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STATUTORY INSTRUMENTS

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**1995 No. 1980 (N.I. 12)**

**NORTHERN IRELAND**

**The Trade Union and Labour Relations  
(Northern Ireland) Order 1995**

*Made - - - - 26th July 1995  
Coming into operation on days to be appointed under  
Article 1(2)*

At the Court at Buckingham Palace, the 26th day of July 1995

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974<sup>(1)</sup> and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**PART I**

**INTRODUCTORY**

**Title and commencement**

**1.—**(1) This Order may be cited as the Trade Union and Labour Relations (Northern Ireland) Order 1995.

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

**Interpretation**

**2.—**(1) The Interpretation Act (Northern Ireland) 1954<sup>(2)</sup> 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—

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(1) 1974 c. 28  
(2) 1954 c. 33 (N.I.)

“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;

“branch” or “section”, in relation to a trade union or employers' association, includes a branch or section which is itself a trade union or employers' association;

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

“conduct” includes statements and acts;

“contract of employment” means a contract of service or of apprenticeship;

“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;

“the duty of confidentiality” has the meaning assigned to it by Article 4(3);

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

“employer”—

- (a) in relation to an employee, means the person by whom the employee is (or, where the employment has ceased, was) employed;
- (b) in relation to a worker, means a person 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) of the 1992 Order;

“executive”, 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;

“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 an office which is equivalent, or the nearest equivalent, to that of general secretary;

“government department” means a Northern Ireland department or a department of the Government of the United Kingdom;

“Great Britain union” means a trade union whose head or main office is situated in England, Wales or Scotland;

“independent trade union” has the meaning assigned to it by Article 2(2) of the 1992 Order;

“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—

- (a) an officer of the union or of a branch or section of the union, or
- (b) 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,

and includes a 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;

“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>(3)</sup>, or
- (b) does not by virtue of an order made under section 69 of that Act (suspension of postal privilege) infringe the exclusive privilege conferred on the Post Office by section 66(1) of that Act;

“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 an office which is equivalent, or the nearest equivalent, to that of president;

“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<sup>(4)</sup>;

“rules”, in relation to a trade union or employers' association, includes the rules of any branch or section;

“trade union” has the meaning assigned to it by Article 3(1) of the 1992 Order;

“worker” means an individual who works, or normally works or seeks to work—

- (a) under a contract of employment, or
- (b) under any other contract 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 government department (otherwise than as a member of the naval, military or air forces of the Crown) in so far as such employment does not fall within sub-paragraph (a) or (b);

“the No. 1 Order” means the Industrial Relations (Northern Ireland) Order 1976<sup>(5)</sup>;

“the No. 2 Order” means the Industrial Relations (No. 2) (Northern Ireland) Order 1976<sup>(6)</sup>;

“the 1992 Order” means the Industrial Relations (Northern Ireland) Order 1992<sup>(7)</sup>;

“the Great Britain Act” means the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(8)</sup>;

“the Wages Order” means the Wages (Northern Ireland) Order 1988<sup>(9)</sup>.

## PART II

### TRADE UNION ADMINISTRATION

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

#### **Duty to maintain register of members' names and addresses**

**3.—(1)** A trade union shall compile and maintain a register of the names and addresses of its members, and shall secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.

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(3) 1981 c. 38  
(4) 1954 c. 33 (N.I.)  
(5) 1976 NI 16  
(6) 1976 NI 28  
(7) 1992 NI 5  
(8) 1992 c. 52  
(9) 1988 NI 7

- (2) The register may be kept by means of a computer.
  - (3) A trade union shall—
    - (a) allow any member, upon reasonable notice, to ascertain from the register, free of charge and at any reasonable time, whether there is an entry on it relating to him; and
    - (b) if requested to do so by any member, supply him as soon as reasonably practicable, either free of charge or on payment of a reasonable fee, with a copy of any entry on the register relating to him.
  - (4) Any duty falling upon a branch or section 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 or section has discharged the duty instead.
  - (5) For the purposes of this Article a member's address means either his home address or another address which he has requested the union in writing to treat as his postal address.
  - (6) The remedy for failure to comply with the requirements of this Article is by way of application under Article 5 (to the Certification Officer) or Article 6 (to the High Court). The making of an application to the Certification Officer does not prevent the applicant, or any other person, from making an application to the High Court in respect of the same matter.
  - (7) Subject to paragraph (8), this Article and Articles 4 to 6 apply to every trade union which has its head or main office in Northern Ireland.
  - (8) This Article and Articles 4 to 6 do not apply to a trade union—
    - (a) which falls within Article 3(1)(b) of the 1992 Order (unions consisting wholly or mainly of, or of representatives of, constituent or affiliated organisations), if it has no individual members other than representatives of constituent or affiliated organisations; or
    - (b) until more than one year has elapsed since its formation (by amalgamation or otherwise).
- For this purpose the date of formation of a trade union formed otherwise than by amalgamation shall be taken to be the date on which the first members of the executive of the union are first appointed or elected.

### **Securing confidentiality of register during ballots**

- 4.—(1) This Article applies in relation to a ballot of the members of a trade union on—
    - (a) an election under Part III for a position to which that Part applies,
    - (b) a political resolution under Part V, and
    - (c) a resolution to approve an instrument of amalgamation or transfer under Part VI.
  - (2) Where this Article applies in relation to a ballot the trade union shall impose the duty of confidentiality in relation to the register of members' names and addresses on the scrutineer appointed by the union for the purposes of the ballot and on any person appointed by the union as the independent person for the purposes of the ballot.
  - (3) The duty of confidentiality in relation to the register of members' names and addresses is, when imposed on a scrutineer or on an independent person, a duty—
    - (a) not to disclose any name or address in the register except in permitted circumstances; and
    - (b) to take all reasonable steps to secure that there is no disclosure of any such name or address by any other person except in permitted circumstances;
- and any reference in this Order to “the duty of confidentiality” is a reference to the duty prescribed in this paragraph.
- (4) The circumstances in which disclosure of a member's name and address is permitted are—
    - (a) where the member consents;

- (b) where it is requested by the Certification Officer for the purposes of the discharge of any of his functions or it is required for the purposes of the discharge of any of the functions of an inspector appointed by him;
- (c) where it is required for the purposes of the discharge of any of the functions of the scrutineer or independent person, as the case may be, under the terms of his appointment;
- (d) where it is required for the purposes of the investigation of crime or of criminal proceedings.

(5) Any provision of this Order which incorporates the duty of confidentiality as respects the register into the appointment of a scrutineer or an independent person has the effect of imposing that duty on the scrutineer or independent person as a duty owed by him to the trade union.

(6) The remedy for failure to comply with the requirements of this Article is by way of application under Article 5 (to the Certification Officer) or Article 6 (to the High Court).

The making of an application to the Certification Officer does not prevent the applicant, or any other person, from making an application to the High Court in respect of the same matter.

#### **Remedy for failure: application to Certification Officer**

5.—(1) A member of a trade union who claims that the union has failed to comply with any of the requirements of Article 3 or 4 (duties with respect to register of members' names and addresses) may apply to the Certification Officer for a declaration to that effect.

(2) On an application being made to him, 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,

and may make or refuse the declaration asked for.

(3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.

(4) Where he makes a declaration and is satisfied that 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 does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.

(5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

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

(7) Where he 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) The Certification Officer shall not entertain an application for a declaration as respects an alleged failure to comply with the requirements of Article 4 in relation to a ballot to which that Article applies unless the application is made before the end of the period of one year beginning with the last day on which votes could be cast in the ballot.

**Remedy for failure: application to High Court**

6.—(1) A member of a trade union who claims that the union has failed to comply with any of the requirements of Article 3 or 4 (duties with respect to register of members' names and addresses) may apply to the High Court for a declaration to that effect.

(2) If an application in respect of the same matter has been made to the Certification Officer, the High Court shall have due regard to any declaration, reasons or observations of his which are brought to its notice.

(3) If the High Court makes a declaration it shall specify in it the provisions with which the trade union has failed to comply.

(4) Where the High Court makes a declaration it shall also, unless it considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—

- (a) to take such steps to remedy the declared failure, within such period, as may be specified in the order;
- (b) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

(5) Where an enforcement order has been made, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(6) Without prejudice to any other power of the High Court, the court may on an application under this Article grant such interlocutory relief as it considers appropriate.

(7) The High Court shall not entertain an application for a declaration as respects an alleged failure to comply with the requirements of Article 4 in relation to a ballot to which that Article applies unless the application is made before the end of the period of one year beginning with the last day on which votes could be cast in the ballot.

*Financial affairs of unions, etc.***Annual return to include additional information**

7. In Part I of Schedule 1 to the 1992 Order (annual returns, etc.) after paragraph 4 there shall be inserted—

“4A.—(1) Every annual return of a trade union shall contain—

- (a) details of the salary paid to and other benefits provided to or in respect of—
  - (i) each member of the executive,
  - (ii) the president, and
  - (iii) the general secretary,

by the trade union during the period to which the return relates; and

- (b) in the case of a trade union required to maintain a register by Article 3 of the Trade Union and Labour Relations (Northern Ireland) Order 1995, a statement of the number of names on the register as at the end of the period to which the return relates and the number of those names which were not accompanied by an address which is a member's address for the purposes of that Article.

(2) For the purposes of this paragraph “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.”.

### **Statement to members following annual return**

8. After Article 11 of the 1992 Order there shall be inserted—

#### **“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
- (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 may apply for material assistance from the Northern Ireland Commissioner for the Rights of Trade Union Members and should, in any case, 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.”.

## **Investigation of financial affairs**

- 9. After Article 12 of the 1992 Order there shall be inserted—

### *“Investigation of financial affairs*

#### **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.

### **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.

### **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.

### **Expenses of investigations**

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

### **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.”.

## Offences

**10.**—(1) In Article 13 of the 1992 Order (offences) in paragraphs

(1) and (4) for “Article 10 or 11 or 12” there shall be substituted “Articles 10 to 12”.

(2) For paragraph (5) of that Article there shall be substituted—

“(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,

he commits an offence.”.

(3) After Article 13 of the 1992 Order there shall be inserted—

**“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; PART II (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 1 l(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.”.

**Disqualification of offenders**

11. After Article 13A of the 1992 Order (which is inserted by Article 10) there shall be inserted—

**“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).

**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—

- (a) shall, where he considers it appropriate, 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.

(3) Where an application is made to the Certification Officer, the person who made that application, or any other person, is not prevented from making an application to the High Court in respect of the same matter.

(4) If, after an application is made to the Certification Officer, an application in respect of the same matter is made to the High Court, the court shall have due regard to any declaration which has been made by the Certification Officer.

(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.

(6) Where an order has been made, 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.”.

## PART III

### ELECTIONS FOR CERTAIN POSITIONS

#### *Duty to hold elections*

#### **Duty to hold elections for certain positions**

12.—(1) A trade union shall secure—

- (a) that every person who holds a position in the union to which this Part applies does so by virtue of having been elected to it at an election satisfying the requirements of this Part, and
- (b) that no person continues to hold such a position for more than five years without being re-elected at such an election.

(2) The positions to which this Part applies (subject as mentioned below) 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;

and the requirements referred to above are those set out in Articles 13 to 19.

(3) In this Part “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 Part 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 13 months after he took it up, and (c) has not held either position at any time in the period of 12 months ending with the day before he took up that position.

(5) 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).

(6) The provisions of this Part apply notwithstanding anything in the rules or practice of the union; and the terms and conditions on which a person is employed by the union shall be disregarded in so far as they would prevent the union from complying with the provisions of this Part.

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

### *Requirements to be satisfied with respect to elections*

#### **Candidates**

**13.—**(1) No member of the trade union shall be unreasonably excluded from standing as a candidate.

(2) No candidate shall be required, directly or indirectly, to be a member of a political party.

(3) A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union. But a rule which provides for such a class to be determined by reference to whom the union chooses to exclude shall be disregarded.

#### **Election addresses**

**14.—**(1) The trade union shall—

- (a) provide every candidate 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 accorded entitlement to vote in the election; and
- (b) secure that, so far as reasonably practicable, copies of every election address submitted to it in time are distributed to each of those persons by post along with the voting papers for the election.

(2) The trade union may determine the time by which an election address must be submitted to it for distribution; but the time so determined must not be earlier than the latest time at which a person may become a candidate in the election.

(3) The trade union may 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, as regards photographs and other matter not in words, incorporate only such matter as the union may determine.

(4) The trade union shall secure that no modification of an election address submitted to it is made by any person in any copy of the address to be distributed except—

- (a) at the request or with the consent of the candidate, or
- (b) where the modification is necessarily incidental to the method adopted for producing that copy.

(5) The trade union shall secure that the same method of producing copies is applied in the same way to every election address submitted and, so far as reasonably practicable, that no such facility or information as would enable a candidate to gain any benefit from—

- (a) the method by which copies of the election addresses are produced, or
- (b) the modifications which are necessarily incidental to that method,

is provided to any candidate without being provided equally to all the others.

(6) The trade union shall, 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 of photographs or other matter not in words, are provided or applied equally to each of the candidates.

(7) The arrangements made by the trade union for the production of the copies to be so distributed must be such as to secure that none of the candidates is required to bear any of the expense of producing the copies.

(8) No one other than the candidate himself shall incur any civil or criminal liability in respect of the publication of a candidate's election address or of any copy required to be made for the purposes of this Article.

### **Appointment of independent scrutineer**

**15.**—(1) The trade union shall, before the election is held, appoint a qualified independent person ("the scrutineer") to carry out—

- (a) the functions in relation to the election which are required under this Article to be contained in his appointment; and
- (b) such additional functions in relation to the election as may be specified in his appointment.

(2) 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 Article by order of the Department or is himself so specified; and
- (b) the trade union 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) The scrutineer's appointment shall require him—

- (a) to be the person who supervises the production of the voting papers and (unless he is appointed under Article 18 to undertake the distribution of the voting papers) their distribution and to whom the voting papers are returned by those voting;
- (b) to—
  - (i) inspect the register of names and addresses of the members of the trade union, or
  - (ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with paragraph (9)(a),

whenever it appears to him appropriate to do so and, in particular, when the conditions specified in paragraph (4) are satisfied;

- (c) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see Article 19);
- (d) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and
- (e) to retain custody of all voting papers returned for the purposes of the election and the copy of the register supplied to him in accordance with paragraph (9)(a)—
  - (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) if within that period an application is made under Article 21 (complaint of failure to comply with election requirements), until the Certification Officer or the High Court authorises him to dispose of the papers or copy.

- (4) The conditions referred to in paragraph (3)(b) are—
- (a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union or candidate who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and
  - (b) that the scrutineer does not consider that the suspicion of the member or candidate is ill-founded.
- (5) In paragraph (4) “the appropriate period” means the period—
- (a) beginning with the first day on which a person may become a candidate in the election or, if later, the day on which the scrutineer is appointed, and
  - (b) ending with the day before the day on which the scrutineer makes his report to the trade union.
- (6) The duty of confidentiality as respects the register is incorporated in the scrutineer’s appointment.
- (7) The trade union shall ensure that nothing in the terms of the scrutineer’s appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer’s independence in relation to the union into question.
- (8) The trade union shall, before the scrutineer begins to carry out his functions, either—
- (a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or
  - (b) take all such other steps for notifying members of the name of the scrutineer 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.
- (9) The trade union shall—
- (a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and
  - (b) comply with any request made by the scrutineer to inspect the register.
- (10) Where the register is kept by means of a computer the duty imposed on the trade union by paragraph (9)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.
- (11) The trade union shall 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.
- (12) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.
- (13) In this Article “the relevant date” means—
- (a) where the trade union has rules determining who is entitled to vote in the election by reference to membership on a particular date, that date, and
  - (b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the election.

### **Entitlement to vote**

**16.—**(1) Subject to the provisions of this Article, entitlement to vote shall be accorded equally to all members of the trade union.

(2) The rules of the union may exclude entitlement to vote in the case of all members belonging to one of the following classes, or to a class falling within one of the following—

- (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) The rules of the union may restrict entitlement to vote to members who fall within—

- (a) a class determined by reference to a trade or occupation,
- (b) a class determined by reference to a geographical area, or
- (c) a class which is by virtue of the rules of the union treated as a separate section within the union,

or to members who fall within a class determined by reference to any combination of the factors mentioned in sub-paragraphs (a), (b) and (c).

(4) Entitlement may not be restricted in accordance with paragraph (3) if the effect is that any 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 excluded in accordance with paragraph (2).

## **Voting**

**17.—**(1) The method of voting must be by the marking of a voting paper by the person voting.

(2) Each voting paper must—

- (a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned,
- (b) 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) be marked with its number.

(3) 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.

(4) So far as is reasonably practicable, every person who is entitled to vote at the election must—

- (a) have sent to him by post, at his home address or another address which he has requested the trade union in writing to treat as his postal address, 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; but 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, sub-paragraph (a) shall have effect with the substitution for the reference to post of a reference to that other means.

(5) The ballot shall 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 at the election are fairly and accurately counted.

For the purposes of sub-paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the election.

(6) The ballot shall be so conducted as to secure that the result of the election is determined solely by counting the number of votes cast directly for each candidate.

(7) Nothing in paragraph (6) shall be taken to prevent the system of voting used for the election being the single transferable vote, that is, a vote capable of being given so as to indicate the voter's order of preference for the candidates and of being transferred to the next choice—

- (a) when it is not required to give a prior choice the necessary quota of votes, or
- (b) when, owing to the deficiency in the number of votes given for a prior choice, that choice is eliminated from the list of candidates.

### **Counting of votes etc. by independent person**

18.—(1) The trade union shall ensure that—

- (a) the storage and distribution of the voting papers for the purposes of the election, and
  - (b) the counting of the votes cast in the election, are undertaken by one or more independent persons appointed by the union.
- (2) A person is an independent person in relation to an election if—
- (a) he is the scrutineer, or
  - (b) he is a person other than the scrutineer and the trade union 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 under this Article shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any statutory provision or the occurrence of any unfairness or malpractice.

(4) The duty of confidentiality as respects the register is incorporated in an appointment under this Article.

(5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.

(6) The trade union—

- (a) shall ensure that nothing in the terms of an appointment under this Article is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,
- (b) shall ensure that a person appointed under this Article 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 into question the independence of the person appointed in relation to the union, and
- (c) shall comply with all reasonable requests made by a person appointed under this Article for the purposes of, or in connection with, the carrying out of his functions.

### **Scrutineer's report**

19.—(1) The scrutineer's report on the election shall state—

- (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; and

- (e) the name of the person (or of each of the persons) appointed under Article 18 or, if no person was so appointed, that fact.
- (2) The report shall also state whether the scrutineer is satisfied—
  - (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 (whether by him or any other person) 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 he has been able to carry out his functions without such interference as would make it reasonable for any person to call his independence in relation to the union into question; and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.
- (3) The report shall also state—
  - (a) whether the scrutineer—
    - (i) has inspected the register of names and addresses of the members of the trade union, or
    - (ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with Article 15(9)(a),
  - (b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or candidate or at his own instance,
  - (c) whether he declined to act on any such request, and
  - (d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date, but shall not state the name of any member or candidate who has requested such an inspection or examination.
- (4) Where one or more persons other than the scrutineer are appointed under Article 18, the statement included in the scrutineer's report in accordance with paragraph (2)(b) shall also indicate—
  - (a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and
  - (b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.
- (5) The trade union shall not publish the result of the election until it has received the scrutineer's report.
- (6) The trade union shall within the period of three months after it receives the report either—
  - (a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
  - (b) 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.
- (7) Any such copy or notification shall be 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.

(8) The trade union shall so supply any member of the union who makes such a request and pays the fee (if any) notified to him.

