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STATUTORY INSTRUMENTS

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**1995 No. 1980**

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

**PART III**

**ELECTIONS FOR CERTAIN POSITIONS**

*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,