STATUTORY INSTRUMENTS

2004 No. 3078 (N.I. 19)

The Employment Relations (Northern Ireland) Order 2004

- - - - - - *17th November 2004*

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Employment Relations (Northern Ireland) Order 2004.

(2) Parts II to VI shall not come into operation until such day or days as the Department may by order appoint[F1].

(3) An order under paragraph (2) may contain such transitional provisions and savings as the Department considers necessary or expedient in connection with the coming into operation of any of the provisions of this Order.

F1 partly exercised by SR 2004/519, SR 2005/73, 345, 571

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c.33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

"the Department" means the Department for Employment and Learning;

"the Employment Rights Order" means the Employment Rights (Northern Ireland) Order 1996 (NI 16);

"the 1992 Order" means the Industrial Relations (Northern Ireland) Order 1992 (NI 5);

"the 1995 Order" means the Trade Union and Labour Relations (Northern Ireland) Order 1995 (NI 12).

PART II

UNION RECOGNITION

Article 3—Amendments

Information required by the Agency for ballots and ascertaining union membership

4.—(1) After Article 84 of the 1992 Order insert—

"**Information required by the Agency for purposes of settling recognition disputes**

84AA.—(1) This Article applies where the Agency is exercising its functions under Article 84 with a view to bringing about a settlement of a recognition dispute.

(2) The parties to the recognition dispute may jointly request the Agency or a person nominated by the Agency to do either or both of the following—

(a) hold a ballot of the workers involved in the dispute;

(b) ascertain the union membership of the workers involved in the dispute.

(3) In the following provisions of this Article references to the Agency include references to a person nominated by the Agency; and anything done by such a person under this Article shall be regarded as done in the exercise of the functions of the Agency mentioned in paragraph (1).

(4) At any time after the Agency has received a request under paragraph (2), it may require any party to the recognition dispute—

(a) to supply the Agency with specified information concerning the workers involved in the dispute, and

(b) to do so within such period as it may specify.

(5) The Agency may impose a requirement under paragraph (4) only if it considers that it is necessary to do so—

(a) for the exercise of the functions mentioned in paragraph (1); and

(b) in order to enable or assist it to comply with the request.

(6) The recipient of a requirement under this Article must, within the specified period, supply the Agency with such of the specified information as is in the recipient's possession.

(7) A request under paragraph (2) may be withdrawn by any party to the recognition dispute at any time and, if it is withdrawn, the Agency shall take no further steps to hold the ballot or to ascertain the union membership of the workers involved in the dispute.

(8) If a party to a recognition dispute fails to comply with paragraph (6), the Agency shall take no further steps to hold the ballot or to ascertain the union membership of the workers involved in the dispute.

(9) Nothing in this Article requires the Agency to comply with a request under paragraph (2).

(10) In this Article—

"party", in relation to a recognition dispute, means each of the employers, employers' associations and trade unions involved in the dispute;

"a recognition dispute" means a trade dispute between employers and workers which is connected wholly or partly with the recognition by employers or employers' associations of the right of a trade union to represent workers in negotiations, consultations or other procedures relating to any of the matters mentioned in sub-paragraphs (a) to (f) of Article 96(1);

"specified" means specified in a requirement under this Article; and

"workers" has the meaning given in Article 96(5)." .

PART III

LAW RELATING TO INDUSTRIAL ACTION

Information about employees to be balloted on industrial action

5.—(1) Article 105 of the 1995 Order (notice of ballot and sample voting paper for employers) is amended as follows.

(2) In paragraph (1)(b) for "paragraph (3)" substitute " paragraph (2F) ".

(3) For paragraph (2)(c) substitute—

"(c) containing—

(i) the lists mentioned in paragraph (2A) and the figures mentioned in paragraph (2B), together with an explanation of how those figures were arrived at, or

(ii) where some or all of the employees concerned are employees from whose wages the employer makes deductions representing payments to the union, either those lists and figures and that explanation or the information mentioned in paragraph (2C)."

(4) After paragraph (2) insert—

"(2A) The lists are—

(a) a list of the categories of employee to which the employees concerned belong, and

(b) a list of the workplaces at which the employees concerned work.

(2B) The figures are—

(a) the total number of employees concerned,

(b) the number of the employees concerned in each of the categories in the list mentioned in paragraph (2A)(a), and

(c) the number of the employees concerned who work at each workplace in the list mentioned in paragraph (2A)(b).

(2C) The information referred to in paragraph (2)(c)(ii) is such information as will enable the employer readily to deduce—

(a) the total number of employees concerned,

(b) the categories of employee to which the employees concerned belong and the number of the employees concerned in each of those categories, and

(c) the workplaces at which the employees concerned work and the number of them who work at each of those workplaces.

(2D) The lists and figures supplied under this Article, or the information mentioned in paragraph (2C) that is so supplied, must be as accurate as is reasonably practicable in the light of the information in the possession of the union at the time when it complies with paragraph (1)(a).

(2E) For the purposes of paragraph (2D) information is in the possession of the union if it is held, for union purposes—

(a) in a document, whether in electronic form or any other form, and

(b) in the possession or under the control of an officer or employee of the union.

(2F) The sample voting paper referred to in sub-paragraph (b) of paragraph (1) is—

(a) a sample of the form of voting paper which is to be sent to the employees concerned, or

(b) where the employees concerned are not all to be sent the same form of voting paper, a sample of each form of voting paper which is to be sent to any of them.

(2G) Nothing in this Article requires a union to supply an employer with the names of the employees concerned.

(2H) In this Article references to the "employees concerned" are references to those employees of the employer in question who the union reasonably believes will be entitled to vote in the ballot.

