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*Status: Point in time view as at 01/01/2006.*

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## STATUTORY INSTRUMENTS

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# 1992 No. 807

## The Industrial Relations (Northern Ireland) Order 1992

### PART III

#### RESTRICTIONS ON LEGAL LIABILITY AND LEGAL PROCEEDINGS

##### *Restrictions on legal liability*

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

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

#### [<sup>F1</sup>Liability of trade union in certain proceedings in tort

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

- (a) on the ground that an act—
  - (i) induces another person to break a contract or interferes or induces another person to interfere with its performance, or
  - (ii) consists in threatening that a contract (whether one to which the union is a party or not) will be broken or its performance interfered with, or that the union will induce another person to break a contract or interfere with its performance, or
- (b) in respect of an agreement or combination by two or more persons to do or to procure the doing of an act which, if it were done without any such agreement or combination, would be actionable in tort on such a ground,

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

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he was at the material time a member, the purposes of which included organising or co-ordinating industrial action.

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

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

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

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

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

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

**F1** 1995 NI 12

## [<sup>F2</sup>Repudiation by union of certain acts

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

(2) Where an act is repudiated—

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

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

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

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

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

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

- (a) is a party to commercial contract whose performance has been or may be interfered with as a result of the act in question, and
- (b) has not been given written notice by the union of the repudiation,

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

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

- (a) a contract of employment, or
- (b) any other contract under which a person agrees personally to do work or perform services for another.]

**F2** 1995 NI 12

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

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

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

- (a) for any of the following resulting in personal injury to any person, that is to say negligence, nuisance or breach of duty;
- (b) without prejudice to sub-paragraph (a), for breach of duty in connection with the ownership, occupation, possession, control or use of property (whether real or personal); or
- (c) to any proceedings by virtue of Part II of the Consumer Protection (Northern Ireland) Order 1987<sup>F3</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.

**F3** 1987 NI 20

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

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

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

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

(2) In this Article “protected property” means any property—

- (a) belonging to the trustees concerned otherwise than in their capacity as such;
- (b) belonging to any member of the union or association concerned otherwise than jointly or in common with the other members;
- (c) belonging to any official of the union or association concerned who is neither a member nor such a trustee;
- (d) comprised in a political fund of the union concerned; or
- (e) comprised in a provident benefits fund of the union concerned.

(3) In paragraph (2)—

“political fund” means a fund which is a political fund for the purposes of<sup>F4</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>F5</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.

**F4** 1995 NI 12

**F5** 2004 c.33

### *Restrictions on powers of court*

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

### *Enforceability of collective agreements*

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) to require that the whole, or some part, of the work done for the purposes of the contract is to be done only by persons who are not members of trade unions or not members of a particular trade union; or

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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;

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

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

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

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

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

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

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

- (a) the person against whom the action is taken; and
- (b) any other person who may be adversely affected by the contravention,

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

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