
STATUTORY INSTRUMENTS

1992 No. 807

The Industrial Relations (Northern Ireland) Order 1992

PART IX

**THE CERTIFICATION OFFICER AND THE COMMISSIONER
FOR THE RIGHTS OF TRADE UNION MEMBERS**

The Certification Officer for Northern Ireland

The Certification Officer for Northern Ireland

69.—(1) The Department shall, after consultation with the Agency, appoint an officer to be known as the Certification Officer for Northern Ireland (in this Order referred to as “the Certification Officer”).

(2) The Certification Officer shall not be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(3) The Agency shall—

- (a) provide for the Certification Officer the requisite staff (from among the Agency’s officers and servants) and the requisite accommodation, equipment and other facilities; and
- (b) pay to the Certification Officer such remuneration and travelling and other allowances as may be determined by the Department with the approval of the Department of Finance and Personnel.

(4) The Department may pay, or make provision for paying, to, or in respect of, the Certification Officer such pension, allowance or gratuity on his death or retirement as the Department may, with the approval of the Department of Finance and Personnel, determine.

(5) The Agency shall pay to the Certification Officer such sums as he may require for the making of payments in pursuance of any scheme made by the Department under Article 70(2).

(6) Where a person ceases to be the Certification Officer otherwise than on the expiry of his term of office, and it appears to the Department that there are special circumstances which make it right for him to receive compensation, the Department may make him a payment of such amount as the Department may, with the approval of the Department of Finance and Personnel, determine.

(7) The Certification Officer shall, as soon as reasonably practicable after the end of each financial year, make a report of his activities during that year to the Agency and the Department and the Department shall lay before the Assembly a copy of every report received by it under this paragraph.

(8) The functions of the Certification Officer may, if for any reason he is unable to act or during any vacancy in his office, be discharged by a person nominated for that purpose by the Department.

(9) The Certification Officer shall take custody of all annual returns, accounts, copies of rules and other documents submitted, for the purposes of the Trade Union Acts (Northern Ireland) 1871 to 1965, to the officer appointed to perform in Northern Ireland the functions of registrar of friendly societies and which are, immediately before the appointed day, in the custody of that officer.

(10) The Certification Officer shall keep available for public inspection (either free of charge or on payment of a reasonable charge) at all reasonable hours such of the documents referred to in paragraph (9) as are, or were, available for public inspection in pursuance of any of the Acts referred to in that paragraph.

(11) In the Northern Ireland Assembly Disqualification Act 1975⁽¹⁾ in Part III of Schedule 1 (other disqualifying offices), there shall be inserted (at the appropriate place) the following entry—

“Certification Officer for Northern Ireland.”.

Procedure before, and appeals from, Certification Officer

70.—(1) Except in relation to matters as to which express provision is made by or under any statutory provision, the Certification Officer may regulate the procedure to be followed—

- (a) on any application or complaint made to him; or
- (b) where his approval is sought with respect to any matter;

and, without prejudice to the generality of the power conferred by this paragraph, the provision made by the Certification Officer in exercise of that power shall include such provision as he considers appropriate for restricting the circumstances in which the identity of an individual who has made, or is proposing to make, any such application or complaint is disclosed to any person.

(2) The Department, with the approval of the Department of Finance and Personnel, may by scheme make provision for the payment by the Certification Officer to any persons of such sums as may be specified in or determined under the scheme in respect of expenses incurred by those persons for the purposes of, or in connection with, their attendance at hearings held by the Certification Officer in the course of carrying out his functions.

(3) The High Court shall hear appeals on questions of fact or law arising in any proceedings before, or arising from any decision of, the Certification Officer under Article 5 or 6.

(4) The Court of Appeal shall hear appeals on questions of law arising in any proceedings before, or arising from any decision of, the Certification Officer under Article 57, 59, 67 or 77.

The Northern Ireland Commissioner for the Rights of Trade Union Members

The Northern Ireland Commissioner for the Rights of Trade Union Members

71.—(1) The Department shall appoint an officer to be known as the Northern Ireland Commissioner for the Rights of Trade Union Members (in this Order referred to as “the Commissioner”) whose function shall be to provide assistance to persons under Article 72.

(2) The provisions of Schedule 2 shall have effect with respect to the Commissioner.

(3) Neither the Commissioner nor any member of his staff shall, in his capacity as such, be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

Assistance by the Commissioner

72.—(1) Subject to the following provisions of this Article, where, in relation to any proceedings to which this Article applies, an individual who is an actual or prospective party to those proceedings applies to the Commissioner for assistance under this Article, the Commissioner shall, as soon as reasonably practicable after receiving the application, consider the application and decide whether and to what extent to grant it.