### **Uncontested elections**

**20.** Nothing in this Part shall be taken to require a ballot to be held at an uncontested election,

#### *Remedy for failure to comply with requirements*

### **Remedy for failure to comply with requirements: general**

**21.—**(1) The remedy for a failure on the part of a trade union to comply with the requirements of this Part is by way of application under Article 22 (to the Certification Officer) or Article 23 (to the High Court). The making of an application to the Certification Officer does not prevent the applicant, or any other person, from making an application to the High Court in respect of the same matter.

(2) An application under those Articles may be made—

- (a) by a person who is a member of the trade union (provided, where the election has been held, he was also a member at the time when it was held), or
- (b) by a person who is or was a candidate at the election; and the references in those Articles to a person having a sufficient interest are to such a person.

(3) No such application may be made after the end of the period of one year beginning with the day on which the union announced the result of the election.

### **Application to Certification Officer**

**22.—**(1) A person having a sufficient interest (see Article 21(2)) who claims that a trade union has failed to comply with any of the requirements of this Part may apply to the Certification Officer for a declaration to that effect.

(2) On an application being made to him, 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, and may make or refuse the declaration asked for.

(3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.

(4) Where he makes a declaration and is satisfied that 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 does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.

(5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

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

(7) Where he 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.

### **Application to High Court**

**23.—**(1) A person having a sufficient interest (see Article 21(2)) who claims that a trade union has failed to comply with any of the requirements of this Part may apply to the High Court for a declaration to that effect.

(2) If an application in respect of the same matter has been made to the Certification Officer, the High Court shall have due regard to any declaration, reasons or observations of his which are brought to its notice.

(3) If the High Court makes the declaration asked for, it shall specify in the declaration the provisions with which the trade union has failed to comply.

(4) Where the High Court makes a declaration it shall also, unless it considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

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

The High Court shall in an order imposing any such requirement as is mentioned in sub-paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

(5) Where the High Court makes an order requiring the union to hold a fresh election, the court shall (unless it considers that it would be inappropriate to do so in the particular circumstances of the case) require the election to be conducted in accordance with the requirements of this Part and such other provisions as may be made by the order.

(6) Where an enforcement order has been made—

- (a) any person who is a member of the union and was a member at the time the order was made, or
- (b) any person who is or was a candidate in the election in question, is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(7) Without prejudice to any other power of the High Court, the court may on an application under this Article grant such interlocutory relief as it considers appropriate.

### *Supplementary*

### **Exemption of newly-formed trade unions, etc.**

**24.—**(1) The provisions of this Part do not apply to a trade union until more than one year has elapsed since its formation (by amalgamation or otherwise).

For this purpose the date of formation of a trade union formed otherwise than by amalgamation shall be taken to be the date on which the first members of the executive of the union are first appointed or elected.

(2) Where a trade union is formed by amalgamation, the provisions of this Part do not apply in relation to a person who—

- (a) by virtue of an election held a position to which this Part applies in one of the amalgamating unions immediately before the amalgamation, and
- (b) becomes the holder of a position to which this Part applies in the amalgamated union in accordance with the instrument of transfer, until after the end of the period for which he would have been entitled in accordance with this Part to continue to hold the first-mentioned position without being re-elected.

(3) Where a trade union transfers its engagements to another trade union, the provisions of this Part do not apply in relation to a person who—

- (a) held a position to which this Part applies in the transferring union immediately before the transfer, and
- (b) becomes the holder of a position to which this Part applies in the transferee union in accordance with the instrument of transfer, until after the end of the period of one year beginning with the date of the transfer or, if he held the first-mentioned position by virtue of an election, any longer period for which he would have been entitled in accordance with this Part to continue to hold that position without being re-elected.

### **Exemption of certain persons nearing retirement**

**25.**—(1) Article 12(1)(b) (requirement of re-election) does not apply to a person holding a position to which this Part applies if the following conditions are satisfied.

(2) The conditions are that—

- (a) he holds the position by virtue of having been elected at an election in relation to which the requirements of this Part were satisfied,
- (b) he is a full-time employee of the union by virtue of the 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 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 Parts I to VI of the Social Security (Contributions and Benefits) (Northern Ireland) Act 1992<sup>(10)</sup>.

### **Period for giving effect to election**

**26.** Where a person holds a position to which this Part applies immediately before an election at which he is not re-elected to that position, nothing in this Part shall be taken to require the union to prevent him from continuing to hold that position for such period (not exceeding six months) as may reasonably be required for effect to be given to the result of the election.

### **Overseas members**

**27.**—(1) A trade union which has overseas members may choose whether or not to accord any of those members entitlement to vote at an election for a position to which this Part applies. 46

(2) An “overseas member” 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.

(10) 1992 c. 7

For this purpose—“merchant seaman” means a person whose employment, or the greater part of it, is carried out on board sea-going ships; and “offshore worker” means a person in offshore employment within the meaning of section 287 of the Great Britain Act, other than one who is in such employment in an area where the law of Great Britain applies.

(3) Where the union chooses to accord an overseas member entitlement to vote, Article 17 (requirements as to voting) applies in relation to him; but nothing in Article 13 (candidates) or Article 16 (entitlement to vote) applies in relation to an overseas member or in relation to a vote cast by such a member.

### **Other supplementary provisions**

**28.**—(1) For the purposes of this Part the date on which a contested election is held shall be taken, in the case of an election in which votes may be cast on more than one day, to the last of those days.

(2) Nothing in this Part affects the validity of anything done by a person holding a position to which this Part applies.

## **PART IV**

### **RIGHTS IN RELATION TO TRADE UNION MEMBERSHIP**

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

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

**29.**—(1) A member of a trade union who claims that members of the union, including himself, are likely to be or have been induced by the union to take part or to continue to take part in industrial action which does not have the support of a ballot may apply to the High Court for an order under this Article. In this Article “the relevant time” means the time when the application is made.

(2) For this purpose industrial action shall be regarded as having the support of a ballot only if—

(a) the union has held a ballot in respect of the action—

- (i) in relation to which the requirements of Article 106 (scrutineer) so far as applicable before and during the holding of the ballot were satisfied,
- (ii) in relation to which the requirements of Articles 108 to 112 were satisfied, and
- (iii) in which the majority voting in the ballot answered “Yes” to the question applicable in accordance with Article 110(3) to industrial action of the kind which the applicant has been or is likely to be induced to take part in;

(b) such of the requirements of the following Articles as have fallen to be satisfied at the relevant time have been satisfied, namely—

- (i) Article 106 so far as applicable after the holding of the ballot, and
- (ii) Article 114 (scrutineer’s report); and

(c) the requirements of Article 116 (calling of industrial action with support of ballot) are satisfied. Any reference in this paragraph to a requirement of a provision which is disappplied or modified by Article 115 (overseas members) has effect subject to that Article.

(3) Where on an application under this Article the High Court is satisfied that the claim is well-founded, it shall make such order as it considers appropriate for requiring the union to take steps for ensuring—

- (a) that there is no, or no further, inducement of members of the union to take part or to continue to take part in the industrial action to which the application relates, and
- (b) that no member engages in conduct after the making of the order by virtue of having been induced before the making of the order to take part or continue to take part in the action,
- (4) Without prejudice to any other power of the High Court, the court may on an application under this Article grant such interlocutory relief as it considers appropriate.
- (5) For the purposes of this Article an act shall be taken to be done by a trade union if it is authorised or endorsed by the union; and the provisions of Article 21(2) to (4) of the 1992 Order apply for the purpose of determining whether an act is to be taken to be so authorised or endorsed. Those provisions also apply in relation to proceedings for failure to comply with an order under this Article as they apply in relation to the original proceedings.
- (6) In this Article—
  - “inducement” includes an inducement which is or would be ineffective, whether because of the member’s unwillingness to be influenced by it or for any other reason; and
  - “industrial action” means a strike or other industrial action by persons employed under contracts of employment.
- (7) Where a 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 this Article,
- (8) References in this Article to a contract of employment include any contract under which one person personally does work or performs services for another; and related expressions shall be construed accordingly.
- (9) Nothing in this Article shall be construed as requiring a trade union to hold separate ballots for the purposes of this Article and Articles 104 to 117 (requirement of ballot before action by trade union).

*Right not to be denied access to the courts*

**Right not to be denied access to the courts**

**30.**—(1) This Article applies where a matter is under the rules of a trade union required or allowed to be submitted for determination or conciliation in accordance with the rules of the union, but a provision of the rules purporting to provide for that to be a person’s only remedy has no effect (or would have no effect if there were one).

(2) Notwithstanding anything in the rules of the union or in the practice of any court, if a member or former member of the union begins proceedings in a court with respect to a matter to which this Article applies, then if—

- (a) he has previously made a valid application to the union for the matter to be submitted for determination or conciliation in accordance with the union’s rules, and
- (b) the court proceedings are begun 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 the matter to be so submitted, and the fact that any relevant steps remain to be taken under the rules, shall be regarded for all purposes as irrelevant to any question whether the court proceedings should be dismissed, stayed or adjourned.

(3) An application shall be deemed to be valid for the purposes of paragraph (2)(a) unless the union informed the applicant, before the end of the period of 28 days beginning with the date on which the union received the application, of the respects in which the application contravened the requirements of the rules.

(4) If the court is satisfied that any delay in the taking of relevant steps under the rules is attributable to unreasonable conduct of the person who commenced the proceedings, it may treat the period specified in paragraph (2)(b) as extended by such further period as it considers appropriate.

(5) In this Article—

- (a) references to the rules of a trade union include any arbitration or other agreement entered into in pursuance of a requirement imposed by or under the rules; and
- (b) references to the relevant steps under the rules, in relation to any matter, include any steps falling to be taken in accordance with the rules for the purposes of or in connection with the determination or conciliation of the matter, or any appeal, review or reconsideration of any determination or award.

(6) This Article does not affect any statutory provision or rule of law by virtue of which a court would apart from this Article disregard any such rules of a trade union or any such fact as is mentioned in paragraph (2).

### *Right not to be unjustifiably disciplined*

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

**31.**—(1) An individual who is or has been a member of a trade union has the right not to be unjustifiably disciplined by the union.

(2) For this purpose an individual is “disciplined” by a trade union if a determination is made, or purportedly made, under the rules of the union or by an official of the union or a number of persons including an official that—

- (a) he should be expelled from the union or a branch or section of the union,
- (b) he should pay a sum to the union, to a branch or section of the union or to any other person;
- (c) sums tendered by him in respect of an obligation to pay subscriptions or other sums to the union, or to a branch or section of the union, should be treated as unpaid or paid for a different purpose,
- (d) he should be deprived to any extent of, or of access to, any benefits, services or facilities which would otherwise be provided or made available to him by virtue of his membership of the union, or a branch or section of the union,
- (e) another trade union, or a branch or section of it, should be encouraged or advised not to accept him as a member, or
- (f) he should be subjected to some other detriment; and whether an individual is “unjustifiably disciplined” shall be determined in accordance with Article 32.

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

(4) Subject to that, the remedies for infringement of the right conferred by this Article are as provided by Articles 33 and 34, and not otherwise.

(5) The right not to be unjustifiably disciplined is in addition to (and not in substitution for) any right which exists apart from this Article; and, subject to Article 33(4), nothing in this Article or Articles 32 to 34 affects any remedy for infringement of any such right.

**Meaning of “unjustifiably disciplined”**

**32.—**(1) An individual is unjustifiably disciplined by a trade union if the actual or supposed conduct which constitutes the reason, or one of the reasons, for disciplining him is—

- (a) conduct to which this Article applies, or
- (b) something which is believed by the union to amount to such conduct; but subject to paragraph (6) (cases of bad faith in relation to assertion of wrongdoing).

(2) This Article applies to conduct which consists in—

- (a) failing to participate in or support a strike or other industrial action (whether by members of the union or by others), or
- (b) indicating opposition to or a lack of support for such action;
- (c) failing to contravene, for a purpose connected with such a strike or other industrial action, a requirement imposed on him by or under a contract of employment;
- (d) asserting (whether by bringing proceedings or otherwise) that the union, any official or representative of it or a trustee of its property has contravened, or is proposing to contravene, a 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 or any rule of law; encouraging or assisting a person—
  - (i) to perform an obligation imposed on him by a contract of employment, or
  - (ii) to make or attempt to vindicate any such assertion as is mentioned in sub-paragraph (c);
- (e) contravening a requirement imposed by or in consequence of a determination which infringes the individual's or another individual's right not to be unjustifiably disciplined;
- (f) failing to agree, or withdrawing agreement, to the making from his wages (in accordance with arrangements between his employer and the union) of deductions representing payments to the union in respect of his membership;
- (g) resigning or proposing to resign from the union or from another union, becoming or proposing to become a member of another union, refusing to become a member of another union, or being a member of another union;
- (h) working with, or proposing to work with, individuals who are not members of the union or who are or are not members of another union;
- (j) working for, or proposing to work for, an employer who employs or who has employed individuals who are not members of the union or who are or are not members of another union; or
- (k) requiring the union to do an act which the union is, by any provision of this Order or the 1992 Order, required to do on the requisition of a member.

(3) This Article applies to conduct which involves the Northern Ireland Commissioner for the Rights of Trade Union Members or the Certification Officer being consulted or asked to provide advice or assistance with respect to any matter whatever, or which involves any 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 paragraph (2)(c).

(4) This Article also applies to conduct which consists in proposing to engage in, or doing anything preparatory or incidental to, conduct falling within paragraph (2) or (3).

(5) This Article does not apply to an act or statement comprised in conduct falling within paragraph (2). (3) or (4) if it is shown that the 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 within paragraph (2) or (3).

- (6) An individual is not unjustifiably disciplined if it is shown—
- (a) that the reason for disciplining him, or one of them, is that he made such an assertion as is mentioned in paragraph (2)(c), or encouraged or assisted another person to make or attempt to vindicate such an assertion,
  - (b) that the assertion was false, and
  - (c) that he made the assertion, or encouraged or assisted another person to make or attempt to vindicate it, in the belief that it was false or otherwise in bad faith, and 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 as unjustifiably disciplined.

- (7) In this Article—

“contract of employment”, in relation to an individual, includes any agreement between that individual and a person for whom he works or normally works, “employer” includes such a person and related expressions shall be construed accordingly;

“representative”, in relation to a union, means a 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;

“require” (on the part of an individual) includes request or apply for, and “requisition” shall be construed accordingly;

“wages” shall be construed in accordance with the definitions of

“contract of employment”, “employer” and related expressions.

(8) Where a person holds any office or employment under the Crown on terms which do not constitute a contract of employment between him and the Crown, those terms shall nevertheless be deemed to constitute such a contract for the purposes of this Article.

### **Complaint of infringement of right**

**33.—**(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.

- (2) The tribunal shall not entertain such a complaint unless it is presented—

- (a) before the end of the period of three months beginning with the date of the making of the determination claimed to infringe the right, or

- (b) where the tribunal is satisfied—

- (i) that it was not reasonably practicable for the complaint to be presented before the end of that period, or

- (ii) that any delay in making the complaint is wholly or partly attributable to a reasonable attempt to appeal against the determination or to have it reconsidered or reviewed, within such further period as the tribunal considers reasonable.

- (3) Where the tribunal finds the complaint well-founded, it shall make a declaration to that effect.

(4) Where a complaint relating to an expulsion which is presented under this Article is declared to be well-founded, no complaint in respect of the expulsion shall be presented or proceeded with under Article 38 (right not to be expelled from trade union).

### **Further remedies for infringement of right**

**34.—**(1) An individual whose complaint under Article 33 has been declared to be well-founded may make an application to an industrial tribunal for one or both of the following—

- (a) an award of compensation to be paid to him by the union;
  - (b) an order that the union pay him an amount equal to any sum which he has paid in pursuance of any such determination as is mentioned in Article 31(2)(b).
- (2) An application under this Article shall not be entertained if made before the end of the period of four weeks beginning with the date of the declaration or after the end of the period of six months beginning with that date.
- (3) The amount of compensation awarded shall, subject to the following provisions, be such as the industrial tribunal considers just and equitable in all the circumstances.
- (4) In determining the amount of compensation to be awarded, the same rule shall be applied 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 complained of was to any extent caused or contributed to by the 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 calculated in accordance with paragraphs (3) to (5) shall not exceed the aggregate of—
- (a) an amount equal to 30 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 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 a case to which paragraph (7) applies, shall not be less than the amount for the time being specified in Article 40(6) of this Order.
- (7) This paragraph applies to a case where when the application under this Article is made—
- (a) the determination infringing the applicant's right not to be unjustifiably disciplined has not been revoked, or
  - (b) the union has failed to take all the steps necessary for securing the reversal of anything done for the purpose of giving effect to the determination.

*Right not to suffer deduction of unauthorised or excessive union subscriptions*

**Right not to suffer deduction of unauthorised or excessive subscriptions**

**35.—**(1) Where arrangements ("subscription deduction arrangements") exist between the employer of a worker and a trade union relating to the making from workers' wages of deductions representing payments to the union in respect of the workers' membership of the union ("subscription deductions"), the employer shall ensure—

- (a) that no subscription deduction is made from wages payable to the worker on any day ("the relevant day") unless it is an authorised deduction, and
- (b) that the amount of any subscription deduction which is so made does not exceed the permitted amount.

(2) For the purposes of paragraph (1)(a) a subscription deduction is an authorised deduction in relation to the relevant day if—

- (a) a document containing the worker's authorisation of the making from his wages of subscription deductions has been signed and dated by the worker, and
- (b) the authorisation is current on that day.

(3) For the purposes of paragraph (2)(b) an authorisation is current on the relevant day if that day falls within the period of three years beginning with the day on which the worker signs and dates the document containing the authorisation and paragraph (4) does not apply.

(4) This paragraph applies if a document containing the worker's withdrawal of the authorisation has been received by the employer in time for it to be reasonably practicable for him to secure that no subscription deduction is made from wages payable to the worker on the relevant day.

(5) For the purposes of paragraph (1)(b) the permitted amount in relation to the relevant day is—

- (a) the amount of the subscription deduction which falls to be made from wages payable to the worker on that day in accordance with the subscription deduction arrangements, or
- (b) if there is a relevant increase in the amount of subscription deductions and appropriate notice has not been given by the employer to the worker at least one month before that day, the amount referred to in sub-paragraph (a) less the amount of the increase.

(6) So much of the increase referred to in paragraph (5)(b) is relevant as is not attributable solely to an increase in the wages payable on the relevant day.

(7) In paragraph (5)(b) “appropriate notice” means, subject to paragraph (8), notice in writing stating—

- (a) the amount of the increase and the increased amount of the subscription deductions, and
- (b) that the worker may at any time withdraw his authorisation of the making of subscription deductions by giving notice in writing to the employer.

(8) Where the relevant increase is attributable to an increase in any percentage by reference to which the worker's subscription deductions are calculated, paragraph (7) shall have effect with the substitution, in sub-paragraph (a), for the reference to the amount of the increase and the increased amount of the deductions of a reference to the percentage before and the percentage after the increase.

(9) A worker's authorisation of the making of subscription deductions from his wages shall not give rise to any obligation on the part of the employer to the worker to maintain or continue to maintain subscription deduction arrangements.

(10) Where arrangements, whether included in subscription deduction arrangements or not, exist between the parties to subscription deduction arrangements for the making from workers' wages of deductions representing payments to the union which are additional to subscription deductions, the amount of the deductions representing such additional payments shall be treated for the purposes of this Article (where they would otherwise not be so treated) as part of the subscription deductions.

(11) In this Article and Article 36 “employer”, “wages” and “worker” have the same meanings as in Part II of the Wages Order.

