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STATUTORY INSTRUMENTS

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**1992 No. 807**

**The Industrial Relations (Northern Ireland) Order 1992**

**PART III**

**RESTRICTIONS ON LEGAL LIABILITY AND LEGAL PROCEEDINGS**

*Restrictions on legal liability*

**Acts in contemplation or furtherance of trade disputes**

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

- (a) that it induces another person to break a contract or interferes or induces any other 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 to interfere with its performance.

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

(3) This Article is subject to Articles 16 to 20.

**Peaceful picketing**

**16.**—(1) Nothing in Article 15 shall prevent 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 this Article.

(2) It shall be 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 that 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.

(3) 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 (2) 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.

(4) In the case of a worker who is 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,

paragraph (2) shall in relation to that dispute have effect as if any reference to his place of work were a reference to his former place of work.

(5) 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 (2) as representing only those members; but otherwise an official of a trade union shall be regarded for those purposes as representing all its members.

### **Secondary action**

17.—(1) Nothing in Article 15 shall prevent an act from being actionable in tort on a ground specified in paragraph (1)(a) or (b) of that Article in any case where—

- (a) the contract concerned is not a contract of employment; and
- (b) one of the facts relied upon for the purpose of establishing liability is that there has been secondary action which is not action satisfying the requirements of paragraph (3), (4) or (5) of this Article.

(2) For the purposes of this Article 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,

if the employer under the contract of employment is not a party to the trade dispute.

(3) Secondary action satisfies the requirements of this paragraph if—

- (a) the purpose or principal purpose of the secondary action was directly to prevent or disrupt the supply during the dispute of goods or services between an employer who is a party to the dispute and the employer under the contract of employment to which the secondary action relates; and
- (b) the secondary action (together with any corresponding action relating to other contracts of employment with the same employer) was likely to achieve that purpose.

(4) Secondary action satisfies the requirements of this paragraph if—

- (a) the purpose or principal purpose of the secondary action was directly to prevent or disrupt the supply during the dispute of goods or services between any person and an associated employer of an employer who is a party to the dispute; and
- (b) the goods or services are in substitution for goods or services which but for the dispute would have fallen to be supplied to or by the employer who is a party to the dispute; and
- (c) the employer under the contract of employment to which the secondary action relates is either the said associated employer or the other party to the supply referred to in sub-paragraph (a); and
- (d) the secondary action (together with any corresponding action relating to other contracts of employment with the same employer) was likely to achieve the purpose referred to in sub-paragraph (a).

(5) Secondary action satisfies the requirements of this paragraph if it is done in the course of attendance declared lawful by Article 16—

- (a) by a worker employed (or, in the case of a worker not in employment, last employed) by a party to the dispute; or
  - (b) by a trade union official whose attendance is lawful by virtue of paragraph (2)(b) of that Article.
- (6) In paragraphs (3)(a) and (4)(a)—
- (a) references to the supply of goods or services between two persons are references to the supply of goods or services by one to the other in pursuance of a contract between them subsisting at the time of the secondary action; and
  - (b) references to directly preventing or disrupting the supply are references to preventing or disrupting it otherwise than by means of preventing or disrupting the supply of goods or services by or to any other person.
- (7) For the purposes of this Article an employer who is a member of an employers' association which is a party to a trade dispute shall by virtue of his membership be regarded as a party to the dispute if he is represented in the dispute by the association, but not otherwise.

#### **Industrial action to enforce trade union membership**

**18.**—(1) Nothing in Article 15 shall prevent an act being actionable in tort in any case where the reason, or one of the reasons, for which the act 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 any trade union, a person who is not a member of a particular trade union or a person who is not a member of one of a number of particular trade unions; or
- (b) is failing, has failed or might fail to discriminate against any such person.

(2) For the purposes of paragraph (1)(b) an employer discriminates against a person who is not a member of any trade union, of a particular trade union or, as the case may be, of one of a number of particular trade unions, if, but only if, he ensures that his conduct in relation to persons, or persons of any description, who are employed by him or who apply to be, or are, considered by him for employment or in relation to the provision of employment for such persons—

- (a) is different, in some or all cases, according to whether or not those persons are such members; and
- (b) is more favourable to those who are.

(3) In this Article—

- (a) references to an employer employing a person are references to a person acting in the capacity of the person for whom a worker works or normally works; and
- (b) references to not being a member of a trade union include references to not being a member of a particular branch or section of that union and to not being a member of one of a number of particular branches or sections of that union.

