
STATUTORY INSTRUMENTS

1995 No. 1980

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

PART X

MISCELLANEOUS AMENDMENTS

Unfair dismissal

Dismissal of those taking part in unofficial industrial action

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

“Dismissal of those taking part in unofficial industrial action

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

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

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

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

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

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

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

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

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

- (a) where the employee’s contract of employment is terminated by notice, when the notice is given,

(b) where the employee's contract of employment is terminated without notice, when the termination takes effect, and

(c) where the employee is employed under a contract for a fixed term which expires without being renewed under the same contract, when that term expires;

and a "working day" means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971⁽¹⁾

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

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

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

Liability of trade union in certain proceedings in tort

Liability of trade union in proceedings in tort

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

"Liability of trade union in certain proceedings in tort

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

(a) on the ground that an act—

(i) induces another person to break a contract or interferes or induces another person to interfere with its performance, or

(ii) consists in threatening that a contract (whether one to which the union is a party or not) will be broken or its performance interfered with, or that the union will induce another person to break a contract or interfere with its performance, or

(b) in respect of an agreement or combination by two or more persons to do or to procure the doing of an act which, if it were done without any such agreement or combination, would be actionable in tort on such a ground,

(2) An act shall be taken to have been authorised or endorsed by a trade union if it was done, or was authorised or endorsed—

(a) by a person empowered by the rules to do, authorise or endorse acts of the kind in question, or

(b) by the executive or the president or general secretary, or

(c) by any other committee of the union or any other official of the union (whether employed by it or not).

(3) For the purposes of sub-paragraph (c) of paragraph (2)—

- (a) any group of persons constituted in accordance with the rules of the union is a committee of the union; and
- (b) an act shall be taken to have been done, authorised or endorsed by an official if it was done, authorised or endorsed by, or by any member of, any group of persons of which he was at the material time a member, the purposes of which included organising or co-ordinating industrial action.

(4) The provisions of sub-paragraphs (b) and (c) of paragraph (2) apply notwithstanding anything in the rules of the union, or in any contract or rule of law, but subject to the provisions of Article 21A (repudiation by union of certain acts).

(5) Where for the purposes of any proceedings an act is by virtue of this Article taken to have been done by a trade union, nothing in this Article shall affect the liability of any other person, in those or any other proceedings, in respect of that act.

(6) In proceedings arising out of an act which is by virtue of this Article taken to have been done by a trade union, the power of the High Court to grant an injunction includes power to require the union to take such steps as the court considers appropriate for ensuring—

- (a) that there is no, or no further, inducement of persons to take part or to continue to take part in industrial action, and
- (b) that no person engages in any conduct after the granting of the injunction by virtue of having been induced before it was granted to take part or to continue to take part in industrial action.

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

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

Repudiation by union of certain acts

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

(2) Where an act is repudiated—

- (a) written notice of the repudiation must be given to the committee or official in question, without delay, and
- (b) the union must do its best to give individual written notice of the fact and date of repudiation, without delay—
 - (i) to every member of the union who the union has reason to believe is taking part, or might otherwise take part, in industrial action as a result of the act, and
 - (ii) to the employer of every such member.

(3) The notice given to members in accordance with sub-paragraph (b)(i) of paragraph (2) must contain the following statement—

“Your union has repudiated the call (or calls) for industrial action to which this notice relates and will give no support to unofficial industrial action taken in response to it (or them). If you are dismissed while taking unofficial industrial action, you will have no right to complain of unfair dismissal.”

(4) If paragraph (2) or (3) is not complied with, the repudiation shall be treated as ineffective.

(5) An act shall not be treated as repudiated if at any time after the union concerned purported to repudiate it the executive, president or general secretary has behaved in a manner which is inconsistent with the purported repudiation.

(6) The executive, president or general secretary shall be treated as so behaving if, on a request made to any of them within three months of the purported repudiation by a person who—

(a) is a party to commercial contract whose performance has been or may be interfered with as a result of the act in question, and

(b) has not been given written notice by the union of the repudiation,

it is not forthwith confirmed in writing that the act has been repudiated.

(7) In this Article “commercial contract” means any contract other than—

(a) a contract of employment, or

(b) any other contract under which a person agrees personally to do work or perform services for another.”.

The Agency

Functions of the Agency

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

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

“Advice

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

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

Fees for exercise of functions by Agency

139. After Article 90 of the 1992 Order there shall be inserted the following Article—

“Fees for exercise of functions by the Agency

90A.—(1) The Agency may, in any case in which it thinks it appropriate to do so, but subject to any directions under paragraph (2), charge a fee for exercising a function in relation to any person.

(2) The Department may direct the Agency to charge fees, in accordance with the direction, for exercising any function specified in the direction, but the Department shall not give a direction under this paragraph without consulting the Agency.

(3) A direction under paragraph (2) may require the Agency to charge fees in respect of the exercise of a function only in specified descriptions of case.

(4) A direction under paragraph (2) shall specify whether fees are to be charged in respect of the exercise of any specified function—

- (a) at the full economic cost level, or
- (b) at a level less than the full economic cost but not less than a specified proportion or percentage of the full economic cost.

(5) Where a direction requires fees to be charged at the full economic cost level the Agency shall fix the fee for the case at an amount estimated to be sufficient to cover the administrative costs of the Agency of exercising the function including an appropriate sum in respect of general staff costs and overheads.

(6) Where a direction requires fees to be charged at a level less than the full economic cost the Agency shall fix the fee for the case at such amount, not being less than the proportion or percentage of the full economic cost specified under paragraph (4)(b), as it thinks appropriate (computing that cost in the same way as under paragraph (5)).

(7) No liability to pay a fee charged under this Article shall arise on the part of any person unless the Agency has notified that person that a fee may or will be charged.

(8) For the purposes of this Article—

- (a) a function is exercised “in relation to” a person who avails himself of the benefit of its exercise, whether or not he requested its exercise and whether the function is such as to be exercisable in relation to particular persons only or in relation to persons generally; and
- (b) where a function is exercised in relation to two or more persons the fee chargeable for its exercise shall be apportioned among them as the Agency thinks appropriate.”

Ballots

Ballots: repeal of provisions for financial assistance and use of employers' premises

140.—(1) Articles 102 and 103 of the 1992 Order (financial assistance towards expenditure on certain ballots and obligations of employers to make premises available) shall cease to have effect on 1st April 1996.

(2) No application under regulations under Article 102 (whether made before or after its repeal) shall be entertained by the Certification Officer in relation to expenditure in respect of a ballot if the date of the ballot falls after 31st March 1996 or in respect of arrangements to hold a ballot which is not proceeded with if the date of the ballot would have fallen after that date; but, for the purposes of applications made after (as well as before) the repeal in relation to expenditure not excluded by this paragraph, the regulations shall continue in force notwithstanding the repeal.

(3) In paragraph (2), the “date of the ballot” means, in the case of a ballot in which votes may be cast on more than one day, the last of those days.