### **Complaint of infringement of rights**

**36.—**(1) A worker may present a complaint to an industrial tribunal that his employer has made a deduction from his wages in contravention of Article 35—

- (a) within the period of three months beginning with the date of the payment of the wages from which the deduction, or (if the complaint relates to more than one deduction) the last of the deductions, was made, or
- (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

(2) Where a tribunal finds that a complaint under this Article is well-founded, it shall make a declaration to that effect and shall order the employer to pay to the worker—

- (a) in the case of a contravention of sub-paragraph (a) of Article 35(1), the whole amount of the deduction, and

- (b) in the case of a contravention of sub-paragraph (b) of Article 35(1), the amount by which the deduction exceeded the amount permitted to be deducted by that sub-paragraph, less any such part of the amount as has already been paid to the worker by the employer.
- (3) Where the making of a deduction from the wages of a worker both contravenes Article 35(1) and involves one or more of the contraventions specified in paragraph (4) of this Article, the aggregate amount which may be ordered by an industrial tribunal or court (whether on the same occasion or on different occasions) to be paid in respect of the contraventions shall not exceed the amount, or (where different amounts may be ordered to be paid in respect of different contraventions) the greatest amount, which may be ordered to be paid in respect of any one of them.
- (4) The contraventions referred to in paragraph (3) are—
  - (a) a contravention of the requirement not to make a deduction without having given the particulars required by Article 44 (itemised pay statements) or 45(1) (standing statements of fixed deductions) of the No. 2 Order;
  - (b) a contravention of Article 3(1) of the Wages Order (requirement not to make unauthorised deductions); and
  - (c) a contravention of Article 60(1) or 64(1) of this Order (requirements not to make deductions of political fund contributions in certain circumstances).

*Right to terminate membership of union*

**Right to terminate membership of union**

**37.** In every contract of membership of a trade union, whether made before or after the appointed day, 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 shall be implied.

*Right not to be expelled from trade union*

**Right not to be expelled from union**

**38.—(1)** An individual shall not be expelled from a trade union unless the expulsion is permitted by this Article.

- (2) The expulsion of an individual from a trade union is permitted by this Article if (and only if)—
  - (a) he does not satisfy, or no longer satisfies, an enforceable membership requirement contained in the rules of the union,
  - (b) he does not qualify, or no longer qualifies, for membership of the union by reason of the union operating only in a particular part or particular parts of Northern Ireland,
  - (c) in the case of a union whose purpose is the regulation of relations between its members and one particular employer or a number of particular employers who are associated, he is not, or is no longer, employed by that employer or one of those employers, or
  - (d) the expulsion is entirely attributable to his conduct.

(3) A requirement in relation to membership of a union is “enforceable” for the purposes of paragraph (2)(a) if it restricts membership solely by reference to one or more of the following criteria—

- (a) employment in a specified trade, industry or profession,
- (b) occupational description (including grade, level or category of appointment), and
- (c) possession of specified trade, industrial or professional qualifications or work experience.

- (4) For the purposes of paragraph (2)(d) “conduct”, in relation to an individual, does not include—
- (a) his being or ceasing to be, or having been or ceased to be—
    - (i) a member of another trade union,
    - (ii) employed by a particular employer or at a particular place, or
    - (iii) a member of a political party, or
  - (b) conduct to which Article 32 (conduct for which an individual may not be disciplined by a trade union) applies or would apply if the references in that Article to the trade union which is relevant for the purposes of that Article were references to any trade union.
- (5) An individual who claims that he has been expelled from a trade union in contravention of this Article may present a complaint to an industrial tribunal.

### **Time limit for proceedings**

- 39.** An industrial tribunal shall not entertain a complaint under Article 38 unless it is presented—
- (a) before the end of the period of six months beginning with the date of the expulsion, or
  - (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as the tribunal considers reasonable.

### **Remedies**

- 40.—**(1) Where the industrial tribunal finds a complaint under Article 38 is well-founded, it shall make a declaration to that effect.
- (2) An individual whose complaint 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.
- (3) The application shall not be entertained if made—
- (a) before the end of the period of four weeks beginning with the date of the declaration, or
  - (b) after the end of the period of six months beginning with that date.
- (4) The amount of compensation awarded shall, subject to the following provisions, be such as the industrial tribunal considers just and equitable in all the circumstances.
- (5) Where the industrial tribunal finds that the expulsion complained of was to any extent caused or contributed to by the 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 calculated in accordance with paragraphs (4) and (5) shall not exceed the aggregate of—
- (a) an amount equal to 30 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 basic award in unfair dismissal cases), and 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 a case to which paragraph (7) applies, shall not be less than £5,000.
- (7) This paragraph applies to a case where when the application is made the applicant has not been re-admitted to the union.

### **Interpretation and other supplementary provisions**

- 41.—**(1) For the purposes of Article 38—
- (a) “trade union” does not include an organisation falling within sub-paragraph (b) of Article 3(1) of the 1992 Order;

(b) “employment” includes any relationship whereby an individual personally does work or performs services for another person (related expressions being construed accordingly).

(2) For the purposes of Articles 38 to 40 an individual who under the rules of a trade union ceases to be a member of the union on the happening of an event specified in the rules shall be treated as having been expelled from the union.

(3) The remedy of an individual for infringement of the right conferred by Article 38 is by way of a complaint to an industrial tribunal in accordance with that Article, Articles 39 and 40 and this Article, and not otherwise.

(4) Where a complaint relating to an expulsion which is presented under Article 38 is declared to be well-founded, no complaint in respect of the expulsion shall be presented or proceeded with under Article 33 (complaint of infringement of right not to be unjustifiably disciplined).

(5) The right conferred by Article 38 is in addition to, and not in substitution for, any right which exists apart from that Article; and, subject to paragraph (4), nothing in that Article, Article 39 or 40 or this Article affects any remedy for infringement of any such right.

### *Access to employment*

#### **Access to employment**

**42.** After Article 47 of the No. 2 Order there shall be inserted the Articles 48 to 48F, together with the heading, set out in Schedule 1 to this Order.

### *Action short of dismissal*

#### **Action short of dismissal: non infringing actions**

**43.** In Article 35 of the No. 2 Order after paragraph (2) there shall be inserted—

“(2A) In determining what was the purpose for which action was taken by the employer against the complainant in a case where—

(a) there is evidence that the employer’s purpose was to further a change in his relationship with all or any class of his employees, and

(b) there is also evidence that his purpose was one falling within Article 33, the tribunal shall regard the purpose mentioned in sub-paragraph (a) (and not the purpose mentioned in sub-paragraph (b)) as the purpose for which the employer took the action, unless it considers that the action was such as no reasonable employer would take having regard to the purpose mentioned in sub-paragraph (a).

(2B) Where the action which the tribunal determines to have been the action taken against the complainant was action taken in consequence of previous action by the employer sub-paragraph (a) of paragraph (2A) is satisfied if the purpose mentioned in that sub-paragraph was the purpose of the previous action.

(2C) In paragraph (2A) “class”, in relation to an employer and his employees, means those employed at a particular place of work, those employees of a particular grade, category or description or those of a particular grade, category or description employed at a particular place of work.”.

### *Supplementary*

#### **Membership of constituent or affiliated organisation**

44. In this Part “member”, in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes a member of any of the constituent or affiliated organisations.

## **PART V**

### **APPLICATION OF FUNDS FOR POLITICAL OBJECTS**

#### *Restriction on use of funds for certain political objects*

#### **Restriction on use of funds for political objects**

45.—(1) The funds of a trade union shall not be applied in the furtherance of the political objects to which this Part applies unless—

- (a) there is in force in accordance with this Part a resolution
  - (a) “political resolution”) approving the furtherance of those objects as an object of the union (see Articles 47 to 56), and
- (b) there are in force rules of the union as to—
  - (i) the making of payments in furtherance of those objects out of a separate fund, and
  - (ii) the making of contributions to that fund by members,

which comply with this Part (see Articles 57 and 59) and have been approved by the Certification Officer.

(2) This applies whether the funds are so applied directly, or in conjunction with another trade union, association or body, or otherwise indirectly.

#### **Political objects to which restriction applies**

46.—(1) The political objects to which this Part applies are the expenditure of money—

- (a) on any contribution to the funds of, or on the payment of 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.

(2) 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 (1)(e), be taken to be expenditure incurred on the holding of the conference or meeting.

(3) In determining for the purposes of paragraph (1) 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.

(4) 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 an election to a political office;

“film” includes any record, however made, of a sequence of visual images, which is capable of being used as a means of showing that sequence as a moving picture;

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

### *Political resolution*

#### **Passing and effect of political resolution**

**47.—**(1) A political resolution must be passed by a majority of those voting on a ballot of the members of the trade union held in accordance with this Part.

(2) A political resolution so passed 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.

(3) If not previously rescinded, a political resolution shall cease to have effect at the end of the period of ten years beginning with the date of the ballot on which it was passed.

(4) Where before the end of that period a ballot is held on a new political resolution, then—

(a) if the new resolution is passed, the old resolution shall be treated as rescinded, and

(b) if it is not passed, the old resolution shall cease to have effect at the end of the period of two weeks beginning with the date of the ballot.

#### **Approval of political ballot rules**

**48.—**(1) A ballot on a political resolution must be held in accordance with rules of the trade union (its “political ballot rules”) approved by the Certification Officer.

(2) Fresh approval is required for the purposes of each ballot which it is proposed to hold, notwithstanding that the rules have been approved for the purposes of an earlier ballot.

(3) The Certification Officer shall not approve a union’s political ballot rules unless he is satisfied that the requirements set out in—

Article 49 (appointment of independent scrutineer),

Article 50 (entitlement to vote),

Article 51 (voting),

Article 52 (counting of votes etc. by independent person), and

Article 53 (scrutineer’s report),

would be satisfied in relation to a ballot held by the union in accordance with the rules,

### **Appointment of independent scrutineer**

**49.**—(1) The trade union shall, before the ballot is held, appoint a qualified independent person (“the scrutineer”) to carry out—

(a) the functions in relation to the ballot which are required under this Article to be contained in his appointment; and

(b) such additional functions in relation to the ballot as may be specified in his appointment.

(2) 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 Article by order of the Department or is himself so specified; and

(b) the trade union 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.

(3) The scrutineer’s appointment shall require him—

(a) to be the person who supervises the production of the voting papers and (unless he is appointed under Article 52 to undertake the distribution of the voting papers) their distribution and to whom the voting papers are returned by those voting;

(b) to—

(i) inspect the register of names and addresses of the members of the trade union, or

(ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with paragraph (9)(a), whenever it appears to him appropriate to do so and, in particular, when the conditions specified in paragraph (4) are satisfied;

(c) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see Article 53);

(d) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and

(e) to retain custody of all voting papers returned for the purposes of the ballot and the copy of the register supplied to him in accordance with paragraph (9)(a)—

(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) if within that period an application is made under Article 54 (complaint of failure to comply with ballot rules), until the Certification Officer or the High Court authorises him to dispose of the papers or copy.

(4) The conditions referred to in paragraph (3)(b) are—

(a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and

(b) that the scrutineer does not consider that the member’s suspicion is ill-founded.

(5) In paragraph (4) “the appropriate period” means the period—

(a) beginning with the day on which the scrutineer is appointed, and

(b) ending with the day before the day on which the scrutineer makes his report to the trade union.

(6) The duty of confidentiality as respects the register is incorporated in the scrutineer’s appointment.

(7) The trade union shall ensure that nothing in the terms of the scrutineer’s appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer’s independence in relation to the union into question.

- (8) The trade union shall, before the scrutineer begins to carry out his functions, either—
- (a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or
  - (b) take all such other steps for notifying members of the name of the scrutineer 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.
- (9) The trade union shall—
- (a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and
  - (b) comply with any request made by the scrutineer to inspect the register.
- (10) Where the register is kept by means of a computer the duty imposed on the trade union by paragraph (9)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.
- (11) The trade union shall 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.
- (12) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.
- (13) In this Article “the relevant date” means—
- (a) where the trade union has rules determining who is entitled to vote in the ballot by reference to membership on a particular date, that date, and
  - (b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the ballot.

### **Entitlement to vote**

- 50.** Entitlement to vote in the ballot shall be accorded equally to all members of the trade union.

### **Voting**

- 51.**—(1) The method of voting must be by the marking of a voting paper by the person voting.
- (2) Each voting paper must—
- (a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned, and
  - (b) 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) be marked with its number.
- (3) 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.
- (4) 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 home address or another address which he has requested the trade union in writing to treat as his postal address, and

(b) be given a convenient opportunity to vote by post; but 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, sub-paragraph

(a) shall have effect with the substitution for the reference to post of a reference to that other means.

(5) The ballot shall 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. For the purposes of sub-paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the ballot.

### **Counting of votes etc. by independent person**

**52.**—(1) The trade union shall ensure that—

(a) the storage and distribution of the voting papers for the purposes of the ballot, and

(b) the counting of the votes cast in the ballot, are undertaken by one or more independent persons appointed by the union.

(2) A person is an independent person in relation to a ballot if—

(a) he is the scrutineer, or

(b) he is a person other than the scrutineer and the trade union 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.

(3) An appointment under this Article shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any statutory provision or the occurrence of any unfairness or malpractice.

(4) The duty of confidentiality as respects the register is incorporated in an appointment under this Article.

(5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.

(6) The trade union—

(a) shall ensure that nothing in the terms of an appointment under this Article is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,

(b) shall ensure that a person appointed under this Article 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 into question the independence of the person appointed in relation to the union, and

(c) shall comply with all reasonable requests made by a person appointed under this Article for the purposes of, or in connection with, the carrying out of his functions.

### **Scrutineer's report**

**53.**—(1) The scrutineer's report on the ballot shall state—

(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 and against the resolution,
- (d) the number of spoiled or otherwise invalid voting papers returned, and
  - (e) the name of the person (or of each of the persons) appointed under Article 52 or, if no person was so appointed, that fact.
- (2) The report shall also state whether the scrutineer is satisfied—
  - (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 (whether by him or any other person) 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 purpose of minimising the risk that any unfairness or malpractice might occur, and
  - (c) that he has been able to carry out his functions without such interference as would make it reasonable for any person to call his independence in relation to the union into question;
 and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.
- (3) The report shall also state—
  - (a) whether the scrutineer—
    - (i) has inspected the register of names and addresses of the members of the trade union, or
    - (ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with Article 49(9)(a),
  - (b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or at his own instance,
  - (c) whether he declined to act on any such request, and
  - (d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date, but shall not state the name of any member who has requested such an inspection or examination.
- (4) Where one or more persons other than the scrutineer are appointed under Article 52, the statement included in the scrutineer's report in accordance with paragraph (2)(b) shall also indicate—
  - (a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and
  - (b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.
- (5) The trade union shall not publish the result of the ballot until it has received the scrutineer's report.
- (6) The trade union shall within the period of three months after it receives the report—
  - (a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
  - (b) 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.

(7) Any such copy or notification shall be 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.

(8) The trade union shall so supply any member of the union who makes such a request and pays the fee (if any) notified to him.

### **Remedy for failure to comply with ballot rules: general**

**54.—**(1) The remedy for—

- (a) the taking by a trade union of a ballot on a political resolution otherwise than in accordance with political ballot rules approved by the Certification Officer, or
- (b) the failure of a trade union, in relation to a proposed ballot on a political resolution, to comply with the political ballot rules so approved,

is by way of application under Article 55 (to the Certification Officer) or 56 (to the High Court). The making of an application to the Certification Officer does not prevent the applicant, or any other person, from making an application to the High Court in respect of the same matter.

(2) An application under those Articles may be made only by a person who is a member of the trade union and, where the ballot has been held, was a member at the time when it was held. References in those Articles to a person having a sufficient interest are to such a person.

(3) No such application may be made after the end of the period of one year beginning with the day on which the union announced the result of the ballot.

### **Application to Certification Officer**

**55.—**(1) A person having a sufficient interest (see Article 54(2)) who claims that a trade union—

- (a) has held a ballot on a political resolution otherwise than in accordance with political ballot rules approved by the Certification Office, or
- (b) has failed in relation to a proposed ballot on a political resolution to comply with political ballot rules so approved,

may apply to the Certification Officer for a declaration to that effect.

(2) On an application being made to him, 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,

and may make or refuse the declaration asked for.

(3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.

(4) Where he makes a declaration and is satisfied that 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 does not occur in future, or that the union has agreed to take such steps, he shall in making the declaration specify those steps.

(5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

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

(7) Where he 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 shall, unless he considers that 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.

### **Application to High Court**

**56.—**(1) A person having a sufficient interest (see Article 54(2)) who claims that a trade union—

- (a) has held a ballot on a political resolution otherwise than in accordance with political ballot rules approved by the Certification Officer, or
- (b) has failed in relation to a proposed ballot on a political resolution to comply with political ballot rules so approved,

may apply to the High Court for a declaration to that effect.

(2) If an application in respect of the same matter has been made to the Certification Officer, the High Court shall have due regard to any declaration, reasons or observations of his which are brought to its notice.

(3) If the High Court makes the declaration asked for, it shall specify in the declaration the provisions with which the trade union has failed to comply.

(4) Where the High Court makes a declaration it shall also, unless it considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

- (a) to secure the holding of a ballot in accordance with the order;
- (b) to take such other steps to remedy the declared failure as may be specified in the order;
- (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The court shall in an order imposing any such requirement as is mentioned in sub-paragraph (a) or (b) specify the period within which the union must comply with the requirements of the order.

(5) Where the High Court makes an order requiring the union to hold a fresh ballot, the High Court shall (unless it considers that it would be inappropriate to do so in the particular circumstances of the case) require the ballot to be conducted in accordance with the union's political ballot rules and such other provisions as may be made by the order.

(6) Where an enforcement order has been made, any person who is a member of the union and was a member at the time the order was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(7) Without prejudice to any other power of the High Court, the court may on an application under this Article grant such interlocutory relief as it considers appropriate.

### *The political fund*

### **Rules as to political fund**

**57.—**(1) The trade union's rules must provide—

- (a) that payments in the furtherance of the political objects to which this Part applies shall be made out of a separate fund (the "political fund" of the union);
- (b) that a member of the union who is not a contributor (see Article 59) shall not be under any obligation to contribute to it;

- (c) that a member shall not by reason of not being a contributor—
    - (i) be excluded from any benefits of the union, or
    - (ii) be placed in any respect either directly or indirectly under a disability or at a disadvantage as compared with other members of the union (except in relation to the control or management of the political fund); and
  - (d) that contribution to the political fund shall not be made a condition for admission to the union.
- (2) A member of a trade union who claims that he is aggrieved by a breach of any rule made in pursuance of this Article may complain to the Certification Officer.
- (3) Where, after giving the member and a representative of the union an opportunity of being heard, the Certification Officer considers that a breach has been committed, he may make such order for remedying the breach as he thinks just under the circumstances.
- (4) Any such order may, if a county court so orders, be enforced in the same way as an order of that court.

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

- 58.—**(1) There may be added to a union's political fund only—
- (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) The rules of the union shall not be taken to require any member to contribute to the political fund at a time when there is no political resolution in force in relation to the union.
- (3) No liability of a union's political fund shall be discharged out of any other fund of the union. This paragraph applies notwithstanding any term or condition on which the liability was incurred or that an asset of the other fund has been charged in connection with the liability.

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

- 59.—**(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.

*Duties of employer who deducts union contributions***Employer not to deduct contributions where member gives certificate**

**60.—(1)** If a member of a trade union which has a political fund certifies in writing to his employer that, or to the effect that, he is not a contributor to the fund, the employer shall ensure that no amount representing a contribution to the political fund is deducted by him from emoluments payable to the member.

(2) The employer's duty under paragraph (1) applies from the first day, following the giving of the certificate, on which it is reasonably practicable for him to comply with that paragraph, until the certificate is withdrawn.

(3) An employer may not refuse to deduct any union dues from emoluments payable to a person who has given a certificate under this Article if he continues to deduct union dues from emoluments payable to other members of the union, unless his refusal is not attributable to the giving of the certificate or otherwise connected with the duty imposed by paragraph (1).

**Application to county court in respect of employer's failure**

**61.—(1)** A person who claims his employer has failed to comply with Article 60 in deducting or refusing to deduct any amount from emoluments payable to him may apply to the county court.

(2) If the county court is satisfied that there has been such a failure it shall make a declaration to that effect.

