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## STATUTORY INSTRUMENTS

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# 1992 No. 807 (N.I. 5)

## The Industrial Relations (Northern Ireland) Order 1992 <sup>F1</sup>

- - - - - 16th March 1992

**F1** functions transf. SR 1999/481

### PART I **N.I.** INTRODUCTORY

#### Title and commencement **N.I.**

- 1.—(1) This Order may be cited as the Industrial Relations (Northern Ireland) Order 1992.
- (2) This Order shall come into operation on such day or days as the Head of the Department of Economic Development may by order appoint<sup>F2</sup>.
- (3) Without prejudice to Article 107(3), an order under paragraph (2) may contain such transitional and supplementary provisions as appear to the Head of the Department of Economic Development to be necessary or expedient.

**F2** fully exercised by SR 1992/212

#### Interpretation **N.I.**

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>F3</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

[<sup>F4</sup>(1A) Articles 2(2), 144 and 145 (interpretation) of the Trade Union and Labour Relations (Northern Ireland) Order 1995 shall apply in relation to this Order as they apply in relation to that Order.]

(2) In this Order—

*Definitions rep. by 1995 NI 12*

[<sup>F4</sup>“agent”, in relation to a trade union or employers' association, means a banker or solicitor of, or any person employed as an auditor by, the union or association or any branch or section of the union or association;]

“the appointed day”, in any provision, means the day appointed under Article 1(2) for the coming into operation of that provision;

*Definition rep. by 1995 NI 12*

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“collective agreement” means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers' associations and relating to one or more of the matters mentioned in<sup>F4</sup> Article 96(1)];

“collective bargaining” means negotiations relating to or connected with one or more of the matters mentioned in<sup>F4</sup> Article 96(1)];

*Definition rep. by 1995 NI 12*

“the Companies Order” means the Companies (Northern Ireland) Order 1986<sup>F5</sup>;

*Definitions rep. by 1995 NI 12*

<sup>F4</sup>“financial affairs”, in relation to a trade union or employers' association, means affairs of the union or association relating to any fund which is applicable for the purposes of the union or association (including any fund of a branch or section of the union or association which is so applicable);]

“independent trade union” means a trade union which—

- (a) is not under the domination or control of an employer or a group of employers or of one or more employers' associations; and
- (b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control;

and, in relation to a trade union, “independence” and “independent” shall be construed accordingly;

*Definition rep. by 1995 NI 12*

“the Industrial Court” means the Industrial Court constituted under Article 91;

*Definitions rep. by 1995 NI 12*

“strike” means any concerted stoppage of work;

*Definitions rep. by 1995 NI 12*

*Paras.(3)#(9) rep. by 1995 NI 12*

(10) For the purposes of this Order any two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control; and in this Order “associated employer” shall be construed accordingly.

(11) For the purposes of this Order it is immaterial whether the law which (apart from this Order) governs any person's employment is the law of the United Kingdom, or of a part of the United Kingdom, or not.

<b>F3</b>	1954 c.33 (NI)
<b>F4</b>	1995 NI 12
<b>F5</b>	1986 NI 6

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## PART II **N.I.**

### DEFINITION, STATUS AND GENERAL REGULATION OF TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS

#### *Definition and status*

#### **Definition and status of trade union **N.I.****

3.—(1) In this Order “trade union” means an organisation (whether permanent or temporary) which either—

- (a) consists wholly or mainly of workers of one or more descriptions and is an organisation whose principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers' associations; or
- (b) consists wholly or mainly of—
  - (i) constituent or affiliated organisations which fulfil the conditions specified in subparagraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions); or
  - (ii) representatives of such constituent or affiliated organisations;

and in either case is an organisation whose principal purposes include the regulation of relations between workers and employers or between workers and employers' associations, or include the regulation of relations between its constituent or affiliated organisations.

(2) A trade union shall not be, or be treated as if it were, a body corporate, but—

- (a) it shall be capable of making contracts;
- (b) all property belonging to the trade union shall be vested in trustees in trust for the union;
- (c) it shall be capable of suing and being sued in its own name, whether in proceedings relating to property or founded on contract or tort or any other cause of action whatsoever;
- (d) proceedings for any offence alleged to have been committed by it or on its behalf may be brought against it in its own name; and
- (e) any judgment, order or award made in proceedings of any description brought against the trade union shall be enforceable by way of enforcement order under the Judgments Enforcement (Northern Ireland) Order 1981<sup>F6</sup>, punishment for contempt or otherwise, against any property held in trust for the trade union to the like extent and in the like manner as if the union were a body corporate.

(3) A trade union shall not be registered as a company under the Companies Order and accordingly any registration of a trade union under that Order (whenever effected) shall be void.

(4) A trade union shall not be registered under the Industrial and Provident Societies Act (Northern Ireland) 1969<sup>F7</sup> or the Friendly Societies Act (Northern Ireland) 1970<sup>F8</sup> and accordingly any registration of a trade union under either of those Acts (whenever effected) shall be void.

(5) The purposes of any trade union shall not, by reason only that they are in restraint of trade, be unlawful so as—

- (a) to make any member of the trade union liable to criminal proceedings for conspiracy or otherwise; or
- (b) to make any agreement or trust void or voidable;

nor shall any rule of a trade union be unlawful or unenforceable by reason only that it is in restraint of trade.

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(6) Article 113 of the Judgments Enforcement (Northern Ireland) Order 1981<sup>F9</sup> (sequestration order against company in contempt) shall apply to a trade union as it applies to a company.

<b>F6</b>	1981 NI 6
<b>F7</b>	1969 c.24 (NI)
<b>F8</b>	1970 c.31 (NI)
<b>F9</b>	1981 NI 6

### Definition and status of employers' association **N.I.**

4.—(1) Subject to paragraph (2), in this Order “employers' association” means an organisation (whether permanent or temporary) which either—

- (a) consists wholly or mainly of employers or individual proprietors of one or more descriptions and is an organisation whose principal purposes include the regulation of relations between employers of that description or those descriptions and workers or trade unions; or
- (b) consists wholly or mainly of—
  - (i) constituent or affiliated organisations which fulfil the conditions specified in subparagraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions); or
  - (ii) representatives of such constituent or affiliated organisations;

and in either case is an organisation whose principal purposes include the regulation of relations between employers and workers or between employers and trade unions, or include the regulation of relations between its constituent or affiliated organisations.

(2) References in this Order to an employers' association include references to a combination of employers and employers' associations.

(3) An employers' association may be either a body corporate or an unincorporated association.

(4) Where an employers' association is unincorporated—

- (a) it shall be capable of making contracts;
- (b) all property belonging to the employers' association shall be vested in trustees in trust for the association;
- (c) it shall be capable of suing and being sued in its own name, whether in proceedings relating to property or founded on contract or tort or any other cause of action whatsoever;
- (d) proceedings for any offence alleged to have been committed by it or on its behalf may be brought against it in its own name; and
- (e) any judgment, order or award made in proceedings of any description brought against the employers' association shall be enforceable by way of enforcement order under the Judgments Enforcement (Northern Ireland) Order 1981<sup>F10</sup>, punishment for contempt or otherwise, against any property held in trust for the employers' association to the like extent and in the like manner as if the association were a body corporate.

*Para.(5) rep. by 2003 NI 17*

(6) The purposes of an unincorporated employers' association and, in so far as they relate to the regulation of relations between employers and workers or trade unions, the purposes of an employers' association which is a body corporate, shall not, by reason only that they are in restraint of trade, be unlawful so as—

- (a) to make any member of the association liable to criminal proceedings for conspiracy or otherwise; or

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(b) to make any agreement or trust void or voidable;

nor shall any rule of an unincorporated employers' association or, in so far as it so relates, any rule of an employers' association which is a body corporate be unlawful or unenforceable by reason only that it is in restraint of trade.

(7) Article 113 of the Judgments Enforcement (Northern Ireland) Order 1981 (sequestration order against company in contempt) shall apply to an unincorporated employers' association as it applies to a company.

**F10** 1981 NI 6

### *Listing and certification*

#### **Lists of trade unions and employers' associations** **N.I.**

5.—(1) The Certification Officer shall maintain a list of trade unions and a list of employers' associations containing the names of those organisations which are entitled to have their names entered therein under the following provisions of this Article.

(2) The Certification Officer shall enter in the list of trade unions or employers' associations, as the case may be, the name of every organisation of workers or of employers which immediately before the appointed day was registered (whether by that or any other name) in Northern Ireland as a trade union under the Trade Union Acts (Northern Ireland) 1871 to 1965, except an organisation which appears to him not to be a trade union or, as the case may be, employers' association within the meaning of this Order.

(3) Any organisation of workers or of employers, whenever formed, whose name is not entered in the relevant list may apply to the Certification Officer to have its name so entered and, subject to paragraph (5), the Certification Officer shall, if satisfied that the organisation is a trade union or employers' association and that paragraph (4) has been complied with, enter the name of that organisation in the relevant list.

(4) An application under paragraph (3) shall be made in such form and manner as the Certification Officer may require and be accompanied by a fee of £45 or such other fee as may be prescribed by regulations and also by—

- (a) a copy of the rules of the organisation;
- (b) a list of its officers;
- (c) the address of its head or main office; and
- (d) the name under which it is or is to be known.

(5) The Certification Officer shall not under paragraph (3) enter the name of an organisation in the relevant list if that name is—

- (a) the same as a name under which another organisation was registered as a trade union under the Trade Union Acts (Northern Ireland) 1871 to 1965 immediately before the appointed day or is for the time being entered in either list maintained under this Article or in<sup>F11</sup> the list of trade unions or the list of employers' associations kept under the Trade Union and Labour Relations (Consolidation) Act 1992; or
- (b) a name so nearly resembling any such name as to be likely to deceive the public; or
- (c) for any other reason likely to deceive the public.

(6) If it appears to the Certification Officer, whether on application made to him or otherwise, that an organisation whose name is entered in the relevant list is not a trade union or employers' association he may remove its name from the relevant list, but shall not do so without giving the

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organisation notice of his intention to do so and without considering any representations made to him by the organisation during a period specified in the notice (being not less than 28 days beginning with the date of the notice).

- (7) The Certification Officer shall remove the name of an organisation from the relevant list—
- (a) if he is requested by the organisation to do so; or
  - (b) if he is satisfied that the organisation has ceased to exist.

[<sup>F12</sup>(8) An organisation aggrieved by the refusal of the Certification Officer to enter its name in the relevant list, or by a decision of his to remove its name from that list, may appeal to the High Court on any question of law arising in the proceedings before, or arising from the decision of, the Certification Officer.]

(9) The Certification Officer shall at all reasonable hours keep available for public inspection (free of charge) copies of the lists of trade unions and employers' associations, as for the time being in force, and a copy of each list shall be included in the annual report made by the Certification Officer under Article 69(7).

(10) The fact that the name of an organisation is included in the list of trade unions or employers' associations maintained under this Article shall be evidence that the organisation is a trade union or, as the case may be, an employers' association, and on the application of the organisation the Certification Officer shall issue it with a certificate that its name is included in the relevant list; and any document purporting to be such a certificate shall be evidence that the name of the organisation is entered in the relevant list.

(11) The fact that the name of an organisation is included in the list of trade unions<sup>F11</sup> or the list of employers' associations kept under the Trade Union and Labour Relations (Consolidation) Act 1992] shall be evidence that the organisation is a trade union or, as the case may be, an employers' association; and any document purporting to be a certificate issued under<sup>F11</sup> section 2(5) or 123(5) of that Act] shall be evidence that the name of the organisation is entered in the relevant list.

**F11** 1992 c.52  
**F12** 2004 NI 19

## **Certification as independent trade union** **N.I.**

6.—(1) Subject to paragraph (12), a trade union whose name is entered on the list of trade unions maintained under Article 5 may apply to the Certification Officer for a certificate that it is independent.

(2) An application under paragraph (1) shall be made in such form and manner as the Certification Officer may require and shall be accompanied by a fee of £305 or such other fee as may be prescribed by regulations.

(3) The Certification Officer shall maintain a record showing details of all applications made under paragraph (1) and shall keep it available for public inspection (free of charge) at all reasonable hours.

(4) If an application is made, or by virtue of paragraph (13) is treated as being made, by a trade union whose name is not entered on the list of trade unions maintained under Article 5, the Certification Officer shall refuse a certificate of independence and shall enter that refusal on the record maintained in accordance with paragraph (3).

- (5) In the case of an application not falling within paragraph (4), the Certification Officer shall—
- (a) determine whether the applicant trade union is independent;

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- (b) enter his decision and the date of his decision on the record maintained in accordance with paragraph (3); and
- (c) if he determines that the trade union is independent, issue a certificate accordingly, or, if he determines that it is not, give reasons for his decision.

(6) The Certification Officer shall not make any determination under paragraph (5) whether a trade union is independent until one month after the application has been entered on the record in accordance with paragraph (3), and before making such a determination he shall make such inquiries as he thinks fit and shall take into account any relevant information submitted to him by any person.

(7) The Certification Officer may at any time withdraw a certificate, in accordance with paragraph (8), if he is of the opinion that the trade union in question is no longer independent.

- (8) Where the Certification Officer proposes to withdraw a certificate under paragraph (7)—
- (a) he shall notify the trade union concerned of the proposal;
  - (b) paragraphs (3), (5) and (6) shall apply (with appropriate modifications) to such a proposal as they apply to an application under paragraph (1); and
  - (c) the Certification Officer shall confirm or withdraw the certificate accordingly.

[<sup>F13</sup>(9) A trade union aggrieved by the refusal of the Certification Officer to issue it with a certificate of independence or by a decision of his to withdraw its certificate may appeal to the High Court on any question of law arising in the proceedings before, or arising from the decision of, the Certification Officer.]

(10) Where the name of an organisation is removed from the list of trade unions maintained under Article 5, the Certification Officer shall cancel any certificate of independence in force in respect of that organisation by entering on the record the fact that the organisation's name has been removed from the said list and that the certificate is accordingly cancelled.

(11) A certificate of independence which is in force, or, as the case may be, a refusal, withdrawal or cancellation of a certificate entered on the record, shall be conclusive evidence for all purposes that the trade union in question is, or, as the case may be, is not, independent; and a document purporting to be such a certificate or a certified copy of such an entry on the record, and to be signed by the Certification Officer or by any person authorised to act on his behalf, shall be taken to be such a certificate or a true copy of such an entry unless the contrary is proved.

(12) The preceding provisions of this Article do not apply to a trade union which has its head or main office in Great Britain, but a certificate of independence which is in force under [<sup>F14</sup> section 6 of the Trade Union and Labour Relations (Consolidation) Act 1992], or, as the case may be, a refusal, withdrawal or cancellation of a certificate entered on the record maintained under that section shall, in relation to such a trade union, be conclusive evidence for all purposes that the trade union in question is, or, as the case may be, is not, independent; and a document purporting to be such a certificate or a certified copy of such an entry on that record, and to be signed by the Certification Officer appointed under [<sup>F15</sup> section 254] of that Act or by any person authorised to act on his behalf, shall be taken to be such a certificate or a true copy of such an entry unless the contrary is proved.

(13) If in any proceedings before any court, the Agency, the Industrial Court or an industrial tribunal a question arises as to whether a trade union is independent and there is no certificate of independence in force as mentioned in paragraph (11) or (12) and no refusal, withdrawal or cancellation of a certificate recorded as so mentioned in relation to that trade union—

- (a) the question shall not be decided in those proceedings, and those proceedings shall be stayed until a certificate has been issued or refused under this Article or, as the case may be, [<sup>F14</sup> section 6 of the Trade Union and Labour Relations (Consolidation) Act 1992]; and
- (b) if the trade union in question does not have its head or main office in Great Britain, the body before whom the proceedings are stayed may refer the question as to the independence



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of that trade union to the Certification Officer who shall proceed in accordance with paragraphs (3) to (6) as if the reference were an application by that trade union.

