STATUTORY INSTRUMENTS

1987 No. 936 (N.I. 9)

NORTHERN IRELAND

The Industrial Relations (Northern Ireland) Order 1987

Made - - - - 18th May 1987
Coming into operation on days to be appointed under Article 1(2)

At the Court at Buckingham Palace, the 18th day of May 1987

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act1974, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introductory

Title and commencement

1.—(1) This Order may be cited as the Industrial Relations (Northern Ireland) Order 1987.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint.

(3) An order under paragraph (2) may contain such transitional and supplemental provisions as appear to the Head of the Department to be necessary or expedient.

(4) Without prejudice to paragraph (3)—

(a) an order under paragraph (2) bringing Article 5 into operation may provide that, for such period as may be specified in the order, Article 22A of the No. 1 Order (as substituted by Article 5) shall have effect as if Article 22A(3)(c) applied only to a union membership agreement taking effect in relation to the employees in question after 3rd May 1982; and

(b) an order under paragraph (2) bringing Article 11 into operation may make corresponding provision in respect of Article 33(6) of the No. 2 Order (as substituted by Article 11).

(5) This Order shall be construed as one with the Industrial Relations (Northern Ireland) Orders 1976 to 1982 and those Orders and this Order may be cited together as the Industrial Relations (Northern Ireland) Orders 1976 to 1987.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland)1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) Without prejudice to the generality of Article 1(5), the provisions of Articles 2(2) to (9) and 3 of the Industrial Relations (Northern Ireland) Order1976 and of Article 2(2) of the Industrial Relations (No. 2) (Northern Ireland) Order1976, in so far as those provisions relate to the definition or interpretation of words or expressions used in those Orders and in this Order, shall apply for the purposes of this Order as they apply for the purposes of those Orders.

Employee involvement

Employee involvement

3.—(1) In Article 243(5) of the Companies (Northern Ireland) Order1986 (matters to be dealt with in directors' report) for the words "and IV" there shall be substituted the words "IV and V" and at the end there shll be added the words "and th involvemnt of employees in th affairs, policy and performance of the company".

(2) At the end of Schedule 7 of that Order there shall be added—

"PART V

EMPLOYEE INVOLVEMENT

11.—(1) This part applies to the director's report where the average number of persons employed by the company in each week during the financial year exceeded 250.

(2) That average number is the quotient derived by dividing by the number of weeks in the financial year the number derived by ascertaining, in relation to each of those weeks, the number of persons who, under contracts of service, were employed in the week (whether throughout it or not) by the company, and adding up the numbers ascertained.

(3) The directors' report shall in that case contain a statement describing the action that has been taken during the financial year to intorduce, maintain or develop arrangements aimed at—

(a) providing employees systematically with information on matters of concern to them as employees;

(b) consulting employees or their representatives on a regular basis so that the views of employees can be taken into account in making decisions which are likely to affect their interests;

(c) encouraging the involvement of employees in the company's performance through an employees' share scheme or by some other means;

(d) achieving a common awareness on the part of all employees of the financial and economic factors affecting the performance of the company.

(4) In sub-paragraph (3) "employee" does not include a person employed to work wholly or mainly outside the United Kingdom; and for the purposes of sub-paragraph (2) no regard is to be had to such a person.".

Unfair dismissal

Compensation for certain dismissals

4. The provisions of Schedule 1 shall have effect for the purpose of enabling the Department to make payments towards compensating individuals who in certain past cases have been dismissed for failure to conform to the requirements of a union membership agreement.

Meaning of unfair dismissal

5.—(1) In Article 22 of the No. 1 Order for paragraphs (3) to (11) there shall be substituted—

"(3) Where the employer has fulfilled the requirements of paragraph (1), then, subject to Articles 22A to 23 and to Article 14 of the No. 2 Order, the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and that question shall be determined in accordance with equity and the substantial merits of the case.

(4) In this Article, in relation to an employee—

(a) "capability" means capability assessed by reference to skill, aptitude, health or any other physical or mental quality;

(b) "qualifications" means any degree, diploma or other academic, technical or professional qualification relevant to the position which the employee held.".

(2) For Articles 22A and 23 of the No. 1 Order there shall be substituted—

"**Dismissal relating to trade union membership**

22A.—(1) Subject to paragraph (3), the dismissal of an employee by an employer shall be regarded for the purposes of this Order as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—

(a) was, or proposed to become, a member of an independent trade union; or

(b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time; or

(c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused or proposed to refuse to become or remain a member.

(2) In paragraph (1) "an appropriate time", in relation to an employee taking part in the activities of a trade union, means a time which either—

(a) is outside his working hours; or

(b) is a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in those activities; and in this paragraph "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.