(3) The county court may, if it considers it appropriate to do so in order to prevent a repetition of the failure, make an order requiring the employer to take, within a specified time, the steps specified in the order in relation to emoluments payable by him to the applicant.

(4) Where in proceedings arising out of Article 60(3) (refusal to deduct union dues) the question arises whether the employer's refusal to deduct an amount was attributable to the certificate having been given or was otherwise connected with the duty under Article 60(1), it is for the employer to satisfy the county court that it was not.

**Application of provisions of Wages Order**

**62.—(1)** The following provisions apply where a certificate has been given by a worker to his employer for the purposes of Article 60.

(2) Nothing in the worker's contract, or in any agreement or consent signified by him, shall be taken for the purposes of Article 3 of the Wages Order (general restriction on deductions from wages) as authorising the making of deductions in contravention of the obligation imposed on the employer in consequence of the giving of the certificate.

(3) No complaint under Article 7 of the Wages Order (complaint to industrial tribunal in respect of unauthorised deduction) shall be presented in respect of a deduction made in contravention of the obligation imposed on the employer in consequence of the giving of the certificate unless a declaration has been made under Article 61(2), either before or after the date of payment of the wages from which the deduction was made, that the employer has failed to comply with that obligation.

(4) Article 7(2) of the Wages Order (time limit for presenting complaint) shall be read in relation to a complaint in respect of such a deduction, or of a series of deductions of which such a deduction is the last, as referring, if it is later, to the date of the declaration instead of to the date of payment of the wages from which the deduction was made.

*Position where political resolution ceases to have effect*

**Administration of political fund where no resolution in force**

**63.—**(1) The following provisions have effect with respect to the political fund of a trade union where there ceases to be any political resolution in force in relation to the union.

(2) If the resolution ceases to have effect by reason of a ballot being held on which a new political resolution is not passed, the union may continue to make payments out of the fund as if the resolution had continued in force for six months beginning with the date of the ballot. But no payment shall be made which causes the fund to be in deficit or increases a deficit in it.

(3) There may be added to the fund only—

(a) contributions to the fund paid to the union (or to a person on its behalf) before the resolution ceased to have effect, and

(b) property which accrues to the fund in the course of administering the assets of the fund.

(4) The union may, notwithstanding any of its rules or any trusts on which the fund is held, transfer the whole or part of the fund to such other fund of the union as it thinks fit.

(5) If a new political resolution is subsequently passed, no property held immediately before the date of the ballot by or on behalf of the union otherwise than in its political fund, and no sums representing such property, may be added to the fund.

**Discontinuance of contributions to political fund**

**64.—**(1) Where there ceases to be any political resolution in force in relation to a trade union, the union shall take such steps as are necessary to ensure that the collection of contributions to its political fund is discontinued as soon as is reasonably practicable.

(2) The union may, notwithstanding any of its rules, pay into any of its other funds any such contribution which is received by it after the resolution ceases to have effect.

(3) If the union continues to collect contributions, it shall refund to a member who applies for a refund the contributions made by him collected after the resolution ceased to have effect.

(4) A member of a trade union who claims that the union has failed to comply with paragraph (1) may apply to the High Court for a declaration to that effect.

(5) Where the High Court is satisfied that the complaint is well-founded, 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. Such an order may be enforced by a person who is a member of the union and was a member at the time the order was made as if he had made the application.

(6) The remedy for failure to comply with paragraph (1) is in accordance with paragraphs (4) and (5), and not otherwise; but this does not affect any right to recover sums payable to a person under paragraph (3).

**Rules to cease to have effect**

**65.—**(1) If there ceases to be any political resolution in force in relation to a trade union, the rules of the union made for the purpose of complying with this Part also cease to have effect, except so far as they are required to enable the political fund to be administered at a time when there is no such resolution in force.

(2) If the resolution ceases to have effect by reason of a ballot being held on which a new political resolution is not passed, the rules cease to have effect at the end of the period of six months beginning

with the date of the ballot. In any other case the rules cease to have effect when the resolution ceases to have effect.

(3) Nothing in this Article affects the operation of Article 57(2) (complaint to Certification Officer in respect of breach of rules) in relation to a breach of a rule occurring before the rule in question ceased to have effect.

(4) A member of a trade union who has at any time not been a contributor to its political fund shall not by reason of his not having been a contributor—

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

### *Supplementary*

#### **Manner of making union rules**

**66.** If the Certification Officer is satisfied, and certifies, that rules of a trade union made for any of the purposes of this Part and requiring approval by him have been approved—

- (a) by a majority of the members of the union voting for the purpose, or
- (b) by a majority of delegates of the union at a meeting called for the purpose,

the rules shall have effect as rules of the union notwithstanding that the rules of the union as to the alteration of rules or the making of new rules have not been complied with.

#### **Effect of amalgamation**

**67.—**(1) Where on an amalgamation of two or more trade unions—

- (a) there is in force in relation to each of the amalgamating unions a political resolution and such rules as are required by this Part, and
- (b) the rules of the amalgamated union in force immediately after the amalgamation include such rules as are required by this Part,

the amalgamated union shall be treated for the purposes of this Part as having passed a political resolution.

(2) That resolution shall 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.

(3) Where one of the amalgamating unions is a Great Britain union, the references above to the requirements of this Part shall be construed as references to the requirements of the corresponding provisions of the law of Great Britain.

#### **Overseas members**

**68.—**(1) Where a political resolution is in force in relation to the union, rules made by the union for the purpose of complying with Article 48 (political ballot rules) in relation to a proposed ballot may provide for overseas members of the union not to be accorded entitlement to vote in the ballot.

(2) Accordingly, where provision is made in accordance with paragraph (1), the Certification Officer shall not on that ground withhold his approval of the rules.

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

For this purpose—

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

“offshore worker” means a person in offshore employment within the meaning of section 287 of the Great Britain Act, other than one who is in such employment in an area where the law of Great Britain applies.

### **Appeals from Certification Officer**

**69.** An appeal lies to the Court of Appeal on any question of law arising in proceedings before or arising from any decision of the Certification Officer under this Part.

### **Meaning of “date of the ballot”**

**70.** In this Part the “date of the ballot” means, in the case of a ballot in which votes may be cast on more than one day, the last of those days.

### **Application to Great Britain unions and members**

**71.—**(1) Subject to paragraphs (2) to (5), the provisions of this Part apply only to a trade union which has its head or main office in Northern Ireland.

(2) The rules of any Great Britain union made in pursuance of section 71(1)(b) of the Great Britain Act shall, in so far as they apply to members of the union in Northern Ireland,—

(a) comply with the requirements of Article 59; and

(b) in so far as they so comply, be subject to the approval of the Certification Officer.

(3) Every member of a Great Britain union who—

(a) has not delivered to the union the notice referred to in Article 59(1)(a); or

(b) has delivered such a notice but has withdrawn it in accordance with Article 59(2),

shall be deemed for the purposes of Chapter VI of Part I of the Great Britain Act 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.

(4) Article 57(2) to (4) shall apply in relation to rules of a trade union approved—

(a) by the Certification Officer under paragraph (2)(b); or

(b) before 1st July 1992, 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 66 shall apply to any rules to be approved by the Certification Officer under paragraph (2)(b).

(5) Articles 60 to 62 apply to a member of a Great Britain union as if—

(a) for references in Article 60(1) to a political fund there were substituted references to a political fund within the meaning of Chapter VI of Part I of the Great Britain Act;

(b) in Article 60(1) for the words “not a contributor” there were substituted the words “exempt from the obligation to contribute”.

**Application of Part V to certain bodies**

72.—(1) This Part applies to a trade union which is in whole or part an association or combination of other unions as if the individual members of the component unions were members of that union and not of the component unions.

But nothing in this Part prevents a component union from collecting contributions on behalf of the association or combination from such of its members as are contributors to the political fund of the association or combination.

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

## PART VI

### AMALGAMATIONS AND SIMILAR MATTERS

#### *Amalgamation or transfer of engagements*

**Amalgamation or transfer of engagements**

73.—(1) 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 the amalgamating unions, but shall not do so unless—

- (a) the instrument of amalgamation is approved in accordance with Article 74, and
- (b) the requirements of Article 75 (notice to members) and Article 76 (resolution to be passed by required majority on ballot held in accordance with Articles 77 to 81) are complied with in respect of each of the amalgamating unions.

(2) A trade union may transfer its engagements to another trade union which undertakes to fulfil those engagements, but shall not do so unless—

- (a) the instrument of transfer is approved in accordance with Article 74, and
- (b) the requirements of Article 75 (notice to members) and Article 76 (resolution to be passed by required majority on ballot held in accordance with Articles 77 to 81) are complied with in respect of the transferor union.

(3) An amalgamation or transfer of engagements does not prejudice any right of any creditor of any trade union party to the amalgamation or transfer.

(4) The above provisions apply to every amalgamation or transfer of engagements notwithstanding anything in the rules of any of the trade unions concerned.

**Approval of instrument of amalgamation or transfer**

74.—(1) The instrument of amalgamation or transfer must be approved by the Certification Officer and shall be submitted to him for approval before a ballot of the members of any amalgamating union, or (as the case may be) of the transferor union, is held on the resolution to approve the instrument.

(2) The instrument must comply with the requirements of any regulations in force under this Part and the Certification Officer shall approve it if he is satisfied that it does so.

### **Notice to be given to members**

**75.**—(1) The trade union shall take all reasonable steps to secure that every voting paper which is supplied for voting in the ballot on the resolution to approve the instrument of amalgamation or transfer is accompanied by a notice in writing approved for the purpose by the Certification Officer.

(2) The notice shall be in writing and shall either—

- (a) set out in full the instrument of amalgamation or transfer to which the resolution relates, or
- (b) 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.

(3) If the notice does not set out the instrument in full it shall state where copies of the instrument may be inspected by those receiving the notice.

(4) The notice shall not contain any statement making a recommendation or expressing an opinion about the proposed amalgamation or transfer.

(5) The notice shall also comply with the requirements of any regulations in force under this Part.

(6) The notice proposed to be supplied to members of the union under this Article shall be submitted to the Certification Officer for approval; and he shall approve it if he is satisfied that it meets the requirements of this Article.

### **Requirement of ballot on resolution**

**76.**—(1) A resolution approving the instrument of amalgamation or transfer must be passed on a ballot of the members of the trade union held in accordance with Articles 77 to 81.

(2) A simple majority of those voting is sufficient to pass such a resolution unless the rules of the trade union expressly require it to be approved by a greater majority or by a specified proportion of the members of the union.

### **Appointment of independent scrutineer**

**77.**—(1) The trade union shall, before the ballot is held, appoint a qualified independent person (“the scrutineer”) to carry out—

- (a) the functions in relation to the ballot which are required under this Article to be contained in his appointment; and
- (b) such additional functions in relation to the ballot as may be specified in his appointment.

(2) 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 Article by order of the Department or is himself so specified; and
- (b) the trade union 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.

(3) The scrutineer’s appointment shall require him—

- (a) to be the person who supervises the production of the voting papers and (unless he is appointed under Article 80 to undertake the distribution of the voting papers) their distribution and to whom the voting papers are returned by those voting;
- (b) to—
  - (i) inspect the register of names and addresses of the members of the trade union, or
  - (ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with paragraph (9)(a),

whenever it appears to him appropriate to do so and, in particular, when the conditions specified in paragraph (4) are satisfied;

- (c) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see Article 81);
- (d) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and
- (e) to retain custody of all voting papers returned for the purposes of the ballot and the copy of the register supplied to him in accordance with paragraph (9)(a)—
  - (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) if within that period a complaint is made under Article 84 (complaint as regards passing of resolution), until the Certification Officer or Court of Appeal authorises him to dispose of the papers or copy.
- (4) The conditions referred to in paragraph (3)(b) are—
  - (a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and
  - (b) that the scrutineer does not consider that the member's suspicion is ill-founded.
- (5) In paragraph (4) "the appropriate period" means the period—
  - (a) beginning with the day on which the scrutineer is appointed, and
  - (b) ending with the day before the day on which the scrutineer makes his report to the trade union.
- (6) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.
- (7) The trade union shall ensure that nothing in the terms of the scrutineer's appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer's independence in relation to the union into question.
- (8) The trade union shall, before the scrutineer begins to carry out his functions, either—
  - (a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or
  - (b) take all such other steps for notifying members of the name of the scrutineer 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.
- (9) The trade union shall—
  - (a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and
  - (b) comply with any request made by the scrutineer to inspect the register.
- (10) Where the register is kept by means of a computer the duty imposed on the trade union by paragraph (9)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.
- (11) The trade union shall 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.

(12) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.

(13) In this Article “the relevant date” means—

- (a) where the trade union has rules determining who is entitled to vote in the ballot by reference to membership on a particular date, that date, and
- (b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the ballot.

### **Entitlement to vote**

**78.** Entitlement to vote in the ballot shall be accorded equally to all members of the trade union.

### **Voting**

**79.—**(1) The method of voting must be by the marking of a voting paper by the person voting.

(2) Each voting paper must—

- (a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned, and
- (b) 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) be marked with its number.

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

- (a) be allowed to vote without interference or constraint, and
- (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.

(4) 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 home address or another address which he has requested the trade union in writing to treat as his postal address, and
- (b) be given a convenient opportunity to vote by post;

but 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 other means than by post then, in relation to that member, sub-paragraph (a) shall have effect with the substitution for the reference to post of a reference to that other means.

(5) No voting paper which is sent to a person for voting shall have enclosed with it any other document except—

- (a) the notice which, under Article 75(1), is to accompany the voting paper,
- (b) an addressed envelope, and
- (c) a document containing instructions for the return of the voting paper,

without any other statement.

(6) The ballot shall 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.

For the purposes of sub-paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the ballot.

**Counting of votes etc. by independent person**

**80.**—(1) The trade union shall ensure that—

- (a) the storage and distribution of the voting papers for the purposes of the ballot, and
- (b) the counting of the votes cast in the ballot,

are undertaken by one or more independent persons appointed by the trade union.

(2) A person is an independent person in relation to a ballot if—

- (a) he is the scrutineer, or
- (b) he is a person other than the scrutineer and the trade union 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.

(3) An appointment under this Article shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any statutory provision or the occurrence of any unfairness or malpractice.

(4) The duty of confidentiality as respects the register is incorporated in an appointment under this Article.

(5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.

(6) The trade union—

- (a) shall ensure that nothing in the terms of an appointment under this Article is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,
- (b) shall ensure that a person appointed under this Article 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 into question the independence of the person appointed in relation to the union, and
- (c) shall comply with all reasonable requests made by a person appointed under this Article for the purposes of, or in connection with, the carrying out of his functions.

**Scrutineer's report**

**81.**—(1) The scrutineer's report on the ballot shall state—

- (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 and against the resolution,
- (d) the number of spoiled or otherwise invalid voting papers returned, and
- (e) the name of the person (or of each of the persons) appointed under Article 80 or, if no person was so appointed, that fact.

(2) The report shall also state whether the scrutineer is satisfied—

- (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 (whether by him or any other person) 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 purpose of minimising the risk that any unfairness or malpractice might occur, and

- (c) that he has been able to carry out his functions without any such interference as would make it reasonable for any person to call his independence in relation to the union into question;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.

(3) The report shall also state—

- (a) whether the scrutineer—
  - (i) has inspected the register of names and addresses of the members of the trade union, or
  - (ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with Article 77(9)(a),
- (b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or at his own instance,
- (c) whether he declined to act on any such request, and
- (d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date,

but shall not state the name of any member who has requested such an inspection or examination.

(4) Where one or more persons other than the scrutineer are appointed under Article 80, the statement included in the scrutineer's report in accordance with paragraph (2)(b) shall also indicate—

- (a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and
- (b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.

(5) The trade union shall not publish the result of the ballot until it has received the scrutineer's report.

(6) The trade union shall within the period of three months after it receives the report—

- (a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
- (b) 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,

(7) Any such copy or notification shall be accompanied by a statement that the union will, on request, supply any member of the trade 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.

(8) The trade union shall so supply any member of the union who makes such a request and pays the fee (if any) notified to him.

### **Registration of instrument of amalgamation or transfer**

**82.**—(1) An instrument of amalgamation or transfer shall not take effect before it has been registered by the Certification Officer under this Part.

(2) It shall not be so registered before the end of the period of six weeks beginning with the date on which an application for its registration is sent to the Certification Officer.

(3) An application for registration of an instrument of amalgamation or transfer shall not be sent to the Certification Officer until Article 81(6) has been complied with in relation to the scrutineer's report on the ballot held on the resolution to approve the instrument.

#### **Power to alter rules of transferee union for purposes of transfer**

**83.**—(1) 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 executive of that union may by memorandum in writing alter the rules of that union so far as is necessary to give effect to those provisions.

This paragraph does not apply if the rules of the trade union expressly provide that this Article is not to apply to that union.

(2) An alteration of the rules of a trade union under paragraph (1) shall not take effect unless or until the instrument of transfer takes effect.

(3) The provisions of paragraph (1) have effect, where they apply, notwithstanding anything in the rules of the union.

#### **Complaints as regards passing of resolution**

**84.**—(1) A member of a trade union who claims that the union—

- (a) has failed to comply with any of the requirements of Articles 75 to 81, or
- (b) has, in connection with a resolution approving an instrument of amalgamation or transfer, failed to comply with any rule of the union relating to the passing of the resolution,

may complain to the Certification Officer.

(2) Any complaint must be made before the end of the period of six weeks beginning with the date on which an application for registration of the instrument of amalgamation or transfer is sent to the Certification Officer.

Where a complaint is made, the Certification Officer shall not register the instrument before the complaint is finally determined or is withdrawn.

(3) If the Certification Officer, after giving the complainant and the trade union an opportunity of being heard, finds the complaint to be justified—

- (a) he shall make a declaration to that effect, and
- (b) he may make an order specifying the steps which must be taken before he will entertain any application to register the instrument of amalgamation or transfer; and where he makes such an order, he shall not entertain any application to register the instrument unless he is satisfied that the steps specified in the order have been taken. An order under this paragraph may be varied by the Certification Officer by a further order.

(4) The Certification Officer shall furnish a statement, orally or in writing, of the reasons for his decision on a complaint under this Article.

(5) 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 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.

#### **Appeal from decision of Certification Officer**

**85.** An appeal lies to the Court of Appeal, at the instance of the complainant or the trade union, on any question of law arising in any proceedings before, or arising from any decision of, the Certification Officer under Article 84.

### **Transfer of property on amalgamation or transfer**

**86.**—(1) 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 or section of any of those unions, by the trustees of the union, branch or section, or
- (b) for the benefit of the transferor trade union, or for the benefit of a branch or section of the transferor trade union, by the trustees of the union, branch or section, 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) In the case of property to be held for the benefit of a branch or section of the amalgamated union, or of the transferee union, “the appropriate trustees” means the trustees of that branch or section, unless the rules of the amalgamated or transferee union provide that the property to be so held is to be held by the trustees of the union.

(3) In any other case “the appropriate trustees” means the trustees of the amalgamated or transferee union.

(4) This Article does 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 the United Kingdom or Northern Ireland.

### **Amalgamation or transfer involving Great Britain union**

**87.**—(1) This Part has effect subject to the following modifications in the case of an amalgamation or transfer of engagements to which a trade union and a Great Britain union are Party.

(2) The requirements of Articles 74 to 81 and 82(3) (approval of instrument; notice to members and ballot on resolution) do not apply in relation to the Great Britain union; but the Certification Officer shall not register the instrument under Article 82 unless he is satisfied that it will be effective under the law of Great Britain.

(3) The instrument of amalgamation or transfer submitted to the Certification Officer for his approval under Article 74 shall state which of the bodies concerned is a Great Britain union and, in the case of an amalgamation, whether the amalgamated body is to be a Great Britain union; and the Certification Officer shall withhold his approval if the instrument does not contain that information.

(4) Nothing in Article 83 (alteration of rules) or Articles 84 and 85 (complaint as to passing of resolution) applies in relation to the Great Britain union.

