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STATUTORY INSTRUMENTS

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**1992 No. 807**

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

**PART VII**

**SECRET BALLOTS FOR TRADE UNION ELECTIONS**

**Duty of trade union to hold elections for certain positions**

**47.**—(1) Subject to the following provisions of this Part, it shall be the duty of every trade union (notwithstanding anything in its rules) to secure—

- (a) that every person who is a member of the principal executive committee of the union holds that position by virtue of having been elected as such a member at an election in relation to which Articles 48, 49 and 50 have been satisfied; and
- (b) that no person remains such a member for a period of more than five years without being re-elected at such an election.

(2) Where a person is a member of the principal executive committee of a trade union by virtue of holding some other position in that union, paragraph (1) shall apply as if references to a member of that committee were references to the holder of that other position.

(3) Where a person—

- (a) was a member of the principal executive committee of a trade union immediately before an election; and
- (b) is not elected at that election as such a member or, as the case may be, as the holder of a position in the union by virtue of which the holder is such a member,

nothing in this Article shall be taken to require the union to prevent him from continuing to be such a member, or continuing to hold that position, at any time before the expiry of such period (not exceeding six months) as may reasonably be required for effect to be given to the result of the election.

(4) Any term or condition upon which a person is employed by a trade union shall be disregarded in so far as it would otherwise prevent the union from complying with any provision of this Part.

(5) Nothing in this Part shall affect the validity of anything done by the principal executive committee of a trade union.

(6) For the purposes of this Article a person is a member of the principal executive committee of a trade union if he is a voting member of that union's principal executive committee or, subject to paragraph (8), if—

- (a) that person is, under the rules of the union, a member, other than a voting member, of that committee (whether by virtue of his holding any position in the union or otherwise); or
- (b) that person may, under the rules or practice of the union, attend and speak at some or all of the meetings of that committee 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 committee in carrying out its functions.

(7) Notwithstanding anything in the rules or practice of any trade union, the persons who hold the following positions in a trade union shall (if the rules of the union do not otherwise provide for them to be members of the union's principal executive committee) be deemed for the purposes of this Article to be members of that committee by virtue of paragraph (6)(b), that is to say—

- (a) the position of president of the union; and
- (b) the position of general secretary of the union.

(8) For the purposes of this Article where any person who holds in any trade union any such position as is mentioned in sub-paragraph (a) or (b) of paragraph (7)—

- (a) is, in respect of that position, neither a voting member of the principal executive committee of the union nor 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 up that position; and
- (c) has held neither that position nor any other position so mentioned at any time in the period of twelve months ending with the day before he took up that position,

that position shall not be regarded for the purposes of this Article as a position by virtue of holding which that person is a member of that committee or is deemed under that paragraph to be such a member.

(9) For the purposes of this Article a person is a voting member of the principal executive committee of a trade union if he is entitled in his own right to attend meetings of the committee and to vote on matters on which votes are taken by the committee (whether or not he is entitled to attend all such meetings or to vote on all such matters in all circumstances).

### **General requirements to be satisfied in relation to elections**

**48.**—(1) Entitlement to vote at the election must be accorded equally to all members of the trade union in question other than those who belong to a class—

- (a) which is, or which falls within, one or other of the classes mentioned in paragraph (2); and
- (b) all the members of which are excluded by the rules of the union from voting at the election.

(2) The classes are—

- (a) members who are not in employment;
- (b) members who are in arrears in respect of any subscription or contribution due to the union;
- (c) members who are apprentices, trainees or students or new members of the union.

(3) Where the conditions mentioned in paragraph (4) are satisfied, nothing in paragraph (1) shall be taken to prevent a trade union from restricting entitlement to vote at an election to members of the union who fall within—

- (a) a class determined by reference to any trade or occupation;
- (b) a class determined by reference to any geographical area;
- (c) a class which is by virtue of the rules of the union treated as a separate section within the union; or
- (d) a class determined by reference to any combination of the matters mentioned in sub-paragraphs (a), (b) and (c).

(4) The conditions are that—

- (a) entitlement to vote is restricted by the rules of the union;
- (b) no member of the union is denied entitlement to vote at all elections held for the purposes of this Part otherwise than by virtue of belonging to a class mentioned in paragraph (1).

(5) The method of voting must be by the marking of a voting paper by the person voting; and each voting paper—

- (a) must clearly specify the address to which, and the date by which, the voting paper is to be returned;
- (b) must be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the election; and
- (c) must be marked with its number.