(1) 1975 c. 25

(2) It shall be the duty of the Commissioner, as soon as reasonably practicable after making any decision under paragraph (1)—

- (a) if he has decided to provide assistance—
 - (i) to notify the applicant of his decision, stating the extent of the assistance to be provided; and
 - (ii) to give the applicant a choice, subject to any restrictions specified in the notification, as to the financial arrangements to be made in connection with the provision of the assistance; and
- (b) if he has decided not to grant the application, to notify the applicant of the decision and, if he thinks fit, of the reasons for his decision.

(3) Assistance by the Commissioner under this Article may include—

- (a) the making of arrangements for, or for the Commissioner to bear the costs of, the giving of any advice or assistance by a solicitor or counsel; and
- (b) the making of arrangements for, or for the Commissioner to bear the costs of, the representation of the applicant or the provision to him of such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring an end to any proceedings;

but nothing in this Article shall affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend and address the court in any proceedings.

(4) The matters to which the Commissioner may have regard in determining whether, and to what extent, to grant an application under this Article shall include, in particular—

- (a) whether the case raises a question of principle;
- (b) whether it is unreasonable, having regard to the complexity of the case, to expect the applicant to deal with the case unaided; and
- (c) whether, in the opinion of the Commissioner, the case involves a matter of substantial public interest.

(5) Where—

- (a) an application for assistance under this Article is made in relation to any proceedings or prospective proceedings consisting in, or arising out of, an application for an order of the High Court under Article 52 or 61;
- (b) the Certification Officer has already made a declaration under that Article with respect to the subject matter of the proceedings or, as the case may be, prospective proceedings; and
- (c) it appears to the Commissioner that the applicant for assistance would (if assisted) have a reasonable prospect of securing the making of such an order in those proceedings,

the Commissioner shall grant the application for assistance to the extent that he considers necessary for securing, so far as reasonably practicable, that all such steps as he considers appropriate (including, where appropriate, the taking of another ballot or the holding of another election) are taken by the trade union in question for the purpose of remedying the failure specified in the declaration and of ensuring that a failure of the same, or a similar, kind does not arise on the part of the union.

(6) The power of the Commissioner to provide assistance to a prospective applicant to the High Court under Article 52 or 61 shall not entitle the Commissioner to provide assistance with the making of an application to the Certification Officer.

(7) This Article applies to any proceedings or prospective proceedings to the extent that they consist in, or arise out of—

- (a) an application to the High Court under Article 9, 32, 37, 52 or 61;

- (b) an application to the High Court under Article 8(3) or any other proceedings brought by virtue of that Article;
- (c) proceedings brought by virtue of Article 57 with respect to the unlawful application of the funds of any trade union;
- (d) such other proceedings, being proceedings against a trade union, an official of a trade union or the trustees of the property of a trade union, as may be specified in an order made by the Department subject to affirmative resolution.

Provisions supplementary to Article 72

73.—(1) Without prejudice to the power of the Commissioner to enter into any such agreement as he thinks fit as to the terms on which assistance under Article 72 is provided, where the Commissioner grants an application under that Article to any person who for the purposes of the application—

- (a) has made any statement which he knew to be false in a material particular; or
- (b) has recklessly made any statement which was false in a material particular,

the Commissioner shall be entitled to recover from that person an amount equal to any sums paid by him to that person, or any other person, by way of assistance provided in pursuance of the grant of that application.

(2) Where the Commissioner provides assistance under Article 72 in relation to any proceedings, it shall be his duty to do so on such terms, or to make such other arrangements, as will secure that any person against whom those proceedings have been or are commenced is informed that assistance has been or is being provided by the Commissioner in relation to the proceedings.

(3) In every case where assistance provided by the Commissioner under Article 72 extends to assistance with respect to the conduct of any proceedings to which that Article applies, that assistance shall include an agreement under which the Commissioner is required (subject only to such exceptions as may have been contained in the notification under paragraph (2) of that Article of the Commissioner's decision on the application) to indemnify the applicant for so much of any liability of the applicant to pay any amount in respect of costs or expenses to any other person as arises by virtue of any judgment or order of the court in the proceedings in relation to which the assistance is provided.

(4) In so far as expenses are incurred by the Commissioner in providing the applicant with assistance under Article 72 the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules of court) shall constitute a first charge for the benefit of the Commissioner—

- (a) on any costs which, by virtue of a judgment or order of the court, are payable to the applicant by any other person in respect of the matter in connection with which the assistance is provided; and
- (b) on any sum payable to the applicant under any compromise or settlement arrived at in connection with that matter to avoid or bring an end to any proceedings.

(5) In this Article “the applicant”, in relation to any assistance under Article 72, means the individual on whose application under that Article that assistance is provided.