(5) Subject to the exceptions specified above, the provisions of this Part as to amalgamations or transfers of engagements apply in relation to the Great Britain union.

(6) Except as provided by this Article, this Part applies only to a trade union which has its head or main office in Northern Ireland.

### *Change of name*

### **Change of name of trade union**

**88.**—(1) A trade union may change its name by any method 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 the trade union is entered in the list of trade unions under Article 5 of the 1992 Order a change of name shall not take effect until approved by the Certification Officer.

(3) The Certification Officer shall not approve a change of name if it appears to him that the proposed new name—

- (a) 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
- (b) is a name so nearly resembling such a name as to be likely to deceive the public.

(4) A change of name by a trade union does not affect any right or obligation of the union or any of its members; and any pending legal proceedings may be continued by or against the union, the trustees of the union or any other officer of the union who can sue or be sued on its behalf notwithstanding its change of name.

### *Supplementary*

#### **General power to make regulations**

**89.**—(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) Provision may in particular be made—

- (a) requiring an application for the registration of an instrument of amalgamation or transfer, or of a change of name, to be accompanied by such statutory declarations or other documents as may be specified in the regulations;
- (b) 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 as to the manner in which any such document is to be signed or authenticated;
- (c) authorising 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.

#### **Application of Part VI to employers' associations**

**90.**—(1) Subject to paragraph (2), this Part applies in relation to unincorporated employers' associations as it applies in relation to trade unions.

(2) In its application to such associations this Part shall have effect—

- (a) as if in Article 75 (1) for the words from “that every” to “accompanied by” there were substituted the words “that not less than 7 days before the ballot on the resolution to approve the instrument of amalgamation or transfer is held, every member is supplied with”,
- (b) as if the requirements imposed by Articles 77 to 81 consisted only of those specified in Articles 78 and 79 (1) and (3) (a) together with the requirement that every member must, so far as is reasonably possible, be given a fair opportunity of voting, and
- (c) with the omission of Article 82(3).

## PART VII

### ASSISTANCE FOR CERTAIN LEGAL PROCEEDINGS

#### **Proceedings in relation to which assistance may be provided**

**91.—**(1) This Part applies to proceedings or prospective proceedings to the extent that they consist in, or arise out of—

- (a) an application to the High Court under Article 8(3) of the 1992 Order (application for order authorising member to take or continue proceedings on behalf of trade union) or any other proceedings brought by virtue of that Article;
- (b) an application to the High Court under Article 9 of the 1992 Order (remedy against trustees for unlawful use of trade union property);
- (c) an application to the High Court under Article 13C of the 1992 Order (remedy for failure to comply with duty to secure positions not held by certain offenders);
- (d) an application to the High Court under Article 37 of the 1992 Order (remedy for failure to comply with request for access to trade union's accounting records);
- (e) an application to the High Court under Article 6 (remedy for failure to maintain register of members or secure confidentiality);
- (f) an application to the High Court under Article 23 (remedy for failure to comply with requirements as to election for office);
- (g) an application to the High Court under Article 29 (application for order where industrial action does not have support of ballot);
- (h) proceedings brought by virtue of Article 45 (restriction on use of funds for political objects) with respect to the unlawful application of the funds of a trade union;
- (j) an application to the High Court under Article 56 (remedy for failure to comply with requirements as to political ballot).

(2) This Part applies to proceedings or prospective proceedings to the extent that they consist in, or arise out of, proceedings in the High Court with respect to an alleged breach or threatened breach of the rules of a trade union relating to any of the following matters—

- (a) the appointment or election of a person to, or the removal of a person from, any office;
- (b) disciplinary proceedings by the union (including expulsion);
- (c) the authorising or endorsing of industrial action;
- (d) the balloting of members;
- (e) the application of the union's funds or property;
- (f) the imposition, collection or distribution of any levy for the purposes of industrial action;
- (g) the constitution or proceedings of any committee, conference or other body. The reference above to the rules of a trade union includes the rules of any branch or section of the trade union; and in sub-paragraph (a) "office" includes any position by virtue of which a person is an official in relation to the trade union or is entitled to attend as a representative any meeting concerned with union business.

(3) This Part also applies to proceedings or prospective proceedings to the extent that they consist in, or arise out of, such other 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.

**Application for assistance: its consideration**

**92.**—(1) An individual who is an actual or prospective party to proceedings to which this Part applies may apply to the Northern Ireland Commissioner for the Rights of Trade Union Members (in this Part referred to as “the Commissioner”) for assistance in relation to the proceedings, and the Commissioner shall, as soon as reasonably practicable after receiving the application, consider it and decide whether and to what extent to grant it.

(2) The matters to which the Commissioner may have regard in determining whether, and to what extent, to grant an application include—

- (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 it unaided, and
- (c) whether, in the Commissioner’s opinion, the case involves a matter of substantial public interest.

(3) In the case of an application made by virtue of Article 91(1)(e), (f) or (j) (failure to maintain register of members or to comply with requirements as to election or political ballot), if—

- (a) the Certification Officer has already made a declaration with respect to the subject-matter of the proceedings or prospective proceedings, and
- (b) it appears to the Commissioner that the applicant would (if assisted) have a reasonable prospect of securing the making of an enforcement order in the proceedings, the Commissioner shall grant the application to the extent he considers necessary for securing that, so far as reasonably practicable, all the steps he considers appropriate (including, where appropriate, the holding of another ballot or election) are taken by the trade union for the purpose of remedying the declared failure and of ensuring that a failure of the same or a similar kind does not occur in future.

(4) The Commissioner shall not grant an application made by virtue of Article 91(2) (proceedings arising out of breach of rules) unless it appears to him—

- (a) that the breach of rules in question affects, or may affect, members of the union other than the applicant, or
- (b) that similar breaches of the rules have been or may be committed in relation to other members of the union.

(5) If the Commissioner decides not to provide assistance, he shall, as soon as reasonably practicable after making the decision, notify the applicant of his decision and, if he thinks fit, of the reasons for it.

**Provision of assistance**

**93.**—(1) If the Commissioner decides to provide assistance, he shall, as soon as reasonably practicable after making the decision—

- (a) notify the applicant, stating the extent of the assistance to be provided, and
- (b) give him 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.

(2) The assistance provided may include the making of arrangements for, or for the Commissioner to bear the costs of—

- (a) the giving of advice or assistance by a solicitor or counsel, and
- (b) the representation of the applicant, or the provision to him of such assistance as is usually given by a solicitor or counsel—
  - (i) in steps preliminary or incidental to the proceedings, or

- (ii) in arriving at or giving effect to a compromise to avoid or bring an end to the proceedings.
- (3) Where assistance is provided with respect to the conduct of proceedings—
  - (a) it shall include an agreement by the Commissioner to indemnify the applicant (subject only to any exceptions specified in the notification) in respect of any liability to pay costs or expenses arising by virtue of any judgment or order of the High Court in the proceedings,
  - (b) it may include an agreement by the Commissioner to indemnify the applicant in respect of any liability to pay costs or expenses arising by virtue of any compromise or settlement arrived at in order to avoid the proceedings or bring the proceedings to an end, and
  - (c) it may include an agreement by the Commissioner to indemnify the applicant in respect of any liability to pay damages pursuant to an undertaking given on the grant of interlocutory relief to the applicant.
- (4) Where the Commissioner provides assistance in relation to any proceedings, he shall do so on such terms, or make such other arrangements, as will secure that a person against whom the proceedings have been or are commenced is informed that assistance has been or is being provided by the Commissioner in relation to them.
- (5) The recovery of expenses incurred by the Commissioner in providing an applicant with assistance (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 any judgment or order of the High 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 a compromise or settlement arrived at in connection with that matter to avoid or bring proceedings to an end.

#### **Title of proceedings where assistance provided**

- 94.**—(1) Where a person is receiving assistance in relation to proceedings, there shall, if he so wishes, be added after his name in the title of the proceedings the words “(assisted by the Northern Ireland Commissioner for the Rights of Trade Union Members)”.
- (2) The addition of those words shall not be construed as making the Commissioner a party to the proceedings or as liable to be treated as a party for any purpose; and the omission of those words shall be treated as an irregularity only and shall not nullify the proceedings, any step taken in the proceedings or any document, judgment or order therein.

#### **Recovery of sums paid in case of fraud**

- 95.**—(1) Where the Commissioner grants an application to a person who for the purposes of the application—
- (a) has made a statement which he knew to be false in a material particular, or
  - (b) has recklessly made a statement which was false in a material particular, he is entitled to recover from that person any sums paid by him to that person, or to any other person, by way of assistance.
- (2) This does not affect the power of the Commissioner to enter into any agreement he thinks fit as to the terms on which assistance is provided.

**Supplementary provisions**

**96.**—(1) Nothing in this Part affects the law and practice regulating the descriptions of persons who may appear in, conduct, defend and address the High Court in any proceedings.

(2) The power of the Commissioner to provide assistance to a prospective applicant to the High Court under Article 6, 23 or 56 (cases where applications may be made either to the High Court or to the Certification Officer, and in certain cases to both) does not entitle the Commissioner to provide assistance with the making of an application to the Certification Officer.

(3) In this Part “applicant”, in relation to assistance under this Part, means the individual on whose application the assistance is provided.

**PART VIII****INDUSTRIAL ACTION***Protection of acts in contemplation or furtherance of trade dispute***Protection of acts in contemplation or furtherance of trade dispute**

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

- (a) that it induces another person to break a contract or interferes or induces another 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 interfere with its performance. Protection from certain tort liabilities

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

(3) Nothing in paragraphs (1) and (2) prevents 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 Article 98 (peaceful picketing).

(4) Paragraphs (1) and (2) have effect subject to Articles 100 to 103 (action excluded from protection) and to Articles 104 (requirement of ballot before action by trade union) and 118 (requirement of notice to employer of industrial action); and in those Articles “not protected” means excluded from the protection afforded by this Article or, where the expression is used with reference to a particular person, excluded from that protection as respects that person.

**Peaceful picketing**

**98.**—(1) It is 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 the 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.

(2) 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 (1) 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.
- (3) In the case of a worker 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, in relation to that dispute his former place of work shall be treated for the purposes of paragraph (1) as being his place of work.
- (4) 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 (1) as representing only those members; but otherwise an official of a union shall be regarded for those purposes as representing all its members.

### **Restrictions on grant of injunctions**

#### **99.—(1) Where—**

- (a) an application for an injunction is made to a court in the absence of the party against whom it is sought or any representative of his, and
  - (b) he 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 him.
- (2) Where—
- (a) an application for an interlocutory injunction is made to a court pending the trial of an action, and
  - (b) the party against whom it 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 any matter which would afford a defence to the action under Article 97 (protection from certain tort liabilities) or Article 98 (peaceful picketing).

### *Action excluded from protection*

### **Action to enforce trade union membership**

- 100.—(1)** An act is not protected if the reason, or one of the reasons, for which it 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 a trade union, or
  - (b) is failing, has failed or might fail to discriminate against such a person.
- (2) For the purposes of paragraph (1)(b) an employer discriminates against a person if, but only if, he ensures that his conduct in relation to—
- (a) persons, or persons of any description, employed by him, or who apply to be, or are, considered by him for employment, or

- (b) the provision of employment for such persons, is different, in some or all cases, according to whether or not they are members of a trade union, and is more favourable to those who are.
- (3) An act is not protected if it constitutes, or is one of a number of acts which together constitute, an inducement or attempted inducement of a person—
  - (a) to incorporate in a contract to which that person is a party, or a proposed contract to which he intends to be a party, a term or condition which is or would be void by virtue of Article 27(1) of the 1992 Order (union membership requirement in contract for goods or services), or
  - (b) to contravene Article 27(2) of that Order (refusal to deal with person on grounds relating to union membership).
- (4) References in this Article to an employer employing a person are to a person acting in the capacity of the person for whom a worker works or normally works.
- (5) References in this Article to not being a member of a trade union are to not being a member of any trade union, of a particular trade union or of one of a number of particular trade unions. Any such reference includes a reference to not being a member of a particular branch or section of a trade union or of one of a number of particular branches or sections of a trade union.

#### **Action taken because of dismissal for taking unofficial action**

**101.** An act is not protected if the reason, or one of the reasons, for doing it is the fact or belief that an employer has dismissed one or more employees in circumstances such that by virtue of Article 23A of the No. 1 Order (dismissal in connection with unofficial action) they have no right to complain of unfair dismissal.

#### **Secondary action**

**102.—(1)** An act is not protected if one of the facts relied on for the purpose of establishing liability is that there has been secondary action which is not lawful picketing.

- (2) 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, and the employer under the contract of employment is not the employer party to the dispute.
- (3) Lawful picketing means acts done in the course of such attendance as is declared lawful by Article 98 (peaceful picketing)—
  - (a) by a worker employed (or, in the case of a worker not in employment, last employed) by the employer party to the dispute, or
  - (b) by a trade union official whose attendance is lawful by virtue of paragraph (1)(b) of that Article.
- (4) For the purposes of this Article an employer shall not be treated as party to a dispute between another employer and workers of that employer; and where more than one employer is in dispute with his workers, the dispute between each employer and his workers shall be treated as a separate dispute. In this paragraph “worker” has the same meaning as in Article 127 (meaning of “trade dispute”).
- (5) An act in contemplation or furtherance of a trade dispute which is primary action in relation to that dispute may not be relied on as secondary action in relation to another trade dispute. Primary action means such action as is mentioned in sub-paragraph

- (a) or (b) of paragraph (2) where the employer under the contract of employment is the employer party to the dispute.

(6) In this article “contract of employment” includes any contract under which one person personally does work or performs services for another, and related expressions shall be construed accordingly.

### **Pressure to impose union recognition requirement**

**103.**—(1) An act is not protected if it constitutes, or is one of a number of acts which together constitute, an inducement or attempted inducement of a person—

- (a) to incorporate in a contract to which that person is a party, or a proposed contract to which he intends to be a party, a term or condition which is or would be void by virtue of Article 28(1) of the 1992 Order (recognition requirement in contract for goods or services); or
- (b) to contravene Article 28(2) of that Order (refusal to deal with person on grounds of union exclusion).

(2) An act is not protected if—

- (a) it interferes with the supply (whether or not under a contract) of goods or services, or can reasonably be expected to have that effect, and
- (b) one of the facts relied upon for the purpose of establishing liability is that a person has—
  - (i) induced another to break a contract of employment or interfered or induced another to interfere with its performance; or
  - (ii) 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; and
- (c) the reason, or one of the reasons, for doing the act is the fact or belief that the supplier (not being the employer under the contract of employment mentioned in sub-paragraph (b)) does not, or might not—
  - (i) recognise one or more trade unions for the purpose of negotiating on behalf of workers, or any class of worker, employed by him, or
  - (ii) negotiate or consult with, or with an official of, one or more trade unions.

### *Requirement of ballot before action by trade union*

### **Requirement of ballot before action by trade union**

**104.**—(1) An act done by a trade union to induce a person to take part, or continue to take part, in industrial action—

- (a) is not protected unless the industrial action has the support of a ballot; and
- (b) where Article '105 falls to be complied with in relation to the person's employer, is not protected as respects the employer unless the trade union has complied with Article 105 in relation to him. In this Article “the relevant time”, in relation to an act by a trade union to induce a person to take part, or continue to take part, in industrial action, means the time at which proceedings are commenced in respect of the act.

(2) Industrial action shall be regarded as having the support of a ballot only if—

- (a) the requirements set out in paragraph (3) are satisfied; or

- (b) in the case of industrial action involving members of a trade union both in Great Britain and Northern Ireland, had the action taken place in Great Britain it would be regarded for the purposes of section 226 of the Great Britain Act as having the support of a ballot.
- (3) The requirements mentioned in paragraph (1)(a) are—
  - (a) the union has held a ballot in respect of the action—
    - (i) in relation to which the requirements of Article 106 so far as applicable before and during the holding of the ballot were satisfied;
    - (ii) in relation to which the requirements of Articles 108 to 113 were satisfied; and
    - (iii) in which the majority voting in the ballot answered “Yes” to the question applicable in accordance with Article 110(3) to industrial action of the kind to which the act of inducement relates;
  - (b) such of the requirements of the following Articles as have fallen to be satisfied at the relevant time have been satisfied, namely—
    - (i) Article 106 so far as applicable after the holding of the ballot; and
    - (ii) Article 114; and
  - (c) the requirements of Article 116 (calling of industrial action with support of ballot) are satisfied. Any reference in this paragraph to a requirement of a provision which is disappplied or modified by Article 115 has effect subject to that Article.
- (4) Where separate workplace ballots are held by virtue of Article 109(1)—
  - (a) industrial action shall be regarded as having the support of a ballot if the conditions specified in paragraph (2) are satisfied, and
  - (b) the trade union shall be taken to have complied with the requirements relating to a ballot imposed by Article 105 if those requirements are complied with,

in relation to the ballot for the place of work of the person induced to take part, or continue to take part, in the industrial action.

(5) For the purposes of this Article an inducement, in relation to a person, includes an inducement which is or would be ineffective, whether because of his unwillingness to be influenced by it or for any other reason.

#### **Notice of ballot and sample voting paper for employers**

- 105.**—(1) The trade union must take such steps as are reasonably necessary to ensure that—
- (a) not later than the seventh day before the opening day of the ballot, the notice specified in paragraph (2), and
  - (b) not later than the third day before the opening day of the ballot, the sample voting paper specified in paragraph (3),

is received by every person who it is reasonable for the union to believe (at the latest time when steps could be taken to comply with sub-paragraph (a)) will be the employer of persons who will be entitled to vote in the ballot.

- (2) The notice referred to in sub-paragraph (a) of paragraph (1) is a notice in writing—
  - (a) stating that the union intends to hold the ballot,
  - (b) specifying the date which the union reasonably believes will be the opening day of the ballot, and
  - (c) describing (so that he can readily ascertain them) the employees of the employer who it is reasonable for the union to believe (at the time when the steps to comply with that sub-paragraph are taken) will be entitled to vote in the ballot.

- (3) The sample voting paper referred to in sub-paragraph (b) of paragraph (1) is—
- (a) a sample of the form of voting paper which is to be sent to the employees who it is reasonable for the trade union to believe (at the time when the steps to comply with sub-paragraph (a) of that paragraph are taken) will be entitled to vote in the ballot, or
  - (b) where they are not all to be sent the same form of voting paper, a sample of each form of voting paper which is to be sent to any of them.
- (4) In this Article references to the opening day of the ballot are references to the first day when a voting paper is sent to any person entitled to vote in the ballot.
- (5) This Article, in its application to a ballot in which merchant seamen to whom Article 11 l(3) applies are entitled to vote, shall have effect with the substitution in paragraph (3), for references to the voting paper which is to be sent to the employees, of references to the voting paper which is to be sent or otherwise provided to them.

### **Appointment of independent scrutineer**

**106.**—(1) The trade union shall, before the ballot in respect of the industrial action is held, appoint a qualified person (“the scrutineer”) whose terms of appointment shall require him to carry out in relation to the ballot the functions of—

- (a) taking such steps as appear to him to be appropriate for the purpose of enabling him to make a report to the trade union (see Article 114); and
  - (b) making the report as soon as reasonably practicable after the date of the ballot and, in any event, not later than the end of the period of four weeks beginning with that date.
- (2) A person is a qualified person in relation to a ballot if—
- (a) he satisfies such conditions as may be specified for the purposes of this Article by order of the Department or is himself so specified; and
  - (b) the trade union has no grounds for believing either that he will carry out the functions conferred on him under paragraph (1) otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

(3) The trade union shall ensure that the scrutineer duly carries out the functions conferred on him under paragraph (1) and that there is no interference with the carrying out of those functions from the union or any of its members, officials or employees.

(4) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of those functions.