(6) Every person who is entitled to vote at the election must—

- (a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees; and
- (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.

(7) So far as is reasonably practicable, every person who is entitled to vote at the election must—

- (a) have sent to him, at his proper address and by post, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates; and
- (b) be given a convenient opportunity to vote by post.

(8) Where, for the purpose of personal safety, a member of a trade union requests the union in writing to send a voting paper to him by some means other than by post then, in relation to that member, paragraph (7)(a) shall have effect with the substitution for the reference to post of a reference to that other means.

(9) The ballot must be conducted so as to secure that—

- (a) so far as is reasonably practicable, those voting do so in secret;
- (b) the result of the election is determined solely by counting the number of votes cast directly for each candidate at the election by those voting (nothing in this sub-paragraph being taken to prevent the system of voting used for the election being the single transferable vote); and
- (c) the votes given at the election are fairly and accurately counted (any inaccuracy in counting being disregarded for the purposes of this sub-paragraph if it is accidental and on a scale which could not affect the result of the election). (10) No member of the trade union in question shall be unreasonably excluded from standing as a candidate at the election.

(11) No candidate at the election shall be required, whether directly or indirectly, to be a member of a political party.

(12) A member of a trade union shall not be taken to have been unreasonably excluded from standing as a candidate at the election if he has been excluded on the ground that he belongs to a class all the members of which are excluded by the rules of the union.

(13) For the purposes of paragraph (12), any rule which provides for a class to be determined by reference to those members which the union chooses to exclude from so standing shall be disregarded.

(14) A trade union which has overseas members may choose whether or not to accord any of those members entitlement to vote at the election; and nothing in the preceding provisions of this Article shall apply in relation to any overseas member or in relation to any vote cast by such a member except, in the case of paragraphs (5) to (9), where the union has chosen to accord that member entitlement to vote at the election.

(15) Nothing in this Article shall be taken to require a ballot to be held at an uncontested election.

### **Requirements as to election address**

- 49.**—(1) The trade union in question must—
- (a) subject to paragraph (2), provide every candidate in the election with an opportunity of preparing an election address in his own words and of submitting it to the union to be distributed to the persons who are accorded entitlement to vote in the election;
  - (b) so far as reasonably practicable, secure that copies of every election address submitted to the union before such time as it may have determined are distributed by the sending of a copy of each such address, with the voting paper for the election, to each of those persons at his proper address;
  - (c) make such arrangements for the production of the copies to be so distributed as secure that none of the candidates is required to bear any of the expense of producing those copies;
  - (d) secure that no modification of any election address so submitted is made by any person in any copy of the address to be distributed except, subject to sub-paragraphs (e) and (f), at the request or with the consent of the candidate or where the modification is necessarily incidental to the method adopted for producing that copy;
  - (e) secure that the same method of producing copies is applied in the same way to every election address so submitted and, so far as reasonably practicable, that no such facility or information as would enable a candidate to gain any benefit from—
    - (i) the method by which copies of the election addresses are produced; or
    - (ii) the modifications which are necessarily incidental to that method,is provided to any candidate without being provided equally to all the others; and
  - (f) so far as reasonably practicable, secure that the same facilities and restrictions with respect to the preparation, submission, length or modification of an election address and with respect to the incorporation in any such address of a photograph or of any other matter not in words are provided or applied equally to each of the candidates.
- (2) Subject to paragraph (1)(f), a trade union may for the purposes of this Article provide that election addresses submitted to it for distribution—
- (a) must not exceed such length, not being less than one hundred words, as may be determined by the union; and
  - (b) may incorporate only such photographs and other matter not in words as the union may determine.
- (3) A time determined for the purposes of paragraph (1) as the time by which election addresses for an election must be submitted to the union shall be no earlier than the latest time at which a person may become a candidate in that election.
- (4) No person other than the candidate himself shall be subject to any civil or criminal liability in respect of any publication of a candidate's election address, or of any copy of such an address, which is required to be made for the purposes of this Article.