(2I) For the purposes of this Article, the workplace at which an employee works is—

(a) in relation to an employee who works at or from a single set of premises, those premises, and

(b) in relation to any other employee, the premises with which his employment has the closest connection." .

(5) Omit paragraphs (3) to (3B).

(6) In paragraph (5) for "paragraph (3)" substitute " paragraph (2F) ".

Entitlement to vote in ballot on industrial action

6. In Article 108(1) of the 1995 Order (entitlement to vote in ballot on industrial action) after "induced" insert " by the union ".

Inducement of members not accorded entitlement to vote

7.—(1) In Article 115B of the 1995 Order (small accidental failures to comply with certain provisions in relation to industrial action ballot to be disregarded) in paragraph (1), at the end add " for all purposes (including, in particular, those of Article 115A(c)) ".

(2) In Article 29 of that Order (right of union member to ballot before industrial action), in paragraph (2), omit "and" at the end of sub-paragraph (b) and after that sub-paragraph insert—

"(bb) Article 115A does not prevent the industrial action from being regarded as having the support of the ballot; and" .

Information about employees to be contained in notice of industrial action

8.—(1) Article 118 of the 1995 Order (notice to employers of industrial action) is amended as follows.

(2) In paragraph (3)—

(a) for sub-paragraph (a) substitute—

"(a) contains—

(i) the lists mentioned in paragraph (3A) and the figures mentioned in paragraph (3B), together with an explanation of how those figures were arrived at, or

(ii) where some or all of the affected employees are employees from whose wages the employer makes deductions representing payments to the union, either those lists and figures and that explanation or the information mentioned in paragraph (3C); and,"

(b) omit sub-paragraph (c) and the word "and" immediately preceding it.

(3) After paragraph (3) insert—

"(3A) The lists referred to in paragraph (3)(a) are—

(a) a list of the categories of employee to which the affected employees belong, and

(b) a list of the workplaces at which the affected employees work.

(3B) The figures referred to in paragraph (3)(a) are—

(a) the total number of the affected employees,

(b) the number of the affected employees in each of the categories in the list mentioned in paragraph (3A)(a), and

(c) the number of the affected employees who work at each workplace in the list mentioned in paragraph (3A)(b).

(3C) The information referred to in paragraph (3)(a)(ii) is such information as will enable the employer readily to deduce—

(a) the total number of affected employees,

(b) the categories of employee to which the affected employees belong and the number of the affected employees in each of those categories, and

(c) the workplaces at which the affected employees work and the number of them who work at each of those workplaces.

(3D) The lists and figures supplied under this Article, or the information mentioned in paragraph (3C) that is so supplied, must be as accurate as is reasonably practicable in the light of the information in the possession of the union at the time when it complies with paragraph (1).

(3E) For the purposes of paragraph (3D) information is in the possession of the union if it is held, for union purposes—

(a) in a document, whether in electronic form or any other form, and

(b) in the possession or under the control of an officer or employee of the union.

(3F) Nothing in this Article requires a union to supply an employer with the names of the affected employees." .

(4) In paragraph (5), for "is one of the affected employees" substitute " falls within a notified category of employee, and the workplace at which he works is a notified workplace ".

(5) For paragraph (5A) substitute—

"(5B) In paragraph (5)—

(a) a "notified category of employee" means—

(i) a category of employee that is listed in the notice, or

(ii) where the notice contains the information mentioned in paragraph (3C), a category of employee that the employer (at the time he receives the notice) can readily deduce from the notice is a category of employee to which some or all of the affected employees belong, and

(b) a "notified workplace" means—

(i) a workplace that is listed in the notice, or

(ii) where the notice contains the information mentioned in paragraph (3C), a workplace that the employer (at the time he receives the notice) can readily deduce from the notice is the workplace at which some or all of the affected employees work."

(5C) In this Article references to the "affected employees" are references to those employees of the employer who the union reasonably believes will be induced by the union, or have been so induced, to take part or continue to take part in the industrial action.

(5D) For the purposes of this Article, the workplace at which an employee works is—

(a) in relation to an employee who works at or from a single set of premises, those premises, and

(b) in relation to any other employee, the premises with which his employment has the closest connection.” .

(6) In paragraph (8), after “(5)” insert “ , (5C) ”.

Dismissal where employees taking protected industrial action locked out

9.—(1) Article 144A of the Employment Rights Order (dismissal in connection with participation in official industrial action) is amended as follows.

(2) In paragraph (3) for the words from “within” to the end substitute “ within the protected period ”.

(3) After paragraph (7) insert—

“(7A) For the purposes of this Article “the protected period”, in relation to the dismissal of an employee, is the sum of the basic period and any extension period in relation to that employee.

(7B) The basic period is 12 weeks beginning with the first day of protected industrial action.

(7C) An extension period in relation to an employee is a period equal to the number of days falling on or after the first day of protected industrial action (but before the protected period ends) during the whole or any part of which the employee is locked out by his employer.

(7D) In paragraphs (7B) and (7C), the “first day of protected industrial action” means the day on which the employee starts to take protected industrial action (even if on that day he is locked out by his employer).” .

Date of dismissal

10.—(1) Article 144A of the Employment Rights Order is also amended as follows.

(2) In paragraph (3) for “it takes place” substitute “ the date of the dismissal is ”.

(3) In paragraph (4)(a) for “it takes place” substitute “ the date of the dismissal is ”.

(4) In paragraph (5)(a) for “it takes place” substitute “ the date of the dismissal is ”.

(5) After paragraph (9) add—

“(10) In this Article “date of dismissal” has the meaning given by Article 144(7).” .