(3) Subject to the following provisions of this Article, the dismissal of an employee by an employer shall be regarded for the purposes of this Order as having been fair if—

(a) it is the practice, in accordance with a union membership agreement, for employees of the employer who are of the same class as the dismissed employee to belong to

a specified independent trade union, or to one of a number of specified independent trade unions; and

(b) the reason (or, if more than one, the principal reason) for the dismissal was that the employee was not, or had refused or proposed to refuse to become or remain, a member of a union in accordance with the agreement; and

(c) the union membership agreement had been approved in relation to employees of that class in accordance with Article 22B through a ballot held within the period of five years ending with the time of dismissal.

(4) Paragraph (3) shall not apply if the employee genuinely objects on grounds of conscience or other deeply-held personal conviction to being a member of any trade union whatsoever or of a particular trade union.

(5) Paragraph (3) shall not apply if the employee—

(a) has been among those employees of the employer who belong to the class to which the union membership agreement relates since before the agreement had the effect of requiring them to be or become members of a trade union; and

(b) has not at any time while the agreement had that effect been a member of a trade union in accordance with the agreement.

(6) Paragraph (3) shall not apply if—

(a) the union membership agreement took effect after 3rd May 1982 in relation to the employees of the employer who are of the same class as the dismissed employee; and

(b) the employee was entitled to vote in the ballot through which the agreement was approved in accordance with Article 22B or, if there have been two or more such ballots, in the first of them; and

(c) the employee has not at any time since the day on which that ballot was held been a member of a trade union in accordance with the agreement.

(7) Paragraph (3) shall not apply if the dismissal was from employment in respect of which, at the time of dismissal, either—

(a) there was in force a declaration made on a complaint presented by the employee under Article 6 of the Industrial Relations (Northern Ireland) Order1982 (unreasonable exclusion or expulsion from trade union); or

(b) proceedings on such a complaint were pending before an industrial tribunal, unless the employee has at any time during the period beginning with the date of the complaint under Article 6 and ending with the effective date of termination been, or failed through his own fault to become, a member of a trade union in accordance with the union membership agreement.

(8) In any case where neither paragraph (4) nor paragraph (7) has the effect of displacing paragraph (3) and the employee—

(a) holds qualifications which are relevant to the employment in question;

(b) is subject to a written code which governs the conduct of those persons who hold those qualifications; and

(c) has—

(i) been expelled from a trade union for refusing to take part in a strike or other industrial action; or

(ii) refused to become or remain a member of a trade union, paragraph (3) shall not apply if the reason (or, if more than one, the principal reason) for his refusal was, in a case falling within sub-paragraph (c)(i), that his taking the action

in question would be in breach of the code or, in a case falling within sub-paragraph (c)(ii), that if he became, or as the case may be remained, a member he would be required to take part in a strike, or other industrial action, which would be in breach of that code.

(9) For the purposes of paragraphs (3)(c) and (6)(c), where votes in a ballot may be cast on more than one day, the ballot shall be treated as held on the last of those days.

(10) For the purposes of paragraph (3) a union shall be treated as specified for the purposes of or in relation to a union membership agreement (in a case where it would not otherwise be so treated) if—

(a) the Agency has made a recommendation under Article 7(1) for recognition of that union covering the employee in question; or

(b) the Agency is exercising, or has been requested to exercise, its powers under Article 7 in relation to a dispute relating to or connected with recognition of that union covering that employee and the dispute has not been settled or otherwise disposed of by the Agency under that Article.

(11) For the purposes of paragraphs (3) and (7) the reference to the time of the dismissal shall, in a case where the dismissal was with notice, be construed as a reference to the time when the notice was given.

(12) For the purposes of paragraph (7) an employee shall be taken to have failed through his own fault to become a member of a trade union only if the tribunal is satisfied that the fact that he is not a member is attributable to his failure to apply (or re-apply) for membership or to his failure to accept an offer of membership.

(13) Where the employer of any employees changes in such circumstances that the employees' period of continuous employment is not broken, this Article and Article 22B shall have effect as if any reference to the employees of any class of the later employer included a reference to the employees of that class of the former employer.

(14) Where the reason, or one of the reasons, for the dismissal of an employee was—

(a) his refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his failure to become or his ceasing to remain a member of any trade union or of a particular trade union or of one of a number of particular trade unions, he must make one or more payments; or

(b) his objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his contract of employment or in writing) under which, in the event mentioned in sub-paragraph (a), his employer is entitled to deduct one or more sums from the remuneration payable to him in respect of his employment, that reason shall be treated as falling within paragraph (1)(c) and (3)(b).

(15) References in this Article and Article 22B to a trade union include references to a branch or section of a trade union, unless the context otherwise requires.

Ballots as to union membership agreements

22B.—(1) Subject to the following provisions of this Article, a union membership agreement shall be taken for the purposes of Article 22A(3)(c) to have been approved in relation to the employees of any class of an employer if a ballot has been held on the question whether the agreement should apply in relation to them and either—

(a) not less than 80 per cent. of those entitled to vote; or

(b) not less than 85 per cent. of those who voted, voted in favour of the agreement's application.