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STATUTORY INSTRUMENTS

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**2004 No. 3078**

**The Employment Relations (Northern Ireland) Order 2004**

**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.

### **Amendments and repeals**

**30.**—(1) Schedule 2 (which makes minor and consequential amendments) has effect.

(2) The statutory provisions specified in Schedule 3 are hereby repealed to the extent specified there.