Dismissal after end of protected period

11.—(1) In Article 144A(6) of the Employment Rights Order (dismissal after end of protected period), after sub-paragraph (d) insert—

“(e) where there was agreement to use either of the services mentioned in sub-paragraphs (c) and (d), the matters specified in Article 144B.” .

(2) After Article 144A of the Employment Rights Order insert—

"**Conciliation and mediation: supplementary provisions**

144B.—(1) The matters referred to in paragraph (6)(e) of Article 144A are those specified in paragraphs (2) to (5); and references in this Article to "the service provider" are to any person who provided a service mentioned in paragraph (6)(c) or (d) of that Article.

(2) The first matter is: whether, at meetings arranged by the service provider, the employer or, as the case may be, a union was represented by an appropriate person.

(3) The second matter is: whether the employer or a union, so far as requested to do so, co-operated in the making of arrangements for meetings to be held with the service provider.

(4) The third matter is: whether the employer or a union fulfilled any commitment given by it during the provision of the service to take particular action.

(5) The fourth matter is: whether, at meetings arranged by the service provider between the parties making use of the service, the representatives of the employer or a union answered any reasonable question put to them concerning the matter subject to conciliation or mediation.

(6) For the purposes of paragraph (2) an "appropriate person" is—

(a) in relation to the employer—

(i) a person with the authority to settle the matter subject to conciliation or mediation on behalf of the employer, or

(ii) a person authorised by a person of that type to make recommendations to him with regard to the settlement of that matter, and

(b) in relation to a union, a person who is responsible for handling on the union's behalf the matter subject to conciliation or mediation.

(7) For the purposes of paragraph (4) regard may be had to any timetable which was agreed for the taking of the action in question or, if no timetable was agreed, to how long it was before the action was taken.

(8) In any proceedings in which regard must be had to the matters referred to in Article 144A(6)(e)—

(a) notes taken by or on behalf of the service provider shall not be admissible in evidence;

(b) the service provider must refuse to give evidence as to anything communicated to him in connection with the performance of his functions as a conciliator or mediator if, in his opinion, to give the evidence would involve his making a damaging disclosure; and

(c) the service provider may refuse to give evidence as to whether, for the purposes of paragraph (5), a particular question was or was not a reasonable one.

(9) For the purposes of paragraph (8)(b) a "damaging disclosure" is—

(a) a disclosure of information which is commercially sensitive, or

(b) a disclosure of information that has not previously been disclosed which relates to a position taken by a party using the conciliation or mediation service on the settlement of the matter subject to conciliation or mediation,

to which the person who communicated the information to the service provider has not consented." .

PART IV

RIGHTS OF TRADE UNION MEMBERS, WORKERS AND EMPLOYEES

Detriments and inducements in respect of membership etc. of independent trade union

Extension of protection against detriment for union membership etc.

12.—(1) Article 73 of the Employment Rights Order (action short of dismissal on grounds related to union membership or activities) is amended in accordance with paragraphs (2) to (5).

(2) For "An employee" in each of paragraphs (1) and (3), and "an employee" in each of paragraphs (2) and (4), substitute " A worker " and " a worker " respectively.

(3) In paragraph (2)—

(a) for "employee's" substitute " worker's "; and

(b) after "contract of employment" insert " (or other contract personally to do work or perform services) ".

(4) In paragraph (3), for "his contract of employment" substitute " a contract of employment ".

(5) For paragraph (6) substitute—

"(6) This Article does not apply where—

(a) the worker is an employee; and

(b) the detriment in question amounts to dismissal.

(7) In this Chapter—

"worker" means an individual who works, or normally works as mentioned in paragraphs (a) to (c) of the definition of "worker" in Article 2(2) of the 1995 Order; and

"employer" means—

(a) in relation to a worker, the person for whom he works;

(b) in relation to a former worker, the person for whom he worked." .

(6) In the heading to Article 73 of the Employment Rights Order, and in the Chapter heading immediately preceding it, for "Action short of dismissal" substitute " Detriment ".

(7) In Article 74(1) of the Employment Rights Order, for "An employee" substitute " A worker or former worker ".

(8) In Article 247 of the Employment Rights Order after paragraph (2) insert—

"(2A) The remedy of a person for infringement of the right conferred on him by Article 73 is by way of a complaint under Article 74 and not otherwise." .

Detriment for use of union services or refusal of inducement

13.—(1) Article 73 of the Employment Rights Order (action short of dismissal on grounds related to union membership or activities) is also amended in accordance with paragraphs (2) to (6).

(2) In paragraph (1), omit "or" at the end of sub-paragraph (b) and after that sub-paragraph insert—

"(ba) preventing or deterring him from making use of trade union services at an appropriate time, or penalising him for doing so, or" .

(3) In paragraph (2)—

(a) for "(1)(b)" substitute " (1) "; and

(b) in sub-paragraph (b), after "the activities of a trade union" insert " or (as the case may be) make use of trade union services ".

(4) After paragraph (2) insert—

"(2A) In this Article—

(a) "trade union services" means services made available to the worker by an independent trade union by virtue of his membership of the union, and

(b) references to a worker's "making use" of trade union services include his consenting to the raising of a matter on his behalf by an independent trade union of which he is a member.

(2B) If an independent trade union of which a worker is a member raises a matter on his behalf (with or without his consent), penalising the worker for that is to be treated as penalising him as mentioned in paragraph (1)(ba).

(2C) A worker also has the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place because of the worker's failure to accept an offer made in contravention of Article 77A or 77B.

(2D) For the purposes of paragraph (2C), not conferring a benefit that, if the offer had been accepted by the worker, would have been conferred on him under the resulting agreement shall be taken to be subjecting him to a detriment as an individual (and to be a deliberate failure to act)."