### **Requirements as to independent scrutiny**

- 50.**—(1) The trade union in question—
- (a) must, before the election is held, appoint a qualified independent person (“the scrutineer”) to carry out—
    - (i) the functions in relation to the election which are required under paragraph (3) to be contained in the scrutineer's appointment; and
    - (ii) such additional functions in relation to that election as may be specified in his appointment;

- (b) must ensure that nothing in the terms of the scrutineer's appointment, or in any additional functions specified in that appointment, is such as to make it reasonable for any person to call the scrutineer's independence in relation to the union into question;
  - (c) must ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer's independence in relation to the union into question; and
  - (d) must comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.
- (2) For the purposes of this Article a person is a qualified independent person in relation to an election if—
- (a) he satisfies such conditions as may be specified for the purposes of this sub-paragraph in an order made by the Department or is himself so specified; and
  - (b) the trade union in question has no grounds for believing either that he will carry out any functions conferred on him in relation to the election otherwise than competently or that his independence in relation to the union, or in relation to the election, might reasonably be called into question.
- (3) An appointment for the purposes of this Article shall require the scrutineer—
- (a) to be the person who supervises the production and distribution, for the purposes of the election, of all the voting papers and the person to whom those voting papers are returned by those voting;
  - (b) to take such steps as appear to him to be appropriate for the purpose of enabling him to make the report mentioned in paragraph (4);
  - (c) as soon as reasonably practicable after the last date for the return of voting papers, to make that report to the trade union in question; and
  - (d) to retain custody of all voting papers returned for the purposes of the election—
    - (i) until the end of the period of one year beginning with the announcement by the union of the result of the election; and
    - (ii) where within that year any application is made under Article 52 with respect to that election, for the period after the end of that year until the Certification Officer or the High Court authorises the disposal of the papers.
- (4) The report referred to in paragraph (3) is a report with respect to the election stating—
- (a) the number of voting papers distributed for the purposes of the election;
  - (b) the number of voting papers returned to the scrutineer;
  - (c) the number of valid votes cast in the election for each candidate;
  - (d) the number of spoiled or otherwise invalid voting papers returned;
  - (e) whether the scrutineer is satisfied as to each of the matters specified in paragraph (5); and
  - (f) if he is not satisfied as to any of those matters, the particulars of his reasons for not being satisfied as to that matter.
- (5) The matters mentioned in paragraph (4)(e) are—
- (a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any statutory provision in relation to the election;
  - (b) that the arrangements made with respect to the production, storage, distribution, return or other handling of the voting papers used in the election, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably

practicable for the purpose of minimising the risk that any unfairness or malpractice might occur; and

- (c) that the scrutineer has been able to carry out his functions without any such interference as is mentioned in paragraph (1)(c).
- (6) The trade union in question must not publish the result of the election until it has received such a report as is mentioned in paragraph (4) from the scrutineer; and the union must—
- (a) within the period of three months after it receives the report—
    - (i) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
    - (ii) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention;
  - (b) ensure that any copy sent or notification given for the purposes of sub-paragraph (a) is accompanied by a statement that the union will, on request, supply any member of the union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification; and
  - (c) so supply any member of the union who makes a request to the union to be supplied and pays such fee (if any) as has been notified to him.

#### **Register of members' names and addresses**

- 51.**—(1) It shall be the duty of every trade union—
- (a) to compile, by the day appointed for the coming into operation of Article 47, and thereafter maintain a register of the names and proper addresses of its members; and
  - (b) to secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.
- (2) The register may be kept by means of a computer.
- (3) It shall be the duty of every trade union—
- (a) free of charge and at any reasonable time, to allow a member of the union who gives the union reasonable notice of his intention to do so to ascertain from the register whether there is an entry on the register relating to that member; and
  - (b) if requested to do so by any member of the union, to supply that member, as soon as reasonably practicable after receiving the request and either free of charge or on payment of a reasonable fee, with a copy of any such entry.
- (4) Any duty falling upon a branch under this Article by reason of its being a trade union shall be treated as having been discharged to the extent to which the union of which it is a branch has discharged that duty instead of the branch.

#### **Remedy for failure to comply with this Part**

- 52.**—(1) Any person who claims that a trade union has failed to comply with one or more of the provisions of this Part may apply to the Certification Officer or to the High Court for a declaration to that effect if—
- (a) in a case where the application relates to an election which has been held, he was a member of the trade union at the date when the election was held and is such a member at the time when the application is made; and
  - (b) in any other case, he is a member of the union at the time when the application is made.

(2) An application relating to an election which has been held must be made before the expiry of the period of one year beginning with the date on which the result of the election is announced by the trade union.

(3) On an application under this Article the Certification Officer or, as the case may be, the High Court may make or refuse to make the declaration asked for.

