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STATUTORY INSTRUMENTS

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**1995 No. 1980 (N.I. 12)**

The Trade Union and Labour Relations  
(Northern Ireland) Order 1995 <sup>F1</sup>

- - - - - 26th July 1995

**F1** functions transf. by SR 1999/481

PART I  
INTRODUCTORY

**Title and commencement**

1.—(1) This Order may be cited as the Trade Union and Labour Relations (Northern Ireland) Order 1995.

(2) This Order shall come into operation on such day or days as the Department may by order appoint<sup>F2</sup>.

**F2** partly exercised by SR 1995/354

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>F3</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“act” and “action” each includes omission and references to doing an act or taking action shall be construed accordingly;

“the Agency” means the Labour Relations Agency;

“the appointed day”, in any provision, means the day appointed under Article 1(2) for the coming into operation of that provision;

“branch” or “section”, in relation to a trade union or employers' association, includes a branch or section which is itself a trade union or employers' association;

[<sup>F4</sup>“certificate of independence” means a certificate issued under—

- (a) Article 6 of the 1992 Order,
- (b) Article 82A(4), or

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(c) section 6(6) or 101A(4) of the Trade Union and Labour Relations (Consolidation) Act 1992;]

“the Certification Officer” means the Certification Officer for Northern Ireland;

“conduct” includes statements and acts;

“contract of employment” means a contract of service or of apprenticeship;

“contravention”, in relation to any order of a court or other requirement, includes a failure to comply;

“the Department” means the Department of Economic Development;

“the duty of confidentiality” has the meaning assigned to it by Article 4(3);

“employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment;

“employer”

(a) in relation to an employee, means the person by whom the employee is (or, where the employment has ceased, was) employed;

(b) in relation to a worker, means a person for whom one or more workers work, or have worked or normally work or seek to work;

“employers' association” has the meaning assigned to it by Article 4(1) and (2) of the 1992 Order;

“executive”, in relation to a trade union or employers' association, means the principal committee of the union or association exercising executive functions, by whatever name it is known;

“general secretary”, in relation to a trade union or employers' association, means the official of the union or association who holds the office of general secretary or, where there is no such office, who holds an office which is equivalent, or the nearest equivalent, to that of general secretary;

“government department” means a Northern Ireland department or a department of the Government of the United Kingdom;

“Great Britain union” means a trade union whose head or main office is situated in England, Wales or Scotland;

“independent trade union” has the meaning assigned to it by Article 2(2) of the 1992 Order;

“officer”, in relation to a trade union or an employers' association, includes any member of the governing body of that union or association and any trustee of any fund applicable for the purposes of that union or association;

“official”, in relation to a trade union, means—

(a) an officer of the union or of a branch or section of the union, or

(b) a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them,

and includes a person so elected or appointed who is an employee of the same employer as the members or one or more of the members whom he is to represent;

*Definition rep. by SI 2001/1149*

“president”, in relation to a trade union or employers' association, means the official of the union or association who holds the office of president or, where there is no such office, who holds an office which is equivalent, or the nearest equivalent, to that of president;

“regulations” means regulations made by the Department;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954<sup>F5</sup>;

“rules”, in relation to a trade union or employers' association, includes the rules of any branch or section;

“trade union” has the meaning assigned to it by Article 3(1) of the 1992 Order;

“worker” means an individual who works, or normally works or seeks to work—

- (a) under a contract of employment, or
- (b) under any other contract whereby he undertakes to do or perform personally any work or services for another party to the contract who is not a professional client of his, or
- (c) in employment under or for the purposes of a government department (otherwise than as a member of the naval, military or air forces of the Crown) in so far as such employment does not fall within sub-paragraph (a) or (b);

[<sup>F6</sup>“the Employment Rights Order” means the Employment Rights (Northern Ireland) Order 1996;]

“the 1992 Order” means the Industrial Relations (Northern Ireland) Order 1992<sup>F7</sup>;

“the Great Britain Act” means the Trade Union and Labour Relations (Consolidation) Act 1992<sup>F8</sup>;

*Definition rep. by 1996 NI 16*

<b>F3</b>	1954 c. 33 (NI)
<b>F4</b>	2004 NI 19
<b>F5</b>	1954 c. 33 (NI)
<b>F6</b>	1996 NI 16
<b>F7</b>	1992 NI 5
<b>F8</b>	1992 c. 52

## PART II

### TRADE UNION ADMINISTRATION

#### *Register of members' names and addresses*

#### **Duty to maintain register of members' names and addresses**

3.—(1) A trade union shall compile and maintain a register of the names and addresses of its members, and shall secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.

(2) The register may be kept by means of a computer.

(3) A trade union shall—

- (a) allow any member, upon reasonable notice, to ascertain from the register, free of charge and at any reasonable time, whether there is an entry on it relating to him; and
- (b) if requested to do so by any member, supply him as soon as reasonably practicable, either free of charge or on payment of a reasonable fee, with a copy of any entry on the register relating to him.

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(4) Any duty falling upon a branch or section under this Article by reason of its being a trade union shall be treated as having been discharged to the extent to which the union of which it is a branch or section has discharged the duty instead.

(5) For the purposes of this Article a member's address means either his home address or another address which he has requested the union in writing to treat as his postal address.

(6) The remedy for failure to comply with the requirements of this Article is by way of application under Article 5 (to the Certification Officer) or Article 6 (to the High Court).

F9 . . .

(7) Subject to paragraph (8), this Article and Articles 4 to 6 apply to every trade union which has its head or main office in Northern Ireland.

(8) This Article and Articles 4 to 6 do not apply to a trade union—

- (a) which falls within Article 3(1)(b) of the 1992 Order (unions consisting wholly or mainly of, or of representatives of, constituent or affiliated organisations), if it has no individual members other than representatives of constituent or affiliated organisations; or
- (b) until more than one year has elapsed since its formation (by amalgamation or otherwise).

For this purpose the date of formation of a trade union formed otherwise than by amalgamation shall be taken to be the date on which the first members of the executive of the union are first appointed or elected.

F9 1999 NI 9

### **Securing confidentiality of register during ballots**

4.—(1) This Article applies in relation to a ballot of the members of a trade union on—

- (a) an election under Part III for a position to which that Part applies,
- (b) a political resolution under Part V, and
- (c) a resolution to approve an instrument of amalgamation or transfer under Part VI.

(2) Where this Article applies in relation to a ballot the trade union shall impose the duty of confidentiality in relation to the register of members' names and addresses on the scrutineer appointed by the union for the purposes of the ballot and on any person appointed by the union as the independent person for the purposes of the ballot.

(3) The duty of confidentiality in relation to the register of members' names and addresses is, when imposed on a scrutineer or on an independent person, a duty—

- (a) not to disclose any name or address in the register except in permitted circumstances; and
- (b) to take all reasonable steps to secure that there is no disclosure of any such name or address by any other person except in permitted circumstances;

and any reference in this Order to “the duty of confidentiality” is a reference to the duty prescribed in this paragraph.

(4) The circumstances in which disclosure of a member's name and address is permitted are—

- (a) where the member consents;
- (b) where it is requested by the Certification Officer for the purposes of the discharge of any of his functions or it is required for the purposes of the discharge of any of the functions of an inspector appointed by him;
- (c) where it is required for the purposes of the discharge of any of the functions of the scrutineer or independent person, as the case may be, under the terms of his appointment;

(d) where it is required for the purposes of the investigation of crime or of criminal proceedings.

(5) Any provision of this Order which incorporates the duty of confidentiality as respects the register into the appointment of a scrutineer or an independent person has the effect of imposing that duty on the scrutineer or independent person as a duty owed by him to the trade union.

(6) The remedy for failure to comply with the requirements of this Article is by way of application under Article 5 (to the Certification Officer) or Article 6 (to the High Court).

F10 . . .

F10 1999 NI 9

### Remedy for failure: application to Certification Officer

5.—(1) A member of a trade union who claims that the union has failed to comply with any of the requirements of Article 3 or 4 (duties with respect to register of members' names and addresses) may apply to the Certification Officer for a declaration to that effect.

(2) On an application being made to him, the Certification Officer shall—

(a) make such enquiries as he thinks fit, and

(b) <sup>F11</sup> . . . give the applicant and the trade union an opportunity to be heard,

and may make or refuse the declaration asked for.

(3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.

(4) Where he makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.

(5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

[<sup>F12</sup>(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—

(a) to take such steps to remedy the declared failure, within such period, as may be specified in the order;

(b) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

(5B) Where an enforcement order has been made, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.]

(6) In exercising his functions under this Article the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.

(7) Where he requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

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(8) The Certification Officer shall not entertain an application for a declaration as respects an alleged failure to comply with the requirements of Article 4 in relation to a ballot to which that Article applies unless the application is made before the end of the period of one year beginning with the last day on which votes could be cast in the ballot.

[<sup>F12</sup>(9) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.

(10) An enforcement order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.

(11) The following provisions have effect if a person applies under Article 6 in relation to an alleged failure—

- (a) that person may not apply under this Article in relation to that failure;
- (b) on an application by a different person under this Article in relation to that failure, the Certification Officer shall have due regard to any declaration, order, observations or reasons made or given by the High Court regarding that failure and brought to the Certification Officer's notice.]

**F11** 1999 NI 9

**F12** 1999 NI 9

### **Remedy for failure: application to High Court**

6.—(1) A member of a trade union who claims that the union has failed to comply with any of the requirements of Article 3 or 4 (duties with respect to register of members' names and addresses) may apply to the High Court for a declaration to that effect.

*Para.(2) rep. by 1999 NI 9*

(3) If the High Court makes a declaration it shall specify in it the provisions with which the trade union has failed to comply.

(4) Where the High Court makes a declaration it shall also, unless it considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—

- (a) to take such steps to remedy the declared failure, within such period, as may be specified in the order;
- (b) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

(5) Where an enforcement order has been made, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(6) Without prejudice to any other power of the High Court, the court may on an application under this Article grant such interlocutory relief as it considers appropriate.

(7) The High Court shall not entertain an application for a declaration as respects an alleged failure to comply with the requirements of Article 4 in relation to a ballot to which that Article applies unless the application is made before the end of the period of one year beginning with the last day on which votes could be cast in the ballot.

[<sup>F13</sup>(8) The following provisions have effect if a person applies under Article 5 in relation to an alleged failure—

- (a) that person may not apply under this Article in relation to that failure;

- (b) on an application by a different person under this Article in relation to that failure, the High Court shall have due regard to any declaration, order, observations or reasons made or given by the Certification Officer regarding that failure and brought to the court's notice.]

F13 1999 NI 9

*Financial affairs of unions, etc.*

**Annual return to include additional information**

7. In Part I of Schedule 1 to the 1992 Order (annual returns, etc.) after paragraph 4 there shall be inserted—

“**4A.**—(1) Every annual return of a trade union shall contain—

- (a) details of the salary paid to and other benefits provided to or in respect of—
- (i) each member of the executive,
  - (ii) the president, and
  - (iii) the general secretary,

by the trade union during the period to which the return relates; and

- (b) in the case of a trade union required to maintain a register by Article 3 of the Trade Union and Labour Relations (Northern Ireland) Order 1995, a statement of the number of names on the register as at the end of the period to which the return relates and the number of those names which were not accompanied by an address which is a member's address for the purposes of that Article.

(2) For the purposes of this paragraph “member of the executive” includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.”.

**Statement to members following annual return**

8. After Article 11 of the 1992 Order there shall be inserted—

“**Statement to members following annual return**

**11A.**—(1) A trade union to which Article 11 applies shall take all reasonable steps to secure that, not later than the end of the period of eight weeks beginning with the day on which the annual return of the union is sent to the Certification Officer, all the members of the union are provided with the statement required by this Article by any of the methods allowed by paragraph (2).

(2) Those methods are—

- (a) the sending of individual copies of the statement to members; or
- (b) any other means (whether by including the statement in a publication of the union or otherwise) which it is the practice of the union to use when information of general interest to all its members needs to be provided to them.

(3) The statement required by this Article shall specify—

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- (a) the total income and expenditure of the trade union for the period to which the return relates,
  - (b) how much of the income of the union for that period consisted of payments in respect of membership,
  - (c) the total income and expenditure for that period of any political fund of the union, and
  - (d) the salary paid to and other benefits provided to or in respect of—
    - (i) each member of the executive (within the meaning of paragraph 4A of Schedule 1).
    - (ii) the president, and
    - (iii) the general secretary,
 by the trade union during that period.
- (4) The requirement imposed by this Article is not satisfied if the statement specifies anything inconsistent with the contents of the return.
- (5) The statement—
- (a) shall also set out in full the report made by the auditor or auditors of the union on the accounts contained in the return and state the name and address of that auditor or of each of those auditors, and
  - (b) may include any other matter which the union considers may give a member significant assistance in making an informed judgment about the financial activities of the union in the period to which the return relates.
- (6) The statement—
- (a) shall also include the following statement—
 

“A member who is concerned that some irregularity may be occurring, or has occurred, in the conduct of the financial affairs of the union may take steps with a view to investigating further, obtaining clarification and, if necessary, securing regularisation of that conduct.

The member may raise any such concern with such one or more of the following as it seems appropriate to raise it with: the officials of the union, the trustees of the property of the union, the auditor or auditors of the union, the Certification Officer for Northern Ireland (who is an independent officer appointed by the Department of Economic Development) and the police.

Where a member believes that the financial affairs of the union have been or are being conducted in breach of the law or in breach of rules of the union and contemplates bringing civil proceedings against the union or responsible officials or trustees, he may apply for material assistance from the Northern Ireland Commissioner for the Rights of Trade Union Members and should, in any case, consider obtaining independent legal advice.”

; and
  - (b) may include such other details of the steps which a member may take for the purpose mentioned in the statement set out above as the trade union considers appropriate.
- (7) A trade union shall send to the Certification Officer a copy of the statement which is provided to its members in pursuance of this Article as soon as is reasonably practicable after it is so provided.



(8) Where the same form of statement is not provided to all the members of a trade union, the union shall send to the Certification Officer in accordance with paragraph (7) a copy of each form of statement provided to any of them.

(9) If at any time during the period of two years beginning with the day referred to in paragraph (1) any member of the trade union requests a copy of the statement required by this Article, the union shall, as soon as practicable, furnish him with such a copy free of charge.

(10) Where the duty falling on a trade union under Article 11 to send to the Certification Officer a return relating to its affairs is treated as discharged by the union by virtue of paragraph (8) of that Article, the duties imposed by this Article in relation to the return shall be treated as duties of the branch or section of the union, or the trade union of which it is a branch or section, by which that duty is in fact discharged.”.

### Investigation of financial affairs

9. After Article 12 of the 1992 Order there shall be inserted—

#### *“Investigation of financial affairs*

#### **Power of Certification Officer to require production of documents etc.**

**12A.**—(1) The Certification Officer may at any time, if he thinks there is good reason to do so, give directions to a trade union or employers' association to which Article 11 applies, or a branch or section of such a trade union or employers' association, requiring it to produce such relevant documents as may be specified in the directions; and the documents shall be produced at such time and place as may be so specified.

(2) The Certification Officer may at any time, if he thinks there is good reason to do so, authorise a member of his staff or any other person, on producing (if so required) evidence of his authority, to require a trade union or employers' association to which Article 11 applies, or a branch or section of such a trade union or employers' association, to produce forthwith to the member of staff or other person such relevant documents as the member of staff or other person may specify.

(3) Where the Certification Officer, or a member of his staff or any other person, has power to require the production of documents by virtue of paragraph (1) or (2), the Certification Officer, member of staff or other person has the like power to require production of those documents from any person who appears to the Certification Officer, member of staff or other person to be in possession of them.

(4) Where such a person claims a lien on documents produced by him, the production is without prejudice to the lien.

(5) The power under this Article to require the production of documents includes power—

- (a) if the documents are produced—
  - (i) to take copies of them or extracts from them, and
  - (ii) to require the person by whom they are produced, or any person who is or has been an official or agent of the trade union or employers' association, to provide an explanation of any of them; and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

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(6) In paragraphs (1) and (2) “relevant documents”, in relation to a trade union or employers' association or a branch or section of a trade union or employers' association, means accounting documents, and documents of any other description, which may be relevant in considering the financial affairs of the trade union or employers' association.

(7) A person shall not be excused from providing an explanation or making a statement in compliance with a requirement imposed under paragraph (5) on the ground that to do so would tend to expose him to proceedings for an offence; but an explanation so provided or statement so made may only be used in evidence against the person by whom it is made or provided—

- (a) on a prosecution for an offence under Article 13(9) (false explanations and statements), or
- (b) on a prosecution for some other offence where in giving evidence the person makes a statement inconsistent with it.

### **Investigations by inspectors**

**12B.—**(1) The Certification Officer may appoint one or more members of his staff or other persons as an inspector or inspectors to investigate the financial affairs of a trade union or employers' association to which Article 11 applies and to report on them in such manner as he may direct.

(2) The Certification Officer may only make such an appointment if it appears to him that there are circumstances suggesting—

- (a) that the financial affairs of the trade union or employers' association are being or have been conducted for a fraudulent or unlawful purpose,
- (b) that persons concerned with the management of those financial affairs have, in connection with that management, been guilty of fraud, misfeasance or other misconduct,
- (c) that the trade union or employers' association has failed to comply with any duty imposed on it by this Order in relation to its financial affairs, or
- (d) that a rule of the union or association relating to its financial affairs has not been complied with.

(3) Where an inspector is, or inspectors are, appointed under this Article it is the duty of all persons who are or have been officials or agents of the trade union or employers' association—

- (a) to produce to the inspector or inspectors all relevant documents which are in their possession,
- (b) to attend before the inspector or inspectors when required to do so, and
- (c) otherwise to give the inspector or inspectors all assistance in connection with the investigation which they are reasonably able to give.

(4) Where any person (whether or not within paragraph (3)) appears to the inspector or inspectors to be in possession of information relating to a matter which he considers, or they consider, to be relevant to the investigation, the inspector or inspectors may require him—

- (a) to produce to the inspector or inspectors any relevant documents relating to that matter,
- (b) to attend before the inspector or inspectors, and
- (c) otherwise to give the inspector or inspectors all assistance in connection with the investigation which he is reasonably able to give;

and it is the duty of the person to comply with the requirement.

(5) In paragraphs (3) and (4) “relevant documents”, in relation to an investigation of the financial affairs of a trade union or employers' association, means accounting documents, and documents of any other description, which may be relevant to the investigation.

(6) A person shall not be excused from providing an explanation or making a statement in compliance with paragraph (3) or a requirement imposed under paragraph (4) on the ground that to do so would tend to expose him to proceedings for an offence; but an explanation so provided or statement so made may only be used in evidence against the person by whom it is provided or made—

- (a) on a prosecution for an offence under Article 13(9) (false explanations and statements), or
- (b) on a prosecution for some other offence where in giving evidence the person makes a statement inconsistent with it.

#### **Inspectors' reports etc.**

**12C.**—(1) An inspector or inspectors appointed under Article 12B—

- (a) may, and if so directed by the Certification Officer shall, make interim reports, and
- (b) on the conclusion of their investigation shall make a final report,

to the Certification Officer.

(2) Any report under paragraph (1) shall be written or printed, as the Certification Officer directs.

(3) An inspector or inspectors appointed under Article 12B may at any time, and if so directed by the Certification Officer shall, inform the Certification Officer of any matters coming to his or their knowledge as a result of the investigation.

(4) The Certification Officer may direct an inspector or inspectors appointed under Article 12B to take no further steps in the investigation, or to take only such further steps as are specified in the direction, if—

- (a) it appears to the Certification Officer that matters have come to light in the course of the investigation which suggest that a criminal offence has been committed and those matters have been referred to the appropriate prosecuting authority, or
- (b) it appears to the Certification Officer appropriate to do so in any other circumstances.

(5) Where an investigation is the subject of a direction under paragraph (4), the inspector or inspectors shall make a final report to the Certification Officer only where the Certification Officer directs him or them to do so at the time of the direction under that paragraph or subsequently.

(6) The Certification Officer shall publish a final report made to him under this Article.

(7) The Certification Officer shall furnish a copy of such a report free of charge—

- (a) to the trade union or employers' association which is the subject of the report,
- (b) to any auditor of that trade union or employers' association or of any branch or section of the union or association, if he requests a copy before the end of the period of three years beginning with the day on which the report is published, and
- (c) to any member of the trade union or employers' association if—

- (i) he has complained to the Certification Officer that there are circumstances suggesting any of the states of affairs specified in Article 12B(2)(a) to (d),

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- (ii) the Certification Officer considers that the report contains findings which are relevant to the complaint, and
- (iii) the member requests a copy before the end of the period of three years beginning with the day on which the report is published.

(8) A copy of any report under this Article, certified by the Certification Officer to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report; and a document purporting to be a certificate of the Certification Officer under this paragraph shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

### **Expenses of investigations**

**12D.**—(1) The expenses of an investigation under Article 12B shall be defrayed in the first instance by the Certification Officer.

(2) For the purposes of this Article there shall be treated as expenses of an investigation, in particular, such reasonable sums as the Certification Officer may determine in respect of general staff costs and overheads.

(3) A person who is convicted on a prosecution instituted as a result of the investigation may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

### **Articles 12A and 12B: supplementary**

**12E.**—(1) Where—

- (a) a report of the auditor or auditors of a trade union or employers' association, or a branch or section of a trade union or employers' association, on the accounts audited by him or them and contained in the annual return of the union or association, or branch or section—
  - (i) does not state without qualification that the accounts give a true and fair view of the matters to which they relate, or
  - (ii) includes a statement in compliance with paragraph 20 of Schedule 1, or
- (b) a member of a trade union or employers' association has complained to the Certification Officer that there are circumstances suggesting any of the states of affairs specified in Article 12B(2)(a) to (d),

the Certification Officer shall consider whether it is appropriate for him to exercise any of the powers conferred on him by Articles 12A and 12B.

(2) If in a case where a member of a trade union or employers' association has complained as mentioned in paragraph (1)(b) the Certification Officer decides not to exercise any of the powers conferred by those Articles he shall, as soon as reasonably practicable after making a decision not to do so, notify the member of his decision and, if he thinks fit, of the reasons for it.

(3) Nothing in Article 12A or 12B—

- (a) requires or authorises anyone to require the disclosure by a person of information which he would in an action in the High Court be entitled to refuse to disclose on grounds of legal professional privilege except, if he is a lawyer, the name and address of his client, or
- (b) requires or authorises anyone to require the production by a person of a document which he would in such an action be entitled to refuse to produce on such grounds.

(4) Nothing in Article 12A or 12B requires or authorises anyone to require the disclosure of information or the production of documents in respect of which the person to whom the requirement would relate owes an obligation of confidence by virtue of carrying on the business of banking unless—

(a) the person to whom the obligation is owed is the trade union or employers' association, or any branch or section of the union or association, concerned or a trustee of any fund concerned, or

(b) the person to whom the obligation of confidence is owed consents to the disclosure or production.

(5) In Articles 12A and 12B and this Article—

(a) references to documents include information recorded in any form, and

(b) in relation to information recorded otherwise than in legible form, references to its production are to the production of a copy of the information in legible form.”.

## Offences

**10.**—(1) In Article 13 of the 1992 Order (offences) in paragraphs (1) and (4) for “Article 10 or 11 or 12” there shall be substituted “Articles 10 to 12”.

(2) For paragraph (5) of that Article there shall be substituted—

“(5) If a person contravenes any duty, or requirement imposed, under Article 12A or 12B he commits an offence.

(6) In any proceedings brought against a person in respect of a contravention of a requirement imposed under Article 12A(3) or 12B(4) to produce documents it is a defence for him to prove—

(a) that the documents were not in his possession; and

(b) that it was not reasonably practicable for him to comply with the requirement.

(7) If an official or agent of a trade union or employers' association—

(a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of, a document relating to the financial affairs of the trade union or employers' association; or

(b) makes, or is privy to the making of, a false entry in any such document,

he commits an offence unless he proves that he had no intention to conceal the financial affairs of the trade union or employers' association or to defeat the law.

(8) If such a person fraudulently—

(a) parts with, alters or deletes anything in any such document; or

(b) is privy to the fraudulent parting with, fraudulent alteration of or fraudulent deletion in, any such document,

he commits an offence.

(9) If a person in purported compliance with a duty, or requirement imposed, under Article 12A or 12B to provide an explanation or make a statement—

(a) provides or makes an explanation or statement which he knows to be false in a material particular; or

(b) recklessly provides or makes an explanation or statement which is false in a material particular,

he commits an offence.”.

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(3) After Article 13 of the 1992 Order there shall be inserted—

**“Penalties and prosecution time limits**

**13A.**—(1) A person guilty of an offence under Article 13 is liable on summary conviction—

- (a) in the case of an offence under paragraph (1) or (5), to a fine not exceeding level 5 on the standard scale; PART II (b) in the case of an offence under paragraph (4), (7), (8) or (9), to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(2) Proceedings for an offence under Article 13(1) relating to the duty imposed by Article 13(2) may be commenced at any time before the end of the period of three years beginning with the date when the offence was committed.

(3) Proceedings for any other offence under Article 13(1) may be commenced—

- (a) at any time before the end of the period of six months beginning with the date when the offence was committed, or
- (b) at any time after the end of that period but before the end of the period of twelve months beginning with the date when evidence sufficient in the opinion of the Certification Officer to justify the proceedings came to his knowledge;

but no proceedings may be commenced by virtue of sub-paragraph (b) after the end of the period of three years beginning with the date when the offence was committed.

(4) For the purposes of paragraph (3)(b), a certificate signed by or on behalf of the Certification Officer which states the date on which evidence sufficient in his opinion to justify the proceedings came to his knowledge shall be conclusive evidence of that fact.

(5) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(6) For the purposes of this Article proceedings are commenced when a complaint charging the commission of the offence is made.”.

**Disqualification of offenders**

11. After Article 13A of the 1992 Order (which is inserted by Article 10) there shall be inserted—

**“Duty to secure positions not held by certain offenders**

**13B.**—(1) A trade union shall secure that a person does not at any time hold a position in the union to which this Article applies if—

- (a) within the period of five years immediately preceding that time he has been convicted of an offence under paragraph (1) or (5) of Article 13; or
- (b) within the period of ten years immediately preceding that time he has been convicted of an offence under paragraph (4), (7), (8) or (9) of that Article.

(2) Subject to paragraph (4), the positions to which this Article applies are—

- (a) member of the executive;
- (b) any position by virtue of which a person is a member of the executive;
- (c) president; and
- (d) general secretary.

(3) For the purposes of paragraph (2)(a) “member of the executive” includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with

factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.

(4) This Article does not apply to the position of president or general secretary if the holder of that position—

- (a) is not, in respect of that position, either a voting member of the executive or an employee of the union;
- (b) holds that position for a period which under the rules of the union cannot end more than thirteen months after he took it up; and
- (c) has not held either position at any time in the period of twelve months ending with the day before he took up that position.

(5) In paragraph (4)(a) “a voting member of the executive” means a person entitled in his own right to attend meetings of the executive and to vote on matters on which votes are taken by the executive (whether or not he is entitled to attend all such meetings or to vote on all such matters or in all circumstances).

### **Remedies and enforcement**

**13C.**—(1) A member of a trade union who claims that the union has failed to comply with the requirement of Article 13B may apply to the Certification Officer or to the High Court for a declaration to that effect.

(2) On an application being made to him, the Certification Officer—

- (a) shall, where he considers it appropriate, give the applicant and the trade union an opportunity to be heard;
- (b) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made;
- (c) may make or refuse the declaration asked for; and
- (d) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.

(3) Where an application is made to the Certification Officer, the person who made that application, or any other person, is not prevented from making an application to the High Court in respect of the same matter.

(4) If, after an application is made to the Certification Officer, an application in respect of the same matter is made to the High Court, the court shall have due regard to any declaration which has been made by the Certification Officer.

(5) Where the High Court makes a declaration it shall also, unless it considers that it would be inappropriate, make an order imposing on the trade union a requirement to take within such period as may be specified in the order such steps to remedy the declared failure as may be so specified.

(6) Where an order has been made, any person who is a member of the trade union and was a member at the time the order was made is entitled to enforce the order as if he had made the application on which the order was made.”.

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## PART III

### ELECTIONS FOR CERTAIN POSITIONS

#### *Duty to hold elections*

#### **Duty to hold elections for certain positions**

12.—(1) A trade union shall secure—

- (a) that every person who holds a position in the union to which this Part applies does so by virtue of having been elected to it at an election satisfying the requirements of this Part, and
- (b) that no person continues to hold such a position for more than five years without being re-elected at such an election.

(2) The positions to which this Part applies (subject as mentioned below) are—

- (a) member of the executive,
- (b) any position by virtue of which a person is a member of the executive,
- (c) president, and
- (d) general secretary;

<sup>F14</sup>

(3) In this Part “member of the executive” includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.

(4) This Part does not apply to the position of president or general secretary if the holder of that position—

- (a) is not, in respect of that position, either a voting member of the executive or an employee of the union,
- (b) holds that position for a period which under the rules of the union cannot end more than 13 months after he took it up, and
- (c) has not held either position at any time in the period of 12 months ending with the day before he took up that position.

[<sup>F14</sup>(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.]

(5) <sup>F14</sup>In paragraph (4)] A “voting member of the executive” means a person entitled in his own right to attend meetings of the executive and to vote on matters on which votes are taken by the executive (whether or not he is entitled to attend all such meetings or to vote on all such matters or in all circumstances).

<sup>F14</sup>(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.]

(6) The provisions of this Part apply notwithstanding anything in the rules or practice of the union; and the terms and conditions on which a person is employed by the union shall be disregarded in so far as they would prevent the union from complying with the provisions of this Part.

(7) This Part applies only to a trade union which has its head or main office in Northern Ireland.

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#### *Requirements to be satisfied with respect to elections*

### **Candidates**

13.—(1) No member of the trade union shall be unreasonably excluded from standing as a candidate.

(2) No candidate shall be required, directly or indirectly, to be a member of a political party.

(3) A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union.

But a rule which provides for such a class to be determined by reference to whom the union chooses to exclude shall be disregarded.

### **Election addresses**

14.—(1) The trade union shall—

(a) provide every candidate with an opportunity of preparing an election address in his own words and of submitting it to the union to be distributed to the persons accorded entitlement to vote in the election; and

(b) secure that, so far as reasonably practicable, copies of every election address submitted to it in time are distributed to each of those persons by post along with the voting papers for the election.

(2) The trade union may determine the time by which an election address must be submitted to it for distribution; but the time so determined must not be earlier than the latest time at which a person may become a candidate in the election.

(3) The trade union may provide that election addresses submitted to it for distribution—

(a) must not exceed such length, not being less than one hundred words, as may be determined by the union, and

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- (b) may, as regards photographs and other matter not in words, incorporate only such matter as the union may determine.
- (4) The trade union shall secure that no modification of an election address submitted to it is made by any person in any copy of the address to be distributed except—
  - (a) at the request or with the consent of the candidate, or
  - (b) where the modification is necessarily incidental to the method adopted for producing that copy.
- (5) The trade union shall secure that the same method of producing copies is applied in the same way to every election address submitted and, so far as reasonably practicable, that no such facility or information as would enable a candidate to gain any benefit from—
  - (a) the method by which copies of the election addresses are produced, or
  - (b) the modifications which are necessarily incidental to that method,
 is provided to any candidate without being provided equally to all the others.
- (6) The trade union shall, so far as reasonably practicable, secure that the same facilities and restrictions with respect to the preparation, submission, length or modification of an election address, and with respect to the incorporation of photographs or other matter not in words, are provided or applied equally to each of the candidates.
- (7) The arrangements made by the trade union for the production of the copies to be so distributed must be such as to secure that none of the candidates is required to bear any of the expense of producing the copies.
- (8) No one other than the candidate himself shall incur any civil or criminal liability in respect of the publication of a candidate's election address or of any copy required to be made for the purposes of this Article.

### **Appointment of independent scrutineer**

- 15.**—(1) The trade union shall, before the election is held, appoint a qualified independent person (“the scrutineer”) to carry out—
- (a) the functions in relation to the election which are required under this Article to be contained in his appointment; and
  - (b) such additional functions in relation to the election as may be specified in his appointment.
- (2) A person is a qualified independent person in relation to an election if—
- (a) he satisfies such conditions as may be specified for the purposes of this Article by order of the Department or is himself so specified; and
  - (b) the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the election otherwise than competently or that his independence in relation to the union, or in relation to the election, might reasonably be called into question.
- (3) The scrutineer's appointment shall require him—
- (a) to be the person who supervises the production of the voting papers and (unless he is appointed under Article 18 to undertake the distribution of the voting papers) their distribution and to whom the voting papers are returned by those voting;
  - (b) to—
    - (i) inspect the register of names and addresses of the members of the trade union, or
    - (ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with paragraph (9)(a),

- whenever it appears to him appropriate to do so and, in particular, when the conditions specified in paragraph (4) are satisfied;
- (c) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see Article 19);
  - (d) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and
  - (e) to retain custody of all voting papers returned for the purposes of the election and the copy of the register supplied to him in accordance with paragraph (9)(a)—
    - (i) until the end of the period of one year beginning with the announcement by the union of the result of the election; and
    - (ii) if within that period an application is made under Article 21 (complaint of failure to comply with election requirements), until the Certification Officer or the High Court authorises him to dispose of the papers or copy.
- (4) The conditions referred to in paragraph (3)(b) are—
- (a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union or candidate who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and
  - (b) that the scrutineer does not consider that the suspicion of the member or candidate is ill-founded.
- (5) In paragraph (4) “the appropriate period” means the period—
- (a) beginning with the first day on which a person may become a candidate in the election or, if later, the day on which the scrutineer is appointed, and
  - (b) ending with the day before the day on which the scrutineer makes his report to the trade union.
- (6) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.
- (7) The trade union shall ensure that nothing in the terms of the scrutineer's appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer's independence in relation to the union into question.
- (8) The trade union shall, before the scrutineer begins to carry out his functions, either—
- (a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or
  - (b) take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.
- (9) The trade union shall—
- (a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and
  - (b) comply with any request made by the scrutineer to inspect the register.
- (10) Where the register is kept by means of a computer the duty imposed on the trade union by paragraph (9)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.

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(11) The trade union shall ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer's independence in relation to the union into question.

(12) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.

(13) In this Article “the relevant date” means—

- (a) where the trade union has rules determining who is entitled to vote in the election by reference to membership on a particular date, that date, and
- (b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the election.

### **Entitlement to vote**

**16.**—(1) Subject to the provisions of this Article, entitlement to vote shall be accorded equally to all members of the trade union.

(2) The rules of the union may exclude entitlement to vote in the case of all members belonging to one of the following classes, or to a class falling within one of the following—

- (a) members who are not in employment;
- (b) members who are in arrears in respect of any subscription or contribution due to the union;
- (c) members who are apprentices, trainees or students or new members of the union.

(3) The rules of the union may restrict entitlement to vote to members who fall within—

- (a) a class determined by reference to a trade or occupation,
- (b) a class determined by reference to a geographical area, or
- (c) a class which is by virtue of the rules of the union treated as a separate section within the union,

or to members who fall within a class determined by reference to any combination of the factors mentioned in sub-paragraphs (a), (b) and (c).

(4) Entitlement may not be restricted in accordance with paragraph (3) if the effect is that any member of the union is denied entitlement to vote at all elections held for the purposes of this Part otherwise than by virtue of belonging to a class excluded in accordance with paragraph (2).

### **Voting**

**17.**—(1) The method of voting must be by the marking of a voting paper by the person voting.

(2) Each voting paper must—

- (a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned,
- (b) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the election, and
- (c) be marked with its number.

(3) Every person who is entitled to vote at the election 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.

- (4) So far as is reasonably practicable, every person who is entitled to vote at the election must—
- (a) have sent to him by post, at his home address or another address which he has requested the trade union in writing to treat as his postal address, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates; and
  - (b) be given a convenient opportunity to vote by post;

but where, for the purpose of personal safety, a member of a trade union requests the union in writing to send a voting paper to him by some means other than by post then, in relation to that member, sub-paragraph (a) shall have effect with the substitution for the reference to post of a reference to that other means.

- (5) The ballot shall 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 at the election are fairly and accurately counted.

For the purposes of sub-paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the election.

(6) The ballot shall be so conducted as to secure that the result of the election is determined solely by counting the number of votes cast directly for each candidate.

(7) Nothing in paragraph (6) shall be taken to prevent the system of voting used for the election being the single transferable vote, that is, a vote capable of being given so as to indicate the voter's order of preference for the candidates and of being transferred to the next choice—

- (a) when it is not required to give a prior choice the necessary quota of votes, or
- (b) when, owing to the deficiency in the number of votes given for a prior choice, that choice is eliminated from the list of candidates.

### **Counting of votes etc. by independent person**

**18.**—(1) The trade union shall ensure that—

- (a) the storage and distribution of the voting papers for the purposes of the election, and
- (b) the counting of the votes cast in the election,

are undertaken by one or more independent persons appointed by the union.

(2) A person is an independent person in relation to an election if—

- (a) he is the scrutineer, or
- (b) he is a person other than the scrutineer and the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the election otherwise than competently or that his independence in relation to the union, or in relation to the election, might reasonably be called into question.

(3) An appointment under this Article shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any statutory provision or the occurrence of any unfairness or malpractice.

(4) The duty of confidentiality as respects the register is incorporated in an appointment under this Article.

(5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.

(6) The trade union—

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- (a) shall ensure that nothing in the terms of an appointment under this Article is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,
- (b) shall ensure that a person appointed under this Article duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call into question the independence of the person appointed in relation to the union, and
- (c) shall comply with all reasonable requests made by a person appointed under this Article for the purposes of, or in connection with, the carrying out of his functions.

### **Scrutineer's report**

**19.**—(1) The scrutineer's report on the election shall state—

- (a) the number of voting papers distributed for the purposes of the election,
- (b) the number of voting papers returned to the scrutineer,
- (c) the number of valid votes cast in the election for each candidate,
- (d) the number of spoiled or otherwise invalid voting papers returned; and
- (e) the name of the person (or of each of the persons) appointed under Article 18 or, if no person was so appointed, that fact.

(2) The report shall also state whether the scrutineer is satisfied—

- (a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any statutory provision in relation to the election,
- (b) that the arrangements made (whether by him or any other person) with respect to the production, storage, distribution, return or other handling of the voting papers used in the election, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and
- (c) that he has been able to carry out his functions without such interference as would make it reasonable for any person to call his independence in relation to the union into question;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.