F13 2004 NI 19  
F14 1992 c.52  
F15 1995 NI 12

### Property

#### Property of trade unions and unincorporated employers' associations **N.I.**

7.—(1) Sections 38 and 39 of the Trustee Act (Northern Ireland) 1958<sup>F16</sup> (vesting of property on retirement of trustee or appointment of new trustee) shall, in their application to trustees in whom any property is vested in trust for a trade union or an unincorporated employers' association to which this paragraph applies, each have effect as if for any reference to a deed there were substituted a reference to an instrument in writing and as if in subsection (4) of section 39 of the said Act of 1958 paragraphs (a) and (c) were omitted.

(2) Paragraph (1) applies to a trade union and to an unincorporated employers' association whose name is (in either case) for the time being entered in the list of trade unions or of employers' associations under Article 5.

(3) An instrument in writing appointing a new trustee of a trade union or unincorporated employers' association to which paragraph (1) applies is referred to in this Article as an “instrument of appointment” and an instrument in writing discharging a trustee of such a union or association is referred to as an “instrument of discharge”; and for the purposes of this Article (and the sections of the Act of 1958 applied by paragraph (1)), where a trustee of such a union or association is appointed or discharged by a resolution taken by or on behalf of the union or association, the written record of the resolution shall be treated as if it were the instrument in writing appointing or, as the case may be, discharging that trustee.

(4) Where by any statutory provision the transfer of securities of any description is required to be effected or recorded by means of entries in a register, then, if—

- (a) there is produced to the person who is authorised or required to keep the register, a copy of an instrument of appointment or of an instrument of discharge which contains or has attached to it a list identifying the securities of that description held in trust for the union or association to which the instrument relates at the date of the appointment or discharge; and
- (b) it appears to that person that any of the securities so identified are included in the register kept by him,

he shall, notwithstanding anything in Article 193(1) or 368 of the Companies Order or any other statutory provision regulating the keeping of the register, make such entries as may be necessary to give effect to the instrument of appointment or of discharge.

(5) A document which purports to be a copy of an instrument of appointment or of an instrument of discharge containing or having attached to it such a list and to be certified to be a copy of such an instrument in accordance with paragraph (6) shall be taken to be a copy of such an instrument unless the contrary is proved.

(6) The certificate referred to in paragraph (5) shall be given by the president and general secretary of the union or association to which the instrument relates and, in the case of an instrument to which the list of securities is attached, shall appear both on the instrument and on the list.

(7) Nothing done for the purposes of or in pursuance of paragraph (4) shall be taken to affect any person with notice of any trust or to impose on any person a duty to inquire into any matter.



F16 1958 c.23 (NI)

## Use of trade union funds for indemnifying unlawful conduct **N.I.**

- 8.—(1) It shall be unlawful for any of the property of a trade union to be applied—
- (a) in or towards the payment for any individual, or securing the payment for any individual, of any penalty which has been or may be imposed on him for a relevant offence or for contempt of court; or
  - (b) in or towards the provision of anything for indemnifying any individual in respect of any penalty which has been or may be imposed on him for any such offence or for contempt of court.
- (2) Where any property of a trade union is applied in contravention of paragraph (1) for the benefit of a particular individual on whom a penalty has been or may be imposed—
- (a) in the case of a payment, an amount equal to the amount of the payment shall be recoverable by the union from that individual; and
  - (b) in the case of an application of property otherwise than by the making of a payment, that individual shall be liable to account to the union for the value of the property.
- (3) A member of a trade union who claims that a failure by that union to bring or continue any proceedings by virtue of paragraph (2) is unreasonable may apply to the High Court for an authorisation under this paragraph; and where, on such an application, the High Court is satisfied that the failure is unreasonable, the court may make an order authorising the applicant to bring or continue the proceedings on the union's behalf and at the union's expense.
- (4) In this Article—
- “penalty”, in relation to a relevant offence, includes an order to pay compensation and an order for the forfeiture of any property, and references to the imposition of a penalty for an offence shall be construed accordingly;
- “relevant offence” means any offence other than an offence for the time being designated by order made by the Department as an offence in relation to which this Article does not apply.
- (5) Paragraph (1) shall be without prejudice to any statutory provision, rule of law or provision of the rules of a trade union which, apart from this Article, makes it unlawful for the property of a trade union to be applied in a particular way; and paragraphs (2) and (3) shall be without prejudice to any remedy available otherwise than under this Article to a trade union, the trustees of its property or any of its members in respect of any unlawful application of the union's property.
- (6) In this Article and Article 9 “member” in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes any member of any of the constituent or affiliated organisations.

## Remedy against trustees of trade union for unlawful use of property **N.I.**

- 9.—(1) Subject to paragraph (2), a member of a trade union who claims that the trustees of the union's property—
- (a) have so carried out their functions, or are proposing so to carry out their functions, as to cause or permit any unlawful application of the union's property; or
  - (b) have complied, or are proposing to comply, with any unlawful direction which has been or may be given, or purportedly given, to them under the rules of the union,
- may apply to the High Court for an order under this Article.

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(2) A person shall not be entitled to make an application under paragraph (1) in a case relating to property which has already been unlawfully applied or to an unlawful direction that has already been complied with, unless he was a member of the union at the time when the property was applied or, as the case may be, the direction complied with.

(3) Subject to paragraph (4), where, on an application under paragraph (1), the High Court is satisfied that the claim is well-founded, the court shall make such order as it considers appropriate; and, without prejudice to the generality of its powers under this paragraph, the powers of the court on such an application shall include—

- (a) power to require the trustees of a trade union (if necessary, on behalf of the union) to take all such steps as may be specified in the order for protecting or recovering the property of the union;
- (b) power to appoint a receiver of the property of a trade union;
- (c) power to remove one or more of the trustees of any such property; and
- (d) power to grant any such interlocutory relief as it considers appropriate.

(4) Where the High Court makes an order under this Article—

- (a) in a case in which property of a trade union has been applied in contravention of the order of any court or in compliance with any direction given in contravention of the order of any court; or
- (b) in a case in which the trustees in question were proposing to apply property in contravention of the order of any court or to comply with any direction the giving of which was or, as the case may be, would have been in contravention of the order of any court,

the order of the court under this Article shall remove all the trustees except any trustee who satisfies the court that there is a good reason for allowing him to remain a trustee.

(5) This Article shall be without prejudice to any remedy available otherwise than under this Article in respect of any breach of trust by the trustees of a trade union's property.

#### *Records and returns*

#### **Duty to keep accounting records** **N.I.**

**10.**—(1) This Article applies to every trade union and every employers' association whose head or main office is situated in Northern Ireland except one which consists wholly or mainly of representatives of constituent or affiliated organisations (of the description referred to in Article 3(1)(b)(ii) or 4(1)(b)(ii)).

(2) Every trade union and every employers' association to which this Article applies shall—

- (a) cause to be kept proper accounting records with respect to its transactions and its assets and liabilities; and
- (b) establish and maintain a satisfactory system of control of its accounting records, its cash holdings and all its receipts and payments.

(3) For the purposes of sub-paragraph (a) of paragraph (2) proper accounting records shall not be taken to be kept with respect to the matters mentioned in that sub-paragraph if there are not kept such records as are necessary to give a true and fair view of the state of the affairs of the trade union or employers' association and to explain its transactions.

(4) Where a trade union or employers' association consists of or includes branches or sections, then—

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- (a) any duty falling upon the union or association in relation to a branch or section under this Article shall be treated as having been discharged to the extent to which a branch or section discharges that duty instead of the union or association; and
- (b) any duty falling upon a branch or section under this Article by reason of its being a trade union or employers' association shall be treated as having been discharged to the extent to which the union or association of which it is a branch or section discharges that duty instead of the branch or section.

### **Duties as to annual returns, auditors and members' superannuation schemes** **N.I.**

**11.**—(1) This Article applies to every trade union and every employers' association to which Article 10 applies except a union or association which has been in existence for less than 12 months.

(2) Every trade union and every employers' association to which this Article applies shall send the Certification Officer as respects every calendar year a return relating to its affairs.

(3) Every trade union and every employers' association to which this Article applies shall appoint an auditor or auditors to audit the accounts contained in its annual return.

(4) Every trade union and every employers' association to which this Article applies shall at the request of any person, supply him with a copy of its rules and of its most recent annual return either free of charge or on payment of a reasonable charge.

(5) The Certification Officer shall at all reasonable hours keep available for public inspection, either free of charge or on payment of a reasonable charge, copies of all annual returns sent to him under this Article.

(6) The provisions of Part I of Schedule 1 shall have effect with respect to the annual return and to the qualifications, appointment, removal and functions of auditors of trade unions and employers' associations to which this Article applies.

(7) The provisions of Part II of Schedule 1 shall have effect with respect to members' superannuation schemes maintained or to be maintained by trade unions or employers' associations to which this Article applies.

(8) Where a trade union or employers' association consists of or includes branches or sections, then—

- (a) any duty falling upon the union or association in relation to a branch or section under this Article or Schedule 1 shall be treated as having been discharged to the extent to which a branch or section discharges that duty instead of the union or association; and
- (b) any duty falling upon a branch or section under this Article or Schedule 1 by reason of its being a trade union or employers' association shall be treated as having been discharged to the extent to which the union or association of which it is a branch or section discharges that duty instead of the branch or section.

(9) Where an employers' association to which this Article applies is a company within the meaning of the Companies Order—

- (a) paragraph (3) above and the provisions of paragraphs 6 to 15 of Schedule 1 do not apply; and
- (b) the rights and powers conferred, and duties imposed, by paragraphs 16 to 21 of that Schedule belong to the auditors of the company appointed under Chapter V of Part XII of that Order.

### **[<sup>F17</sup>Statement to members following annual return** **N.I.**

**11A.**—(1) A trade union to which Article 11 applies shall take all reasonable steps to secure that, not later than the end of the period of eight weeks beginning with the day on which the annual return

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of the union is sent to the Certification Officer, all the members of the union are provided with the statement required by this Article by any of the methods allowed by paragraph (2).

(2) Those methods are—

- (a) the sending of individual copies of the statement to members; or
- (b) any other means (whether by including the statement in a publication of the union or otherwise) which it is the practice of the union to use when information of general interest to all its members needs to be provided to them.

(3) The statement required by this Article shall specify—

- (a) the total income and expenditure of the trade union for the period to which the return relates,
- (b) how much of the income of the union for that period consisted of payments in respect of membership,
- (c) the total income and expenditure for that period of any political fund of the union, and
- (d) the salary paid to and other benefits provided to or in respect of—
  - (i) each member of the executive (within the meaning of paragraph 4A of Schedule 1),
  - (ii) the president, and
  - (iii) the general secretary,
 by the trade union during that period.

(4) The requirement imposed by this Article is not satisfied if the statement specifies anything inconsistent with the contents of the return.

(5) The statement—

- (a) shall also set out in full the report made by the auditor or auditors of the union on the accounts contained in the return and state the name and address of that auditor or of each of those auditors, and
- (b) may include any other matter which the union considers may give a member significant assistance in making an informed judgment about the financial activities of the union in the period to which the return relates.

(6) The statement—

(a) shall also include the following statement—

“A member who is concerned that some irregularity may be occurring, or has occurred, in the conduct of the financial affairs of the union may take steps with a view to investigating further, obtaining clarification and, if necessary, securing regularisation of that conduct.

The member may raise any such concern with such one or more of the following as it seems appropriate to raise it with: the officials of the union, the trustees of the property of the union, the auditor or auditors of the union, the Certification Officer for Northern Ireland (who is an independent officer appointed by the Department of Economic Development) and the police.

Where a member believes that the financial affairs of the union have been or are being conducted in breach of the law or in breach of rules of the union and contemplates bringing civil proceedings against the union or responsible officials or trustees, he<sup>F18</sup> should] consider obtaining independent legal advice.” ; and

- (b) may include such other details of the steps which a member may take for the purpose mentioned in the statement set out above as the trade union considers appropriate.

(7) A trade union shall send to the Certification Officer a copy of the statement which is provided to its members in pursuance of this Article as soon as is reasonably practicable after it is so provided.

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(8) Where the same form of statement is not provided to all the members of a trade union, the union shall send to the Certification Officer in accordance with paragraph (7) a copy of each form of statement provided to any of them.

(9) If at any time during the period of two years beginning with the day referred to in paragraph (1) any member of the trade union requests a copy of the statement required by this Article, the union shall, as soon as practicable, furnish him with such a copy free of charge.

(10) Where the duty falling on a trade union under Article 11 to send to the Certification Officer a return relating to its affairs is treated as discharged by the union by virtue of paragraph (8) of that Article, the duties imposed by this Article in relation to the return shall be treated as duties of the branch or section of the union, or the trade union of which it is a branch or section, by which that duty is in fact discharged.]

**F17** 1995 NI 12

**F18** 1999 NI 9

## **Returns, etc., by trade unions and employers' associations outside Northern Ireland** **N.I.**

**12.—**(1) Any trade union or employers' association carrying on business in Northern Ireland and being a trade union or employers' association to which<sup>F19</sup> section 32 of the Trade Union and Labour Relations (Consolidation) Act 1992] applies shall,—

- (a) within one month of the date on which it sends an annual return under<sup>F19</sup> subsection (1)] of that section, send to the Certification Officer a copy, certified in such manner as the Certification Officer may require, of that annual return; and
- (b) before 1st June in every year, send to the Certification Officer a statement setting forth, in relation to the business carried on by the trade union or employers' association in Northern Ireland in the last preceding calendar year, such particulars of its receipts and payments, and such other information, as the Certification Officer may require.

(2) Any trade union or employers' association carrying on business in Northern Ireland but having its head or main office outside the United Kingdom shall, before 1st June in every year, send to the Certification Officer a statement setting forth, in relation to the business carried on in Northern Ireland in the last preceding calendar year, such particulars of its receipts and payments, and such other information, as the Certification Officer may require.

(3) Every trade union and employers' association carrying on business in Northern Ireland but not having its head or main office in Northern Ireland shall furnish to the Certification Officer, before 1st June in every year, the names and addresses of some one or more persons resident in Northern Ireland authorised to accept on its behalf service of process and any notices required to be served on it.

(4) Any process or notice required to be served on a trade union or employers' association to which paragraph (3) applies shall be sufficiently served if—

- (a) it is addressed to any person whose name has been furnished to the Certification Officer under that paragraph and left at, or sent by post to, the address which has been so furnished; or
- (b) where—
  - (i) any such trade union or employers' association makes default in furnishing to the Certification Officer the name and address of a person resident in Northern Ireland who is authorised to accept on its behalf service of process or notices; or
  - (ii) at any time all the persons whose names and addresses have been so furnished are dead, or have ceased to so reside, or refuse to accept service on behalf of the trade union or employers' association, or for any reason cannot be served,

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it is left at, or sent by post to, any place where the business of the trade union or employers' association is carried on in Northern Ireland.

(5) The Certification Officer, if in any particular case he considers it appropriate to do so, may direct that the date before which a trade union or employers' association must comply with paragraph (1)(a) or (b), (2) or (3) shall be such other date (whether before or after that specified in paragraph (1)(a) or (b), (2) or (3)) as may be specified in the direction.

(6) The Certification Officer shall at all reasonable hours keep available for public inspection, either free of charge or on payment of a reasonable charge, copies of all documents sent to him under this Article.

(7) Paragraph (8) of Article 11 applies for the purposes of this Article as it applies for the purposes of Article 11.

**F19** 1992 c.52

*[<sup>F20</sup>Investigation of financial affairs]*

**F20** 1995 NI 12

**[<sup>F21</sup>Power of Certification Officer to require production of documents etc. N.I.]**

**12A.**—(1) The Certification Officer may at any time, if he thinks there is good reason to do so, give directions to a trade union or employers' association to which Article 11 applies, or a branch or section of such a trade union or employers' association, requiring it to produce such relevant documents as may be specified in the directions; and the documents shall be produced at such time and place as may be so specified.

(2) The Certification Officer may at any time, if he thinks there is good reason to do so, authorise a member of his staff or any other person, on producing (if so required) evidence of his authority, to require a trade union or employers' association to which Article 11 applies, or a branch or section of such a trade union or employers' association, to produce forthwith to the member of staff or other person such relevant documents as the member of staff or other person may specify.