### **Exclusion for small ballots**

**107.** Nothing in Article 106, Article 110(2)(a) or Article 114 shall impose a requirement on a trade union unless—

- (a) the number of members entitled to vote in the ballot, or
- (b) where separate workplace ballots are held in accordance with Article 109(1), the aggregate of the number of members entitled to vote in each of them, exceeds 50.

### **Entitlement to vote**

**108.**—(1) Entitlement to vote in the ballot must be accorded equally to all the 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 industrial action in question, and to no others.

(2) The requirement in paragraph (1) shall be taken not to have been satisfied if any person who was a member of the trade union at the time when the ballot was held and was denied entitlement to vote in the ballot is induced by the union to take part or, as the case may be, to continue to take part in the industrial action.

### **Separate workplace ballots**

**109.**—(1) Subject to the following provisions, where the members who it is reasonable at the time of the ballot for the union to believe will be induced to take part, or continue to take part, in the industrial action in question have different places of work, separate ballots shall be held for each place of work. In such a case entitlement to vote in the ballot for each place of work shall be accorded only to such of those members as the union reasonably believes to have that as their place of work.

(2) Paragraph (1) does not apply if at the time of the ballot it is reasonable for the union to believe, and it does believe, that all the members who are accorded entitlement to vote in the ballot have the same place of work.

(3) Paragraph (1) does not apply if at the time of the ballot it is reasonable for the union to believe, and it does believe, 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—

- (a) relates to the terms or conditions of his employment or to the occupational description which is applicable to him in his employment,
- (b) is a factor which he has in common with one or more of the other members of the union who are accorded that entitlement, and
- (c) in a case where there are individuals employed by the same employer as he is who are members of the union but are not accorded that entitlement, is not a factor—
  - (i) which he has in common with any of those individuals, or
  - (ii) which individuals employed by that employer have in common as a consequence of having the same place of work;

nor does that paragraph apply if at the time of the ballot it is reasonable for the union to believe, and it does believe, that the above conditions would be satisfied if any overseas members accorded entitlement to vote in the ballot were disregarded.

(4) In this Article “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.

### **Voting**

**110.**—(1) The method of voting in a ballot must be by the marking of a voting paper by the person voting.

(2) Each voting paper must—

- (a) state the name of the independent scrutineer,
- (b) clearly specify the address to which, and the date by which, it is to be returned,
- (c) 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
- (d) be marked with its number.

This paragraph, in its application to a ballot in which merchant seamen to whom Article 11 l(3) applies are entitled to vote, shall have effect with the substitution, for the reference to the address to which the voting paper is to be returned, of a reference to the ship to which the seamen belong.

(3) 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 industrial action short of a strike.

(4) The voting paper must specify who, in the event of a vote in favour of industrial action, is authorised for the purposes of Article 116 to call upon members to take part or continue to take part in the industrial action. The person or description of persons so specified need not be authorised under the rules of the union but must be within Article 21(2) of the 1992 Order (persons for whose acts the union is taken to be responsible).

(5) The following statement must (without being qualified or commented upon by anything else on the voting paper) appear on every voting paper—

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

### **Conduct of ballot**

**111.**—(1) 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.

(2) Except as regards persons falling within paragraph (3), 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 home address or any other address which he has requested the trade union in writing to treat as his postal address; and
- (b) be given a convenient opportunity to vote by post; but 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, sub-paragraph (a) shall have effect with the substitution for the reference to post of a reference to that other means.

(3) Where a merchant seaman to whom this paragraph applies is entitled to vote in the ballot he must, so far as is reasonably practicable—

- (a) have a voting paper made available to him while he is on board the ship or is at a place where the ship is; and
- (b) be given an opportunity to vote while he is on board the ship or is at a place where the ship is.

(4) Paragraph (3) applies to a merchant seaman who the trade union reasonably believes will, throughout the period during which votes may be cast in the ballot, be employed in a ship either at sea or at a place outside Northern Ireland.

(5) In paragraphs (3) and (4) “merchant seaman” means a person whose employment, or the greater part of it, is carried out on board sea-going ships.

- (6) A ballot shall 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.

For the purposes of sub-paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the ballot.

### **Information as to result of ballot**

**112.** As soon as 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.

### **Employers to be informed of ballot result**

**113.—**(1) As soon as reasonably practicable after the holding of the ballot, the trade union shall take such steps as are reasonably necessary to ensure that every relevant employer is informed of the matters mentioned in Article 112.

(2) In paragraph (1) “relevant employer” means a person who it is reasonable for the trade union to believe (at the time when the steps are taken) was at the time of the ballot the employer of any persons entitled to vote.

### **Scrutineer’s report**

**114.—**(1) The scrutineer’s report on the ballot shall state whether the scrutineer is satisfied—

- (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 purpose of minimising the risk that any unfairness or malpractice might occur, and
- (c) that he has been able to carry out the functions conferred on him under Article 106(1) without any interference from the trade union or any of its members, officials or employees;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reason for not being satisfied as to that matter.

(2) If at any time within six months from the date of the ballot—

- (a) any person entitled to vote in the ballot, or
- (b) the employer of any such person,

requests a copy of the scrutineer’s report, the trade union must, as soon as practicable, provide him with one either free of charge or on payment of such reasonable fee as may be specified by the trade union.

## **Overseas members**

**115.**—(1) 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 Article 106 to 111 and 114 applies in relation to an overseas member or a vote cast by such a member.

(2) Where overseas members have voted in the ballot—

- (a) the references in Articles 112 and 113 to persons entitled to vote in the ballot do not include overseas members, and
- (b) those Articles shall be read as requiring the information mentioned in Article 112 to distinguish between overseas members and other members.

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

For this purpose—

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

“offshore worker” means a person in offshore employment, other than one who is in such employment in an area where the law of England and Wales or Scotland applies.

(4) A member who throughout the period during which votes may be cast is in Great Britain shall not be treated as an overseas member—

- (a) where the ballot is one to which Article 109(1) or (2) applies (workplace ballots) and his place of work is in Northern Ireland, or
- (b) where the ballot is one to which Article 109(3) applies (general ballots) and relates to industrial action involving members both in Great Britain and in Northern Ireland.

(5) In relation to offshore employment the references in paragraph (4) to Northern Ireland include any area where the law of Northern Ireland applies and the references to Great Britain include any area where the law of England and Wales or Scotland applies.

## **Calling of industrial action with support of ballot**

**116.**—(1) Industrial action shall not be regarded as having the support of a ballot unless it is called by a specified person and the conditions specified below are satisfied.

(2) A “specified person” means a person specified or of a description specified in the voting paper for the ballot in accordance with Article 110(4).

(3) The conditions are that—

- (a) there must have been no call by the trade union to take part or continue to take part in industrial action to which the ballot relates, or any authorisation or endorsement by the union of any such industrial action, before the date of the ballot;
- (b) there must be a call for industrial action by a specified person, and industrial action to which it relates must take place, before the ballot ceases to be effective in accordance with Article 117.

(4) For the purposes of this Article a call shall be taken to have been made by a trade union if it was authorised or endorsed by the union; and the provisions of Article 21(2) to (4) of the 1992 Order apply for the purpose of determining whether a call, or industrial action, is to be taken to have been so authorised or endorsed.

**Period after which ballot ceases to be effective**

**117.**—(1) Subject to the following provisions, a ballot ceases to be effective for the purposes of Article 116(3)(b) at the end of the period of four weeks beginning with the date of the ballot.

(2) Where for the whole or part of that period the calling or organising of industrial action is prohibited—

- (a) by virtue of a court order which subsequently lapses or is discharged, recalled or set aside, or
- (b) by virtue of an undertaking given to a court by any person from which he is subsequently released or by which he ceases to be bound,

the trade union may apply to the court for an order that the period during which the prohibition had effect shall not count towards the period referred to in paragraph (1).

(3) The application must be made forthwith upon the prohibition ceasing to have effect—

- (a) to the court by virtue of whose decision it ceases to have effect, or
- (b) where an order lapses or an undertaking ceases to bind without any such decision, to the court by which the order was made or to which the undertaking was given;

and no application may be made after the end of the period of eight weeks beginning with the date of the ballot.

(4) The court shall not make an order if it appears to the court—

- (a) that the result of the ballot no longer represents the views of the union members concerned, or
- (b) that an event is likely to occur as a result of which those members would vote against industrial action if another ballot were to be held.

(5) No appeal lies from the decision of the court to make or refuse an order under this Article.

(6) The period between the making of an application under this Article and its determination does not count towards the period referred to in paragraph (1).

But a ballot shall not by virtue of this paragraph (together with any order of the court) be regarded as effective for the purposes of Article 116(3)(b) after the end of the period of twelve weeks beginning with the date of the ballot.

**Notice to employers of industrial action**

**118.**—(1) An act done by a trade union to induce a person to take part, or continue to take part, in industrial action is not protected as respects his employer unless the union has taken or takes such steps as are reasonably necessary to ensure that the employer receives within the appropriate period a relevant notice covering the act.

(2) Paragraph (1) imposes a requirement in the case of an employer only if it is reasonable for the union to believe, at the latest time when steps could be taken to ensure that he receives such a notice, that he is the employer of persons who will be or have been induced to take part, or continue to take part, in the industrial action. (3) For the purposes of this Article a relevant notice is a notice in writing which—

- (a) describes (so that he can readily ascertain them) the employees of the employer who the union intends to induce or has induced to take part, or continue to take part, in the industrial action (“the affected employees”),
- (b) states whether industrial action is intended to be continuous or discontinuous and specifies—

- (i) where it is to be continuous, the intended date for any of the affected employees to begin to take part in the action,
  - (ii) where it is to be discontinuous, the intended dates for any of the affected employees to take part in the action, and
- (c) states that it is given for the purposes of this Article.
- (4) For the purposes of paragraph (1) the appropriate period is the period—
  - (a) beginning with the day when the union satisfies the requirement of Article 113 in relation to the ballot in respect of the industrial action, and
  - (b) ending with the seventh day before the day, or before the first of the days, specified in the relevant notice.
- (5) For the purposes of paragraph (1) a relevant notice covers an act done by the union if the person induced is one of the affected employees and—
  - (a) where he is induced to take part or continue to take part in industrial action which the union intends to be continuous, if—
    - (i) the notice states that the union intends the industrial action to be continuous, and
    - (ii) there is no participation by him in the industrial action before the date specified in the notice in consequence of any inducement by the union not covered by a relevant notice; and
  - (b) where he is induced to take part or continue to take part in industrial action which the union intends to be discontinuous, if there is no participation by him in the industrial action on a day not so specified in consequence of any inducement by the union not covered by a relevant notice.
- (6) For the purposes of this Article—
  - (a) a union intends industrial action to be discontinuous if it intends it to take place only on some days on which there is an opportunity to take the action, and
  - (b) a union intends industrial action to be continuous if it intends it to be not so restricted.
- (7) Where—
  - (a) continuous industrial action which has been authorised or endorsed by a union ceases to be so authorised or endorsed otherwise than to enable the union to comply with a court order or an undertaking given to a court, and
  - (b) the industrial action has at a later date again been authorised or endorsed by the union (whether as continuous or discontinuous action),no relevant notice covering acts done to induce persons to take part in the earlier action shall operate to cover acts done to induce persons to take part in the action authorised or endorsed at the later date and this Article shall apply in relation to an act to induce a person to take part, or continue to take part, in the industrial action after that date as if the references in paragraph (3)(b)(i) to the industrial action were to the industrial action taking place after that date.
- (8) The requirement imposed on a trade union by paragraph (1) shall be treated as having been complied with if the steps were taken by other relevant persons or committees whose acts were authorised or endorsed by the union and references to the belief or intention of the union in paragraph (2) or, as the case may be, paragraphs (3), (5) and (6) shall be construed as references to the belief or the intention of the person or committee taking the steps.
- (9) The provisions of Article 21(2) to (4) of the 1992 Order apply for the purpose of determining for the purposes of paragraph (1) who are relevant persons or committees and whether the trade union is to be taken to have authorised or endorsed the steps the person or committee took and for

the purposes of paragraph (7) whether the trade union is to be taken to have authorised or endorsed the industrial action.

### **Construction of references to contract of employment**

**119.** In Articles 104 to 118 (requirement of ballot before action by trade union) references to a contract of employment include any contract under which one person personally does work or performs services for another; and “employer” and other related expressions shall be construed accordingly.

### *Industrial action affecting supply of goods or services to an individual*

### **Industrial action affecting supply of goods or services to an individual**

**120.**—(1) Where an individual claims that—

- (a) any trade union or other person has done, or is likely to do, an unlawful act to induce any person to take part, or to continue to take part, in industrial action, and
- (b) an effect, or a likely effect, of the industrial action is or will be to—
  - (i) prevent or delay the supply of goods or services, or
  - (ii) reduce the quality of goods or services supplied,

to the individual making the claim, he may apply to the High Court for an order under this Article.

(2) For the purposes of this Article an act to induce any person to take part, or to continue to take part, in industrial action is unlawful—

- (a) if it is actionable in tort by any one or more persons, or
- (b) (where it is or would be the act of a trade union) if it could form the basis of an application by a member under Article 29 (right to a ballot before industrial action).

(3) In determining whether an individual may make an application under this Article it is immaterial whether or not the individual is entitled to be supplied with the goods or services in question.

(4) Where on an application under this Article the High Court is satisfied that the claim is well-founded, it shall make such order as it considers appropriate for requiring the person by whom the act of inducement has been, or is likely to be, done to take steps for ensuring—

- (a) that no, or no further, act is done by him to induce any persons to take part or to continue to take part in the industrial action, and
- (b) that no person engages in conduct after the making of the order by virtue of having been induced by him before the making of the order to take part or continue to take part in the industrial action.

(5) Without prejudice to any other power of the High Court, the court may on an application under this Article grant such interlocutory relief as it considers appropriate.

(6) For the purposes of this Article an act of inducement shall be taken to be done by a trade union if it is authorised or endorsed by the union; and the provisions of Article 21(2) to (4) of the 1992 Order apply for the purposes of determining whether such an act is to be taken to be so authorised or endorsed.

Those provisions also apply in relation to proceedings for failure to comply with an order under this Article as they apply in relation to the original proceedings.

### **Application for assistance for proceedings under Article 120**

**121.**—(1) An individual who is an actual or prospective party to proceedings to which this Article applies may apply to the Northern Ireland Commissioner for Protection Against Unlawful Industrial Action (in this Article and Article 122 referred to as “the Commissioner”) for assistance in relation to the proceedings, and the Commissioner shall, as soon as reasonably practicable after receiving the application, consider it and decide whether and to what extent to grant it.

(2) This Article applies to proceedings or prospective proceedings to the extent that they consist in, or arise out of, an application to the High Court under Article 120 brought with respect to an act of a trade union; but the Department may by order subject to affirmative resolution, provide that this Article shall also apply to such proceedings brought with respect to an act of a person other than a trade union. (3) The matters to which the Commissioner may have regard in determining whether, and to what extent, to grant an application under this Article include—

- (a) whether it is unreasonable, having regard to the complexity of the case, to expect the applicant to deal with it unaided, and
- (b) whether, in the Commissioner’s opinion, the case involves a matter of substantial public interest or concern.

(4) If the Commissioner decides not to provide assistance, he shall, as soon as reasonably practicable after making the decision, notify the applicant of his decision and, if he thinks fit, of the reasons for it.

(5) If the Commissioner decides to provide assistance, he shall, as soon as reasonably practicable after making the decision—

- (a) notify the applicant, stating the extent of the assistance to be provided, and
- (b) give him 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.

(6) The assistance provided may include the making of arrangements for, or for the Commissioner to bear the costs of—

- (a) the giving of advice or assistance by a solicitor or counsel, and
- (b) the representation of the applicant, or the provision to him of such assistance as is usually given by a solicitor or counsel—
  - (i) in steps preliminary or incidental to the proceedings, or
  - (ii) in arriving at or giving effect to a compromise to avoid or bring an end to the proceedings.

### **Provisions supplementary to Article 121**

**122.**—(1) Where assistance is provided under Article 121 with respect to the conduct of proceedings—

- (a) it shall include an agreement by the Commissioner to indemnify the applicant (subject only to any exceptions specified in the notification) in respect of any liability to pay costs or expenses arising by virtue of any judgment or order of the High Court in the proceedings,
- (b) it may include an agreement by the Commissioner to indemnify the applicant in respect of any liability to pay costs or expenses arising by virtue of any compromise or settlement arrived at in respect of the matter in connection with which the assistance is provided in order to avoid or bring proceedings to an end, and
- (c) it may include an agreement by the Commissioner to indemnify the applicant in respect of any liability to pay damages pursuant to an undertaking given on the grant of interlocutory relief to the applicant.

(2) Where the Commissioner provides assistance in relation to any proceedings, he shall do so on such terms, or make such other arrangements, as will secure that a person against whom the proceedings have been or are commenced is informed that assistance has been or is being provided by the Commissioner in relation to them.

(3) The recovery of expenses incurred by the Commissioner in providing an applicant with assistance (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 any judgment or order of the High 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 a compromise or settlement arrived at in connection with that matter to avoid or bring proceedings to an end.

(4) Where a person is receiving assistance in relation to proceedings, there shall, if he so wishes, be added after his name in the title of the proceedings the words “(assisted by the Northern Ireland Commissioner for Protection Against Unlawful Industrial Action)”.

(5) The addition of those words shall not be construed as making the Commissioner a party to the proceedings or as liable to be treated as a party for any purpose; and the omission of those words shall be treated as an irregularity only and shall not nullify the proceedings, any step taken in the proceedings or any document, judgment or order therein.

(6) Where the Commissioner grants an application to a person who for the purposes of the application—

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

he is entitled to recover from that person any sum paid by him to that person, or to any other person, by way of assistance; but nothing in this paragraph affects the power of the Commissioner to enter into any agreement he thinks fit as to the terms on which assistance is provided.

(7) Nothing in Article 121 or this Article affects the law and practice regulating the description of persons who may appear in, conduct, defend and address the High Court in any proceedings.

(8) In Article 121 and this Article “applicant”, in relation to assistance, means the individual on whose application the assistance is provided.

### *No compulsion to work*

#### **No compulsion to work**

**123.** 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.

### *Criminal offences*

#### **Breach of contract involving injury to persons or property**

**124.**—(1) A person commits an offence who wilfully and maliciously breaks a contract of service or hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be—

- (a) to endanger human life or cause serious bodily injury, or
- (b) to expose valuable property, whether real or personal, to destruction or serious injury.

(2) Paragraph (1) applies equally whether the offence is committed from malice conceived against the person endangered or injured or, as the case may be, the owner of the property destroyed or injured, or otherwise.

(3) A person guilty of an offence under this Article is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 2 on the standard scale or both.

(4) This Article does not apply to a merchant seaman (as defined in Article 11 l(5)).

### **Intimidation or annoyance by violence or otherwise**

**125.**—(1) A person commits an offence who, with a view to compelling another person to abstain from doing or to do any act which that person has a legal right to do or abstain from doing, wrongfully and without legal authority—

- (a) uses violence to or intimidates that person or his wife or children, or injures his property,
- (b) persistently follows that person about from place to place,
- (c) hides any tools, clothes or other property owned or used by that person, or deprives him of or hinders him in the use thereof,
- (d) watches or besets the house or other place where that person resides, works, carries on business or happens to be, or the approach to any such house or place, or
- (e) follows that person with two or more other persons in a disorderly manner in or through any street or road.

(2) A person guilty of an offence under this Article is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.

(3) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this Article.

### **Restriction of offence of conspiracy**

**126.** Where in pursuance of any such agreement as is mentioned in Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983(**11**) (which provides for the offence of conspiracy) the acts in question in relation to an offence are to be done in contemplation or furtherance of a trade dispute, the offence shall be disregarded for the purposes of that paragraph if it is an offence which is punishable only on summary conviction and is not punishable with imprisonment.