(3) The report shall also state—

- (a) whether the scrutineer—
  - (i) has inspected the register of names and addresses of the members of the trade union, or
  - (ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with Article 15(9)(a),
- (b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or candidate or at his own instance,
- (c) whether he declined to act on any such request, and
- (d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date,

but shall not state the name of any member or candidate who has requested such an inspection or examination.

- (4) Where one or more persons other than the scrutineer are appointed under Article 18, the statement included in the scrutineer's report in accordance with paragraph (2)(b) shall also indicate—
- (a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and
  - (b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.
- (5) The trade union shall not publish the result of the election until it has received the scrutineer's report.
- (6) The trade union shall within the period of three months after it receives the report either—
- (a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
  - (b) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.
- (7) Any such copy or notification shall be accompanied by a statement that the union will, on request, supply any member of the union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification.
- (8) The trade union shall so supply any member of the union who makes such a request and pays the fee (if any) notified to him.

### Uncontested elections

20. Nothing in this Part shall be taken to require a ballot to be held at an uncontested election.

#### *Remedy for failure to comply with requirements*

### Remedy for failure to comply with requirements: general

21.—(1) The remedy for a failure on the part of a trade union to comply with the requirements of this Part is by way of application under Article 22 (to the Certification Officer) or Article 23 (to the High Court).

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- (2) An application under those Articles may be made—
- (a) by a person who is a member of the trade union (provided, where the election has been held, he was also a member at the time when it was held), or
  - (b) by a person who is or was a candidate at the election;

and the references in those Articles to a person having a sufficient interest are to such a person.

(3) [F16Where an election has been held, no application under those Articles with respect to that election] may be made after the end of the period of one year beginning with the day on which the union announced the result of the election.

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## Application to Certification Officer

22.—(1) A person having a sufficient interest (see Article 21(2)) who claims that a trade union has failed to comply with any of the requirements of this Part may apply to the Certification Officer for a declaration to that effect.

(2) On an application being made to him, the Certification Officer shall—

- (a) make such enquiries as he thinks fit, and
- (b) <sup>F17</sup> . . . give the applicant and the trade union an opportunity to be heard,

and may make or refuse the declaration asked for.

(3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.

(4) Where he makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.

(5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

[<sup>F18</sup>(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

- (a) to secure the holding of an election in accordance with the order;
- (b) to take such other steps to remedy the declared failure as may be specified in the order;
- (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The Certification Officer shall in an order imposing any such requirement as is mentioned in subparagraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

(5B) Where the Certification Officer makes an order requiring the union to hold a fresh election, he shall (unless he considers that it would be inappropriate to do so in the particular circumstances of the case) require the election to be conducted in accordance with the requirements of this Part and such other provisions as may be made by the order.

(5C) Where an enforcement order has been made—

- (a) any person who is a member of the union and was a member at the time the order was made, or
- (b) any person who is or was a candidate in the election in question,

is entitled to enforce obedience to the order as if he had made the application on which the order was made.]

(6) In exercising his functions under this Article the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.

(7) Where he requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.



[<sup>F18</sup>(8) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.

(9) An enforcement order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.

(10) The following provisions have effect if a person applies under Article 23 in relation to an alleged failure—

- (a) that person may not apply under this Article in relation to that failure;
- (b) on an application by a different person under this Article in relation to that failure, the Certification Officer shall have due regard to any declaration, order, observations or reasons made or given by the High Court regarding that failure and brought to the Certification Officer's notice.]

**F17** 1999 NI 9

**F18** 1999 NI 9

### Application to High Court

**23.**—(1) A person having a sufficient interest (see Article 21(2)) who claims that a trade union has failed to comply with any of the requirements of this Part may apply to the High Court for a declaration to that effect.

*Para.(2) rep. by 1999 NI 19*

(3) If the High Court makes the declaration asked for, it shall specify in the declaration the provisions with which the trade union has failed to comply.

(4) Where the High Court makes a declaration it shall also, unless it considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

- (a) to secure the holding of an election in accordance with the order;
- (b) to take such other steps to remedy the declared failure as may be specified in the order;
- (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The High Court shall in an order imposing any such requirement as is mentioned in sub-paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

(5) Where the High Court makes an order requiring the union to hold a fresh election, the court shall (unless it considers that it would be inappropriate to do so in the particular circumstances of the case) require the election to be conducted in accordance with the requirements of this Part and such other provisions as may be made by the order.

(6) Where an enforcement order has been made—

- (a) any person who is a member of the union and was a member at the time the order was made, or
- (b) any person who is or was a candidate in the election in question,

is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(7) Without prejudice to any other power of the High Court, the court may on an application under this Article grant such interlocutory relief as it considers appropriate.

[<sup>F19</sup>(8) The following provisions have effect if a person applies under Article 22 in relation to an alleged failure—

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- (a) that person may not apply under this Article in relation to that failure;
- (b) on an application by a different person under this Article in relation to that failure, the High Court shall have due regard to any declaration, order, observations or reasons made or given by the Certification Officer regarding that failure and brought to the court's notice.]

**F19** 1999 NI 9

### *Supplementary*

#### **Exemption of newly-formed trade unions, etc.**

**24.**—(1) The provisions of this Part do not apply to a trade union until more than one year has elapsed since its formation (by amalgamation or otherwise).

For this purpose the date of formation of a trade union formed otherwise than by amalgamation shall be taken to be the date on which the first members of the executive of the union are first appointed or elected.

(2) Where a trade union is formed by amalgamation, the provisions of this Part do not apply in relation to a person who—

- (a) by virtue of an election held a position to which this Part applies in one of the amalgamating unions immediately before the amalgamation, and
- (b) becomes the holder of a position to which this Part applies in the amalgamated union in accordance with the instrument of transfer,

until after the end of the period for which he would have been entitled in accordance with this Part to continue to hold the first-mentioned position without being re-elected.

(3) Where a trade union transfers its engagements to another trade union, the provisions of this Part do not apply in relation to a person who—

- (a) held a position to which this Part applies in the transferring union immediately before the transfer, and
- (b) becomes the holder of a position to which this Part applies in the transferee union in accordance with the instrument of transfer,

until after the end of the period of one year beginning with the date of the transfer or, if he held the first-mentioned position by virtue of an election, any longer period for which he would have been entitled in accordance with this Part to continue to hold that position without being re-elected.

#### **Exemption of certain persons nearing retirement**

**25.**—(1) Article 12(1)(b) (requirement of re-election) does not apply to a person holding a position to which this Part applies if the following conditions are satisfied.

(2) The conditions are that—

- (a) he holds the position by virtue of having been elected at an election in relation to which the requirements of this Part were satisfied,
- (b) he is a full-time employee of the union by virtue of the position,
- (c) he will reach retirement age within five years,
- (d) he is entitled under the rules of the union to continue as the holder of the position until retirement age without standing for re-election,
- (e) he has been a full-time employee of the union for a period (which need not be continuous) of at least ten years, and

- (f) the period between the day on which the election referred to in sub-paragraph (a) took place and the day immediately preceding that on which sub-paragraph (c) is first satisfied does not exceed five years.
- (3) For the purposes of this Article “retirement age”, in relation to any person, means the earlier of—
- (a) the age fixed by, or in accordance with, the rules of the union for him to retire from the position in question, or
  - (b) the age which is for the time being pensionable age<sup>F20</sup> within the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995.]

F20 1995 NI 22

### Period for giving effect to election

**26.** Where a person holds a position to which this Part applies immediately before an election at which he is not re-elected to that position, nothing in this Part shall be taken to require the union to prevent him from continuing to hold that position for such period (not exceeding six months) as may reasonably be required for effect to be given to the result of the election.

### Overseas members

**27.—(1)** A trade union which has overseas members may choose whether or not to accord any of those members entitlement to vote at an election for a position to which this Part applies. 46

(2) An “overseas member” 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.

For this purpose—

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

“offshore worker” means a person in offshore employment within the meaning of section 287 of the Great Britain Act, other than one who is in such employment in an area where the law of Great Britain applies.

(3) Where the union chooses to accord an overseas member entitlement to vote, Article 17 (requirements as to voting) applies in relation to him; but nothing in Article 13 (candidates) or Article 16 (entitlement to vote) applies in relation to an overseas member or in relation to a vote cast by such a member.

### Other supplementary provisions

**28.—(1)** For the purposes of this Part the date on which a contested election is held shall be taken, in the case of an election in which votes may be cast on more than one day, to the last of those days.

(2) Nothing in this Part affects the validity of anything done by a person holding a position to which this Part applies.

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## PART IV

### RIGHTS IN RELATION TO TRADE UNION MEMBERSHIP

#### *Right to a ballot before industrial action*

#### **Right to a ballot before industrial action**

**29.**—(1) A member of a trade union who claims that members of the union, including himself, are likely to be or have been induced by the union to take part or to continue to take part in industrial action which does not have the support of a ballot may apply to the High Court for an order under this Article.

In this Article “the relevant time” means the time when the application is made.

- (2) For this purpose industrial action shall be regarded as having the support of a ballot only if—
- (a) the union has held a ballot in respect of the action—
    - (i) in relation to which the requirements of Article 106 (scrutineer) so far as applicable before and during the holding of the ballot were satisfied,
    - (ii) in relation to which the requirements of Articles 108 to 112 were satisfied, and
    - (iii) in which the majority voting in the ballot answered “Yes” to the question applicable in accordance with Article 110(3) to industrial action of the kind which the applicant has been or is likely to be induced to take part in;
  - (b) such of the requirements of the following Articles as have fallen to be satisfied at the relevant time have been satisfied, namely—
    - (i) Article 106 so far as applicable after the holding of the ballot, and
    - (ii) Article 114 (scrutineer's report);<sup>F21</sup> . . .
  - <sup>F21</sup>(bb) Article 115A does not prevent the industrial action from being regarded as having the support of the ballot; and]
  - (c) the requirements of Article 116 (calling of industrial action with support of ballot) are satisfied.

Any reference in this paragraph to a requirement of a provision which is disapplied or modified by Article 115 (overseas members) has effect subject to that Article.

(3) Where on an application under this Article the High Court is satisfied that the claim is well-founded, it shall make such order as it considers appropriate for requiring the union to take steps for ensuring—

- (a) that there is no, or no further, inducement of members of the union to take part or to continue to take part in the industrial action to which the application relates, and
- (b) that no member engages in conduct after the making of the order by virtue of having been induced before the making of the order to take part or continue to take part in the action.

(4) Without prejudice to any other power of the High Court, the court may on an application under this Article grant such interlocutory relief as it considers appropriate.

(5) For the purposes of this Article an act shall be taken to be done by a trade union if it is authorised or endorsed by the union; and the provisions of Article 21(2) to (4) of the 1992 Order apply for the purpose of determining whether an act is to be taken to be so authorised or endorsed. Those provisions also apply in relation to proceedings for failure to comply with an order under this Article as they apply in relation to the original proceedings.

- (6) In this Article—

“inducement” includes an inducement which is or would be ineffective, whether because of the member's unwillingness to be influenced by it or for any other reason; and

“industrial action” means a strike or other industrial action by persons employed under contracts of employment.

(7) Where a person holds any office or employment under the Crown on terms which do not constitute a contract of employment between that person and the Crown, those terms shall nevertheless be deemed to constitute such a contract for the purposes of this Article,

(8) References in this Article to a contract of employment include any contract under which one person personally does work or performs services for another; and related expressions shall be construed accordingly.

(9) Nothing in this Article shall be construed as requiring a trade union to hold separate ballots for the purposes of this Article and Articles 104 to 117 (requirement of ballot before action by trade union).

**F21** 2004 NI 19

*Right not to be denied access to the courts*

**Right not to be denied access to the courts**

**30.**—(1) This Article applies where a matter is under the rules of a trade union required or allowed to be submitted for determination or conciliation in accordance with the rules of the union. but a provision of the rules purporting to provide for that to be a person's only remedy has no effect (or would have no effect if there were one).

(2) Notwithstanding anything in the rules of the union or in the practice of any court, if a member or former member of the union begins proceedings in a court with respect to a matter to which this Article applies, then if—

- (a) he has previously made a valid application to the union for the matter to be submitted for determination or conciliation in accordance with the union's rules, and
- (b) the court proceedings are begun after the end of the period of six months beginning with the day on which the union received the application,

the rules requiring or allowing the matter to be so submitted, and the fact that any relevant steps remain to be taken under the rules, shall be regarded for all purposes as irrelevant to any question whether the court proceedings should be dismissed, stayed or adjourned.

(3) An application shall be deemed to be valid for the purposes of paragraph (2)(a) unless the union informed the applicant, before the end of the period of 28 days beginning with the date on which the union received the application, of the respects in which the application contravened the requirements of the rules.

(4) If the court is satisfied that any delay in the taking of relevant steps under the rules is attributable to unreasonable conduct of the person who commenced the proceedings, it may treat the period specified in paragraph (2)(b) as extended by such further period as it considers appropriate.

(5) In this Article—

- (a) references to the rules of a trade union include any arbitration or other agreement entered into in pursuance of a requirement imposed by or under the rules; and
- (b) references to the relevant steps under the rules, in relation to any matter, include any steps falling to be taken in accordance with the rules for the purposes of or in connection with

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the determination or conciliation of the matter, or any appeal, review or reconsideration of any determination or award.

(6) This Article does not affect any statutory provision or rule of law by virtue of which a court would apart from this Article disregard any such rules of a trade union or any such fact as is mentioned in paragraph (2).

*Right not to be unjustifiably disciplined*

**Right not to be unjustifiably disciplined**

**31.**—(1) An individual who is or has been a member of a trade union has the right not to be unjustifiably disciplined by the union.

(2) For this purpose an individual is “disciplined” by a trade union if a determination is made, or purportedly made, under the rules of the union or by an official of the union or a number of persons including an official that—

- (a) he should be expelled from the union or a branch or section of the union,
- (b) he should pay a sum to the union, to a branch or section of the union or to any other person;
- (c) sums tendered by him in respect of an obligation to pay subscriptions or other sums to the union, or to a branch or section of the union, should be treated as unpaid or paid for a different purpose,
- (d) he should be deprived to any extent of, or of access to, any benefits, services or facilities which would otherwise be provided or made available to him by virtue of his membership of the union, or a branch or section of the union,
- (e) another trade union, or a branch or section of it, should be encouraged or advised not to accept him as a member, or
- (f) he should be subjected to some other detriment;

and whether an individual is “unjustifiably disciplined” shall be determined in accordance with Article 32.

(3) Where a determination made in infringement of an individual's right under this Article requires the payment of a sum or the performance of an obligation, no person is entitled in any proceedings to rely on that determination for the purpose of recovering the sum or enforcing the obligation.

(4) Subject to that, the remedies for infringement of the right conferred by this Article are as provided by Articles 33 and 34, and not otherwise.

(5) The right not to be unjustifiably disciplined is in addition to (and not in substitution for) any right which exists apart from this Article; and, subject to Article 33(4), nothing in this Article or Articles 32 to 34 affects any remedy for infringement of any such right.

**Meaning of “unjustifiably disciplined”**

**32.**—(1) An individual is unjustifiably disciplined by a trade union if the actual or supposed conduct which constitutes the reason, or one of the reasons, for disciplining him is—

- (a) conduct to which this Article applies, or
- (b) something which is believed by the union to amount to such conduct;

but subject to paragraph (6) (cases of bad faith in relation to assertion of wrongdoing).

(2) This Article applies to conduct which consists in—

- (a) failing to participate in or support a strike or other industrial action (whether by members of the union or by others), or indicating opposition to or a lack of support for such action;
- (b) failing to contravene, for a purpose connected with such a strike or other industrial action, a requirement imposed on him by or under a contract of employment;
- (c) asserting (whether by bringing proceedings or otherwise) that the union, any official or representative of it or a trustee of its property has contravened, or is proposing to contravene, a requirement which is, or is thought to be, imposed by or under the rules of the union or any other agreement or by or under any statutory provision or any rule of law;
- (d) encouraging or assisting a person—
  - (i) to perform an obligation imposed on him by a contract of employment, or
  - (ii) to make or attempt to vindicate any such assertion as is mentioned in subparagraph (c);
- (e) contravening a requirement imposed by or in consequence of a determination which infringes the individual's or another individual's right not to be unjustifiably disciplined;
- (f) failing to agree, or withdrawing agreement, to the making from his wages (in accordance with arrangements between his employer and the union) of deductions representing payments to the union in respect of his membership;
- (g) resigning or proposing to resign from the union or from another union, becoming or proposing to become a member of another union, refusing to become a member of another union, or being a member of another union;
- (h) working with, or proposing to work with, individuals who are not members of the union or who are or are not members of another union;
- (j) working for, or proposing to work for, an employer who employs or who has employed individuals who are not members of the union or who are or are not members of another union; or
- (k) requiring the union to do an act which the union is, by any provision of this Order or the 1992 Order, required to do on the requisition of a member.

(3) This Article applies to conduct which involves<sup>F22</sup> . . . the Certification Officer being consulted or asked to provide advice or assistance with respect to any matter whatever, or which involves any person being consulted or asked to provide advice or assistance with respect to a matter which forms, or might form, the subject-matter of any such assertion as is mentioned in paragraph (2)(c).

(4) This Article also applies to conduct which consists in proposing to engage in, or doing anything preparatory or incidental to, conduct falling within paragraph (2) or (3).

(5) This Article does not apply to an act or statement comprised in conduct falling within paragraph (2). (3) or (4) if it is shown that the act or statement is one in respect of which individuals would be disciplined by the union irrespective of whether their acts or statements were in connection with conduct within paragraph (2) or (3).

(6) An individual is not unjustifiably disciplined if it is shown—

- (a) that the reason for disciplining him, or one of them, is that he made such an assertion as is mentioned in paragraph (2)(c), or encouraged or assisted another person to make or attempt to vindicate such an assertion,
- (b) that the assertion was false, and
- (c) that he made the assertion, or encouraged or assisted another person to make or attempt to vindicate it, in the belief that it was false or otherwise in bad faith,

and that there was no other reason for disciplining him or that the only other reasons were reasons in respect of which he does not fall to be treated as unjustifiably disciplined.

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(7) In this Article—

“contract of employment”, in relation to an individual, includes any agreement between that individual and a person for whom he works or normally works,

“employer” includes such a person and related expressions shall be construed accordingly;

“representative”, in relation to a union, means a person acting or purporting to act—

(a) in his capacity as a member of the union, or

(b) on the instructions or advice of a person acting or purporting to act in that capacity or in the capacity of an official of the union;

“require” (on the part of an individual) includes request or apply for, and “requisition” shall be construed accordingly;

“wages” shall be construed in accordance with the definitions of “contract of employment”, “employer” and related expressions.

(8) Where a person holds any office or employment under the Crown on terms which do not constitute a contract of employment between him and the Crown, those terms shall nevertheless be deemed to constitute such a contract for the purposes of this Article.

**F22** 1999 NI 9

### **Complaint of infringement of right**

**33.**—(1) An individual who claims that he has been unjustifiably disciplined by a trade union may present a complaint against the union to an industrial tribunal.

(2) The tribunal shall not entertain such a complaint unless it is presented—

(a) before the end of the period of three months beginning with the date of the making of the determination claimed to infringe the right, or

(b) where the tribunal is satisfied—

(i) that it was not reasonably practicable for the complaint to be presented before the end of that period, or

(ii) that any delay in making the complaint is wholly or partly attributable to a reasonable attempt to appeal against the determination or to have it reconsidered or reviewed,

within such further period as the tribunal considers reasonable.

(3) Where the tribunal finds the complaint well-founded, it shall make a declaration to that effect.

(4) Where a complaint relating to an expulsion which is presented under this Article is declared to be well-founded, no complaint in respect of the expulsion shall be presented or proceeded with under Article 38 (right not to be expelled from trade union).

### **Further remedies for infringement of right**

**34.**—(1) An individual whose complaint under Article 33 has been declared to be well-founded may make an application to an industrial tribunal for one or both of the following—

(a) an award of compensation to be paid to him by the union;

(b) an order that the union pay him an amount equal to any sum which he has paid in pursuance of any such determination as is mentioned in Article 31(2)(b).

(2) An application under this Article shall not be entertained if made before the end of the period of four weeks beginning with the date of the declaration or after the end of the period of six months beginning with that date.



(3) The amount of compensation awarded shall, subject to the following provisions, be such as the industrial tribunal considers just and equitable in all the circumstances.

(4) In determining the amount of compensation to be awarded, the same rule shall be applied concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of Northern Ireland.

(5) Where the industrial tribunal finds that the infringement complained of was to any extent caused or contributed to by the action of the applicant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

(6) The amount of compensation calculated in accordance with paragraphs (3) to (5) shall not exceed the aggregate of—

- (a) an amount equal to 30 times the limit for the time being imposed by<sup>F23</sup> Article 23(1)(a) of the Employment Rights Order] (maximum amount of a week's pay for basic award in unfair dismissal cases), and
- (b) an amount equal to the limit for the time being imposed by<sup>F23</sup> Article 158(1)] of that Order (maximum compensatory award in such cases);

and, in a case to which paragraph (7) applies, shall not be less than the amount for the time being specified in<sup>F24</sup> Article 40(6) of this Order.

(7) This paragraph applies to a case where when the application under this Article is made—

- (a) the determination infringing the applicant's right not to be unjustifiably disciplined has not been revoked, or
- (b) the union has failed to take all the steps necessary for securing the reversal of anything done for the purpose of giving effect to the determination.

**F23** 1996 NI 16

**F24** prosp. subst. by 2004 NI 19

<sup>F25</sup>*Right not to suffer deduction of unauthorised union subscriptions*

**F25** 1999 NI 5

### **Right not to suffer deduction of unauthorised subscriptions**

**35.**—(1) Where arrangements ( “subscription deduction arrangements”) exist between the employer of a worker and a trade union relating to the making from workers' wages of deductions representing payments to the union in respect of the workers' membership of the union ( “subscription deductions”), the employer shall ensure that no subscription deduction is made from wages payable to the worker on any day unless—

- (a) the worker has authorised in writing the making from his wages of subscription deductions; and
- (b) the worker has not withdrawn the authorisation.

(2) A worker withdraws an authorisation given for the purposes of paragraph (1), in relation to a subscription deduction which falls to be made from wages payable to him on any day, if a written notice withdrawing the authorisation has been received by the employer in time for it to be reasonably practicable for the employer to secure that no such deduction is made.

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(3) A worker's authorisation of the making of subscription deductions from his wages shall not give rise to any obligation on the part of the employer to the worker to maintain or continue to maintain subscription deduction arrangements.

(4) In this Article and Article 36, “employer”, “wages” and “worker” have the same meanings as in the Employment Rights Order.

### Complaint of infringement of rights

**36.**—(1) A worker may present a complaint to an industrial tribunal that his employer has made a deduction from his wages in contravention of Article 35—

- (a) within the period of three months beginning with the date of the payment of the wages from which the deduction, or (if the complaint relates to more than one deduction) the last of the deductions, was made, or
- (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

[  
<sup>F26</sup>(2) Where a tribunal finds that a complaint under this Article is well-founded, it shall make a declaration to that effect and shall order the employer to pay to the worker the whole amount of the deduction, less any such part of the amount as has already been paid to the worker by the employer.

(3) Where the making of a deduction from the wages of a worker both contravenes Article 35(1) and involves one or more of the contraventions specified in paragraph (4) of this Article, the aggregate amount which may be ordered by an industrial tribunal or court (whether on the same occasion or on different occasions) to be paid in respect of the contraventions shall not exceed the amount, or (where different amounts may be ordered to be paid in respect of different contraventions) the greatest amount, which may be ordered to be paid in respect of any one of them.

(4) The contraventions referred to in paragraph (3) are—

- [ a contravention of the requirement not to make a deduction without having given the
- <sup>F27</sup>(a) particulars required by Article 40 (itemised pay statements) or 41(1) (standing statements of fixed deductions of the Employment Rights Order;
- (b) a contravention of Article 45 of that Order; and
- (c) a contravention of Article 60(1) or 64(1) of this Order (requirements not to make deductions of political fund contributions in certain circumstances).]]]

**F26** 1999 NI 5

**F27** 1996 NI 16

### *Right to terminate membership of union*

#### **Right to terminate membership of union**

**37.** In every contract of membership of a trade union, whether made before or after the appointed day, a term conferring a right on the member, on giving reasonable notice and complying with any reasonable conditions, to terminate his membership of the union shall be implied.

*Right not to be expelled from trade union*

**Right not to be expelled from union**

**38.**—(1) An individual shall not be expelled from a trade union unless the expulsion is permitted by this Article.

(2) The expulsion of an individual from a trade union is permitted by this Article if (and only if)—

- (a) he does not satisfy, or no longer satisfies, an enforceable membership requirement contained in the rules of the union,
- (b) he does not qualify, or no longer qualifies, for membership of the union by reason of the union operating only in a particular part or particular parts of Northern Ireland,
- (c) in the case of a union whose purpose is the regulation of relations between its members and one particular employer or a number of particular employers who are associated, he is not, or is no longer, employed by that employer or one of those employers, or
- (d) the expulsion is entirely attributable to<sup>F28</sup> his conduct.

(3) A requirement in relation to membership of a union is “enforceable” for the purposes of paragraph (2)(a) if it restricts membership solely by reference to one or more of the following criteria—

- (a) employment in a specified trade, industry or profession,
- (b) occupational description (including grade, level or category of appointment), and
- (c) possession of specified trade, industrial or professional qualifications or work experience.

<sup>F28</sup>(4) For the purposes of paragraph (2)(d) “conduct”, in relation to an individual, does not include—

- (a) his being or ceasing to be, or having been or ceased to be—
  - (i) a member of another trade union,
  - (ii) employed by a particular employer or at a particular place, or
  - (iii) a member of a political party, or
- (b) conduct to which Article 32 (conduct for which an individual may not be disciplined by a trade union) applies or would apply if the references in that Article to the trade union which is relevant for the purposes of that Article were references to any trade union.

(5) An individual who claims that he has been expelled from a trade union in contravention of this Article may present a complaint to an industrial tribunal.

**F28** prosp. subst. by 2004 NI 19

**Time limit for proceedings**

**39.** An industrial tribunal shall not entertain a complaint under Article 38 unless it is presented—

- (a) before the end of the period of six months beginning with the date of the expulsion, or
- (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as the tribunal considers reasonable.

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## Remedies

**40.**—(1) Where the industrial tribunal finds a complaint under Article 38 is well-founded, it shall make a declaration to that effect.

<sup>F29</sup>(2) An individual whose complaint has been declared to be well-founded may make an application to an industrial tribunal for an award of compensation to be paid to him by the union.

(3) The application shall not be entertained if made—

- (a) before the end of the period of four weeks beginning with the date of the declaration<sup>F29</sup>, or
- (b) after the end of the period of six months beginning with that date.

(4) The amount of compensation awarded shall, subject to the following provisions, be such as the industrial tribunal considers just and equitable in all the circumstances.

(5) Where the industrial tribunal finds that the expulsion complained of was to any extent caused or contributed to by the action of the applicant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

(6) The amount of compensation calculated in accordance with paragraphs (4) and (5) shall not exceed the aggregate of—

- (a) an amount equal to 30 times the limit for the time being imposed by<sup>F30</sup> Article 23(1)(a) of the Employment Rights Order] (maximum amount of a week's pay for basic award in unfair dismissal cases), and
- (b) an amount equal to the limit for the time being imposed by<sup>F30</sup> Article 158(1)] of that Order (maximum compensatory award in such cases);

<sup>F31</sup>and, in a case to which paragraph (7) applies, shall not be less than<sup>F32</sup> £6,100].

<sup>F33</sup>(7) This paragraph applies to a case where when the application is made the applicant has not been re-admitted to the union.

**F29** prosp. insertion by [2004 NI 19](#)

**F30** [1996 NI 16](#)

**F31** prosp. rep. by [2004 NI 19](#)

**F32** SR 2005/12

**F33** prosp. subst. by [2004 NI 19](#)

## Interpretation and other supplementary provisions

**41.**—(1) For the purposes of Article 38—

- (a) “trade union” does not include an organisation falling within sub-paragraph (b) of Article 3(1) of the 1992 Order;
- (b) “employment” includes any relationship whereby an individual personally does work or performs services for another person (related expressions being construed accordingly).

(2) For the purposes of Articles 38 to 40 an individual who under the rules of a trade union ceases to be a member of the union on the happening of an event specified in the rules shall be treated as having been expelled from the union.

(3) The remedy of an individual for infringement of the right conferred by Article 38 is by way of a complaint to an industrial tribunal in accordance with that Article, Articles 39 and 40 and this Article, and not otherwise.

(4) Where a complaint relating to an expulsion which is presented under Article 38 is declared to be well-founded, no complaint in respect of the expulsion shall be presented or proceeded with under Article 33 (complaint of infringement of right not to be unjustifiably disciplined).

(5) The right conferred by Article 38 is in addition to, and not in substitution for, any right which exists apart from that Article; and, subject to paragraph (4), nothing in that Article, Article 39 or 40 or this Article affects any remedy for infringement of any such right.

*Access to employment*

*Art. 42 rep. by 1996 NI 16*

*Action short of dismissal*

*Art. 43 rep. by 1996 NI 16*

*Supplementary*

**Membership of constituent or affiliated organisation**

44. In this Part “member”, in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes a member of any of the constituent or affiliated organisations.

[<sup>F34</sup>PART IVA]

[<sup>F34</sup>COLLECTIVE BARGAINING: RECOGNITION]

F34 1999 NI 9

[<sup>F35</sup>Recognition of trade unions

44A. Schedule 1A shall have effect.]

F35 1999 NI 9

[<sup>F36</sup>Training

44B.—(1) This Article applies where—

- (a) a trade union is recognised, in accordance with Schedule 1A, as entitled to conduct collective bargaining on behalf of a bargaining unit (within the meaning of Part I of that Schedule), and
- (b) a method for the conduct of collective bargaining is specified by the Industrial Court under paragraph 31(3) of that Schedule (and is not the subject of an agreement under paragraph 31(5)(a) or (b)).

(2) The employer must from time to time invite the trade union to send representatives to a meeting for the purpose of—

- (a) consulting about the employer's policy on training for workers within the bargaining unit,
- (b) consulting about his plans for training for those workers during the period of six months starting with the day of the meeting, and

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- (c) reporting about training provided for those workers since the previous meeting.
- (3) The date set for a meeting under paragraph (2) must not be later than—
  - (a) in the case of a first meeting, the end of the period of six months starting with the day on which this Article first applies in relation to a bargaining unit, and
  - (b) in the case of each subsequent meeting, the end of the period of six months starting with the day of the previous meeting.
- (4) The employer shall, before the period of two weeks ending with the date of a meeting, provide to the trade union any information—
  - (a) without which the union's representatives would be to a material extent impeded in participating in the meeting, and
  - (b) which it would be in accordance with good industrial relations practice to disclose for the purposes of the meeting.
- (5) Article 40(1) of the 1992 Order shall apply in relation to the provision of information under paragraph (4) as it applies in relation to the disclosure of information under Article 39 of that Order.
- (6) The employer shall take account of any written representations about matters raised at a meeting which he receives from the trade union within the period of four weeks starting with the date of the meeting.
- (7) Where more than one trade union is recognised as entitled to conduct collective bargaining on behalf of a bargaining unit, a reference in this Article to “the trade union” is a reference to each trade union.
- (8) Where at a meeting under this Article (Meeting 1) an employer indicates his intention to convene a subsequent meeting (Meeting 2) before the expiry of the period of six months beginning with the date of Meeting 1, for the reference to a period of six months in paragraph (2)(b) there shall be substituted a reference to the expected period between Meeting 1 and Meeting 2.
- (9) The Department may by order amend any of paragraphs (2) to (6).
- (10) No order shall be made under paragraph (9) unless a draft has been laid before, and approved by resolution of, the Assembly.]

**F36** 1999 NI 9

#### **Article 44B: complaint to industrial tribunal**

- 44C.**—(1) A trade union may present a complaint to an industrial tribunal that an employer has failed to comply with his obligations under Article 44B in relation to a bargaining unit.
- (2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—
    - (a) before the end of the period of three months beginning with the date of the alleged failure, or
    - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
  - (3) Where an industrial tribunal finds a complaint under this Article well-founded it—
    - (a) shall make a declaration to that effect, and
    - (b) may make an award of compensation to be paid by the employer to each person who was, at the time when the failure occurred, a member of the bargaining unit.
  - (4) The amount of the award shall not, in relation to each person, exceed two weeks' pay.
  - (5) For the purpose of paragraph (4) a week's pay—

- (a) shall be calculated in accordance with Chapter IV of Part I of the Employment Rights Order (taking the date of the employer's failure as the calculation date), and
  - (b) shall be subject to the limit in Article 23(1) of that Order.
- (6) Proceedings for enforcement of an award of compensation under this Article—
- (a) may, in relation to each person to whom compensation is payable, be commenced by that person, and
  - (b) may not be commenced by a trade union.

## PART V

### APPLICATION OF FUNDS FOR POLITICAL OBJECTS

#### *Restriction on use of funds for certain political objects*

#### **Restriction on use of funds for political objects**

**45.—**(1) The funds of a trade union shall not be applied in the furtherance of the political objects to which this Part applies unless—

- (a) there is in force in accordance with this Part a resolution (a “political resolution”) approving the furtherance of those objects as an object of the union (see Articles 47 to 56), and
- (b) there are in force rules of the union as to—
  - (i) the making of payments in furtherance of those objects out of a separate fund, and
  - (ii) the making of contributions to that fund by members,

which comply with this Part (see Articles 57 and 59) and have been approved by the Certification Officer.

(2) This applies whether the funds are so applied directly, or in conjunction with another trade union, association or body, or otherwise indirectly.

#### **Political objects to which restriction applies**

- 46.—**(1) The political objects to which this Part applies are the expenditure of money—
- (a) on any contribution to the funds of, or on the payment of expenses incurred directly or indirectly by, a political party;
  - (b) on the provision of any service or property for use by or on behalf of any political party;
  - (c) in connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot by the union in connection with any election to a political office;
  - (d) on the maintenance of any holder of a political office;
  - (e) on the holding of any conference or meeting by or on behalf of a political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party;
  - (f) on the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate.

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(2) Where a person attends a conference or meeting as a delegate or otherwise as a participator in the proceedings, any expenditure incurred in connection with his attendance as such shall, for the purposes of paragraph (1)(e), be taken to be expenditure incurred on the holding of the conference or meeting.

(3) In determining for the purposes of paragraph (1) whether a trade union has incurred expenditure of a kind mentioned in that paragraph, no account shall be taken of the ordinary administrative expenses of the union.

(4) In this Article—

“candidate” means a candidate for election to a political office and includes a prospective candidate;

“contribution”, in relation to the funds of a political party, includes any fee payable for affiliation to, or membership of, the party and any loan made to the party;

“electors” means electors at an election to a political office;

“film” includes any record, however made, of a sequence of visual images, which is capable of being used as a means of showing that sequence as a moving picture;

“political office” means the office of member of the Assembly, member of Parliament, member of the European Parliament or member of a district council or any position within a political party.

### [<sup>F37</sup> Application of funds in breach of Article 45

**46A.**—(1) A person who is a member of a trade union and who claims that it has applied its funds in breach of Article 45 may apply to the Certification Officer for a declaration that it has done so.

(2) On an application under this Article the Certification Officer—

- (a) shall make such enquiries as he thinks fit,
- (b) shall give the applicant and the union an opportunity to be heard,
- (c) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,
- (d) may make or refuse the declaration asked for,
- (e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing, and
- (f) may make written observations on any matter arising from, or connected with, the proceedings.

(3) If he makes a declaration he shall specify in it—

- (a) the provisions of Article 45 breached, and
- (b) the amount of the funds applied in breach.

(4) If he makes a declaration and is satisfied that the union has taken or agreed to take steps with a view to—

- (a) remedying the declared breach, or
- (b) securing that a breach of the same or any similar kind does not occur in future,

he shall specify those steps in making the declaration.

(5) If he makes a declaration he may make such order for remedying the breach as he thinks just under the circumstances.

(6) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is



to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(7) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.

(8) Where an order has been made under this Article, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(9) An order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.

(10) If a person applies to the Certification Officer under this Article in relation to an alleged breach he may not apply to the High Court in relation to the breach; but nothing in this paragraph shall prevent such a person from exercising any right to appeal against or challenge the Certification Officer's decision on the application to him.

(11) If—

- (a) a person applies to the High Court in relation to alleged breach, and
- (b) the breach is one in relation to which he could have made an application to the Certification Officer under this Article,

he may not apply to the Certification Officer under this Article in relation to the breach.]

F37 1999 NI 9

### *Political resolution*

#### **Passing and effect of political resolution**

**47.—**(1) A political resolution must be passed by a majority of those voting on a ballot of the members of the trade union held in accordance with this Part.

(2) A political resolution so passed shall take effect as if it were a rule of the union and may be rescinded in the same manner and subject to the same provisions as such a rule.

(3) If not previously rescinded, a political resolution shall cease to have effect at the end of the period of ten years beginning with the date of the ballot on which it was passed.

(4) Where before the end of that period a ballot is held on a new political resolution, then—

- (a) if the new resolution is passed, the old resolution shall be treated as rescinded, and
- (b) if it is not passed, the old resolution shall cease to have effect at the end of the period of two weeks beginning with the date of the ballot.

#### **Approval of political ballot rules**

**48.—**(1) A ballot on a political resolution must be held in accordance with rules of the trade union (its “political ballot rules”) approved by the Certification Officer.

(2) Fresh approval is required for the purposes of each ballot which it is proposed to hold, notwithstanding that the rules have been approved for the purposes of an earlier ballot.

(3) The Certification Officer shall not approve a union's political ballot rules unless he is satisfied that the requirements set out in—

Article 49 (appointment of independent scrutineer),

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Article 50 (entitlement to vote),  
 Article 51 (voting),  
 Article 52 (counting of votes etc. by independent person), and  
 Article 53 (scrutineer's report),  
 would be satisfied in relation to a ballot held by the union in accordance with the rules.

### **Appointment of independent scrutineer**

**49.**—(1) The trade union shall, before the ballot is held, appoint a qualified independent person (“the scrutineer”) to carry out—

- (a) the functions in relation to the ballot which are required under this Article to be contained in his appointment; and
- (b) such additional functions in relation to the ballot as may be specified in his appointment.