#### **Pressure to impose union membership or recognition requirements**

**19.**—(1) Nothing in Article 15 shall prevent an act being actionable in tort in any case where a person induces, or attempts to induce, another—

- (a) to incorporate in a contract to which that other person is a party, or proposed contract to which that other person intends to be a party, any term or condition which is, or would be, void by virtue of Article 27(1) or 28(1); or
- (b) to contravene Article 27(2) or 28(2);

and the act constitutes, or is one of a number of acts which together constitute, the inducement or attempted inducement.

(2) Nothing in Article 15 shall prevent an act which interferes with the supply (whether or not under a contract) of goods or services, or can reasonably be expected to have such an effect, being actionable in tort in any case where paragraph (3) is satisfied and one of the facts relied upon for the purpose of establishing liability is that any person has—

- (a) induced another to break a contract of employment or interfered or induced another to interfere with its performance; or
- (b) 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.

(3) This paragraph is satisfied if—

- (a) the supplier of the goods or services is not the employer under the contract of employment mentioned in paragraph (2); and
- (b) the reason, or one of the reasons, for which the act is done is the fact or belief that the supplier does not, or that the supplier might not, recognise, negotiate or consult as mentioned in Article 28.

#### **Industrial action authorised or endorsed by trade union without support of a ballot**

**20.**—(1) Nothing in Article 15 shall prevent an act done by a trade union without the support of a ballot from being actionable in tort (whether or not against the trade union) on the ground that it induced a person to break his contract of employment or to interfere with its performance.

(2) Nothing in Article 15 shall prevent an act done by a trade union from being actionable in tort (whether or not against the trade union) on the ground that it induced a person to break a commercial contract or to interfere with its performance where—

- (a) one of the facts relied upon for the purpose of establishing liability is that the union induced another person to break his contract of employment or to interfere with its performance; and
- (b) by virtue of paragraph (1), nothing in Article 15 would prevent the act of inducement referred to in sub-paragraph (a) from being actionable in tort.

(3) Part VI has effect for determining whether an act shall be taken for the purposes of paragraph (1) as having been done with the support of a ballot.

(4) In this Article “commercial contract” means any contract which is not a contract of employment.

#### *Legal proceedings involving trade unions and employers' associations*

#### **Actions in tort against trade unions**

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

- (a) on a ground specified in paragraph (1)(a) or (b) of Article 15; 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,

then, for the purpose of determining in those proceedings whether the union is liable in respect of the act in question, that act shall be taken to have been done by the union if, but only if, it was authorised or endorsed by a responsible person.

(2) For the purposes of this Article but subject to paragraph (3), an act shall not be taken to have been authorised or endorsed by a responsible person unless it was authorised or, as the case may be, endorsed—

- (a) by the principal executive committee;
- (b) by any other person who is empowered by the rules to authorise or, as the case may be, endorse acts of the kind in question;
- (c) by the president or general secretary;
- (d) by any other official of the union who is an employed official; or
- (e) by any committee of the union to whom an employed official regularly reports.

(3) An act shall not be taken, by virtue of paragraph (2)(d) or (e) to have been authorised or endorsed by a responsible person if—

- (a) that person was, at the time in question, prevented by the rules from authorising or endorsing acts of the kind in question; or
- (b) the act has been repudiated by the principal executive committee or by the president or general secretary.

(4) For the purposes of paragraph (3)(b), an act shall not be treated as repudiated unless—

- (a) it is repudiated as soon as is reasonably practicable after the purported authorisation or endorsement of the act has come to the knowledge of the principal executive committee or, as the case may be, of the president or general secretary; and
- (b) the person who purported to authorise or endorse the act has been notified in writing and without delay that it has been repudiated.

(5) An act shall not be treated as repudiated, notwithstanding paragraph (4), if at any time after the union concerned purported to repudiate it the principal executive committee or president or general secretary has behaved in a manner which is inconsistent with the purported repudiation.

(6) In this Article—

“employed official”, in relation to a union, means an official who is employed by it;

“rules” means the written rules of the union and any other written provisions forming part of the contract between a member and the other members.

(7) Where, for the purpose 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.

### **Limit on damages awarded against trade unions in actions in tort**

**22.**—(1) Subject to paragraph (2), in any proceedings in tort brought against a trade union the amount which may be awarded against the union by way of damages in those proceedings shall not exceed the appropriate limit.

(2) Paragraph (1) does not apply to any proceedings—

- (a) for any of the following resulting in personal injury to any person, that is to say negligence, nuisance or breach of duty;
- (b) without prejudice to sub-paragraph (a), for breach of duty in connection with the ownership, occupation, possession, control or use of property (whether real or personal); or
- (c) to any proceedings by virtue of Part II of the Consumer Protection (Northern Ireland) Order 1987(1) (product liability).