(3) Where the Certification Officer, or a member of his staff or any other person, has power to require the production of documents by virtue of paragraph (1) or (2), the Certification Officer, member of staff or other person has the like power to require production of those documents from any person who appears to the Certification Officer, member of staff or other person to be in possession of them.

(4) Where such a person claims a lien on documents produced by him, the production is without prejudice to the lien.

(5) The power under this Article to require the production of documents includes power—

(a) if the documents are produced—

(i) to take copies of them or extracts from them, and

(ii) to require the person by whom they are produced, or any person who is or has been an official or agent of the trade union or employers' association, to provide an explanation of any of them; and

(b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

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(6) In paragraphs (1) and (2) “relevant documents”, in relation to a trade union or employers' association or a branch or section of a trade union or employers' association, means accounting documents, and documents of any other description, which may be relevant in considering the financial affairs of the trade union or employers' association.

(7) A person shall not be excused from providing an explanation or making a statement in compliance with a requirement imposed under paragraph (5) on the ground that to do so would tend to expose him to proceedings for an offence; but an explanation so provided or statement so made may only be used in evidence against the person by whom it is made or provided—

- (a) on a prosecution for an offence under Article 13(9) (false explanations and statements), or
- (b) on a prosecution for some other offence where in giving evidence the person makes a statement inconsistent with it.]

F21 1995 NI 12

## [<sup>F22</sup>Investigations by inspectors **N.I.**

**12B.—**(1) The Certification Officer may appoint one or more members of his staff or other persons as an inspector or inspectors to investigate the financial affairs of a trade union or employers' association to which Article 11 applies and to report on them in such manner as he may direct.

(2) The Certification Officer may only make such an appointment if it appears to him that there are circumstances suggesting—

- (a) that the financial affairs of the trade union or employers' association are being or have been conducted for a fraudulent or unlawful purpose,
- (b) that persons concerned with the management of those financial affairs have, in connection with that management, been guilty of fraud, misfeasance or other misconduct,
- (c) that the trade union or employers' association has failed to comply with any duty imposed on it by this Order in relation to its financial affairs, or
- (d) that a rule of the union or association relating to its financial affairs has not been complied with.

(3) Where an inspector is, or inspectors are, appointed under this Article it is the duty of all persons who are or have been officials or agents of the trade union or employers' association—

- (a) to produce to the inspector or inspectors all relevant documents which are in their possession,
- (b) to attend before the inspector or inspectors when required to do so, and
- (c) otherwise to give the inspector or inspectors all assistance in connection with the investigation which they are reasonably able to give.

(4) Where any person (whether or not within paragraph (3)) appears to the inspector or inspectors to be in possession of information relating to a matter which he considers, or they consider, to be relevant to the investigation, the inspector or inspectors may require him—

- (a) to produce to the inspector or inspectors any relevant documents relating to that matter,
- (b) to attend before the inspector or inspectors, and
- (c) otherwise to give the inspector or inspectors all assistance in connection with the investigation which he is reasonably able to give;

and it is the duty of the person to comply with the requirement.



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(5) In paragraphs (3) and (4) “relevant documents”, in relation to an investigation of the financial affairs of a trade union or employers' association, means accounting documents, and documents of any other description, which may be relevant to the investigation.

(6) A person shall not be excused from providing an explanation or making a statement in compliance with paragraph (3) or a requirement imposed under paragraph (4) on the ground that to do so would tend to expose him to proceedings for an offence; but an explanation so provided or statement so made may only be used in evidence against the person by whom it is provided or made—

- (a) on a prosecution for an offence under Article 13(9) (false explanations and statements), or
- (b) on a prosecution for some other offence where in giving evidence the person makes a statement inconsistent with it.]

F22 1995 NI 12

[<sup>F23</sup> **Inspectors' reports etc.** **N.I.**]

**12C.**—(1) An inspector or inspectors appointed under Article 12B—

- (a) may, and if so directed by the Certification Officer shall, make interim reports, and
- (b) on the conclusion of their investigation shall make a final report,

to the Certification Officer.

(2) Any report under paragraph (1) shall be written or printed, as the Certification Officer directs.

(3) An inspector or inspectors appointed under Article 12B may at any time, and if so directed by the Certification Officer shall, inform the Certification Officer of any matters coming to his or their knowledge as a result of the investigation.

(4) The Certification Officer may direct an inspector or inspectors appointed under Article 12B to take no further steps in the investigation, or to take only such further steps as are specified in the direction, if—

- (a) it appears to the Certification Officer that matters have come to light in the course of the investigation which suggest that a criminal offence has been committed and those matters have been referred to the appropriate prosecuting authority, or
- (b) it appears to the Certification Officer appropriate to do so in any other circumstances.

(5) Where an investigation is the subject of a direction under paragraph (4), the inspector or inspectors shall make a final report to the Certification Officer only where the Certification Officer directs him or them to do so at the time of the direction under that paragraph or subsequently.

(6) The Certification Officer shall publish a final report made to him under this Article.

(7) The Certification Officer shall furnish a copy of such a report free of charge—

- (a) to the trade union or employers' association which is the subject of the report,
- (b) to any auditor of that trade union or employers' association or of any branch or section of the union or association, if he requests a copy before the end of the period of three years beginning with the day on which the report is published, and
- (c) to any member of the trade union or employers' association if—
  - (i) he has complained to the Certification Officer that there are circumstances suggesting any of the states of affairs specified in Article 12B(2)(a) to (d),
  - (ii) the Certification Officer considers that the report contains findings which are relevant to the complaint, and

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(iii) the member requests a copy before the end of the period of three years beginning with the day on which the report is published.

(8) A copy of any report under this Article, certified by the Certification Officer to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report; and a document purporting to be a certificate of the Certification Officer under this paragraph shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.]

**F23** 1995 NI 12

[<sup>F24</sup>**Expenses of investigations** **N.I.**

**12D.**—(1) The expenses of an investigation under Article 12B shall be defrayed in the first instance by the Certification Officer.

(2) For the purposes of this Article there shall be treated as expenses of an investigation, in particular, such reasonable sums as the Certification Officer may determine in respect of general staff costs and overheads.

(3) A person who is convicted on a prosecution instituted as a result of the investigation may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the order.]

**F24** 1995 NI 12

[<sup>F25</sup>**Articles 12A and 12B: supplementary** **N.I.**

**12E.**—(1) Where—

- (a) a report of the auditor or auditors of a trade union or employers' association, or a branch or section of a trade union or employers' association, on the accounts audited by him or them and contained in the annual return of the union or association, or branch or section—
  - (i) does not state without qualification that the accounts give a true and fair view of the matters to which they relate, or
  - (ii) includes a statement in compliance with paragraph 20 of Schedule 1, or
- (b) a member of a trade union or employers' association has complained to the Certification Officer that there are circumstances suggesting any of the states of affairs specified in Article 12B(2)(a) to (d),

the Certification Officer shall consider whether it is appropriate for him to exercise any of the powers conferred on him by Articles 12A and 12B.

(2) If in a case where a member of a trade union or employers' association has complained as mentioned in paragraph (1)(b) the Certification Officer decides not to exercise any of the powers conferred by those Articles he shall, as soon as reasonably practicable after making a decision not to do so, notify the member of his decision and, if he thinks fit, of the reasons for it.

(3) Nothing in Article 12A or 12B—

- (a) requires or authorises anyone to require the disclosure by a person of information which he would in an action in the High Court be entitled to refuse to disclose on grounds of legal professional privilege except, if he is a lawyer, the name and address of his client, or
- (b) requires or authorises anyone to require the production by a person of a document which he would in such an action be entitled to refuse to produce on such grounds.

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(4) Nothing in Article 12A or 12B requires or authorises anyone to require the disclosure of information or the production of documents in respect of which the person to whom the requirement would relate owes an obligation of confidence by virtue of carrying on the business of banking unless—

- (a) the person to whom the obligation is owed is the trade union or employers' association, or any branch or section of the union or association, concerned or a trustee of any fund concerned, or
  - (b) the person to whom the obligation of confidence is owed consents to the disclosure or production.
- (5) In Articles 12A and 12B and this Article—
- (a) references to documents include information recorded in any form, and
  - (b) in relation to information recorded otherwise than in legible form, references to its production are to the production of a copy of the information in legible form.]

**F25** 1995 NI 12

## Offences **N.I.**

**13.**—(1) If a trade union or an employers' association refuses or wilfully neglects to perform a duty imposed on it by or under any of the provisions of<sup>[F26]</sup> Articles 10 to 12] or Schedule 1 the trade union or employers' association shall be guilty of an offence.

(2) Subject to paragraph (3), any offence committed by a trade union or an employers' association under paragraph (1) shall be deemed to have been also committed by—

- (a) every officer of that trade union or employers' association who is bound by the rules of the union or association to discharge on its behalf the duty breach of which constitutes that offence; or
- (b) if there is no such officer, every member of the<sup>[F27]</sup> executive] of the union or association.

(3) In any proceedings brought against an officer or member by virtue of paragraph (2) in respect of any breach of duty, it shall be a defence for him to prove that he had reasonable cause to believe, and did believe, that some other person who was competent to discharge that duty was authorised to discharge it instead of him and had discharged it or would do so.

(4) A person who wilfully alters or causes to be altered a document which is required for the purposes of any of the provisions of<sup>[F26]</sup> Article 10 to 12] or Schedule 1, with intent to falsify the document or to enable a trade union or employers' association to evade any of those provisions, shall be guilty of an offence.

<sup>[F26]</sup>(5) If a person contravenes any duty, or requirement imposed, under Article 12A or 12B he commits an offence.

(6) In any proceedings brought against a person in respect of a contravention of a requirement imposed under Article 12A(3) or 12B(4) to produce documents it is a defence for him to prove—

- (a) that the documents were not in his possession; and
- (b) that it was not reasonably practicable for him to comply with the requirement.

(7) If an official or agent of a trade union or employers' association—

- (a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of, a document relating to the financial affairs of the trade union or employers' association; or
- (b) makes, or is privy to the making of, a false entry in any such document,

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he commits an offence unless he proves that he had no intention to conceal the financial affairs of the trade union or employers' association or to defeat the law.

(8) If such a person fraudulently—

- (a) parts with, alters or deletes anything in any such document; or
- (b) is privy to the fraudulent parting with, fraudulent alteration of or fraudulent deletion in, any such document,

he commits an offence.

(9) If a person in purported compliance with a duty, or requirement imposed, under Article 12A or 12B to provide an explanation or make a statement—

- (a) provides or makes an explanation or statement which he knows to be false in a material particular; or
- (b) recklessly provides or makes an explanation or statement which is false in a material particular,

he commits an offence.]

**F26** 1995 NI 12

**F27** 1995 NI 12

## [<sup>F28</sup>Penalties and prosecution time limits **N.I.**

**13A.**—(1) A person guilty of an offence under Article 13 is liable on summary conviction—

- (a) in the case of an offence under paragraph (1) or (5), to a fine not exceeding level 5 on the standard scale;
- (b) in the case of an offence under paragraph (4), (7), (8) or (9), to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(2) Proceedings for an offence under Article 13(1) relating to the duty imposed by Article 1 I(2) may be commenced at any time before the end of the period of three years beginning with the date when the offence was committed.

(3) Proceedings for any other offence under Article 13(1) may be commenced—

- (a) at any time before the end of the period of six months beginning with the date when the offence was committed, or
- (b) at any time after the end of that period but before the end of the period of twelve months beginning with the date when evidence sufficient in the opinion of the Certification Officer to justify the proceedings came to his knowledge;

but no proceedings may be commenced by virtue of sub-paragraph (b) after the end of the period of three years beginning with the date when the offence was committed.

(4) For the purposes of paragraph (3)(b), a certificate signed by or on behalf of the Certification Officer which states the date on which evidence sufficient in his opinion to justify the proceedings came to his knowledge shall be conclusive evidence of that fact.

(5) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(6) For the purposes of this Article proceedings are commenced when a complaint charging the commission of the offence is made.]

**F28** 1995 NI 12

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## <sup>F29</sup> **Duty to secure positions not held by certain offenders** **N.I.**

**13B.**—(1) A trade union shall secure that a person does not at any time hold a position in the union to which this Article applies if—

- (a) within the period of five years immediately preceding that time he has been convicted of an offence under paragraph (1) or (5) of Article 13; or
  - (b) within the period of ten years immediately preceding that time he has been convicted of an offence under paragraph (4), (7), (8) or (9) of that Article.
- (2) Subject to paragraph (4), the positions to which this Article applies are—
- (a) member of the executive;
  - (b) any position by virtue of which a person is a member of the executive;
  - (c) president; and
  - (d) general secretary.

(3) For the purposes of paragraph (2)(a) “member of the executive” includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.

(4) This Article does not apply to the position of president or general secretary if the holder of that position—

- (a) is not, in respect of that position, either a voting member of the executive or an employee of the union;
- (b) holds that position for a period which under the rules of the union cannot end more than thirteen months after he took it up; and
- (c) has not held either position at any time in the period of twelve months ending with the day before he took up that position.

(5) In paragraph (4)(a) “a voting member of the executive” means a person entitled in his own right to attend meetings of the executive and to vote on matters on which votes are taken by the executive (whether or not he is entitled to attend all such meetings or to vote on all such matters or in all circumstances).]

**F29** 1995 NI 12

## <sup>F30</sup> **Remedies and enforcement** **N.I.**

**13C.**—(1) A member of a trade union who claims that the union has failed to comply with the requirement of Article 13B may apply to the Certification Officer or to the High Court for a declaration to that effect.

(2) On an application being made to him, the Certification Officer—

[ shall make such enquiries as he thinks fit,]

<sup>F31</sup>(aa)

- (a) shall, <sup>F32</sup> . . . give the applicant and the trade union an opportunity to be heard;
- (b) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made;
- (c) may make or refuse the declaration asked for; and
- (d) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.

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*Paras. (3),(4) rep. by 1999 NI 9*

(5) Where the High Court makes a declaration it shall also, unless it considers that it would be inappropriate, make an order imposing on the trade union a requirement to take within such period as may be specified in the order such steps to remedy the declared failure as may be so specified.

[<sup>F31</sup>(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that it would be inappropriate, make an order imposing on the trade union a requirement to take within such period as maybe specified in the order such steps to remedy the declared failure as may be so specified.

(5B) The following provisions have effect if a person applies to the Certification Officer under this Article in relation to an alleged failure—

- (a) that person may not apply to the High Court under this Article in relation to that failure;
- (b) on an application by a different person to the High Court under this Article in relation to that failure, the court shall have due regard to any declaration, order, observations or reasons made or given by the Certification Officer regarding that failure and brought to the court's notice.

(5C) The following provisions have effect if a person applies to the High Court under this Article in relation to an alleged failure—

- (a) that person may not apply to the Certification Officer under this Article in relation to that failure;
- (b) on an application by a different person to the Certification Officer under this Article in relation to that failure, the Certification Officer shall have regard to any declaration, order, observations or reasons made or given by the court regarding that failure and brought to the Certification Officer's notice.]

(6) Where an order has been made<sup>F31</sup> under paragraph (5) or (5A)], any person who is a member of the trade union and was a member at the time the order was made is entitled to enforce the order as if he had made the application on which the order was made.

[<sup>F31</sup>(7) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(8) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.

(9) An order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.]]

**F30** 1995 NI 12

**F31** 1999 NI 9

**F32** 1999 NI 9

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### *Application of existing statutory provisions*

#### **Application of existing statutory provisions** **N.I.**

**14.** Any statutory provision passed or made before the appointed day which refers (or is to be construed as referring) to a trade union registered under the Trade Union Acts (Northern Ireland) 1871 to 1965 shall, on and after that day, have effect as if it referred to a trade union or employers' association within the meaning of this Order.