(2) A person is a qualified independent person in relation to a ballot if—

- (a) he satisfies such conditions as may be specified for the purposes of this Article by order of the Department or is himself so specified; and
- (b) the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

(3) The scrutineer's appointment shall require him—

- (a) to be the person who supervises the production of the voting papers and (unless he is appointed under Article 52 to undertake the distribution of the voting papers) their distribution and to whom the voting papers are returned by those voting;
- (b) to—
  - (i) inspect the register of names and addresses of the members of the trade union, or
  - (ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with paragraph (9)(a),

whenever it appears to him appropriate to do so and, in particular, when the conditions specified in paragraph (4) are satisfied;

- (c) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see Article 53);
- (d) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and
- (e) to retain custody of all voting papers returned for the purposes of the ballot and the copy of the register supplied to him in accordance with paragraph (9)(a)—
  - (i) until the end of the period of one year beginning with the announcement by the union of the result of the ballot; and
  - (ii) if within that period an application is made under Article 54 (complaint of failure to comply with ballot rules), until the Certification Officer or the High Court authorises him to dispose of the papers or copy.

(4) The conditions referred to in paragraph (3)(b) are—

- (a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and

- (b) that the scrutineer does not consider that the member's suspicion is ill-founded.
- (5) In paragraph (4) “the appropriate period” means the period—
  - (a) beginning with the day on which the scrutineer is appointed, and
  - (b) ending with the day before the day on which the scrutineer makes his report to the trade union.
- (6) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.
- (7) The trade union shall ensure that nothing in the terms of the scrutineer's appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer's independence in relation to the union into question.
- (8) The trade union shall, before the scrutineer begins to carry out his functions, either—
  - (a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or
  - (b) take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.
- (9) The trade union shall—
  - (a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and
  - (b) comply with any request made by the scrutineer to inspect the register.
- (10) Where the register is kept by means of a computer the duty imposed on the trade union by paragraph (9)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.
- (11) The trade union shall ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer's independence in relation to the union into question.
- (12) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.
- (13) In this Article “the relevant date” means—
  - (a) where the trade union has rules determining who is entitled to vote in the ballot by reference to membership on a particular date, that date, and
  - (b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the ballot.

### **Entitlement to vote**

**50.** Entitlement to vote in the ballot shall be accorded equally to all members of the trade union.

### **Voting**

- 51.**—(1) The method of voting must be by the marking of a voting paper by the person voting.
- (2) Each voting paper must—
  - (a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned, and

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- (b) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot, and
- (c) be marked with its number.
- (3) 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.
- (4) So far as is reasonably practicable, every person who is entitled to vote in the ballot must—
  - (a) have a voting paper sent to him by post at his home address or another address which he has requested the trade union in writing to treat as his postal address, and
  - (b) be given a convenient opportunity to vote by post;

but where, for the purpose of personal safety, a member of a trade union requests the union in writing to send a voting paper to him by some means other than by post then, in relation to that member, sub-paragraph (a) shall have effect with the substitution for the reference to post of a reference to that other means.

- (5) The ballot shall 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.

For the purposes of sub-paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the ballot.

### **Counting of votes etc. by independent person**

- 52.**—(1) The trade union shall ensure that—
- (a) the storage and distribution of the voting papers for the purposes of the ballot, and
  - (b) the counting of the votes cast in the ballot,

are undertaken by one or more independent persons appointed by the union.

- (2) A person is an independent person in relation to a ballot if—
  - (a) he is the scrutineer, or
  - (b) he is a person other than the scrutineer and the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

(3) An appointment under this Article shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any statutory provision or the occurrence of any unfairness or malpractice.

(4) The duty of confidentiality as respects the register is incorporated in an appointment under this Article.

(5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.

- (6) The trade union—

- (a) shall ensure that nothing in the terms of an appointment under this Article is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,
- (b) shall ensure that a person appointed under this Article duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call into question the independence of the person appointed in relation to the union, and
- (c) shall comply with all reasonable requests made by a person appointed under this Article for the purposes of, or in connection with, the carrying out of his functions.

### **Scrutineer's report**

**53.**—(1) The scrutineer's report on the ballot shall state—

- (a) the number of voting papers distributed for the purposes of the ballot,
- (b) the number of voting papers returned to the scrutineer,
- (c) the number of valid votes cast in the ballot for and against the resolution,
- (d) the number of spoiled or otherwise invalid voting papers returned, and
- (e) the name of the person (or of each of the persons) appointed under Article 52 or, if no person was so appointed, that fact.

(2) The report shall also state whether the scrutineer is satisfied—

- (a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any statutory provision in relation to the ballot,
- (b) that the arrangements made (whether by him or any other person) with respect to the production, storage, distribution, return or other handling of the voting papers used in the ballot, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and
- (c) that he has been able to carry out his functions without such interference as would make it reasonable for any person to call his independence in relation to the union into question;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.

(3) The report shall also state—

- (a) whether the scrutineer—
  - (i) has inspected the register of names and addresses of the members of the trade union, or
  - (ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with Article 49(9)(a),
- (b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or at his own instance,
- (c) whether he declined to act on any such request, and
- (d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date,

but shall not state the name of any member who has requested such an inspection or examination.

(4) Where one or more persons other than the scrutineer are appointed under Article 52, the statement included in the scrutineer's report in accordance with paragraph (2)(b) shall also indicate—

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- (a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and
  - (b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.
- (5) The trade union shall not publish the result of the ballot until it has received the scrutineer's report.
- (6) The trade union shall within the period of three months after it receives the report—
- (a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
  - (b) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.
- (7) Any such copy or notification shall be accompanied by a statement that the union will, on request, supply any member of the union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification.
- (8) The trade union shall so supply any member of the union who makes such a request and pays the fee (if any) notified to him.

#### **Remedy for failure to comply with ballot rules: general**

**54.—**(1) The remedy for—

- (a) the taking by a trade union of a ballot on a political resolution otherwise than in accordance with political ballot rules approved by the Certification Officer, or
- (b) the failure of a trade union, in relation to a proposed ballot on a political resolution, to comply with the political ballot rules so approved,

is by way of application under Article 55 (to the Certification Officer) or 56 (to the High Court).

<sup>F38</sup>  
...

(2) An application under those Articles may be made only by a person who is a member of the trade union and, where the ballot has been held, was a member at the time when it was held. References in those Articles to a person having a sufficient interest are to such a person.

(3) No such application may be made after the end of the period of one year beginning with the day on which the union announced the result of the ballot.

**F38** 1999 NI 9

#### **Application to Certification Officer**

**55.—**(1) A person having a sufficient interest (see Article 54(2)) who claims that a trade union—

- (a) has held a ballot on a political resolution otherwise than in accordance with political ballot rules approved by the Certification Office, or
- (b) has failed in relation to a proposed ballot on a political resolution to comply with political ballot rules so approved,

may apply to the Certification Officer for a declaration to that effect.

(2) On an application being made to him, the Certification Officer shall—

- (a) make such enquiries as he thinks fit, and
- (b) <sup>F39</sup> . . . give the applicant and the trade union an opportunity to be heard,

and may make or refuse the declaration asked for.

(3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.

(4) Where he makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall in making the declaration specify those steps.

(5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

[<sup>F40</sup>(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

- (a) to secure the holding of a ballot in accordance with the order;
- (b) to take such other steps to remedy the declared failure as may be specified in the order;
- (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The Certification Officer shall in an order imposing any such requirement as is mentioned in subparagraph (a) or (b) specify the period within which the union must comply with the requirements of the order.

(5B) Where the Certification Officer makes an order requiring the union to hold a fresh ballot, he shall (unless he considers that it would be inappropriate to do so in the particular circumstances of the case) require the ballot to be conducted in accordance with the union's political ballot rules and such other provisions as may be made by the order.

(5C) Where an enforcement order has been made, any person who is a member of the union and was a member at the time the order was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.]

(6) In exercising his functions under this Article the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.

(7) Where he requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and shall, unless he considers that it would be inappropriate to do so, proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

[<sup>F40</sup>(8) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.

(9) An enforcement order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.

(10) The following provisions have effect if a person applies under Article 56 in relation to a matter—

- (a) that person may not apply under this Article in relation to that matter;
- (b) on an application by a different person under this Article in relation to that matter, the Certification Officer shall have due regard to any declaration, order, observations or reasons made or given by the High Court regarding that matter and brought to the Certification Officer's notice.]

*Status: Point in time view as at 08/01/2006.*

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**F39** 1999 NI 9

**F40** 1999 NI 9

### Application to High Court

**56.**—(1) A person having a sufficient interest (see Article 54(2)) who claims that a trade union—

- (a) has held a ballot on a political resolution otherwise than in accordance with political ballot rules approved by the Certification Officer, or
- (b) has failed in relation to a proposed ballot on a political resolution to comply with political ballot rules so approved,

may apply to the High Court for a declaration to that effect.

*Para.(2) rep. by 1999 NI 9*

(3) If the High Court makes the declaration asked for, it shall specify in the declaration the provisions with which the trade union has failed to comply.

(4) Where the High Court makes a declaration it shall also, unless it considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

- (a) to secure the holding of a ballot in accordance with the order;
- (b) to take such other steps to remedy the declared failure as may be specified in the order;
- (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The court shall in an order imposing any such requirement as is mentioned in sub-paragraph (a) or (b) specify the period within which the union must comply with the requirements of the order.

(5) Where the High Court makes an order requiring the union to hold a fresh ballot, the High Court shall (unless it considers that it would be inappropriate to do so in the particular circumstances of the case) require the ballot to be conducted in accordance with the union's political ballot rules and such other provisions as may be made by the order.

(6) Where an enforcement order has been made, any person who is a member of the union and was a member at the time the order was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(7) Without prejudice to any other power of the High Court, the court may on an application under this Article grant such interlocutory relief as it considers appropriate.

[<sup>F41</sup>(8) The following provisions have effect if a person applies under Article 55 in relation to a matter—

- (a) that person may not apply under this Article in relation to that matter;
- (b) on an application by a different person under this Article in relation to that matter, the High Court shall have due regard to any declaration, order, observations or reasons made or given by the Certification Officer regarding that matter and brought to the court's notice.]

**F41** 1999 NI 9

### *The political fund*

#### Rules as to political fund

**57.**—(1) The trade union's rules must provide—



- (a) that payments in the furtherance of the political objects to which this Part applies shall be made out of a separate fund (the “political fund” of the union);
- (b) that a member of the union who is not a contributor (see Article 59) shall not be under any obligation to contribute to it;
- (c) that a member shall not by reason of not being a contributor—
  - (i) be excluded from any benefits of the union, or
  - (ii) be placed in any respect either directly or indirectly under a disability or at a disadvantage as compared with other members of the union (except in relation to the control or management of the political fund); and
- (d) that contribution to the political fund shall not be made a condition for admission to the union.

(2) A member of a trade union who claims that he is aggrieved by a breach of any rule made in pursuance of this Article may complain to the Certification Officer.

[<sup>F42</sup>(2A) On a complaint being made to him the Certification Officer shall make such enquiries as he thinks fit.]

(3) Where, after giving the member and a representative of the union an opportunity of being heard, the Certification Officer considers that a breach has been committed, he may make such order for remedying the breach as he thinks just under the circumstances.

[<sup>F42</sup>(3A) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.]

[<sup>F43</sup>(4A) Where an order has been made under this Article, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the complaint on which it was made.

(4B) An order made by the Certification Officer under this Article may be enforced in the same way as an order of the county court.]

**F42** [1999 NI 9](#)  
**F43** [2004 NI 19](#)

### **Assets and liabilities of political fund**

**58.**—(1) There may be added to a union's political fund only—

- (a) sums representing contributions made to the fund by members of the union or by any person other than the union itself, and
- (b) property which accrues to the fund in the course of administering the assets of the fund.

(2) The rules of the union shall not be taken to require any member to contribute to the political fund at a time when there is no political resolution in force in relation to the union.

(3) No liability of a union's political fund shall be discharged out of any other fund of the union. This paragraph applies notwithstanding any term or condition on which the liability was incurred or that an asset of the other fund has been charged in connection with the liability.

*Status: Point in time view as at 08/01/2006.*

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### **Contributions to the political fund from members of the union**

**59.**—(1) It shall not be lawful to require any member of a trade union to make any contribution to the political fund of a trade union unless he—

- (a) has given to the union notice in writing of his willingness to contribute to that fund; and
- (b) has not withdrawn that notice in accordance with paragraph (2).

(2) A member of a trade union who has given notice under paragraph (1)(a) may withdraw that notice by giving written notice of withdrawal to the union.

(3) A notice under paragraph (1)(a) and a notice of withdrawal under paragraph (2) may be given to a trade union—

- (a) by being delivered at the head office or a branch office of the union;
- (b) by being so delivered personally or by any authorised agent or by post;

and any such notice of withdrawal shall take effect for the purposes of this Part as from 1st January next following the giving of that notice to the union.

(4) All contributions to the political fund of a trade union from members of the trade union who are contributors to the fund shall be levied and made separately from any contributions to the other funds of the trade union.

(5) In this Part “contributor”, in relation to the political fund of a trade union, means a member who has given to the union the notice referred to in paragraph (1)(a) and not withdrawn it.

#### *Duties of employer who deducts union contributions*

### **Employer not to deduct contributions where member gives certificate**

**60.**—(1) If a member of a trade union which has a political fund certifies in writing to his employer that, or to the effect that, he is not a contributor to the fund, the employer shall ensure that no amount representing a contribution to the political fund is deducted by him from emoluments payable to the member.

(2) The employer's duty under paragraph (1) applies from the first day, following the giving of the certificate, on which it is reasonably practicable for him to comply with that paragraph, until the certificate is withdrawn.

(3) An employer may not refuse to deduct any union dues from emoluments payable to a person who has given a certificate under this Article if he continues to deduct union dues from emoluments payable to other members of the union, unless his refusal is not attributable to the giving of the certificate or otherwise connected with the duty imposed by paragraph (1).

### **[<sup>F44</sup>Complaint in respect of employer's failure**

**61.**—(1) A person who claims his employer has failed to comply with Article 60 in deducting or refusing to deduct any amount from emoluments payable to him may present a complaint to an industrial tribunal.

(2) A tribunal shall not consider a complaint under paragraph (1) unless it is presented—

- (a) within the period of three months beginning with the date of the payment of the emoluments or (if the complaint relates to more than one payment) the last of the payments, or
- (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

(3) Where on a complaint under paragraph (1) arising out of paragraph (3) (refusal to deduct union dues) of Article 60 the question arises whether the employer's refusal to deduct an amount was attributable to the giving of the certificate or was otherwise connected with the duty imposed by paragraph (1) of that Article, it is for the employer to satisfy the tribunal that it was not.

(4) Where a tribunal finds that a complaint under paragraph (1) is well-founded—

(a) it shall make a declaration to that effect and, where the complaint arises out of paragraph (1) of Article 60, order the employer to pay to the complainant the amount deducted in contravention of that paragraph less any part of that amount already paid to him by the employer, and

(b) it may, if it considers it appropriate to do so in order to prevent a repetition of the failure, make an order requiring the employer to take, within a specified time, the steps specified in the order in relation to emoluments payable by him to the complainant.

(5) A person who claims his employer has failed to comply with an order made under paragraph (4)(b) on a complaint presented by him may present a further complaint to an industrial tribunal; but only one complaint may be presented under this paragraph in relation to any order.

(6) A tribunal shall not consider a complaint under paragraph (5) unless it is presented—

(a) after the end of the period of four weeks beginning with the date of the order, but

(b) before the end of the period of six months beginning with that date.

(7) Where on a complaint under paragraph (5) a tribunal finds that an employer has, without reasonable excuse, failed to comply with an order made under paragraph (4)(b), it shall order the employer to pay to the complainant an amount equal to two weeks' pay.

(8) Chapter IV of Part I of the Employment Rights (Northern Ireland) Order 1996 (calculation of a week's pay) applies for the purposes of paragraph (7) with the substitution for Article 21 of the following—

“For the purposes of this Chapter in its application to paragraph (7) of Article 61 of the Trade Union and Labour Relations Order, the calculation date is the date of the payment, or (if more than one) the last of the payments, to which the complaint related.”.]

F44 1998 NI 8

Art. 62 rep. by 1998 NI 8

*Position where political resolution ceases to have effect*

### **Administration of political fund where no resolution in force**

**63.**—(1) The following provisions have effect with respect to the political fund of a trade union where there ceases to be any political resolution in force in relation to the union.

(2) If the resolution ceases to have effect by reason of a ballot being held on which a new political resolution is not passed, the union may continue to make payments out of the fund as if the resolution had continued in force for six months beginning with the date of the ballot.

But no payment shall be made which causes the fund to be in deficit or increases a deficit in it.

(3) There may be added to the fund only—

(a) contributions to the fund paid to the union (or to a person on its behalf) before the resolution ceased to have effect, and

(b) property which accrues to the fund in the course of administering the assets of the fund.

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(4) The union may, notwithstanding any of its rules or any trusts on which the fund is held, transfer the whole or part of the fund to such other fund of the union as it thinks fit.

(5) If a new political resolution is subsequently passed, no property held immediately before the date of the ballot by or on behalf of the union otherwise than in its political fund, and no sums representing such property, may be added to the fund.

### **Discontinuance of contributions to political fund**

**64.**—(1) Where there ceases to be any political resolution in force in relation to a trade union, the union shall take such steps as are necessary to ensure that the collection of contributions to its political fund is discontinued as soon as is reasonably practicable.

(2) The union may, notwithstanding any of its rules, pay into any of its other funds any such contribution which is received by it after the resolution ceases to have effect.

(3) If the union continues to collect contributions, it shall refund to a member who applies for a refund the contributions made by him collected after the resolution ceased to have effect.

(4) A member of a trade union who claims that the union has failed to comply with paragraph (1) may apply to the High Court for a declaration to that effect.

(5) Where the High Court is satisfied that the complaint is well-founded, it may, if it considers it appropriate to do so in order to secure that the collection of contributions to the political fund is discontinued, make an order requiring the union to take, within such time as may be specified in the order, such steps as may be so specified.

Such an order may be enforced by a person who is a member of the union and was a member at the time the order was made as if he had made the application.

(6) The remedy for failure to comply with paragraph (1) is in accordance with paragraphs (4) and (5), and not otherwise; but this does not affect any right to recover sums payable to a person under paragraph (3).

### **Rules to cease to have effect**

**65.**—(1) If there ceases to be any political resolution in force in relation to a trade union, the rules of the union made for the purpose of complying with this Part also cease to have effect, except so far as they are required to enable the political fund to be administered at a time when there is no such resolution in force.

(2) If the resolution ceases to have effect by reason of a ballot being held on which a new political resolution is not passed, the rules cease to have effect at the end of the period of six months beginning with the date of the ballot.

In any other case the rules cease to have effect when the resolution ceases to have effect.

(3) Nothing in this Article affects the operation of Article 57(2) (complaint to Certification Officer in respect of breach of rules) in relation to a breach of a rule occurring before the rule in question ceased to have effect.

(4) A member of a trade union who has at any time not been a contributor to its political fund shall not by reason of his not having been a contributor—

- (a) be excluded from any benefits of the union, or
- (b) be placed in any respect either directly or indirectly under a disability or at a disadvantage as compared with other members (except in relation to the control or management of the political fund).

## Supplementary

### Manner of making union rules

**66.** If the Certification Officer is satisfied, and certifies, that rules of a trade union made for any of the purposes of this Part and requiring approval by him have been approved—

- (a) by a majority of the members of the union voting for the purpose, or
- (b) by a majority of delegates of the union at a meeting called for the purpose,

the rules shall have effect as rules of the union notwithstanding that the rules of the union as to the alteration of rules or the making of new rules have not been complied with.

### Effect of amalgamation

**67.—**(1) Where on an amalgamation of two or more trade unions—

- (a) there is in force in relation to each of the amalgamating unions a political resolution and such rules as are required by this Part, and
- (b) the rules of the amalgamated union in force immediately after the amalgamation include such rules as are required by this Part,

the amalgamated union shall be treated for the purposes of this Part as having passed a political resolution.

(2) That resolution shall be treated as having been passed on the date of the earliest of the ballots on which the resolutions in force immediately before the amalgamation with respect to the amalgamating unions were passed.

(3) Where one of the amalgamating unions is a Great Britain union, the references above to the requirements of this Part shall be construed as references to the requirements of the corresponding provisions of the law of Great Britain.

### Overseas members

**68.—**(1) Where a political resolution is in force in relation to the union, rules made by the union for the purpose of complying with Article 48 (political ballot rules) in relation to a proposed ballot may provide for overseas members of the union not to be accorded entitlement to vote in the ballot.

(2) Accordingly, where provision is made in accordance with paragraph (1), the Certification Officer shall not on that ground withhold his approval of the rules.

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

For this purpose—

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

“offshore worker” means a person in offshore employment within the meaning of section 287 of the Great Britain Act, other than one who is in such employment in an area where the law of Great Britain applies.

*Art. 69 rep. by 1999 NI 9*

### Meaning of “date of the ballot”

**70.** In this Part the “date of the ballot” means, in the case of a ballot in which votes may be cast on more than one day, the last of those days.

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### Application to Great Britain unions and members

71.—(1) Subject to paragraphs (2) to (5), the provisions of this Part apply only to a trade union which has its head or main office in Northern Ireland.

(2) The rules of any Great Britain union made in pursuance of section 71(1)(b) of the Great Britain Act shall, in so far as they apply to members of the union in Northern Ireland,—

- (a) comply with the requirements of Article 59; and
- (b) in so far as they so comply, be subject to the approval of the Certification Officer.

(3) Every member of a Great Britain union who—

- (a) has not delivered to the union the notice referred to in Article 59(1)(a); or
- (b) has delivered such a notice but has withdrawn it in accordance with Article 59(2),

shall be deemed for the purposes of Chapter VI of Part I of the Great Britain Act to be a member who is exempt from the obligation to contribute to the political fund of the union; and references in that Act to a member who is so exempt shall be construed accordingly.

(4) Article 57(2) to (4) shall apply in relation to rules of a trade union approved—

- (a) by the Certification Officer under paragraph (2)(b); or
- (b) before 1st July 1992, by the officer appointed to perform in Northern Ireland the functions of registrar of friendly societies,

as they apply in relation to rules made in pursuance of Article 57; and Article 66 shall apply to any rules to be approved by the Certification Officer under paragraph (2)(b).

(5) Articles 60 to 62 apply to a member of a Great Britain union as if—

- (a) for references in Article 60(1) to a political fund there were substituted references to a political fund within the meaning of Chapter VI of Part I of the Great Britain Act;
- (b) in Article 60(1) for the words “not a contributor” there were substituted the words “exempt from the obligation to contribute”.

### Application of Part V to certain bodies

72.—(1) This Part applies to a trade union which is in whole or part an association or combination of other unions as if the individual members of the component unions were members of that union and not of the component unions.

But nothing in this Part prevents a component union from collecting contributions on behalf of the association or combination from such of its members as are contributors to the political fund of the association or combination.

(2) [<sup>F45</sup>Subject to paragraphs (3) to (6),] this Part applies with the necessary modifications in relation to an unincorporated employers' association as it applies in relation to a trade union.

[<sup>F45</sup>(3) Paragraph (1) does not apply to these provisions—

- (a) Article 46A;
- (b) in Article 55, paragraphs (5A) to (5C) and (8) to (10);
- (c) in Article 56, paragraph (8).

(4) In its application to an unincorporated employers' association, Article 54 shall have effect as if at the end of paragraph (1) there were inserted—

“The making of an application to the Certification Officer does not prevent the applicant, or any other person, from making an application to the High Court in respect of the same matter.”

(5) In its application to an unincorporated employers' association, Article 55(2)(b) shall have effect as if the words “where he considers it appropriate,” were inserted at the beginning.

(6) In its application to an unincorporated employers' association, Article 56 shall have effect as if after paragraph (1) there were inserted—

“(2) If an application in respect of the same matter has been made to the Certification Officer, the High Court shall have due regard to any declaration, reasons or observations of his which are brought to its notice.”.]

F45 1999 NI 9

## PART VI

### AMALGAMATIONS AND SIMILAR MATTERS

#### *Amalgamation or transfer of engagements*

#### **Amalgamation or transfer of engagements**

73.—(1) Two or more trade unions may amalgamate and become one trade union, with or without a division or dissolution of the funds of any one or more of the amalgamating unions, but shall not do so unless—

- (a) the instrument of amalgamation is approved in accordance with Article 74, and
- (b) the requirements of Article 75 (notice to members) and Article 76 (resolution to be passed by required majority on ballot held in accordance with Articles 77 to 81) are complied with in respect of each of the amalgamating unions.

(2) A trade union may transfer its engagements to another trade union which undertakes to fulfil those engagements, but shall not do so unless—

- (a) the instrument of transfer is approved in accordance with Article 74, and
- (b) the requirements of Article 75 (notice to members) and Article 76 (resolution to be passed by required majority on ballot held in accordance with Articles 77 to 81) are complied with in respect of the transferor union.

(3) An amalgamation or transfer of engagements does not prejudice any right of any creditor of any trade union party to the amalgamation or transfer.

(4) The above provisions apply to every amalgamation or transfer of engagements notwithstanding anything in the rules of any of the trade unions concerned.

#### **Approval of instrument of amalgamation or transfer**

74.—(1) The instrument of amalgamation or transfer must be approved by the Certification Officer and shall be submitted to him for approval before a ballot of the members of any amalgamating union, or (as the case may be) of the transferor union, is held on the resolution to approve the instrument.

[<sup>F46</sup>(2) If the Certification Officer is satisfied—

- (a) that an instrument of amalgamation complies with the requirements of any regulations in force under this Part, and
  - (b) that he is not prevented from approving the instrument of amalgamation by paragraph (3),
- he shall approve the instrument.

*Status: Point in time view as at 08/01/2006.*

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(3) The Certification Officer shall not approve an instrument of amalgamation if it appears to him that the proposed name of the amalgamated union is the same as the name under which another organisation—

- (a) was on 30th June 1992 registered as a trade union under the Trade Union Acts (Northern Ireland) 1871 to 1965, or
- (b) is for the time being entered in the list of trade unions or in the list of employers' associations kept under the 1992 Order or under the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52),

or if the proposed name is one so nearly resembling any such name as to be likely to deceive the public.

(4) Paragraph (3) does not apply if the proposed name is the name of one of the amalgamating unions.

(5) If the Certification Officer is satisfied that an instrument of transfer complies with the requirements of any regulations in force under this Part, he shall approve the instrument.]

**F46** 2004 NI 19

### **Notice to be given to members**

**75.**—(1) The trade union shall take all reasonable steps to secure that every voting paper which is supplied for voting in the ballot on the resolution to approve the instrument of amalgamation or transfer is accompanied by a notice in writing approved for the purpose by the Certification Officer.

(2) The notice shall be in writing and shall either—

- (a) set out in full the instrument of amalgamation or transfer to which the resolution relates, or
- (b) give an account of it sufficient to enable those receiving the notice to form a reasonable judgment of the main effects of the proposed amalgamation or transfer.

(3) If the notice does not set out the instrument in full it shall state where copies of the instrument may be inspected by those receiving the notice.

(4) The notice shall not contain any statement making a recommendation or expressing an opinion about the proposed amalgamation or transfer.

(5) The notice shall also comply with the requirements of any regulations in force under this Part.

(6) The notice proposed to be supplied to members of the union under this Article shall be submitted to the Certification Officer for approval; and he shall approve it if he is satisfied that it meets the requirements of this Article.

### **Requirement of ballot on resolution**

**76.**—(1) A resolution approving the instrument of amalgamation or transfer must be passed on a ballot of the members of the trade union held in accordance with Articles 77 to 81.

(2) A simple majority of those voting is sufficient to pass such a resolution unless the rules of the trade union expressly require it to be approved by a greater majority or by a specified proportion of the members of the union.

### **Appointment of independent scrutineer**

**77.**—(1) The trade union shall, before the ballot is held, appoint a qualified independent person (“the scrutineer”) to carry out—



- (a) the functions in relation to the ballot which are required under this Article to be contained in his appointment; and
  - (b) such additional functions in relation to the ballot as may be specified in his appointment.
- (2) A person is a qualified independent person in relation to a ballot if—
- (a) he satisfies such conditions as may be specified for the purposes of this Article by order of the Department or is himself so specified; and
  - (b) the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.
- (3) The scrutineer's appointment shall require him—
- (a) to be the person who supervises the production of the voting papers and (unless he is appointed under Article 80 to undertake the distribution of the voting papers) their distribution and to whom the voting papers are returned by those voting;
  - (b) to—
    - (i) inspect the register of names and addresses of the members of the trade union, or
    - (ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with paragraph (9)(a),whenever it appears to him appropriate to do so and, in particular, when the conditions specified in paragraph (4) are satisfied;
  - (c) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see Article 81);
  - (d) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and
  - (e) to retain custody of all voting papers returned for the purposes of the ballot and the copy of the register supplied to him in accordance with paragraph (9)(a)—
    - (i) until the end of the period of one year beginning with the announcement by the union of the result of the ballot; and
    - (ii) if within that period a complaint is made under Article 84 (complaint as regards passing of resolution), until the Certification Officer or Court of Appeal authorises him to dispose of the papers or copy.
- (4) The conditions referred to in paragraph (3)(b) are—
- (a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and
  - (b) that the scrutineer does not consider that the member's suspicion is ill-founded.
- (5) In paragraph (4) “the appropriate period” means the period—
- (a) beginning with the day on which the scrutineer is appointed, and
  - (b) ending with the day before the day on which the scrutineer makes his report to the trade union.
- (6) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.
- (7) The trade union shall ensure that nothing in the terms of the scrutineer's appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer's independence in relation to the union into question.

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- (8) The trade union shall, before the scrutineer begins to carry out his functions, either—
- (a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or
  - (b) take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.
- (9) The trade union shall—
- (a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and
  - (b) comply with any request made by the scrutineer to inspect the register.
- (10) Where the register is kept by means of a computer the duty imposed on the trade union by paragraph (9)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.
- (11) The trade union shall ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer's independence in relation to the union into question.
- (12) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.
- (13) In this Article “the relevant date” means—
- (a) where the trade union has rules determining who is entitled to vote in the ballot by reference to membership on a particular date, that date, and
  - (b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the ballot.

### **Entitlement to vote**

**78.** Entitlement to vote in the ballot shall be accorded equally to all members of the trade union.

### **Voting**

- 79.**—(1) The method of voting must be by the marking of a voting paper by the person voting.
- (2) Each voting paper must—
- (a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned, and
  - (b) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot, and
  - (c) be marked with its number.
- (3) Every person who is entitled to vote in the ballot must—
- (a) be allowed to vote without interference or constraint, and
  - (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.
- (4) So far as is reasonably practicable, every person who is entitled to vote in the ballot must—
- (a) have a voting paper sent to him by post at his home address or another address which he has requested the trade union in writing to treat as his postal address, and

(b) be given a convenient opportunity to vote by post;

but where, for the purpose of personal safety, a member of a trade union requests the union in writing to send a voting paper to him by some other means than by post then, in relation to that member, sub-paragraph (a) shall have effect with the substitution for the reference to post of a reference to that other means.

(5) No voting paper which is sent to a person for voting shall have enclosed with it any other document except—

- (a) the notice which, under Article 75(1), is to accompany the voting paper,
- (b) an addressed envelope, and
- (c) a document containing instructions for the return of the voting paper,

without any other statement.

(6) The ballot shall 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.

For the purposes of sub-paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the ballot.

### **Counting of votes etc. by independent person**

**80.**—(1) The trade union shall ensure that—

- (a) the storage and distribution of the voting papers for the purposes of the ballot, and
- (b) the counting of the votes cast in the ballot,

are undertaken by one or more independent persons appointed by the trade union.

(2) A person is an independent person in relation to a ballot if—

- (a) he is the scrutineer, or
- (b) he is a person other than the scrutineer and the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

(3) An appointment under this Article shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any statutory provision or the occurrence of any unfairness or malpractice.

(4) The duty of confidentiality as respects the register is incorporated in an appointment under this Article.

(5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.

(6) The trade union—

- (a) shall ensure that nothing in the terms of an appointment under this Article is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,
- (b) shall ensure that a person appointed under this Article duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call into question the independence of the person appointed in relation to the union, and

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- (c) shall comply with all reasonable requests made by a person appointed under this Article for the purposes of, or in connection with, the carrying out of his functions.

### Scrutineer's report

**81.**—(1) The scrutineer's report on the ballot shall state—

- (a) the number of voting papers distributed for the purposes of the ballot,
- (b) the number of voting papers returned to the scrutineer,
- (c) the number of valid votes cast in the ballot for and against the resolution,
- (d) the number of spoiled or otherwise invalid voting papers returned, and
- (e) the name of the person (or of each of the persons) appointed under Article 80 or, if no person was so appointed, that fact.

(2) The report shall also state whether the scrutineer is satisfied—

- (a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any statutory provision in relation to the ballot,
- (b) that the arrangements made (whether by him or any other person) with respect to the production, storage, distribution, return or other handling of the voting papers used in the ballot, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and
- (c) that he has been able to carry out his functions without any such interference as would make it reasonable for any person to call his independence in relation to the union into question;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.

(3) The report shall also state—

- (a) whether the scrutineer—
  - (i) has inspected the register of names and addresses of the members of the trade union, or
  - (ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with Article 77(9)(a),
- (b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or at his own instance,
- (c) whether he declined to act on any such request, and
- (d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date,

but shall not state the name of any member who has requested such an inspection or examination.

(4) Where one or more persons other than the scrutineer are appointed under Article 80, the statement included in the scrutineer's report in accordance with paragraph (2)(b) shall also indicate—

- (a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and
- (b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.

(5) The trade union shall not publish the result of the ballot until it has received the scrutineer's report.

- (6) The trade union shall within the period of three months after it receives the report—
- (a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
  - (b) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.
- (7) Any such copy or notification shall be accompanied by a statement that the union will, on request, supply any member of the trade union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification.
- (8) The trade union shall so supply any member of the union who makes such a request and pays the fee (if any) notified to him.

### **Registration of instrument of amalgamation or transfer**

- 82.**—(1) An instrument of amalgamation or transfer shall not take effect before it has been registered by the Certification Officer under this Part.
- (2) It shall not be so registered before the end of the period of six weeks beginning with the date on which an application for its registration is sent to the Certification Officer.
- (3) An application for registration of an instrument of amalgamation or transfer shall not be sent to the Certification Officer until Article 81(6) has been complied with in relation to the scrutineer's report on the ballot held on the resolution to approve the instrument.

### **[<sup>F47</sup>Listing and certification after amalgamation**

- 82A.**—(1) Paragraph (2) applies if when an instrument of amalgamation is registered by the Certification Officer under this Part each of the amalgamating unions is entered in the list of trade unions.
- (2) The Certification Officer shall—
- (a) enter, with effect from the amalgamation date, the name of the amalgamated union in the list of trade unions, and
  - (b) remove, with effect from that date, the names of the amalgamating unions from that list.
- (3) Paragraph (4) applies if when an instrument of amalgamation is registered by the Certification Officer under this Part each of the amalgamating unions has a certificate of independence which is in force.
- (4) The Certification Officer shall issue to the amalgamated trade union, with effect from the amalgamation date, a certificate that the union is independent.
- (5) In this Article “the amalgamation date” means the date on which the instrument of amalgamation takes effect.]

**F47** 2004 NI 19

### **Supply of information by amalgamated union**

- 82B.**—(1) If an instrument of amalgamation is registered under this Part by the Certification Officer and the amalgamated union is entered in the list of trade unions in accordance with Article 82A, that union shall send to him, in such manner and form as he may require—
- (a) a copy of the rules of the union,
  - (b) a list of its officers, and

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- (c) the address of its head or main office.
- (2) The information required to be sent under paragraph (1) must be accompanied by any fee prescribed for the purpose under Article 89.
- (3) The information must be sent—
  - (a) before the end of the period of six weeks beginning with the date on which the instrument of amalgamation takes effect, or
  - (b) if the Certification Officer considers that it is not reasonably practicable for the amalgamated union to send it in that period, before the end of such longer period, beginning with that date, as he may specify to the amalgamated union.
- (4) If any of paragraphs (1) to (3) are not complied with by the amalgamated union, the Certification Officer shall remove its name from the list of trade unions.

### **Power to alter rules of transferee union for purposes of transfer**

**83.**—(1) Where a trade union proposes to transfer its engagements to another trade union and an alteration of the rules of the transferee union is necessary to give effect to provisions in the instrument of transfer, the executive of that union may by memorandum in writing alter the rules of that union so far as is necessary to give effect to those provisions.

This paragraph does not apply if the rules of the trade union expressly provide that this Article is not to apply to that union.

(2) An alteration of the rules of a trade union under paragraph (1) shall not take effect unless or until the instrument of transfer takes effect.

(3) The provisions of paragraph (1) have effect, where they apply, notwithstanding anything in the rules of the union.

### **Complaints as regards passing of resolution**

**84.**—(1) A member of a trade union who claims that the union—

- (a) has failed to comply with any of the requirements of Articles 75 to 81, or
- (b) has, in connection with a resolution approving an instrument of amalgamation or transfer, failed to comply with any rule of the union relating to the passing of the resolution,

may complain to the Certification Officer.

(2) Any complaint must be made before the end of the period of six weeks beginning with the date on which an application for registration of the instrument of amalgamation or transfer is sent to the Certification Officer.

Where a complaint is made, the Certification Officer shall not register the instrument before the complaint is finally determined or is withdrawn.

[<sup>F48</sup>(2A) On a complaint being made to him the Certification Officer shall make such enquiries as he thinks fit.]

(3) If the Certification Officer, after giving the complainant and the trade union an opportunity of being heard, finds the complaint to be justified—

- (a) he shall make a declaration to that effect, and
- (b) he may make an order specifying the steps which must be taken before he will entertain any application to register the instrument of amalgamation or transfer;

and where he makes such an order, he shall not entertain any application to register the instrument unless he is satisfied that the steps specified in the order have been taken.

An order under this paragraph may be varied by the Certification Officer by a further order.

(4) The Certification Officer shall furnish a statement, orally or in writing, of the reasons for his decision on a complaint under this Article.

(5) The validity of a resolution approving an instrument of amalgamation or transfer shall not be questioned in any legal proceedings whatsoever (except proceedings before the Certification Officer under this Article or proceedings arising out of such proceedings) on any ground on which a complaint could be, or could have been, made to the Certification Officer under this Article.

[<sup>F48</sup>(6) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(7) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.

(8) Where an order has been made under this Article, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the [<sup>F49</sup> complaint] on which the order was made.

(9) An order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.]

**F48** 1999 NI 9  
**F49** 2004 NI 19

*Art. 85 rep. by 1999 NI 9*

### **Transfer of property on amalgamation or transfer**

**86.**—(1) Where an instrument of amalgamation or transfer takes effect, the property held—

- (a) for the benefit of any of the amalgamating unions, or for the benefit of a branch or section of any of those unions, by the trustees of the union, branch or section, or
- (b) for the benefit of the transferor trade union, or for the benefit of a branch or section of the transferor trade union, by the trustees of the union, branch or section,

shall without any conveyance or assignment vest, on the instrument taking effect, or on the appointment of the appropriate trustees, whichever is the later, in the appropriate trustees.

