
STATUTORY INSTRUMENTS

1995 No. 1980

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

PART VI

AMALGAMATIONS AND SIMILAR MATTERS

Amalgamation or transfer of engagements

Amalgamation or transfer of engagements

73.—(1) Two or more trade unions may amalgamate and become one trade union, with or without a division or dissolution of the funds of any one or more of the amalgamating unions, but shall not do so unless—

- (a) the instrument of amalgamation is approved in accordance with Article 74, and
- (b) the requirements of Article 75 (notice to members) and Article 76 (resolution to be passed by required majority on ballot held in accordance with Articles 77 to 81) are complied with in respect of each of the amalgamating unions.

(2) A trade union may transfer its engagements to another trade union which undertakes to fulfil those engagements, but shall not do so unless—

- (a) the instrument of transfer is approved in accordance with Article 74, and
- (b) the requirements of Article 75 (notice to members) and Article 76 (resolution to be passed by required majority on ballot held in accordance with Articles 77 to 81) are complied with in respect of the transferor union.

(3) An amalgamation or transfer of engagements does not prejudice any right of any creditor of any trade union party to the amalgamation or transfer.

(4) The above provisions apply to every amalgamation or transfer of engagements notwithstanding anything in the rules of any of the trade unions concerned.

Approval of instrument of amalgamation or transfer

74.—(1) The instrument of amalgamation or transfer must be approved by the Certification Officer and shall be submitted to him for approval before a ballot of the members of any amalgamating union, or (as the case may be) of the transferor union, is held on the resolution to approve the instrument.

(2) The instrument must comply with the requirements of any regulations in force under this Part and the Certification Officer shall approve it if he is satisfied that it does so.

Notice to be given to members

75.—(1) The trade union shall take all reasonable steps to secure that every voting paper which is supplied for voting in the ballot on the resolution to approve the instrument of amalgamation or transfer is accompanied by a notice in writing approved for the purpose by the Certification Officer.

(2) The notice shall be in writing and shall either—

- (a) set out in full the instrument of amalgamation or transfer to which the resolution relates, or
- (b) give an account of it sufficient to enable those receiving the notice to form a reasonable judgment of the main effects of the proposed amalgamation or transfer.

(3) If the notice does not set out the instrument in full it shall state where copies of the instrument may be inspected by those receiving the notice.

(4) The notice shall not contain any statement making a recommendation or expressing an opinion about the proposed amalgamation or transfer.

(5) The notice shall also comply with the requirements of any regulations in force under this Part.

(6) The notice proposed to be supplied to members of the union under this Article shall be submitted to the Certification Officer for approval; and he shall approve it if he is satisfied that it meets the requirements of this Article.

Requirement of ballot on resolution

76.—(1) A resolution approving the instrument of amalgamation or transfer must be passed on a ballot of the members of the trade union held in accordance with Articles 77 to 81.

(2) A simple majority of those voting is sufficient to pass such a resolution unless the rules of the trade union expressly require it to be approved by a greater majority or by a specified proportion of the members of the union.

Appointment of independent scrutineer

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

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

(2) A person is a qualified independent person in relation to a ballot 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 ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, 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 80 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 81);
 - (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 ballot 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 ballot; and
 - (ii) if within that period a complaint is made under Article 84 (complaint as regards passing of resolution), until the Certification Officer or Court of Appeal 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 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 member's suspicion is ill-founded.
- (5) In paragraph (4) "the appropriate period" means the period—
- (a) beginning with 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 ballot 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 ballot.

Entitlement to vote

78. Entitlement to vote in the ballot shall be accorded equally to all members of the trade union.

Voting

79.—(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, and
- (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 ballot, and
- (c) be marked with its number.

(3) Every person who is entitled to vote in the ballot must—

- (a) be allowed to vote without interference or constraint, 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 in the ballot must—

- (a) have a voting paper 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, 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 other means 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) No voting paper which is sent to a person for voting shall have enclosed with it any other document except—

- (a) the notice which, under Article 75(1), is to accompany the voting paper,
- (b) an addressed envelope, and
- (c) a document containing instructions for the return of the voting paper,

without any other statement.

(6) 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 in the ballot 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 ballot.

Counting of votes etc. by independent person

- 80.**—(1) The trade union shall ensure that—
- (a) the storage and distribution of the voting papers for the purposes of the ballot, and
 - (b) the counting of the votes cast in the ballot,
- are undertaken by one or more independent persons appointed by the trade union.
- (2) A person is an independent person in relation to a ballot 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 ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, 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

- 81.**—(1) The scrutineer's report on the ballot shall state—
- (a) the number of voting papers distributed for the purposes of the ballot,
 - (b) the number of voting papers returned to the scrutineer,
 - (c) the number of valid votes cast in the ballot for and against the resolution,
 - (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 80 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 ballot,
 - (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 ballot, 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 any 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 77(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 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 who has requested such an inspection or examination.

(4) Where one or more persons other than the scrutineer are appointed under Article 80, 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 ballot until it has received the scrutineer's report.

(6) The trade union shall within the period of three months after it receives the report—

- (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 trade 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.