(5) In paragraph (5) (references to being etc. a member of a union to include being etc. a member of a branch or section) omit "; and references to taking part in the activities of a trade union shall be similarly construed".

(6) After that paragraph insert—

"(5A) References in this Chapter—

(a) to taking part in the activities of a trade union, and

(b) to services made available by a trade union by virtue of membership of the union,

shall be construed in accordance with paragraph (5)."

(7) In Article 75 of the Employment Rights Order (consideration of complaint under Article 74), omit paragraphs (3) to (5).

(8) Omit Article 19 of the Employment Relations (Northern Ireland) Order 1999 (NI 9) (which is superseded by this Article and Article 15).

Inducements relating to union membership or activities

14.—(1) After Article 77 of the Employment Rights Order insert—

"CHAPTER III

INDUCEMENTS

Inducements relating to union membership or activities

77A.—(1) A worker has the right not to have an offer made to him by his employer for the sole or main purpose of inducing the worker—

(a) not to be or seek to become a member of an independent trade union,

(b) not to take part, at an appropriate time, in the activities of an independent trade union,

(c) not to make use, at an appropriate time, of trade union services, or

(d) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions.

(2) In paragraph (1) "an appropriate time" means—

(a) a time outside the worker's working hours, or

(b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union or (as the case may be) make use of trade union services.

(3) In paragraph (2) "working hours", in relation to a worker, means any time when, in accordance with his contract of employment (or other contract personally to do work or perform services), he is required to be at work.

(4) In paragraphs (1) and (2)—

(a) "trade union services" means services made available to the worker by an independent trade union by virtue of his membership of the union, and

(b) references to a worker's "making use" of trade union services include his consenting to the raising of a matter on his behalf by an independent trade union of which he is a member.

(5) A worker or former worker may present a complaint to an industrial tribunal on the ground that his employer has made him an offer in contravention of this Article.

Inducements relating to collective bargaining

77B.—(1) A worker who is a member of an independent trade union which is recognised, or seeking to be recognised, by his employer has the right not to have an offer made to him by his employer if—

(a) acceptance of the offer, together with other workers' acceptance of offers which the employer also makes to them, would have the prohibited result, and

(b) the employer's sole or main purpose in making the offers is to achieve that result.

(2) The prohibited result is that the workers' terms of employment, or any of those terms, will not (or will no longer) be determined by collective agreement negotiated by or on behalf of the union.

(3) It is immaterial for the purposes of paragraph (1) whether the offers are made to the workers simultaneously.

(4) Having terms of employment determined by collective agreement shall not be regarded for the purposes of Article 77A (or Article 73 or 136) as making use of a trade union service.

(5) A worker of former worker may present a complaint to an industrial tribunal on the ground that his employer has made him an offer in contravention of this Article.

Time limit for proceedings

77C. An industrial tribunal shall not consider a complaint under Article 77A or 77B unless it is presented—

(a) before the end of the period of three months beginning with the date when the offer was made or, where the offer is part of a series of similar offers to the complainant, the date when the last of them was made, or

(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.

Consideration of complaint

77D.—(1) On a complaint under Article 77A it shall be for the employer to show what was his sole or main purpose in making the offer.

(2) On a complaint under Article 77B it shall be for the employer to show what was his sole or main purpose in making the offers.

(3) On a complaint under Article 77A or 77B, in determining any question whether the employer made the offer (or offers) or the purpose for which he did so, no account shall be taken of any pressure which was exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.

(4) In determining whether an employer's sole or main purpose in making offers was the purpose mentioned in Article 77B(1), the matters taken into account must include any evidence—

(a) that when the offers were made the employer had recently changed or sought to change, or did not wish to use, arrangements agreed with the union for collective bargaining,

(b) that when the offers were made the employer did not wish to enter into arrangements proposed by the union for collective bargaining, or

(c) that the offers were made only to particular workers, and were made with the sole or main purpose of rewarding those particular workers for their high level of performance or of retaining them because of their special value to the employer.

Remedies

77E.—(1) Paragraphs (2) and (3) apply where the industrial tribunal finds that a complaint under Article 77A or 77B is well-founded.

(2) The tribunal—

(a) shall make a declaration to that effect, and

(b) shall make an award to be paid by the employer to the complainant in respect of the offer complained of.

(3) The amount of the award shall be £2,500 (subject to any adjustment of the award that may fall to be made under Part IV of the Employment (Northern Ireland) Order 2003).

(4) Where an offer made in contravention of Article 77A or 77B is accepted—

(a) if the acceptance results in the worker's agreeing to vary his terms of employment, the employer cannot enforce the agreement to vary, or recover any sum paid or other asset transferred by him under the agreement to vary;

(b) if as a result of the acceptance the worker's terms of employment are varied, nothing in Article 77A or 77B makes the variation unenforceable by either party.

(5) Nothing in this Article or Articles 77A and 77B prejudices any right conferred by Article 73 or 76.

(6) In ascertaining any amount of compensation under Article 76, no reduction shall be made on the ground—

(a) that the complainant caused or contributed to his loss, or to the act or failure complained of, by accepting or not accepting an offer made in contravention of Article 77A or 77B, or

(b) that the complainant has received or is entitled to an award under this Article.

Interpretation and other supplementary provisions

77F.—(1) References in Articles 77A to 77E to being or becoming a member of a trade union include references—

(a) to being or becoming a member of a particular branch or section of that union, and

(b) to being or becoming a member of one of a number of particular branches or sections of that union.

