
STATUTORY INSTRUMENTS

1992 No. 807

The Industrial Relations (Northern Ireland) Order 1992

PART VI

SECRET BALLOTS BEFORE INDUSTRIAL ACTION

Ballots authorising or endorsing industrial action

44.—(1) For the purposes of paragraph (1) of Article 20, an act shall be taken as having been done with the support of a ballot if, but only if—

- (a) the requirements set out in paragraph (2) are satisfied; or
- (b) in the case of an act done in contemplation or furtherance of a trade dispute involving members both in Great Britain and in Northern Ireland, had the act taken place in Great Britain, it would be taken for the purposes of section 10(1) of the Trade Union Act 1984⁽¹⁾ as having been so done.

(2) The requirements mentioned in paragraph (1)(a) are—

- (a) that the trade union has held a ballot in respect of the strike or other industrial action in the course of which the breach or interference referred to in that paragraph occurred;
- (b) that the majority of those voting in the ballot have answered “Yes” to the appropriate question;
- (c) that the first authorisation or endorsement of any relevant act, and in the case of an authorisation the relevant act itself, took place after the date on which the ballot was held and before the expiry of the period of four weeks beginning with that date; and
- (d) that Article 45 has been satisfied in relation to the ballot.

(3) Where—

- (a) any person has been induced by an act to break his contract of employment or to interfere with its performance; and
- (b) separate ballots have been held by virtue of Article 45(2) in relation to the strike or industrial action in the course of which that act has induced the breach or interference,

then paragraph (2) shall be construed, in relation to the inducement of that breach or interference, as making provision which, in the case of sub-paragraph (b) of that paragraph, requires only that the majority voting in the ballot for that person’s place of work have answered “Yes” to the appropriate question and, in the case of sub-paragraphs (c) and (d), does not impose any requirements in relation to any other ballot.

(4) Subject to paragraph (5), in this Part references to the appropriate question are references to whichever of the questions set out in paragraph (6) of Article 45 is applicable to the strike or other industrial action in question.

(5) Where both the questions mentioned in paragraph (4) are applicable in relation to any industrial action, an act inducing a breach or interference such as is mentioned in paragraph (1) of Article 20 shall be treated as an act for the purposes of which the requirement of sub-paragraph (b) of paragraph (2) is satisfied if, but only if, that sub-paragraph (or, as the case may be, that sub-paragraph as it has effect by virtue of paragraph (3)) is satisfied in relation to the question applicable to that part of the action in the course of which the breach or interference occurred.

Requirements to be satisfied in relation to ballots authorising or endorsing industrial action

45.—(1) Entitlement to vote in the ballot must be accorded—

- (a) equally, to all those members of the trade union who it is reasonable at the time of the ballot for the union to believe will be induced to take part or, as the case may be, to continue to take part in the strike or other industrial action; and
- (b) to no others.

(2) Subject to paragraph (3), where the members who it is reasonable at the time of the ballot for the union to believe will be induced as mentioned in paragraph (1) have different places of work—

- (a) a separate ballot in relation to which the requirements of this Article are satisfied must be held for each place of work (instead of one ballot of all those members); and
- (b) paragraph (1) shall have effect so as to require entitlement to vote in the ballot held for each place of work to be accorded to such of those members as the union reasonably believes to be members having that place as their place of work, and to no other persons.

(3) Paragraph (2) shall not apply in relation to a ballot if at the time of the ballot it is reasonable for the trade union to believe and it does believe—

- (a) that all the members who are accorded entitlement to vote in the ballot have the same place of work;
- (b) that there is, in relation to each of the members of the union who is accorded entitlement to vote in the ballot, some factor (whether or not the same factor) which—
 - (i) relates to the terms or conditions of that member’s employment or to the occupational description which is applicable to that member in his employment;
 - (ii) is a factor which that member has in common with one or more of the other members of the union who are accorded that entitlement; and
 - (iii) in a case where there are individuals employed by the same employer as that member who are members of the union but are not accorded that entitlement, is neither a factor which that member has in common with any of those individuals nor a factor which individuals employed by that employer have in common as a consequence of having the same place of work; or
- (c) that the condition specified in sub-paragraph (b) would be satisfied if any overseas members accorded entitlement to vote in the ballot were disregarded.

(4) Where a person who was a member of a trade union at the time when a ballot was held for the purposes of this Part—

- (a) was denied entitlement to vote in the ballot; and
- (b) is induced by the union to take part or, as the case may be, to continue to take part in the strike or other industrial action,

this Article shall be taken not to have been satisfied in relation to that ballot.