Registration of instrument of amalgamation or transfer

82.—(1) An instrument of amalgamation or transfer shall not take effect before it has been registered by the Certification Officer under this Part.

(2) It shall not be so registered before the end of the period of six weeks beginning with the date on which an application for its registration is sent to the Certification Officer.

(3) An application for registration of an instrument of amalgamation or transfer shall not be sent to the Certification Officer until Article 81(6) has been complied with in relation to the scrutineer's report on the ballot held on the resolution to approve the instrument.

Power to alter rules of transferee union for purposes of transfer

83.—(1) Where a trade union proposes to transfer its engagements to another trade union and an alteration of the rules of the transferee union is necessary to give effect to provisions in the instrument of transfer, the executive of that union may by memorandum in writing alter the rules of that union so far as is necessary to give effect to those provisions.

This paragraph does not apply if the rules of the trade union expressly provide that this Article is not to apply to that union.

(2) An alteration of the rules of a trade union under paragraph (1) shall not take effect unless or until the instrument of transfer takes effect.

(3) The provisions of paragraph (1) have effect, where they apply, notwithstanding anything in the rules of the union.

Complaints as regards passing of resolution

84.—(1) A member of a trade union who claims that the union—

- (a) has failed to comply with any of the requirements of Articles 75 to 81, or
- (b) has, in connection with a resolution approving an instrument of amalgamation or transfer, failed to comply with any rule of the union relating to the passing of the resolution,

may complain to the Certification Officer.

(2) Any complaint must be made before the end of the period of six weeks beginning with the date on which an application for registration of the instrument of amalgamation or transfer is sent to the Certification Officer.

Where a complaint is made, the Certification Officer shall not register the instrument before the complaint is finally determined or is withdrawn.

(3) If the Certification Officer, after giving the complainant and the trade union an opportunity of being heard, finds the complaint to be justified—

- (a) he shall make a declaration to that effect, and
- (b) he may make an order specifying the steps which must be taken before he will entertain any application to register the instrument of amalgamation or transfer; and where he makes such an order, he shall not entertain any application to register the instrument unless he is satisfied that the steps specified in the order have been taken. An order under this paragraph may be varied by the Certification Officer by a further order.

(4) The Certification Officer shall furnish a statement, orally or in writing, of the reasons for his decision on a complaint under this Article.

(5) The validity of a resolution approving an instrument of amalgamation or transfer shall not be questioned in any legal proceedings whatsoever (except proceedings before the Certification Officer under this Article or proceedings arising out of such proceedings) on any ground on which a complaint could be, or could have been, made to the Certification Officer under this Article.

Appeal from decision of Certification Officer

85. An appeal lies to the Court of Appeal, at the instance of the complainant or the trade union, on any question of law arising in any proceedings before, or arising from any decision of, the Certification Officer under Article 84.

Transfer of property on amalgamation or transfer

86.—(1) Where an instrument of amalgamation or transfer takes effect, the property held—

- (a) for the benefit of any of the amalgamating unions, or for the benefit of a branch or section of any of those unions, by the trustees of the union, branch or section, or
- (b) for the benefit of the transferor trade union, or for the benefit of a branch or section of the transferor trade union, by the trustees of the union, branch or section, shall without any conveyance or assignment vest, on the instrument taking effect, or on the appointment of the appropriate trustees, whichever is the later, in the appropriate trustees.

(2) In the case of property to be held for the benefit of a branch or section of the amalgamated union, or of the transferee union, “the appropriate trustees” means the trustees of that branch or section, unless the rules of the amalgamated or transferee union provide that the property to be so held is to be held by the trustees of the union.

(3) In any other case “the appropriate trustees” means the trustees of the amalgamated or transferee union.

(4) This Article does not apply—

- (a) to property excepted from the operation of this Article by the instrument of amalgamation or transfer, or
- (b) to stocks and securities in the public funds of the United Kingdom or Northern Ireland.

Amalgamation or transfer involving Great Britain union

87.—(1) This Part has effect subject to the following modifications in the case of an amalgamation or transfer of engagements to which a trade union and a Great Britain union are Party.

(2) The requirements of Articles 74 to 81 and 82(3) (approval of instrument; notice to members and ballot on resolution) do not apply in relation to the Great Britain union; but the Certification Officer shall not register the instrument under Article 82 unless he is satisfied that it will be effective under the law of Great Britain.

(3) The instrument of amalgamation or transfer submitted to the Certification Officer for his approval under Article 74 shall state which of the bodies concerned is a Great Britain union and, in the case of an amalgamation, whether the amalgamated body is to be a Great Britain union; and the Certification Officer shall withhold his approval if the instrument does not contain that information.

(4) Nothing in Article 83 (alteration of rules) or Articles 84 and 85 (complaint as to passing of resolution) applies in relation to the Great Britain union.

(5) Subject to the exceptions specified above, the provisions of this Part as to amalgamations or transfers of engagements apply in relation to the Great Britain union.

(6) Except as provided by this Article, this Part applies only to a trade union which has its head or main office in Northern Ireland.