(2) References in those Articles—

(a) to taking part in the activities of a trade union, and

(b) to services made available by a trade union by virtue of membership of the union,

shall be construed in accordance with paragraph (1).

(3) In Articles 77A to 77—

"worker" means an individual who works, or normally works as mentioned in paragraphs (a) to (c) of the definition of "worker" in Article 2(2) of the 1995 Order; and

"employer" means—

(a) in relation to a worker, the person for whom he works;

(b) in relation to a former worker, the person for whom he worked." .

(2) In Article 247 of the Employment Rights Order after paragraph (2A) insert—

"(2B) The remedy of a person for infringement of the right conferred on him by Article 77A or Article 77B is by way of a complaint under that Article and not otherwise." .

Dismissal for use of union services or refusal of inducement

15.—(1) Article 136 of the Employment Rights Order (dismissal on grounds related to union membership or activities) is amended as follows.

(2) In paragraph (1), omit "or" at the end of each of sub-paragraphs (a) and (b) and after sub-paragraph (b) insert—

"(ba) had made use, or proposed to make use, of trade union services at an appropriate time,

(bb) had failed to accept an offer made in contravention of Article 77A or 77B, or" .

(3) In paragraph (2)—

(a) for "(1)(b)" substitute " (1) "; and

(b) in sub-paragraph (b), after "the activities of a trade union" insert " or (as the case may be) make use of trade union services ".

(4) After paragraph (2) insert—

"(2A) In this Article—

(a) "trade union services" means services made available to the employee by an independent trade union by virtue of his membership of the union, and

(b) references to an employee's "making use" of trade union services include his consenting to the raising of a matter on his behalf by an independent trade union of which he is a member.

(2B) Where the reason or one of the reasons for the dismissal was that an independent trade union (with or without the employee's consent) raised a matter on behalf of the employee as one of its members, the reason shall be treated as falling within paragraph (1)(ba)." .

(5) In paragraph (4) (references to being etc. a member of a union to include being etc. a member of a branch or section) omit "; and references to taking part in the activities of a trade union shall be similarly construed".

(6) After that paragraph add—

"(5) References in this Article—

(a) to taking part in the activities of a trade union, and

(b) to services made available by a trade union by virtue of membership of the union,

shall be construed in accordance with paragraph (4)." .

Other rights of workers and employees

Expulsion from trade union attributable to conduct

16. [F2] . . . . . .

F2 Art. 16 repealed (3.8.2010) by Employment Act (Northern Ireland) 2010 (c. 12), ss. 7, 8(2), Sch. 1 para. 7, **Sch. 2**

National security: powers of industrial tribunals

17. For paragraph (6) of Article 12 of the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) (procedure regulations in relation to cases involving issues of national security) substitute—

"(6) Industrial tribunal procedure regulations may enable a tribunal, if it considers it expedient in the interests of national security, to do in relation to particular proceedings before it anything of a kind which, by virtue of paragraph (5), industrial tribunal procedure regulations may enable the Secretary of State to direct a tribunal to do in relation to particular Crown employment proceedings."

Other rights of workers and employers

Role of companion at disciplinary or grievance hearings

18.—(1) For paragraph (2) of Article 12 of the Employment Relations (Northern Ireland) Order 1999 (NI 9) (duty of employers to permit workers to be accompanied at disciplinary and grievance hearings) substitute—

"(2A) Where this Article applies, the employer must permit the worker to be accompanied at the hearing by one companion who—

(a) is chosen by the worker; and

(b) is within paragraph (3).

(2B) The employer must permit the worker's companion to—

(a) address the hearing in order to do any or all of the following—

(i) put the worker's case;

(ii) sum up that case;

(iii) respond on the worker's behalf to any view expressed at the hearing;

(b) confer with the worker during the hearing.

(2C) Paragraph (2B) does not require the employer to permit the worker's companion to—

(a) answer questions on behalf of the worker;

(b) address the hearing if the worker indicates at it that he does not wish his companion to do so; or

(c) use the powers conferred by that paragraph in a way that prevents the employer from explaining his case or prevents any other person at the hearing from making his contribution to it.” .

(2) In Article 13(1) of that Order (complaint to industrial tribunal), for “12(2)” substitute “ 12(2A), (2B) ”.

(3) In Article 14 of that Order (right not to be subjected to a detriment or dismissal)—

(a) in paragraphs (1)(a) and (3)(a) for “12(2)” substitute “ 12(2A), (2B) ”; and

(b) after paragraph (6) add—

“(7) References in this Article to a worker having accompanied or sought to accompany another worker include references to his having exercised or sought to exercise any of the powers conferred by Article 12(2A) or (2B).” .

Ways in which provision conferring rights on individuals may be made

19. In Article 24 of the Employment Relations (Northern Ireland) Order 1999 (NI 9) (power to confer on individuals of a specified description rights conferred by certain statutory provisions) in paragraph (5) (ways in which that power may be exercised) for the words from “whether” to the end substitute “ including, in particular, amending, excluding or applying (with or without amendment) any statutory provision. ”.

Protection of employees in respect of jury service

20.—(1) In Chapter I of Part VI of the Employment Rights Order (protection from suffering detriment in employment), before Article 68 insert—

“**Jury service**

67M.—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer on the ground that the employee—

(a) has been summoned under the Juries (Northern Ireland) Order 1974 (NI 6) or the Coroners (Northern Ireland) Act 1959 (c.15) to attend for service as a juror, or

(b) has been absent from work because he attended at any place in pursuance of being so summoned.

(2) This Article does not apply where the detriment in question amounts to dismissal within the meaning of Part XI.

