>F6</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

(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>F7</sup> (sequestration order against company in contempt) shall apply to a trade union as it applies to a company.

**F1** 1981 NI 6

**F2** Words in art. 3(3) substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 136(3)(a)** (with art. 10)

**F3** Words in art. 3(3) substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 136(3)(b)** (with art. 10)

**F4** Words in art. 3(4) substituted (6.4.2018) by [Credit Unions and Co-operative and Community Benefit Societies Act \(Northern Ireland\) 2016 \(c. 16\)](#), s. 17(2), **Sch. 1 para. 25**; S.R. 2017/217, art. 2(d)

**F5** 1969 c.24 (NI)

**F6** 1970 c.31 (NI)

**F7** 1981 NI 6

### 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—

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- (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>F8</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.

*Para.(5) rep. by 2003 NI 17*

(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' 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.

**F8** [1981 NI 6](#)

### *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.

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(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<sup>[F9]</sup> the list of trade unions or the list of employers' associations kept under the Trade Union and Labour Relations (Consolidation) Act 1992]; 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.

<sup>[F10]</sup>(8) An 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 to the High Court on any question of law arising in the proceedings before, or arising from the decision of, the Certification Officer.]

(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<sup>[F9]</sup> or the list of employers' associations kept under the Trade Union and Labour Relations (Consolidation) Act 1992] 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<sup>[F9]</sup> section 2(5) or 123(5) of that Act] shall be evidence that the name of the organisation is entered in the relevant list.

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**F9** 1992 c.52

**F10** 2004 NI 19

### **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.

[<sup>F11</sup>(9) A trade union aggrieved by the refusal of the Certification Officer to issue it with a certificate of independence or by a decision of his to withdraw its certificate may appeal to the High Court on any question of law arising in the proceedings before, or arising from the decision of, the Certification Officer.]

(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

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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<sup>F12</sup> section 6 of the Trade Union and Labour Relations (Consolidation) Act 1992], 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<sup>F13</sup> section 254] 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,<sup>F12</sup> section 6 of the Trade Union and Labour Relations (Consolidation) Act 1992]; 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.

**F11** 2004 NI 19

**F12** 1992 c.52

**F13** 1995 NI 12

### *Property*

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

7.—(1) Sections 38 and 39 of the Trustee Act (Northern Ireland) 1958<sup>F14</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.

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(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 [<sup>F15</sup>section 126 or 770 of the Companies Act 2006] 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.

**F14** 1958 c.23 (NI)

**F15** Words in art. 7(4) substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 136(4)** (with art. 10)

## 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—

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“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.

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(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 [<sup>F16</sup>(as defined in section 1(1) of the Companies Act 2006)]—

- (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 <sup>F17</sup> . . . [<sup>F18F17</sup> . . . Chapter 2 of Part 16 of the Companies Act 2006].

**F16** Words in art. 11(9) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 136(5)(a)** (with art. 10)

**F17** Words in art. 11(9)(b) omitted (1.10.2009) by virtue of Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 136(5)(b)** (with art. 10)

**F18** Words in art. 11(9)(b) inserted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 76** (with art. 2)

### <sup>F19</sup>Statement to members following annual return

**11A.**—(1) A trade union to which Article 11 applies shall take all reasonable steps to secure that, not later than the end of the period of eight weeks beginning with the day on which the annual return of the union is sent to the Certification Officer, all the members of the union are provided with the statement required by this Article by any of the methods allowed by paragraph (2).

(2) Those methods are—

- (a) the sending of individual copies of the statement to members; or
- (b) any other means (whether by including the statement in a publication of the union or otherwise) which it is the practice of the union to use when information of general interest to all its members needs to be provided to them.

(3) The statement required by this Article shall specify—

- (a) the total income and expenditure of the trade union for the period to which the return relates,
- (b) how much of the income of the union for that period consisted of payments in respect of membership,
- (c) the total income and expenditure for that period of any political fund of the union, and

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- (d) the salary paid to and other benefits provided to or in respect of—
- (i) each member of the executive (within the meaning of paragraph 4A of Schedule 1).
  - (ii) the president, and
  - (iii) the general secretary,
- by the trade union during that period.
- (4) The requirement imposed by this Article is not satisfied if the statement specifies anything inconsistent with the contents of the return.
- (5) The statement—
- (a) shall also set out in full the report made by the auditor or auditors of the union on the accounts contained in the return and state the name and address of that auditor or of each of those auditors, and
  - (b) may include any other matter which the union considers may give a member significant assistance in making an informed judgment about the financial activities of the union in the period to which the return relates.
- (6) The statement—
- (a) shall also include the following statement—

“A member who is concerned that some irregularity may be occurring, or has occurred, in the conduct of the financial affairs of the union may take steps with a view to investigating further, obtaining clarification and, if necessary, securing regularisation of that conduct.

