1992 No. 240

INDUSTRIAL RELATIONS

Funds for Trade Union Ballots Regulations (Northern Ireland) 1992

Made	*28th May 1992*
Coming into operation . .	*1st July 1992*

The Department of Economic Development, in exercise of the powers conferred on it by Article 102(1), (5) and (6) of the Industrial Relations (Northern Ireland) Order 1992(**a**) and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1. These Regulations may be cited as the Funds for Trade Union Ballots Regulations (Northern Ireland) 1992 and shall come into operation on 1st July 1992.

2. In these Regulations—

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

"the Scheme" means the scheme made by these Regulations;

"the scrutineer" means the person appointed by a trade union in relation to the election or ballot in question in accordance with Article 50(1) or 60(8) respectively of the 1992 Order;

"merchant seaman", "offshore worker", "overseas member", "post" and "working hours" have the same meanings respectively as in Article 46(1) of the 1992 Order;

"proper address", "section" and "single transferable vote" have the same meanings respectively as in Article 56(1) of the 1992 Order.

Scope of the Scheme

3. Subject to regulations 5 and 6, the Scheme applies to a ballot if—

(*a*) the purpose of the question, or of each of the questions, to be voted upon falls within the purposes mentioned in regulation 4; or

(*b*) the purpose of one or more of the questions to be voted upon falls within those purposes and each other question to be voted upon relates to the same issue as a question the purpose of which falls within those purposes.

(a) S.I. 1992/807 (N.I. 5)

4. The purposes referred to in regulation 3 are—

(*a*) obtaining a decision or ascertaining the views of members of a trade union as to the calling or ending of a strike or other industrial action;

(*b*) carrying out an election—

(i) in relation to which Article 48 of the 1992 Order is required to be satisfied; or

(ii) provided for by the rules of a trade union to the principal committee of the union exercising executive functions, by whatever name it is known; or

(iii) provided for by the rules of a trade union to the positions of president, chairman, secretary or treasurer of the union or to any position which the person elected will hold as an employee of the union;

(*c*) amending the rules of a trade union;

(*d*) obtaining a decision in accordance with Part X of the 1992 Order on a resolution to approve an instrument of amalgamation or transfer;

(*e*) obtaining a decision on a resolution for the purposes of Article 57 of the 1992 Order;

(*f*) obtaining a decision or ascertaining the views of members of a trade union as to the acceptance or rejection of a proposal made by an employer which relates in whole or in part to remuneration (whether in money or money's worth), hours of work, level of performance, holidays or pensions.

5. Notwithstanding anything in regulations 3 and 4, the Scheme does not apply to a ballot if—

(*a*) the purpose of any question to be voted upon is the obtaining of a decision of the kind mentioned in regulation 4(*e*); and

(*b*) the ballot is held at a time when there is no resolution in force in respect of the trade union under Article 57 of the 1992 Order.

6. The Scheme applies only to ballots which are so conducted as to secure, so far as reasonably practicable, that those voting do so in secret.

Application for payments

7.—(1) An independent trade union claiming to have incurred expenditure on a ballot to which the Scheme applies may apply to the Certification Officer within six months of the date of the ballot for payments in respect of that ballot.

(2) The Certification Officer may, if he thinks fit, accept an application under paragraph (1) in respect of more than one ballot relating to the same question or to related questions and in any such case, for all purposes of these Regulations, he shall proceed as if each ballot had been the subject of a separate application.

(3) Notwithstanding anything in paragraph (1), no application shall be made in respect of a ballot containing a question the purpose of which falls

within regulation 4(*b*)(i) or (*e*) before the date on which the trade union publishes the result of the election or ballot in accordance with Article 50(6) or 60(13) respectively of the 1992 Order.

(4) An application under paragraph (1) shall be made in such form, shall contain such assurances and shall be accompanied, or subsequently supported, by such other assurances and documents as the Certification Officer may require.

(5) Every application under paragraph (1) in respect of such a ballot as is mentioned in paragraph (3) shall be accompanied by a copy of such report with respect to the election or ballot as is mentioned in Article 50(4) or 60(11) respectively of the 1992 Order.

(6) Where a ballot ("the first ballot") has been held and set aside (whether as the result of an enforcement order made under Article 52(5) of the 1992 Order, or otherwise) and another ballot ("the second ballot") has been, or is to be, held in its place—

(*a*) the Certification Officer (if he is aware of those circumstances) shall take no further action under these Regulations in relation to any application that has already been made under paragraph (1) in respect of the first ballot; and

(*b*) no application may be made under paragraph (1)—

(i) in respect of the first ballot; or

(ii) in respect of the second ballot if a payment has been made under regulations 13 to 17 in respect of the first ballot.

8.—(1) If the Certification Officer is satisfied that an application under regulation 7(1) is in respect of a ballot to which the Scheme applies he shall proceed in accordance with the following regulations.