(3) For the purposes of this Article, an employee is not to be regarded as having been subjected to a detriment by a failure to pay remuneration in respect of a relevant period unless under his contract of employment he is entitled to be paid that remuneration.

(4) In paragraph (3) “a relevant period” means any period during which the employee is absent from work because of his attendance at any place in pursuance of being summoned as mentioned in paragraph (1)(a).” .

(2) In Article 71(1) of that Order (application to industrial tribunal), after “Article” insert “ 67M, ”.

(3) After Article 130A of that Order insert—

"**Jury service**

130B.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) has been summoned under the Juries (Northern Ireland) Order 1974 or the Coroners Act (Northern Ireland) 1959 (c.15) to attend for service as a juror, or

(b) has been absent from work because he attended at any place in pursuance of being so summoned.

(2) Paragraph (1) does not apply in relation to an employee who is dismissed if the employer shows—

(a) that the circumstances were such that the employee's absence in pursuance of being so summoned was likely to cause substantial injury to the employer's undertaking,

(b) that the employer brought those circumstances to the attention of the employee,

(c) that the employee refused or failed to apply to be excused from attending in pursuance of being so summoned, and

(d) that the refusal or failure was not reasonable."

(4) In Article 137 of that Order (redundancy), for paragraph (1)(c) substitute—

"(c) it is shown that any of paragraphs (2A) to (7D) applies." .

(5) In that Article, before paragraph (3) insert—

"(2A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 130B (unless the case is one to which paragraph (2) of that Article applies)."

(6) In Article 140(3) of that Order (exceptions to one year qualifying period of continuous employment for claims of unfair dismissal), before sub-paragraph (b) insert—

"(aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies," .

(7) In Article 141(2) of that Order (exceptions to upper age limit for claims of unfair dismissal), before sub-paragraph (b) insert—

"(aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies," .

(8) In Article 143(2) of that Order (cases where employee may complain of unfair dismissal despite participation in unofficial industrial action) before sub-paragraph (a) insert—

"(aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies;" .

(9) In Article 144(2) of that Order (cases where industrial tribunal to determine whether dismissal of an employee is unfair despite limitation in paragraph (1) of that Article) before sub-paragraph (a) insert—

"(aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies;" .

Flexible working

21.—(1) After paragraph (6B) of Article 137 of the Employment Rights Order (unfair dismissal by reason of redundancy) insert—

"(6C) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in Article 135C." .

(2) In Article 141(2) of that Order (exceptions to upper age limit for claims for unfair dismissal), after sub-paragraph (fg) insert—

"(fh) Article 135C applies," .

(3) In Article 143(2) of that Order (cases where employee may complain of unfair dismissal despite participation in unofficial industrial action) after sub-paragraph (ccc) insert—

"(d) Article 135C applies;" .

(4) In Article 144(2) of that Order (cases where industrial tribunal to determine whether dismissal of an employee is unfair despite limitation in paragraph (2) of that Article) after sub-paragraph (cc) insert—

"(d) Article 135C applies;" .

PART V

THE CERTIFICATION OFFICER

Striking out by Certification Officer of applications or complaints

22.—(1) After Article 70 of the 1992 Order, insert—

"**Striking out**

70ZA.—(1) At any stage of proceedings on an application or complaint made to the Certification Officer, he may—

(a) order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,

(b) order anything in the application or complaint, or in any response, to be amended or struck out on those grounds, or

(c) order the application or complaint, or any response, to be struck out on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or complainant or (as the case may be) respondent has been scandalous, vexatious, or unreasonable.

(2) The Certification Officer may order an application or complaint made to him to be struck out for excessive delay in proceeding with it.

(3) An order under this Article may be made on the Certification Officer's own initiative and may also be made—

(a) if the order sought is to strike out an application or complaint, or to amend or strike out anything in an application or complaint, on an application by the respondent, or

(b) if the order sought is to strike out any response, or to amend or strike out anything in any response, on an application by the person who made the application or complaint mentioned in paragraph (1).

(4) Before making an order under this Article, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.

(5) Paragraph (4) shall not be taken to require the Certification Officer to send a notice under that paragraph if the party against whom it is proposed that the order under this Article

should be made has been given an opportunity to show cause orally why the order should not be made.

(6) Nothing in this Article prevents the Certification Officer from making further provision under Article 70(1) about the striking out of proceedings on any application or complaint made to him.

(7) In this Article—

"response" means any response made by a trade union or other body in the exercise of a right to be heard, or to make representations, in response to the application or complaint;

"respondent" means any trade union, or other body, that has such a right." .

(2) In Article 70(4)(a) of the 1992 Order (appeals from decisions of Certification Officer to Court of Appeal) for "or 37" substitute " 37 or 70ZA ".

Amalgamations: approval, listing and certification

23.—(1) In Article 74 of the 1995 Order (approval of instrument of amalgamation or transfer) for paragraph (2) substitute—

"(2) If the Certification Officer is satisfied—

(a) that an instrument of amalgamation complies with the requirements of any regulations in force under this Part, and

(b) that he is not prevented from approving the instrument of amalgamation by paragraph (3),

he shall approve the instrument.

(3) The Certification Officer shall not approve an instrument of amalgamation if it appears to him that the proposed name of the amalgamated union is the same as the name under which another organisation—

(a) was on 30th June 1992 registered as a trade union under the Trade Union Acts (Northern Ireland) 1871 to 1965, or

(b) is for the time being entered in the list of trade unions or in the list of employers' associations kept under the 1992 Order or under the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52),

or if the proposed name is one so nearly resembling any such name as to be likely to deceive the public.

(4) Paragraph (3) does not apply if the proposed name is the name of one of the amalgamating unions.