## **PART III** **N.I.**

### **RESTRICTIONS ON LEGAL LIABILITY AND LEGAL PROCEEDINGS**

#### *Restrictions on legal liability*

*Arts. 15#20 rep. by 1995 NI 12*

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

#### **[<sup>F33</sup>Liability of trade union in certain proceedings in tort** **N.I.**

**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,

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 is to be taken to have been authorised or endorsed by the trade union in accordance with the following provisions.

(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.



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(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.]

F33 1995 NI 12

#### [<sup>F34</sup>Repudiation by union of certain acts **N.I.**

**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—

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- (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.]

**F34** 1995 NI 12

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

**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<sup>F35</sup> (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.

**F35** 1987 NI 20

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

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<sup>F36</sup> Part V of the Trade Union and Labour Relations (Northern Ireland) Order 1995] 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<sup>F37</sup> spouse or civil partner] 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.

**F36** 1995 NI 12

**F37** 2004 c.33

### *Restrictions on powers of court*

*Arts. 24, 25 rep. by 1995 NI 12*

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### *Enforceability of collective agreements*

#### **Enforceability of collective agreements** **N.I.**

**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** **N.I.**

**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

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- (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;

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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** **N.I.**

**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).

## **PART IV** **N.I.**

### **RIGHTS OF TRADE UNION MEMBERS**

*Arts 29#36 rep. by 1995 NI 12*

### **Right to inspect union's accounting records** **N.I.**

**37.**—(1) It shall be the duty of a trade union to keep its accounting records available for inspection in pursuance of this Article from their creation until the end of the period of six years beginning with the 1st January following the end of the period to which the records relate.

(2) Where—

- (a) at a time when a trade union is required under paragraph (1) to keep any accounting records available for inspection, any person who is a member of the union makes a request to the union to be allowed access to any of those records; and
- (b) none of the records that are the subject matter of the request relates to a period other than one which includes a time when that person was a member of the union,

it shall be the duty of the union to comply with the request in accordance with paragraph (3) and, if the period mentioned in paragraph (1) expires before the request is complied with, to continue to keep those records available for inspection by that person until the request is complied with.

(3) The trade union shall perform its duty to comply with a request under paragraph (2)—

- (a) by making arrangements with the person who made the request for that person to be allowed, before the end of the period of twenty-eight days beginning with the day on which the request was made, to inspect the records which are the subject matter of the request;

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- (b) by allowing that person and any accountant who may accompany him for the purpose to inspect those records at the time and place arranged; and
  - (c) by securing that at the time of the inspection that person is allowed to take, or is supplied with, such copies of, or of extracts from, any records inspected by him as he may require.
- (4) Except where the parties to any arrangements made under paragraph (3) otherwise agree, an inspection under any such arrangements of any accounting records shall be at a reasonable hour and at the place where the records are normally kept.

(5) A trade union shall not be required to allow a person inspecting any accounting records under this Article to be accompanied by an accountant if the accountant fails to enter into such agreement as the union may reasonably require for protecting the confidentiality of the records.

(6) Where—

- (a) a trade union complies with a request made by any person under paragraph (2); and
- (b) that person had been informed by the union, before any arrangements were made in pursuance of that request—
  - (i) of the union's intention to charge for allowing that person to inspect the records to which the request relates, for allowing that person to take any copies of, or of extracts from, those records or for supplying any such copies; and
  - (ii) of the principles in accordance with which its charges will be determined,

that person shall be liable to pay to the union on demand such amount, not exceeding the reasonable administrative expenses incurred by the union in complying with the request, as is determined in accordance with the principles of which that person was so informed.

(7) Any person who claims that a trade union has failed in any respect to comply with a request made by that person under paragraph (2) may apply to the High Court<sup>[F38]</sup> or to the Certification Officer; and where, on an application to it], the court is satisfied that a trade union has failed to comply with any such request, the court shall make such order as it considers appropriate for ensuring that<sup>[F38]</sup> the applicant]

- (a) is allowed to inspect the records which are the subject matter of the request;
- (b) is allowed to be accompanied by an accountant when making an inspection of those records; and
- (c) is allowed to take, or is supplied with, such copies of, or of extracts from, those records as he may require.

<sup>[F38]</sup>(7A) On an application to him the Certification Officer shall—

- (a) make such enquiries as he thinks fit, and
- (b) give the applicant and the trade union an opportunity to be heard.

(7B) Where the Certification Officer is satisfied that the claim is well-founded he shall make such order as he considers appropriate for ensuring that the applicant—

- (a) is allowed to inspect the records requested,
- (b) is allowed to be accompanied by an accountant when making the inspection of those records, and
- (c) is allowed to take, or is supplied with, such copies of, or of extracts from, the records as he may require.

(7C) In exercising his functions under this Article the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.]



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(8) Without prejudice to any power conferred on the High Court otherwise than by virtue of this Article, the court shall have power, on an application<sup>F38</sup> to it] under this Article, to grant any such interlocutory relief as it considers appropriate.

[<sup>F38</sup>(8A) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(8B) An order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.

(8C) If a person applies to the High Court under this Article in relation to an alleged failure he may not apply to the Certification Officer under this Article in relation to that failure.

(8D) If a person applies to the Certification Officer under this Article in relation to an alleged failure he may not apply to the High Court under this Article in relation to that failure.]

(9) Article 13 shall apply in relation to the duties to keep accounting records available for inspection which are imposed on trade unions by paragraphs (1) and (2) as it applies in relation to the duties imposed on trade unions by<sup>F39</sup> Articles 10 to 12].

(10) In this Article—

- (a) references to accounting records, in relation to a trade union, are references to such of the documentary and non-documentary accounting records of that union, or of any branch or section of that union, as are, or purport to be, records which are required to be kept by the union under Article 10 and which relate to any period beginning after 31st December 1991;
- (b) references to a trade union do not include references to a trade union falling within sub-paragraph (b) of Article 3(1) which consists wholly of constituent or affiliated organisations, of representatives of such organisations or of such organisations together with representatives of constituent or affiliated organisations; and
- (c) references to an accountant, in relation to the inspection of any accounting records, are references to any person who, at the time of the inspection, is qualified under paragraph 6 of Schedule 1 to be the auditor of a trade union.

[<sup>F39</sup>(10A) In this Article “member”, in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes any member of any of the constituent or affiliated organisations.]

(11) Nothing in this Article shall be construed as preventing a duty to comply with a request made in relation to the accounting records of a branch or section of a trade union from arising where the request is made by a person who, although he was a member of the union at the time of his request and at a time during the period to which the records relate, was not a member of that branch or section at one or both of those times.

**F38** 1999 NI 9  
**F39** 1995 NI 12

*Art. 38 rep. by 1995 NI 12*

## PART V **N.I.**

### DISCLOSURE OF INFORMATION

#### **General duty of employers to disclose information **N.I.****

**39.**—(1) For the purposes of all the stages of collective bargaining between an employer and representatives of an independent trade union about matters and in relation to descriptions of workers in respect of which the trade union is recognised by that employer, it shall be the duty of the employer, subject to Article 40, to disclose to those representatives on request all such information relating to his undertaking as is in his possession, or that of any associated employer, and is both—

- (a) information without which the trade union representatives would be to a material extent impeded in carrying on with him such collective bargaining; and
- (b) information which it would be in accordance with good industrial relations practice that he should disclose to them for the purposes of collective bargaining.

(2) In this Part—

“recognised”, in relation to a trade union, means recognised by an employer to any extent for the purpose of collective bargaining;

“representative”, in relation to a trade union, means an official or other person authorised by the trade union to carry on such collective bargaining as is referred to in paragraph (1).

(3) Where a request for information is made by trade union representatives under this Article, the request shall, if the employer so requests, be in writing or be confirmed in writing.

(4) In determining, for the purposes of paragraph (1)(b), what would be in accordance with good industrial relations practice, regard shall be had to the relevant provisions of any Code of Practice issued by the Agency under Article 90, but not so as to exclude any other evidence of what that practice is.

(5) Where an employer is required by virtue of this Article to disclose any information to trade union representatives, the disclosure of it shall, if they so request, be in writing or be confirmed in writing.

*Paras.(6),(7) rep. by 1993 NI 11*

#### **Restrictions on general duty under Article 39 **N.I.****

**40.**—(1) No employer shall, by virtue of Article 39, be required to disclose—

- (a) any information the disclosure of which would be against the interests of national security, public safety or public order; or
- (b) any information which he could not disclose without contravening a prohibition imposed by or under a statutory provision; or
- (c) any information which has been communicated to the employer in confidence, or which the employer has otherwise obtained in consequence of the confidence reposed in him by another person; or
- (d) any information relating specifically to an individual, unless he has consented to its being disclosed; or
- (e) any information the disclosure of which would cause substantial injury to the employer's undertaking for reasons other than its effect on collective bargaining; or
- (f) any information obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings;

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and in formulating the provisions of any Code of Practice under Article 90 relating to the disclosure of information, the Agency shall have regard to the provisions of this paragraph.

- (2) In the performance of his duty under Article 39 an employer shall not be required—
- (a) to produce, or allow inspection of, any document (other than a document prepared for the purpose of conveying or confirming the information) or to make a copy of or extracts from any document; or
  - (b) to compile or assemble any information where the compilation or assembly would involve an amount of work or expenditure out of reasonable proportion to the value of the information in the conduct of collective bargaining.

*Para.(3) rep. by 1993 NI 11*

### **Complaint of failure to disclose information** **N.I.**

**41.—**(1) An independent trade union may refer to the Agency, in writing in such form as the Agency may require, a complaint that an employer has failed to disclose to representatives of that trade union information which he was required to disclose to them by Article 39, or to confirm any such information in writing in accordance with paragraph (5) of that Article.

(2) If on receipt of such a complaint the Agency is of the opinion that the complaint is reasonably likely to be settled by conciliation, it shall seek to promote a settlement of the matter.

- (3) Where the complaint is not settled or withdrawn and the Agency is of the opinion that—
- (a) the complaint is not reasonably likely to be settled by conciliation; or
  - (b) that further attempts at conciliation are unlikely to result in a settlement,

the Agency shall refer the complaint to the Industrial Court.

(4) The Industrial Court shall hear and determine the complaint and shall make a declaration stating whether it finds the complaint well-founded, wholly or in part, and stating the reasons for its finding.

(5) On the hearing of a complaint under this Article any person who the Industrial Court considers has a proper interest in the complaint shall be entitled to be heard by the Court, but a failure to accord a hearing to a person other than the trade union and employer directly concerned shall not affect the validity of any decision of the Court in those proceedings.

(6) If the Industrial Court finds the complaint wholly or partly well-founded, the declaration shall specify—

- (a) the information in respect of which the Court finds that the complaint is well-founded;
- (b) the date (or, if more than one, the earliest date) on which the employer refused or failed to disclose, or, as the case may be, to confirm in writing, any of the information specified under sub-paragraph (a); and
- (c) a period (not being less than one week from the date of the declaration) within which the employer ought to disclose, or, as the case may be, to confirm in writing, the information specified under sub-paragraph (a).

(7) On a hearing of a complaint under this Article a certificate signed by or on behalf of the Secretary of State and certifying that a particular request for information could not be complied with except by disclosing information the disclosure of which would have been against the interests of national security, public safety or public order shall be conclusive evidence of that fact; and a document which purports to be such a certificate shall be taken to be such a certificate unless the contrary is proved.

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### **Further complaint arising from failure to disclose information** **N.I.**

**42.**—(1) At any time after the expiration of the period specified in a declaration under Article 41(6)(c) the trade union may refer to the Agency in writing in such form as the Agency may require, a complaint (hereafter in this Article and Article 43 referred to as a “further complaint”) that the employer has failed to disclose, or, as the case may be, to confirm in writing, to representatives of that union information specified in the declaration under Article 41(6)(a).

(2) On receipt of a further complaint the Agency shall refer the complaint to the Industrial Court which shall proceed to hear and determine the complaint and shall make a declaration stating whether it finds the complaint well-founded, wholly or in part, and stating the reasons for its finding.

(3) On the hearing of a further complaint under this Article any person who the Industrial Court considers has a proper interest in the complaint shall be entitled to be heard by the Court, but a failure to accord a hearing to a person other than the trade union and employer directly concerned shall not affect the validity of any decision of the Court in those proceedings.

(4) If the Industrial Court finds the further complaint wholly or partly well-founded the declaration shall specify the information in respect of which the Court finds that the complaint is well-founded.

### **Determination of claim and award** **N.I.**

**43.**—(1) On or after referring a further complaint under Article 42, the trade union may refer to the Agency in writing, a claim in respect of one or more descriptions of employees (but not workers who are not employees) specified in the claim that their contracts should include the terms and conditions specified in the claim and the Agency shall refer the claim to the Industrial Court.

(2) The right to refer a claim under paragraph (1) shall expire, or, as the case may be, a claim so referred shall be treated as withdrawn, if at any time before the Industrial Court makes an award under this Article the employer discloses, or, as the case may be, confirms in writing, to representatives of the trade union the information specified in the declaration under Article 41(6)(a) or, as the case may be, Article 42(4).

(3) If the Industrial Court finds, or has found, the further complaint wholly or partly well-founded, it may, after hearing the parties, make an award that in respect of any description of employees specified in the claim the employer shall, from a specified date, observe either—

- (a) the terms and conditions specified in the claim; or
- (b) other terms and conditions which the Court considers appropriate.

(4) The date specified in an award under paragraph (3) may be a date earlier than that on which the award is made but shall not be earlier than the date specified in accordance with Article 41(6)(b) in the declaration made by the Industrial Court on the original complaint.

(5) An award under paragraph (3) shall be made only in respect of a description of employees, and shall comprise only terms and conditions relating to matters, in respect of which the trade union making the claim is recognised by the employer.

(6) Any terms and conditions which by an award under this Article the employer is required to observe in respect of employees of his shall have effect as part of the contract of employment of any such employee, as from the date specified in the award, except in so far as they are superseded or varied—

- (a) by a subsequent award under this Article;
- (b) by a collective agreement between the employer and the union for the time being representing that employee; or

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(c) by express or implied agreement between the employee and the employer so far as that agreement effects an improvement in any terms and conditions having effect by virtue of the award.

(7) Where—

(a) by virtue of any statutory provision, other than one contained in this Article, providing for minimum remuneration or terms and conditions, a contract of employment is to have effect as modified by an award, order or other instrument under that statutory provision; and

(b) by virtue of an award under this Article any terms and conditions are to have effect as part of that contract,

that contract shall have effect in accordance with that award, order or other instrument or in accordance with the award under this Article, whichever is the more favourable, in respect of any terms and conditions of that contract, to the employee.

(8) No award shall be made under this Article in respect of any terms and conditions of employment which are fixed by virtue of any statutory provision.

*Parts VI–VIII rep. by 1995 NI 12*

## PART IX **N.I.**

### THE CERTIFICATION OFFICER AND THE COMMISSIONER FOR THE RIGHTS OF TRADE UNION MEMBERS

#### *The Certification Officer for Northern Ireland*

#### **The Certification Officer for Northern Ireland **N.I.****

69.—(1) The Department shall, after consultation with the Agency, appoint an officer to be known as the Certification Officer for Northern Ireland (in this Order referred to as “the Certification Officer”).

(2) The Certification Officer shall not be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(3) The Agency shall—

(a) provide for the Certification Officer the requisite staff (from among the Agency's officers and servants) and the requisite accommodation, equipment and other facilities; and

(b) pay to the Certification Officer such remuneration and travelling and other allowances as may be determined by the Department with the approval of the Department of Finance and Personnel.

(4) The Department may pay, or make provision for paying, to, or in respect of, the Certification Officer such pension, allowance or gratuity on his death or retirement as the Department may, with the approval of the Department of Finance and Personnel, determine.

(5) The Agency shall pay to the Certification Officer such sums as he may require<sup>F40</sup> for the performance of any of his functions].

(6) Where a person ceases to be the Certification Officer otherwise than on the expiry of his term of office, and it appears to the Department that there are special circumstances which make it right for him to receive compensation, the Department may make him a payment of such amount as the Department may, with the approval of the Department of Finance and Personnel, determine.