(5) The method of voting in the ballot must be by the marking of a voting paper by the person voting and the following statement must (without being qualified or commented upon by anything else on the voting paper) appear on every voting paper, namely—

“If you take part in a strike or other industrial action, you may be in breach of your contract of employment.”.

- (6) The voting paper must contain at least one of the following questions—
 - (a) a question (however framed) which requires the person answering it to say, by answering “Yes” or “No”, whether he is prepared to take part or, as the case may be, to continue to take part in a strike;
 - (b) a question (however framed) which requires the person answering it to say, by answering “Yes” or “No”, whether he is prepared to take part or, as the case may be, to continue to take part in action short of a strike.
- (7) Every person who is entitled to vote in the ballot must—
 - (a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees; and
 - (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.
- (8) So far as is reasonably practicable, every person who is entitled to vote in the ballot must—
 - (a) have made available to him—
 - (i) immediately before, immediately after, or during his working hours; and
 - (ii) at his place of work or at a place which is more convenient for him;or be supplied with, a voting paper; and
 - (b) be given—
 - (i) a convenient opportunity to vote by post (but no other opportunity to vote);
 - (ii) an opportunity to vote immediately before, immediately after, or during his working hours and at his place of work or at a place which is more convenient for him (but no other opportunity); or
 - (iii) as alternatives, both of those opportunities (but no other opportunity).
- (9) The ballot must be conducted so as to secure that—
 - (a) so far as is reasonably practicable, those voting do so in secret; and
 - (b) the votes given in the ballot are fairly and accurately counted (any inaccuracy in counting being disregarded for the purposes of this sub-paragraph if it is accidental and on a scale which could not affect the result of the ballot).
- (10) As soon as is reasonably practicable after the holding of the ballot, the trade union shall take such steps as are reasonably necessary to ensure that all persons entitled to vote in the ballot are informed of the number of—
 - (a) votes cast in the ballot;
 - (b) individuals answering “Yes” to the question or, as the case may be, to each question;
 - (c) individuals answering “No” to the question or, as the case may be, to each question; and
 - (d) spoiled voting papers.
- (11) A trade union which has overseas members may choose whether or not to accord any of those members entitlement to vote in a ballot; and nothing in paragraphs (4) to (9) shall apply in relation to any overseas member or in relation to any vote cast by any such member.
- (12) Where overseas members have voted in the ballot, paragraph (10) shall be read as requiring the information in question to be provided to all those entitled to vote in the ballot other than overseas members and to distinguish between overseas members and other members.

Interpretation of Part VI

46.—(1) In this Part—

“authorisation or endorsement” means an authorisation or endorsement of an act which, by virtue of Article 21, causes the act to be taken, for the purposes mentioned in that Article, to have been done by the trade union;

“merchant seaman” means a person whose employment, or the greater part of it, is carried out on board seagoing ships;

“offshore worker” means any person in employment to which section 127 of the Employment Protection Act 1975⁽²⁾ (employment for purposes of activities in territorial or other offshore waters) applies, other than one who is in such employment in any area where the law of Great Britain applies;

“overseas member”, in relation to a trade union, means a member of the union (other than a merchant seaman or offshore worker) who is outside Northern Ireland throughout the period during which votes may be cast;

“place of work”, in relation to any person who is employed, means the premises occupied by his employer at or from which that person works or, where he does not work at or from any such premises or works at or from more than one set of premises, the premises occupied by his employer with which his employment has the closest connection;

“post” means a postal service which—

- (a) is provided by the Post Office or under a licence granted under section 68 of the British Telecommunications Act 1981⁽³⁾; or
- (b) does not infringe the exclusive privilege conferred on the Post Office by section 66(1) of that Act only by virtue of an order made under section 69 of that Act;

“relevant act” means an act (done in the course of the action mentioned in Article 44(2)(a)) of inducing a person to break his contract of employment or to interfere with its performance; and

“working hours”, in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

(2) In this Part any reference to a breach or interference occurring in the course of a strike or other industrial action includes a reference to a breach or interference which, taken together with any corresponding action relating to other contracts of employment, constitutes that action.

(3) In this Part references to an inducement, in relation to a member of a trade union, include references to an inducement which is or would be ineffective, whether because of that member’s unwillingness to be influenced by it or for any other reason.

(2) 1975 c. 71
(3) 1981 c. 38