(2) In the case of property to be held for the benefit of a branch or section of the amalgamated union, or of the transferee union, “the appropriate trustees” means the trustees of that branch or section, unless the rules of the amalgamated or transferee union provide that the property to be so held is to be held by the trustees of the union.

(3) In any other case “the appropriate trustees” means the trustees of the amalgamated or transferee union.

(4) This Article does not apply—

- (a) to property excepted from the operation of this Article by the instrument of amalgamation or transfer, or
- (b) to stocks and securities in the public funds of the United Kingdom or Northern Ireland.

### **Amalgamation or transfer involving Great Britain union**

**87.**—(1) This Part has effect subject to the following modifications in the case of an amalgamation or transfer of engagements to which a trade union and a Great Britain union are Party.

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(2) The requirements of Articles 74 to 81 and 82(3) (approval of instrument; notice to members and ballot on resolution) do not apply in relation to the Great Britain union; but the Certification Officer shall not register the instrument under Article 82 unless he is satisfied that it will be effective under the law of Great Britain.

(3) The instrument of amalgamation or transfer submitted to the Certification Officer for his approval under Article 74 shall state which of the bodies concerned is a Great Britain union and, in the case of an amalgamation, whether the amalgamated body is to be a Great Britain union; and the Certification Officer shall withhold his approval if the instrument does not contain that information.

(4) Nothing in Article 83 (alteration of rules) or Articles 84 and 85 (complaint as to passing of resolution) applies in relation to the Great Britain union.

(5) Subject to the exceptions specified above, the provisions of this Part as to amalgamations or transfers of engagements apply in relation to the Great Britain union.

(6) Except as provided by this Article, this Part applies only to a trade union which has its head or main office in Northern Ireland.

### *Change of name*

#### **Change of name of trade union**

**88.**—(1) A trade union may change its name by any method expressly provided for by its rules or, if its rules do not expressly provide for a method of doing so, by adopting in accordance with its rules an alteration of the provision in them which gives the union its name.

(2) If the name of the trade union is entered in the list of trade unions under Article 5 of the 1992 Order a change of name shall not take effect until approved by the Certification Officer.

(3) The Certification Officer shall not approve a change of name if it appears to him that the proposed new name—

- (a) is the same as one entered in either of the lists under that Article as the name of another trade union or employers' association, or
- (b) is a name so nearly resembling such a name as to be likely to deceive the public.

(4) A change of name by a trade union does not affect any right or obligation of the union or any of its members; and any pending legal proceedings may be continued by or against the union, the trustees of the union or any other officer of the union who can sue or be sued on its behalf notwithstanding its change of name.

### *Supplementary*

#### **General power to make regulations**

**89.**—(1) The Department may make regulations as respects—

- (a) applications to the Certification Officer under this Part,
- (b) the registration under this Part of any document or matter,
- (c) the inspection of documents kept by the Certification Officer under this Part,
- (d) the charging of fees in respect of such matters, and of such amounts, as may with the approval of the Department of Finance and Personnel be prescribed by the regulations,

and generally for carrying this Part into effect.

(2) Provision may in particular be made—



- (a) requiring an application for the registration of an instrument of amalgamation or transfer, or of a change of name, to be accompanied by such statutory declarations or other documents as may be specified in the regulations;
- (b) as to the form or content of any document required by this Part, or by the regulations, to be sent or submitted to the Certification Officer and as to the manner in which any such document is to be signed or authenticated;
- (c) authorising the Certification Officer to require notice to be given or published in such manner as he may direct of the fact that an application for registration of an instrument of amalgamation or transfer has been or is to be made to him.

### Application of Part VI to employers' associations

**90.**—(1) Subject to paragraph (2), this Part applies in relation to unincorporated employers' associations as it applies in relation to trade unions.

(2) In its application to such associations this Part shall have effect—

- (a) as if in Article 75 (1) for the words from “that every” to “accompanied by” there were substituted the words “that not less than 7 days before the ballot on the resolution to approve the instrument of amalgamation or transfer is held, every member is supplied with”;
- (b) as if the requirements imposed by Articles 77 to 81 consisted only of those specified in Articles 78 and 79 (1) and (3) (a) together with the requirement that every member must, so far as is reasonably possible, be given a fair opportunity of voting,<sup>F50</sup> . . .
- [<sup>F50</sup>(ba) as if the references in Articles 82A and 82B to the list of trade unions were to the list of employers' associations, and]
- (c) with the omission of Article 82(3)[<sup>F50</sup>, 82A(3) and (4)][<sup>F51</sup> and 84(2A) and (6) to (9)].

**F50** 2004 NI 19

**F51** 1999 NI 9

## [<sup>F52</sup>PART VIA BREACH OF RULES

**F52** 1999 NI 9

### Right to apply to Certification Officer

**90A.**—(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in paragraph (2) may apply to the Certification Officer for a declaration to that effect, subject to paragraphs (3) to (7).

(2) The matters are—

- (a) the appointment or election of a person to, or the removal of a person from, any office;
- (b) disciplinary proceedings by the union (including expulsion);
- (c) the balloting of members on any issue other than industrial action;
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;

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- (e) such other matters as may be specified in an order made by the Department.
- (3) The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.
- (4) A person may not apply under paragraph(1) in relation to a claim if he is entitled to apply under Article 55 in relation to the claim.
- (5) No application may be made regarding—
  - (a) the dismissal of an employee of the union;
  - (b) disciplinary proceedings against an employee of the union.
- (6) An application must be made—
  - (a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or
  - (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in paragraph (7).
- (7) Those days are—
  - (a) the day on which the procedure is concluded, and
  - (b) the last day of the period of one year beginning with the day on which the procedure is invoked.
- (8) The reference in paragraph (1) to the rules of a union includes references to the rules of any branch or section of the union.
- (9) In paragraph (2)(c) “industrial action” means a strike or other industrial action by persons employed under contracts of employment.
- (10) For the purposes of paragraph (2)(d) a committee is an executive committee if—
  - (a) it is a committee of the union concerned and has power to make executive decisions on behalf of the union or on behalf of a constituent body,
  - (b) it is a committee of a major constituent body and has power to make executive decisions on behalf of that body, or
  - (c) it is a sub-committee of a committee falling within sub-paragraph (a) or (b).
- (11) For the purposes of paragraph (2)(d) a decision-making meeting is—
  - (a) a meeting of members of the union concerned (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union, is final as regards the union or which, under the rules of the union or a constituent body, is final as regards that body, or
  - (b) a meeting of members of a major constituent body (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union or the body, is final as regards that body.
- (12) For the purposes of paragraphs (10) and (11), in relation to the trade union concerned—
  - (a) a constituent body is any body which forms part of the union, including a branch, group, section or region;
  - (b) a major constituent body is such a body which has more than 1,000 members.
- (13) No order shall be made under paragraph (2)(e) unless a draft of it has been laid before and approved by resolution of the Assembly.
- (14) If a person applies to the Certification Officer under this Article in relation to an alleged breach or threatened breach he may not apply to the High Court in relation to the breach or threatened

breach; but nothing in this paragraph shall prevent such a person from exercising any right to appeal against or challenge the Certification Officer's decision on the application to him.

(15) If—

- (a) a person applies to the High Court in relation to an alleged breach or threatened breach, and
- (b) the breach or threatened breach is one in relation to which he could have made an application to the Certification Officer under this Article,

he may not apply to the Certification Officer under this Article in relation to the breach or threatened breach.

### **Declarations and orders**

**90B.**—(1) The Certification Officer may refuse to accept an application under Article 90A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.

(2) If he accepts an application under Article 90A the Certification Officer—

- (a) shall make such enquiries as he thinks fit,
- (b) shall give the applicant and the union an opportunity to be heard,
- (c) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,
- (d) may make or refuse the declaration asked for, and
- (e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.

(3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—

- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
- (b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

(4) The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (3)(a) specify the period within which the union is to comply with the requirement.

(5) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(6) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.

(7) Where an enforcement order has been made, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(8) An enforcement order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.

(9) An order under Article 90A(2)(e) may provide that, in relation to an application under Article 90A with regard to a prescribed matter, the preceding provisions of this Article shall apply with such omissions or modifications as may be specified in the order; and a prescribed matter is such matter specified under Article 90A(2)(e) as is prescribed under this paragraph.]

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Part VII rep. by 1999 NI 9

## PART VIII

### INDUSTRIAL ACTION

*Protection of acts in contemplation or furtherance of trade dispute*

#### **Protection from certain tort liabilities**

**97.**—(1) An act done by a person in contemplation or furtherance of a trade dispute is not actionable in tort on the ground only—

- (a) that it induces another person to break a contract or interferes or induces another person to interfere with its performance; or
- (b) that it consists in his threatening that a contract (whether one to which he is a party or not) will be broken or its performance interfered with, or that he will induce another person to break a contract or interfere with its performance.

(2) An agreement or combination by two or more persons to do or procure the doing of an act in contemplation or furtherance of a trade dispute is not actionable in tort if the act is one which if done without any such agreement or combination would not be actionable in tort.

(3) Nothing in paragraphs (1) and (2) prevents an act done in the course of picketing from being actionable in tort unless it is done in the course of attendance declared lawful by Article 98 (peaceful picketing).

(4) Paragraphs (1) and (2) have effect subject to Articles 100 to 103 (action excluded from protection) and to Articles 104 (requirement of ballot before action by trade union) and 118 (requirement of notice to employer of industrial action); and in those Articles “not protected” means excluded from the protection afforded by this Article or, where the expression is used with reference to a particular person, excluded from that protection as respects that person.

#### **Peaceful picketing**

**98.**—(1) It is lawful for a person in contemplation or furtherance of a trade dispute to attend—

- (a) at or near his own place of work, or
- (b) if he is an official of a trade union, at or near the place of work of a member of the union whom he is accompanying and whom he represents,

for the purpose only of peacefully obtaining or communicating information, or peacefully persuading any person to work or abstain from working.

(2) If a person works or normally works—

- (a) otherwise than at any one place, or
- (b) at a place the location of which is such that attendance there for a purpose mentioned in paragraph (1) is impracticable,

his place of work for the purposes of that paragraph shall be any premises of his employer from which he works or from which his work is administered.

(3) In the case of a worker not in employment where—

- (a) his last employment was terminated in connection with a trade dispute; or

- (b) the termination of his employment was one of the circumstances giving rise to a trade dispute,

in relation to that dispute his former place of work shall be treated for the purposes of paragraph (1) as being his place of work.

(4) A person who is an official of a trade union by virtue only of having been elected or appointed to be a representative of some of the members of the union shall be regarded for the purposes of paragraph (1) as representing only those members; but otherwise an official of a union shall be regarded for those purposes as representing all its members.

### **Restrictions on grant of injunctions**

**99.**—(1) Where—

- (a) an application for an injunction is made to a court in the absence of the party against whom it is sought or any representative of his, and
- (b) he claims, or in the opinion of the court would be likely to claim, that he acted in contemplation or furtherance of a trade dispute,

the court shall not grant the injunction unless satisfied that all steps which in the circumstances were reasonable have been taken with a view to securing that notice of the application and an opportunity of being heard with respect to the application have been given to him.

(2) Where—

- (a) an application for an interlocutory injunction is made to a court pending the trial of an action, and
- (b) the party against whom it is sought claims that he acted in contemplation or furtherance of a trade dispute,

the court shall, in exercising its discretion whether or not to grant the injunction, have regard to the likelihood of that party's succeeding at the trial of the action in establishing any matter which would afford a defence to the action under Article 97 (protection from certain tort liabilities) or Article 98 (peaceful picketing).

### *Action excluded from protection*

### **Action to enforce trade union membership**

**100.**—(1) An act is not protected if the reason, or one of the reasons, for which it is done is the fact or belief that a particular employer—

- (a) is employing, has employed or might employ a person who is not a member of a trade union, or
- (b) is failing, has failed or might fail to discriminate against such a person.

(2) For the purposes of paragraph (1)(b) an employer discriminates against a person if, but only if, he ensures that his conduct in relation to—

- (a) persons, or persons of any description, employed by him, or who apply to be, or are, considered by him for employment, or
- (b) the provision of employment for such persons,

is different, in some or all cases, according to whether or not they are members of a trade union, and is more favourable to those who are.

(3) An act is not protected if it constitutes, or is one of a number of acts which together constitute, an inducement or attempted inducement of a person—

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- (a) to incorporate in a contract to which that person is a party, or a proposed contract to which he intends to be a party, a term or condition which is or would be void by virtue of Article 27(1) of the 1992 Order (union membership requirement in contract for goods or services), or
- (b) to contravene Article 27(2) of that Order (refusal to deal with person on grounds relating to union membership).

(4) References in this Article to an employer employing a person are to a person acting in the capacity of the person for whom a worker works or normally works.

(5) References in this Article to not being a member of a trade union are to not being a member of any trade union, of a particular trade union or of one of a number of particular trade unions. Any such reference includes a reference to not being a member of a particular branch or section of a trade union or of one of a number of particular branches or sections of a trade union.

### **Action taken because of dismissal for taking unofficial action**

**101.** An act is not protected if the reason, or one of the reasons, for doing it is the fact or belief that an employer has dismissed one or more employees in circumstances such that by virtue of Article 23A of the No. 1 Order (dismissal in connection with unofficial action) they have no right to complain of unfair dismissal.

### **Secondary action**

**102.—(1)** An act is not protected if one of the facts relied on for the purpose of establishing liability is that there has been secondary action which is not lawful picketing.

- (2) There is secondary action in relation to a trade dispute when, and only when, a person—
  - (a) induces another to break a contract of employment or interferes or induces another to interfere with its performance, or
  - (b) threatens that a contract of employment under which he or another is employed will be broken or its performance interfered with, or that he will induce another to break a contract of employment or to interfere with its performance,

and the employer under the contract of employment is not the employer party to the dispute.

(3) Lawful picketing means acts done in the course of such attendance as is declared lawful by Article 98 (peaceful picketing)—

- (a) by a worker employed (or, in the case of a worker not in employment, last employed) by the employer party to the dispute, or
- (b) by a trade union official whose attendance is lawful by virtue of paragraph (1)(b) of that Article.

(4) For the purposes of this Article an employer shall not be treated as party to a dispute between another employer and workers of that employer; and where more than one employer is in dispute with his workers, the dispute between each employer and his workers shall be treated as a separate dispute,

In this paragraph “worker” has the same meaning as in Article 127 (meaning of “trade dispute”).

(5) An act in contemplation or furtherance of a trade dispute which is primary action in relation to that dispute may not be relied on as secondary action in relation to another trade dispute.

Primary action means such action as is mentioned in sub-paragraph (a) or (b) of paragraph (2) where the employer under the contract of employment is the employer party to the dispute.

(6) In this article “contract of employment” includes any contract under which one person personally does work or performs services for another, and related expressions shall be construed accordingly.

### **Pressure to impose union recognition requirement**

**103.**—(1) An act is not protected if it constitutes, or is one of a number of acts which together constitute, an inducement or attempted inducement of a person—

- (a) to incorporate in a contract to which that person is a party, or a proposed contract to which he intends to be a party, a term or condition which is or would be void by virtue of Article 28(1) of the 1992 Order (recognition requirement in contract for goods or services); or
  - (b) to contravene Article 28(2) of that Order (refusal to deal with person on grounds of union exclusion).
- (2) An act is not protected if—
- (a) it interferes with the supply (whether or not under a contract) of goods or services, or can reasonably be expected to have that effect, and
  - (b) one of the facts relied upon for the purpose of establishing liability is that a person has—
    - (i) induced another to break a contract of employment or interfered or induced another to interfere with its performance; or
    - (ii) threatened that a contract of employment under which he or another is employed will be broken or its performance interfered with, or that he will induce another to break a contract of employment or to interfere with its performance; and
  - (c) the reason, or one of the reasons, for doing the act is the fact or belief that the supplier (not being the employer under the contract of employment mentioned in sub-paragraph (b)) does not, or might not—
    - (i) recognise one or more trade unions for the purpose of negotiating on behalf of workers, or any class of worker, employed by him, or
    - (ii) negotiate or consult with, or with an official of, one or more trade unions.

#### *Requirement of ballot before action by trade union*

### **Requirement of ballot before action by trade union**

**104.**—(1) An act done by a trade union to induce a person to take part, or continue to take part, in industrial action—

- (a) is not protected unless the industrial action has the support of a ballot; and
- (b) where Article '105 falls to be complied with in relation to the person's employer, is not protected as respects the employer unless the trade union has complied with Article 105 in relation to him.

In this Article “the relevant time”, in relation to an act by a trade union to induce a person to take part, or continue to take part, in industrial action, means the time at which proceedings are commenced in respect of the act.

- (2) Industrial action shall be regarded as having the support of a ballot only if—
- (a) the requirements set out in paragraph (3) are satisfied; or
  - (b) in the case of industrial action involving members of a trade union both in Great Britain and Northern Ireland, had the action taken place in Great Britain it would be regarded for the purposes of section 226 of the Great Britain Act as having the support of a ballot.
- (3) The requirements mentioned in paragraph (1)(a) are—
- (a) the union has held a ballot in respect of the action—
    - (i) in relation to which the requirements of Article 106 so far as applicable before and during the holding of the ballot were satisfied;

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- (ii) in relation to which the requirements of Articles 108 to<sup>F53</sup> 112] were satisfied; and
- (iii) in which the majority voting in the ballot answered “Yes” to the question applicable in accordance with Article 110(3) to industrial action of the kind to which the act of inducement relates;
- (b) such of the requirements of the following Articles as have fallen to be satisfied at the relevant time have been satisfied, namely—
  - (i) Article 106 so far as applicable after the holding of the ballot; and
  - (ii) Article 114,<sup>F53</sup> . . .
- <sup>F53</sup>(bb) Article 115A does not prevent the industrial action from being regarded as having the support of the ballot; and]
- (c) the requirements of Article 116 (calling of industrial action with support of ballot) are satisfied.

Any reference in this paragraph to a requirement of a provision which is disapplied or modified by Article 115 has effect subject to that Article.

- (4) Where separate workplace ballots are held by virtue of Article<sup>F53</sup> 109(3)]
  - (a) industrial action shall be regarded as having the support of a ballot if the conditions specified in paragraph (2) are satisfied, and
  - (b) the trade union shall be taken to have complied with the requirements relating to a ballot imposed by Article 105 if those requirements are complied with,

in relation to the ballot for the place of work of the person induced to take part, or continue to take part, in the industrial action.

<sup>F53</sup>(4A) If the requirements of Article 113 fall to be satisfied in relation to an employer, as respects that employer industrial action shall not be regarded as having the support of a ballot unless those requirements are satisfied in relation to that employer.]

(5) For the purposes of this Article an inducement, in relation to a person, includes an inducement which is or would be ineffective, whether because of his unwillingness to be influenced by it or for any other reason.

**F53** 1999 NI 9

### **Notice of ballot and sample voting paper for employers**

- 105.**—(1) The trade union must take such steps as are reasonably necessary to ensure that—
- (a) not later than the seventh day before the opening day of the ballot, the notice specified in paragraph (2), and
  - (b) not later than the third day before the opening day of the ballot, the sample voting paper specified in<sup>F54</sup> paragraph (2F)],

is received by every person who it is reasonable for the union to believe (at the latest time when steps could be taken to comply with sub-paragraph (a)) will be the employer of persons who will be entitled to vote in the ballot.

- (2) The notice referred to in sub-paragraph (a) of paragraph (1) is a notice in writing—
  - (a) stating that the union intends to hold the ballot,
  - (b) specifying the date which the union reasonably believes will be the opening day of the ballot, and



[<sup>F55</sup>(c) containing—

- (i) the lists mentioned in paragraph (2A) and the figures mentioned in paragraph (2B), together with an explanation of how those figures were arrived at, or
- (ii) where some or all of the employees concerned are employees from whose wages the employer makes deductions representing payments to the union, either those lists and figures and that explanation or the information mentioned in paragraph (2C).]

[<sup>F56</sup>(2A) The lists are—

- (a) a list of the categories of employee to which the employees concerned belong, and
- (b) a list of the workplaces at which the employees concerned work.

(2B) The figures are—

- (a) the total number of employees concerned,
- (b) the number of the employees concerned in each of the categories in the list mentioned in paragraph (2A)(a), and
- (c) the number of the employees concerned who work at each workplace in the list mentioned in paragraph (2A)(b).

(2C) The information referred to in paragraph (2)(c)(ii) is such information as will enable the employer readily to deduce—

- (a) the total number of employees concerned,
- (b) the categories of employee to which the employees concerned belong and the number of the employees concerned in each of those categories, and
- (c) the workplaces at which the employees concerned work and the number of them who work at each of those workplaces.

(2D) The lists and figures supplied under this Article, or the information mentioned in paragraph (2C) that is so supplied, must be as accurate as is reasonably practicable in the light of the information in the possession of the union at the time when it complies with paragraph (1)(a).

(2E) For the purposes of paragraph (2D) information is in the possession of the union if it is held, for union purposes—

- (a) in a document, whether in electronic form or any other form, and
- (b) in the possession or under the control of an officer or employee of the union.

(2F) The sample voting paper referred to in sub-paragraph (b) of paragraph (1) is—

- (a) a sample of the form of voting paper which is to be sent to the employees concerned, or
- (b) where the employees concerned are not all to be sent the same form of voting paper, a sample of each form of voting paper which is to be sent to any of them.

(2G) Nothing in this Article requires a union to supply an employer with the names of the employees concerned.

(2H) In this Article references to the “employees concerned” are references to those employees of the employer in question who the union reasonably believes will be entitled to vote in the ballot.

(2I) For the purposes of this Article, the workplace at which an employee works is—

- (a) in relation to an employee who works at or from a single set of premises, those premises, and
- (b) in relation to any other employee, the premises with which his employment has the closest connection.]

<sup>F57</sup>(3) .....

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<sup>F57</sup>(3A) .....

<sup>F57</sup>(3B) .....

(4) In this Article references to the opening day of the ballot are references to the first day when a voting paper is sent to any person entitled to vote in the ballot.

(5) This Article, in its application to a ballot in which merchant seamen to whom Article 111(3) applies are entitled to vote, shall have effect with the substitution in [<sup>F58</sup> paragraph (2F)], for references to the voting paper which is to be sent to the employees, of references to the voting paper which is to be sent or otherwise provided to them.

- F54** Words in art. 105(1)(b) substituted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), [arts. 1\(2\)](#), 5(2); S.R. 2005/571, art. 3, [Sch.](#) (with art. 6)
- F55** Art. 105(2)(c) substituted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), [arts. 1\(2\)](#), 5(3); S.R. 2005/571, art. 3, [Sch.](#) (with art. 6)
- F56** Art. 105(2A)-(2I) inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), [arts. 1\(2\)](#), 5(4); S.R. 2005/571, art. 3, [Sch.](#) (with art. 6)
- F57** Art. 105(3)-(3B) repealed (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), [arts. 1\(2\)](#), 5(5), [Sch. 3](#); S.R. 2005/571, art. 3, [Sch.](#) (with art. 6)
- F58** Words in art. 105(5) substituted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), [arts. 1\(2\)](#), 5(6); S.R. 2005/571, art. 3, [Sch.](#) (with art. 6)

### Appointment of independent scrutineer

**106.**—(1) The trade union shall, before the ballot in respect of the industrial action is held, appoint a qualified person (“the scrutineer”) whose terms of appointment shall require him to carry out in relation to the ballot the functions of—

- (a) taking such steps as appear to him to be appropriate for the purpose of enabling him to make a report to the trade union (see Article 114); and
  - (b) making the report as soon as reasonably practicable after the date of the ballot and, in any event, not later than the end of the period of four weeks beginning with that date.
- (2) A person is a qualified person in relation to a ballot if—
- (a) he satisfies such conditions as may be specified for the purposes of this Article by order of the Department or is himself so specified; and
  - (b) the trade union has no grounds for believing either that he will carry out the functions conferred on him under paragraph (1) otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

(3) The trade union shall ensure that the scrutineer duly carries out the functions conferred on him under paragraph (1) and that there is no interference with the carrying out of those functions from the union or any of its members, officials or employees.

(4) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of those functions.

### Exclusion for small ballots

**107.** Nothing in Article 106, Article 110(2)(a) or Article 114 shall impose a requirement on a trade union unless—

- (a) the number of members entitled to vote in the ballot, or
- (b) where separate workplace ballots are held in accordance with Article 109(1), the aggregate of the number of members entitled to vote in each of them,

exceeds 50.

### Entitlement to vote

**108.**—(1) Entitlement to vote in the ballot must be accorded equally to all the members of the trade union who it is reasonable at the time of the ballot for the union to believe will be induced<sup>[F59]</sup> by the union] to take part or, as the case may be, to continue to take part in the industrial action in question, and to no others.

*Para. (2) rep. by 1999 NI 9*

**F59** 2004 NI 19

### [<sup>F60</sup>Separate workplace ballots

**109.**—(1) Subject to paragraph (2), this Article applies if the members entitled to vote in a ballot by virtue of Article 108 do not all have the same workplace.

(2) This Article does not apply if the union reasonably believes that all those members have the same workplace.

(3) Subject to Article 109A, a separate ballot shall be held for each workplace; and entitlement to vote in each ballot shall be accorded equally to, and restricted to, members of the union who—

- (a) are entitled to vote by virtue of Article 108; and
- (b) have that workplace.

(4) In this Article and Article 109A “workplace” in relation to a person who is employed means—

- (a) if the person works at or from a single set of premises, those premises; and
- (b) in any other case, the premises with which the person's employment has the closest connection.]

**F60** 1999 NI 9

### Separate workplaces: single and aggregate ballots

**109A.**—(1) Where Article 109(3) would require separate ballots to be held for each workplace, a ballot may be held in place of some or all of the separate ballots if one of paragraphs (2) to (4) is satisfied in relation to it.

(2) This paragraph is satisfied in relation to a ballot if the workplace of each member entitled to vote in the ballot is the workplace of at least one member of the union who is affected by the dispute.

(3) This paragraph is satisfied in relation to a ballot if entitlement to vote is accorded to, and limited to, all the members of the union who—

- (a) according to the union's reasonable belief have an occupation of a particular kind or have any of a number of particular kinds of occupation; and
- (b) are employed by a particular employer, or by any of a number of particular employers, with whom the union is in dispute.

(4) This paragraph is satisfied in relation to a ballot if entitlement to vote is accorded to, and limited to, all the members of the union who are employed by a particular employer, or by any of a number of particular employers, with whom the union is in dispute.

(5) For the purposes of paragraph (2) the following are members of the union affected by a dispute—

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- (a) if the dispute relates (wholly or partly) to a decision which the union reasonably believes the employer has made or will make concerning a matter specified in paragraph (1)(a), (b) or (c) of Article 127 (meaning of “trade dispute”), members whom the decision directly affects;
- (b) if the dispute relates (wholly or partly) to a matter specified in paragraph (1)(d) of that Article, members whom the matter directly affects;
- (c) if the dispute relates (wholly or partly) to a matter specified in paragraph (1)(e) of that Article, persons whose membership or non-membership is in dispute;
- (d) if the dispute relates (wholly or partly) to a matter specified in paragraph (1)(f) of that Article, officials of the union who have used or would use the facilities concerned in the dispute.

## Voting

**110.**—(1) The method of voting in a ballot must be by the marking of a voting paper by the person voting.

(2) Each voting paper must—

- (a) state the name of the independent scrutineer,
- (b) clearly specify the address to which, and the date by which, it is to be returned,
- (c) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot, and
- (d) be marked with its number.

This paragraph, in its application to a ballot in which merchant seamen to whom Article 111(3) applies are entitled to vote, shall have effect with the substitution, for the reference to the address to which the voting paper is to be returned, of a reference to the ship to which the seamen belong.

(3) 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 industrial action short of a strike.

[<sup>F61</sup>(3A) For the purposes of paragraph (3) an overtime ban and a call-out ban constitute industrial action short of a strike.]

(4) The voting paper must specify who, in the event of a vote in favour of industrial action, is authorised for the purposes of Article 116 to call upon members to take part or continue to take part in the industrial action.

The person or description of persons so specified need not be authorised under the rules of the union but must be within Article 21(2) of the 1992 Order (persons for whose acts the union is taken to be responsible).

(5) The following statement must (without being qualified or commented upon by anything else on the voting paper) appear on every voting paper—

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

[<sup>F61</sup>However, if you are dismissed for taking part in strike or other industrial action which is called officially and is otherwise lawful, the dismissal will be unfair if it takes place fewer than<sup>F62</sup> 12]

weeks after you started taking part in the action, and depending on the circumstances may be unfair if it takes place later.”.]

F61 1999 NI 9  
F62 2004 NI 19

### Conduct of ballot

111.—(1) 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.

(2) Except as regards persons falling within paragraph (3), so far as is reasonably practicable, every person who is entitled to vote in the ballot must—

- (a) have a voting paper sent to him by post at his home address or any other address which he has requested the trade union in writing to treat as his postal address; and
- (b) be given a convenient opportunity to vote by post;

but where, for the purpose of personal safety, a member of a trade union requests the union in writing to send a voting paper to him by some means other than by post then, in relation to that member, sub-paragraph(a) shall have effect with the substitution for the reference to post of a reference to that other means.

[<sup>F63</sup>(3) Paragraph (4) applies to a merchant seaman if the trade union reasonably believes that—

- (a) he will be employed in a ship either at sea or at a place outside Northern Ireland at some time in the period during which votes may be cast; and
- (b) it will be convenient for him to receive a voting paper and to vote while on the ship or while at a place where the ship is rather than in accordance with paragraph (2).

(4) Where this paragraph applies to a merchant seaman he shall, if it is reasonably practicable—

- (a) have a voting paper made available to him while on the ship or while at a place where the ship is; and
- (b) be given an opportunity to vote while on the ship or while at a place where the ship is.]

(5) In paragraphs (3) and (4) “merchant seaman” means a person whose employment, or the greater part of it, is carried out on board sea-going ships.

(6) A ballot shall 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.

For the purposes of sub-paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the ballot.

F63 1999 NI 9

### Information as to result of ballot

112. As soon as 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—

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- (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.

### **Employers to be informed of ballot result**

**113.**—(1) As soon as reasonably practicable after the holding of the ballot, the trade union shall take such steps as are reasonably necessary to ensure that every relevant employer is informed of the matters mentioned in Article 112.

(2) In paragraph (1) “relevant employer” means a person who it is reasonable for the trade union to believe (at the time when the steps are taken) was at the time of the ballot the employer of any persons entitled to vote.

### **Scrutineer's report**

**114.**—(1) The scrutineer's report on the ballot shall state whether the scrutineer is satisfied—

- (a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any statutory provision in relation to the ballot,
- (b) that the arrangements made with respect to the production, storage, distribution, return or other handling of the voting papers used in the ballot, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and
- (c) that he has been able to carry out the functions conferred on him under Article 106(1) without any interference from the trade union or any of its members, officials or employees;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reason for not being satisfied as to that matter.

(2) If at any time within six months from the date of the ballot—

- (a) any person entitled to vote in the ballot, or
- (b) the employer of any such person,

requests a copy of the scrutineer's report, the trade union must, as soon as practicable, provide him with one either free of charge or on payment of such reasonable fee as may be specified by the trade union.

### **Overseas members**

**115.**—(1) 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 Article 106 to 111 and 114 applies in relation to an overseas member or a vote cast by such a member.

(2) Where overseas members have voted in the ballot—

- (a) the references in Articles 112 and 113 to persons entitled to vote in the ballot do not include overseas members, and
- (b) those Articles shall be read as requiring the information mentioned in Article 112 to distinguish between overseas members and other members.

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

For this purpose—

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

“offshore worker” means a person in offshore employment, other than one who is in such employment in an area where the law of England and Wales or Scotland applies.

(4) A member who throughout the period during which votes may be cast is in Great Britain shall not be treated as an overseas member—

- (a) where the ballot is one to which Article 109(1) or (2) applies (workplace ballots) and his place of work is in Northern Ireland, or
- (b) where the ballot is one to which Article 109(3) applies (general ballots) and relates to industrial action involving members both in Great Britain and in Northern Ireland.

(5) In relation to offshore employment the references in paragraph (4) to Northern Ireland include any area where the law of Northern Ireland applies and the references to Great Britain include any area where the law of England and Wales or Scotland applies.

#### [<sup>F64</sup>Inducement of member denied entitlement to vote

**115A.** Industrial action shall not be regarded as having the support of a ballot if the following conditions apply in the case of any person—

- (a) he was a member of the trade union at the time when the ballot was held;
- (b) it was reasonable at that time for the trade union to believe he would be induced to take part or, as the case may be, to continue to take part in the industrial action;
- (c) he was not accorded entitlement to vote in the ballot; and
- (d) he was induced by the trade union to take part or, as the case may be, to continue to take part in the industrial action.]

F64 1999 NI 9

#### [<sup>F65</sup>Small accidental failures to be disregarded

**115B.—(1)** If—

- (a) in relation to a ballot there is a failure (or there are failures) to comply with a provision mentioned in paragraph (2) or with more than one of those provisions; and
- (b) the failure is accidental and on a scale which is unlikely to affect the result of the ballot or, as the case may be, the failures are accidental and taken together are on a scale which is unlikely to affect the result of the ballot,

the failure (or failures) shall be disregarded[<sup>F66</sup> for all purposes (including, in particular, those of Article 115A(c))].

(2) The provisions are Article 108(1), Article 111(2) and Article 111(4).]

F65 1999 NI 9

F66 2004 NI 19

#### Calling of industrial action with support of ballot

**116.—(1)** Industrial action shall not be regarded as having the support of a ballot unless it is called by a specified person and the conditions specified below are satisfied.

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(2) A “specified person” means a person specified or of a description specified in the voting paper for the ballot in accordance with Article 110(4).

(3) The conditions are that—

- (a) there must have been no call by the trade union to take part or continue to take part in industrial action to which the ballot relates, or any authorisation or endorsement by the union of any such industrial action, before the date of the ballot;
- (b) there must be a call for industrial action by a specified person, and industrial action to which it relates must<sup>F67</sup> begin], before the ballot ceases to be effective in accordance with Article 117.

(4) For the purposes of this Article a call shall be taken to have been made by a trade union if it was authorised or endorsed by the union; and the provisions of Article 21(2) to (4) of the 1992 Order apply for the purpose of determining whether a call, or industrial action, is to be taken to have been so authorised or endorsed.

**F67** 2004 NI 19

#### **Period after which ballot ceases to be effective**

**117.**—<sup>F68</sup>(1) Subject to the following provisions, a ballot ceases to be effective for the purposes of Article 116(3)(b) in relation to industrial action by members of a trade union at the end of the period, beginning with the date of the ballot—

- (a) of four weeks; or
- (b) of such longer duration not exceeding eight weeks as is agreed between the union and the members' employer.]

(2) Where for the whole or part of that period the calling or organising of industrial action is prohibited—

- (a) by virtue of a court order which subsequently lapses or is discharged, recalled or set aside, or
- (b) by virtue of an undertaking given to a court by any person from which he is subsequently released or by which he ceases to be bound,

the trade union may apply to the court for an order that the period during which the prohibition had effect shall not count towards the period referred to in paragraph (1).

(3) The application must be made forthwith upon the prohibition ceasing to have effect—

- (a) to the court by virtue of whose decision it ceases to have effect, or
- (b) where an order lapses or an undertaking ceases to bind without any such decision, to the court by which the order was made or to which the undertaking was given;

and no application may be made after the end of the period of eight weeks beginning with the date of the ballot.

(4) The court shall not make an order if it appears to the court—

- (a) that the result of the ballot no longer represents the views of the union members concerned, or
- (b) that an event is likely to occur as a result of which those members would vote against industrial action if another ballot were to be held.

(5) No appeal lies from the decision of the court to make or refuse an order under this Article.

(6) The period between the making of an application under this Article and its determination does not count towards the period referred to in paragraph (1).



But a ballot shall not by virtue of this paragraph (together with any order of the court) be regarded as effective for the purposes of Article 116(3)(b) after the end of the period of twelve weeks beginning with the date of the ballot.

F68 1999 NI 9

**Notice to employers of industrial action**

118.—(1) An act done by a trade union to induce a person to take part, or continue to take part, in industrial action is not protected as respects his employer unless the union has taken or takes such steps as are reasonably necessary to ensure that the employer receives within the appropriate period a relevant notice covering the act.

(2) Paragraph (1) imposes a requirement in the case of an employer only if it is reasonable for the union to believe, at the latest time when steps could be taken to ensure that he receives such a notice, that he is the employer of persons who will be or have been induced to take part, or continue to take part, in the industrial action.

(3) For the purposes of this Article a relevant notice is a notice in writing which—

[<sup>F69</sup>(a) contains—

- (i) the lists mentioned in paragraph (3A) and the figures mentioned in paragraph (3B), together with an explanation of how those figures were arrived at, or
- (ii) where some or all of the affected employees are employees from whose wages the employer makes deductions representing payments to the union, either those lists and figures and that explanation or the information mentioned in paragraph (3C); and]

(b) states whether industrial action is intended to be continuous or discontinuous and specifies—

- (i) where it is to be continuous, the intended date for any of the affected employees to begin to take part in the action,
- (ii) where it is to be discontinuous, the intended dates for any of the affected employees to take part in the action,<sup>F70</sup> . . .

<sup>F70</sup>(c) . . . . .

[<sup>F71</sup>(3A) The lists referred to in paragraph (3)(a) are—

- (a) a list of the categories of employee to which the affected employees belong, and
- (b) a list of the workplaces at which the affected employees work.

(3B) The figures referred to in paragraph (3)(a) are—

- (a) the total number of the affected employees,
- (b) the number of the affected employees in each of the categories in the list mentioned in paragraph (3A)(a), and
- (c) the number of the affected employees who work at each workplace in the list mentioned in paragraph (3A)(b).

(3C) The information referred to in paragraph (3)(a)(ii) is such information as will enable the employer readily to deduce—

- (a) the total number of affected employees,
- (b) the categories of employee to which the affected employees belong and the number of the affected employees in each of those categories, and

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(c) the workplaces at which the affected employees work and the number of them who work at each of those workplaces.

(3D) The lists and figures supplied under this Article, or the information mentioned in paragraph (3C) that is so supplied, must be as accurate as is reasonably practicable in the light of the information in the possession of the union at the time when it complies with paragraph (1).

(3E) For the purposes of paragraph (3D) information is in the possession of the union if it is held, for union purposes—

- (a) in a document, whether in electronic form or any other form, and
- (b) in the possession or under the control of an officer or employee of the union.