(5) If the Certification Officer is satisfied that an instrument of transfer complies with the requirements of any regulations in force under this Part, he shall approve the instrument." .

(2) After Article 82 of that Order insert—

"**Listing and certification after amalgamation**

82A.—(1) Paragraph (2) applies if when an instrument of amalgamation is registered by the Certification Officer under this Part each of the amalgamating unions is entered in the list of trade unions.

(2) The Certification Officer shall—

(a) enter, with effect from the amalgamation date, the name of the amalgamated union in the list of trade unions, and

(b) remove, with effect from that date, the names of the amalgamating unions from that list.

(3) Paragraph (4) applies if when an instrument of amalgamation is registered by the Certification Officer under this Part each of the amalgamating unions has a certificate of independence which is in force.

(4) The Certification Officer shall issue to the amalgamated trade union, with effect from the amalgamation date, a certificate that the union is independent.

(5) In this Article "the amalgamation date" means the date on which the instrument of amalgamation takes effect.

Supply of information by amalgamated union

82B.—(1) If an instrument of amalgamation is registered under this Part by the Certification Officer and the amalgamated union is entered in the list of trade unions in accordance with Article 82A, that union shall send to him, in such manner and form as he may require—

(a) a copy of the rules of the union,

(b) a list of its officers, and

(c) the address of its head or main office.

(2) The information required to be sent under paragraph (1) must be accompanied by any fee prescribed for the purpose under Article 89.

(3) The information must be sent—

(a) before the end of the period of six weeks beginning with the date on which the instrument of amalgamation takes effect, or

(b) if the Certification Officer considers that it is not reasonably practicable for the amalgamated union to send it in that period, before the end of such longer period, beginning with that date, as he may specify to the amalgamated union.

(4) If any of paragraphs (1) to (3) are not complied with by the amalgamated union, the Certification Officer shall remove its name from the list of trade unions." .

(3) In Article 90(2) of the 1995 Order (modifications of Part VI in its application to unincorporated employers' associations)—

(a) omit "and" at the end of sub-paragraph (b) and after that sub-paragraph insert—

"(ba) as if the references in Articles 82A and 82B to the list of trade unions were to the list of employers' associations, and" ; and

(b) in sub-paragraph (c), after "82(3)" insert " , 82A(3) and (4) ".

(4) In Article 2(2) of that Order (definitions for the purposes of the Order) at the appropriate place insert—

""certificate of independence" means a certificate issued under—

(a) Article 6 of the 1992 Order,

(b) Article 82A(4), or

(c) section 6(6) or 101A(4) of the Trade Union and Labour Relations (Consolidation) Act 1992;" .

(5) In each of paragraphs 6, 35(4)(a), 44(4)(a), 60(4), 134(1)(b) and 138 of Schedule 1A to that Order (requirements for union to be independent) for the words "under Article 6 of the 1992 Order that it is independent" substitute " of independence ".

Restriction on grounds of appeal from Certification Officer

24.—(1) In Article 5 of the 1992 Order for paragraph (8) (appeal against decision of Certification Officer relating to the list of trade unions or employers' associations) substitute—

"(8) An organisation aggrieved by the refusal of the Certification Officer to enter its name in the relevant list, or by a decision of his to remove its name from that list, may appeal to the High Court on any question of law arising in the proceedings before, or arising from the decision of, the Certification Officer." .

(2) In Article 6 of the 1992 Order for paragraph (9) (appeal against decision of Certification Officer relating to certificate of independence) substitute—

"(9) A trade union aggrieved by the refusal of the Certification Officer to issue it with a certificate of independence or by a decision of his to withdraw its certificate may appeal to the High Court on any question of law arising in the proceedings before, or arising from the decision of, the Certification Officer." .

PART VI

MISCELLANEOUS

Enforcement officers for agricultural wages legislation

25.—(1) Before Article 11 of the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 (NI 22) (in this Article referred to as "the 1977 Order") insert—

"**Appointment of officers**

10A.—(1) The Department—

(a) may appoint officers to act for the purposes of this Order; and

(b) may, instead of or in addition to appointing any officers under this Article, arrange with any Minister of the Crown or public body, that officers of that Minister or body shall act for those purposes.

(2) In paragraph (1) "public body" means—

(a) a department of the Government of the United Kingdom;

(b) a Northern Ireland department; or

(c) a body performing functions on behalf of the Crown.

(3) When acting for the purposes of this Order, an officer shall, if so required, produce some duly authenticated document showing his authority so to act.

(4) If it appears to an officer that any person with whom he is dealing while acting for the purposes of this Order does not know that he is an officer so acting, the officer shall identify himself as such to that person." .

(2) In Article 11 of the 1977 Order (officers)—

(a) for the heading substitute " Powers of officers ";

(b) omit paragraphs (1) and (4); and

(c) in paragraph (2) for "appointed under paragraph (1)" substitute " acting for the purposes of this Order ".

(3) An appointment made under Article 11(1) of the 1977 Order which is in force immediately before the date on which this Article comes into operation shall have effect on and after that date as if made under Article 10A of the 1977 Order (which is inserted by paragraph (1)).

Additional case in which election for president of union not required

26.—(1) Article 12 of the 1995 Order (requirement to hold elections for certain positions in trade unions) is amended as follows.

(2) In paragraph (2), omit the words after sub-paragraph (d).