The member may raise any such concern with such one or more of the following as it seems appropriate to raise it with: the officials of the union, the trustees of the property of the union, the auditor or auditors of the union, the Certification Officer for Northern Ireland (who is an independent officer appointed by the Department of Economic Development) and the police.

Where a member believes that the financial affairs of the union have been or are being conducted in breach of the law or in breach of rules of the union and contemplates bringing civil proceedings against the union or responsible officials or trustees, he<sup>[F20]</sup> should] consider obtaining independent legal advice.” ; and
  - (b) may include such other details of the steps which a member may take for the purpose mentioned in the statement set out above as the trade union considers appropriate.
- (7) A trade union shall send to the Certification Officer a copy of the statement which is provided to its members in pursuance of this Article as soon as is reasonably practicable after it is so provided.
- (8) Where the same form of statement is not provided to all the members of a trade union, the union shall send to the Certification Officer in accordance with paragraph (7) a copy of each form of statement provided to any of them.
- (9) If at any time during the period of two years beginning with the day referred to in paragraph (1) any member of the trade union requests a copy of the statement required by this Article, the union shall, as soon as practicable, furnish him with such a copy free of charge.
- (10) Where the duty falling on a trade union under Article 11 to send to the Certification Officer a return relating to its affairs is treated as discharged by the union by virtue of paragraph (8) of that Article, the duties imposed by this Article in relation to the return shall be treated as duties of the branch or section of the union, or the trade union of which it is a branch or section, by which that duty is in fact discharged.]

**F19** 1995 NI 12

**F20** 1999 NI 9

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## 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<sup>F21</sup> section 32 of the Trade Union and Labour Relations (Consolidation) Act 1992] applies shall,—

- (a) within one month of the date on which it sends an annual return under<sup>F21</sup> subsection (1)] 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.

**F21** 1992 c.52

[<sup>F22</sup>Investigation of financial affairs]

F22 1995 NI 12

[<sup>F23</sup>Power of Certification Officer to require production of documents etc.

**12A.**—(1) The Certification Officer may at any time, if he thinks there is good reason to do so, give directions to a trade union or employers' association to which Article 11 applies, or a branch or section of such a trade union or employers' association, requiring it to produce such relevant documents as may be specified in the directions; and the documents shall be produced at such time and place as may be so specified.

(2) The Certification Officer may at any time, if he thinks there is good reason to do so, authorise a member of his staff or any other person, on producing (if so required) evidence of his authority, to require a trade union or employers' association to which Article 11 applies, or a branch or section of such a trade union or employers' association, to produce forthwith to the member of staff or other person such relevant documents as the member of staff or other person may specify.

(3) Where the Certification Officer, or a member of his staff or any other person, has power to require the production of documents by virtue of paragraph (1) or (2), the Certification Officer, member of staff or other person has the like power to require production of those documents from any person who appears to the Certification Officer, member of staff or other person to be in possession of them.

(4) Where such a person claims a lien on documents produced by him, the production is without prejudice to the lien.

(5) The power under this Article to require the production of documents includes power—

(a) if the documents are produced—

(i) to take copies of them or extracts from them, and

(ii) to require the person by whom they are produced, or any person who is or has been an official or agent of the trade union or employers' association, to provide an explanation of any of them; and

(b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) In paragraphs (1) and (2) “relevant documents”, in relation to a trade union or employers' association or a branch or section of a trade union or employers' association, means accounting documents, and documents of any other description, which may be relevant in considering the financial affairs of the trade union or employers' association.

(7) A person shall not be excused from providing an explanation or making a statement in compliance with a requirement imposed under paragraph (5) on the ground that to do so would tend to expose him to proceedings for an offence; but an explanation so provided or statement so made may only be used in evidence against the person by whom it is made or provided—

(a) on a prosecution for an offence under Article 13(9) (false explanations and statements), or

(b) on a prosecution for some other offence where in giving evidence the person makes a statement inconsistent with it.]

F23 1995 NI 12

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## [<sup>F24</sup>Investigations by inspectors

**12B.**—(1) The Certification Officer may appoint one or more members of his staff or other persons as an inspector or inspectors to investigate the financial affairs of a trade union or employers' association to which Article 11 applies and to report on them in such manner as he may direct.