(3F) Nothing in this Article requires a union to supply an employer with the names of the affected employees.]

(4) For the purposes of paragraph (1) the appropriate period is the period—

- (a) beginning with the day when the union satisfies the requirement of Article 113 in relation to the ballot in respect of the industrial action, and
- (b) ending with the seventh day before the day, or before the first of the days, specified in the relevant notice.

(5) For the purposes of paragraph (1) a relevant notice covers an act done by the union if the person induced<sup>[F72]</sup> falls within a notified category of employee, and the workplace at which he works is a notified workplace] and—

- (a) where he is induced to take part or continue to take part in industrial action which the union intends to be continuous, if—
  - (i) the notice states that the union intends the industrial action to be continuous, and
  - (ii) there is no participation by him in the industrial action before the date specified in the notice in consequence of any inducement by the union not covered by a relevant notice; and
- (b) where he is induced to take part or continue to take part in industrial action which the union intends to be discontinuous, if there is no participation by him in the industrial action on a day not so specified in consequence of any inducement by the union not covered by a relevant notice.

<sup>[F73]</sup>(5B) In paragraph (5)—

- (a) a “notified category of employee” means—
  - (i) a category of employee that is listed in the notice, or
  - (ii) where the notice contains the information mentioned in paragraph (3C), a category of employee that the employer (at the time he receives the notice) can readily deduce from the notice is a category of employee to which some or all of the affected employees belong, and
- (b) a “notified workplace” means—
  - (i) a workplace that is listed in the notice, or
  - (ii) where the notice contains the information mentioned in paragraph (3C), a workplace that the employer (at the time he receives the notice) can readily deduce from the notice is the workplace at which some or all of the affected employees work.”

(5C) In this Article references to the “affected employees” are references to those employees of the employer who the union reasonably believes will be induced by the union, or have been so induced, to take part or continue to take part in the industrial action.

(5D) For the purposes of this Article, the workplace at which an employee works is—

- (a) in relation to an employee who works at or from a single set of premises, those premises, and
- (b) in relation to any other employee, the premises with which his employment has the closest connection.]
- (6) For the purposes of this Article—
  - (a) a union intends industrial action to be discontinuous if it intends it to take place only on some days on which there is an opportunity to take the action, and
  - (b) a union intends industrial action to be continuous if it intends it to be not so restricted.
- (7) <sup>F74</sup>Subject to paragraphs (7A) and (7B),] where—
  - (a) continuous industrial action which has been authorised or endorsed by a union ceases to be so authorised or endorsed<sup>F74</sup> . . . , and
  - (b) the industrial action has at a later date again been authorised or endorsed by the union (whether as continuous or discontinuous action),

no relevant notice covering acts done to induce persons to take part in the earlier action shall operate to cover acts done to induce persons to take part in the action authorised or endorsed at the later date and this Article shall apply in relation to an act to induce a person to take part, or continue to take part, in the industrial action after that date as if the references in paragraph (3)(b)(i) to the industrial action were to the industrial action taking place after that date.

<sup>F74</sup>(7A) Paragraph (7) shall not apply where industrial action ceases to be authorised or endorsed in order to enable the union to comply with a court order or an undertaking given to a court.

(7B) Paragraph (7) shall not apply where—

- (a) a union agrees with an employer, before industrial action ceases to be authorised or endorsed, that it will cease to be authorised or endorsed with effect from a date specified in the agreement ( “the suspension date”) and that it may again be authorised or endorsed with effect from a date not earlier than a date specified in the agreement ( “the resumption date”);
- (b) the action ceases to be authorised or endorsed with effect from the suspension date; and
- (c) the action is again authorised or endorsed with effect from a date which is not earlier than the resumption date or such later date as may be agreed between the union and the employer.]

(8) The requirement imposed on a trade union by paragraph (1) shall be treated as having been complied with if the steps were taken by other relevant persons or committees whose acts were authorised or endorsed by the union and references to the belief or intention of the union in paragraph (2) or, as the case may be, paragraphs (3), (5)<sup>F75</sup>, (5C)] and (6) shall be construed as references to the belief or the intention of the person or committee taking the steps.

(9) The provisions of Article 21(2) to (4) of the 1992 Order apply for the purpose of determining for the purposes of paragraph (1) who are relevant persons or committees and whether the trade union is to be taken to have authorised or endorsed the steps the person or committee took and for the purposes of<sup>F74</sup> paragraphs (7) to (7B)] whether the trade union is to be taken to have authorised or endorsed the industrial action.

**F69** Art. 118(3)(a) substituted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), **arts. 1(2)**, 8(2)(a); S.R. 2005/571, art. 3, **Sch.** (with art. 7)

**F70** Art. 118(3)(c) and preceding word repealed (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), **arts. 1(2)**, 8(2)(b), **Sch. 3**; S.R. 2005/571, art. 3, **Sch.** (with art. 7)

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- F71** Art. 118(3A)-(3F) inserted (8.1.2006) by *Employment Relations (Northern Ireland) Order 2004* (S.I. 2004/3078 (N.I. 19)), **arts. 1(2)**, 8(3); S.R. 2005/571, art. 3, **Sch.** (with art. 7)
- F72** Words in art. 118(5) substituted (8.1.2006) by *Employment Relations (Northern Ireland) Order 2004* (S.I. 2004/3078 (N.I. 19)), **arts. 1(2)**, 8(4); S.R. 2005/571, art. 3, **Sch.** (with art. 7)
- F73** Art. 118(5B)-(5D) substituted (8.1.2006) for art. 118(5A) by *Employment Relations (Northern Ireland) Order 2004* (S.I. 2004/3078 (N.I. 19)), **arts. 1(2)**, 8(5); S.R. 2005/571, art. 3, **Sch.** (with art. 7)
- F74** 1999 NI 9
- F75** Words in art. 118(8) inserted (8.1.2006) by *Employment Relations (Northern Ireland) Order 2004* (S.I. 2004/3078 (N.I. 19)), **arts. 1(2)**, 8(6); S.R. 2005/571, art. 3, **Sch.** (with art. 7)

### Construction of references to contract of employment

**119.** In Articles 104 to 118 (requirement of ballot before action by trade union) references to a contract of employment include any contract under which one person personally does work or performs services for another; and “employer” and other related expressions shall be construed accordingly.

#### *Industrial action affecting supply of goods or services to an individual*

### Industrial action affecting supply of goods or services to an individual

**120.**—(1) Where an individual claims that—

- (a) any trade union or other person has done, or is likely to do, an unlawful act to induce any person to take part, or to continue to take part, in industrial action, and
- (b) an effect, or a likely effect, of the industrial action is or will be to—
  - (i) prevent or delay the supply of goods or services, or
  - (ii) reduce the quality of goods or services supplied,

to the individual making the claim, he may apply to the High Court for an order under this Article.

(2) For the purposes of this Article an act to induce any person to take part, or to continue to take part, in industrial action is unlawful—

- (a) if it is actionable in tort by any one or more persons, or
- (b) (where it is or would be the act of a trade union) if it could form the basis of an application by a member under Article 29 (right to a ballot before industrial action).

(3) In determining whether an individual may make an application under this Article it is immaterial whether or not the individual is entitled to be supplied with the goods or services in question.

(4) Where on an application under this Article the High Court is satisfied that the claim is well-founded, it shall make such order as it considers appropriate for requiring the person by whom the act of inducement has been, or is likely to be, done to take steps for ensuring—

- (a) that no, or no further, act is done by him to induce any persons to take part or to continue to take part in the industrial action, and
- (b) that no person engages in conduct after the making of the order by virtue of having been induced by him before the making of the order to take part or continue to take part in the industrial action.

(5) Without prejudice to any other power of the High Court, the court may on an application under this Article grant such interlocutory relief as it considers appropriate.

(6) For the purposes of this Article an act of inducement shall be taken to be done by a trade union if it is authorised or endorsed by the union; and the provisions of Article 21(2) to (4) of the 1992 Order apply for the purposes of determining whether such an act is to be taken to be so authorised or endorsed.

Those provisions also apply in relation to proceedings for failure to comply with an order under this Article as they apply in relation to the original proceedings.

*Arts. 121, 122 rep. by 1999 NI 9*

#### *No compulsion to work*

#### **No compulsion to work**

**123.** No court shall, whether by way of—

- (a) an order for specific performance of a contract of employment; or
- (b) an injunction restraining a breach or threatened breach of such a contract,

compel an employee to do any work or attend at any place for the doing of any work.

#### *Criminal offences*

#### **Breach of contract involving injury to persons or property**

**124.**—(1) A person commits an offence who wilfully and maliciously breaks a contract of service or hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be—

- (a) to endanger human life or cause serious bodily injury, or
- (b) to expose valuable property, whether real or personal, to destruction or serious injury.

(2) Paragraph (1) applies equally whether the offence is committed from malice conceived against the person endangered or injured or, as the case may be, the owner of the property destroyed or injured, or otherwise.

(3) A person guilty of an offence under this Article is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 2 on the standard scale or both.

(4) This Article does not apply to a merchant seaman (as defined in Article 111(5)).

#### **Intimidation or annoyance by violence or otherwise**

**125.**—(1) A person commits an offence who, with a view to compelling another person to abstain from doing or to do any act which that person has a legal right to do or abstain from doing, wrongfully and without legal authority—

- (a) uses violence to or intimidates that person or his<sup>F76</sup> spouse or civil partner] or children, or injures his property,
- (b) persistently follows that person about from place to place,
- (c) hides any tools, clothes or other property owned or used by that person, or deprives him of or hinders him in the use thereof,
- (d) watches or besets the house or other place where that person resides, works, carries on business or happens to be, or the approach to any such house or place, or

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(e) follows that person with two or more other persons in a disorderly manner in or through any street or road.

(2) A person guilty of an offence under this Article is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.

(3) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this Article.

**F76** 2004 c.33

### Restriction of offence of conspiracy

**126.** Where in pursuance of any such agreement as is mentioned in Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983<sup>F77</sup> (which provides for the offence of conspiracy) the acts in question in relation to an offence are to be done in contemplation or furtherance of a trade dispute, the offence shall be disregarded for the purposes of that paragraph if it is an offence which is punishable only on summary conviction and is not punishable with imprisonment.

**F77** 1983 NI 13

### *Supplementary*

### Meaning of “trade dispute” in Part VIII

**127.—(1)** In this Part a “trade dispute” means a dispute between workers and their employer which relates wholly or mainly to one or more of the following—

- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
- (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
- (c) allocation of work or the duties of employment between workers or groups of workers;
- (d) matters of discipline;
- (e) a worker's membership or non-membership of a trade union;
- (f) facilities for officials of trade unions; and
- (g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.

(2) A dispute between a Minister of the Crown or Northern Ireland Department and any workers shall, notwithstanding that the Minister or the Department is not the employer of those workers, be treated as a dispute between those workers and their employer if the dispute relates to matters which—

- (a) have been referred for consideration by a joint body on which, by virtue of provision made by or under any statutory provision, that Minister or that Department is represented, or
- (b) cannot be settled without that Minister or that Department exercising a power conferred by or under any statutory provision.

(3) There is a trade dispute even though it relates to matters occurring outside the United Kingdom, so long as the person or persons whose actions in the United Kingdom are said to be in contemplation or furtherance of a trade dispute relating to matters occurring outside the United Kingdom are likely to be affected in respect of one or more of the matters specified in paragraph (1) by the outcome of the dispute.

(4) An act, threat or demand done or made by one person or organisation against another which, if resisted, would have led to a trade dispute with that other, shall be treated as being done or made in contemplation of a trade dispute with that other, notwithstanding that because that other submits to the act or threat or accedes to the demand no dispute arises.

(5) In this Article—

“employment” includes any relationship whereby one person personally does work or performs services for another; and

“worker”, in relation to a dispute with an employer, means—

- (a) a worker employed by that employer; or
- (b) a person who has ceased to be so employed if his employment was terminated in connection with the dispute or if the termination of his employment was one of the circumstances giving rise to the dispute.

### **Crown employees and contracts**

**128.** Where a person holds any office or employment under the Crown on terms which do not constitute a contract of employment between that person and the Crown, those terms shall nevertheless be deemed to constitute such a contract for the purposes of—

- (a) the law relating to liability in tort of a person who commits an act which—
  - (i) induces another person to break a contract, interferes with the performance of a contract or induces another person to interfere with its performance, or
  - (ii) consists in a threat that a contract will be broken or its performance interfered with, or that any person will be induced to break a contract or interfere with its performance, and
- (b) the provisions of this or any other statutory provision which refer (whether in relation to contracts generally or only in relation to contracts of employment) to such an act.

### **Minor definitions**

**129.** In this Part—

“date of the ballot” means, in the case of a ballot in which votes may be cast on more than one day, the last of those days;

“strike” means<sup>F78</sup> (except for the purposes of Article 110(3)) any concerted stoppage of work;

“working hours”, in relation to a person, means any time when under his contract of employment, or other contract personally to do work or perform services, he is required to be at work.

**F78** 1999 NI 9

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## PART X

### MISCELLANEOUS AMENDMENTS

#### *Unfair dismissal*

*Art. 136 rep. by 1996 NI 16*

#### *Liability of trade union in certain proceedings in tort*

#### **Liability of trade union in proceedings in tort**

**137.** For Article 21 of the 1992 Order there shall be substituted the following Articles—

#### **“Liability of trade union in certain proceedings in tort**

**21.—**(1) Where proceedings in tort are brought against a trade union—

(a) on the ground that an act—

(i) induces another person to break a contract or interferes or induces another person to interfere with its performance, or

(ii) consists in threatening that a contract (whether one to which the union is a party or not) will be broken or its performance interfered with, or that the union will induce another person to break a contract or interfere with its performance, or

(b) in respect of an agreement or combination by two or more persons to do or to procure the doing of an act which, if it were done without any such agreement or combination, would be actionable in tort on such a ground,

then, for the purpose of determining in those proceedings whether the union is liable in respect of the act in question, that act shall be taken to have been done by the union if, but only if, it is to be taken to have been authorised or endorsed by the trade union in accordance with the following provisions.

(2) An act shall be taken to have been authorised or endorsed by a trade union if it was done, or was authorised or endorsed—

(a) by a person empowered by the rules to do, authorise or endorse acts of the kind in question, or

(b) by the executive or the president or general secretary, or

(c) by any other committee of the union or any other official of the union (whether employed by it or not).

(3) For the purposes of sub-paragraph (c) of paragraph (2)—

(a) any group of persons constituted in accordance with the rules of the union is a committee of the union; and

(b) an act shall be taken to have been done, authorised or endorsed by an official if it was done, authorised or endorsed by, or by any member of, any group of persons of which he was at the material time a member, the purposes of which included organising or co-ordinating industrial action.

(4) The provisions of sub-paragraphs (b) and (c) of paragraph (2) apply notwithstanding anything in the rules of the union, or in any contract or rule of law, but subject to the provisions of Article 21A (repudiation by union of certain acts).



(5) Where for the purposes of any proceedings an act is by virtue of this Article taken to have been done by a trade union, nothing in this Article shall affect the liability of any other person, in those or any other proceedings, in respect of that act.

(6) In proceedings arising out of an act which is by virtue of this Article taken to have been done by a trade union, the power of the High Court to grant an injunction includes power to require the union to take such steps as the court considers appropriate for ensuring—

- (a) that there is no, or no further, inducement of persons to take part or to continue to take part in industrial action, and
- (b) that no person engages in any conduct after the granting of the injunction by virtue of having been induced before it was granted to take part or to continue to take part in industrial action.

The provisions of paragraphs (2) to (4) apply in relation to proceedings for failure to comply with any such injunction as they apply in relation to the original proceedings.

(7) In this Article “rules”, in relation to a trade union, means the written rules of the union and any other written provision forming part of the contract between a member and the other members.

#### **Repudiation by union of certain acts**

**21A.**—(1) An act shall not be taken to have been authorised or endorsed by a trade union by virtue only of sub-paragraph (c) of Article 21(2) if it was repudiated by the executive, president or general secretary as soon as reasonably practicable after coming to the knowledge of any of them.

(2) Where an act is repudiated—

- (a) written notice of the repudiation must be given to the committee or official in question, without delay, and
- (b) the union must do its best to give individual written notice of the fact and date of repudiation, without delay—
  - (i) to every member of the union who the union has reason to believe is taking part, or might otherwise take part, in industrial action as a result of the act, and
  - (ii) to the employer of every such member.

(3) The notice given to members in accordance with sub-paragraph (b)(i) of paragraph (2) must contain the following statement—

“Your union has repudiated the call (or calls) for industrial action to which this notice relates and will give no support to unofficial industrial action taken in response to it (or them). If you are dismissed while taking unofficial industrial action, you will have no right to complain of unfair dismissal.”

(4) If paragraph (2) or (3) is not complied with, the repudiation shall be treated as ineffective.

(5) An act shall not be treated as repudiated if at any time after the union concerned purported to repudiate it the executive, president or general secretary has behaved in a manner which is inconsistent with the purported repudiation.

(6) The executive, president or general secretary shall be treated as so behaving if, on a request made to any of them within three months of the purported repudiation by a person who—

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- (a) is a party to commercial contract whose performance has been or may be interfered with as a result of the act in question, and
  - (b) has not been given written notice by the union of the repudiation,
- it is not forthwith confirmed in writing that the act has been repudiated.
- (7) In this Article “commercial contract” means any contract other than—
- (a) a contract of employment, or
  - (b) any other contract under which a person agrees personally to do work or perform services for another.”.

### *The Agency*

#### **Functions of the Agency**

*Para. (1) rep. by 1999 NI 9*

(2) For Article 89 of the 1992 Order (powers of the Agency to give advice) there shall be substituted—

#### **“Advice**

- 89.**—(1) The Agency may, on request or otherwise, give employers, employers' associations, workers and trade unions such advice as it thinks appropriate on matters concerned with or affecting or likely to affect industrial relations.
- (2) The Agency may also publish general advice on matters concerned with or affecting or likely to affect industrial relations.”.

#### **Fees for exercise of functions by Agency**

**139.** After Article 90 of the 1992 Order there shall be inserted the following Article—

#### **“Fees for exercise of functions by the Agency**

- 90A.**—(1) The Agency may, in any case in which it thinks it appropriate to do so, but subject to any directions under paragraph (2), charge a fee for exercising a function in relation to any person.
- (2) The Department may direct the Agency to charge fees, in accordance with the direction, for exercising any function specified in the direction, but the Department shall not give a direction under this paragraph without consulting the Agency.
- (3) A direction under paragraph (2) may require the Agency to charge fees in respect of the exercise of a function only in specified descriptions of case.
- (4) A direction under paragraph (2) shall specify whether fees are to be charged in respect of the exercise of any specified function—
- (a) at the full economic cost level, or
  - (b) at a level less than the full economic cost but not less than a specified proportion or percentage of the full economic cost.
- (5) Where a direction requires fees to be charged at the full economic cost level the Agency shall fix the fee for the case at an amount estimated to be sufficient to cover the administrative costs of the Agency of exercising the function including an appropriate sum in respect of general staff costs and overheads.

(6) Where a direction requires fees to be charged at a level less than the full economic cost the Agency shall fix the fee for the case at such amount, not being less than the proportion or percentage of the full economic cost specified under paragraph (4)(b), as it thinks appropriate (computing that cost in the same way as under paragraph (5)).

(7) No liability to pay a fee charged under this Article shall arise on the part of any person unless the Agency has notified that person that a fee may or will be charged.

(8) For the purposes of this Article—

- (a) a function is exercised “in relation to” a person who avails himself of the benefit of its exercise, whether or not he requested its exercise and whether the function is such as to be exercisable in relation to particular persons only or in relation to persons generally; and
- (b) where a function is exercised in relation to two or more persons the fee chargeable for its exercise shall be apportioned among them as the Agency thinks appropriate.”

### *Ballots*

#### **Ballots: repeal of provisions for financial assistance and use of employers' premises**

**140.**—(1) Articles 102 and 103 of the 1992 Order (financial assistance towards expenditure on certain ballots and obligations of employers to make premises available) shall cease to have effect on 1st April 1996.

(2) No application under regulations under Article 102 (whether made before or after its repeal) shall be entertained by the Certification Officer in relation to expenditure in respect of a ballot if the date of the ballot falls after 31st March 1996 or in respect of arrangements to hold a ballot which is not proceeded with if the date of the ballot would have fallen after that date; but, for the purposes of applications made after (as well as before) the repeal in relation to expenditure not excluded by this paragraph, the regulations shall continue in force notwithstanding the repeal.

(3) In paragraph (2), the “date of the ballot” means, in the case of a ballot in which votes may be cast on more than one day, the last of those days.

## PART XI

### MISCELLANEOUS AND GENERAL

#### *Crown employment, etc.*

#### **Crown employment**

**141.**—(1) The provisions of this Order<sup>[F79]</sup> and the 1992 Order] have effect (except as mentioned below) in relation to Crown employment and persons in Crown employment as in relation to other employment and other workers or employees.

(2) Paragraph (1) does not apply in relation to<sup>[F80]</sup> Article 61(4)(b) (power of tribunal] to make order in respect of employer's failure to comply with duties as to union contributions)<sup>[F79]</sup> or in relation to Articles 42 and 43 of the 1992 Order].

(3) In this Article “Crown employment” means employment under or for the purposes of a government department.

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(4) For the purposes of the provisions of this Order as they apply in relation to Crown employment or persons in Crown employment—

- (a) “employee” and “contract of employment” means a person in Crown employment and the terms of employment of such a person;
- (b) “dismissal” means the termination of Crown employment;
- [<sup>F79</sup>(bb) the reference in Article 40(1)(e) of the 1992 Order to the employer's undertaking shall be construed as a reference to the national interest;]
- (c) any reference to an undertaking shall be construed, in relation to a Minister of the Crown or Head of a department, as a reference to his functions or (as the context may require) to the department of which he is in charge, and in relation to a government department, shall be construed as a reference to the functions of the department or (as the context may require) to the department.

(5) This Article has effect subject to Article 142 (armed forces) and Article 143 (exemption on grounds of national security).

**F79** 1996 NI 16

**F80** 1998 NI 8

### Armed forces

**142.**—(1) Article 141 (application of Order to Crown employment) does not apply to service as a member of the naval, military or air forces of the Crown.

(2) But that Article applies to employment by an association established for the purposes of Part VI of the Reserve Forces Act 1980<sup>F81</sup> (territorial, auxiliary and reserve forces associations) as it applies to employment for the purposes of a government department.

**F81** 1980 c. 9

### Exemption on grounds of national security

**143.**—(1) Article 141 (application of Order to Crown employment) does not apply to employment in respect of which there is in force a certificate issued by or on behalf of the Secretary of State certifying that employment of a description specified in the certificate, or the employment of a particular person so specified, is (or, at a time specified in the certificate, was) required to be excepted from that Article for the purpose of safeguarding national security or protecting public safety or public order.

(2) A document purporting to be such a certificate shall, unless the contrary is proved, be deemed to be such a certificate.

### *Health service practitioners*

#### Health service practitioners

**144.**—[<sup>F82</sup>(1)] In this Order “worker” includes an individual regarded in his capacity as one who works or normally works or seeks to work as a person[<sup>F83</sup> performing personal medical services or personal dental services] providing general medical services, general dental services, general ophthalmic services or pharmaceutical services in accordance with arrangements made by a Health and Social Services Board under Article[<sup>F83</sup> 15B,]<sup>F82</sup>. . . , 61, 62 or 63 of the Health and Personal

Social Services (Northern Ireland) Order 1972<sup>F84</sup>; and “employer”, in relation to such an individual, regarded in that capacity, means that Board.

[<sup>F82</sup>(2) In this Order “worker” also includes an individual regarded in his capacity as one who works or normally works or seeks to work as a person performing primary medical services—

- (a) in accordance with arrangements made by a Health and Social Services Board under Article 15B of the Health and Personal Social Services (Northern Ireland) Order 1972;
- (b) under a contract under Article 57 of that Order entered into by him with a Health and Social Services Board,

and “employer” in relation to such an individual, regarded in that capacity, means that Board.]

**F82** 2004 NI 2  
**F83** 1997 NI 7  
**F84** 1972 NI 14

#### *Police service*

#### **Police service**

**145.**—(1) In this Order “employee” or “worker” does not include a person in police service.

(2) “Police service” means service as a member of the Royal Ulster Constabulary or the Royal Ulster Constabulary Reserve, or, subject to paragraph (3), in any other capacity by virtue of which a person has the powers or privileges of a constable.

(3) Service in the office of constable under Article 19 of the Airports (Northern Ireland) Order 1994<sup>F85</sup> shall not be treated as police service for the purposes of this Article, and the holding of that office on any airport shall be treated for those purposes as work under a contract of employment with the airport operator.

**F85** 1994 NI 1

#### *Contracting out, etc.*

#### **Restriction on contracting out**

**146.**—(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Order, or
- (b) to preclude a person from bringing proceedings before an industrial tribunal under any provision of this Order.

(2) Paragraph (1) does not apply to an agreement to refrain from instituting or continuing proceedings where the Agency has taken action under<sup>F86</sup> Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996] (general provisions as to conciliation).

(3) Paragraph (1) does not apply to an agreement to refrain from instituting or continuing any proceedings specified in Article 148 before an industrial tribunal if the conditions regulating compromise agreements under this Order are satisfied in relation to the agreement.

(4) The conditions regulating compromise agreements under this Order are that—

- (a) the agreement must be in writing;

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- (b) the agreement must relate to the particular<sup>[F87]</sup> proceedings];
  - (c) the complainant must have received<sup>[F88]</sup> advice from a relevant independent adviser] as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his rights before an industrial tribunal;
  - (d) there must be in force, when the adviser gives the advice, a<sup>[F89]</sup> contract of insurance, or an indemnity provided for members of a profession or professional body,] covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
  - (e) the agreement must identify the adviser; and
  - (f) the agreement must state that the conditions regulating compromise agreements under this Order are satisfied.
- <sup>[F87]</sup>(5) A person is a relevant independent adviser for the purposes of paragraph (4)(c)—
- (a) if he is a qualified lawyer,
  - (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
  - (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
  - (d) if he is a person of a description specified in an order made by the Department.
- (5A) But a person is not a relevant independent adviser for the purposes of paragraph (4)(c) in relation to the complainant—
- (a) if he is, is employed by or is acting in the matter for the other party or for a person who is connected with the other party,
  - (b) in the case of a person within paragraph (5)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,
  - (c) in the case of a person within paragraph (5)(c), if the complainant makes a payment for the advice received from him, or
  - (d) in the case of a person of a description specified in an order under paragraph (5)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.
- (5B) In paragraph (5)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.
- (6) For the purposes of paragraph (5A) any two persons are to be treated as connected—
- (a) if one is a company of which the other (directly or indirectly) has control, or
  - (b) if both are companies of which a third person (directly or indirectly) has control.]
- <sup>[F90]</sup>(7) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of paragraphs (2) and (3) as being an agreement to refrain from instituting or continuing proceedings if—
    - (i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992; and
    - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
  - (b) shall be regarded for those purposes as neither being nor including such an agreement in any other case.]

**F86** 1996 NI 18  
**F87** 1998 NI 8  
**F88** 1998 NI 8  
**F89** 1998 NI 8  
**F90** 1998 NI 8

### **Employment governed by foreign law**

**147.** For the purposes of this Order it is immaterial whether the law which (apart from this Order) governs any person's employment is the law of the United Kingdom, or of a part of the United Kingdom, or not.

#### *Industrial tribunal proceedings*

*Art.148 rep. by 1996 NI 18*

#### *Regulations and orders*

### **Regulations and orders**

**149.**—(1) Subject to paragraph (2), all regulations and orders made by the Department under this Order shall be subject to negative resolution.

(2) Paragraph (1) does not apply to an order under Article 1(2),<sup>[F91 44B(9),]</sup><sup>[F92 90A(2)(e)]</sup> 91(3) or 121(2).

(3) Regulations and orders under this Order may contain such incidental, supplementary and transitional provisions as appear to the Department to be necessary or expedient.

**F91** 1999 NI 9  
**F92** 1999 NI 9

#### *Amendments, transitional provisions and repeals*

### **Amendments, transitional provisions and repeals**

**150.**—(1) The Coal Mines Regulation Act 1908<sup>F93</sup> (which makes provision for limiting hours of work below ground) shall cease to have effect.

*Para. (2)—Amendments*

(3) The transitional provisions in Schedule 3 shall have effect.

*Para. (4)—Repeals*

**F93** 1908 c. 57

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## SCHEDULES

*Schedule 1 rep. by 1996 NI 16*

### <sup>F94</sup>SCHEDULE 1A

#### COLLECTIVE BARGAINING: RECOGNITION

**F94** 1999 NI 9

### PART I RECOGNITION

#### *Introduction*

1. A trade union (or trade unions) seeking recognition to be entitled to conduct collective bargaining on behalf of a group or groups of workers may make a request in accordance with this Part.

2.—(1) This paragraph applies for the purposes of this Part.

(2) References to the bargaining unit are to the group of workers concerned (or the groups taken together).

(3) References to the proposed bargaining unit are to the bargaining unit proposed in the request for recognition.

[<sup>F95</sup>(3A) References to an appropriate bargaining unit's being decided by the Court are to a bargaining unit's being decided by the Court to be appropriate under paragraph 19(2) or (3) or 19A(2) or (3).]

(4) References to the employer are to the employer of the workers constituting the bargaining unit concerned.

(5) References to the parties are to the union (or unions) and the employer.

**F95** 2004 NI 19

3.—(1) This paragraph applies for the purposes of this Part.

(2) References to collective bargaining are to negotiations relating to pay, hours and holidays; but this has effect subject to sub-paragraph (3).

(3) If the parties agree matters as the subject of collective bargaining, references to collective bargaining are to negotiations relating to the agreed matters; and this is the case whether the



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agreement is made before or after the time when the Court issues a declaration, or the parties agree, that the union is (or unions are) entitled to conduct collective bargaining on behalf of a bargaining unit.

(4) Sub-paragraph (3) does not apply in construing paragraph 31(3).

(5) Sub-paragraphs (2) to (4) do not apply in construing paragraph 35 or 44 and in those paragraphs collective bargaining has the meaning given by Article 2(2) of the 1992 Order.

#### *Request for recognition*

4.—(1) The union or unions seeking recognition must make a request for recognition to the employer.

(2) Paragraphs 5 to 9 apply to the request.

5. The request is not valid unless it is received by the employer.

6. The request is not valid unless the union (or each of the unions) has a certificate<sup>F96</sup> of independence].

**F96** 2004 NI 19

7.—(1) The request is not valid unless the employer, taken with any associated employer or employers, employs—

- (a) at least 21 workers on the day the employer receives the request, or
- (b) an average of at least 21 workers in the 13 weeks ending with that day.

(2) To find the average under sub-paragraph (1)(b)—

- (a) take the number of workers employed in each of the 13 weeks (including workers not employed for the whole of the week);
- (b) aggregate the 13 numbers;
- (c) divide the aggregate by 13.

(3) For the purposes of sub-paragraph (1)(a) any worker employed by an associated company incorporated outside Northern Ireland must be ignored unless the day the request was made fell within a period during which he ordinarily worked in Northern Ireland.

(4) For the purposes of sub-paragraph (1)(b) any worker employed by an associated company incorporated outside Northern Ireland must be ignored in relation to a week unless the whole or any part of that week fell within a period during which he ordinarily worked in Northern Ireland.

(5) For the purposes of sub-paragraphs (3) and (4) a worker who is employed on board a ship registered in the register maintained under section 8 of the Merchant Shipping Act 1995 shall be treated as ordinarily working in Northern Ireland unless—

- (a) the ship's entry in the register specifies a port outside Northern Ireland as the port to which the vessel is to be treated as belonging,
- (b) the employer is wholly outside Northern Ireland, or
- (c) the worker is not ordinarily resident in Northern Ireland.

(6) The Department may by order—

- (a) provide that sub-paragraphs (1) to (5) are not to apply, or are not to apply in specified circumstances, or
- (b) vary the number of workers for the time being specified in sub-paragraph (1).

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(7) No order shall be made under sub-paragraph(6) unless a draft of it has been laid before, and approved by a resolution of, the Assembly.

8. The request is not valid unless it—

- (a) is in writing,
- (b) identifies the union or unions and the bargaining unit, and
- (c) states that it is made under this Schedule.

9. The Department may by order prescribe the form of requests and the procedure for making them, and if it does so the request is not valid unless it complies with the order.

#### *Parties agree*

10.—(1) If before the end of the first period the parties agree a bargaining unit and that the union is (or unions are) to be recognised as entitled to conduct collective bargaining on behalf of the unit, no further steps are to be taken under this Part.

(2) If before the end of the first period the employer informs the union (or unions) that the employer does not accept the request but is willing to negotiate, sub-paragraph (3) applies.

(3) The parties may conduct negotiations with a view to agreeing a bargaining unit and that the union is (or unions are) to be recognised as entitled to conduct collective bargaining on behalf of the unit.

(4) If such an agreement is made before the end of the second period no further steps are to be taken under this Part.

(5) The employer and the union (or unions) may request the Agency to assist in conducting the negotiations.

(6) The first period is the period of 10 working days starting with the day after that on which the employer receives the request for recognition.

(7) The second period is—

- (a) the period of 20 working days starting with the day after that on which the first period ends, or
- (b) such longer period (so starting) as the parties may from time to time agree.

#### *Employer rejects request*

11.—(1) This paragraph applies if—

- (a) before the end of the first period the employer fails to respond to the request, or
- (b) before the end of the first period the employer informs the union (or unions) that the employer does not accept the request (without indicating a willingness to negotiate).

(2) The union (or unions) may apply to the Court to decide both these questions—

[<sup>F97</sup>(a) whether the proposed bargaining unit is appropriate;]

- (b) whether the union has (or unions have) the support of a majority of the workers constituting the appropriate bargaining unit.

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### *Negotiations fail*

- 12.**—(1) Sub-paragraph (2) applies if—
- (a) the employer informs the union (or unions) under paragraph 10(2), and
  - (b) no agreement is made before the<sup>[F98 end]</sup> of the second period.
- (2) The union (or unions) may apply to the Court to decide both these questions—
- <sup>[F98]</sup>(a) whether the proposed bargaining unit is appropriate;
  - (b) whether the union has (or unions have) the support of a majority of the workers constituting the appropriate bargaining unit.
- (3) Sub-paragraph (4) applies if—
- (a) the employer informs the union (or unions) under paragraph 10(2), and
  - (b) before the end of the second period the parties agree a bargaining unit but not that the union is (or unions are) to be recognised as entitled to conduct collective bargaining on behalf of the unit.
- (4) The union (or unions) may apply to the Court to decide the question whether the union has (or unions have) the support of a majority of the workers constituting the bargaining unit.
- (5) But no application may be made under this paragraph if within the period of 10 working days starting with the day after that on which the employer informs the union (or unions) under paragraph 10(2) the employer proposes that the Agency be requested to assist in conducting the negotiations and—
- (a) the union rejects (or unions reject) the proposal, or
  - (b) the union fails (or unions fail) to accept the proposal within the period of 10 working days starting with the day after that on which the employer makes the proposal.

**F98** 2004 NI 19

### *Acceptance of applications*

- 13.** The Court must give notice to the parties of receipt of an application under paragraph 11 or 12.
- 14.**—(1) This paragraph applies if—
- (a) two or more relevant applications are made,
  - (b) at least one worker falling within one of the relevant bargaining units also falls within the other relevant bargaining unit (or units), and
  - (c) the Court has not accepted any of the applications.
- (2) A relevant application is an application under paragraph 11 or 12.
- (3) In relation to a relevant application, the relevant bargaining unit is—
- (a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
  - (b) the agreed bargaining unit, where the application is under paragraph 12(4).
- (4) Within the acceptance period the Court must decide, with regard to each relevant application, whether the 10 per cent test is satisfied.
- (5) The 10 per cent test is satisfied if members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit.
- (6) The acceptance period is—

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- (a) the period of 10 working days starting with the day after that on which the Court receives the last relevant application, or
  - (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.
- (7) If the Court decides that—
- (a) the 10 per cent test is satisfied with regard to more than one of the relevant applications, or
  - (b) the 10 per cent test is satisfied with regard to none of the relevant applications,
- the Court must not accept any of the relevant applications.
- (8) If the Court decides that the 10 per cent test is satisfied with regard to one only of the relevant applications the Court—
- (a) must proceed under paragraph 15 with regard to that application, and
  - (b) must not accept any of the other relevant applications.
- (9) The Court must give notice of its decision to the parties.
- (10) If by virtue of this paragraph the Court does not accept an application, no further steps are to be taken under this Part in relation to that application.

- 15.—**(1) This paragraph applies to these applications—
- (a) any application with regard to which no decision has to be made under paragraph 14;
  - (b) any application with regard to which the Court must proceed under this paragraph by virtue of paragraph 14.
- (2) Within the acceptance period the Court must decide whether—
- (a) the request for recognition to which the application relates is valid within the terms of paragraphs 5 to 9, and
  - (b) the application is made in accordance with paragraph 11 or 12 and admissible within the terms of paragraphs 33 to 42.
- (3) In deciding those questions the Court must consider any evidence which it has been given by the employer or the union (or unions).
- (4) If the Court decides that the request is not valid or the application is not made in accordance with paragraph 11 or 12 or is not admissible—
- (a) the Court must give notice of its decision to the parties,
  - (b) the Court must not accept the application, and
  - (c) no further steps are to be taken under this Part.
- (5) If the Court decides that the request is valid and the application is made in accordance with paragraph 11 or 12 and is admissible it must—
- (a) accept the application, and
  - (b) give notice of the acceptance to the parties.
- (6) The acceptance period is—
- (a) the period of 10 working days starting with the day after that on which the Court receives the application, or
  - (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.

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### *Withdrawal of application*

**16.**—(1) If an application under paragraph 11 or 12 is accepted by the Court, the union (or unions) may not withdraw the application—

- (a) after the Court issues a declaration under paragraph<sup>F99</sup> 19F(5) or] 22(2), or
  - (b) after the union (or the last of the unions) receives notice under paragraph 22(3) or 23(2).
- (2) If an application is withdrawn by the union (or unions)—
- (a) the Court must give notice of the withdrawal to the employer, and
  - (b) no further steps are to be taken under this Part.