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(7) The Certification Officer shall, as soon as reasonably practicable after the end of each financial year, make a report of his activities during that year to the Agency and the Department and the Department shall lay before the Assembly a copy of every report received by it under this paragraph.

[<sup>F41</sup>(8) The Certification Officer—

(a) may appoint one or more assistant certification officers; and

(b) may delegate to an assistant certification officer such functions as he thinks appropriate;

and references to the Certification Officer in any statutory provision relating to his functions shall be construed accordingly.]

(9) The Certification Officer shall take custody of all annual returns, accounts, copies of rules and other documents submitted, for the purposes of the Trade Union Acts (Northern Ireland) 1871 to 1965, to the officer appointed to perform in Northern Ireland the functions of registrar of friendly societies and which are, immediately before the appointed day, in the custody of that officer.

(10) The Certification Officer shall keep available for public inspection (either free of charge or on payment of a reasonable charge) at all reasonable hours such of the documents referred to in paragraph (9) as are, or were, available for public inspection in pursuance of any of the Acts referred to in that paragraph.

(11) In the Northern Ireland Assembly Disqualification Act 1975<sup>F42</sup> in Part III of Schedule 1 (other disqualifying offices), there shall be inserted (at the appropriate place) the following entry—  
“Certification Officer for Northern Ireland.” .

**F40** 1995 NI 12

**F41** 2003 NI 15

**F42** 1975 c.25

## Procedure before, and appeals from, Certification Officer **N.I.**

**70.**—(1) Except in relation to matters as to which express provision is made by or under any statutory provision, the Certification Officer may regulate the procedure to be followed—

(a) on any application or complaint made to him; or

(b) where his approval is sought with respect to any matter;

<sup>F43</sup> . . .

[<sup>F44</sup>(1A) He shall in particular make provision about the disclosure, and restriction of the disclosure, of the identity of an individual who has made or is proposing to make any such application or complaint.

(1B) Provision under paragraph (1A) shall be such that if the application or complaint relates to a trade union—

(a) the individual's identity is disclosed to the union unless the Certification Officer thinks the circumstances are such that it should not be so disclosed;

(b) the individual's identity is disclosed to such other persons (if any) as the Certification Officer thinks fit.]

(2) The Department, with the approval of the Department of Finance and Personnel, may by scheme make provision for the payment by the Certification Officer to any persons of such sums as may be specified in or determined under the scheme in respect of expenses incurred by those persons for the purposes of, or in connection with, their attendance at hearings held by the Certification Officer in the course of carrying out his functions.

*Para. (3) rep. by 2004 NI 19*



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[<sup>F44</sup>(4) An appeal lies to the Court of Appeal on any question of law arising in proceedings before or arising from any decision of the Certification Officer under—

- (a) Article 13C[<sup>F45</sup> 37 or 70ZA] of this Order;
- (b) Article 5, Article 22, Part V, Article 84 or Part VIA of the Trade Union and Labour Relations (Northern Ireland) Order 1995.]

**F43** 1999 NI 9  
**F44** 1999 NI 9  
**F45** 2004 NI 19

### [<sup>F46</sup>Striking Out **N.I.**

**70ZA.**—(1) At any stage of the proceedings on an application or complaint made to the Certification Officer, he may—

- (a) order the application or complaint, or any response, to be struck out on the grounds that is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,
- (b) order anything in the application or complaint, or any response, to be amended or struck out on those grounds, or
- (c) order the application or complaint, or any response, to be struck out on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or on behalf of the applicant or complainant or (as the case may be) respondent has been scandalous, vexatious, or unreasonable.

(2) The Certification Officer may order an application or complaint made to him to be struck out for excessive delay in proceeding with it.

(3) An order under this Article may be made on the Certification Officer's own initiative and may also be made—

- (a) if the order sought is to strike out an application or complaint, or to amend or strike out anything in an application or complaint, on an application by the respondent, or
- (b) if the order sought is to strike out any response, or to amend or strike out anything in any response, on an application by the person who made the application or complaint mentioned in paragraph (1).

(4) Before making an order under this Article, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.

(5) Paragraph (4) shall not be taken to require the Certification Officer to send a notice under that paragraph if the party against whom it is proposed that the order under this Article should be made has been given an opportunity to show cause orally why the order should not be made.

(6) Nothing in this Article prevents the Certification Officer from making further provision under Article 70(1) about the striking out of the proceedings on any application or complaint made to him.

(7) In this Article—

“response” means any response made by a trade union or other body in the exercise of a right to be heard, or to make representations, in response to the applicant or complaint;

“respondent” means any trade union, or other body, that has such a right.]

**F46** 2004 NI 19



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## **Vexatious litigants** **N.I.**

**70A.**—(1) The Certification Officer may refuse to entertain any application or complaint made to him under a provision of—

- (a) this Order; or
- (b) Parts II to VIA of the Trade Union and Labour Relations (Northern Ireland) Order 1995,

by a vexatious litigant.

(2) The Certification Officer must give reasons for such a refusal.

(3) Paragraph (1) does not apply to a complaint under Article 12E(1)(b) or to an application under Article 5 or 6 or paragraph 30 of Schedule 1.

(4) For the purposes of paragraph (1) a vexatious litigant is a person who is the subject of—

- (a) an order which is made under section 32 of the Judicature (Northern Ireland) Act 1978,
- (b) an order which is made under section 33(1) of the Industrial Tribunals Act 1996 and which remains in force,
- (c) a civil proceedings order or an all proceedings order which is made under section 42(1) of the Supreme Court Act 1981 and which remains in force, or
- (d) an order which is made under section 1 of the Vexatious Actions (Scotland) Act 1898.

## **[<sup>F47</sup>Vexatious litigants: applications disregarded** **N.I.**

**70B.**—(1) For the purposes of a relevant enactment an application to the Certification Officer shall be disregarded if—

- (a) it was made under a provision mentioned in the relevant enactment, and
- (b) it was refused by the Certification Officer under Article 70A(1).

(2) The relevant enactments are—

- (a) Articles 13C(5B) and 37(8D); and
- (b) Articles 6(8), 23(8), 46A(10), 56(8) and 90A(14) of the Trade Union and Labour Relations (Northern Ireland) Order 1995.]

**F47** 1999 NI 9

*Arts. 71—73 rep. by 1995 NI 12*

*Part X rep. by 1995 NI 12*

## **PART XI** **N.I.**

### **MACHINERY FOR PROMOTING IMPROVEMENT OF INDUSTRIAL RELATIONS**

*The Labour Relations Agency*

## **Constitution of the Labour Relations Agency** **N.I.**

**82.**—(1) There shall continue to be a body called the Labour Relations Agency (in this Order referred to as “the Agency”).

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(2) The constitution of the Agency shall be as provided in that behalf in Part I of Schedule 4, and the supplementary provisions contained in Part II of that Schedule shall have effect with respect to the Agency.

### General function of the Agency **N.I.**

**83.**—(1) It shall be the duty of the Agency to promote the improvement of industrial relations<sup>F48</sup> . . . .

(2) Without prejudice to the generality of paragraph (1), the Agency shall exercise such functions as are conferred on it by or under the following provisions of this Order and by any other statutory provision.

F48 1999 NI 9

### Functions of the Agency in relation to trade disputes **N.I.**

**84.**—(1) Where the Agency apprehends that a trade dispute may occur it may take all steps which it considers appropriate for avoiding such trade dispute.

(2) Where a trade dispute exists the Agency may—

- (a) inquire into the causes and circumstances of the trade dispute;
- (b) form a view on the matter in dispute;
- (c) express, either publicly or to the parties to the dispute, the view it has formed on the matter in dispute;
- (d) assist the parties to the trade dispute to achieve a settlement of the dispute by conciliation or otherwise;
- (e) at any time, with the agreement of the parties, refer the matter for settlement to the arbitration of—
  - (i) one or more persons appointed by the Agency; or
  - (ii) the Industrial Court;
- (f) at any time, with the agreement of the parties, refer the matter to one or more persons appointed by the Agency to inquire into the matter and report to the Agency thereon;
- (g) if it is satisfied that no appropriate agreed procedures for negotiation or the settlement of disputes exist between the parties, at any time, with the agreement of the parties, refer the dispute to a committee appointed in accordance with paragraph (3) whose function shall be to—
  - (i) inquire into the causes and circumstances of the dispute; and
  - (ii) seek the agreement of the parties to the dispute as to how it may be settled.

(3) The committee referred to in paragraph (2)(g) shall consist of—

- (a) a chairman appointed by the Agency; and
- (b) such equal number of representatives of each party to the trade dispute as the Agency may determine.

(4) In exercising its functions under paragraph (2)(d), the Agency shall have regard to the desirability of encouraging the parties to a dispute to use any appropriate agreed procedures for negotiation or the settlement of disputes.

(5) In exercising its functions under paragraph (2)(e), the Agency shall consider the likelihood of the dispute being settled by conciliation and, where there exist appropriate agreed procedures for

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negotiation or the settlement of disputes, shall not refer a matter for settlement to arbitration under that sub-paragraph unless those procedures have been used and have failed to result in a settlement or unless, in the opinion of the Agency, there is a special reason which justifies arbitration under that sub-paragraph as an alternative to those procedures.

(6) For the purpose of exercising its powers under paragraph (2)(e)(i) the Agency may maintain a register of persons who, having regard to their knowledge and experience, would, in the opinion of the Agency, be suitable for appointment by the Agency as arbitrators.

(7) Nothing in paragraph (2) prejudices the operation of any other statutory provision conferring on a person or body a power to refer any matter connected with a trade dispute to arbitration or for inquiry or the right of the parties to the dispute to establish at any time appropriate procedures for negotiation or the settlement of disputes.

(8) The Agency may pay to persons appointed under paragraph (2)(e)(i) or (f) or (3)(a) such fees and such allowances for expenses as the Agency, with the approval of the Department and the Department of Finance and Personnel, may determine.

(9) [<sup>F49</sup>Part I of the Arbitration Act 1996] shall not apply to any arbitration under this Article.

**F49** 1996 c.23

**Modifications etc. (not altering text)**

**C1** Art. 84 applied (18.8.2006) by [European Cooperative Society \(Involvement of Employees\) Regulations 2006 \(S.I. 2006/2059\)](#), regs. 2, 39(2), **Sch. 3 para. 16**

**[<sup>F50</sup>Information required by the Agency for purposes of settling recognition disputes **N.I.****

**84AA.**—(1) This Article applies where the Agency is exercising its functions under Article 84 with a view to bringing about a settlement of a recognition dispute.

(2) The parties to the recognition dispute may jointly request the Agency or a person nominated by the Agency to do either or both of the following—

- (a) hold a ballot of the workers involved in the dispute;
- (b) ascertain the union membership of the workers involved in the dispute.

(3) In the following provisions of this Article references to the Agency include references to a person nominated by the Agency; and anything done by such a person under this Article shall be regarded as done in the exercise of the functions of the Agency mentioned in paragraph (1).

(4) At any time after the Agency has received a request under paragraph (2), it may require any party to the recognition dispute—

- (a) to supply the Agency with specified information concerning the workers involved in the dispute, and
- (b) to do so within such period as it may specify.

(5) The Agency may impose a requirement under paragraph (4) only if it considers that it is necessary to do so—

- (a) for the exercise of the functions mentioned in paragraph (1); and
- (b) in order to enable or assist it to comply with the request.

(6) The recipient of a requirement under this Article must, within the specified period, supply the Agency with such of the specified information as is in the recipient's possession.

(7) A request under paragraph (2) may be withdrawn by any party to the recognition dispute at any time and, if it is withdrawn, the Agency shall take no further steps to hold the ballot or to ascertain the union membership of the workers involved in the dispute.

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(8) If a party to a recognition dispute fails to comply with paragraph (6), the Agency shall take no further steps to hold the ballot or to ascertain the union membership of the workers involved in the dispute.

(9) Nothing in this Article requires the Agency to comply with a request under paragraph (2).

(10) In this Article—

“party”, in relation to a recognition dispute, means each of the employers, employer's associations and trade unions involved in the dispute;

“a recognition dispute” means a trade dispute between employers and workers which is connected wholly or partly with the recognition by employers or employers' associations of the right of a trade union to represent workers in negotiations, consultations or other procedures relating to any of the matters mentioned in sub-paragraphs (a) to (f) of Article 96(1);

“specified” means specified in a requirement under this Article; and

“workers” has the meaning given in Article 96(5).]

F50 2004 NI 19

#### [<sup>F51</sup> **Arbitration scheme for unfair dismissal cases etc. N.I.**

**84A.**—(1) The Agency may prepare a scheme providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before an industrial tribunal[<sup>F52</sup> under, or] arising out of a contravention or alleged contravention of—

[ Article 112G(1) or 112H(1)(b) of the Employment Rights (Northern Ireland) Order 1996<sup>F52</sup>(za) (flexible working);]

(a) Part XI of[<sup>F53</sup> that Order] (unfair dismissal); or

(b) any statutory provision specified in an order made by the Department.

(2) When the Agency has prepared such a scheme it shall submit a draft of the scheme to the Department which, if it approves the scheme, shall make an order—

(a) setting out the scheme, and

(b) making provision for it to come into effect.

(3) The Agency may from time to time prepare a revised version of such a scheme and, when it has done so, shall submit a draft of the revised scheme to the Department which, if it approves the scheme, shall make an order—

(a) setting out the revised scheme, and

(b) making provision for it to come into effect.

(4) The Agency may take any steps appropriate for promoting awareness of a scheme prepared under this Article.

(5) Where the parties to any dispute within paragraph (1) agree in writing to submit the dispute to arbitration in accordance with a scheme having effect by virtue of an order under this Article, the Agency shall refer the dispute to the arbitration of a person appointed by the Agency for the purpose (not being an officer or employee of the Agency).

(6) Nothing in the Arbitration Act 1996 shall apply to an arbitration conducted in accordance with a scheme having effect by virtue of an order under this Article except to the extent that the order provides for any provision of Part I of that Act so to apply; and the order may provide for any such provision so to apply subject to modifications.

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(7) Where a scheme set out in an order under this Article includes provision for the making of re-employment orders in arbitrations conducted in accordance with the scheme, the order setting out the scheme may require industrial tribunals to enforce such orders—

- (a) in accordance with Article 151 of the Employment Rights (Northern Ireland) Order 1996 (enforcement by award of compensation), or
- (b) in accordance with that Article as modified by the order.

For this purpose “re-employment orders” means orders requiring that persons found to have been unfairly dismissed be reinstated, re-engaged or otherwise re-employed.

(8) An order under this Article setting out a scheme may provide that, in the case of disputes within paragraph (1)(a), such part of an award made in accordance with the scheme as is specified by the order shall be treated as a basic award of compensation for unfair dismissal for the purposes of Article 229(1)(d) of the Employment Rights (Northern Ireland) Order 1996 (which specifies such an award as a debt which the Department must satisfy if the employer has become insolvent).

(9) No order shall be made under paragraph (1)(b) unless a draft of the order has been laid before and approved by resolution of the Assembly.]

**F51** 1998 NI 8  
**F52** 2002 NI 2  
**F53** 2002 NI 2

#### [<sup>F54</sup>Dismissal procedures agreements **N.I.**

**84B.** The Agency may, in accordance with any dismissal procedures agreement (within the meaning of the Employment Rights (Northern Ireland) Order 1996), refer any matter to the arbitration of a person appointed by the Agency for the purpose (not being an officer or employee of the Agency).]

**F54** 1998 NI 8

#### Notification of procedural agreements **N.I.**

**85.**—(1) The Agency may request an employer to submit to it copies, or particulars, of procedural agreements to which he is a party and may receive and record such procedural agreements or particulars thereof.

(2) The Agency, after examining any procedural agreement or the particulars of any procedural agreement submitted to it under paragraph (1) may make such inquiries and seek such further information concerning that procedural agreement as the Agency thinks fit.