(2) The Certification Officer may only make such an appointment if it appears to him that there are circumstances suggesting—

- (a) that the financial affairs of the trade union or employers' association are being or have been conducted for a fraudulent or unlawful purpose,
- (b) that persons concerned with the management of those financial affairs have, in connection with that management, been guilty of fraud, misfeasance or other misconduct,
- (c) that the trade union or employers' association has failed to comply with any duty imposed on it by this Order in relation to its financial affairs, or
- (d) that a rule of the union or association relating to its financial affairs has not been complied with.

(3) Where an inspector is, or inspectors are, appointed under this Article it is the duty of all persons who are or have been officials or agents of the trade union or employers' association—

- (a) to produce to the inspector or inspectors all relevant documents which are in their possession,
- (b) to attend before the inspector or inspectors when required to do so, and
- (c) otherwise to give the inspector or inspectors all assistance in connection with the investigation which they are reasonably able to give.

(4) Where any person (whether or not within paragraph (3)) appears to the inspector or inspectors to be in possession of information relating to a matter which he considers, or they consider, to be relevant to the investigation, the inspector or inspectors may require him—

- (a) to produce to the inspector or inspectors any relevant documents relating to that matter,
- (b) to attend before the inspector or inspectors, and
- (c) otherwise to give the inspector or inspectors all assistance in connection with the investigation which he is reasonably able to give;

and it is the duty of the person to comply with the requirement.

(5) In paragraphs (3) and (4) “relevant documents”, in relation to an investigation of the financial affairs of a trade union or employers' association, means accounting documents, and documents of any other description, which may be relevant to the investigation.

(6) A person shall not be excused from providing an explanation or making a statement in compliance with paragraph (3) or a requirement imposed under paragraph (4) on the ground that to do so would tend to expose him to proceedings for an offence; but an explanation so provided or statement so made may only be used in evidence against the person by whom it is provided or made—

- (a) on a prosecution for an offence under Article 13(9) (false explanations and statements), or
- (b) on a prosecution for some other offence where in giving evidence the person makes a statement inconsistent with it.]

[<sup>F25</sup>**Inspectors' reports etc.**

- 12C.**—(1) An inspector or inspectors appointed under Article 12B—
- (a) may, and if so directed by the Certification Officer shall, make interim reports, and
  - (b) on the conclusion of their investigation shall make a final report,
- to the Certification Officer.
- (2) Any report under paragraph (1) shall be written or printed, as the Certification Officer directs.
- (3) An inspector or inspectors appointed under Article 12B may at any time, and if so directed by the Certification Officer shall, inform the Certification Officer of any matters coming to his or their knowledge as a result of the investigation.
- (4) The Certification Officer may direct an inspector or inspectors appointed under Article 12B to take no further steps in the investigation, or to take only such further steps as are specified in the direction, if—
- (a) it appears to the Certification Officer that matters have come to light in the course of the investigation which suggest that a criminal offence has been committed and those matters have been referred to the appropriate prosecuting authority, or
  - (b) it appears to the Certification Officer appropriate to do so in any other circumstances.
- (5) Where an investigation is the subject of a direction under paragraph (4), the inspector or inspectors shall make a final report to the Certification Officer only where the Certification Officer directs him or them to do so at the time of the direction under that paragraph or subsequently.
- (6) The Certification Officer shall publish a final report made to him under this Article.
- (7) The Certification Officer shall furnish a copy of such a report free of charge—
- (a) to the trade union or employers' association which is the subject of the report,
  - (b) to any auditor of that trade union or employers' association or of any branch or section of the union or association, if he requests a copy before the end of the period of three years beginning with the day on which the report is published, and
  - (c) to any member of the trade union or employers' association if—
    - (i) he has complained to the Certification Officer that there are circumstances suggesting any of the states of affairs specified in Article 12B(2)(a) to (d),
    - (ii) the Certification Officer considers that the report contains findings which are relevant to the complaint, and
    - (iii) the member requests a copy before the end of the period of three years beginning with the day on which the report is published.
- (8) A copy of any report under this Article, certified by the Certification Officer to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report; and a document purporting to be a certificate of the Certification Officer under this paragraph shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.]

**F25** 1995 NI 12

[<sup>F26</sup>**Expenses of investigations**

- 12D.**—(1) The expenses of an investigation under Article 12B shall be defrayed in the first instance by the Certification Officer.