**F99** 2004 NI 19

### *Notice to cease consideration of application*

**17.**—(1) This paragraph applies if the Court has received an application under paragraph 11 or 12 and—

- (a) it has not decided whether the application is admissible, or
  - (b) it has decided that the application is admissible.
- (2) No further steps are to be taken under this Part if, before the final event occurs, the parties give notice to the Court that they want no further steps to be taken.
- (3) The final event occurs when the first of the following occurs—
- (a) the Court issues a declaration under paragraph<sup>F100</sup> 19F(5) or] 22(2) in consequence of the application;
  - (b) the last day of the notification period ends;
- and the notification period is that defined by paragraph<sup>F100</sup> 24(6)] and arising from the application.

**F100** 2004 NI 19

### *Appropriate bargaining unit*

**18.**—(1) If the Court accepts an application under paragraph 11(2) or 12(2) it must try to help the parties to reach within the appropriate period an agreement as to what the appropriate bargaining unit is.

- (2) The appropriate period is<sup>F101</sup> (subject to any notice under sub-paragraph (3), (4) or (5))]
- (a) the period of 20 working days starting with the day after that on which the Court gives notice of acceptance of the application, or
  - (b) such longer period (so starting) as the Court must specify to the parties by notice containing reasons for the extension.

<sup>F101</sup>(3) If, during the appropriate period, the Court concludes that there is no reasonable prospect of the parties' agreeing an appropriate bargaining unit before the time when (apart from this sub-paragraph) the appropriate period would end, the Court may, by a notice given to the parties, declare that the appropriate period ends with the date of the notice.

(4) If, during the appropriate period, the parties apply to the Court for a declaration that the appropriate period is to end with a date (specified in the application) which is earlier than the date

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with which it would otherwise end, the Court may, by a notice given to the parties, declare that the appropriate period ends with the specified date.

(5) If the Court has declared under sub-paragraph (4) that the appropriate period ends with a specified date, it may before that date by a notice given to the parties specify a later date with which the appropriate period ends.

(6) A notice under sub-paragraph (3) must contain reasons for reaching the conclusion mentioned in that sub-paragraph.

(7) A notice under sub-paragraph (5) must contain reasons for the extension of the appropriate period.]

**F101** 2004 NI 19

[<sup>F102</sup>**18A.**—(1) This paragraph applies if the Court accepts an application under paragraph 11(2) or 12(2).

(2) Within 5 working days starting with the day after that on which the Court gives the employer notice of acceptance of the application, the employer must supply the following information to the union (or unions) and the Court—

- (a) a list of the categories of worker in the proposed bargaining unit,
- (b) a list of the workplaces at which the workers in the proposed bargaining unit work, and
- (c) the number of workers the employer reasonably believes to be in each category at each workplace.

(3) The lists and numbers supplied under this paragraph must be as accurate as is reasonably practicable in the light of the information in the possession of the employer at the time when he complies with sub-paragraph (2).

(4) The lists and numbers supplied to the union (or unions) and to the Court must be the same.

(5) For the purposes of this paragraph, the workplace at which a worker works is—

- (a) if the person works at or from a single set of premises, those premises, and
- (b) in any other case, the premises with which the workers employment has the closest connection.]

**F102** 2004 NI 19

[<sup>F103</sup>**19.**—(1) This paragraph applies if—

- (a) the Court accepts an application under paragraph 11(2) or 12(2),
- (b) the parties have not agreed an appropriate bargaining unit at the end of the appropriate period (defined by paragraph 18), and
- (c) at the end of that period either no request under paragraph 19A(1)(b) has been made or such a request has been made but the condition in paragraph 19A(1)(c) has not been met.

(2) Within the decision period, the Court must decide whether the proposed bargaining unit is appropriate.

(3) If the Court decides that the proposed bargaining unit is not appropriate, it must also decide within the decision period a bargaining unit which is appropriate.

(4) The decision period is—

- (a) the period of 10 working days starting with the day after that with which the appropriate period ends, or

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- (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.]

**F103** 2004 NI 19

**19A.**—(1) This paragraph applies if—

- (a) the Court accepts an application under paragraph 11(2) or 12(2),
- (b) during the appropriate period (defined by paragraph 18), the Court is requested by the union (or unions) to make a decision under this paragraph, and
- (c) the Court is, either at the time the request is made or at a later time during the appropriate period, of the opinion that the employer has failed to comply with the duty imposed by paragraph 18A.

(2) Within the decision period, the Court must decide whether the proposed bargaining unit is appropriate.

(3) If the Court decides that the proposed bargaining unit is not appropriate, it must also decide within the decision period a bargaining unit which is appropriate.

(4) The decision period is—

- (a) the period of 10 working days starting with the day after the day on which the request is made, or
- (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.

**19B.**—(1) This paragraph applies if the Court has to decide whether a bargaining unit is appropriate for the purposes of paragraph 19(2) or (3) or 19A(2) or (3).

(2) The Court must take these matters into account—

- (a) the need for the unit to be compatible with effective management;
- (b) the matters listed in sub-paragraph (3), so far as they do not conflict with that need.

(3) The matters are—

- (a) the views of the employer and of the union (or unions);
- (b) existing national and local bargaining arrangements;
- (c) the desirability of avoiding small fragmented bargaining units within an undertaking;
- (d) the characteristics of workers falling within the bargaining unit under consideration and of any other employees of the employer whom the Court considers relevant;
- (e) the location of workers.

(4) In taking an employer's views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the Court must take into account any view the employer has about any other bargaining unit that he considers would be appropriate.

(5) The Court must give notice of its decision to the parties.

*[<sup>F104</sup>Union communications with workers after acceptance of application*

**F104** 2004 NI 19

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**19C.**—(1) This paragraph applies if the Court accepts an application under paragraph 11(2) or 12(2) or (4).

(2) The union (or unions) may apply to the Court for the appointment of a suitable independent person to handle communications during the initial period between the union (or unions) and the relevant workers.

(3) In the case of an application under paragraph 11(2) or 12(2), the relevant workers are—

- (a) in relation to any time before an appropriate bargaining unit is agreed by the parties or decided by the Court, those falling within the proposed bargaining unit, and
- (b) in relation to any time after an appropriate bargaining unit is so agreed or decided, those falling within the bargaining unit agreed or decided upon.

(4) In the case of an application under paragraph 12(4), the relevant workers are those falling within the bargaining unit agreed by the parties.

(5) The initial period is the period starting with the day on which the Court informs the parties under sub-paragraph (7)(b) and ending with the first day on which any of the following occurs—

- (a) the application under paragraph 11 or 12 is withdrawn;
- (b) the Court gives notice to the union (or unions) of a decision under paragraph 20 that the application is invalid;
- (c) the Court notifies the union (or unions) of a declaration issued under paragraph 19F(5) or 22(2);
- (d) the Court informs the union (or unions) under paragraph 25(9) of the name of the person appointed to conduct a ballot.

(6) A person is a suitable independent person if—

- (a) he satisfies such conditions as may be specified for the purposes of paragraph 25(7)(a) by an order under that provision, or is himself specified for those purposes by such an order, and
- (b) there are no grounds for believing either that he will carry out any functions arising from his appointment otherwise than competently or that his independence in relation to those functions might reasonably be called into question.

(7) On an application under sub-paragraph (2) the Court must as soon as reasonably practicable—

- (a) make such an appointment as is mentioned in that sub-paragraph, and
- (b) inform the parties of the name of the person appointed and the date of his appointment.

(8) The person appointed by the Court is referred to in paragraphs 19D and 19E as “the appointed person”.

**19D.**—(1) An employer who is informed by the Court under paragraph 19C(7)(b) must comply with the following duties (so far as it is reasonable to expect him to do so).

(2) The duties are—

- (a) to give to the Court, within the period of 10 working days starting with the day after that on which the employer is informed under paragraph 19C(7)(b), the names and home addresses of the relevant workers;
- (b) if the relevant workers change as a result of an appropriate bargaining unit being agreed by the parties or decided by the Court, to give to the Court, within the period of 10 working days starting with the day after that on which the bargaining unit is agreed or the Court's decision is notified to the employer, the names and home addresses of those who are now the relevant workers;



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- (c) to give to the Court, as soon as reasonably practicable, the name and home address of any worker who joins the bargaining unit after the employer has complied with paragraph (a) or (b);
  - (d) to inform the Court, as soon as reasonably practicable, of any worker whose name has been given to the Court under paragraph (a), (b) or (c) and who ceases to be a relevant worker (otherwise than by reason of a change mentioned in paragraph (b)).
- (3) Nothing in sub-paragraph (2) requires the employer to give information to the Court after the end of the initial period.
- (4) As soon as reasonably practicable after the Court receives any information under sub-paragraph (2), it must pass it on to the appointed person.

**19E.**—(1) During the initial period, the appointed person must if asked to do so by the union (or unions) send to any worker—

- (a) whose name and home address have been passed on to him under paragraph 19D(4), and
  - (b) who is (so far as the appointed person is aware) still a relevant worker,
- any information supplied by the union (or unions) to the appointed person.

(2) The costs of the appointed person shall be borne—

- (a) if the application under paragraph 19C was made by one union, by the union, and
- (b) if that application was made by more than one union, by the unions in such proportions as they jointly indicate to the appointed person or, in the absence of such an indication, in equal shares.

(3) The appointed person may send to the union (or each of the unions) a demand stating his costs and the amount of those costs to be borne by the recipient.

(4) In such a case the recipient must pay the amount stated to the person sending the demand and must do so within the period of 15 working days starting with the day after that on which the demand is received.

(5) If the amount stated is not paid in accordance with sub-paragraph (4) it shall, if a county court so orders, be recoverable by execution issued from that court or otherwise as if it were payable under an order of that court.

(6) Where an amount is recoverable under sub-paragraph (5) execution may be carried out, to the same extent and in the same manner as if the union were a body corporate, against any property held in trust for the union other than protected property as defined in Article 23(2) of the 1992 Order.

(7) References to the costs of the appointed person are to—

- (a) the costs wholly, exclusively and necessarily incurred by the appointed person in connection with handling during the initial period communications between the union (or unions) and the relevant workers,
- (b) such reasonable amount as the appointed person charges for his services, and
- (c) such other costs as the union (or unions) agree.

**19F.**—(1) If the Court is satisfied that the employer has failed to fulfil a duty mentioned in paragraph 19D(2), and the initial period has not yet ended, the Court may order the employer—

- (a) to take such steps to remedy the failure as the Court considers reasonable and specifies in the order, and
  - (b) to do so within such period as the Court considers reasonable and specifies in the order;
- and in this paragraph a “remedial order” means an order under this sub-paragraph.

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(2) If the Court is satisfied that the employer has failed to comply with a remedial order and the initial period has not yet ended, the Court must as soon as reasonably practicable notify the employer and the union (or unions) that it is satisfied that the employer has failed to comply.

(3) A remedial order and a notice under sub-paragraph (2) must draw the recipient's attention to the effect of sub-paragraphs (4) and (5).

(4) Sub-paragraph (5) applies if—

- (a) the Court is satisfied that the employer has failed to comply with a remedial order,
- (b) the parties have agreed an appropriate bargaining unit or the Court has decided an appropriate bargaining unit,
- (c) in the case of an application under paragraph 11(2) or 12(2), the Court, if required to do so, has decided under paragraph 20 that the application is not invalid, and
- (d) the initial period has not yet ended.

(5) The Court may issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit.]

#### *Union recognition*

**20.**—(1) This paragraph applies if—

- (a) the Court accepts an application under paragraph 11(2) or 12(2),
- (b) the parties have agreed an appropriate bargaining unit at the end of the appropriate period<sup>[F105 (defined by paragraph 18)]</sup>, or the Court has decided an appropriate bargaining unit, and
- (c) that bargaining unit differs from the proposed bargaining unit.

(2) Within the decision period the Court must decide whether the application is invalid within the terms of paragraphs 43 to 50.

(3) In deciding whether the application is invalid, the Court must consider any evidence which it has been given by the employer or the union (or unions).

(4) If the Court decides that the application is invalid—

- (a) the Court must give notice of its decision to the parties,
- (b) the Court must not proceed with the application, and
- (c) no further steps are to be taken under this Part.

(5) If the Court decides that the application is not invalid it must—

- (a) proceed with the application, and
- (b) give notice to the parties that it is so proceeding.

(6) The decision period is—

- (a) the period of 10 working days starting with the day after that on which the parties agree an appropriate bargaining unit or the Court decides an appropriate bargaining unit, or
- (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.

**F105** 2004 NI 19

**21.**—(1) This paragraph applies if—

- (a) the Court accepts an application under paragraph 11(2) or 12(2),

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- (b) the parties have agreed an appropriate bargaining unit at the end of the appropriate period<sup>F106</sup> (defined by paragraph 18)], or the Court has decided an appropriate bargaining unit, and
  - (c) that bargaining unit is the same as the proposed bargaining unit.
- (2) This paragraph also applies if the Court accepts an application under paragraph 12(4).
- (3) The Court must proceed with the application.

**F106** 2004 NI 19

**22.**—(1) This paragraph applies if—

- (a) the Court proceeds with an application in accordance with paragraph 20 or 21<sup>F107</sup> (and makes no declaration under paragraph 19F(5)), and
- (b) the Court is satisfied that a majority of the workers constituting the bargaining unit are members of the union (or unions).

(2) The Court must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit.

(3) But if any of the three qualifying conditions is fulfilled, instead of issuing a declaration under sub-paragraph (2) the Court must give notice to the parties that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.

(4) These are the three qualifying conditions—

- (a) the Court is satisfied that a ballot should be held in the interests of good industrial relations;
- <sup>F107</sup>(b) the Court has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;]
- (c) membership evidence is produced which leads the Court to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf.

(5) For the purposes of sub-paragraph (4)(c) membership evidence is—

- (a) evidence about the circumstances in which union members became members;
- (b) evidence about the length of time for which union members have been members, in a case where the Court is satisfied that such evidence should be taken into account.

**F107** 2004 NI 19

**23.**—(1) This paragraph applies if—

- (a) the Court proceeds with an application in accordance with paragraph 20 or 21<sup>F108</sup> (and makes no declaration under paragraph 19F(5)), and
- (b) the Court is not satisfied that a majority of the workers constituting the bargaining unit are members of the union (or unions).

(2) The Court must give notice to the parties that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.

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**F108** 2004 NI 19

**24.**—(1) This paragraph applies if the Court gives notice under paragraph 22(3) or 23(2).

(2) Within the notification period—

- (a) the union (or unions), or
- (b) the union (or unions) and the employer,

may notify the Court that the party making the notification does not (or the parties making the notification do not) want the Court to arrange for the holding of the ballot.

(3) If the Court is so notified—

- (a) it must not arrange for the holding of the ballot,
- (b) it must inform the parties that it will not arrange for the holding of the ballot, and why, and
- (c) no further steps are to be taken under this Part.

(4) If the Court is not so notified it must arrange for the holding of the ballot.

[<sup>F109</sup>(5) The notification period is, in relation to notification by the union (or unions)—

- (a) the period of 10 working days starting with the day on which the union (or last of the unions) receives the Court's notice under paragraph 22(3) or 23(2), or
- (b) such longer period so starting as the Court may specify to the parties by notice.

(6) The notification period is, in relation to notification by the union (or unions) and the employer—

- (a) the period of 10 working days starting with the day on which the last of the parties receives the Court's notice under paragraph 22(3) or 23(2), or
- (b) such longer period so starting as the Court may specify to the parties by notice.

(7) The Court may give a notice under sub-paragraph (5)(b) or (6)(b) only if the parties have applied jointly to it for the giving of such a notice.]

**F109** 2004 NI 19

**25.**—(1) This paragraph applies if the Court arranges under paragraph 24 for the holding of a ballot.

(2) The ballot must be conducted by a qualified independent person appointed by the Court.,

(3) The ballot must be conducted within—

- (a) the period of 20 working days starting with the day after that on which the qualified independent person is appointed, or
- (b) such longer period (so starting) as the Court may decide.

(4) The ballot must be conducted—

- (a) at a workplace or workplaces decided by the Court,
- (b) by post, or
- (c) by a combination of the methods described in sub-paragraphs (a) and (b),

depending on the Court's preference.

(5) In deciding how the ballot is to be conducted the Court must take into account—

- (a) the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace or workplaces;

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- (b) costs and practicality;
  - (c) such other matters as the Court considers appropriate.
- (6) The Court may not decide that the ballot is to be conducted as mentioned in sub-paragraph (4) unless there are special factors making such a decision appropriate; and special factors include—
- (a) factors arising from the location of workers or the nature of their employment;
  - (b) factors put to the Court by the employer or the union (or unions).
- [<sup>F110</sup>(6A) If the Court decides that the ballot must (in whole or in part) be conducted at a workplace (or workplaces), it may require arrangements to be made for workers—
- (a) who (but for the arrangements) would be prevented by the Court's decision from voting by post, and
  - (b) who are unable, for reasons relating to those workers as individuals, to cast their votes in the ballot at the workplace (or at any of them),
- to be given the opportunity (if they request it far enough in advance of the ballot for this to be practicable) to vote by post; and the Court's imposing such a requirement is not to be treated for the purposes of sub-paragraph (6) as a decision that the ballot be conducted as mentioned in sub-paragraph (4)(c).]
- (7) A person is a qualified independent person if—
- (a) he satisfies such conditions as may be specified for the purposes of this paragraph by order of the Department or is himself so specified, and
  - (b) there are no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the ballot might reasonably be called into question.
- (8) An order under sub-paragraph (7)(a) shall be subject to negative resolution.
- (9) As soon as is reasonably practicable after the Court is required under paragraph 24 to arrange for the holding of a ballot it must inform the parties—
- (a) that it is so required;
  - (b) of the nature of the person appointed to conduct the ballot and the date of his appointment;
  - (c) of the period within which the ballot must be conducted;
  - (d) whether the ballot is to be conducted by post or at a workplace or workplaces;
  - (e) of the workplace or workplaces concerned (if the ballot is to be conducted at a workplace or workplaces).

**F110** 2004 NI 19

**26.**—(1) An employer who is informed by the Court under paragraph 25(9) must comply with the following<sup>F111</sup> five] duties.

(2) The first duty is to co-operate generally, in connection with the ballot, with the union (or unions) and the person appointed to conduct the ballot; and the second and third duties are not to prejudice the generality of this.

(3) The second duty is to give to the union (or unions) such access to the workers constituting the bargaining unit as is reasonable to enable the union(or unions) to inform the workers of the object of the ballot and to seek their support and their opinions on the issues involved.

(4) The third duty is to do the following (so far as it is reasonably to expect the employer to do so)—

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- (a) to give to the Court, within the period of 10 working days starting with the day after that on which the employer is informed under paragraph 25(9), the names and home addresses of the workers constituting the bargaining unit;
  - (b) to give to the Court, as soon as is reasonably practicable, the name and home address of any worker who joins the<sup>F112</sup> unit] after the employer has complied with paragraph (a);
  - (c) to inform the Court, as soon as is reasonably practicable, of any worker whose name has been given to the Court under paragraph<sup>F112</sup> 19D or paragraph (a) or (b) of this sub-paragraph and] who ceases to be within the unit.
- <sup>F113</sup>(4A) The fourth duty is to refrain from making any offer to any or all of the workers constituting the bargaining unit which—
- (a) has or is likely to have the effect of inducing any or all of them not to attend any relevant meeting between the union (or unions) and the workers constituting the bargaining unit, and
  - (b) is not reasonable in the circumstances.
- (4B) The fifth duty is to refrain from taking or threatening to take any action against a worker solely or mainly on the grounds that he—
- (a) attended or took part in any relevant meeting between the union (or unions) and the workers constituting the bargaining unit, or
  - (b) indicated his intention to attend or take part in such a meeting.
- (4C) A meeting is a relevant meeting in relation to a worker for the purposes of sub-paragraph (4A) and (4B) if—
- (a) it is organised in accordance with any agreement reached concerning the second duty or as a result of a step ordered to be taken under paragraph 27 to remedy a failure to comply with that duty, and
  - (b) it is one which the employer is, by such an agreement or order as is mentioned in paragraph (a), required to permit the worker to attend.
- (4D) Without prejudice to the generality of the second duty imposed by this paragraph, an employer is to be taken to have failed to comply with that duty if—
- (a) he refuses a request for a meeting between the union (or unions) and any or all of the workers constituting the bargaining unit to be held in the absence of the employer or any representative of his (other than one who has been invited to attend the meeting) and it is not reasonable in the circumstances for him to do so,
  - (b) he or a representative of his attends such a meeting without having been invited to do so,
  - (c) he seeks to record or otherwise be informed of the proceedings at any such meeting and it is not reasonable in the circumstances for him to do so, or
  - (d) he refuses to give an undertaking that he will not seek to record or otherwise be informed of the proceedings at any such meeting unless it is reasonable in the circumstances for him to do either of those things.
- (4E) The fourth and fifth duties do not confer any rights on a worker; but that does not affect any other right which a worker may have.]
- <sup>F112</sup>(4F) Sub-paragraph (4)(a) does not apply to names and addresses that the employer has already given to the Court under paragraph 19D.
- (4G) Where (because of sub-paragraph (4F)) the employer does not have to comply with sub-paragraph (4)(a), the reference in sub-paragraph (4)(b) to the time when the employer complied with sub-paragraph (4)(a) is to be read as a reference to the time when the employer is informed under paragraph 25(9).

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(4H) If—

- (a) a person was appointed on an application under paragraph 19C, and
- (b) the person appointed to conduct the ballot is not that person,

the Court must, as soon as is reasonably practicable, pass on to the person appointed to conduct the ballot the names and addresses given to it under paragraph 19D.]

(5) As soon as is reasonably practicable after the Court receives any information under sub-paragraph (4) it must pass it on to the person appointed to conduct the ballot.

(6) If asked to do so by the union (or unions) the person appointed to conduct the ballot must send to any worker—

- (a) whose name and home address have been<sup>[F112]</sup> passed on to him under paragraph 19D or this paragraph], and

- (b) who is still within the unit (so far as the person so appointed is aware),

any information supplied by the union (or unions) to the person so appointed.

(7) The duty under sub-paragraph (6) does not apply unless the union bears (or unions bear) the cost of sending the information.

<sup>[F114]</sup>(8) Each of the powers specified in sub-paragraph (9) shall be taken to include power to issue Codes of Practice—

- (a) about reasonable access for the purposes of sub-paragraph (3), and
- (b) about the fourth duty imposed by this paragraph.

(9) The powers are—

- (a) the power of the Agency under Article 90 of the 1992 Order;
- (b) the power of the Department under Article 95 of that Order.]

**F111** Word in Sch. 1A para. 26(1) substituted (8.1.2006) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)), arts. 1(2), 3, **Sch. 1 para. 9(2)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**F112** 2004 NI 19

**F113** Sch. 1A para. 26(4A)-(4E) inserted (8.1.2006) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)), arts. 1(2), 3, **Sch. 1 para. 9(3)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**F114** Sch. 1A para. 26(8)(9) substituted (8.1.2006) for Sch. 1A para. 26(8) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)), arts. 1(2), 3, **Sch. 1 para. 9(4)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**27.**—(1) If the Court is satisfied that the employer has failed to fulfil any of the<sup>[F115]</sup> duties imposed on him] by paragraph 26, and the ballot has not been held, the Court may order the employer—

- (a) to take such steps to remedy the failure as the Court considers reasonable and specifies in the order, and
- (b) to do so within such period as the Court considers reasonable and specifies in the order.

(2) If the Court is satisfied that the employer has failed to comply with an order under sub-paragraph (1), and the ballot has not been held, the Court may issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit.

(3) If the Court issues a declaration under sub-paragraph (2) it shall take steps to cancel the holding of the ballot; and if the ballot is held it shall have no effect.

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**F115** Words in *Sch. 1A para. 27(1)* substituted (8.1.2006) by *Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19))*, arts. 1(2), 3, **Sch. 1 para. 9(5)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**[<sup>F116</sup>27A.—**(1) Each of the parties informed by the Court under paragraph 25(9) must refrain from using any unfair practice.

(2) A party uses an unfair practice if, with a view to influencing the result of the ballot, the party—

- (a) offers to pay money or give money’s worth to a worker entitled to vote in the ballot in return for the worker’s agreement to vote in a particular way or to abstain from voting,
- (b) makes an outcome-specific offer to a worker entitled to vote in the ballot;
- (c) coerces or attempts to coerce a worker entitled to vote in the ballot to disclose—
  - (i) whether he intends to vote or to abstain from voting in the ballot, or
  - (ii) how he intends to vote, or how he has voted, in the ballot,
- (d) dismisses or threatens to dismiss a worker,
- (e) takes or threatens to take disciplinary action against a worker,
- (f) subjects or threatens to subject a worker to any other detriment, or
- (g) uses or attempts to use undue influence on a worker entitled to vote in the ballot.

(3) For the purposes of sub-paragraph (2)(b) an “outcome-specific offer” is an offer to pay money or give money’s worth which—

- (a) is conditional on the issuing by the Court of a declaration that—
  - (i) the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit, or
  - (ii) the union is (or unions are) not entitled to be so recognised, and
- (b) is not conditional on anything which is done or occurs as a result of the declaration in question.

(4) The duty imposed by this paragraph does not confer any rights on a worker; but that does not affect any other right which a worker may have.

(5) Each of the following powers shall be taken to include power to issue Codes of Practice about unfair practices for the purposes of this paragraph—

- (a) the power of the Agency under Article 90 of the 1992 Order;
- (b) the power of the Department under Article 95 of that Order.

**F116** *Sch. 1A paras. 27A-27F* inserted (8.1.2006) by *Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19))*, arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**27B.—**(1) A party may complain to the Court that another party has failed to comply with paragraph 27A.

(2) A complaint under sub-paragraph (1) must be made on or before the first working day after—

- (a) the date of the ballot, or
- (b) if votes may be cast in the ballot on more than one day, the last of those days.

(3) Within the decision period the Court must decide whether the complaint is well-founded.

(4) A complaint is well-founded if—

- (a) the Court finds that the party complained against used an unfair practice, and



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- (b) the Court is satisfied that the use of that practice changed or was likely to change, in the case of a worker entitled to vote in the ballot—
  - (i) his intention to vote or to abstain from voting,
  - (ii) his intention to vote in a particular way, or
  - (iii) how he voted.
- (5) The decision period is—
  - (a) the period of 10 working days starting with the day after that on which the complaint under sub-paragraph (1) was received by the Court, or
  - (b) such longer period (so starting) as the Court may specify to the parties by a notice containing reasons for the extension.
- (6) If, at the beginning of the decision period, the ballot has not begun, the Court may by notice to the parties and the qualified independent person postpone the date on which it is to begin until a date which falls after the end of the decision period.

**F116** Sch. 1A paras. 27A-27F inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

- 27C.**—(1) This paragraph applies if the Court decides that a complaint under paragraph 27B is well-founded.
- (2) The Court must, as soon as is reasonably practicable, issue a declaration to that effect.
  - (3) The Court may do either or both of the following—
    - (a) order the party concerned to take any action specified in the order within such period as may be so specified, or
    - (b) give notice to the employer and to the union (or unions) that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.
  - (4) The Court may give an order or a notice under sub-paragraph (3) either at the same time as it issues the declaration under sub-paragraph (2) or at any other time before it acts under paragraph 29.
  - (5) The action specified in an order under sub-paragraph (3)(a) shall be such as the Court considers reasonable in order to mitigate the effect of the failure of the party concerned to comply with the duty imposed by paragraph 27A.
  - (6) The Court may give more than one order under sub-paragraph (3)(a).

**F116** Sch. 1A paras. 27A-27F inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

- 27D.**—(1) This paragraph applies if the Court issues a declaration under paragraph 27C(2) and the declaration states that the unfair practice used consisted of or included—
- (a) the use of violence, or
  - (b) the dismissal of a union official.
- (2) This paragraph also applies if the Court has made an order under paragraph 27C(3)(a) and—
- (a) it is satisfied that the party subject to the order has failed to comply with it, or
  - (b) it makes another declaration under paragraph 27C(2) in relation to a complaint against that party.

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(3) If the party concerned is the employer, the Court may issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit.

(4) If the party concerned is a union, the Court may issue a declaration that the union is (or unions are) not entitled to be so recognised.

(5) The powers conferred by this paragraph are in addition to those conferred by paragraph 27C(3).

**F116** Sch. 1A paras. 27A-27F inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**27E.**—(1) This paragraph applies if the Court issues a declaration that a complaint under paragraph 27B is well-founded and—

- (a) gives a notice under paragraph 27C(3)(b), or
- (b) issues a declaration under paragraph 27D.

(2) If the ballot in connection with which the complaint was made has not been held, the Court shall take steps to cancel it.

(3) If that ballot is held, it shall have no effect.

**F116** Sch. 1A paras. 27A-27F inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**27F.**—(1) This paragraph applies if the Court gives a notice under paragraph 27C(3)(b).

(2) Paragraphs 24 to 29 apply in relation to that notice as they apply in relation to a notice given under paragraph 22(3) or 23(2) but with the modifications specified in sub-paragraphs (3) to (6).

(3) In each of sub-paragraphs (5)(a) and (6)(a) of paragraph 24 for “10 working days” substitute 5 working days.

(4) An employer’s duty under paragraph (a) of paragraph 26(4) is limited to—

- (a) giving the Court the names and home addresses of any workers in the bargaining unit which have not previously been given to it in accordance with that duty;
- (b) giving the Court the names and home addresses of those workers who have joined the bargaining unit since he last gave the Court information in accordance with that duty;
- (c) informing the Court of any change to the name or home address of a worker whose name and home address have previously been given to the Court in accordance with that duty; and
- (d) informing the Court of any worker whose name had previously been given to it in accordance with that duty who has ceased to be within the bargaining unit.

(5) Any order given under paragraph 27(1) or 27C(3)(a) for the purposes of the cancelled or ineffectual ballot shall have effect (to the extent that the Court specifies in a notice to the parties) as if it were made for the purposes of the ballot to which the notice under paragraph 27C(3)(b) relates.

(6) The gross costs of the ballot shall be borne by such of the parties and in such proportions as the Court may determine and, accordingly, sub-paragraphs (2) and (3) of paragraph 28 shall be omitted and the reference in sub-paragraph (4) of that paragraph to the employer and the union (or each of the unions) shall be construed as a reference to the party or parties which bear the costs in accordance with the Court’s determination.]

**F116** Sch. 1A paras. 27A-27F inserted (8.1.2006) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)), arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**28.**—(1) This paragraph applies if the holding of a ballot has been arranged under paragraph 24 whether or not it has been cancelled.

(2) The gross costs of the ballot shall be borne—

- (a) as to half, by the employer, and
- (b) as to half, by the union (or unions).

(3) If there is more than one union they shall bear their half of the gross costs—

- (a) in such proportions as they jointly indicate to the person appointed to conduct the ballot, or
- (b) in the absence of such an indication, in equal shares.

(4) The person appointed to conduct the ballot may send to the employer and the union (or each of the unions) a demand stating—

- (a) the gross costs of the ballot, and
- (b) the amount of the gross costs to be borne by the recipient.

(5) In such a case the recipient must pay the amount stated to the person sending the demand, and must do so within the period of 15 working days starting with the day after that on which the demand is received.

(6) If the amount stated is not paid in accordance with sub-paragraph (5) it shall, if a county court so orders, be recoverable as if it were payable under an order of that court.

[<sup>F117</sup>(6A) Where an amount is recoverable from a union under subparagraph (6) execution may be carried out, to the same extent and in the same manner as if the union were a body corporate, against any property held in trust for the union other than protected property as defined in Article 23(2) of the 1992 Order.]

(7) References to the costs of the ballot are to—

- (a) the costs wholly, exclusively and necessarily incurred in connection with the ballot by the person appointed to conduct it,
- (b) such reasonable amount as the person appointed to conduct the ballot charges for his services, and
- (c) such other costs as the employer and the union (or unions) agree.

**F117** 2004 NI 19

**29.**—(1) As soon as is reasonably practicable after the Court is informed of the result of a ballot by the person conducting it, the Court must act under this paragraph.

[<sup>F118</sup>(1A) The duty in sub-paragraph (1) does not apply if the Court gives a notice under paragraph 27C(3)(b).]

(2) The Court must inform the employer and the union (or unions) of the result of the ballot.

(3) If the result is that the union is (or unions are) supported by—

- (a) a majority of the workers voting, and
- (b) at least 40 per cent of the workers constituting the bargaining unit,

the Court must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit.

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(4) If the result is otherwise the Court must issue a declaration that the union is (or unions are) not entitled to be so recognised.

(5) The Department may by order amend sub-paragraph (3) so as to specify a different degree of support.

(6) No order shall be made under sub-paragraph(5) unless a draft of it has been laid before, and approved by a resolution of, the Assembly.

**F118** Sch. 1A para. 29(1A) inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 10(2)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

### *Consequences of recognition*

**30.**—(1) This paragraph applies if the Court issues a declaration under this Part that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit.

(2) The parties may in the negotiation period conduct negotiations with a view to agreeing a method by which they will conduct collective bargaining.

(3) If no agreement is made in the negotiation period the employer or the union (or unions) may apply to the Court for assistance.

(4) The negotiation period is—

(a) the period of 30 working days starting with the start day, or

(b) such longer period (so starting) as the parties may from time to time agree.

(5) The start day is the day after that on which the parties are notified of the declaration.

**31.**—(1) This paragraph applies if an application for assistance is made to the Court under paragraph 30.

(2) The Court must try to help the parties to reach in the agreement period an agreement on a method by which they will conduct collective bargaining.

(3) If at the end of the agreement period the parties have not made such an agreement the Court must specify to the parties the method by which they are to conduct collective bargaining.

(4) Any method specified under sub-paragraph (3) is to have effect as if it were contained in a legally enforceable contract made by the parties.

(5) But if the parties agree in writing—

(a) that sub-paragraph (4) shall not apply, or shall not apply to particular parts of the method specified by the Court, or

(b) to vary or replace the method specified by the Court,

the written agreement shall have effect as a legally enforceable contract made by the parties.

(6) Specific performance shall be the only remedy available for breach of anything which is a legally enforceable contract by virtue of this paragraph.

(7) If at any time before a specification is made under sub-paragraph (3) the parties jointly apply to the Court requesting it to stop taking steps under this paragraph, the Court must comply with the request.

(8) The agreement period is—

(a) the period of 20 working days starting with the day after that on which the Court receives the application under paragraph 30, or

(b) such longer period (so starting) as the Court may decide with the consent of the parties.

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*Method not carried out*

- 32.**—(1) This paragraph applies if—
- (a) the Court issues a declaration under this Part that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit,
  - (b) the parties agree a method by which they will conduct collective bargaining, and
  - (c) one or more of the parties fails to carry out the agreement.
- (2) The<sup>F119</sup> employer or the union (or unions)] may apply to the Court for assistance.
- (3) Paragraph 31 applies as if “paragraph 30” (in each place) read “paragraph 30 or paragraph 32”.

**F119** 2004 NI 19

*General provisions about admissibility*

- 33.** An application under paragraph 11 or 12 is not admissible unless—
- (a) it is made in such form as the Court specifies, and
  - (b) it is supported by such documents as the Court specifies.
- 34.** An application under paragraph 11 or 12 is not admissible unless the union gives (or unions give) to the employer—
- (a) notice of the application, and
  - (b) a copy of the application and any documents supporting it.
- 35.**—(1) An application under paragraph 11 or 12 is not admissible if the Court is satisfied that there is already in force a collective agreement under which a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of any workers falling within the relevant bargaining unit.
- (2) But sub-paragraph (1) does not apply to an application under paragraph 11 or 12 if—
- (a) the union (or unions) recognised under the collective agreement and the union (or unions) making the application under paragraph 11 or 12 are the same, and
  - (b) the matters in respect of which the union is (or unions are) entitled to conduct collective bargaining do not include<sup>F120</sup> all of the following: pay, hours and holidays ( “the core topics”)].
- (3) A declaration of recognition which is the subject of a declaration under paragraph 83(2) must for the purposes of sub-paragraph (1) be treated as ceasing to have effect to the extent specified in paragraph 83(2) on the making of the declaration under paragraph 83(2).
- (4) In applying sub-paragraph (1) an agreement for recognition (the agreement in question) must be ignored if—
- (a) the union does not have (or none of the unions has) a certificate<sup>F120</sup> of independence],
  - (b) at some time there was an agreement (the old agreement) between the employer and the union under which the union (whether alone or with other unions) was recognised as entitled to conduct collective bargaining on behalf of a group of workers which was the same or substantially the same as the group covered by the agreement in question, and
  - (c) the old agreement ceased to have effect in the period of three years ending with the date of the agreement in question.

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(5) It is for the Court to decide whether one group of workers is the same or substantially the same as another, but in deciding the Court may take account of the views of any person it believes has an interest in the matter.

(6) The relevant bargaining unit is—

- (a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
- (b) the agreed bargaining unit, where the application is under paragraph 12(4).

**F120 2004 NI 19**

**36.—**(1) An application under paragraph 11 or 12 is not admissible unless the Court decides that—

- (a) members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit, and
  - (b) a majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union (or unions) as entitled to conduct collective bargaining on behalf of the bargaining unit.
- (2) The relevant bargaining unit is—
- (a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
  - (b) the agreed bargaining unit, where the application is under paragraph 12(4).
- (3) The Court must give reasons for the decision.

**37.—**(1) This paragraph applies to an application made by more than one union under paragraph 11 or 12.

(2) The application is not admissible unless—

- (a) the unions show that they will co-operate with each other in a manner likely to secure and maintain stable and effective collective bargaining arrangements, and
  - (b) the unions show that, if the employer wishes, they will enter into arrangements under which collective bargaining is conducted by the unions acting together on behalf of the workers constituting the relevant bargaining unit.
- (3) The relevant bargaining unit is—
- (a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
  - (b) the agreed bargaining unit, where the application is under paragraph 12(4).

**38.—**(1) This paragraph applies if—

- (a) the Court accepts a relevant application relating to a bargaining unit or proceeds under paragraph 20 with an application relating to a bargaining unit,
  - (b) the application has not been withdrawn,
  - (c) no notice has been given under paragraph 17(2),
  - (d) the Court has not issued a declaration under paragraph<sup>F121</sup> 19F(5), 22(2), 27(2), 27D(3), 27D(4)], 29(3) or 29(4) in relation to that bargaining unit, and
  - (e) no notification has been made under paragraph 24(2).
- (2) Another relevant application is not admissible if—
- (a) at least one worker falling within the relevant bargaining unit also falls within the bargaining unit referred to in sub-paragraph (1), and

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- (b) the application is made by a union (or unions) other than the union (or unions) which made the application referred to in sub-paragraph (1).
- (3) A relevant application is an application under paragraph 11 or 12.
- (4) The relevant bargaining unit is—
  - (a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
  - (b) the agreed bargaining unit, where the application is under paragraph 12(4).

