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STATUTORY INSTRUMENTS

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**1995 No. 1980**

**The Trade Union and Labour Relations  
(Northern Ireland) Order 1995**

**PART III**

**ELECTIONS FOR CERTAIN POSITIONS**

*Duty to hold elections*

**Duty to hold elections for certain positions**

**12.**—(1) A trade union shall secure—

- (a) that every person who holds a position in the union to which this Part applies does so by virtue of having been elected to it at an election satisfying the requirements of this Part, and
- (b) that no person continues to hold such a position for more than five years without being re-elected at such an election.

(2) The positions to which this Part applies (subject as mentioned below) 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;

and the requirements referred to above are those set out in Articles 13 to 19.

(3) In this Part “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 Part 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 13 months after he took it up, and (c) has not held either position at any time in the period of 12 months ending with the day before he took up that position.

(5) 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).

(6) The provisions of this Part apply notwithstanding anything in the rules or practice of the union; and the terms and conditions on which a person is employed by the union shall be disregarded in so far as they would prevent the union from complying with the provisions of this Part.

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

*Requirements to be satisfied with respect to elections*

**Candidates**

**13.—**(1) No member of the trade union shall be unreasonably excluded from standing as a candidate.

(2) No candidate shall be required, directly or indirectly, to be a member of a political party.

(3) A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union. But a rule which provides for such a class to be determined by reference to whom the union chooses to exclude shall be disregarded.

**Election addresses**

**14.—**(1) The trade union shall—

(a) provide every candidate 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 accorded entitlement to vote in the election; and

(b) secure that, so far as reasonably practicable, copies of every election address submitted to it in time are distributed to each of those persons by post along with the voting papers for the election.

(2) The trade union may determine the time by which an election address must be submitted to it for distribution; but the time so determined must not be earlier than the latest time at which a person may become a candidate in the election.

(3) The trade union may 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, as regards photographs and other matter not in words, incorporate only such matter as the union may determine.

(4) The trade union shall secure that no modification of an election address submitted to it is made by any person in any copy of the address to be distributed except—

(a) at the request or with the consent of the candidate, or

(b) where the modification is necessarily incidental to the method adopted for producing that copy.

(5) The trade union shall secure that the same method of producing copies is applied in the same way to every election address submitted and, so far as reasonably practicable, that no such facility or information as would enable a candidate to gain any benefit from—

(a) the method by which copies of the election addresses are produced, or

(b) the modifications which are necessarily incidental to that method,

is provided to any candidate without being provided equally to all the others.

(6) The trade union shall, 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 of photographs or other matter not in words, are provided or applied equally to each of the candidates.

(7) The arrangements made by the trade union for the production of the copies to be so distributed must be such as to secure that none of the candidates is required to bear any of the expense of producing the copies.

(8) No one other than the candidate himself shall incur any civil or criminal liability in respect of the publication of a candidate's election address or of any copy required to be made for the purposes of this Article.

### **Appointment of independent scrutineer**

**15.**—(1) The trade union shall, before the election is held, appoint a qualified independent person (“the scrutineer”) to carry out—

- (a) the functions in relation to the election which are required under this Article to be contained in his appointment; and
- (b) such additional functions in relation to the election as may be specified in his appointment.

(2) 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 Article by order of the Department or is himself so specified; and
- (b) the trade union 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) The scrutineer's appointment shall require him—

- (a) to be the person who supervises the production of the voting papers and (unless he is appointed under Article 18 to undertake the distribution of the voting papers) their distribution and to whom the voting papers are returned by those voting;
- (b) to—
  - (i) inspect the register of names and addresses of the members of the trade union, or
  - (ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with paragraph (9)(a),whenever it appears to him appropriate to do so and, in particular, when the conditions specified in paragraph (4) are satisfied;
- (c) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see Article 19);
- (d) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and
- (e) to retain custody of all voting papers returned for the purposes of the election and the copy of the register supplied to him in accordance with paragraph (9)(a)—
  - (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) if within that period an application is made under Article 21 (complaint of failure to comply with election requirements), until the Certification Officer or the High Court authorises him to dispose of the papers or copy.

(4) The conditions referred to in paragraph (3)(b) are—

- (a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union or candidate who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and
- (b) that the scrutineer does not consider that the suspicion of the member or candidate is ill-founded.

(5) In paragraph (4) “the appropriate period” means the period—

- (a) beginning with the first day on which a person may become a candidate in the election or, if later, the day on which the scrutineer is appointed, and
  - (b) ending with the day before the day on which the scrutineer makes his report to the trade union.
- (6) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.
- (7) The trade union shall ensure that nothing in the terms of the scrutineer's appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer's independence in relation to the union into question.
- (8) The trade union shall, before the scrutineer begins to carry out his functions, either—
- (a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or
  - (b) take all such other steps for notifying members of the name of the scrutineer 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.
- (9) The trade union shall—
- (a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and
  - (b) comply with any request made by the scrutineer to inspect the register.
- (10) Where the register is kept by means of a computer the duty imposed on the trade union by paragraph (9)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.
- (11) The trade union shall 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.
- (12) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.
- (13) In this Article "the relevant date" means—
- (a) where the trade union has rules determining who is entitled to vote in the election by reference to membership on a particular date, that date, and
  - (b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the election.