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(2) For the purposes of this Article there shall be treated as expenses of an investigation, in particular, such reasonable sums as the Certification Officer may determine in respect of general staff costs and overheads.

(3) A person who is convicted on a prosecution instituted as a result of the investigation may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the order.]

**F26** 1995 NI 12

[<sup>F27</sup>**Articles 12A and 12B: supplementary**

**12E.**—(1) Where—

- (a) a report of the auditor or auditors of a trade union or employers' association, or a branch or section of a trade union or employers' association, on the accounts audited by him or them and contained in the annual return of the union or association, or branch or section—
  - (i) does not state without qualification that the accounts give a true and fair view of the matters to which they relate, or
  - (ii) includes a statement in compliance with paragraph 20 of Schedule 1, or
- (b) a member of a trade union or employers' association has complained to the Certification Officer that there are circumstances suggesting any of the states of affairs specified in Article 12B(2)(a) to (d),

the Certification Officer shall consider whether it is appropriate for him to exercise any of the powers conferred on him by Articles 12A and 12B.

(2) If in a case where a member of a trade union or employers' association has complained as mentioned in paragraph (1)(b) the Certification Officer decides not to exercise any of the powers conferred by those Articles he shall, as soon as reasonably practicable after making a decision not to do so, notify the member of his decision and, if he thinks fit, of the reasons for it.

(3) Nothing in Article 12A or 12B—

- (a) requires or authorises anyone to require the disclosure by a person of information which he would in an action in the High Court be entitled to refuse to disclose on grounds of legal professional privilege except, if he is a lawyer, the name and address of his client, or
- (b) requires or authorises anyone to require the production by a person of a document which he would in such an action be entitled to refuse to produce on such grounds.

(4) Nothing in Article 12A or 12B requires or authorises anyone to require the disclosure of information or the production of documents in respect of which the person to whom the requirement would relate owes an obligation of confidence by virtue of carrying on the business of banking unless—

- (a) the person to whom the obligation is owed is the trade union or employers' association, or any branch or section of the union or association, concerned or a trustee of any fund concerned, or
- (b) the person to whom the obligation of confidence is owed consents to the disclosure or production.

(5) In Articles 12A and 12B and this Article—

- (a) references to documents include information recorded in any form, and
- (b) in relation to information recorded otherwise than in legible form, references to its production are to the production of a copy of the information in legible form.]



F27 1995 NI 12

## 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<sup>[F28]</sup> Articles 10 to 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<sup>[F29]</sup> executive] 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<sup>[F28]</sup> Article 10 to 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.

<sup>[F28]</sup>(5) If a person contravenes any duty, or requirement imposed, under Article 12A or 12B he commits an offence.

(6) In any proceedings brought against a person in respect of a contravention of a requirement imposed under Article 12A(3) or 12B(4) to produce documents it is a defence for him to prove—

(a) that the documents were not in his possession; and

(b) that it was not reasonably practicable for him to comply with the requirement.

(7) If an official or agent of a trade union or employers' association—

(a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of, a document relating to the financial affairs of the trade union or employers' association; or

(b) makes, or is privy to the making of, a false entry in any such document,

he commits an offence unless he proves that he had no intention to conceal the financial affairs of the trade union or employers' association or to defeat the law.

(8) If such a person fraudulently—

(a) parts with, alters or deletes anything in any such document; or

(b) is privy to the fraudulent parting with, fraudulent alteration of or fraudulent deletion in, any such document,

he commits an offence.

(9) If a person in purported compliance with a duty, or requirement imposed, under Article 12A or 12B to provide an explanation or make a statement—

(a) provides or makes an explanation or statement which he knows to be false in a material particular; or

(b) recklessly provides or makes an explanation or statement which is false in a material particular,

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he commits an offence.]

**F28** 1995 NI 12

**F29** 1995 NI 12

### [<sup>F30</sup>Penalties and prosecution time limits

**13A.**—(1) A person guilty of an offence under Article 13 is liable on summary conviction—

- (a) in the case of an offence under paragraph (1) or (5), to a fine not exceeding level 5 on the standard scale;
- (b) in the case of an offence under paragraph (4), (7), (8) or (9), to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(2) Proceedings for an offence under Article 13(1) relating to the duty imposed by Article 11(2) may be commenced at any time before the end of the period of three years beginning with the date when the offence was committed.