**F121** 2004 NI 19

**39.**—(1) This paragraph applies if the Court accepts a relevant application relating to a bargaining unit or proceeds under paragraph 20 with an application relating to a bargaining unit.

- (2) Another relevant application is not admissible if—
  - (a) the application is made within the period of 3 years starting with the day after that on which the Court gave notice of acceptance of the application mentioned in sub-paragraph (1),
  - (b) the relevant bargaining unit is the same or substantially the same as the bargaining unit mentioned in sub-paragraph (1), and
  - (c) the application is made by the union (or unions) which made the application mentioned in sub-paragraph (1).
- (3) A relevant application is an application under paragraph 11 or 12.
- (4) The relevant bargaining unit is—
  - (a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
  - (b) the agreed bargaining unit, where the application is under paragraph 12(4).
- (5) This paragraph does not apply if paragraph 40 or 41 applies.

**40.**—(1) This paragraph applies if the Court issues a declaration under paragraph<sup>F122</sup> 27D(4) or] 29(4) that a union is (or unions are) not entitled to be recognised as entitled to conduct collective bargaining on behalf of a bargaining unit; and this is so whether the ballot concerned is<sup>F122</sup> arranged] under this Part or Part III.

- (2) An application under paragraph 11 or 12 is not admissible if—
  - (a) the application is made within the period of 3 years starting with the day after that on which the declaration was issued,
  - (b) the relevant bargaining unit is the same or substantially the same as the bargaining unit mentioned in sub-paragraph (1), and
  - (c) the application is made by the union (or unions) which made the application leading to the declaration.
- (3) The relevant bargaining unit is—
  - (a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
  - (b) the agreed bargaining unit, where the application is under paragraph 12(4).

**F122** 2004 NI 19

**41.**—(1) This paragraph applies if the Court issues a declaration under paragraph<sup>F123</sup> 119D(4), 119H(5) or] 121(3) that bargaining arrangements are to cease to have effect; and this is so whether the ballot concerned is<sup>F123</sup> arranged] under Part IV or Part V.

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- (2) An application under paragraph 11 or 12 is not admissible if—
- (a) the application is made within the period of 3 years starting with the day after that on which the declaration was issued,
  - (b) the relevant bargaining unit is the same or substantially the same as the bargaining unit to which the bargaining arrangements mentioned in sub-paragraph (1) relate, and
  - (c) the application is made by the union which was a party (or unions which were parties) to the proceedings leading to the declaration.
- (3) The relevant bargaining unit is—
- (a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
  - (b) the agreed bargaining unit, where the application is under paragraph 12(4).

**F123** 2004 NI 19

**42.—**(1) This paragraph applies for the purposes of paragraphs 39 to 41.

(2) It is for the Court to decide whether one bargaining unit is the same or substantially the same as another, but in deciding the Court may take account of the views of any person it believes has an interest in the matter.

*General provisions about validity*

**43.—**(1) Paragraphs 44 to 50 apply if the Court has to decide under paragraph 20 whether an application is valid.

- (2) In those paragraphs—
- (a) references to the application in question are to that application, and
  - (b) references to the relevant bargaining unit are to the bargaining unit agreed by the parties or decided by the Court.

**44.—**(1) The application in question is invalid if the Court is satisfied that there is already in force a collective agreement under which a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of any workers falling within the relevant bargaining unit.

- (2) But sub-paragraph (1) does not apply to the application in question if—
- (a) the union (or unions) recognised under the collective agreement and the union (or unions) making the application in question are the same, and
  - (b) the matters in respect of which the union is (or unions are) entitled to conduct collective bargaining do not include<sup>F124</sup> all of the following: pay, hours and holidays ( “the core topics”)].

(3) A declaration of recognition which is the subject of a declaration under paragraph 83(2) must for the purposes of sub-paragraph (1) be treated as ceasing to have effect to the extent specified in paragraph 83(2) on the making of the declaration under paragraph 83(2).

(4) In applying sub-paragraph (1) an agreement for recognition (the agreement in question) must be ignored if—

- (a) the union does not have (or none of the unions has) a certificate<sup>F124</sup> of independence],
- (b) at some time there was an agreement (the old agreement) between the employer and the union under which the union (whether alone or with other unions) was recognised as entitled to conduct collective bargaining on behalf of a group of workers which was the same or substantially the same as the group covered by the agreement in question, and



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(c) the old agreement ceased to have effect in the period of three years ending with the date of the agreement in question.

(5) It is for the Court to decide whether one group of workers is the same or substantially the same as another, but in deciding the Court may take account of the views of any person it believes has an interest in the matter.

**F124** 2004 NI 19

**45.** The application in question is invalid unless the Court decides that—

- (a) members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit, and
- (b) a majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union (or unions) as entitled to conduct collective bargaining on behalf of the bargaining unit.

**46.—**(1) This paragraph applies if—

- (a) the Court accepts an application under paragraph 11 or 12 relating to a bargaining unit or proceeds under paragraph 20 with an application relating to a bargaining unit,
- (b) the application has not been withdrawn,
- (c) no notice has been given under paragraph 17(2),
- (d) the Court has not issued a declaration under paragraph<sup>F125</sup> 19F(5), 22(2), 27(2), 27D(3), 27D(4),] 29(3) or 29(4) in relation to that bargaining unit, and
- (e) no notification has been made under paragraph 24(2).

(2) The application in question is invalid if—

- (a) at least one worker falling within the relevant bargaining unit also falls within the bargaining unit referred to in sub-paragraph (1), and
- (b) the application in question is made by a union (or unions) other than the union(or unions) which made the application referred to in sub-paragraph (1).

**F125** 2004 NI 19

**47.—**(1) This paragraph applies if the Court accepts an application under paragraph 11 or 12 relating to a bargaining unit or proceeds under paragraph 20 with an application relating to a bargaining unit.

(2) The application in question is invalid if—

- (a) the application is made within the period of 3 years starting with the day after that on which the Court gave notice of acceptance of the application mentioned in sub-paragraph (1),
- (b) the relevant bargaining unit is the same or substantially the same as the bargaining unit mentioned in sub-paragraph (1), and
- (c) the application is made by the union (or unions) which made the application mentioned in sub-paragraph (1).

(3) This paragraph does not apply if paragraph 48 or 49 applies.

**48.—**(1) This paragraph applies if the Court issues a declaration under paragraph<sup>F126</sup> 27D(4) or] 29(4) that a union is (or unions are) not entitled to be recognised as entitled to conduct collective

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bargaining on behalf of a bargaining unit; and this is so whether the ballot concerned is<sup>F126</sup> arranged] under this Part or Part III.

- (2) The application in question is invalid if—
- (a) the application is made within the period of 3 years starting with the date of the declaration,
  - (b) the relevant bargaining unit is the same or substantially the same as the bargaining unit mentioned in sub-paragraph (1), and
  - (c) the application is made by the union (or unions) which made the application leading to the declaration.

**F126** 2004 NI 19

**49.**—(1) This paragraph applies if the Court issues a declaration under paragraph<sup>F127</sup> 119D(4), 119H(5) or] 121(3) that bargaining arrangements are to cease to have effect; and this is so whether he ballot concerned is<sup>F127</sup> arranged] under Part IV or Part V.

- (2) The application in question is invalid if—
- (a) the application is made within the period of 3 years starting with the day after that on which the declaration was issued,
  - (b) the relevant bargaining unit is the same or substantially the same as the bargaining unit to which the bargaining arrangements mentioned in sub-paragraph (1) relate, and
  - (c) the application is made by the union which was a party (or unions which were parties) to the proceedings leading to the declaration.

**F127** 2004 NI 19

**50.**—(1) This paragraph applies for the purposes of paragraphs 47 to 49.

(2) It is for the Court to decide whether one bargaining unit is the same or substantially the same as another, but in deciding the Court may take account of the views of any person it believes has an interest in the matter.

#### *Competing applications*

**51.**—(1) For the purposes of this paragraph—

- (a) the original application is the application referred to in paragraph 38(1) or 46(1), and
- (b) the competing application is the other application referred to in paragraph 38(2) or the application in question referred to in paragraph 46(2);

but an application cannot be an original application unless it was made under paragraph 11(2) or 12(2).

- (2) This paragraph applies if—
- (a) the Court decides that the competing application is not admissible by reason of paragraph 38 or is invalid by reason of paragraph 46,
  - (b) at the time the decision is made the parties to the original application have not agreed the appropriate bargaining unit under paragraph 18, and the Court has not decided the appropriate bargaining unit under paragraph 19<sup>F128</sup> or 19A], in relation to the application, and

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- (c) the 10 per cent test (within the meaning given by paragraph 14) is satisfied with regard to the competing application.
- (3) In such a case—
  - (a) the Court must cancel the original application,
  - (b) the Court must give notice to the parties to the application that it has been cancelled,
  - (c) no further steps are to be taken under this Part in relation to the application, and
  - (d) the application shall be treated as if it had never been admissible.

**F128** 2004 NI 19

## PART II

### VOLUNTARY RECOGNITION

#### *Agreements for recognition*

- 52.**—(1) This paragraph applies for the purposes of this Part.
- (2) An agreement is an agreement for recognition if the following conditions are fulfilled in relation to it—
- (a) the agreement is made in the permitted period between a union (or unions) and an employer in consequence of a request made under paragraph 4 and valid within the terms of paragraphs 5 to 9;
  - (b) under the agreement the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a group or groups of workers employed by the employer;
  - (c) if sub-paragraph (5) applies to the agreement, it is satisfied.
- (3) The permitted period is the period which begins with the day on which the employer receives the request and ends when the first of the following occurs—
- (a) the union withdraws (or unions withdraws) the request;
  - (b) the union withdraws (or unions withdraw) any application under paragraph 11 or 12 made in consequence of the request;
  - (c) the Court gives notice of a decision under paragraph 14(7) which precludes it from accepting such an application under paragraph 11 or 12;
  - (d) the Court gives notice under paragraph 15(4)(a) or 20(4)(a) in relation to such an application under paragraph 11 or 12;
  - (e) the parties give notice to the court under paragraph 17(2) in relation to such an application under paragraph 11 or 12;
  - (f) the Court issues a declaration under paragraph<sup>F129</sup> 19F(5) or] 22(2) in consequence of such an application under paragraph 11 or 12;
  - (g) the Court is notified under paragraph 24(2) in relation to such an application under paragraph 11 or 12;
  - (h) the last day of the notification period ends (the notification period being that defined by paragraph<sup>F129</sup> 24(6)) and rising from such an application under paragraph 11 or 12;
  - (i) the Court is required under paragraph 51(3) to cancel such an application under paragraph 11 or 12.

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- (4) Sub-paragraph (5) applies to an agreement if—
- (a) at the time it is made the Court has received an application under paragraph 11 or 12 in consequence of the request mentioned in sub-paragraph (2), and
  - (b) the Court has not decided whether the application is admissible or it has decided that it is admissible.

(5) This sub-paragraph is satisfied if, in relation to the application under paragraph 11 or 12, the parties give notice to the Court under paragraph 17 before the final event (as defined in paragraph 17) occurs.

**F129** 2004 NI 19

#### *Other interpretation*

**53.**—(1) This paragraph applies for the purposes of this Part.

(2) In relation to an agreement for recognition, references to the bargaining unit are to the group of workers (or the groups taken together) to which the agreement for recognition relates.

(3) In relation to an agreement for recognition, references to the parties are to the union (or unions) and the employer who are parties to the agreement.

**54.**—(1) This paragraph applies for the purposes of this Part.

(2) Except in paragraph 63(2), in relation to an agreement for recognition references to collective bargaining are to negotiations relating to the matters in respect of which the union is (or unions are) recognised as entitled to conduct negotiations under the agreement for recognition.

(3) In paragraph 63(2) the reference to collective bargaining is to negotiations relating to pay, hours and holidays.

#### *Determination of type of agreement*

**55.**—(1) This paragraph applies if one or more of the parties to an agreement applies to the Court for a decision whether or not the agreement is an agreement for recognition.

(2) The Court must give notice of receipt of an application under sub-paragraph (1) to any parties to the agreement who are not parties to the application.

(3) The Court must within the decision period decide whether the agreement is an agreement for recognition.

(4) If the Court decides that the agreement is an agreement for recognition it must issue a declaration to that effect.

(5) If the Court decides that the agreement is not an agreement for recognition it must issue a declaration to that effect.

(6) The decision period is—

- (a) the period of 10 working days starting with the day after that on which the Court receives the application under sub-paragraph (1), or
- (b) such longer period (so starting) as the Court may specify to the parties to the agreement by notice containing reasons for the extension.

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### *Termination of agreement for recognition*

**56.**—(1) The employer may not terminate an agreement for recognition before the relevant period ends.

(2) After that period ends the employer may terminate the agreement, with or without the consent of the union (or unions).

(3) The union (or unions) may terminate an agreement for recognition at any time, with or without the consent of the employer.

(4) Sub-paragraphs (1) to (3) have effect subject to the terms of the agreement or any other agreement of the parties.

(5) The relevant period is the period of three years starting with the day after the date of the agreement.

**57.**—(1) If an agreement for recognition is terminated, as from the termination the agreement and any provisions relating to the collective bargaining method shall cease to have effect.

(2) For this purpose provisions relating to the collective bargaining method are—

(a) any agreement between the parties as to the method by which collective bargaining is to be conducted with regard to the bargaining unit, or

(b) anything effective as, or as if contained in, a legally enforceable contract and relating to the method by which collective bargaining is to be conducted with regard to the bargaining unit.

### *Application to Court to specify method*

**58.**—(1) This paragraph applies if the parties make an agreement for recognition.

(2) The parties may in the negotiation period conduct negotiations with a view to agreeing a method by which they will conduct collective bargaining.

(3) If no agreement is made in the negotiation period the employer or the union (or unions) may apply to the Court for assistance.

(4) The negotiation period is—

(a) the period of 30 working days starting with the start day, or

(b) such longer period (so starting) as the parties may from time to time agree.

(5) The start day is the day after that on which the agreement is made.

**59.**—(1) This paragraph applies if—

(a) the parties to an agreement for recognition agree a method by which they will conduct collective bargaining, and

(b) one or more of the parties fails to carry out the agreement as to a method.

(2) The employer or the union (or unions) may apply to the Court for assistance.

**60.**—(1) This paragraph applies if an application for assistance is made to the Court under paragraph 58 or 59.

(2) The application is not admissible unless the conditions in sub-paragraphs (3) and (4) are satisfied.

(3) The condition is that the employer, taken with any associated employer or employers, must—

(a) employ at least 21 workers on the day the application is made, or

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- (b) employ an average of at least 21 workers in the 13 weeks ending with that day.
- (4) The condition is that the union (or every union) has a certificate<sup>F130</sup> of independence].
- (5) To find the average under sub-paragraph (3)(b)—
  - (a) take the number of workers employed in each of the 13 weeks (including workers not employed for the whole of the week);
  - (b) aggregate the 13 numbers;
  - (c) divide the aggregate by 13.
- (6) For the purposes of sub-paragraph (3)(a) any worker employed by an associated company incorporated outside Northern Ireland must be ignored unless the day the application was made fell within a period during which he ordinarily worked in Northern Ireland.
- (7) For the purposes of sub-paragraph (3)(b) any worker employed by an associated company incorporated outside Northern Ireland must be ignored in relation to a week unless the whole or any part of that week fell within a period during which he ordinarily worked in Northern Ireland.
- (8) For the purposes of sub-paragraphs (6) and (7) a worker who is employed on board a ship registered in the register maintained under section 8 of the Merchant Shipping Act 1995 shall be treated as ordinarily working in Northern Ireland unless—
  - (a) the ship's entry in the register specifies a port outside Northern Ireland as the port to which the vessel is to be treated as belonging,
  - (b) the employment is wholly outside Northern Ireland, or
  - (c) the worker is not ordinarily resident in Northern Ireland.
- (9) An order made under paragraph 7(6) may also—
  - (a) provide that sub-paragraphs (2), (3) and (5) to (8) of this paragraph are not to apply, or are not to apply in specified circumstances, or
  - (b) vary the number of workers for the time being specified in sub-paragraph (3).

**F130** 2004 NI 19

- 61.**—(1) An application to the Court is not admissible unless—
- (a) it is made in such form as the Court specifies, and
  - (b) it is supported by such documents as the Court specifies.
- (2) An application which is made by a union (or unions) to the Court is not admissible unless the union gives (or unions give) to the employer—
- (a) notice of the application, and
  - (b) a copy of the application and any documents supporting it.
- (3) An application which is made by an employer to the Court is not admissible unless the employer gives to the union (or each of the unions)—
- (a) notice of the application, and
  - (b) a copy of the application and any documents supporting it.

*Court's response to application*

- 62.**—(1) The Court must give notice to the parties of receipt of an application under paragraph 58 or 59.

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(2) Within the acceptance period the Court must decide whether the application is admissible within the terms of paragraphs 60 and 61.

(3) In deciding whether an application is admissible the Court must consider any evidence which it has been given by the employer or the union (or unions).

(4) If the Court decides that the application is not admissible—

- (a) the Court must give notice of its decision to the parties,
- (b) the Court must not accept the application, and
- (c) no further steps are to be taken under this Part.

(5) If the Court decides that the application is admissible it must—

- (a) accept the application, and
- (b) give notice of the acceptance to the parties.

(6) The acceptance period is—

- (a) the period of 10 working days starting with the day after that on which the Court receives the application, or
- (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.

**63.**—(1) If the Court accepts an application it must try to help the parties to reach in the agreement period an agreement on a method by which they will conduct collective bargaining.

(2) If at the end of the agreement period the parties have not made such an agreement the Court must specify to the parties the method by which they are to conduct collective bargaining.

(3) Any method specified under sub-paragraph (2) is to have effect as if it were contained in a legally enforceable contract made by the parties.

(4) But if the parties agree in writing—

- (a) that sub-paragraph (3) shall not apply, or shall not apply to particular parts of the method specified by the Court, or
- (b) to vary or replace the method specified by the Court, the written agreement shall have effect as a legally enforceable contract made by the parties.

(5) Specific performance shall be the only remedy available for breach of anything which is a legally enforceable contract by virtue of this paragraph.

(6) If the Court accepts an application, the applicant may not withdraw it after the end of the agreement period.

(7) If at any time before a specification is made under sub-paragraph (2) the parties jointly apply to the Court requesting it to stop taking steps under this paragraph, the Court must comply with the request.

(8) The agreement period is—

- (a) the period of 20 working days starting with the day after that on which the Court gives notice of acceptance of the application, or
- (b) such longer period (so starting) as the parties may from time to time agree.

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## PART III CHANGES AFFECTING BARGAINING UNIT

### *Introduction*

- 64.**—(1) This Part applies if—
- (a) the Court has issued a declaration that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit, and
  - (b) provisions relating to the collective bargaining method apply in relation to the unit.
- (2) In such a case, in this Part—
- (a) references to the original unit are to the bargaining unit on whose behalf the union is (or unions are) recognised as entitled to conduct collective bargaining, and
  - (b) references to the bargaining arrangements are to the declaration and to the provisions relating to the collective bargaining method which apply in relation to the original unit.
- (3) For this purpose provisions relating to the collective bargaining method are—
- (a) the parties' agreement as to the method by which collective bargaining is to be conducted with regard to the original unit,
  - (b) anything effective as, or as if contained in, a legally enforceable contract and relating to the method by which collective bargaining is to be conducted with regard to the original unit, or
  - (c) any provision of this Part that a method of collective bargaining is to have effect with regard to the original unit.
- 65.** References in this Part to the parties are to the employer and the union (or unions) concerned.

### *Either party believes unit no longer appropriate*

**66.**—(1) This paragraph applies if the employer believes or the union believes (or unions believe) that the original unit is no longer an appropriate bargaining unit.

(2) The employer or union (or unions) may apply to the Court to make a decision as to what is an appropriate bargaining unit.

**67.**—(1) An application under paragraph 66 is not admissible unless the Court decides that it is likely that the original unit is no longer appropriate by reason of any of the matters specified in sub-paragraph (2).

- (2) The matters are—
- (a) a change in the organisation or structure of the business carried on by the employer;
  - (b) a change in the activities pursued by the employer in the course of the business carried on by him;
  - (c) a substantial change in the number of workers employed in the original unit.

**68.**—(1) The Court must give notice to the parties of receipt of an application under paragraph 66.

(2) Within the acceptance period the Court must decide whether the application is admissible within the terms of paragraphs 67 and 92.

(3) In deciding whether the application is admissible the Court must consider any evidence which it has been given by the employer or the union (or unions).



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- (4) If the Court decides that the application is not admissible—
    - (a) the Court must give notice of its decision to the parties,
    - (b) the Court must not accept the application, and
    - (c) no further steps are to be taken under this Part.
  - (5) If the Court decides that the application is admissible it must—
    - (a) accept the application, and
    - (b) give notice of the acceptance to the parties.
  - (6) The acceptance period is—
    - (a) the period of 10 working days starting with the day after that on which the Court receives the application, or
    - (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.
- 69.**—(1) This paragraph applies if—
  - (a) the Court gives notice of acceptance of the application, and
  - (b) before the end of the first period the parties agree a bargaining unit or units (the new unit or units) differing from the original unit and inform the Court of their agreement.
- (2) If in the Court's opinion the new unit (or any of the new units) contains at least one worker falling within an outside bargaining unit no further steps are to be taken under this Part.
- (3) If sub-paragraph (2) does not apply—
  - (a) the Court must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the new unit or units;
  - (b) so far as it affects workers in the new unit (or units) who fall within the original unit, the declaration shall have effect in place of any declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the original unit;
  - (c) the method of collective bargaining relating to the original unit shall have effect in relation to the new unit or units, with any modifications which the Court considers necessary to take account of the change of bargaining unit and specifies in the declaration.
- (4) The first period is—
  - (a) the period of 10 working days starting with the day after that on which the Court gives notice of acceptance of the application, or
  - (b) such longer period (so starting) as the parties may from time to time agree and notify to the Court.
- (5) An outside bargaining unit is a bargaining unit which fulfils these conditions—
  - (a) it is not the original unit;
  - (b) a union is (or unions are) recognised as entitled to conduct collective bargaining on its behalf;
  - (c) the union (or at least one of the unions) is not a party referred to in paragraph 64.
- 70.**—(1) This paragraph applies if—
  - (a) the Court gives notice of acceptance of the application, and
  - (b) the parties do not inform the Court before the end of the first period that they have agreed a bargaining unit or units differing from the original unit.
- (2) During the second period—

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- (a) the Court must decide whether or not the original unit continues to be an appropriate bargaining unit;
  - (b) if the Court decides that the original unit does not so continue, it must decide what other bargaining unit is or units are appropriate;
  - (c) the Court must give notice to the parties of its decision or decisions under paragraphs (a) and (b).
- (3) In deciding whether or not the original unit continues to be an appropriate bargaining unit the Court must take into account only these matters—
- (a) any change in the organisation or structure of the business carried on by the employer;
  - (b) any change in the activities pursued by the employer in the course of the business carried on by him;
  - (c) any substantial change in the number of workers employed in the original unit.
- (4) In deciding what other bargaining unit is or units are appropriate the Court must take these matters into account—
- (a) the need for the unit or units to be compatible with effective management;
  - (b) the matters listed in sub-paragraph (5), so far as they do not conflict with that need.
- (5) The matters are—
- (a) the views of the employer and of the union (or unions);
  - (b) existing national and local bargaining arrangements;
  - (c) the desirability of avoiding small fragmented bargaining units within an undertaking;
  - (d) the characteristics of workers falling within the original unit and of any other employees of the employer whom the Court considers relevant;
  - (e) the location of workers.
- (6) If the Court decides that two or more bargaining units are appropriate its decision must be such that no worker falls within more than one of them.
- (7) The second period is—
- (a) the period of 10 working days starting with the day after that on which the first period ends, or
  - (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.
- 71.** If the Court gives notice under paragraph 70 of a decision that the original unit continues to be an appropriate bargaining unit no further steps are to be taken under this Part.
- 72.** Paragraph 82 applies if the Court gives notice under paragraph 70 of—
- (a) a decision that the original unit is no longer an appropriate bargaining unit, and
  - (b) a decision as to the bargaining unit which is (or units which are) appropriate.
- 73.—(1)** This paragraph applies if—
- (a) the parties agree under paragraph 69 a bargaining unit or units differing from the original unit,
  - (b) paragraph 69(2) does not apply, and
  - (c) at least one worker falling within the original unit does not fall within the new unit (or any of the new units).
- (2) In such a case—

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- (a) the Court must issue a declaration that the bargaining arrangements, so far as relating to the worker or workers mentioned in sub-paragraph (1)(c), are to cease to have effect on a date specified by the Court in the declaration, and
- (b) the bargaining arrangements shall cease to have effect accordingly.

*Employer believes unit has ceased to exist*

**74.**—(1) If the employer—

- (a) believes that the original unit has ceased to exist, and
- (b) wishes the bargaining arrangements to cease to have effect,

he must give the union (or each of the unions) a notice complying with sub-paragraph (2) and must give a copy of the notice to the Court.

(2) A notice complies with this sub-paragraph if it—

- (a) identifies the unit and the bargaining arrangements,
- (b) states the date on which the notice is given,
- (c) states that the unit has ceased to exist, and
- (d) states that the bargaining arrangements are to cease to have effect on a date which is specified in the notice and which falls after the end of the period of 35 working days starting with the day after that on which the notice is given.

(3) Within the validation period the Court must decide whether the notice complies with sub-paragraph (2).

(4) If the Court decides that the notice does not comply with sub-paragraph (2)—

- (a) the Court must give the parties notice of its decision, and
- (b) the employer's notice shall be treated as not having been given.

(5) If the Court decides that the notice complies with sub-paragraph (2) it must give the parties notice of the decision.

(6) The bargaining arrangements shall cease to have effect on the date specified under sub-paragraph (2)(d) if—

- (a) the Court gives notice under sub-paragraph (5), and
- (b) the union does not (or unions do not) apply to the Court under paragraph 75.

(7) The validation period is—

- (a) the period of 10 working days starting with the day after that on which the Court receives the copy of the notice, or
- (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.

**75.**—(1) Paragraph 76 applies if—

- (a) the Court gives notice under paragraph 74(5), and
- (b) within the period of 10 working days starting with the day after that on which the notice is given the union makes (or unions make) an application to the Court for a decision on the questions specified in sub-paragraph (2).

(2) The questions are—

- (a) whether the original unit has ceased to exist;

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- (b) whether the original unit is no longer appropriate by reason of any of the matters specified in sub-paragraph (3).
  - (3) The matters are—
    - (a) a change in the organisation or structure of the business carried on by the employer;
    - (b) a change in the activities pursued by the employer in the course of the business carried on by him;
    - (c) a substantial change in the number of workers employed in the original unit.
- 76.—**(1) The Court must give notice to the parties of receipt of an application under paragraph 75.
- (2) Within the acceptance period the Court must decide whether the application is admissible within the terms of paragraph 92.
- (3) In deciding whether the application is admissible the Court must consider any evidence which it has been given by the employer or the union (or unions).
- (4) If the Court decides that the application is not admissible—
  - (a) the Court must give notice of its decision to the parties,
  - (b) the Court must not accept the application, and
  - (c) no further steps are to be taken under this Part.
- (5) If the Court decides that the application is admissible it must—
  - (a) accept the application, and
  - (b) give notice of the acceptance to the parties.
- (6) The acceptance period is—
  - (a) the period of 10 working days starting with the day after that on which the Court receives the application, or
  - (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.
- 77.—**(1) If the Court accepts an application it—
  - (a) must give the employer and the union (or unions) an opportunity to put their views on the questions in relation to which the application was made;
  - (b) must decide the questions before the end of the decision period.
- (2) If the Court decides that the original unit has ceased to exist—
  - (a) the Court must give the parties notice of its decision, and
  - (b) the bargaining arrangements shall cease to have effect on the termination date.
- (3) If the Court decides that the original unit has not ceased to exist, and that it is not the case that the original unit is no longer appropriate by reason of any of the matters specified in paragraph 75(3)—
  - (a) the Court must give the parties notice of its decision, and
  - (b) the employer's notice shall be treated as not having been given.
- (4) If the Court decides that the original unit has not ceased to exist, and that the original unit is no longer appropriate by reason of any of the matters specified in paragraph 75(3), the Court must give the parties notice of its decision.
- (5) The decision period is—
  - (a) the period of 10 working days starting with the day after that on which the Court gives notice of acceptance of the application, or

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- (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.
- (6) The termination date is the later of—
  - (a) the date specified under paragraph 74(2)(d), and
  - (b) the day after the last day of the decision period.
- 78.**—(1) This paragraph applies if—
  - (a) the Court gives notice under paragraph 77(4), and
  - (b) before the end of the first period the parties agree a bargaining unit or units (the new unit or units) differing from the original unit and inform the Court of their agreement.
- (2) If in the Court's opinion the new unit (or any of the new units) contains at least one worker falling within an outside bargaining unit no further steps are to be taken under this Part.
- (3) If sub-paragraph (2) does not apply—
  - (a) the Court must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the new unit or units;
  - (b) so far as it affects workers in the new unit (or units) who fall within the original unit, the declaration shall have effect in place of any declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the original unit;
  - (c) the method of collective bargaining relating to the original unit shall have effect in relation to the new unit or units, with any modifications which the Court considers necessary to take account of the change of bargaining unit and specifies in the declaration.
- (4) The first period is—
  - (a) the period of 10 working days starting with the day after that on which the Court gives notice under paragraph 77(4), or
  - (b) such longer period (so starting) as the parties may from time to time agree and notify to the Court.
- (5) An outside bargaining unit is a bargaining unit which fulfils these conditions—
  - (a) it is not the original unit;
  - (b) a union is (or unions are) recognised as entitled to conduct collective bargaining on its behalf;
  - (c) the union (or at least one of the unions) is not a party referred to in paragraph 64.
- 79.**—(1) This paragraph applies if—
  - (a) the Court gives notice under paragraph 77(4), and
  - (b) the parties do not inform the Court before the end of the first period that they have agreed a bargaining unit or units differing from the original unit.
- (2) During the second period the Court—
  - (a) must decide what other bargaining unit is or units are appropriate;
  - (b) must give notice of its decision to the parties.
- (3) In deciding what other bargaining unit is or units are appropriate, the Court must take these matters into account—
  - (a) the need for the unit or units to be compatible with effective management;
  - (b) the matters listed in sub-paragraph (4), so far as they do not conflict with that need.
- (4) The matters are—

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- (a) the views of the employer and of the union (or unions);
  - (b) existing national and local bargaining arrangements;
  - (c) the desirability of avoiding small fragmented bargaining units within an undertaking;
  - (d) the characteristics of workers falling within the original unit and of any other employees of the employer whom the Court considers relevant;
  - (e) the location of workers.
- (5) If the Court decides that two or more bargaining units are appropriate its decision must be such that no worker falls within more than one of them.
- (6) The second period is—
- (a) the period of 10 working days starting with the day after that on which the first period ends, or
  - (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.
- 80.** Paragraph 82 applies if the Court gives notice under paragraph 79 of a decision as to the bargaining unit which is (or units which are) appropriate.
- 81.—**(1) This paragraph applies if—
- (a) the parties agree under paragraph 78 a bargaining unit or units differing from the original unit,
  - (b) paragraph 78(2) does not apply, and
  - (c) at least one worker falling within the original unit does not fall within the new unit (or any of the new units).
- (2) In such a case—
- (a) the Court must issue a declaration that the bargaining arrangements, so far as relating to the worker or workers mentioned in sub-paragraph (1)(c), are to cease to have effect on a date specified by the Court in the declaration, and
  - (b) the bargaining arrangements shall cease to have effect accordingly.

*Position where Court decides new unit*

- 82.—**(1) This paragraph applies if the Court gives notice under paragraph 70 of—
- (a) a decision that the original unit is no longer an appropriate bargaining unit, and
  - (b) a decision as to the bargaining unit which is (or units which are) appropriate.
- (2) This paragraph also applies if the Court gives notice under paragraph 79 of a decision as to the bargaining unit which is (or units which are) appropriate.
- (3) The court—
- (a) must proceed as stated in paragraphs 83 to 89 with regard to the appropriate unit (if there is one only), or
  - (b) must proceed as stated in paragraphs 83 to 89 with regard to each appropriate unit separately (if there are two or more).
- (4) References in those paragraphs to the new unit are to the appropriate unit under consideration.
- 83.—**(1) This paragraph applies if in the Court's opinion the new unit contains at least one worker falling within a statutory outside bargaining unit.

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- (2) In such a case—
    - (a) the Court must issue a declaration that the relevant bargaining arrangements, so far as relating to workers falling within the new unit, are to cease to have effect on a date specified by the Court in the declaration, and
    - (b) the relevant bargaining arrangements shall cease to have effect accordingly.
  - (3) The relevant bargaining arrangements are—
    - (a) the bargaining arrangements relating to the original unit, and
    - (b) the bargaining arrangements relating to each statutory outside bargaining unit containing workers who fall within the new unit.
  - (4) The bargaining arrangements relating to the original unit are the bargaining arrangements as defined in paragraph 64.
  - (5) The bargaining arrangements relating to an outside unit are—
    - (a) the declaration recognising a unit (or unions) as entitled to conduct collective bargaining on behalf of the workers constituting the outside unit, and
    - (b) the provisions relating to the collective bargaining method.
  - (6) For this purpose the provisions relating to the collective bargaining method are—
    - (a) any agreement by the employer and the union (or unions) as to the method by which collective bargaining is to be conducted with regard to the outside unit,
    - (b) anything effective as, or as if contained in, a legally enforceable contract and relating to the method by which collective bargaining is to be conducted with regard to the outside unit, or
    - (c) any provision of this Part that a method of collective bargaining is to have effect with regard to the outside unit.
  - (7) A statutory outside bargaining unit is a bargaining unit which fulfils these conditions—
    - (a) it is not the original unit;
    - (b) a union is (or unions are) recognised as entitled to conduct collective bargaining on its behalf by virtue of a declaration of the Court;
    - (c) the union (or at least one of the unions) is not a party referred to in paragraph 64.
  - (8) The date specified under sub-paragraph<sup>F131</sup> (2)(a)] must be—
    - (a) the date on which the relevant period expires, or
    - (b) if the Court believes that to maintain the relevant bargaining arrangements would be impracticable or contrary to the interests of good industrial relations, the date after the date on which the declaration is issued;
- and the relevant period is the period of 65 working days starting with the day after that on which the declaration is issued.

**F131** 2004 NI 19

- 84.**—(1) This paragraph applies if in the Court's opinion the new unit contains—
  - (a) at least one worker falling within a voluntary outside bargaining unit, but
  - (b) no worker falling within a statutory outside bargaining unit.
- (2) In such a case—

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- (a) the Court must issue a declaration that the original bargaining arrangements, so far as relating to workers falling within the new unit, are to cease to have effect on a date specified by the Court in the declaration, and
  - (b) the original bargaining arrangements shall cease to have effect accordingly.
- (3) The original bargaining arrangements are the bargaining arrangements as defined in paragraph 64.
- (4) A voluntary outside bargaining unit is a bargaining unit which fulfils these conditions—
- (a) it is not the original unit;
  - (b) a union is (or unions are) recognised as entitled to conduct collective bargaining on its behalf by virtue of an agreement with the employer;
  - (c) the union (or at least one of the unions) is not a party referred to in paragraph 64.
- (5) The date specified under sub-paragraph (2)(a) must be—
- (a) the date on which the relevant period expires, or
  - (b) if the Court believes that to maintain the original bargaining arrangements would be impracticable or contrary to the interests of good industrial relations, the date after the date on which the declaration is issued;

and the relevant period is the period of 65 working days starting with the day after that on which the declaration is issued.

- 85.**—(1) If the Court's opinion is not that mentioned in paragraph 83(1) or 84(1) it must—
- (a) decide whether the difference between the original unit and the new unit is such that the support of the union (or unions) within the new unit needs to be assessed, and
  - (b) inform the parties of its decision.
- (2) If the Court's decision is that such support does not need to be assessed—
- (a) the Court must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the new unit;
  - (b) so far as it affects workers in the new unit who fall within the original unit, the declaration shall have effect in place of any declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the original unit;
  - (c) the method of collective bargaining relating to the original unit shall have effect in relation to the new unit, with any modifications which the Court considers necessary to take account of the change of bargaining unit and specifies in the declaration.

**86.**—(1) This paragraph applies if the Court decides under paragraph 85(1) that the support of the union(or unions) within the new unit needs to be assessed.

- (2) The Court must decide these questions—
- (a) whether members of the union (or unions) constitute at least 10 per cent of the workers constituting the new unit;
  - (b) whether a majority of the workers constituting the new unit would be likely to favour recognition of the union (or unions) as entitled to conduct collective bargaining on behalf of the new unit.
- (3) If the Court decides one or both of the questions in the negative—
- (a) the Court must issue a declaration that the bargaining arrangements, so far as relating to workers falling within the new unit, are to cease to have effect on a date specified by the Court in the declaration, and



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(b) the bargaining arrangements shall cease to have effect accordingly.

**87.**—(1) This paragraph applies if—

- (a) the Court decides both the questions in paragraph 86(2) in the affirmative, and
- (b) the Court is satisfied that a majority of the workers constituting the new unit are members of the union (or unions).

(2) The Court must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the workers constituting the new unit.

(3) But if any of the three qualifying condition is fulfilled, instead of issuing a declaration under sub-paragraph (2) the Court must give notice to the parties that it intends to arrange for the holding of a secret ballot in which the workers constituting the new unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.

(4) These are the three qualifying conditions—

- (a) the Court is satisfied that a ballot should be held in the interests of good industrial relations;
- <sup>[F132]</sup>(b) the Court has evidence, which it considers to be credible, from a significant number of the union members within the new bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;]
- (c) membership evidence is produced which leads the Court to conclude that there are doubts whether a significant number of the union members within the new unit want the union (or unions) to conduct collective bargaining on their behalf.

(5) For the purposes of sub-paragraph (4)(c) membership evidence is—

- (a) evidence about the circumstances in which union members became members;
- (b) evidence about the length of time for which union members have been members, in a case where the Court is satisfied that such evidence should be taken into account.

(6) If the Court issues a declaration under sub-paragraph (2)—

- (a) so far as it affects workers in the new unit who fall within the original unit, the declaration shall have effect in place of any declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the original unit;
- (b) the method of collective bargaining relating to the original unit shall have effect in relation to the new unit, with any modifications which the Court considers necessary to take account of the change of bargaining unit and specifies in the declaration.

**F132** 2004 NI 19

**88.**—(1) This paragraph applies if—

- (a) the Court decides both the questions in paragraph 86(2) in the affirmative, and
- (b) the Court is not satisfied that a majority of the workers constituting the new unit are members of the union (or unions).