### **Entitlement to vote**

**16.—**(1) Subject to the provisions of this Article, entitlement to vote shall be accorded equally to all members of the trade union.

(2) The rules of the union may exclude entitlement to vote in the case of all members belonging to one of the following classes, or to a class falling within one of the following—

- (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) The rules of the union may restrict entitlement to vote to members who fall within—

- (a) a class determined by reference to a trade or occupation,
- (b) a class determined by reference to a geographical area, or

(c) a class which is by virtue of the rules of the union treated as a separate section within the union,  
or to members who fall within a class determined by reference to any combination of the factors mentioned in sub-paragraphs (a), (b) and (c).

(4) Entitlement may not be restricted in accordance with paragraph (3) if the effect is that any 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 excluded in accordance with paragraph (2).

## **Voting**

17.—(1) The method of voting must be by the marking of a voting paper by the person voting.

(2) Each voting paper must—

- (a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned,
- (b) 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) be marked with its number.

(3) 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.

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

- (a) have sent to him by post, at his home address or another address which he has requested the trade union in writing to treat as his postal address, 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; but 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, sub-paragraph (a) shall have effect with the substitution for the reference to post of a reference to that other means.

(5) The ballot shall be conducted so as to secure that—

- (a) so far as is reasonably practicable, those voting do so in secret, and
- (b) the votes given at the election are fairly and accurately counted.

For the purposes of sub-paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the election.

(6) The ballot shall be so conducted as to secure that the result of the election is determined solely by counting the number of votes cast directly for each candidate.

(7) Nothing in paragraph (6) shall be taken to prevent the system of voting used for the election being the single transferable vote, that is, a vote capable of being given so as to indicate the voter's order of preference for the candidates and of being transferred to the next choice—

- (a) when it is not required to give a prior choice the necessary quota of votes, or
- (b) when, owing to the deficiency in the number of votes given for a prior choice, that choice is eliminated from the list of candidates.

**Counting of votes etc. by independent person**

18.—(1) The trade union shall ensure that—

- (a) the storage and distribution of the voting papers for the purposes of the election, and
- (b) the counting of the votes cast in the election, are undertaken by one or more independent persons appointed by the union.

(2) A person is an independent person in relation to an election if—

- (a) he is the scrutineer, or
- (b) he is a person other than the scrutineer and the trade union 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 under this Article shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any statutory provision or the occurrence of any unfairness or malpractice.

(4) The duty of confidentiality as respects the register is incorporated in an appointment under this Article.

(5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.

(6) The trade union—

- (a) shall ensure that nothing in the terms of an appointment under this Article is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,
- (b) shall ensure that a person appointed under this Article 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 into question the independence of the person appointed in relation to the union, and
- (c) shall comply with all reasonable requests made by a person appointed under this Article for the purposes of, or in connection with, the carrying out of his functions.

**Scrutineer's report**

19.—(1) The scrutineer's report on the election shall state—

- (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; and
- (e) the name of the person (or of each of the persons) appointed under Article 18 or, if no person was so appointed, that fact.

(2) The report shall also state whether the scrutineer is satisfied—

- (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 (whether by him or any other person) 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 he has been able to carry out his functions without such interference as would make it reasonable for any person to call his independence in relation to the union into question; and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.
- (3) The report shall also state—
- (a) whether the scrutineer—
- (i) has inspected the register of names and addresses of the members of the trade union, or
- (ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with Article 15(9)(a),
- (b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or candidate or at his own instance,
- (c) whether he declined to act on any such request, and
- (d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date, but shall not state the name of any member or candidate who has requested such an inspection or examination.
- (4) Where one or more persons other than the scrutineer are appointed under Article 18, the statement included in the scrutineer's report in accordance with paragraph (2)(b) shall also indicate—
- (a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and
- (b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.
- (5) The trade union shall not publish the result of the election until it has received the scrutineer's report.
- (6) The trade union shall within the period of three months after it receives the report either—
- (a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
- (b) 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.
- (7) Any such copy or notification shall be 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.
- (8) The trade union shall so supply any member of the union who makes such a request and pays the fee (if any) notified to him.

### **Uncontested elections**

- 20.** Nothing in this Part shall be taken to require a ballot to be held at an uncontested election,

*Remedy for failure to comply with requirements*

**Remedy for failure to comply with requirements: general**

**21.**—(1) The remedy for a failure on the part of a trade union to comply with the requirements of this Part is by way of application under Article 22 (to the Certification Officer) or Article 23 (to the High Court). The making of an application to the Certification Officer does not prevent the applicant, or any other person, from making an application to the High Court in respect of the same matter.