(3) In this Article “procedural agreement” means so much of a collective agreement as provides for procedures for the conduct of relations between workers or their representatives and employers and includes (without prejudice to the generality of the foregoing) so much of such an agreement as relates to—

- (a) machinery for consultation with regard to, or for the settlement by negotiation or arbitration of, terms and conditions of employment;
- (b) machinery for consultation with regard to, or for the settlement by negotiation or arbitration of, other questions arising between an employer or group of employers and one or more workers or trade unions;
- (c) negotiating rights;
- (d) facilities for officials of trade unions or other organisations of workers;

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- (e) procedures relating to dismissal;
- (f) procedures relating to matters of discipline other than dismissal;
- (g) procedures relating to grievances of individual workers;
- (h) disclosure of information;
- (i) redundancy;
- (j) health and safety at work; and
- (k) promotion.

### **Review of collective bargaining arrangements** **N.I.**

**86.**—(1) The Agency may review existing arrangements for the conduct of collective bargaining and may make recommendations to trade unions, employers and employers' associations concerning the introduction of arrangements for the conduct of collective bargaining or the improvement of existing arrangements.

(2) The Agency may review progress towards the institution of suitable arrangements for the conduct of collective bargaining and may send reports concerning such progress to appropriate trade unions, employers and employers' associations.

### **Industrial relations training** **N.I.**

**87.**—(1) The Agency may—

- (a) review arrangements for industrial relations training in Northern Ireland;
- (b) advise employers, trade unions and the Department on training needs;
- (c) make recommendations to employers, trade unions, the Department and other interested bodies as to how training needs may best be met and in so doing may devise and propose training programmes;
- (d) co-ordinate by agreement, the activities of employers, employers' associations, trade unions and other interested bodies in the provision of industrial relations training in order to secure the most advantageous use of training resources for the fulfilment of identified training needs;
- (e) review progress in the fulfilment of identified training needs; and
- (f) obtain information about, and encourage the utilisation of developments in, training methods and techniques in respect of industrial relations training.

(2) The Department may make a grant of such amount as the Department, with the approval of the Department of Finance and Personnel, may determine towards defraying the expenses incurred by any undertaking or organisation in connection with industrial relations training.

(3) In this Article “industrial relations training” means training in any matter pertaining to the conduct of industrial relations.

### **Industrial relations research** **N.I.**

**88.**—(1) Where the Agency thinks fit, or at the request of the Department, an employer, an employers' association or a trade union, the Agency may conduct research into any question relating to industrial relations generally or to industrial relations in any particular industry or in any particular undertaking or part of an undertaking.

(2) The findings of any research under paragraph (1) together with any advice given by the Agency in connection with those findings, may be published by the Agency if—

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- (a) it appears to the Agency that publication is desirable for the improvement of industrial relations, either generally or in relation to the specific question into which research was made; and
  - (b) after sending a draft of the findings to, and taking into account the views of, all the parties appearing to the Agency to be concerned, the Agency thinks fit.
- (3) The Department may make a grant of such amount as the Department, with the approval of the Department of Finance and Personnel, may determine towards defraying the expenses incurred by any undertaking or organisation in connection with—
- (a) the conduct of research into any question relating to industrial relations generally or to industrial relations in any particular industry or in any particular undertaking or part of an undertaking; and
  - (b) the giving of advice based on such research.

<sup>F55</sup> **Advice** **N.I.**

**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.]

**F55** 1995 NI 12

**Codes of Practice** **N.I.**

**90.**—(1) The Agency may issue Codes of Practice containing such practical guidance as the Agency thinks fit for the purpose of promoting the improvement of industrial relations<sup>F56</sup> or for purposes connected with trade union learning representatives].

(2) Without prejudice to the generality of paragraph (1), the Agency shall, in one or more Codes of Practice, provide practical guidance on the following matters—

- (a) the disclosure of information, in accordance with Articles 39 and 40, by employers to trade union representatives for the purpose of collective bargaining;
- (b) the time off to be permitted by an employer—
  - (i) to a trade union official in accordance with<sup>F57</sup> Article 92 of the Employment Rights (NI) Order 1996], including guidance on the circumstances in which a trade union official is to be permitted to take time off under that Article in respect of duties connected with industrial action; and
  - (ii) to a trade union member in accordance with<sup>F57</sup> Article 94] of that Order, including guidance on the question whether, and the circumstances in which, a trade union member is to be permitted to take time off under that Article for trade union activities connected with industrial action.

(3) When the Agency proposes to issue a Code of Practice, it shall prepare and publish a draft of that Code, shall consider any representations made to it about the draft and may modify the draft accordingly.

(4) If the Agency determines to proceed with the draft, it shall transmit the draft to the Department which shall—

- (a) if it approves of the draft, lay it before the Assembly; and



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- (b) if it does not approve of the draft, publish details of its reasons for withholding approval.
- (5) In the case of a draft Code of Practice containing practical<sup>F56</sup> guidance—
- (a) on the time off to be permitted to a trade union learning representative in accordance with Article 92A<sup>F58</sup> (time off for training and carrying out functions as a learning representative);
  - (b) on the training that is sufficient to enable a trade union learning representative to carry on the activities mentioned in Article 92A(2)<sup>F58</sup> (activities for which time off is to be permitted), or
  - (c) on any of the matters referred to in paragraph (2),]
- , if the draft is approved by resolution of the Assembly the Agency shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Department may by order appoint.
- (6) In the case of a draft Code of Practice not containing such practical guidance, if, within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before the Assembly of a new draft.
- (7) If no such resolution is passed as is referred to in paragraph (6), the Agency shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Department may by order appoint.
- (8) If the Agency is of the opinion that the provisions of a Code of Practice to be issued under the preceding provisions of this Article will supersede the whole or part of a Code previously issued by it under this Article or by the Department under Article 95, it shall in the new Code state that on the day on which the new Code comes into effect in pursuance of an order under paragraph (5) or (7) the old Code or a specified part of it shall cease to have effect (subject to any transitional provisions or savings made by the order).
- (9) The Agency may from time to time revise the whole or any part of a Code of Practice issued under this Article and issue that revised Code, and, subject to paragraph (10), paragraphs (3) to (7) shall apply (with appropriate modifications) to such a revised Code as they apply to the first issue of a Code.
- (10) A Code of Practice issued under this Article may be revised by the Agency in accordance with paragraphs (11) to (13) for the purpose of bringing it into conformity with statutory provisions coming into operation after the Code was issued by the making of consequential amendments and the omission of obsolete passages.
- (11) Where the Agency proposes to revise a Code under paragraph (10), it shall transmit a draft of the revised Code to the Department which shall—
- (a) if it approves of the draft, lay it before the Assembly; and
  - (b) if it does not approve of the draft, publish details of its reasons for withholding approval.
- (12) If, within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before the Assembly of a new draft.
- (13) If no such resolution is passed as is referred to in paragraph (12), the Agency shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Department may by order appoint.
- (14) A Code of Practice issued under this Article may be revoked by an order made by the Department; but no such order shall be made—
- (a) except at the request of the Agency; and
  - (b) unless a draft of the order has been laid before and approved by resolution of the Assembly.

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(15) If the Agency requests the Department to revoke a Code of Practice issued under this Article and the Department decides not to do so, the Department shall publish details of its reasons for withholding approval.

(16) A failure on the part of any person to observe any provision of a Code of Practice issued under this Article shall not of itself render him liable to any proceedings; but in any proceedings before an industrial tribunal or the Industrial Court—

- (a) any such Code shall be admissible in evidence; and
- (b) any provision of the Code which appears to the tribunal or Industrial Court to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

(17) Without prejudice to Article 107(3), an order under paragraph (5), (7), (13) or (14) may contain such transitional provisions or savings as appear to the Department to be necessary or expedient in connection with the Code of Practice thereby brought into operation or (as the case may be) revoked.

**F56** 2003 NI 15

**F57** 1996 NI 16

**F58** prosp. (until 15/01/06) insertion by 2005 NI 20

VALID FROM 03/04/2011

**[<sup>F59</sup>Effect of failure to comply with Code: adjustment of awards N.I.]**

**90AA.**—(1) This Article applies to proceedings before—

- (a) an industrial tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule 4A;
- (b) the Fair Employment Tribunal relating to a claim by an employee under Article 38 of the Fair Employment (Northern Ireland) Order 1998;

and references in this Article to “the tribunal” are to be read accordingly.

(2) If, in the case of proceedings to which this Article applies, it appears to the tribunal that—

- (a) the claim to which the proceedings relate concerns a matter—
  - (i) to which a relevant Code of Practice applies, and
  - (ii) to which a statutory dispute resolution procedure does not apply;
- (b) the employer has failed to comply with that Code in relation to that matter, and
- (c) that failure was unreasonable,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 50%.

(3) If, in the case of proceedings to which this Article applies, it appears to the tribunal that—

- (a) the claim to which the proceedings relate concerns a matter—
  - (i) to which a relevant Code of Practice applies, and
  - (ii) to which a statutory dispute resolution procedure does not apply;
- (b) the employee has failed to comply with that Code in relation to that matter, and
- (c) that failure was unreasonable,

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the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 50%.

(4) In this Article—

“relevant Code of Practice” means a Code of Practice issued under Article 90 which relates exclusively or primarily to procedure for the resolution of disputes;

“statutory dispute resolution procedure” means a procedure set out in Part 1 of Schedule 1 to the Employment (Northern Ireland) Order 2003.

(5) Where an award falls to be adjusted under this Article and under Article 27 or 28 of the Employment (Northern Ireland) Order 2003, the adjustment under this Article shall be made before the adjustment under that Article.

(6) The Department may by order amend Schedule 4A for the purpose of—

- (a) adding a jurisdiction to the list in that Schedule, or
- (b) removing a jurisdiction from that list.

(7) No order shall be made under paragraph (6) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.]

**F59** Art. 90AA inserted (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\), ss. 4\(2\), 17\(1\); S.R. 2011/159, art. 2](#) (with [Sch. para. 1](#))

## <sup>F60</sup>Fees for exercise of functions by the Agency **N.I.**

**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—

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- (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.]

F60 1995 NI 12

### *The Industrial Court*

#### [<sup>F61</sup>The Industrial Court **N.I.**

91.—(1) There shall continue to be a body called the Industrial Court.

(2) The functions of the Court shall be performed on behalf of the Crown, but the Court shall not be subject to directions of any kind from any Minister of the Crown or Northern Ireland department as to the manner in which it is to exercise any of its functions.

F61 1999 NI 9

#### **The members of the Court **N.I.****

[<sup>F61</sup>91A.—(1) The Industrial Court shall consist of members appointed by the Department.

(2) The Department shall appoint a member as chairman, and may appoint a member as deputy chairman or members as deputy chairmen.

(3) The Department may appoint as members only persons experienced in industrial relations, and they shall include some persons whose experience is as representatives of employers and some whose experience is as representatives of workers.

(4) Before making an appointment under paragraph (1) or (2) the Department shall consult the Agency and may consult other persons.

(5) At any time when the chairman of the Industrial Court is absent or otherwise incapable of acting, or there is a vacancy in the office of chairman, and the Court has a deputy chairman or deputy chairmen—

- (a) the deputy chairman, if there is only one, or
- (b) if there is more than one, such of the deputy chairmen as they may agree or in default of agreement as the Department may direct,

may perform any of the functions of chairman of the Court.

(6) At any time when every person who is chairman or deputy chairman is absent or otherwise incapable of acting, or there is no such person, such member of the Court as the Department may direct may perform any of the functions of the chairman of the Court.

(7) The members of the Court shall hold and vacant office in accordance with their terms of appointment.

(8) The Department shall pay to the members of the Court such remuneration and such travelling and other allowances as may be determined by the Department with the approval of the Department of Finance and Personnel and may pay to any other persons such allowances as the Department may, with the approval of the Department of Finance and Personnel, determine for the purposes of, or in connection with, their attendance at proceedings of the Court.]

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F61 1999 NI 9

### Proceedings of the Court **N.I.**

[<sup>F61</sup>92.—(1) For the purposes of discharging any of its functions, the Court shall consist of such of the members of the Court as the chairman may direct.

(2) If in any case the Court cannot reach a unanimous decision on its award, the chairman shall decide the matter acting with the full powers of an umpire.

(3) The Department may make, or authorise the Industrial Court to make, rules regulating the procedure of the Court and such rules may provide—

- (a) for references in certain cases to a single member of the court;
- (b) for the Court to sit in two or more divisions;
- (c) for the Court to sit with assessors;
- (d) for the Court, or any division of the Court, to act notwithstanding any vacancy in its number;
- (e) for enabling questions as to the interpretation of any award to be settled without any fresh reference;
- (f) for the cases in which persons may appear by counsel or solicitor in proceedings before the Court.

(4) Except as provided by rules under paragraph (3)(f), no person shall be entitled to appear in any proceedings before the Court by counsel or solicitor.

(5) Where any trade dispute referred to the Court under Article 84(2)(e) involves questions as to wages or as to hours of work or otherwise as to the terms and conditions of or affecting employment which are regulated by any statutory provision, the Court shall not make any award which is inconsistent with that statutory provision.

(6) Subject to paragraphs (1) to (5), the Court shall determine its own procedure.

(7) The Arbitration Act (Northern Ireland) 1937 shall not apply to any proceedings before the Court.

(8) In relation to the discharge of the Court's functions under Schedule 1A to the Trade Union and Labour Relations Order—

- (a) Article 92A and paragraph (7) shall apply; and
- (b) paragraphs (1) to (6) shall not apply.]

F61 1999 NI 9

### Proceedings of the Court under Schedule 1A to the Trade Union and Labour Relations Order **N.I.**

92A.—(1) For the purpose of discharging its functions under Schedule 1A to the Trade Union and Labour Relations Order in any particular case, the Industrial Court shall consist of a panel established under this Article.

(2) The chairman of the Court shall establish a panel or panels, and a panel shall consist of these three persons appointed by him—

- (a) the chairman or a deputy chairman of the Court, who shall be chairman of the panel;
- (b) a member of the Court whose experience is as a representative of employers;

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- (c) a member of the Court whose experience is as a representative of workers.
- (3) The chairman of the Court shall decide which panel is to deal with a particular case.
- (4) A panel may at the discretion of its chairman sit in private where it appears expedient to do so.
- (5) If—
- (a) a panel cannot reach a unanimous decision on a question arising before it, and
  - (b) a majority of the panel have the same opinion,
- the question shall be decided according to that opinion.
- (6) If—
- (a) a panel cannot reach a unanimous decision on a question arising before it, and
  - (b) a majority of the panel do not have the same opinion,
- the chairman of the panel shall decide the question acting with the full powers of an umpire.
- (7) The Department may make, or authorise the Court to make, rules regulating the procedure of the Court in discharging its functions under Schedule 1A to the Trade Union and Labour Relations Order.
- (8) Subject to the above provisions, a panel shall determine its own procedure.
- (9) The Court may correct in any decision or declaration of the Court under Schedule 1A to the Trade Union and Labour Relations Order any clerical mistake or error arising from an accidental slip or omission.
- (10) If any question arises as to the interpretation of a decision or declaration of the Court under that Schedule any party may apply to the Court for a decision; and the Court shall decide the question after hearing the parties or, if the parties consent, without a hearing and shall notify the parties.
- [
- <sup>F62</sup>(11) The reference in paragraph (1) to the Court's functions under Schedule 1A to the Trade Union and Labour Relations Order does not include a reference to its functions under paragraph 166 of that Schedule.]]

F61 1999 NI 9  
F62 2004 NI 19

### *Courts of inquiry*

#### **Court of inquiry into trade dispute** **N.I.**

- 93.**—(1) Where any trade dispute exists or is apprehended, the Head of the Department may—
- (a) inquire into the causes and circumstances of the dispute; and
  - (b) if he thinks fit, refer the matters appearing to him to be connected with or relevant to the dispute to a court of inquiry appointed under paragraph (2).
- (2) For the purpose of a reference under paragraph (1)(b), the Head of the Department may appoint a court of inquiry consisting of—
- (a) one person; or
  - (b) a chairman and such other persons as the Head of the Department thinks fit.
- (3) The Department shall pay to the members of a court of inquiry such remuneration and such travelling and other allowances as may be determined by the Department with the approval of the Department of Finance and Personnel and may pay to any other persons such allowances as the

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Department may, with the approval of the Department of Finance and Personnel, determine for the purposes of, or in connection with, their attendance at proceedings of a court of inquiry.