- (3) The appropriate limit is—
- (a) £10,000, if the union has less than 5,000 members;
  - (b) £50,000, if it has 5,000 or more members but less than 25,000 members;
  - (c) £125,000, if it has 25,000 or more members but less than 100,000 members; and
  - (d) £250,000, if it has 100,000 or more members.
- (4) The Department may by order vary any of the sums for the time being specified in paragraph (3).
- (5) In this Article—
- “duty” means a duty imposed by any rule of law or by or under any statutory provision; and
- “personal injury” includes any disease and any impairment of a person’s physical or mental condition.
- (6) In calculating for the purposes of this Article the number of members which a trade union has—
- (a) there shall be included members outside Northern Ireland; and
  - (b) in any case where a trade union consists wholly or mainly of organisations or representatives of organisations, the members of those organisations shall be treated as members of the union.

### **Recovery of sums awarded in proceedings involving trade unions and employers' associations**

**23.—(1)** Where in any proceedings an amount is awarded by way of damages, costs or expenses—

- (a) against a trade union or employers' association;
- (b) against trustees in whom property is vested in trust for a trade union or employers' association, in their capacity as such and otherwise than in respect of a breach of trust on their part; or
- (c) against members or officials of a trade union or employers' association on behalf of themselves and all of the members of the union or association,

no part of that amount shall be recoverable by enforcement against any protected property.

- (2) In this Article “protected property” means any property—
- (a) belonging to the trustees concerned otherwise than in their capacity as such;
  - (b) belonging to any member of the union or association concerned otherwise than jointly or in common with the other members;
  - (c) belonging to any official of the union or association concerned who is neither a member nor such a trustee;
  - (d) comprised in a political fund of the union concerned; or
  - (e) comprised in a provident benefits fund of the union concerned.
- (3) In paragraph (2)—

“political fund” means a fund which is a political fund for the purposes of Part VIII and which is (and was at the time when the act in respect of which the proceedings are brought was done) subject to rules of the union which prevent property which is or has been comprised in the fund from being used for financing strikes or other industrial action;

“provident benefits” includes any payment, expressly authorised by the rules of the union, which is made to a member during sickness or incapacity from personal injury or while out

of work, or to an aged member by way of superannuation, or to a member who has met with an accident or has lost his tools by fire or theft, and includes a payment in discharge or aid of funeral expenses on the death of a member or the wife of a member, or as provision for the children of a deceased member; and

“provident benefits fund” means a separate fund which is maintained in accordance with the rules of the union for the purpose only of providing provident benefits.

#### *Restrictions on powers of court*

#### **Court not to compel employee to work**

24. 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.

#### **Restrictions on grant of injunctions by court**

25.—(1) Where an application for an injunction is made to a court in the absence of the party against whom the injunction is sought or any representative of his, and that party 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 that party.

(2) Where an application is made to a court, pending the trial of an action, for an interlocutory injunction and the party against whom the injunction 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 the matter or matters which would, under any provision of Article 15 or 16 afford a defence to the action.

#### *Enforceability of collective agreements*

#### **Enforceability of collective agreements**

26.—(1) Subject to paragraph (3), any collective agreement (whether made before or after the coming into operation of this Article) shall be conclusively presumed not to have been intended by the parties to be a legally enforceable contract unless the agreement—

- (a) is in writing; and
- (b) contains a provision which (however expressed) states that the parties intended that the agreement shall be a legally enforceable contract.

(2) Any such agreement which satisfies the conditions in paragraph (1)(a) and (b) shall be conclusively presumed to have been intended by the parties to be a legally enforceable contract.

(3) If any such agreement is in writing and contains a provision which (however expressed) states that the parties intend that one or more parts of the agreement specified in that provision, but not the whole of the agreement, shall be a legally enforceable contract, then—

- (a) the specified part or parts shall be conclusively presumed to have been intended by the parties to be a legally enforceable contract; and

- (b) the remainder of the agreement shall be conclusively presumed not to have been intended by the parties to be such a contract, but a part of an agreement which by virtue of this sub-paragraph is not a legally enforceable contract may be referred to for the purpose of interpreting a part of that agreement which is such a contract.

(4) Notwithstanding anything in paragraphs (2) and (3), any terms of a collective agreement (whether made before or after the coming into operation of this Article) which prohibit or restrict the right of workers to engage in a strike or other industrial action, or have the effect of prohibiting or restricting that right, shall not form part of any contract between any worker and the person for whom he works unless the collective agreement—

- (a) is in writing; and
- (b) contains a provision expressly stating that those terms shall or may be incorporated in such a contract; and
- (c) is reasonably accessible at his place of work to the worker to whom it applies and is available for him to consult during working hours; and
- (d) is one where each trade union which is a party to the agreement is an independent trade union;

and unless the contract with that worker expressly or impliedly incorporates those terms in the contract.