(3) After paragraph (4) insert—

"(4A) This Part also does not apply to the position of president if—

(a) the holder of that position was elected or appointed to it in accordance with the rules of the union,

(b) at the time of his election or appointment as president he held a position mentioned in sub-paragraph (a), (b) or (d) of paragraph (2) by virtue of having been elected to it at a qualifying election,

(c) it is no more than five years since—

(i) he was elected, or re-elected, to the position mentioned in sub-paragraph (b) which he held at the time of his election or appointment as president, or

(ii) he was elected to another position of a kind mentioned in that sub-paragraph at a qualifying election held after his election or appointment as president of the union, and

(d) he has, at all times since his election or appointment as president, held a position mentioned in sub-paragraph (a), (b) or (d) of paragraph (2) by virtue of having been elected to it at a qualifying election." .

(4) In paragraph (5), at the beginning, insert " In paragraph (4) ".

(5) After paragraph (5) insert—

"(5A) In paragraph (4A) "qualifying election" means an election satisfying the requirements of this Part.

(5B) The "requirements of this Part" referred to in paragraphs (1) and (5A) are those set out in Articles 13 to 19." .

Body corporate acting as auditor of trade union or employers' association

27.—(1) Schedule 1 to the 1992 Order (annual returns and auditors) is amended as follows.

(2) Renumber paragraph 17 as sub-paragraph (1) of that paragraph and after that sub-paragraph add—

"(2) In the case of an auditor which is a body corporate or partnership, its right to attend or be heard at a meeting is exercisable by an individual authorised by it to act as its representative at the meeting."

(3) After paragraph 18 (auditor's report) insert—

"**18A.**—(1) The report shall state the names of, and be signed by, the auditor or auditors.

(2) Any reference in this Schedule to signature by an auditor is, where the office of auditor is held by a body corporate or partnership, to signature in the name of the body corporate or partnership by an individual authorised to sign on its behalf." .

Means of voting in ballots and elections

28.—(1) The Department may by order provide, in relation to any description of ballot or election authorised or required by the 1995 Order, that any ballot or election of that description is to be conducted by such one or more permissible means as the responsible person determines.

(2) A "permissible means" is a means of voting that the order provides is permissible for that description of ballot or election.

(3) "The responsible person" is a person specified, or of a description specified, by the order.

(4) An order under this Article may—

(a) include provision about the determinations that may be made by the responsible person, including provision requiring specified factors to be taken into account, or specified criteria to be applied, in making a determination;

(b) allow the determination of different means of voting for voters in different circumstances;

(c) allow a determination to be such that voters have a choice of means of voting.

(5) The means that an order specifies as permissible means must, in the case of any description of ballot or election, include (or consist of) postal voting.

(6) An order under this Article may include supplemental, incidental and consequential provisions.

(7) An order under this Article may—

(a) modify the provisions of the 1995 Order;

(b) exclude or apply (with or without modifications) any provision of that Order;

(c) make provision as respects any ballot or election conducted by specified means which is similar to any provision of that Order relating to ballots or elections.

(8) No order may be made under this Article unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

(9) The Department shall not make an order under this Article which provides that a means of voting is permissible for a description of ballot or election unless it considers—

(a) that a ballot or election of that description conducted by that means could, if particular conditions were satisfied, meet the required standard; and

(b) that, in relation to any ballot or election of that description held after the order comes into operation, the responsible person will not be permitted to determine that that means must or may be used by any voters unless he has taken specified factors into account or applied specified criteria.

(10) In specifying in an order under this Article factors to be taken into account or criteria to be applied by the responsible person, the Department must have regard to the need for ballots and elections to meet the required standard.

(11) For the purposes of paragraphs (9) and (10) a ballot or election meets "the required standard" if it is such that—

(a) those entitled to vote have an opportunity to do so;

(b) votes cast are secret;

(c) the risk of any unfairness or malpractice is minimised.

(12) In this Article "specified" means specified in an order under this Article.

Provision of money for trade union modernisation

29.—(1) The Department may provide money to a trade union to enable or assist it to do any or all of the following—

(a) improve the carrying out of any of its existing functions;

(b) prepare to carry out any new function;

(c) increase the range of services it offers to persons who are or may become members of it;

(d) prepare for an amalgamation or the transfer of any or all of its engagements:

(e) ballot its members (whether as a result of a requirement imposed by the 1995 Order or otherwise).

(2) No money shall be provided to a trade union under this Article unless at the time when the money is provided the union has a certificate of independence.

(3) Money may be provided in such a way as the Department thinks fit (whether as grants or otherwise) and on such terms as it thinks fit (whether as to repayment or otherwise).

(4) If money is provided to a trade union under this Article, the terms on which it is so provided shall be deemed to include a prohibition ("a political fund prohibition") on any of it being added to the political fund of the union.

(5) If a political fund prohibition is contravened, the Department—

(a) is entitled to recover from the trade union as a debt due to it an amount equal to the amount of money added to the union's political fund in contravention of the prohibition (whether or not that money continues to form part of the political fund); and

(b) must take such steps as are reasonably practicable to recover that amount.

(6) An amount recoverable under paragraph (5) is a liability of the trade union's political fund.

(7) Paragraph (5) does not prevent money provided to a trade union under this Article from being provided on terms containing further sanctions for a contravention of the political fund prohibition.

(8) In this Article—

(a) "trade union" has the meaning assigned to it by Article 3(1) of the 1992 Order; but

(b) paragraph (2) does not apply to a trade union which consists wholly or mainly of constituent or affiliated organisations or representatives of such organisations, as described in sub-paragraph (b) of the definition in Article 3(1) of that Order.

Article 30—Amendments and Repeals

S C H E D U L E S

Schedule 1—Amendments

Schedule 2—Amendments

Schedule 3—Repeals

Status:
Point in time view as at 03/08/2010.

Changes to legislation:
There are currently no known outstanding effects for the The Employment Relations (Northern Ireland) Order 2004.