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STATUTORY INSTRUMENTS

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**1995 No. 1980**

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

**PART VIII**

**INDUSTRIAL ACTION**

*Protection of acts in contemplation or furtherance of trade dispute*

**Protection from certain tort liabilities**

**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.

(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<sup>[F1 112]</sup> 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;<sup>F1 . . .</sup>
- <sup>[F1]</sup>(bb) Article 115A does not prevent the industrial action from being regarded as having the support of the ballot; 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 has effect subject to that Article.

- (4) Where separate workplace ballots are held by virtue of Article<sup>[F1 109(3)]</sup>
- (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.

<sup>[F1(4A)]</sup> If the requirements of Article 113 fall to be satisfied in relation to an employer, as respects that employer industrial action shall not be regarded as having the support of a ballot unless those requirements are satisfied in relation to that employer.]

(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.

**F1** 1999 NI 9

### 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

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- (b) not later than the third day before the opening day of the ballot, the sample voting paper specified in<sup>F2</sup> 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

- <sup>F2</sup>(c) [<sup>F3</sup>containing such information in the union's possession as would help the employer to make plans and bring information to the attention of those of his employees] 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.

- <sup>F4F5</sup>(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.

- <sup>F3F5</sup>(3A) These rules apply for the purposes of sub-paragraph (c) of paragraph (2)—

- (a) if the union possesses information as to the number, category or work-place of the employees concerned, a notice must contain that information (at least);  
 (b) if a notice does not name any employees, that fact shall not be a ground for holding that it does not comply with sub-paragraph (c) of paragraph (2).

- <sup>F5</sup>(3B) In paragraph (3) references to employees are to employees of the employer concerned.]

(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 111(3) applies are entitled to vote, shall have effect with the substitution in<sup>F2</sup> 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.

**F2** prosp. (until 08/01/06) subst. by 2004 NI 19

**F3** 1999 NI 9

**F4** prosp. (until 08/01/06) insertion by 2004 NI 19

**F5** prosp. (until 08/01/06) rep. by 2004 NI 19

### **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<sup>[F6]</sup> by the union] to take part or, as the case may be, to continue to take part in the industrial action in question, and to no others.

*Para. (2) rep. by 1999 NI 9*

F6 2004 NI 19

### <sup>[F7]</sup>Separate workplace ballots

109.—(1) Subject to paragraph (2), this Article applies if the members entitled to vote in a ballot by virtue of Article 108 do not all have the same workplace.

(2) This Article does not apply if the union reasonably believes that all those members have the same workplace.

(3) Subject to Article 109A, a separate ballot shall be held for each workplace; and entitlement to vote in each ballot shall be accorded equally to, and restricted to, members of the union who—

- (a) are entitled to vote by virtue of Article 108; and
- (b) have that workplace.

(4) In this Article and Article 109A “workplace” in relation to a person who is employed means—

- (a) if the person works at or from a single set of premises, those premises; and
- (b) in any other case, the premises with which the person's employment has the closest connection.]

F7 1999 NI 9

**Separate workplaces: single and aggregate ballots**

**109A.**—(1) Where Article 109(3) would require separate ballots to be held for each workplace, a ballot may be held in place of some or all of the separate ballots if one of paragraphs (2) to (4) is satisfied in relation to it.

(2) This paragraph is satisfied in relation to a ballot if the workplace of each member entitled to vote in the ballot is the workplace of at least one member of the union who is affected by the dispute.

(3) This paragraph is satisfied in relation to a ballot if entitlement to vote is accorded to, and limited to, all the members of the union who—

- (a) according to the union's reasonable belief have an occupation of a particular kind or have any of a number of particular kinds of occupation; and
- (b) are employed by a particular employer, or by any of a number of particular employers, with whom the union is in dispute.

(4) This paragraph is satisfied in relation to a ballot if entitlement to vote is accorded to, and limited to, all the members of the union who are employed by a particular employer, or by any of a number of particular employers, with whom the union is in dispute.

(5) For the purposes of paragraph (2) the following are members of the union affected by a dispute—

- (a) if the dispute relates (wholly or partly) to a decision which the union reasonably believes the employer has made or will make concerning a matter specified in paragraph (1)(a), (b) or (c) of Article 127 (meaning of “trade dispute”), members whom the decision directly affects;
- (b) if the dispute relates (wholly or partly) to a matter specified in paragraph (1)(d) of that Article, members whom the matter directly affects;
- (c) if the dispute relates (wholly or partly) to a matter specified in paragraph (1)(e) of that Article, persons whose membership or non-membership is in dispute;
- (d) if the dispute relates (wholly or partly) to a matter specified in paragraph (1)(f) of that Article, officials of the union who have used or would use the facilities concerned in the dispute.

**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 111(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.

[<sup>F8</sup>(3A) For the purposes of paragraph (3) an overtime ban and a call-out ban constitute 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.

[<sup>F8</sup>However, if you are dismissed for taking part in strike or other industrial action which is called officially and is otherwise lawful, the dismissal will be unfair if it takes place fewer than<sup>F9</sup> 12] weeks after you started taking part in the action, and depending on the circumstances may be unfair if it takes place later.”.]