### *Supplementary*

### **Meaning of “trade dispute” in Part VIII**

**127.**—(1) In this Part a “trade dispute” means a dispute between workers and their employer which relates wholly or mainly to one or more of the following—

- (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 between workers or groups of workers;
- (d) matters of discipline;
- (e) a worker's membership or non-membership of a trade union;
- (f) facilities for officials of trade unions; and
- (g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.

(2) A dispute between a Minister of the Crown or Northern Ireland Department and any workers shall, notwithstanding that the Minister or the Department is not the employer of those workers, be treated as a dispute between those workers and their employer if the dispute relates to matters which—

- (a) have been referred for consideration by a joint body on which, by virtue of provision made by or under any statutory provision, that Minister or that Department is represented, or
- (b) 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 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 (1) by the outcome of the dispute.

(4) 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 be treated as being done or made in contemplation of a trade dispute with that other, notwithstanding that because that other submits to the act or threat or accedes to the demand no dispute arises.

(5) In this Article—

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

“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 so employed if his employment was terminated in connection with the dispute or if the termination of his employment was one of the circumstances giving rise to the dispute.

### **Crown employees and contracts**

**128.** Where a 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 liability in tort of a person who commits an act which—
  - (i) induces another person to break a contract, interferes with the performance of a contract or induces another person to interfere with its performance, 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 interfere with its performance, and

- (b) the provisions of this or any other statutory provision which refer (whether in relation to contracts generally or only in relation to contracts of employment) to such an act.

### **Minor definitions**

**129.** In this Part—

“date of the ballot” means, in the case of a ballot in which votes may be cast on more than one day, the last of those days;

“strike” means any concerted stoppage of work;

“working hours”, in relation to a person, means any time when under his contract of employment, or other contract personally to do work or perform services, he is required to be at work.

## **PART IX**

### **THE NORTHERN IRELAND COMMISSIONER FOR THE RIGHTS OF TRADE UNION MEMBERS AND THE NORTHERN IRELAND COMMISSIONER FOR PROTECTION AGAINST UNLAWFUL INDUSTRIAL ACTION**

### **The Commissioners**

**130.**—(1) There—

(a) shall continue to be an officer called the Northern Ireland Commissioner for the Rights of Trade Union Members whose function is to provide assistance in accordance with Part VII in connection with certain legal proceedings, and

(b) shall be an officer called the Northern Ireland Commissioner for Protection Against Unlawful Industrial Action whose function is to provide assistance in accordance with Articles 121 and 122 in connection with proceedings brought by virtue of Article 120.

(2) Each of the Commissioners shall be appointed by the Department.

(3) Each of the Commissioners shall have an official seal for the authentication of documents required for the purposes of his functions.

(4) Anything authorised or required by or under this Order to be done by either of the Commissioners may be done by a member of his staff authorised by him for that purpose, whether generally or specifically. An authorisation given for the purposes of this paragraph continues to have effect during a vacancy in the office of the Commissioner concerned.

(5) Neither of the Commissioners nor any member of the staff of either of the Commissioners shall, in that capacity, be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

### **Terms of appointment of Commissioners**

**131.**—(1) Each of the Commissioners shall hold and vacate office in accordance with the terms of his appointment, subject to the following provisions.

(2) The appointment of a person to hold office as one of the Commissioners shall be for a term not exceeding five years; but previous appointment to that office does not affect eligibility for re-appointment.

(3) The Department may remove a person from office as one of the Commissioners if it is satisfied—

- (a) that that person has been adjudged bankrupt or he has made a composition or arrangement with his creditors,
- (b) that he is incapacitated by physical or mental illness, or
- (c) that he is otherwise unable or unfit to discharge the functions of the office.

**Remuneration, pension, etc.**

**132.**—(1) There shall be paid to each of the Commissioners such remuneration, and such travelling and other allowances, as the Department may determine.

(2) If the Department so determines in the case of any person who holds office as one of the Commissioners, there shall be paid such pension, allowance or gratuity to or in respect of him on his retirement or death, or such contributions or payments towards provision for such a pension, allowance or gratuity as may be so determined.

(3) If, when a person ceases to hold office as one of the Commissioners, the Department determines that there are special circumstances which make it right that he should receive compensation, there may be paid to him a sum by way of compensation of such amount as may be so determined.

(4) Payments required to be made under this Article shall be made by the Department.

(5) The consent of the Department of Finance and Personnel is required for the making of a determination under this Article.

**Staff of the Commissioners**

**133.**—(1) Each of the Commissioners may appoint such staff as he may determine, with the approval of the Department as to numbers and terms and conditions of service.

The consent of the Department of Finance and Personnel is required for the giving of an approval under this paragraph.

(2) Employment as a member of the staff of one of the Commissioners is one of the kinds of employment to which a superannuation scheme under Article 3 of the Superannuation (Northern Ireland) Order 1972<sup>(12)</sup> may apply.

(3) Where a person who is a participant in a scheme under Article 3 of that Order by reference to his employment by one of the Commissioners becomes one of the Commissioners, the Department of Finance and Personnel may determine that his service as Commissioner shall be treated for the purposes of the scheme as service as an employee; and his rights under the scheme shall not be affected by the preceding provisions of this Part.

(4) Neither of the Commissioners is required by Part III of the Employers' Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972<sup>(13)</sup> to effect insurance.

**Financial provisions**

**134.**—(1) Each of the Commissioners may, with the approval of the Department, make such provision as he considers appropriate for the payment by him to those who apply for assistance of sums in respect of travelling and other expenses incurred by them in connection with their applications.

(2) The Department shall pay to each of the Commissioners such sums as it may determine are required by him for the purpose of carrying out his functions.

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(3) The consent of the Department of Finance and Personnel is required for the giving of an approval under paragraph (1) or the making of a determination under paragraph (2).

### **Annual report and accounts**

**135.**—(1) As soon as reasonably practicable after the end of a financial year each of the Commissioners shall prepare a report on his activities during that year and shall send a copy of it to the Department.

The Department shall lay a copy of the report before the Assembly.

(2) Each of the Commissioners shall keep proper accounts and proper records in relation to the accounts, and shall prepare in respect of each financial year a statement of accounts in such form as the Department may, with the approval of the Department of Finance and Personnel, direct.

(3) Each of the Commissioners shall, not later than 30th November following the end of the financial year to which the statement relates, send copies of the statement to the Department and to the Comptroller and Auditor General for Northern Ireland.

(4) The Comptroller and Auditor General shall examine, certify and report on each such statement and shall send copies of that report to the Department.

(5) The Department shall lay before the Assembly a copy of each statement of account sent to it under paragraph (3) and of the report made by the Comptroller and Auditor General thereon under paragraph (4).

## **PART X**

### **MISCELLANEOUS AMENDMENTS**

#### *Unfair dismissal*

#### **Dismissal of those taking part in unofficial industrial action**

**136.**—(1) After Article 23 of the No. 1 Order there shall be inserted—

##### **“Dismissal of those taking part in unofficial industrial action**

**23A.**—(1) An employee has no right to complain of unfair dismissal if at the time of dismissal he was taking part in an unofficial strike or other unofficial industrial action.

(2) Paragraph (1) does not apply to the dismissal of the employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal was one of those specified in Article 22B(1) (read with (2) and (3)) of this Order or in Article 29 of the No. 2 Order.

(3) A strike or other industrial action is unofficial in relation to an employee unless—

- (a) he is a member of a trade union and the action is authorised or endorsed by that union, or
- (b) he is not a member of a trade union but there are among those taking part in the industrial action members of a trade union by which the action has been authorised or endorsed.

Provided that, a strike or other industrial action shall not be regarded as unofficial if none of those taking part in it are members of a trade union.

(4) The provisions of Article 21(2) of the 1992 Order apply for the purpose of determining whether industrial action is to be taken to have been authorised or endorsed by a trade union.

(5) The question whether industrial action is to be so taken in any case shall be determined by reference to the facts as at the time of dismissal.

Provided that, where an act is repudiated as mentioned in Article 21A of the 1992 Order, industrial action shall not thereby be treated as unofficial before the end of the next working day after the day on which the repudiation takes place.

(6) In this Article the “time of dismissal” means—

- (a) where the employee’s contract of employment is terminated by notice, when the notice is given,
- (b) where the employee’s contract of employment is terminated without notice, when the termination takes effect, and
- (c) where the employee is employed under a contract for a fixed term which expires without being renewed under the same contract, when that term expires;

and a “working day” means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971<sup>(14)</sup>

(7) For the purposes of this Article membership of a trade union for purposes unconnected with the employment in question shall be disregarded; but an employee who was a member of a trade union when he began to take part in industrial action shall continue to be treated as a member for the purpose of determining whether that action is unofficial in relation to him or another notwithstanding that he may in fact have ceased to be a member.”.

(2) In Article 23 of the No. 1 Order (dismissal in connection with a lock-out, strike or other industrial action) after paragraph (5) there shall be added—

“(6) The provisions of this Article do not apply to an employee who by virtue of Article 23A has no right to complain of unfair dismissal; but nothing in Article 23A affects the question who are relevant employees in relation to an employee to whom the provisions of this Article do apply.”.

### *Liability of trade union in certain proceedings in tort*

#### **Liability of trade union in proceedings in tort**

137. For Article 21 of the 1992 Order there shall be substituted the following Articles—

#### **“Liability of trade union in certain proceedings in tort**

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

- (a) on the ground that an act—
  - (i) induces another person to break a contract or interferes or induces another person to interfere with its performance, or
  - (ii) consists in threatening that a contract (whether one to which the union is a party or not) will be broken or its performance interfered with, or that the union will induce another person to break a contract or interfere with its performance, 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,
- (2) An act shall be taken to have been authorised or endorsed by a trade union if it was done, or was authorised or endorsed—
  - (a) by a person empowered by the rules to do, authorise or endorse acts of the kind in question, or
  - (b) by the executive or the president or general secretary, or
  - (c) by any other committee of the union or any other official of the union (whether employed by it or not).
- (3) For the purposes of sub-paragraph (c) of paragraph (2)—
  - (a) any group of persons constituted in accordance with the rules of the union is a committee of the union; and
  - (b) an act shall be taken to have been done, authorised or endorsed by an official if it was done, authorised or endorsed by, or by any member of, any group of persons of which he was at the material time a member, the purposes of which included organising or co-ordinating industrial action.
- (4) The provisions of sub-paragraphs (b) and (c) of paragraph (2) apply notwithstanding anything in the rules of the union, or in any contract or rule of law, but subject to the provisions of Article 21A (repudiation by union of certain acts).
- (5) Where for the purposes 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.
- (6) In proceedings arising out of an act which is by virtue of this Article taken to have been done by a trade union, the power of the High Court to grant an injunction includes power to require the union to take such steps as the court considers appropriate for ensuring—
  - (a) that there is no, or no further, inducement of persons to take part or to continue to take part in industrial action, and
  - (b) that no person engages in any conduct after the granting of the injunction by virtue of having been induced before it was granted to take part or to continue to take part in industrial action.

The provisions of paragraphs (2) to (4) apply in relation to proceedings for failure to comply with any such injunction as they apply in relation to the original proceedings.

(7) In this Article “rules”, in relation to a trade union, means the written rules of the union and any other written provision forming part of the contract between a member and the other members.

### **Repudiation by union of certain acts**

**21A.—**(1) An act shall not be taken to have been authorised or endorsed by a trade union by virtue only of sub-paragraph (c) of Article 21(2) if it was repudiated by the executive, president or general secretary as soon as reasonably practicable after coming to the knowledge of any of them.

- (2) Where an act is repudiated—
  - (a) written notice of the repudiation must be given to the committee or official in question, without delay, and

- (b) the union must do its best to give individual written notice of the fact and date of repudiation, without delay—
  - (i) to every member of the union who the union has reason to believe is taking part, or might otherwise take part, in industrial action as a result of the act, and
  - (ii) to the employer of every such member.
- (3) The notice given to members in accordance with sub-paragraph (b)(i) of paragraph (2) must contain the following statement—
 

“Your union has repudiated the call (or calls) for industrial action to which this notice relates and will give no support to unofficial industrial action taken in response to it (or them). If you are dismissed while taking unofficial industrial action, you will have no right to complain of unfair dismissal.”.
- (4) If paragraph (2) or (3) is not complied with, the repudiation shall be treated as ineffective.
- (5) An act shall not be treated as repudiated if at any time after the union concerned purported to repudiate it the executive, president or general secretary has behaved in a manner which is inconsistent with the purported repudiation.
- (6) The executive, president or general secretary shall be treated as so behaving if, on a request made to any of them within three months of the purported repudiation by a person who—
  - (a) is a party to commercial contract whose performance has been or may be interfered with as a result of the act in question, and
  - (b) has not been given written notice by the union of the repudiation,
 it is not forthwith confirmed in writing that the act has been repudiated.
- (7) In this Article “commercial contract” means any contract other than—
  - (a) a contract of employment, or
  - (b) any other contract under which a person agrees personally to do work or perform services for another.”.

### *The Agency*

#### **Functions of the Agency**

**138.**—(1) In Article 83(1) of the 1992 Order (duty of the Agency to promote improvement of industrial relations), for the words following “industrial relations” there shall be substituted “, in particular, by exercising its functions in relation to the settlement of trade disputes under Article 84”.

(2) For Article 89 of the 1992 Order (powers of the Agency to give advice) there shall be substituted—

#### **“Advice**

**89.**—(1) The Agency may, on request or otherwise, give employers, employers' associations, workers and trade unions such advice as it thinks appropriate on matters concerned with or affecting or likely to affect industrial relations.

(2) The Agency may also publish general advice on matters concerned with or affecting or likely to affect industrial relations.”.

## **Fees for exercise of functions by Agency**

139. After Article 90 of the 1992 Order there shall be inserted the following Article—

### **“Fees for exercise of functions by the Agency**

**90A.**—(1) The Agency may, in any case in which it thinks it appropriate to do so, but subject to any directions under paragraph (2), charge a fee for exercising a function in relation to any person.

(2) The Department may direct the Agency to charge fees, in accordance with the direction, for exercising any function specified in the direction, but the Department shall not give a direction under this paragraph without consulting the Agency.

(3) A direction under paragraph (2) may require the Agency to charge fees in respect of the exercise of a function only in specified descriptions of case.

(4) A direction under paragraph (2) shall specify whether fees are to be charged in respect of the exercise of any specified function—

- (a) at the full economic cost level, or
- (b) at a level less than the full economic cost but not less than a specified proportion or percentage of the full economic cost.

(5) Where a direction requires fees to be charged at the full economic cost level the Agency shall fix the fee for the case at an amount estimated to be sufficient to cover the administrative costs of the Agency of exercising the function including an appropriate sum in respect of general staff costs and overheads.

(6) Where a direction requires fees to be charged at a level less than the full economic cost the Agency shall fix the fee for the case at such amount, not being less than the proportion or percentage of the full economic cost specified under paragraph (4)(b), as it thinks appropriate (computing that cost in the same way as under paragraph (5)).

(7) No liability to pay a fee charged under this Article shall arise on the part of any person unless the Agency has notified that person that a fee may or will be charged.

(8) For the purposes of this Article—

- (a) a function is exercised “in relation to” a person who avails himself of the benefit of its exercise, whether or not he requested its exercise and whether the function is such as to be exercisable in relation to particular persons only or in relation to persons generally; and
- (b) where a function is exercised in relation to two or more persons the fee chargeable for its exercise shall be apportioned among them as the Agency thinks appropriate.”.

## *Ballots*

### **Ballots: repeal of provisions for financial assistance and use of employers' premises**

**140.**—(1) Articles 102 and 103 of the 1992 Order (financial assistance towards expenditure on certain ballots and obligations of employers to make premises available) shall cease to have effect on 1st April 1996.

(2) No application under regulations under Article 102 (whether made before or after its repeal) shall be entertained by the Certification Officer in relation to expenditure in respect of a ballot if the date of the ballot falls after 31st March 1996 or in respect of arrangements to hold a ballot which is not proceeded with if the date of the ballot would have fallen after that date; but, for the purposes of

applications made after (as well as before) the repeal in relation to expenditure not excluded by this paragraph, the regulations shall continue in force notwithstanding the repeal.

(3) In paragraph (2), the “date of the ballot” means, in the case of a ballot in which votes may be cast on more than one day, the last of those days.

## PART XI

### MISCELLANEOUS AND GENERAL

#### *Crown employment, etc.*

#### **Crown employment**

**141.**—(1) The provisions of this Order have effect (except as mentioned below) in relation to Crown employment and persons in Crown employment as in relation to other employment and other workers or employees.

(2) Paragraph (1) does not apply in relation to Article 61(3) (power of county court to make order in respect of employer’s failure to comply with duties as to union contributions).

(3) In this Article “Crown employment” means employment under or for the purposes of a government department.

(4) For the purposes of the provisions of this Order as they apply in relation to Crown employment or persons in Crown employment—

- (a) “employee” and “contract of employment” means a person in Crown employment and the terms of employment of such a person;
- (b) “dismissal” means the termination of Crown employment;
- (c) any reference to an undertaking shall be construed, in relation to a Minister of the Crown or Head of a department, as a reference to his functions or (as the context may require) to the department of which he is in charge, and in relation to a government department, shall be construed as a reference to the functions of the department or (as the context may require) to the department.

(5) This Article has effect subject to Article 142 (armed forces) and Article 143 (exemption on grounds of national security).

#### **Armed forces**

**142.**—(1) Article 141 (application of Order to Crown employment) does not apply to service as a member of the naval, military or air forces of the Crown.

(2) But that Article applies to employment by an association established for the purposes of Part VI of the Reserve Forces Act 1980<sup>(15)</sup> (territorial, auxiliary and reserve forces associations) as it applies to employment for the purposes of a government department.

#### **Exemption on grounds of national security**

**143.**—(1) Article 141 (application of Order to Crown employment) does not apply to employment in respect of which there is in force a certificate issued by or on behalf of the Secretary of State certifying that employment of a description specified in the certificate, or the employment of a particular person so specified, is (or, at a time specified in the certificate, was) required to be excepted

from that Article for the purpose of safeguarding national security or protecting public safety or public order.

(2) A document purporting to be such a certificate shall, unless the contrary is proved, be deemed to be such a certificate.

### *Health service practitioners*

#### **Health service practitioners**

**144.** In this Order “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<sup>(16)</sup>; and “employer”, in relation to such an individual, regarded in that capacity, means that Board.

### *Police service*

#### **Police service**

**145.—**(1) In this Order “employee” or “worker” does not include a person in police service.

(2) “Police service” means service as a member of the Royal Ulster Constabulary or the Royal Ulster Constabulary Reserve, or, subject to paragraph (3), in any other capacity by virtue of which a person has the powers or privileges of a constable.

(3) Service in the office of constable under Article 19 of the Airports (Northern Ireland) Order 1994<sup>(17)</sup> shall not be treated as police service for the purposes of this Article, and the holding of that office on any airport shall be treated for those purposes as work under a contract of employment with the airport operator.

### *Contracting out, etc.*

#### **Restriction on contracting out**

**146.—**(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Order, or
- (b) to preclude a person from bringing proceedings before an industrial tribunal under any provision of this Order.

(2) Paragraph (1) does not apply to an agreement to refrain from instituting or continuing proceedings where the Agency has taken action under Article 62(2) to (5) of the No. 1 Order (general provisions as to conciliation).

(3) Paragraph (1) does not apply to an agreement to refrain from instituting or continuing any proceedings specified in Article 148 before an industrial tribunal if the conditions regulating compromise agreements under this Order are satisfied in relation to the agreement.

(4) The conditions regulating compromise agreements under this Order are that—

- (a) the agreement must be in writing;

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<sup>(16)</sup> 1972 NI 14

<sup>(17)</sup> 1994 NI 1

- (b) the agreement must relate to the particular complaint;
  - (c) the complainant must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his rights before an industrial tribunal;
  - (d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
  - (e) the agreement must identify the adviser; and
  - (f) the agreement must state that the conditions regulating compromise agreements under this Order are satisfied.
- (5) In paragraph (4)—
- “independent”, in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and
- “qualified lawyer” means—
- (a) a barrister, whether in practice as such or employed to give legal advice, or
  - (b) a solicitor of the Supreme Court who holds a practising certificate.
- (6) For the purposes of paragraph (5) any two persons are to be treated as “connected” 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.