(3) Proceedings for any other offence under Article 13(1) may be commenced—

- (a) at any time before the end of the period of six months beginning with the date when the offence was committed, or
- (b) at any time after the end of that period but before the end of the period of twelve months beginning with the date when evidence sufficient in the opinion of the Certification Officer to justify the proceedings came to his knowledge;

but no proceedings may be commenced by virtue of sub-paragraph (b) after the end of the period of three years beginning with the date when the offence was committed.

(4) For the purposes of paragraph (3)(b), a certificate signed by or on behalf of the Certification Officer which states the date on which evidence sufficient in his opinion to justify the proceedings came to his knowledge shall be conclusive evidence of that fact.

(5) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(6) For the purposes of this Article proceedings are commenced when a complaint charging the commission of the offence is made.]

**F30** 1995 NI 12

### [<sup>F31</sup>Duty to secure positions not held by certain offenders

**13B.**—(1) A trade union shall secure that a person does not at any time hold a position in the union to which this Article applies if—

- (a) within the period of five years immediately preceding that time he has been convicted of an offence under paragraph (1) or (5) of Article 13; or
- (b) within the period of ten years immediately preceding that time he has been convicted of an offence under paragraph (4), (7), (8) or (9) of that Article.

(2) Subject to paragraph (4), the positions to which this Article applies are—

- (a) member of the executive;
- (b) any position by virtue of which a person is a member of the executive;
- (c) president; and
- (d) general secretary.

(3) For the purposes of paragraph (2)(a) “member of the executive” includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, 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 executive in carrying out its functions.

(4) This Article does not apply to the position of president or general secretary if the holder of that position—

- (a) is not, in respect of that position, either a voting member of the executive or 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 it up; and
- (c) has not held either position at any time in the period of twelve months ending with the day before he took up that position.

(5) In paragraph (4)(a) “a voting member of the executive” means a person entitled in his own right to attend meetings of the executive and to vote on matters on which votes are taken by the executive (whether or not he is entitled to attend all such meetings or to vote on all such matters or in all circumstances).]

**F31** 1995 NI 12

### [<sup>F32</sup>Remedies and enforcement

**13C.**—(1) A member of a trade union who claims that the union has failed to comply with the requirement of Article 13B may apply to the Certification Officer or to the High Court for a declaration to that effect.

(2) On an application being made to him, the Certification Officer—

[ shall make such enquiries as he thinks fit,]

<sup>F33</sup>(aa)

- (a) shall, <sup>F34</sup> . . . give the applicant and the trade union an opportunity to be heard;
- (b) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made;
- (c) may make or refuse the declaration asked for; and
- (d) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.

*Paras. (3),(4) rep. by 1999 NI 9*

(5) Where the High Court makes a declaration it shall also, unless it considers that it would be inappropriate, make an order imposing on the trade union a requirement to take within such period as may be specified in the order such steps to remedy the declared failure as may be so specified.

[  
<sup>F33</sup>(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that it would be inappropriate, make an order imposing on the trade union a requirement to take within such period as maybe specified in the order such steps to remedy the declared failure as may be so specified.

(5B) The following provisions have effect if a person applies to the Certification Officer under this Article in relation to an alleged failure—

- (a) that person may not apply to the High Court under this Article in relation to that failure;

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- (b) on an application by a different person to the High Court under this Article in relation to that failure, the court shall have due regard to any declaration, order, observations or reasons made or given by the Certification Officer regarding that failure and brought to the court's notice.

(5C) The following provisions have effect if a person applies to the High Court under this Article in relation to an alleged failure—

- (a) that person may not apply to the Certification Officer under this Article in relation to that failure;
- (b) on an application by a different person to the Certification Officer under this Article in relation to that failure, the Certification Officer shall have regard to any declaration, order, observations or reasons made or given by the court regarding that failure and brought to the Certification Officer's notice.]

(6) Where an order has been made<sup>[F33]</sup> under paragraph (5) or (5A)], any person who is a member of the trade union and was a member at the time the order was made is entitled to enforce the order as if he had made the application on which the order was made.

[<sup>F33</sup>(7) Where the Certification Officer requests a 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, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(8) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.

(9) An order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.]]

**F32** 1995 NI 12

**F33** 1999 NI 9

**F34** 1999 NI 9

#### *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.

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**Changes and effects yet to be applied to :**

- Instrument excl by [1994 c. 33 s. 127\(8\)](#)
- Instrument restr (pt retrospect) by [1994 c. 33 s. 126\(1\)s. 126\(2\)\(b\)\(4\)](#)