(4) A court of inquiry appointed under paragraph (2)(b) may act notwithstanding any vacancy in its number.

(5) A court of inquiry shall, either in public or in private at its discretion, inquire into the matters referred to it.

(6) Subject to paragraph (9), a court of inquiry shall report to the Head of the Department on any matters referred to it and may, if it thinks fit, make interim reports.

(7) Any report of a court of inquiry made to the Head of the Department under paragraph (6) shall be laid before the Assembly.

(8) Subject to paragraph (9), the Head of the Department may publish, in such manner as he thinks fit, any information obtained or conclusions arrived at by the court of inquiry as a result of or in the course of its inquiry.

(9) There shall not be included in any report made under paragraph (6) or any publication under paragraph (8) any information obtained by the court of inquiry in the course of its inquiry as to any trade union or employers' association or as to any individual business carried on by a person, firm or business which is not available otherwise than through evidence given at the inquiry, except with the consent of the general secretary of the trade union or employers' association or of the person, firm or company in question.

#### **Procedure of court of inquiry** **N.I.**

**94.**—(1) The Head of the Department may make rules regulating the procedure of a court of inquiry appointed under Article 93 and such rules may provide—

- (a) for the summoning of witnesses;
- (b) for the quorum of a court of inquiry appointed under Article 93(2)(b);
- (c) for the appointment of committees;
- (d) for enabling the court of inquiry to call for such documents as the court may determine to be relevant to the subject matter of the inquiry;
- (e) for the cases in which persons may appear by counsel or solicitor in proceedings before the court of inquiry.

(2) Except as provided by rules under paragraph (1)(e), no person shall be entitled to appear in any proceedings before a court of inquiry by counsel or solicitor.

(3) A court of inquiry may, if and to such extent as may be authorised by rules under this Article, by order require any person who appears to the court to have any knowledge of the subject matter of the inquiry—

- (a) to furnish, in writing or otherwise, such particulars in relation thereto as the court may require; and
- (b) where necessary, to attend before the court and give evidence on oath.

(4) A court of inquiry may administer, or authorise any person to administer, an oath for the purposes of paragraph (3)(b).



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*Issue by Department of Codes of Practice*

**Issue by Department of Codes of Practice** **N.I.**

**95.**—(1) The Department may issue Codes of Practice containing such practical guidance as the Department thinks fit for the purpose of promoting the improvement of industrial relations or of promoting what appear to it to be desirable practices in relation to the conduct by trade unions of ballots and elections<sup>[F63]</sup> or for purposes connected with trade union learning representatives].

(2) The Department shall, after consultation with the Agency, prepare and publish a draft of any Code of Practice that it proposes to issue under this Article.

(3) The Department shall consider any representations made to it about a draft prepared under paragraph (2) and may modify the draft accordingly.

(4) If the Department determines to proceed with the draft the Department shall lay it before the Assembly.

(5) If the draft is approved by resolution of the Assembly, the Department shall issue the Code in the form of the draft and the Code shall come into operation on such day as the Department may by order appoint.

(6) If the Department is of the opinion that the provisions of a Code of Practice to be issued under the preceding provisions of this Article will supersede the whole or part of a Code previously issued by the Department under this Article or by the Agency under Article 90, the Department shall in the new Code state that on the day on which the new Code comes into operation in pursuance of an order under paragraph (5) the old Code or a specified part of it shall cease to have effect (subject to any transitional provisions or savings made by the order).

(7) The Department may from time to time revise the whole or any part of a Code of Practice issued under this Article and issue that revised Code, and, subject to paragraph (8), paragraphs (2) to (5) shall apply (with appropriate modifications) to such a revised Code as they apply to the first issue of a Code.

(8) A Code of Practice issued under this Article may be revised by the Department in accordance with paragraphs (9) to (11) for the purpose of bringing it into conformity with statutory provisions coming into operation after the Code was issued by the making of consequential amendments and the omission of obsolete passages.

(9) Where the Department proposes to revise a Code under paragraph (8), it shall lay a draft of the revised Code before the Assembly.

(10) If, within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before the Assembly of a new draft.

(11) If no such resolution is passed as is referred to in paragraph (10), the Department shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Department may by order appoint.

(12) A Code of Practice issued under this Article may be revoked by an order made by the Department; but no such order shall be made unless a draft of the order has been laid before and approved by resolution of the Assembly.

(13) A failure on the part of any person to observe any provision of a Code of Practice issued under this Article shall not of itself render him liable to any proceedings; but in any proceedings before a court or industrial tribunal or the Industrial Court—

- (a) any such Code shall be admissible in evidence; and

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(b) any provision of the Code which appears to the court, tribunal or Industrial Court to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

(14) Without prejudice to Article 107(3), an order under paragraph (5), (11) or (12) may contain such transitional provisions or savings as appear to the Department to be necessary or expedient in connection with the Code of Practice thereby brought into operation or (as the case may be) revoked.

#### Subordinate Legislation Made

- P1** Art. 95(5) power exercised: 19.3.2006 appointed by {S.R. 2006/100}, art. 2 (with art. 3) and {S.R. 2006/101}, art. 2 (with art. 3)
- F63** 2003 NI 15

### Meaning of “trade dispute” in Part XI

#### Meaning of “trade dispute” in Part XI **N.I.**

**96.**—(1) In this Part “trade dispute” means a dispute between employers and workers, or between workers and workers, which is connected with one or more of the following, that is to say—

- (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 as between workers or groups of workers;
- (d) matters of discipline;
- (e) the membership or non-membership of a trade union on the part of a worker;
- (f) facilities for officials of trade unions;
- (g) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures.

(2) A dispute between a Minister of the Crown or Department of the Government of Northern Ireland and any workers shall, notwithstanding that the Minister or the Department is not the employer of those workers, be treated for the purposes of this Part as a dispute between an employer and those workers if the dispute relates—

- (a) to matters which have been referred for consideration by a joint body on which, by virtue of any provision made by or under any statutory provision, that Minister or that Department is represented; or
- (b) to matters which 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 for the purposes of this Part even though it relates to matters occurring outside Northern Ireland.

(4) A dispute to which a trade union or employers' association is a party shall be treated for the purposes of this Part as a dispute to which workers or, as the case may be, employers are parties.

(5) In this Article—

“employment” includes any relationship whereby one person personally does work or performs services for another;

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“worker”, in relation to a dispute to which an employer is a party, includes any worker even if not employed by that employer.

## PART XII **N.I.**

### MISCELLANEOUS AND SUPPLEMENTARY

*Art. 97 rep. by 1993 NI 11*

*Arts. 98, 99 rep. by 1996 NI 16*

*Art. 100 rep. by 1996 NI 18*

*Art. 101 rep. by 1995 NI 12*

*Art. 102 rep. with saving by 1995 NI 12*

*Art. 103 rep. by 1995 NI 12*

#### *Nominations by members of trade union*

#### **Nominations by members of trade union **N.I.****

**104.**—(1) Regulations may make provision—

- (a) for enabling members of trade unions who are not under sixteen years of age to nominate a person or persons to become entitled, on the death of the person making the nomination, to the whole or part of any money payable on his death out of the funds of the trade union of which he is a member; and
- (b) for enabling any money payable out of the funds of a trade union on the death of a member of the trade union, to an amount not exceeding £5,000, to be paid or distributed on his death (whether in accordance with such a nomination or otherwise) without letters of administration or probate of any will.

(2) Any regulations made in accordance with paragraph (1)(a)—

- (a) may include provision as to the manner in which nominations may be made and as to the manner in which nominations may be varied or revoked; and
- (b) may provide that, subject to such exceptions as may be prescribed, no nomination made by a member of a trade union shall be valid if at the date of the nomination the person nominated is an officer or employee of the trade union or is otherwise connected with the trade union in such manner as may be prescribed.

(3) Regulations made in accordance with paragraph (1)(a) may, without prejudice to Article 107(3), include provision for securing, to such extent and subject to such conditions as may be prescribed, that nominations made under the Trade Union Act Amendment Act 1876<sup>F64</sup> shall have effect as if made under the regulations and may be varied or revoked accordingly.

(4) In paragraphs (2) and (3) “prescribed” means prescribed by regulations made in accordance with paragraph (1).

(5)<sup>F65</sup> Paragraph (1)(b) shall be included among the provisions with respect to which the Department of Finance and Personnel may make an order under section 6(1) of the Administration of Estates (Small Payments) Act (Northern Ireland) 1967<sup>F66</sup> substituting, for references to the amount for the time being provided for, references to such higher amount as may be specified in the order.

**F64** 1876 c.22

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**F65** mod. by SR 2004/68

**F66** 1967 c.5 (NI)

*Crown employees and contracts, etc.*

### **Crown employees and contracts, etc.** **N.I.**

*Para. (1) rep. by 1995 NI 12*

(2) Articles 27 and 28 shall bind the Crown.

*Paras. (3),(4) rep. by 1993 NI 11*

*[<sup>F67</sup>Restrictions on contracting out*

**F67** 1993 NI 11

### **Restrictions on contracting out** **N.I.**

**105A.**—(1) Except as provided by paragraph (2), any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Order;
- (b) to preclude any person from presenting a complaint to, or bringing any proceedings under this Order before, an industrial tribunal; or
- (c) to preclude any person from making any reference, claim or complaint under Part V.

(2) Paragraph (1) does not apply—

*Sub. para. (a) rep. by 1996 NI 18*

- (b) to any agreement such as is referred to in Article 43(6)(b) or (c) to the extent that it varies or supersedes an award under that Article; or

*Sub. para. (c) rep. by 1995 NI 12*

*Paras. (3)#(5) rep. by 1995 NI 12*

*Art. 106 rep. by 1998 NI 21]*

*Supplementary*

### **Orders and regulations** **N.I.**

**107.**—(1) Subject to paragraph (2), all orders and regulations under this Order shall be subject to negative resolution.

(2) Paragraph (1) does not apply to an order under [<sup>F68</sup> Article 1(2), [<sup>F69</sup> 84A(1)(b),] 90(14) or 95(12)].

(3) Regulations and orders under this Order may contain incidental, supplementary and transitional provisions.

**F68** 1995 NI 12

**F69** 1998 NI 8

*Art. 108 rep. by 1996 NI 16*

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## SCHEDULES

### SCHEDULE 1 **N.I.**

Article 11.

#### ADMINISTRATIVE PROVISIONS RELATING TO TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS

#### PART I **N.I.**

#### ANNUAL RETURNS, AND QUALIFICATIONS, APPOINTMENT AND REMOVAL, AND FUNCTIONS, OF AUDITORS

##### *Annual returns*

1.—(1) Subject to paragraph 5, the annual return of a trade union or an employers' association required by Article 11(2) shall be sent to the Certification Officer before 1st June and shall relate to the last preceding calendar year.

(2) The annual return shall be in such form and be signed by such persons as the Certification Officer may require.

2. Every annual return shall contain—

- (a) revenue accounts indicating the income and expenditure of the trade union or employers' association for the period to which the return relates;
- (b) a balance sheet as at the end of that period;
- (c) such other accounts (if any) as the Certification Officer may require; and
- (d) a copy of the rules of the trade union or employers' association as in force at the end of that period;

and shall have attached to it a note of all changes in the officers of the union or association and of any change in the address of the head or main office of the union or association during the period to which the return relates.

3. Every revenue account, every balance sheet and every other account contained in a return in accordance with paragraph 2 shall give a true and fair view of the matters to which it relates.

4. Every return, in addition to containing the accounts mentioned in paragraph 2 shall contain a copy of the report made by the auditor or auditors of the trade union or employers' association on those accounts under paragraph 18 and such other documents relating to those accounts and such further particulars as the Certification Officer may require, subject in the case of the accounts contained in the return to such modifications (if any) as may be necessary to secure compliance with paragraph 3.

[<sup>F70</sup>4A.—(1) Every annual return of a trade union shall contain—

- (a) details of the salary paid to and other benefits provided to or in respect of—
  - (i) each member of the executive,

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- (ii) the president, and
- (iii) the general secretary,

by the trade union during the period to which the return relates; and

- (b) in the case of a trade union required to maintain a register by Article 3 of the Trade Union and Labour Relations (Northern Ireland) Order 1995, a statement of the number of names on the register as at the end of the period to which the return relates and the number of those names which were not accompanied by an address which is a member's address for the purposes of that Article.

(2) For the purposes of this paragraph “member of the executive” includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.]

**F70** 1995 NI 12

5. The Certification Officer, if in any particular case he considers it appropriate to do so,—
- (a) may direct that the period for which a return is to be sent to him under Article 11(2) shall be a period other than the calendar year last preceding the date on which the return is sent;
  - (b) whether a direction under sub-paragraph (a) is given or not, may direct that the date before which any such return is to be sent to him shall be such date (whether before or after 1st June) as may be specified in the direction.

### *Qualifications of auditors*

**N.I.**

[<sup>F71</sup>6. Subject to paragraph 9, a person shall not be qualified to be the auditor or one of the auditors of a trade union or employers' association unless he is eligible for appointment as a company auditor under Article 28 of the Companies (Northern Ireland) Order 1990.]

**F71** SR 1993/67

9.—(1) Two or more persons who are not qualified under paragraph 6 may act as auditors of a trade union or employers' association in respect of any accounting period of that union or association if—

- (a) its receipts and payments in respect of its last preceding accounting period did not in the aggregate exceed £5,000;
- (b) the number of its members at the end of its last preceding accounting period did not exceed 500; and
- (c) the value of its assets at the end of its last preceding accounting period did not in the aggregate exceed £5,000.

(2) Where by virtue of sub-paragraph (1) persons who are not qualified under paragraph 6 act as auditors in respect of any accounting period of a trade union or employers' association, the Certification Officer may at any time (whether during that period or after it comes to an end) direct the trade union or employers' association to appoint a person who is so qualified to audit its accounts for that period.

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- (3) Regulations may—
- (a) substitute for any sum or number for the time being specified in sub-paragraph (1) such sum or number as may be specified in the regulations; and
  - (b) prescribe what receipts and payments shall be taken into account for the purposes of that sub-paragraph.

**10.**—(1) None of the following persons shall act as auditor of a trade union or employers' association, that is to say—

- (a) an officer or employee of the trade union or employers' association or of any of its branches or sections;
- (b) a person who is a partner of, or in the employment of, or who employs, such an officer or employee;

*Head (c) rep. by SR 1993/67*

*Para. (2) rep. by 1995 NI 12*

#### *Appointment and removal of auditors*

**11.** The rules of every trade union and every employers' association shall contain provision for the appointment and removal of auditors.

**12.** Notwithstanding anything in the rules of a trade union or employers' association, its auditor or auditors shall not be removed from office except by resolution passed at a general meeting of its members, or of delegates of its members.

**13.**—(1) Notwithstanding anything in the rules of a trade union or employers' association, a qualified auditor appointed to audit its accounts for the preceding year of account shall (subject to sub-paragraph (2)) be re-appointed as auditor for the current year of account unless—

- (a) a resolution has been passed at a general meeting of the trade union or employers' association appointing somebody instead of him or providing expressly that he shall not be re-appointed; or
- (b) he has given to the trade union or employers' association notice in writing of his unwillingness to be re-appointed; or
- (c) he is ineligible for appointment as its auditor or one of its auditors for the current year of account; or
- (d) he has ceased to act as its auditor or one of its auditors by reason of incapacity.

(2) Where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor and the resolution cannot be proceeded with at the meeting because of the death or incapacity of that person or persons, or because he or they are ineligible for appointment as auditor or auditors for the current year of account, the retiring auditor shall not be automatically re-appointed by virtue of this paragraph.

