
STATUTORY INSTRUMENTS

1995 No. 1980

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

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 disapplied 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 subparagraph (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.