(2) An application under those Articles may be made—

- (a) by a person who is a member of the trade union (provided, where the election has been held, he was also a member at the time when it was held), or
- (b) by a person who is or was a candidate at the election; and the references in those Articles to a person having a sufficient interest are to such a person.

(3) No such application may be made after the end of the period of one year beginning with the day on which the union announced the result of the election.

**Application to Certification Officer**

**22.**—(1) A person having a sufficient interest (see Article 21(2)) who claims that a trade union has failed to comply with any of the requirements of this Part may apply to the Certification Officer for a declaration to that effect.

(2) On an application being made to him, 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, and may make or refuse the declaration asked for.

(3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.

(4) Where he makes a declaration and is satisfied that 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 does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.

(5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

(6) 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.

(7) Where he 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.

**Application to High Court**

**23.**—(1) A person having a sufficient interest (see Article 21(2)) who claims that a trade union has failed to comply with any of the requirements of this Part may apply to the High Court for a declaration to that effect.



(2) If an application in respect of the same matter has been made to the Certification Officer, the High Court shall have due regard to any declaration, reasons or observations of his which are brought to its notice.

(3) If the High Court makes the declaration asked for, it shall specify in the declaration the provisions with which the trade union has failed to comply.

(4) Where the High Court makes a declaration it shall also, unless it considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

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

The High Court shall in an order imposing any such requirement as is mentioned in sub-paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

(5) Where the High Court makes an order requiring the union to hold a fresh election, the court shall (unless it considers that it would be inappropriate to do so in the particular circumstances of the case) require the election to be conducted in accordance with the requirements of this Part and such other provisions as may be made by the order.

(6) Where an enforcement order has been made—

- (a) any person who is a member of the union and was a member at the time the order was made, or
- (b) any person who is or was a candidate in the election in question, is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(7) Without prejudice to any other power of the High Court, the court may on an application under this Article grant such interlocutory relief as it considers appropriate.

### *Supplementary*

#### **Exemption of newly-formed trade unions, etc.**

**24.—**(1) The provisions of this Part do not apply to a trade union until more than one year has elapsed since its formation (by amalgamation or otherwise).

For this purpose the date of formation of a trade union formed otherwise than by amalgamation shall be taken to be the date on which the first members of the executive of the union are first appointed or elected.

(2) Where a trade union is formed by amalgamation, the provisions of this Part do not apply in relation to a person who—

- (a) by virtue of an election held a position to which this Part applies in one of the amalgamating unions immediately before the amalgamation, and
- (b) becomes the holder of a position to which this Part applies in the amalgamated union in accordance with the instrument of transfer, until after the end of the period for which he would have been entitled in accordance with this Part to continue to hold the first-mentioned position without being re-elected.

(3) Where a trade union transfers its engagements to another trade union, the provisions of this Part do not apply in relation to a person who—

- (a) held a position to which this Part applies in the transferring union immediately before the transfer, and

- (b) becomes the holder of a position to which this Part applies in the transferee union in accordance with the instrument of transfer, until after the end of the period of one year beginning with the date of the transfer or, if he held the first-mentioned position by virtue of an election, any longer period for which he would have been entitled in accordance with this Part to continue to hold that position without being re-elected.

### **Exemption of certain persons nearing retirement**

**25.**—(1) Article 12(1)(b) (requirement of re-election) does not apply to a person holding a position to which this Part applies if the following conditions are satisfied.

(2) The conditions are that—

- (a) he holds the position by virtue of having been elected at an election in relation to which the requirements of this Part were satisfied,
- (b) he is a full-time employee of the union by virtue of the 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 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 Parts I to VI of the Social Security (Contributions and Benefits) (Northern Ireland) Act 1992(1).

### **Period for giving effect to election**

**26.** Where a person holds a position to which this Part applies immediately before an election at which he is not re-elected to that position, nothing in this Part shall be taken to require the union to prevent him from continuing to hold that position for such period (not exceeding six months) as may reasonably be required for effect to be given to the result of the election.

### **Overseas members**

**27.**—(1) A trade union which has overseas members may choose whether or not to accord any of those members entitlement to vote at an election for a position to which this Part applies. 46

(2) An “overseas member” means a member of the union (other than a merchant seaman or offshore worker) who is outside Northern Ireland throughout the period during which votes may be cast.

For this purpose— “merchant seaman” means a person whose employment, or the greater part of it, is carried out on board sea-going ships; and “offshore worker” means a person in offshore employment within the meaning of section 287 of the Great Britain Act, other than one who is in such employment in an area where the law of Great Britain applies.

(3) Where the union chooses to accord an overseas member entitlement to vote, Article 17 (requirements as to voting) applies in relation to him; but nothing in Article 13 (candidates) or Article 16 (entitlement to vote) applies in relation to an overseas member or in relation to a vote cast by such a member.

**Other supplementary provisions**

**28.**—(1) For the purposes of this Part the date on which a contested election is held shall be taken, in the case of an election in which votes may be cast on more than one day, to the last of those days.

(2) Nothing in this Part affects the validity of anything done by a person holding a position to which this Part applies.