(3) For the purposes of this paragraph a person is ineligible for appointment as auditor of a trade union or employers' association for the current year of account if, but only if,—

- (a) he would be precluded by paragraph 10 from acting as its auditor for that year; or
- (b) he is not a qualified auditor at the time when the question of his appointment falls to be considered.

(4) In this paragraph “qualified auditor”, in relation to a trade union or employers' association, means a person qualified to be its auditor or one of its auditors in accordance with paragraphs<sup>[F72]</sup> 6 and 9], “the current year of account”, in relation to the appointment of a person as auditor, means



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the year of account in which the question of that appointment arises, and “the preceding year of account” means the year of account immediately preceding the current year of account.

**F72** SR 1993/67

**14.** Regulations may make provision as to the procedure to be followed when it is intended to move a resolution—

- (a) appointing another auditor or other auditors in place of a retiring auditor or retiring auditors of a trade union or an employers' association; or
- (b) providing expressly that a retiring auditor or auditors of a trade union or an employers' association shall not be re-appointed;

and as to the rights of auditors and members of a trade union or an employers' association in relation to such a motion.

**15.—**(1) Where any regulations made under paragraph 14 require copies of any representations made by a retiring auditor to be sent out, or require any such representations to be read out at a meeting, the High Court, on the application of the trade union or employers' association or of any other person, may dispense with that requirement if satisfied that the rights conferred on the retiring auditor by the regulations are being abused to secure needless publicity for defamatory matter.

(2) On any such application the High Court may order the costs or expenses of the trade union or employers' association to be paid, in whole or in part, by the retiring auditor, whether he is a party to the application or not.

*Auditor's right of access to books and information and right to be heard at meetings*

**16.** Every auditor of a trade union or an employers' association—

- (a) shall have a right of access at all times to its accounting records and to all other documents relating to its affairs; and
- (b) shall be entitled to require from its officers, or the officers of any of its branches or sections, such information and explanations as he thinks necessary for the performance of his duties as auditor.

**17.—**[<sup>F73</sup>(1)] Every auditor of a trade union or an employers' association shall be entitled—

- (a) to attend any general meetings of its members, or of delegates of its members, and to receive all notices of and other communications relating to any general meeting which any such member or delegate is entitled to receive; and
- (b) to be heard at any meeting which he attends on any part of the business of the meeting which concerns him as auditor.

[<sup>F73</sup>(2) In the case of an auditor which is a body corporate or partnership, its right to attend or be heard at a meeting is exercisable by an individual authorised by it to act as its representative at the meeting.]

**F73** 2004 NI 19

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### *Auditor's reports*

**18.** The auditor or auditors of a trade union or an employers' association shall make a report to it on the accounts of the trade union or employers' association audited by him or them and contained in its annual return.

[<sup>F74</sup>**18A.**—(1) The report shall state the names of, and be signed by, the auditor or auditors.

(2) Any reference in this Schedule to signatute by an auditor is, where the office of auditor is held by a body corporate or partnership, to signature in the name of the body corporate or partnership by an individual authorised to sign on its behalf.]

**F74** 2004 NI 19

**19.** The report shall state whether, in the opinion of the auditor or auditors, those accounts give a true and fair view of the matters to which they relate.

**20.** It shall be the duty of the auditor or auditors, in preparing a report under paragraph 18, to carry out such investigations as will enable him or them to form an opinion as to the following matters, that is to say—

- (a) whether the trade union or employers' association has kept proper accounting records in accordance with the requirements of Article 10;
- (b) whether it has maintained a satisfactory system of control over its transactions in accordance with the requirements of that Article; and
- (c) whether the accounts to which the report refers are in agreement with the accounting records;

and if in the opinion of the auditor or auditors the trade union or employers' association has failed to comply with Article 10(2)(a) or (b) or if the accounts to which the report relates are not in agreement with the accounting records, the auditor or auditors shall state that fact in the report.

**21.** If an auditor fails to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of an audit, he shall state that fact in his report.

**22.** In this Part “accounting period”, in relation to a trade union or an employers' association, means any period in relation to which it is required under Article 11(2) to send a return to the Certification Officer.

## **PART II** **N.I.**

### **MEMBERS' SUPERANNUATION SCHEMES**

#### *Examination of superannuation schemes*

**23.** Subject to paragraphs 29 to 31, every trade union and every employers' association which at the appointed day is maintaining a members' superannuation scheme shall arrange for the scheme, as it has effect at a date not later than two years from the appointed day to be examined by an appropriately qualified actuary, and for the actuary to make a report to the trade union or employers' association on the results of his examination of the scheme.

**24.** Where a members' superannuation scheme to which paragraph 23 applies includes provision for the maintenance of a separate fund for the purpose of the scheme, the examination under that paragraph shall include a valuation (as at the date by reference to which the examination is carried out) of the assets comprised in that fund and of the liabilities falling to be discharged out of it.

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- 25.** The report made by the actuary on the results of this examination of any such scheme—
- (a) shall state whether in his opinion the premium or contribution rates are adequate and whether the accounting or funding arrangements are suitable; and
  - (b) if the scheme provides for the maintenance of a separate fund for the purposes of the scheme, shall state whether in his opinion the fund is adequate.

**26.** A copy of any report made by an actuary under paragraph 23 signed by the actuary, shall be sent to the Certification Officer and it shall be the duty of the trade union or employers' association to make such arrangements under that paragraph as will enable the report to be sent to the Certification Officer before the end of the period of one year from the date by reference to which the actuarial examination was carried out.

**27.** Subject to paragraphs 30 and 31, no trade union or employers' association shall after the appointed day begin to maintain a members' superannuation scheme unless, before the date on which the scheme begins to be maintained,—

- (a) the proposals for the scheme have been examined by an appropriately qualified actuary; and
- (b) a copy of a report made to the trade union or employers' association by the actuary on the results of his examination of the proposals, signed by the actuary, has been sent to the Certification Officer;

and the provisions of paragraph 25 shall have effect in relation to a report under this paragraph on the proposals for a scheme as they have effect in relation to a report on a scheme under paragraph 23.

**28.** A copy of any report made to a trade union or employers' association under paragraph 23 or paragraph 27 shall, on the application of any of its members, be supplied to him free of charge.

**29.** Where on the application of a trade union or employers' association the Certification Officer is satisfied—

- (a) that a members' superannuation scheme maintained by it, as it had effect at a date not more than two years before the appointed day, has been examined by an actuary;
- (b) that the qualifications of the actuary were adequate for the purpose of carrying out the examination; and
- (c) that the examination, and the report made by the actuary on its results, fulfil the requirements of paragraphs 24 and 25,

the Certification Officer may direct that paragraph 23 shall have effect, in relation to that scheme, as if for the reference to two years from the appointed day there were substituted a reference to five years from the date by reference to which that examination was carried out.

**30.** The Certification Officer, on the application of a trade union or employers' association, may exempt any members' superannuation scheme which it maintains or proposes to maintain from the requirements of paragraph 23 or (as the case may be) paragraph 27, if he is satisfied that, by reason of the small number of members to which the scheme is or would be applicable or for any other special reasons, it is unnecessary for the scheme to be examined in accordance with those requirements.

**31.** The Certification Officer may at any time revoke any exemption granted under paragraph 30 if it appears to him that the circumstances by reason of which the exemption was granted have ceased to exist.

#### *Periodical re-examination of schemes*

**32.—(1)** Subject to paragraph 34, where a trade union or employers' association for the time being maintains a members' superannuation scheme, and either—

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- (a) the scheme has been examined in pursuance of paragraph 23 or in pursuance of this paragraph; or
- (b) the scheme itself has not been so examined but the proposals for the scheme have been examined in pursuance of paragraph 27,

the trade union or employers' association in question shall arrange for that scheme, as it has effect at each successive relevant date, to be examined by an appropriately qualified actuary, and for a report to be made to it by the actuary on the result of his examination of the scheme.

(2) Subject to the next following sub-paragraph, in this paragraph “relevant date”, in relation to a members' superannuation scheme, means such date as the trade union or employers' association in question may determine, not being later than five years after the date by reference to which the last examination of the scheme, or (as the case may be) the examination of the proposals for the scheme, was carried out in accordance with paragraph 23 or paragraph 27 or in accordance with the preceding sub-paragraph.

(3) In the case of any trade union or employers' association the Certification Officer may direct that, in relation to any time after the making of the direction, sub-paragraph (2) shall have effect as if, for the reference to five years there was substituted a reference to such shorter period as may be specified in the direction.

**33.** The provisions of paragraphs 24 to 26 and paragraph 28 shall have effect in relation to the examination of a scheme under paragraph 32 as they have effect in relation to the examination of a scheme under paragraph 23.

**34.** The Certification Officer, on the application of a trade union or employers' association, may exempt any members' superannuation scheme which it maintains from the requirements of paragraph 32 if he is satisfied that, by reason of the small number of members to which the scheme is applicable or for any other special reasons, it is unnecessary for the scheme to be examined in accordance with those requirements.

**35.** The Certification Officer may at any time revoke any exemption granted under paragraph 34 if it appears to him that the circumstances by reason of which the exemption was granted have ceased to exist; and for the purposes of paragraph 32 the relevant date next following the revocation shall be such date as the Certification Officer may direct.

#### *Separate fund for members' superannuation scheme*

**36.** After the appointed day no trade union or employers' association shall maintain a members' superannuation scheme which was not established before the appointed day unless it maintains a separate fund for the payments of benefits in accordance with the scheme.

**37.** After the end of the period of five years beginning with the date on which paragraph 36 comes into operation no trade union or employers' association shall maintain a members' superannuation scheme (whenever established) unless it maintains a separate fund for the payment of benefits in accordance with the scheme.

#### *Interpretation of Part II*

**38.** In this Part—

- (a) “members' superannuation scheme” means any scheme or arrangement made by or on behalf of a trade union or employers' association (including any scheme or arrangement shown in the rules of a trade union or employers' association) in so far as it provides for benefits to be paid by way of pension (including any widows' or children's pensions or dependants' pensions) to or in respect of members or former members of the trade union or employers' association and to be so paid either out of the funds (whether the general funds

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or any other fund) of the trade union or employers' association or under any insurance scheme maintained out of those funds;

- (b) “appropriately qualified actuary”, in relation to a trade union or employers' association, means a person who is either a Fellow of the Institute of Actuaries or a Fellow of the Faculty of Actuaries or is approved by the Certification Officer on the application of the trade union or employers' association as a person having actuarial knowledge; and
- (c) “separate fund” means a fund separate from the general funds of the trade union or employers' association.

N.I.

Schedules 2–3 rep. by 1995 NI 12

#### SCHEDULE 4 N.I.

Article 82(2).

### THE LABOUR RELATIONS AGENCY

#### PART I N.I.

### THE CONSTITUTION OF THE AGENCY

1. The Agency shall be a body corporate to which section 19 of the Interpretation Act (Northern Ireland) 1954<sup>F75</sup> shall apply.

**F75** 1954 c.33 (NI)

N.I.

2. The Agency shall consist of the following persons appointed by the Head of the Department, namely—

- (a) a chairman; and
- (b) 9 other members of whom—
  - (i) 3 shall be appointed after consultation with such organisations or associations of organisations representative of employers as appear to the Head of the Department to be appropriate;
  - (ii) 3 shall be appointed after consultation with such organisations or associations of organisations representative of employees as appear to the Head of the Department to be appropriate; and
  - (iii) 3 shall be appointed as appears to the Head of the Department to be appropriate.

3.—(1) A member of the Agency shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold his office, be eligible for re-appointment.

(2) Any member may at any time by notice in writing to the Head of the Department resign his office.

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4. The Head of the Department may, by notice in writing addressed to a member, terminate his appointment as a member of the Agency if of the opinion that he is unfit to continue in office or incapable of performing his duties as a member.

5. The proceedings of the Agency shall not be invalidated by any vacancy in the membership of the Agency or by any defect in the appointment of any of its members.

6. The Agency shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown or as exempt from any tax, duty, rate, levy or other charge whatsoever, whether general or local, and its property shall not be regarded as the property of, or property held on behalf of, the Crown.

## PART II **N.I.**

### SUPPLEMENTARY PROVISIONS AS TO THE AGENCY

#### *Members*

7. The Agency may pay, or make such payments towards the provision of, such remuneration, allowances (including allowances for expenses), pensions or gratuities to or in respect of the chairman and other members of the Agency, or any of them, as the Department, with the approval of the Department of Finance and Personnel, may determine.

8. In Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975<sup>F76</sup> the following entry shall continue to be inserted at the appropriate place in alphabetical order—

“The Labour Relations Agency.” .

**F76** 1975 c.25

#### *Panel of advisers*

9.—(1) The Agency may appoint a panel of persons, who are not members of the Agency, from whom it may from time to time select persons to assist it in the discharge of its functions.

(2) The number of persons which the Agency may appoint under this paragraph shall be determined by the Agency with the approval of the Department and the Department of Finance and Personnel.

(3) The Agency may pay to persons appointed under this paragraph such fees and such allowances for expenses as the Agency, with the approval of the Department and the Department of Finance and Personnel, may determine.

#### *The seal*

10. The fixing of the common seal of the Agency shall be authenticated by the signature of the chairman of the Agency or some other member thereof authorised either generally or specially by the Agency to act for that purpose.

#### *Execution of contracts and instruments not under seal*

11. Any contract or instrument which, if entered into or executed by an individual, would not require to be<sup>F77</sup> executed as a deed] may be entered into or executed on behalf of the Agency by any person generally or specially authorised by the Agency to act for that purpose and any document

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purporting to be such a contract or instrument shall be deemed to be such a contract or instrument until the contrary is proved.

F77 2005 NI 7

#### *Staff*

**12.** The number of persons employed by the Agency and the terms and conditions of employment of such persons shall be determined by the Agency, with the approval of the Department and the Department of Finance and Personnel.

**13.** The Agency may, in the case of such persons employed by it as may be determined by the Agency with the approval of the Department and the Department of Finance and Personnel, pay to or in respect of them such pensions or gratuities, or provide and maintain for them such pension schemes (whether contributory or not) or contributory or other pension arrangements as may be so determined.

#### *Financial provision*

**14.** For the purpose of enabling the Agency to carry out its functions, the Department shall pay to the Agency such sums as the Department may, with the approval of the Department of Finance and Personnel, determine.

#### *Accounts and audit*

[<sup>F78</sup>**15.**—(1) The Agency shall—

- (a) keep proper accounts and proper records in relation to the accounts; and
- (b) prepare a statement of accounts in respect of each financial year.

(2) The statement of accounts shall—

- (a) be in such form; and
- (b) contain such information,

as the Department may, with the approval of the Department of Finance and Personnel, direct.

(3) The Agency shall, within such period after the end of each financial year as the Department may direct, send copies of the statement of accounts relating to that year to—

- (a) the Department; and
- (b) the Comptroller and Auditor General for Northern Ireland.

(4) The Comptroller and Auditor General shall—

- (a) examine, certify and report on every statement of accounts sent to him by the Agency under this paragraph; and
- (b) send a copy of his report to the Department.

(5) The Department shall lay a copy of the statement of accounts and of the Comptroller and Auditor General's report before the Assembly.]

F78 2003 NI 5



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### Reports

**16.—**(1) The Agency shall, as soon as possible within a period of three months after the end of each financial year, make to the Head of the Department a report, in such form and containing such information as the Department may direct, on the performance of its functions during that financial year.

(2) The Head of the Department shall lay before the Assembly a copy of each report made to him under this paragraph<sup>F79</sup>. . . .

**F79** 2003 NI 5

VALID FROM 03/04/2011

[<sup>F80</sup>SCHEDULE 4A **N.I.**

TRIBUNAL JURISDICTIONS TO WHICH ARTICLE 90AA APPLIES]

**F80** Sch. 4A inserted (3.4.2011) by [Employment Act \(Northern Ireland\) 2011 \(c. 13\)](#), ss. 4(4), 17(1), [Sch. 2](#); S.R. 2011/159, [art. 2](#) (with Sch. para. 1)

**N.I.**

*Schedules 5–6 rep. by 1996 NI 16*

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