
STATUTORY INSTRUMENTS

2004 No. 3078

The Employment Relations (Northern Ireland) Order 2004

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.”