(5) Paragraph (4) shall have effect notwithstanding any provision to the contrary in any agreement (including a collective agreement or a contract with any worker).

#### *Union membership or recognition requirements in contracts*

#### **Prohibition on union membership requirements**

**27.—**(1) Any term or condition of a contract for the supply of goods or services is void in so far as it purports—

- (a) to require that the whole, or some part, of the work done for the purposes of the contract is to be done only by persons who are not members of trade unions or not members of a particular trade union; or
  - (b) to require that the whole, or some part, of such work is to be done only by persons who are members of trade unions or members of a particular trade union.
- (2) A person contravenes this paragraph if, on the ground of union membership, he—
- (a) fails, in a case where he maintains (in whatever form) a list of approved suppliers of goods or services or a list of persons from whom tenders for the supply of goods or services may be invited, to include the name of a particular person in that list;
  - (b) terminates a contract for the supply of goods or services; or
  - (c) does, in relation to a proposed contract for the supply of goods or services, any of the acts mentioned in paragraph (3).
- (3) The acts are—
- (a) excluding a particular person from the group of persons from whom tenders for the supply of the goods or services are invited;
  - (b) failing to permit a particular person to submit such a tender;
  - (c) otherwise determining not to enter into a contract with a particular person for the supply of the goods or services.



(4) For the purposes of paragraph (2)(a), a person (the “first person”) fails to include the name of another person (the “supplier”) in a list, on the ground of union membership, if the ground, or one of the grounds, for failing to include his name is either—

- (a) that, if the supplier were to enter into a contract with the first person for the supply of goods or services, work to be done for the purposes of the contract would, or would be likely to, be done by persons who were not members of trade unions or of a particular trade union; or
- (b) that, if the supplier were to enter into such a contract, work to be done for the purposes of the contract would, or would be likely to, be done by persons who were members of trade unions or of a particular trade union.

(5) For the purposes of paragraph (2)(b), a person terminates a contract on the ground of union membership if the ground, or one of the grounds, for terminating it is either—

- (a) that work done, or to be done, for the purposes of the contract has been, or is likely to be, done by persons who are not members of trade unions or of a particular trade union; or
- (b) that work done, or to be done, for the purposes of the contract has been, or is likely to be, done by persons who are members of trade unions or of a particular trade union.

(6) For the purposes of paragraph (2)(c), a person does an act on the ground of union membership if the ground, or one of the grounds, on which he does that act is either—

- (a) that, if the proposed contract were entered into with the person referred to in paragraph (3), work to be done for the purposes of the contract would, or would be likely to, be done by persons who are not members of trade unions or of a particular trade union; or
- (b) that, if the proposed contract were entered into with that person, work to be done for the purposes of the contract would, or would be likely to, be done by persons who are members of trade unions or of a particular trade union.

(7) Paragraph (2) does not create an offence but the obligation to comply with it is a duty owed to each of the following—

- (a) in a case falling within paragraph (2)(a), the person referred to in paragraph (4) as the supplier;
- (b) in a case falling within paragraph (2)(b), any other party to the contract;
- (c) in a case falling within paragraph (2)(c), the person referred to in paragraph (3); and
- (d) in any case, any other person who may be adversely affected by its contravention;

and any breach of that duty shall be actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).

### **Prohibition on union recognition requirements**

**28.**—(1) Any term or condition of a contract for the supply of goods or services is void in so far as it purports to require any party to the contract—

- (a) to recognise one or more trade unions (whether or not named in the contract) for the purpose of negotiating on behalf of workers, or any class of worker, employed by him; or
- (b) to negotiate or consult with, or with any official of, one or more trade unions (whether or not so named).

(2) A person contravenes this paragraph if, on the ground of union exclusion, he acts in a manner falling within paragraph (2)(a), (b) or (c) of Article 27.

(3) For the purposes of paragraph (2), a person acts on the ground of union exclusion if the ground or one of the grounds for his action is that the person against whom it is taken does not, or is not likely to, recognise, negotiate or consult as mentioned in paragraph (1).

(4) Paragraph (2) does not create an offence but the obligation to comply with it is a duty owed to each of the following—

(a) the person against whom the action is taken; and

(b) any other person who may be adversely affected by the contravention,

and any breach of that duty shall be actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).