### **Employment governed by foreign law**

**147.** 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.

## *Industrial tribunal proceedings*

### **General provisions as to conciliation**

**148.** The provisions of Article 62(2) to (7) of the No. 1 Order (general provisions as to conciliation by Agency) have effect in relation to industrial tribunal proceedings, and claims which could be the subject of industrial tribunal proceedings, arising out of a contravention or alleged contravention of any of the following provisions of this Order—

- (a) Article 31 (right of trade union member not to be unjustifiably disciplined);
- (b) Article 35 (right not to suffer deduction of unauthorised or excessive subscriptions);
- (c) Article 38 (expulsion from union).

## *Regulations and orders*

### **Regulations and orders**

**149.**—(1) Subject to paragraph (2), all regulations and orders made by the Department under this Order shall be subject to negative resolution.

(2) Paragraph (1) does not apply to an order under Article 1(2), 91(3) or 121(2).

(3) Regulations and orders under this Order may contain such incidental, supplementary and transitional provisions as appear to the Department to be necessary or expedient.

*Amendments, transitional provisions and repeals*

**Amendments, transitional provisions and repeals**

**150.**—(1) The Coal Mines Regulation Act 1908(**18**) (which makes provision for limiting hours of work below ground) shall cease to have effect.

(2) The statutory provisions set out in Schedule 2 shall have effect subject to the minor and consequential amendments specified in that Schedule.

(3) The transitional provisions in Schedule 3 shall have effect.

(4) The statutory provisions set out in Schedule 4 are hereby repealed to the extent specified in the third column of that Schedule.

*N. H. Nicholls*  
Clerk of the Privy Council

## SCHEDULES

### SCHEDULE 1

Article 42.

#### ARTICLES 48 TO 48F OF THE No. 2 ORDER, AS INSERTED

##### *“Access to employment*

##### **Refusal of employment on grounds related to union membership**

**48.—**(1) It is unlawful to refuse a person employment—

- (a) because he is, or is not, a member of a trade union, or
- (b) because he is unwilling to accept a requirement—
  - (i) to take steps to become or cease to be, or to remain or not to become, a member of a trade union, or
  - (ii) to make payments or suffer deductions in the event of his not being a member of a trade union.

(2) A person who is thus unlawfully refused employment has a right of complaint to an industrial tribunal.

(3) Where an advertisement is published which indicates, or might reasonably be understood as indicating—

- (a) that employment to which the advertisement relates is open only to a person who is, or is not, a member of a trade union, or
- (b) that any such requirement as is mentioned in paragraph (1)(b) will be imposed in relation to employment to which the advertisement relates, a person who does not satisfy that condition or, as the case may be, is unwilling to accept that requirement, and who seeks and is refused employment to which the advertisement relates, shall be conclusively presumed to have been refused employment for that reason.

(4) Where there is an arrangement or practice under which employment is offered only to persons put forward or approved by a trade union, and the trade union puts forward or approves only persons who are members of the union, a person who is not a member of the union and who is refused employment in pursuance of the arrangement or practice shall be taken to have been refused employment because he is not a member of the trade union.

(5) A person shall be taken to be refused employment if he seeks employment of any description with a person and that person—

- (a) refuses or deliberately omits to entertain and process his application or enquiry, or
- (b) causes him to withdraw or cease to pursue his application or enquiry, or
- (c) refuses or deliberately omits to offer him employment of that description, or
- (d) makes him an offer of such employment the terms of which are such as no reasonable employer who wished to fill the post would offer and which is not accepted, or
- (e) makes him an offer of such employment but withdraws it or causes him not to accept it.

(6) Where a person is offered employment on terms which include a requirement that he is, or is not, a member of a trade union, or any such requirement as is mentioned in paragraph (1)(b), and he does not accept the offer because he does not satisfy or, as the case may be, is unwilling to accept that requirement, he shall be treated as having been refused employment for that reason.

(7) Where a person may not be considered for appointment or election to an office in a trade union unless he is a member of the union, or of a particular branch or section of the union or of one of a number of particular branches or sections of the union, nothing in this Article applies to anything done for the purpose of securing compliance with that condition although as holder of the office he would be employed by the union. For this purpose an “office” means any position—

- (a) by virtue of which the holder is an official of the union, or
- (b) to which Part III applies (duty to hold elections).

(8) The provisions of this Article apply in relation to an employment agency acting, or purporting to act, on behalf of an employer as in relation to an employer.

#### **Refusal of service of employment agency on grounds related to union membership**

**48A.**—(1) It is unlawful for an employment agency to refuse a person any of its services—

- (a) because he is, or is not, a member of a trade union, or
- (b) because he is unwilling to accept a requirement to take steps to become or cease to be, or to remain or not to become, a member of a trade union.

(2) A person who is thus unlawfully refused any service of an employment agency has a right of complaint to an industrial tribunal.

(3) Where an advertisement is published which indicates, or might reasonably be understood as indicating—

- (a) that any service of an employment agency is available only to a person who is, or is not, a member of a trade union, or
- (b) that any such requirement as is mentioned in paragraph (1)(b) will be imposed in relation to a service to which the advertisement relates, a person who does not satisfy that condition or, as the case may be, is unwilling to accept that requirement, and who seeks to avail himself of and is refused that service, shall be conclusively presumed to have been refused it for that reason.

(4) A person shall be taken to be refused a service if he seeks to avail himself of it and the agency—

- (a) refuses or deliberately omits to make the service available to him, or
- (b) causes him not to avail himself of the service or to cease to avail himself of it, or
- (c) does not provide the same service, on the same terms, as is provided to others.

(5) Where a person is offered a service on terms which include a requirement that he is, or is not, a member of a trade union, or any such requirement as is mentioned in paragraph (1)(b), and he does not accept the offer because he does not satisfy or, as the case may be, is unwilling to accept that requirement, he shall be treated as having been refused the service for that reason.

#### **Time limit for proceedings**

**48B.**—(1) An industrial tribunal shall not consider a complaint under Article 48 or 48A unless it is presented to the tribunal—

*Status: This is the original version (as it was originally made).*

- (a) before the end of the period of three months beginning with the date of the conduct to which the complaint relates, or
  - (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as the tribunal considers reasonable.
- (2) The date of the conduct to which a complaint under Article 48 relates shall be taken to be—
- (a) in the case of an actual refusal, the date of the refusal;
  - (b) in the case of a deliberate omission—
    - (i) to entertain and process the complainant's application or enquiry, or
    - (ii) to offer employment, the end of the period within which it was reasonable to expect the employer to act;
  - (c) in the case of conduct causing the complainant to withdraw or cease to pursue his application or enquiry, the date of that conduct;
  - (d) in a case where an offer was made but withdrawn, the date when it was withdrawn;
  - (e) in any other case where an offer was made but not accepted, the date on which it was made.
- (3) The date of the conduct to which a complaint under Article 48A relates shall be taken to be—
- (a) in the case of an actual refusal, the date of the refusal;
  - (b) in the case of a deliberate omission to make a service available, the end of the period within which it was reasonable to expect the employment agency to act;
  - (c) in the case of conduct causing the complainant not to avail himself of a service or to cease to avail himself of it, the date of that conduct;
  - (d) in the case of failure to provide the same service, on the same terms, as is provided to others, the date or last date on which the service in fact provided was provided.

## **Remedies**

**48C.**—(1) Where the industrial tribunal finds that a complaint under Article 48 or 48A is well-founded, it shall make a declaration to that effect and may make such of the following as it considers just and equitable—

- (a) an order requiring the respondent to pay compensation to the complainant of such amount as the tribunal may determine;
  - (b) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any conduct to which the complaint relates.
- (2) Compensation shall be assessed on the same basis as damages for breach of statutory duty and may include compensation for injury to feelings.
- (3) If the respondent fails without reasonable justification to comply with a recommendation to take action, the tribunal may increase its award of compensation or, if it has not made such an award, make one.
- (4) The total amount of compensation shall not exceed the limit for the time being imposed by Article 37 of the No. 1 Order (limit on compensation for unfair 'dismissal').

### **Complaint against employer and employment agency**

**48D.**—(1) Where a person has a right of complaint against a prospective employer and against an employment agency arising out of the same facts, he may present a complaint against either of them or against them jointly.

(2) If a complaint is brought against one only, he or the complainant may request the tribunal to join the other as a party to the proceedings. The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made its decision as to whether the complaint is well-founded.

(3) Where a complaint is brought against an employer and an employment agency jointly, or where it is brought against one and the other is joined as a party to the proceedings, and the tribunal—

- (a) finds that the complaint is well-founded as against the employer and the agency, and
- (b) makes an award of compensation, it may order that the compensation shall be paid by the one or the other, or partly by one and partly by the other, as the tribunal may consider just and equitable in the circumstances.

### **Awards against third parties**

**48E.**—(1) If in proceedings on a complaint under Article 48 or 48A either the complainant or the respondent claims that the respondent was induced to act in the manner complained of by pressure which a trade union or other person exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, the complainant or the respondent may request the industrial tribunal to direct that the person who he claims exercised the pressure be joined as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made its decision as to whether the complaint is well-founded.

(3) Where a person has been so joined as a party to the proceedings and the tribunal—

- (a) finds that the complaint is well-founded,
- (b) makes an award of compensation, and
- (c) also finds that the claim in paragraph (1) is well-founded, it may order that the compensation shall be paid by the person joined instead of by the respondent, or partly by that person and partly by the respondent, as the tribunal may consider just and equitable in the circumstances.

(4) Where by virtue of Article 48D (complaint against employer and employment agency) there is more than one respondent, the above provisions apply to either or both of them.

### **Interpretation and other supplementary provisions**

**48F.**—(1) In Articles 48 to 48E—

“advertisement” includes every form of advertisement or notice, whether to the public or not, and references to publishing an advertisement shall be construed accordingly;

“employment” means employment under a contract of employment, and related expressions shall be construed accordingly; and

“employment agency” means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers, but subject to paragraph (2).

*Status: This is the original version (as it was originally made).*

- (2) For the purposes of Articles 48 to 48E as they apply to employment agencies—
- (a) services other than those mentioned in the definition of “employment agency” above shall be disregarded, and
  - (b) a trade union shall not be regarded as an employment agency by reason of services provided by it only for, or in relation to, its members.
- (3) References in Articles 48 to 48E to being or not being a member of a trade union are to being or not being a member of any trade union, of a particular trade union or of one of a number of particular trade unions. Any such reference includes a reference to being or not being a member of a particular branch or section of a trade union or of one of a number of particular branches or sections of a trade union.
- (4) The remedy of a person for conduct which is unlawful by virtue of Article 48 or 48A is by way of a complaint to an industrial tribunal in accordance with this Order, and not otherwise. No other legal liability arises by reason that conduct is unlawful by virtue of either of those Articles.
- (5) Article 48A and the other provisions of this Order applying in relation to that Article, bind the Crown so far as they relate to the activities of an employment agency in relation to employment to which those provisions apply. This does not affect the operation of those provisions in relation to Crown employment by virtue of Article 9 of the Industrial Relations (Northern Ireland) Order 1993.
- (6) Articles 48 and 48A do not apply in relation to police service.
- (7) Articles 48 to 48E apply in relation to Crown employment otherwise than under a contract only where the terms of employment correspond to those of a contract of employment.”

## SCHEDULE 2

Article 150(2).

### AMENDMENTS

#### *The Commissioner for Complaints Act (Northern Ireland) 1969 (c. 25 N.I.)*

Part II of Schedule 1 (bodies subject to investigation) shall continue to have effect with the following entry (originally inserted by paragraph 12 of Schedule 2 to the 1992 Order)—

“Office of the Northern Ireland Commissioner for the Rights of Trade Union Members.”.

In Part II of Schedule 1 there shall be inserted at the appropriate place—

“Office of the Northern Ireland Commissioner for Protection Against Unlawful Industrial Action.”.

#### *The Northern Ireland Assembly Disqualification Act 1975 (c. 15)*

Part III of Schedule 1 (other disqualifying offices) shall continue to have effect with the following entry (originally inserted by paragraph 13 of Schedule 2 to the 1992 Order)—

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

In Part III of Schedule 1 there shall be inserted at the appropriate place—

“Northern Ireland Commissioner for Protection Against Unlawful Industrial Action.”.

*Industrial Relations (Northern Ireland) Order 1976 (NI 16)*

In Article 2(2) for the definition of “trade dispute” substitute—

““trade dispute” has the meaning assigned to it by Article 127 of the Trade Union and Labour Relations (Northern Ireland) Order 1995”.

In Article 22D(4)(b) for head (ii) substitute—

“(ii) Article 35 or 60 of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (deductions from pay).”.

In Article 80(2A) after “59(2C)” insert “or 61(3)”.

*Industrial Relations (No. 2) (Northern Ireland) Order 1976 (NI 28)*

In Article 37(1)(a) for “Article 2(4)” substitute “Article 96(1)”.

In Article 49(2) for “and 44” substitute “44 and 48 to 48F”. In Article 56(2) (a) for “and 44” substitute “44 and 48 to 48F”.

*The Industrial Relations (Northern Ireland) Order 1992 (NI 5)*

In Article 2 after paragraph (1) insert—

“(1A) Articles 2(2), 144 and 145 (interpretation) of the Trade Union and Labour Relations (Northern Ireland) Order 1995 shall apply in relation to this Order as they apply in relation to that Order.”.

In Article 2(2) in the definition of “collective agreement” and “collective bargaining” for “paragraph (4)” substitute “Article 96(1)”.

In Article 2(2) at the appropriate places insert—

““agent”, in relation to a trade union or employers' association, means a banker or solicitor of, or any person employed as an auditor by, the union or association or any branch or section of the union or association;”

““financial affairs”, in relation to a trade union or employers' association, means affairs of the union or association relating to any fund which is applicable for the purposes of the union or association (including any fund of a branch or section of the union or association which is so applicable);”.

In Article 6(12) for “section 7” substitute “section 254”.

In Article 13(2)(b) for “principal executive committee” substitute “executive”.

In Article 23(3) in the definition of “political fund” for “Part VIII” substitute “Part V of the Trade Union and Labour Relations (Northern Ireland) Order 1995”.

In Article 37(9) for “Articles 10, 11 and 12” substitute “Articles 10 to 12”.

In Article 37 after paragraph (10) insert—

“(10A) In this Article “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.”.

In Article 69(5) for the words from “for the making” to the end substitute “for the performance of any of his functions”.

In Article 107(2) for the words from “Article” onwards substitute “Article 1(2), 90(14) or 95(12)”.

In Schedule 1, paragraph 10(2) shall cease to have effect. 158

*Status: This is the original version (as it was originally made).*

*The Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)*

In section 301(3) for “Article 67(3) to (5) of the Industrial Relations (Northern Ireland) Order 1992” substitute “Article 71(2) to (4) of the Trade Union and Labour Relations (Northern Ireland) Order 1995”.

*The Industrial Relations (Northern Ireland) Order 1993 (NI 11)*

In Article 9(1)(c) for “43 and 65(5)” substitute “and 43”.

*The Education and Libraries (Northern Ireland) Order 1993 (NI 12)*

In Article 19 in the definition of “trade dispute” for “Article 2(4) to (7) of the Industrial Relations (Northern Ireland) Order 1992” substitute “Article 127 of the Trade Union and Labour Relations (Northern Ireland) Order 1995.”.

SCHEDULE 3

Article 150(3).

TRANSITIONAL PROVISIONS

*General*

1.—(1) An order under Article 1 may contain such transitional provisions as appear to the Department to be appropriate.

(2) Nothing in the following provisions of this Schedule prejudices the generality of sub-paragraph (1).

(3) Nothing in this Schedule prejudices the operation of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954(19).

*Elections for certain trade union positions*

2.—(1) Where a person was elected to a position to which Part III of this Order applies at an election held within the period of five years ending on 3 1st December 1993—

(a) Article 12(1)(a) shall have effect as if it did not require that Part to be satisfied in relation to that election; and

(b) the period of five years mentioned in Article 12(1)(b) shall be calculated from the date of that election.

(2) Sub-paragraph (1) does not apply if the only persons entitled to vote in the election were themselves persons holding positions to which Part III of this Order would have applied had that Part been in operation at the time.

*Deduction of trade union subscriptions*

3. For the purposes of Article 35 a deduction representing a payment to a trade union in respect of a worker’s membership which is made in accordance with arrangements existing between his employer and the union immediately before the day on which that Article comes into operation under

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(19) 1954 c. 33 (N.I.)

which deductions were made in his case before that day shall be treated as an authorised deduction where—

- (a) the day on which the deduction is made falls before the end of the period of one year beginning with the day on which that Article comes into operation, and
- (b) written notice from the worker stating that he does not wish such deductions to be made has not been received by the employer in time for it to be reasonably practicable for him to secure that the deduction is not made.

#### *Political resolutions*

4. Articles 66(1) and (2) of the 1992 Order shall, notwithstanding their repeal by this Order, continue to have effect in relation to resolutions mentioned in Article 66( 1) of that Order, as if for references to provisions of the 1992 Order there were substituted references to the corresponding provisions of this Order.

### SCHEDULE 4

Article 150(4).

#### REPEALS

Chapter or Number	Short title	Extent of repeal
1875 c. 86.	The Conspiracy, and Protection of Property Act, 1875.	The whole Act.
1908 c. 57.		
The Coal Mines Regulation Act 1908.	The whole Act.	
1917 c. 8.	The Coal Mines Regulation (Amendment) Act 1917.	The whole Act.
1969 c. 6 (N.I.).	The Mines Act (Northern Ireland) 1969.	Section 161.
		In Schedule 4, the entry relating to the Coal Mines Regulation Act 1908.
1970 c. 36.	The Merchant Shipping Act 1970.	Section 42(1).
		In Schedule 3, paragraph 1.
1976 NI 15.	The Sex Discrimination (Northern Ireland) Order 1976.	Article 23(2).
1976 NI 16.	The Industrial Relations (Northern Ireland) Order 1976.	Article 62(1)(aa).
1983 NI 13.	The Criminal Attempts and Conspiracy (Northern Ireland) Order 1983.	Article 9(3).
		Article 13(12)(b).

**Status:** This is the original version (as it was originally made).

Chapter or Number	Short title	Extent of repeal
<a href="#">1988 NI 7.</a>	The Wages (Northern Ireland) Order 1988.	In Article 3(6) the words from “and where a certificate” to the end.  Article 7(3A).  In Schedule 4, paragraphs 1, 2 and 4.
<a href="#">1992 c. 52.</a>	The Trade Union and Labour Relations (Consolidation) Act 1992.	In Schedule 2, paragraph 40(5) to (9).  In Schedule 3, paragraph 12.
<a href="#">1992 NI 5.</a>	The Industrial Relations (Northern Ireland) Order 1992.	Article 2(2), except the definitions of “the appointed day”, “collective agreement”, “collective bargaining”, “the Companies Order”, “independent trade union”, “the Industrial Court” and “strike”.  Article 2(3) to (9).  Articles 15 to 20.  Articles 24 and 25.  Articles 29 to 36.  Article 38.  Parts VI to VIII.  Article 70(4).  Articles 71 to 73.  Part X.  Articles 101 to 103.  Article 105(1).  Article 105A(2)(c) and (3) to (5).  In Schedule 1, paragraph 10(2).  Schedules 2 and 3.  In Schedule 5, paragraphs 2(3) and (5) and 4.
<a href="#">1993 NI 11.</a>	The Industrial Relations (Northern Ireland) Order 1993.	In Schedule 6, the amendments to the 1992 Order.

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## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends and largely restates the law in relation to trade unions and industrial relations.