(4) A declaration made under this Article shall specify the provisions with which the trade union has failed to comply.

(5) Where the High Court makes such a declaration it shall also make an enforcement order unless it considers that to do so would be inappropriate.

(6) In this Article “enforcement order” means an order which imposes on the trade union one or more of the requirements mentioned in paragraph (7).

(7) The requirements are—

- (a) to secure the holding of such an election as may be specified in the order;
- (b) to take such other steps to remedy the declared failure as may be so specified;
- (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same, or any similar, kind as that of the declared failure does not arise on the part of the trade union.

(8) In making an enforcement order which requires the union to hold a fresh election, in any case where the application relates to an election which has been held, the High Court shall (unless it considers that it would be inappropriate to do so in the particular circumstances of the case) require the fresh election to be conducted in accordance with this Part and with such other provisions as may be made by the order.

(9) An enforcement order under this Article which imposes requirements by virtue of subparagraph (a) or (b) of paragraph (7) shall be so expressed as to require the trade union to comply with those requirements before the expiry of such period as the court considers appropriate.

(10) 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 under this Article, to grant any such interlocutory relief as it considers appropriate.

(11) The remedy of any person for a failure of a trade union to comply with one or more of the provisions of this Part shall be by way of application under this Article and not otherwise.

(12) Where an enforcement order has been made, any person who satisfies the requirements of paragraph (13) shall be entitled to enforce obedience to the order as if he had made the application in pursuance of which the order was made.

(13) The requirements are that—

- (a) he is a member of the union at the time when the proceedings to enforce obedience to the order are begun; and
- (b) he was such a member at the time when the order was made.

(14) The requirements of paragraph (1) or (13) that a person making an application under this Article in relation to an election or seeking to enforce obedience to an enforcement order in relation to an election must be or have been a member of the union at a particular time shall not apply where the person who makes the application or seeks to enforce obedience to the order is or was a candidate in the election.

### **Proceedings before Certification Officer: supplementary provisions**

**53.**—(1) Where the Certification Officer makes a declaration under Article 52 and is satisfied that—

- (a) steps have been taken by the union with a view to remedying the declared failure or securing that a failure of the same, or any similar, kind as that of the declared failure does not arise on the part of the union; or
- (b) the union has agreed to take such steps,

the Certification Officer shall, in making the declaration, specify those steps.

(2) On an application to him under Article 52, the Certification Officer (whether or not he makes a declaration) shall give reasons for his decision in writing; and any such reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

(3) The making of an application to the Certification Officer under Article 52 shall not be taken to prevent the applicant, or any other person, from making a subsequent application to the High Court under that Article in respect of the same matter.

(4) Where such a subsequent application is made, the High Court shall have due regard to any declaration, reasons or observations of the Certification Officer in the proceedings before him which are brought to the notice of the court in the proceedings before it.

(5) On an application made to him under Article 52, the Certification Officer shall—

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

(6) In exercising his functions under this Article the Certification Officer shall ensure, so far as is reasonably practicable, that every application made to him under Article 52 is determined within six months.

(7) Where the Certification Officer requests any 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 shall, unless he considers that in all the circumstances of the case it would be inappropriate to do so, proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

### **Exemptions for certain trade unions**

**54.**—(1) This Part does not apply to any trade union which—

- (a) falls within Article 3(1)(b) (unions which consist wholly or mainly of, or of representatives of, constituent or affiliated organisations); and
- (b) has no members (other than such representatives) who are individuals.

(2) This Part does not apply to a trade union at any time when the conditions mentioned in paragraph (3) are satisfied in relation to it.

(3) The conditions are that—

- (a) the trade union was formed after the coming into operation of this Part; and
- (b) not more than one year has elapsed since its formation.

(4) In paragraph (3) “formed” includes formed by amalgamation under Part X.

(5) Where a trade union is formed otherwise than by amalgamation under Part X, the date of its formation shall be taken, for the purposes only of this Article, to be the date on which the first members of its principal executive committee are first appointed or, as the case may be, elected to that committee.

