

## STATUTORY INSTRUMENTS

# 1992 No. 807

## The Industrial Relations (Northern Ireland) Order 1992

### PART II

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

*[<sup>F1</sup>Investigation of financial affairs]*

F1 1995 NI 12

#### **[<sup>F2</sup>Power of Certification Officer to require production of documents etc.**

**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.

(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

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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.]

F2 1995 NI 12
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### [<sup>F3</sup>Investigations by inspectors

**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.

(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.]

**F3** 1995 NI 12

**[<sup>F4</sup>Inspectors' reports etc.**

**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
  - (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.

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(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.]

**F4** 1995 NI 12

#### [<sup>F5</sup>Expenses of investigations

**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.]

**F5** 1995 NI 12

#### [<sup>F6</sup>Articles 12A and 12B: supplementary

**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.

(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.]

F6 1995 NI 12

## Offences

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>F7</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>F8</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>F7</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>F7</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,

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.

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(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.]

**F7** [1995 NI 12](#)

**F8** [1995 NI 12](#)

### [<sup>F9</sup>Penalties and prosecution time limits

**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 l(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.]

**F9** [1995 NI 12](#)

## [<sup>F10</sup>Duty to secure positions not held by certain offenders

**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).]

**F10** 1995 NI 12

## [<sup>F11</sup>Remedies and enforcement

**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>F12</sup>(aa)

- (a) shall, <sup>F13</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>F12</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>F12</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>F12</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.]]

**F11** 1995 NI 12

**F12** 1999 NI 9

**F13** 1999 NI 9



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**Changes and effects yet to be applied to :**

- Instrument excl by [1994 c. 33 s. 127\(8\)](#)
- Instrument restr (pt retrospect) by [1994 c. 33 s. 126\(1\)s. 126\(2\)\(b\)\(4\)](#)