
STATUTORY INSTRUMENTS

1995 No. 1980

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

PART VIII

INDUSTRIAL ACTION

Action excluded from protection

Action to enforce trade union membership

100.—(1) An act is not protected if the reason, or one of the reasons, for which it is done is the fact or belief that a particular employer—

- (a) is employing, has employed or might employ a person who is not a member of a trade union, or
- (b) is failing, has failed or might fail to discriminate against such a person.

(2) For the purposes of paragraph (1)(b) an employer discriminates against a person if, but only if, he ensures that his conduct in relation to—

- (a) persons, or persons of any description, employed by him, or who apply to be, or are, considered by him for employment, or
- (b) the provision of employment for such persons, is different, in some or all cases, according to whether or not they are members of a trade union, and is more favourable to those who are.

(3) An act is not protected if it constitutes, or is one of a number of acts which together constitute, an inducement or attempted inducement of a person—

- (a) to incorporate in a contract to which that person is a party, or a proposed contract to which he intends to be a party, a term or condition which is or would be void by virtue of Article 27(1) of the 1992 Order (union membership requirement in contract for goods or services), or
- (b) to contravene Article 27(2) of that Order (refusal to deal with person on grounds relating to union membership).

(4) References in this Article to an employer employing a person are to a person acting in the capacity of the person for whom a worker works or normally works.

(5) References in this Article to not being a member of a trade union are to not being a member of any trade union, of a particular trade union or of one of a number of particular trade unions. Any such reference includes a reference to not being a member of a particular branch or section of a trade union or of one of a number of particular branches or sections of a trade union.

Action taken because of dismissal for taking unofficial action

101. An act is not protected if the reason, or one of the reasons, for doing it is the fact or belief that an employer has dismissed one or more employees in circumstances such that by virtue of Article 23A of the No. 1 Order (dismissal in connection with unofficial action) they have no right to complain of unfair dismissal.

Secondary action

102.—(1) An act is not protected if one of the facts relied on for the purpose of establishing liability is that there has been secondary action which is not lawful picketing.

(2) There is secondary action in relation to a trade dispute when, and only when, a person—

- (a) induces another to break a contract of employment or interferes or induces another to interfere with its performance, or
- (b) threatens that a contract of employment under which he or another is employed will be broken or its performance interfered with, or that he will induce another to break a contract of employment or to interfere with its performance, and the employer under the contract of employment is not the employer party to the dispute.

(3) Lawful picketing means acts done in the course of such attendance as is declared lawful by Article 98 (peaceful picketing)—

- (a) by a worker employed (or, in the case of a worker not in employment, last employed) by the employer party to the dispute, or
- (b) by a trade union official whose attendance is lawful by virtue of paragraph (1)(b) of that Article.

(4) For the purposes of this Article an employer shall not be treated as party to a dispute between another employer and workers of that employer; and where more than one employer is in dispute with his workers, the dispute between each employer and his workers shall be treated as a separate dispute. In this paragraph “worker” has the same meaning as in Article 127 (meaning of “trade dispute”).

(5) An act in contemplation or furtherance of a trade dispute which is primary action in relation to that dispute may not be relied on as secondary action in relation to another trade dispute. Primary action means such action as is mentioned in sub-paragraph

- (a) or (b) of paragraph (2) where the employer under the contract of employment is the employer party to the dispute.

(6) In this article “contract of employment” includes any contract under which one person personally does work or performs services for another, and related expressions shall be construed accordingly.

Pressure to impose union recognition requirement

103.—(1) An act is not protected if it constitutes, or is one of a number of acts which together constitute, an inducement or attempted inducement of a person—

- (a) to incorporate in a contract to which that person is a party, or a proposed contract to which he intends to be a party, a term or condition which is or would be void by virtue of Article 28(1) of the 1992 Order (recognition requirement in contract for goods or services); or
- (b) to contravene Article 28(2) of that Order (refusal to deal with person on grounds of union exclusion).

(2) An act is not protected if—

- (a) it interferes with the supply (whether or not under a contract) of goods or services, or can reasonably be expected to have that effect, and

- (b) one of the facts relied upon for the purpose of establishing liability is that a person has—
 - (i) induced another to break a contract of employment or interfered or induced another to interfere with its performance; or
 - (ii) threatened that a contract of employment under which he or another is employed will be broken or its performance interfered with, or that he will induce another to break a contract of employment or to interfere with its performance; and
- (c) the reason, or one of the reasons, for doing the act is the fact or belief that the supplier (not being the employer under the contract of employment mentioned in sub-paragraph (b)) does not, or might not—
 - (i) recognise one or more trade unions for the purpose of negotiating on behalf of workers, or any class of worker, employed by him, or
 - (ii) negotiate or consult with, or with an official of, one or more trade unions.