(2) Where the Certification Officer—

(*a*) is aware of the institution of any legal proceedings relating to a ballot in respect of which an application has been made under regulation 7(1); and

(*b*) considers that any issue relevant to his duties in relation to that application may be raised in those proceedings,

he shall take no further action under these Regulations in relation to that application until those proceedings have been finally determined.

(3) For the purposes of paragraph (2), proceedings shall be taken to have been finally determined when any appeal in respect of such proceedings has been determined, withdrawn or abandoned or when the time for appealing has expired without an appeal having been brought.

(4) For the avoidance of doubt, in paragraph (2), "legal proceedings" includes proceedings before the Certification Officer under Article 52, 61 or 77 of the 1992 Order.

Conditions to be satisfied if payment is to be made

9.—(1) Except as provided by regulation 23, the Certification Officer shall not make any payments under regulations 13 to 17 unless he considers

that adequate assurances have been given by the trade union as to compliance with—

(*a*) the conditions mentioned in regulation 10 (which are applicable to all ballots); and

(*b*) such of the conditions mentioned in regulation 11 (which are applicable to specific questions asked in ballots) as are applicable to the question or questions asked in the ballot.

(2) For the purposes of paragraph (1), the Certification Officer shall not consider adequate such assurances as have been given if, on consideration of any matter which has come to his notice, he is of the opinion that any of the conditions referred to in that paragraph has not been satisfied.

10. The conditions (applicable to all ballots) referred to in regulation 9(1)(*a*) are—

(*a*) that the method of voting was by the marking of a voting paper by the person voting;

(*b*) that every person who was entitled to vote in the ballot was—

(i) allowed to vote without interference from, or constraint imposed by, the trade union or any of its members, officials or employees; and

(ii) so far as was reasonably practicable, enabled to do so without incurring any direct cost to himself;

(*c*) that, so far as was reasonably practicable, every person who was entitled to vote—

(i) had sent to him, at his proper address and by post, a voting paper; and

(ii) was given a convenient opportunity to vote by post;

(*d*) where the votes on any question have not been counted, that the decision not to count them was taken because of a change in circumstances occurring after the first day on which voting papers were made available or supplied to persons entitled to vote which materially affected the issue to which the question related;

(*e*) where the votes on any question have been counted, that the ballot was conducted so as to secure that the votes given in the ballot were fairly and accurately counted (any inaccuracy in counting being disregarded for the purposes of this paragraph if it was accidental and on a scale which did not affect the result of the ballot;

(*f*) that the ballot was conducted so as to secure that the result of the ballot was determined solely by counting the number of votes cast directly by those voting (this condition shall not be taken not to have been satisfied by reason only that the system of voting used was the single transferable vote).

11. The conditions (applicable to specific questions) referred to in regulation 9(1)(*b*) are—

(*a*) in the case of a question the purpose of which falls within regulation

4(*a*) and is concerned only with the ending of a strike or other industrial action—

(i) that the ballot was conducted so as to secure, so far as reasonably practicable, that all the members participating in the action were entitled to vote; and

(ii) that as soon as was reasonably practicable after the holding of the ballot the trade union took such steps as were reasonably necessary to ensure that all persons entitled to vote on that question were informed of the number of—

(A) votes cast on that question;

(B) individuals voting in favour of that question;

(C) individuals voting against that question; and

(D) spoiled ballot papers;

(*b*) in the case of a question the purpose of which falls within regulation 4(*a*), other than a question to which paragraph (*a*) of this regulation relates, that paragraphs (1) to (6) and (10) of Article 45 of the 1992 Order have, within the meaning of that Article, been satisfied in relation to the ballot;

(*c*) in the case of a question the purpose of which falls within regulation 4(*b*), that, subject to regulation 12(5), entitlement to vote at the election was accorded equally to all members of the trade union in question other than those mentioned in regulation 12(3);

(*d*) in the case of a question the purpose of which falls within regulation 4(*b*), that the voting papers either listed the candidates at the election or were accompanied by a separate list of those candidates;

(*e*) in the case of a question the purpose of which falls within regulation 4(*b*)(i), that the requirements of Article 49(1) of the 1992 Order have been satisfied in relation to that ballot;

(*f*) in the case of a question the purpose of which falls within regulation 4(*b*)(i) or (*e*), that the requirements of Article 50(1) or 60(8) of the 1992 Order have been satisfied in relation to that election or ballot respectively;

(*g*) in the case of a question the purpose of which falls within regulation 4(*b*)(i) or (*e*), that each voting paper—

(i) clearly specified the address to which, and the date by which, the voting paper was to be returned;

(ii) was given one of a series of consecutive whole numbers every one of which was used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot; and

(iii) was marked with its number;

(*h*) in the case of a question the purpose of which falls within regulation 4(*c*), that any requirements in the rules of the trade union as to entitlement to vote were complied with;