<b>F8</b>	1999 NI 9
<b>F9</b>	2004 NI 19

## 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.

[<sup>F10</sup>(3) Paragraph (4) applies to a merchant seaman if the trade union reasonably believes that—

- (a) he will be employed in a ship either at sea or at a place outside Northern Ireland at some time in the period during which votes may be cast; and
- (b) it will be convenient for him to receive a voting paper and to vote while on the ship or while at a place where the ship is rather than in accordance with paragraph (2).

*Status: Point in time view as at 01/01/2006.*

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- (4) Where this paragraph applies to a merchant seaman he shall, if it is reasonably practicable—
- (a) have a voting paper made available to him while on the ship or while at a place where the ship is; and
  - (b) be given an opportunity to vote while on the ship or while at a place where the ship is.]
- (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.

**F10** 1999 NI 9

#### **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.

### [<sup>F11</sup>Inducement of member denied entitlement to vote

**115A.** Industrial action shall not be regarded as having the support of a ballot if the following conditions apply in the case of any person—

- (a) he was a member of the trade union at the time when the ballot was held;
- (b) it was reasonable at that time for the trade union to believe he would be induced to take part or, as the case may be, to continue to take part in the industrial action;
- (c) he was not accorded entitlement to vote in the ballot; and
- (d) he was induced by the trade union to take part or, as the case may be, to continue to take part in the industrial action.]

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**F11** 1999 NI 9

### [<sup>F12</sup>Small accidental failures to be disregarded

**115B.**—(1) If—

- (a) in relation to a ballot there is a failure (or there are failures) to comply with a provision mentioned in paragraph (2) or with more than one of those provisions; and
- (b) the failure is accidental and on a scale which is unlikely to affect the result of the ballot or, as the case may be, the failures are accidental and taken together are on a scale which is unlikely to affect the result of the ballot,

the failure (or failures) shall be disregarded[<sup>F13</sup> for all purposes (including, in particular, those of Article 115A(c))].

(2) The provisions are Article 108(1), Article 111(2) and Article 111(4).]

**F12** 1999 NI 9

**F13** 2004 NI 19

### 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[<sup>F14</sup> begin], 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.

**F14** 2004 NI 19

### Period after which ballot ceases to be effective

**117.**—[<sup>F15</sup>(1) Subject to the following provisions, a ballot ceases to be effective for the purposes of Article 116(3)(b) in relation to industrial action by members of a trade union at the end of the period, beginning with the date of the ballot—

- (a) of four weeks; or
- (b) of such longer duration not exceeding eight weeks as is agreed between the union and the members' employer.]

(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.

F15 1999 NI 9

### 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—

- <sup>F16</sup>(a) [<sup>F17</sup>contains such information in the union's possession as would help the employer to make plans and bring information to the attention of those of his employees whom] 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—

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- (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,<sup>F18</sup> and
- <sup>F18</sup>(c) states that it is given for the purposes of this Article.
- <sup>F19</sup>(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<sup>F16</sup> 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.
- [<sup>F17F16</sup>(5A) These rules apply for the purposes of sub-paragraph (a) of paragraph (3)—
- (a) if the union possesses information as to the number, category or work-place of the employees concerned, a notice must contain that information (at least);
  - (b) if a notice does not name any employees, that fact shall not be a ground for holding that it does not comply with sub-paragraph (a) of paragraph (3).]

(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) [<sup>F17</sup>Subject to paragraphs (7A) and (7B),] where—

    - (a) continuous industrial action which has been authorised or endorsed by a union ceases to be so authorised or endorsed<sup>F17</sup>. . . , 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.

[<sup>F17</sup>(7A) Paragraph (7) shall not apply where industrial action ceases to be authorised or endorsed in order to enable the union to comply with a court order or an undertaking given to a court.

(7B) Paragraph (7) shall not apply where—

- (a) a union agrees with an employer, before industrial action ceases to be authorised or endorsed, that it will cease to be authorised or endorsed with effect from a date specified in the agreement (“the suspension date”) and that it may again be authorised or endorsed with effect from a date not earlier than a date specified in the agreement (“the resumption date”);
- (b) the action ceases to be authorised or endorsed with effect from the suspension date; and
- (c) the action is again authorised or endorsed with effect from a date which is not earlier than the resumption date or such later date as may be agreed between the union and the employer.]

(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)<sup>F19</sup> 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<sup>F17</sup> paragraphs (7) to (7B)] whether the trade union is to be taken to have authorised or endorsed the industrial action.

- F16** prosp. (until 08/01/06) subst. by [2004 NI 19](#)
- F17** [1999 NI 9](#)
- F18** prosp. (until 08/01/06) rep. by [2004 NI 19](#)
- F19** prosp. (until 08/01/06) insertion by [2004 NI 19](#)

### 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).

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(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.

*Arts. 121, 122 rep. by 1999 NI 9*

#### *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 111(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<sup>F20</sup> spouse or civil partner] 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.

F20 2004 c.33

### 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<sup>F21</sup> (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.

F21 1983 NI 13

### 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

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- (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<sup>F22</sup> (except for the purposes of Article 110(3)) 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.

**F22** 1999 NI 9

**Status:**

Point in time view as at 01/01/2006.

**Changes to legislation:**

There are currently no known outstanding effects for the The Trade Union and Labour Relations (Northern Ireland) Order 1995, PART VIII.