(6) Where one trade union (the “transferring union”) has transferred its engagements to another trade union (the “receiving union”) then, during the period of one year beginning with the date of the transfer, this Part shall not apply in relation to any person who—



- (a) was a member of the principal executive committee of the transferring union immediately before the transfer; and
  - (b) became a member of the principal executive committee of the receiving union in accordance with the instrument of transfer.
- (7) Without prejudice to paragraphs (2) to (6), where—
- (a) by virtue of any election (including one held before the coming into operation of this Part) a person is a member of a trade union’s principal executive committee at a time after the coming into operation of this Part when that trade union amalgamates with, or transfers its engagements to, another union under Part X;
  - (b) under the instrument of amalgamation or transfer, that person becomes a member of the principal executive committee of the trade union formed by the amalgamation or, as the case may be, of the union to which the engagements are transferred (whether by taking up the same position as he held in the amalgamating or transferring union or by taking up any other position); and
  - (c) under any provision of this Part that person would have been entitled, at the time of the amalgamation or transfer, to continue for any period, without being re-elected, to be a member of the principal executive committee mentioned in sub-paragraph (a) or, as the case may be, to hold the position by virtue of which he was such a member,

this Part shall not apply in relation to that person to the union formed by the amalgamation or, as the case may be, to the union to which the engagements are transferred until the end of the period mentioned in sub-paragraph (c).

**Exemptions for certain persons nearing retirement**

**55.**—(1) Article 47(1)(b) does not apply to any member of the principal executive committee of a trade union at any time when the conditions mentioned in paragraph (2) are satisfied in relation to him.

- (2) The conditions are that—
- (a) he holds his position as such a member by virtue of having been elected (whether as such a member or as the holder of another position in the union) at an election in relation to which Articles 48, 49 and 50 have been satisfied;
  - (b) he is—
    - (i) in the case of a person who has been elected as such a member, a full-time employee of the union by virtue of being such a member; or
    - (ii) in the case of a person who has been elected as the holder of another position in the union by virtue of which he is such a member, a full-time employee of the union by virtue of holding that other position;
  - (c) he will reach retirement age within five years;
  - (d) he is entitled under the rules of the union to continue as the holder of the position in question until retirement age without standing for re-election;
  - (e) he has been a full-time employee of the union for a period (which need not be continuous) of at least ten years; and
  - (f) the period between the day on which the election referred to in sub-paragraph (a) took place and the day immediately preceding that on which sub-paragraph (c) is first satisfied does not exceed five years.
- (3) For the purposes of this Article “retirement age”, in relation to any person, means the earlier of—

- (a) the age fixed by, or in accordance with, the rules of the union for him to retire from the position in question; or
- (b) the age which is for the time being pensionable age for the purpose of the Social Security (Northern Ireland) Act 1975(1).

(4) Where the election referred to in sub-paragraph (a) of paragraph (2) was held before the coming into operation of this Part, that paragraph shall apply as if it did not require Articles 48, 49 and 50 to be satisfied in relation to that election.

## **Interpretation of Part VII**

**56.**—(1) In this Part “member”, in relation to a trade union’s principal executive committee, shall be construed in accordance with Article 47(6) to (8);

“overseas member”, in relation to a trade union, has the same meaning as in Part VI;

“post” has the same meaning as in Part VI;

“proper address”, in relation to any member of a trade union, means his home address or any other address which he has requested the union in writing to treat as his address;

“section”, in relation to a trade union, includes any part of the union which is itself a trade union;

“single transferable vote” means a vote capable of being—

- (a) given so as to indicate the voter’s order of preference for the candidates; and
- (b) transferred to the next choice—
  - (i) when it is not required to give a prior choice the necessary quota of votes; or
  - (ii) when, owing to the deficiency in the number of votes given for a prior choice, that choice is eliminated from the list of candidates;

“voting member” shall be construed in accordance with Article 47(9).

(2) Where a member of the principal executive committee of a trade union was elected as such a member, or as the case may be as the holder of a relevant position, at an election held within the period of five years ending with the coming into operation of this Part—

- (a) Article 47(1)(a) shall have effect, as if it did not require Articles 48, 49 and 50 to be satisfied in relation to that election; and
- (b) the period of five years mentioned in Article 47(1)(b) shall be calculated from the date of that election.

(3) In paragraph (2) “relevant position” means a position in the union by virtue of which the holder is a member of the principal executive committee of the union.

(4) The reference in paragraph (2) to an election held within the period of five years ending with the coming into operation of this Part does not include a reference to an election in which the only persons entitled to vote were persons who at the time of the election were members of the principal executive committee of the trade union in question.

(5) This Part applies only to a trade union which has its head or main office in Northern Ireland.