(2) The Court must give notice to the parties that it intends to arrange for the holding of a secret ballot in which the workers constituting the new unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.

**89.**—(1) If the Court gives notice under paragraph 87(3) or 88(2) the union (or unions) may within the notification period notify the Court that the union does not (or unions do not) want the Court to arrange for the holding of the ballot; and the notification period is the period of 10 working days starting with the day after that on which the union (or last of the unions) receives the Court's notice.

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- (2) If the Court is so notified—
- (a) it must not arrange for the holding of the ballot,
  - (b) it must inform the parties that it will not arrange for the holding of the ballot, and why,
  - (c) it must issue a declaration that the bargaining arrangements, so far as relating to workers falling within the new unit, are to cease to have effect on a date specified by it in the declaration, and
  - (d) the bargaining arrangements shall cease to have effect accordingly.
- (3) If the Court is not so notified it must arrange for the holding of the ballot.
- (4) Paragraph 25 applies if the Court arranges under this paragraph for the holding of a ballot (as well as if the Court arranges under paragraph 24 for the holding of a ballot).
- (5) Paragraphs 26 to 29 apply accordingly,<sup>[F133]</sup> but as if—
- (a) references to the bargaining unit were references to the new unit, and
  - (b) paragraph 26(4F) to (4H), and the references in paragraph 26(4) and (6) to paragraph 19D, were omitted.]
- (6) If as a result of the ballot the Court issues a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the new unit—
- (a) so far as it affects workers in the new unit who fall within the original unit, the declaration shall have effect in place of any declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the original unit;
  - (b) the method of collective bargaining relating to the original unit shall have effect in relation to the new unit, with any modifications which the Court considers necessary to take account of the change of bargaining unit and specifies in the declaration.
- (7) If as a result of the ballot the Court issues a declaration that the union is (or unions are) not entitled to be recognised as entitled to conduct collective bargaining on behalf of the new unit—
- (a) the Court must state in the declaration the date on which the bargaining arrangements, so far as relating to workers falling within the new unit, are to cease to have effect, and
  - (b) the bargaining arrangements shall cease to have effect accordingly.
- (8) Paragraphs (a) and (b) of sub-paragraph (6) also apply if the Court issues a declaration under paragraph 27(2)<sup>[F133]</sup> or 27D(3)].
- <sup>[F133]</sup>(9) Paragraphs (a) and (b) of sub-paragraph (7) also apply if the Court issues a declaration under paragraph 27D(4).]

**F133** [2004 NI 19](#)

### *Residual workers*

- 90.**—(1) This paragraph applies if—
- (a) the Court decides an appropriate bargaining unit or units under paragraph 70 or 79, and
  - (b) at least one worker falling within the original unit does not fall within the new unit (or any of the new units).
- (2) In such a case—
- (a) the Court must issue a declaration that the bargaining arrangements, so far as relating to the worker or workers mentioned in sub-paragraph (1)(b), are to cease to have effect on a date specified by the Court in the declaration, and

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(b) the bargaining arrangements shall cease to have effect accordingly.

**91.—**(1) This paragraph applies if—

- (a) the Court has proceeded as stated in paragraphs 83 to 89 with regard to the new unit (if there is one only) or with regard to each new unit (if there are two or more), and
- (b) in so doing the Court has issued one or more declarations under paragraph 83.

(2) The Court must—

- (a) consider each declaration issued under paragraph 83, and
- (b) in relation to each declaration, identify each statutory outside bargaining unit which contains at least one worker who also falls within the new unit to which the declaration relates;

and in this paragraph each statutory outside bargaining unit so identified is referred to as a parent unit.

(3) The Court must then—

- (a) consider each parent unit, and
- (b) in relation to each parent unit, identify any workers who fall within the parent unit but who do not fall within the new unit (or any of the new units);

and in this paragraph the workers so identified in relation to a parent unit are referred to as a residual unit.

(4) In relation to each residual unit, the Court must issue a declaration that the outside union is (or outside unions are) recognised as entitled to conduct collective bargaining on its behalf.

(5) But no such declaration shall be issued in relation to a residual unit if the Court has received an application under paragraph 66 or 75 in relation to its parent unit.

(6) In this paragraph references to the outside union (or to outside unions) in relation to a residual unit are to the union which is (or unions which are) recognised as entitled to conduct collective bargaining on behalf of its parent unit.

(7) If the Court issues a declaration under sub-paragraph (4)—

- (a) the declaration shall have effect in place of the existing declaration that the outside union is (or outside unions are) recognised as entitled to conduct collective bargaining on behalf of the parent unit, so far as the existing declaration relates to the residual unit;
- (b) if there is a method of collective bargaining relating to the parent unit, it shall have effect in relation to the residual unit with any modifications which the Court considers necessary to take account of the change of bargaining unit and specifies in the declaration.

#### *Applications under this Part*

**92.—**(1) An application to the Court under this Part is not admissible unless—

- (a) it is made in such form as the Court specifies, and
- (b) it is supported by such documents as the Court specifies.

(2) An application which is made by a union (or unions) to the Court under this Part is not admissible unless the union gives (or unions give) to the employer—

- (a) notice of the application, and
- (b) a copy of the application and any documents supporting it.

(3) An application which is made by an employer to the Court under this Part is not admissible unless the employer gives to the union (or each of the unions)—

- (a) notice of the application, and

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- (b) a copy of the application and any documents supporting it.

#### *Withdrawal of application*

**93.**—(1) If an application under paragraph 66 or 75 is accepted by the Court, the applicant (or applicants) may not withdraw the application—

- (a) after the Court issues a declaration under paragraph 69(3) or 78(3),
  - (b) after the Court decides under paragraph 77(2) or 77(3),
  - (c) after the Court issues a declaration under paragraph 83(2), 85(2), 86(3) or 87(2) in relation to the new unit (where there is only one) or a declaration under any of those paragraphs in relation to any of the new units (where there is more than one),
  - (d) after the union has (or unions have) notified the Court under paragraph 89(1) in relation to the new unit (where there is only one) or any of the new units (where there is more than one), or
  - (e) after the end of the notification period referred to in paragraph 89(1) and relating to the new unit (where there is only one) or any of the new units (where there is more than one).
- (2) If an application is withdrawn by the applicant (or applicants)—
- (a) the Court must give notice of the withdrawal to the other party (or parties), and
  - (b) no further steps are to be taken under this Part.

#### *Meaning of collective bargaining*

**94.**—(1) This paragraph applies for the purposes of this Part.

(2) In relation to paragraphs 69(5), 78(5) and 83(6), collective bargaining has the meaning given by Article 2(2) of the 1992 Order.

(3) In relation to a new unit references to collective bargaining are to negotiations relating to the matters which were the subject of collective bargaining in relation to the corresponding original unit; and the corresponding original unit is the unit which was the subject of an application under paragraph 66 or 75 in consequence of which the new unit was agreed by the parties or decided by the Court.

(4) But if the parties agree matters as the subject of collective bargaining in relation to the new unit, references to collective bargaining in relation to that unit are to negotiations relating to the agreed matters; and this is the case whether the agreement is made before or after the time when the Court issues a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the new unit.

(5) In relation to a residual unit in relation to which a declaration is issued under paragraph 91, references to collective bargaining are to negotiations relating to the matters which were the subject of collective bargaining in relation to the corresponding parent unit.

- (6) In construing paragraphs 69(3)(c), 78(3)(c), 85(2)(c), 87(6)(b) and 89(6)(b)—
  - (a) sub-paragraphs (3) and (4) do not apply, and
  - (b) references to collective bargaining are to negotiations relating to pay, hours and holidays.

#### *Method of collective bargaining*

**95.**—(1) This paragraph applies for the purposes of this Part.

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(2) Where a method of collective bargaining has effect in relation to a new unit, that method shall have effect as if it were contained in a legally enforceable contract made by the parties.

(3) But if the parties agree in writing—

- (a) that sub-paragraph (2) shall not apply, or shall not apply to particular parts of the method, or
- (b) to vary or replace the method,

the written agreement shall have effect as a legally enforceable contract made by the parties.

(4) Specific performance shall be the only remedy available for breach of anything which is a legally enforceable contract by virtue of this paragraph.

## PART IV

### DERECOGNITION: GENERAL

#### *Introduction*

**96.**—(1) This Part applies if the Court has issued a declaration that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit.

(2) In such a case references in this Part to the bargaining arrangements are to the declaration and to the provisions relating to the collective bargaining method.

(3) For this purpose the provisions relating to the collective bargaining method are—

- (a) the parties' agreement as to the method by which collective bargaining is to be conducted,
- (b) anything effective as, or as if contained in, a legally enforceable contract and relating to the method by which collective bargaining is to be conducted, or
- (c) any provision of Part III that a method of collective bargaining is to have effect.

**97.** For the purposes of this Part the relevant date is the date of the expiry of the period of 3 years starting with the date of the Court's declaration.

**98.** References in this Part to the parties are to the employer and the union (or unions) concerned.

#### *Employer employs fewer than 21 workers*

**99.**—(1) This paragraph applies if—

- (a) the employer believes that he, taken with any associated employer or employers, employed an average of fewer than 21 workers in any period of 13 weeks, and
- (b) that period ends on or after the relevant date.

(2) If the employer wishes the bargaining arrangements to cease to have effect, he must give the union (or each of the unions) a notice complying with sub-paragraph (3) and must give a copy of the notice to the Court.

(3) A notice complies with this sub-paragraph if it—

[<sup>F134</sup>(za) is not invalidated by paragraph 99A,]

- (a) identifies the bargaining arrangements,
- (b) specifies the period of 13 weeks in question,
- (c) states the date on which the notice is given,

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- (d) is given within the period of 5 working days starting with the day after the last day of the specified period of 13 weeks,
  - (e) states that the employer, taken with any associated employer or employers, employed an average of fewer than 21 workers in the specified period of 13 weeks, and
  - (f) states that the bargaining arrangements are to cease to have effect on a date which is specified in the notice and which falls after the end of the period of 35 working days starting with the day after that on which the notice is given.
- (4) To find the average number of workers employed by the employer, taken with any associated employer or employers, in the specified period of 13 weeks—
- (a) take the number of workers employed in each of the 13 weeks (including workers not employed for the whole of the week);
  - (b) aggregate the 13 numbers;
  - (c) divide the aggregate by 13.
- (5) For the purposes of sub-paragraph (1)(a) any worker employed by an associated company incorporated outside Northern Ireland must be ignored in relation to a week unless the whole or any part of that week fell within a period during which he ordinarily worked in Northern Ireland.
- (6) For the purposes of sub-paragraph (5) a worker who is employed on board a ship registered in the register maintained under section 8 of the Merchant Shipping Act 1995 shall be treated as ordinarily working in Northern Ireland unless—
- (a) the ship's entry in the register specifies a port outside Northern Ireland as the port to which the vessel is to be treated as belonging,
  - (b) the employment is wholly outside Northern Ireland, or
  - (c) the worker is not ordinarily resident in Northern Ireland.
- (7) An order made under paragraph 7(6) may also—
- (a) provide that sub-paragraphs (1) to (6) of this paragraph and paragraphs<sup>[F134 99A]</sup> to 103 are not to apply, or are not to apply in specified circumstances, or
  - (b) vary the number of workers for the time being specified in sub-paragraphs (1)(a) and (3) (e).

**F134** 2004 NI 19

<sup>[F135]</sup>**99A.**—(1) A notice given for the purposes of paragraph 99(2) (“the notice in question”) is invalidated by this paragraph if—

- (a) a relevant application was made, or an earlier notice under paragraph 99(2) was given, within the period of 3 years prior to the date when the notice in question was given,
  - (b) the relevant application, or that earlier notice, and the notice in question relate to the same bargaining unit, and
  - (c) the Court accepted the relevant application or (as the case may be) decided under paragraph 100 that the earlier notice under paragraph 99(2) complied with paragraph 99(3).
- (2) A relevant application is an application made to the Court—
- (a) by the employer under paragraph 106, 107 or 128, or
  - (b) by a worker (or workers) under paragraph 112.]

**F135** 2004 NI 19

**100.**—(1) [<sup>F136</sup>If an employer gives notice for the purposes of paragraph 99(2),] Within the validation period the Court must decide whether the notice complies with paragraph 99(3).

(2) If the Court decides that the notice does not comply with paragraph 99(3)—

- (a) the Court must give the parties notice of its decision, and
- (b) the employer's notice shall be treated as not having been given.

(3) If the Court decides that the notice complies with paragraph 99(3) it must give the parties notice of the decision.

(4) The bargaining arrangements shall cease to have effect on the date specified under paragraph 99(3)(f) if—

- (a) the Court gives notice under sub-paragraph (3), and
- (b) the union does not (or unions do not) apply to the Court under paragraph 101.

(5) The validation period is—

- (a) the period of 10 working days starting with the day after that on which the Court receives the copy of the notice, or
- (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.

**F136** 2004 NI 19

**101.**—(1) This paragraph applies if—

- (a) the Court gives notice under paragraph 100(3), and
- (b) within the period of 10 working days starting with the day after that on which the notice is given, the union makes (or unions make) an application to the Court for a decision whether the period of 13 weeks specified under paragraph 99(3)(b) ends on or after the relevant date and whether the statement made under paragraph 99(3)(e) is correct.

(2) An application is not admissible unless—

- (a) it is made in such form as the Court specifies, and
- (b) it is supported by such documents as the Court specifies.

(3) An application is not admissible unless the union gives (or unions give) to the employer—

- (a) notice of the application, and
- (b) a copy of the application and any documents supporting it.

*Sub-paras. (4) and (5) rep. by 2004 NI 19*

**102.**—(1) The Court must give notice to the parties of receipt of an application under paragraph 101.

(2) Within the acceptance period the Court must decide whether the application is admissible within the terms of paragraph 101.

(3) In deciding whether an application is admissible the Court must consider any evidence which it has been given by the employer or the union (or unions).

(4) If the Court decides that the application is not admissible—

- (a) the Court must give notice of its decision to the parties,
- (b) the Court must not accept the application,
- (c) no further steps are to be taken under this Part, and

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- (d) the bargaining arrangements shall cease to have effect on the date specified under paragraph 99(3)(f).
- (5) If the Court decides that the application is admissible it must—
  - (a) accept the application, and
  - (b) give notice of the acceptance to the parties.
- (6) The acceptance period is—
  - (a) the period of 10 working days starting with the day after that on which the Court receives the application, or
  - (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.

**103.—**(1) If the Court accepts an application it—

- (a) must give the employer and the union (or unions) an opportunity to put their views on the questions whether the period of 13 weeks specified under paragraph 99(3)(b) ends on or after the relevant date and whether the statement made under paragraph 99(3)(e) is correct;
- (b) must decide the questions within the decision period and must give reasons for the decision.

(2) If the Court decides that the period of 13 weeks specified under paragraph 99(3)(b) ends on or after the relevant date and that the statement made under paragraph 99(3)(e) is correct the bargaining arrangements shall cease to have effect on the termination date.

(3) If the Court decides that the period of 13 weeks specified under paragraph 99(3)(b) does not end on or after the relevant date or that the statement made under paragraph 99(3)(e) is not correct, the notice under paragraph 99 shall be treated as not having been given.

[<sup>F137</sup>(3A) Sub-paragraph (3) does not prevent the notice from being treated for the purposes of the provisions mentioned in sub-paragraph (3B) as having been given.

(3B) Those provisions are—

- (a) paragraphs 109(1), 113(1) and 130(1);
- (b) paragraph 99A(1) in its application to a later notice given for the purposes of paragraph 99(2).]
- (4) The decision period is—
  - (a) the period of 10 working days starting with the day after that on which the Court gives notice of acceptance of the application, or
  - (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.
- (5) The termination date is the later of—
  - (a) the date specified under paragraph 99(3)(f), and
  - (b) the day after the last day of the decision period.

**F137** 2004 NI 19

#### *Employer's request to end arrangements*

**104.—**(1) This paragraph and paragraphs 105 to 111 apply if after the relevant date the employer requests the union (or each of the unions) to agree to end the bargaining arrangements.



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- (2) The request is not valid unless it—
  - (a) is in writing,
  - (b) is received by the union (or each of the unions),
  - (c) identifies the bargaining arrangements, and
  - (d) states that it is made under this Schedule.

**105.**—(1) If before the end of the first period the parties agree to end the bargaining arrangements no further steps are to be taken under this Part.

- (2) Sub-paragraph (3) applies if before the end of the first period—
  - (a) the union informs the employer that the union does not accept the request but is willing to negotiate, or
  - (b) the unions inform the employer that the unions do not accept the request but are willing to negotiate.

(3) The parties may conduct negotiations with a view to agreeing to end the bargaining arrangements.

(4) If such an agreement is made before the end of the second period no further steps are to be taken under this Part.

(5) The employer and the union (or unions) may request the Agency to assist in conducting the negotiations.

- (6) The first period is the period of 10 working days starting with the day after—
  - (a) the day on which the union receives the request, or
  - (b) the last day on which any of the unions receives the request.

- (7) The second period is—
  - (a) the period of 20 working days starting with the day after that on which the first period ends, or
  - (b) such longer period (so starting) as the parties may from time to time agree.

**106.**—(1) This paragraph applies if—

- (a) before the end of the first period the union fails (or unions fail) to respond to the request, or
- (b) before the end of the first period the union informs the employer that it does not (or unions inform the employer that they do not) accept the request (without indicating a willingness to negotiate).

(2) The employer may apply to the Court for the holding of a secret ballot to decide whether the bargaining arrangements should be ended.

**107.**—(1) This paragraph applies if—

- (a) the union informs (or unions inform) the employer under paragraph 105(2), and
- (b) no agreement is made before the end of the second period.

(2) The employer may apply to the Court for the holding of a secret ballot to decide whether the bargaining arrangements should be ended.

(3) But no application may be made if within the period of 10 working days starting with the day after that on which the union informs (or unions inform) the employer under paragraph 105(2) the union proposes (or unions propose) that the Agency be requested to assist in conducting the negotiations and—

- (a) the employer rejects the proposal, or

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- (b) the employer fails to accept the proposal within the period of 10 working days starting with the day after that on which the union makes (or unions make) the proposal.

**108.**—(1) An application under paragraph 106 or 107 is not admissible unless—

- (a) it is made in such form as the Court specifies, and
- (b) it is supported by such documents as the Court specifies.

(2) An application under paragraph 106 or 107 is not admissible unless the employer gives to the union (or each of the unions)—

- (a) notice of the application, and
- (b) a copy of the application and any documents supporting it.

**109.**—(1) An application under paragraph 106 or 107 is not admissible if—

- (a) a relevant application was made<sup>[F138]</sup>, or a notice under paragraph 99(2) was given,] within the period of 3 years prior to the date of the application under paragraph 106 or 107,
- (b) the relevant application<sup>[F138]</sup>, or notice under paragraph 99(2),] and the application under paragraph 106 or 107 relate to the same bargaining unit, and
- (c) the Court accepted the relevant application<sup>[F138]</sup> or (as the case may be) decided under paragraph 100 that the notice complied with paragraph 99(3)].

(2) A relevant application is an application made to the Court—

*Sub-para. (a) rep. by 2004 NI 19*

- (b) by the employer under paragraph 106, 107 or 128, or
- (c) by a worker (or workers) under paragraph 112.

**F138** [2004 NI 19](#)

**110.**—(1) An application under paragraph 106 or 107 is not admissible unless the Court decides that—

- (a) at least 10 per cent of the workers constituting the bargaining unit favour an end of the bargaining arrangements, and
- (b) a majority of the workers constituting the bargaining unit would be likely to favour an end of the bargaining arrangements.

(2) The Court must give reasons for the decision.

**111.**—(1) The Court must give notice to the parties of receipt of an application under paragraph 106 or 107.

(2) Within the acceptance period the Court must decide whether—

- (a) the request is valid within the terms of paragraph 104, and
- (b) the application is made in accordance with paragraph 106 or 107 and admissible within the terms of paragraphs 108 to 110.

(3) In deciding those questions the Court must consider any evidence which it has been given by the employer or the union (or unions).

(4) If the Court decides that the request is not valid or the application is not made in accordance with paragraph 106 or 107 or is not admissible—

- (a) the Court must give notice of its decision to the parties,
- (b) the Court must not accept the application, and

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- (c) no further steps are to be taken under this Part.
- (5) If the Court decides that the request is valid and the application is made in accordance with paragraph 106 or 107 and is admissible it must—
  - (a) accept the application, and
  - (b) give notice of the acceptance to the parties.
- (6) The acceptance period is—
  - (a) the period of 10 working days starting with the day after that on which the Court receives the application, or
  - (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.

#### *Workers' application to end arrangements*

**112.—**(1) A worker or workers falling within the bargaining unit may after the relevant date apply to the Court to have the bargaining arrangements ended.

- (2) An application is not admissible unless—
  - (a) it is made in such form as the Court specifies, and
  - (b) it is supported by such documents as the Court specifies.
- (3) An application is not admissible unless the worker gives (or workers give) to the employer and to the union (or each of the unions)—
  - (a) notice of the application, and
  - (b) a copy of the application and any documents supporting it.

**113.—**(1) An application under paragraph 112 is not admissible if—

- (a) a relevant application was made<sup>[F139]</sup>, or a notice under paragraph 99(2) was given,] within the period of 3 years prior to the date of the application under paragraph 112,
  - (b) the relevant application<sup>[F139]</sup>, or notice under paragraph 99(2),] and the application under paragraph 112 relate to the same bargaining unit, and
  - (c) the Court accepted the relevant application<sup>[F139]</sup> or (as the case may be) decided under paragraph 100 that the notice complied with paragraph 99(3)].
- (2) A relevant application is an application made to the Court—
- Sub-para. (a) rep. by 2004 NI 19*
- (b) by the employer under paragraph 106, 107 or 128, or
  - (c) by a worker (or workers) under paragraph 112.

**F139** 2004 NI 19

**114.—**(1) An application under paragraph 112 is not admissible unless the Court decides that—

- (a) at least 10 per cent of the workers constituting the bargaining unit favour an end of the bargaining arrangements, and
  - (b) a majority of the workers constituting the bargaining unit would be likely to favour an end of the bargaining arrangements.
- (2) The Court must give reasons for the decision.

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**115.—**(1) The Court must give notice to the worker (or workers), the employer and the union (or unions) of receipt of an application under paragraph 112.

(2) Within the acceptance period the Court must decide whether the application is admissible within the terms of paragraphs 112 to 114.

(3) In deciding whether the application is admissible the Court must consider any evidence which it has been given by the employer, the union (or unions) or any of the workers falling within the bargaining unit.

(4) If the Court decides that the application is not admissible—

- (a) the Court must give notice of its decision to the worker (or workers), the employer and the union (or unions),
- (b) the Court must not accept the application, and
- (c) no further steps are to be taken under this Part.

(5) If the Court decides that the application is admissible it must—

- (a) accept the application, and
- (b) give notice of the acceptance to the worker (or workers), the employer and the union (or unions).

(6) The acceptance period is—

- (a) the period of 10 working days starting with the day after that on which the Court receives the application, or
- (b) such longer period (so starting) as the Court may specify to the worker (or workers), the employer and the union (or unions) by notice containing reasons for the extension.

**116.—**(1) If the Court accepts the application, in the negotiation period the Court must help the employer, the union (or unions) and the worker (or workers) with a view to—

- (a) the employer and the union (or unions) agreeing to end the bargaining arrangements, or
- (b) the worker (or workers) withdrawing the application.

(2) The negotiation period is—

- (a) the period of 20 working days starting with the day after that on which the Court gives notice of acceptance of the application, or
- (b) such longer period (so starting) as the Court may decide with the consent of the worker (or workers), the employer and the union (or unions).

#### *Ballot on derecognition*

**117.—**(1) This paragraph applies if the Court accepts an application under paragraph 106 or 107.

(2) This paragraph also applies if—

- (a) the Court accepts an application under paragraph 112, and
- (b) in the period mentioned in paragraph 116(1) there is no agreement or withdrawal as there described.

(3) The Court must arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether the bargaining arrangements should be ended.

(4) The ballot must be conducted by a qualified independent person appointed by the Court.

(5) The ballot must be conducted within—

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- (a) the period of 20 working days starting with the day after that on which the qualified independent person is appointed, or
  - (b) such longer period (so starting) as the Court may decide.
- (6) The ballot must be conducted—
- (a) at a workplace or workplaces decided by the Court,
  - (b) by post, or
  - (c) by a combination of the methods described in sub-paragraphs (a) and (b),
- depending on the Court's preference.
- (7) In deciding how the ballot is to be conducted the Court must take into account—
- (a) the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace or workplaces;
  - (b) costs and practicality;
  - (c) such other matters as the Court considers appropriate.
- (8) The Court may not decide that the ballot is to be conducted as mentioned in sub-paragraph (6) unless there are special factors making such a decision appropriate; and special factors include—
- (a) factors arising from the location of workers or the nature of their employment;
  - (b) factors put to the Court by the employer or the union (or unions).
- [<sup>F140</sup>(8A) If the Court decides that the ballot must (in whole or in part) be conducted at a workplace (or workplaces), it may require arrangements to be made for workers—
- (a) who (but for the arrangements) would be prevented by the Court's decision from voting by post, and
  - (b) who are unable, for reasons relating to those workers as individuals, to cast their votes in the ballot at the workplace (or at any of them),
- to be given the opportunity (if they request it far enough in advance of the ballot for this to be practicable) to vote by post; and the Court's imposing such a requirement is not to be treated for the purposes of sub-paragraph (8) as a decision that the ballot be conducted as mentioned in sub-paragraph (6)(c).]
- (9) A person is a qualified independent person if—
- (a) he satisfies such conditions as may be specified for the purposes of this paragraph by order of the Department or is himself so specified, and
  - (b) there are no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the ballot might reasonably be called into question.
- (10) An order under sub-paragraph (9)(a) shall be subject to negative resolution.
- (11) As soon as is reasonably practicable after the Court is required under sub-paragraph (3) to arrange for the holding of a ballot it must inform the employer and the union (or unions)—
- (a) that it is so required;
  - (b) of the name of the person appointed to conduct the ballot and the date of his appointment;
  - (c) of the period within which the ballot must be conducted;
  - (d) whether the ballot is to be conducted by post or at a workplace or workplaces;
  - (e) of the workplace or workplaces concerned (if the ballot is to be conducted at a workplace or workplaces).

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**F140 2004 NI 19**

**118.**—(1) An employer who is informed by the Court under paragraph 117(11) must comply with the following<sup>[F141]</sup> five] duties.

(2) The first duty is to co-operate generally, in connection with the ballot, with the union (or unions) and the person appointed to conduct the ballot; and the second and third duties are not to prejudice the generality of this.

(3) The second duty is to give to the union (or unions) such access to the workers constituting the bargaining unit as is reasonable to enable the union(or unions) to inform the workers of the object of the ballot and to seek their support and their opinions on the issues involved.

(4) The third duty is to do the following (so far as it is reasonable to expect the employer to do so)—

- (a) to give to the Court, within the period of 10 working days starting with the day after that on which the employer is informed under paragraph 117(11), the names and home addresses of the workers constituting the bargaining unit;
- (b) to give to the Court, as soon as is reasonably practicable, the name and home address of any worker who joins the unit after the employer has complied with paragraph (a);
- (c) to inform the Court, as soon as is reasonably practicable, of any worker whose name has been given to the Court under paragraph (a) or (b) but who ceases to be within the unit.

<sup>[F142]</sup>(4A) The fourth duty is to refrain from making any offer to any or all of the workers constituting the bargaining unit which—

- (a) has or is likely to have the effect of inducing any or all of them not to attend any relevant meeting between the union (or unions) and the workers constituting the bargaining unit, and
- (b) is not reasonable in the circumstances.

(4B) The fifth duty is to refrain from taking or threatening to take any action against a worker solely or mainly on the grounds that he—

- (a) attended or took part in any relevant meeting between the union (or unions) and the workers constituting the bargaining unit, or
- (b) indicated his intention to attend or take part in such a meeting.

(4C) A meeting is a relevant meeting in relation to a worker for the purposes of subparagraph (4A) and (4B) if—

- (a) it is organised in accordance with any agreement reached concerning the second duty or as a result of a step ordered to be taken under paragraph 119 to remedy a failure to comply with that duty, and
- (b) it is one which the employer is, by such an agreement or order as is mentioned in paragraph (a), required to permit the worker to attend.

(4D) Without prejudice to the generality of the second duty imposed by this paragraph, an employer is to be taken to have failed to comply with that duty if—

- (a) he refuses a request for a meeting between the union (or unions) and any or all of the workers constituting the bargaining unit to be held in the absence of the employer or any representative of his (other than one who has been invited to attend the meeting) and it is not reasonable in the circumstances for him to do so,
- (b) he or a representative of his attends such a meeting without having been invited to do so,

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- (c) he seeks to record or otherwise be informed of the proceedings at any such meeting and it is not reasonable in the circumstances for him to do so, or
- (d) he refuses to give an undertaking that he will not seek to record or otherwise be informed of the proceedings at any such meeting unless it is reasonable in the circumstances for him to do either of those things.

(4E) The fourth and fifth duties do not confer any rights on a worker; but that does not affect any other right which a worker may have.]

(5) As soon as is reasonably practicable after the Court receives any information under sub-paragraph (4) it must pass it on to the person appointed to conduct the ballot.

(6) If asked to do so by the union (or unions) the person appointed to conduct the ballot must send to any worker—

- (a) whose name and home address have been given under sub-paragraph (5), and
- (b) who is still within the unit (so far as the person so appointed is aware),

any information supplied by the union (or unions) to the person so appointed.

(7) The duty under sub-paragraph (6) does not apply unless the union bears (or unions bear) the cost of sending the information.

[<sup>F143</sup>(8) Each of the powers specified in sub-paragraph (9) shall be taken to include power to issue Codes of Practice—

- (a) about reasonable access for the purposes of sub-paragraph (3), and
- (b) about the fourth duty imposed by this paragraph.

(9) The powers are—

- (a) the power of the Agency under Article 90 of the 1992 Order;
- (b) the power of the Department under Article 95 of that Order.]

**F141** Word in Sch. 1A para. 118(1) substituted (8.1.2006) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)), arts. 1(2), 3, **Sch. 1 para. 9(7)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**F142** Sch. 1A para. 118(4A)-(4E) inserted (8.1.2006) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)), arts. 1(2), 3, **Sch. 1 para. 9(8)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**F143** Sch. 1A para. 118(8)(9) substituted (8.1.2006) for Sch. 1A para. 118(8) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)), arts. 1(2), 3, **Sch. 1 para. 9(9)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**119.**—(1) If the Court is satisfied that the employer has failed to fulfil any of the<sup>F144</sup> duties imposed on him] by paragraph 118, and the ballot has not been held, the Court may order the employer—

- (a) to take such steps to remedy the failure as the Court considers reasonable and specifies in the order, and
- (b) to do so within such period as the Court considers reasonable and specifies in the order.

(2) If—

- (a) the ballot has been arranged in consequence of an application under paragraph 106 or 107,
- (b) the Court is satisfied that the employer has failed to comply with an order under sub-paragraph (1), and
- (c) the ballot has not been held,

the Court may refuse the application.

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<sup>F145</sup>(3) .....

(4) If the Court refuses an application under sub-paragraph (2) it shall take steps to cancel the holding of the ballot; and if the ballot is held it shall have no effect.

**F144** Words in **Sch. 1A para. 119(1)** substituted (8.1.2006) by **Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19))**, arts. 1(2), 3, **Sch. 1 para. 9(10)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)  
**F145** **Sch. 1A para. 119(3)** repealed (8.1.2006) by **Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19))**, arts. 1(2), 3, 30(2), **Sch. 1 para. 21(22)**, **Sch. 3**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

[<sup>F146</sup>**119A.**—(1) Each of the parties informed by the Court under paragraph 117(11) must refrain from using any unfair practice.

- (2) A party uses an unfair practice if, with a view to influencing the result of the ballot, the party—
  - (a) offers to pay money or give money’s worth to a worker entitled to vote in the ballot in return for the worker’s agreement to vote in a particular way or to abstain from voting,
  - (b) makes an outcome-specific offer to a worker entitled to vote in the ballot;
  - (c) coerces or attempts to coerce a worker entitled to vote in the ballot to disclose—
    - (i) whether he intends to vote or to abstain from voting in the ballot, or
    - (ii) how he intends to vote, or how he has voted, in the ballot,
  - (d) dismisses or threatens to dismiss a worker,
  - (e) takes or threatens to take disciplinary action against a worker,
  - (f) subjects or threatens to subject a worker to any other detriment, or
  - (g) uses or attempts to use undue influence on a worker entitled to vote in the ballot.

(3) For the purposes of sub-paragraph (2)(b) an “outcome-specific offer” is an offer to pay money or give money’s worth which—

- (a) is conditional on—
  - (i) the issuing by the Court of a declaration that the bargaining arrangements are to cease to have effect; or
  - (ii) the refusal by the Court of an application under paragraph 106. 107 or 112 , and
- (b) is not conditional on anything which is done or occurs as a result of that declaration or, as the case may be, of that refusal.

(4) The duty imposed by this paragraph does not confer any rights on a worker; but that does not affect any other right which a worker may have.

(5) Each of the following powers shall be taken to include power to issue Codes of Practice about unfair practices for the purposes of this paragraph—

- (a) the power of the Agency under Article 90 of the 1992 Order;
- (b) the power of the Department under Article 95 of that Order.

**F146** **Sch. 1A paras. 119A-119I** inserted (8.1.2006) by **Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19))**, arts. 1(2), 3, **Sch. 1 para. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**119B.**—(1) A party may complain to the Court that another party has failed to comply with paragraph 119A.

(2) A complaint under sub-paragraph (1) must be made on or before the first working day after—



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- (a) the date of the ballot, or
- (b) if votes may be cast in the ballot on more than one day, the last of those days.
- (3) Within the decision period the Court must decide whether the complaint is well-founded.
- (4) A complaint is well-founded if—
  - (a) the Court finds that the party complained against used an unfair practice, and
  - (b) the Court is satisfied that the use of that practice changed or was likely to change, in the case of a worker entitled to vote in the ballot—
    - (i) his intention to vote or to abstain from voting,
    - (ii) his intention to vote in a particular way, or
    - (iii) how he voted.
- (5) The decision period is—
  - (a) the period of 10 working days starting with the day after that on which the complaint under sub-paragraph (1) was received by the Court, or
  - (b) such longer period (so starting) as the Court may specify to the parties by a notice containing reasons for the extension.
- (6) If, at the beginning of the decision period, the ballot has not begun, the Court may by notice to the parties and the qualified independent person postpone the date on which it is to begin until a date which falls after the end of the decision period.

**F146** Sch. 1A paras. 119A-119I inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**119C.**—(1) This paragraph applies if the Court decides that a complaint under paragraph 119B is well-founded.

- (2) The Court must, as soon as is reasonably practicable, issue a declaration to that effect.
- (3) The Court may do either or both of the following—
  - (a) order the party concerned to take any action specified in the order within such period as may be so specified, or
  - (b) make arrangements for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether the bargaining arrangements should be ended.
- (4) The Court may give an order or make arrangements under sub-paragraph (3) either at the same time as it issues the declaration under sub-paragraph (2) or at any other time before it acts under paragraph 121.
- (5) The action specified in an order under sub-paragraph (3)(a) shall be such as the Court considers reasonable in order to mitigate the effect of the failure of the party complained against to comply with the duty imposed by paragraph 119A.
- (6) The Court may give more than one order under sub-paragraph (3)(a).

**F146** Sch. 1A paras. 119A-119I inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**119D.**—(1) This paragraph applies if the Court issues a declaration under paragraph 119C(2) and the declaration states that the unfair practice used consisted of or included—

- (a) the use of violence, or

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- (b) the dismissal of a union official.
- (2) This paragraph also applies if the Court has made an order under paragraph 119C(3)(a) and—
  - (a) it is satisfied that the party subject to the order has failed to comply with it, or
  - (b) it makes another declaration under paragraph 119C(2) in relation to a complaint against that party.
- (3) If the party concerned is the employer, the Court may refuse the employer’s application under paragraph 106 or 107.
- (4) If the party concerned is a union, the Court may issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the Court in the declaration.
- (5) If a declaration is issued under sub-paragraph (4) the bargaining arrangements shall cease to have effect accordingly.
- (6) The powers conferred by this paragraph are in addition to those conferred by paragraph 119C(3).

**F146** Sch. 1A paras. 119A-119I inserted (8.1.2006) by *Employment Relations (Northern Ireland) Order 2004* (S.I. 2004/3078 (N.I. 19)), arts. 1(2), 3, **Sch. 1 para. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

- 119E.**—(1) This paragraph applies if the Court issues a declaration that a complaint under paragraph 119B is well-founded and—
- (a) makes arrangements under paragraph 119C(3)(b),
  - (b) refuses under paragraph 119D(3) or 119H(6) an application under paragraph 106, 107 or 112, or
  - (c) issues a declaration under paragraph 119D(4) or 119H(5).
- (2) If the ballot in connection with which the complaint was made has not been held, the Court shall take steps to cancel it.
- (3) If that ballot is held, it shall have no effect.

**F146** Sch. 1A paras. 119A-119I inserted (8.1.2006) by *Employment Relations (Northern Ireland) Order 2004* (S.I. 2004/3078 (N.I. 19)), arts. 1(2), 3, **Sch. 1 para. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

- 119F.**—(1) This paragraph applies if the Court makes arrangements under paragraph 119C(3)(b).
- (2) Paragraphs 117(4) to (11) and 118 to 121 apply in relation to those arrangements as they apply in relation to arrangements made under paragraph 117(3) but with the modifications specified in sub-paragraphs (3) to (5).
- (3) An employer’s duty under paragraph (a) of paragraph 118(4) is limited to—
- (a) giving the Court the names and home addresses of any workers in the bargaining unit which have not previously been given to it in accordance with that duty;
  - (b) giving the Court the names and home addresses of those workers who have joined the bargaining unit since he last gave the Court information in accordance with that duty;
  - (c) informing the Court of any change to the name or home address of a worker whose name and home address have previously been given to the Court in accordance with that duty; and
  - (d) informing the Court of any worker whose name had previously been given to it in accordance with that duty who has ceased to be within the bargaining unit.

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(4) Any order given under paragraph 119(1) or 119C(3)(a) for the purposes of the cancelled or ineffectual ballot shall have effect (to the extent that the Court specifies in a notice to the parties) as if it were made for the purposes of the ballot for which arrangements are made under paragraph 119C(3)(b).

(5) The gross costs of the ballot shall be borne by such of the parties and in such proportions as the Court may determine and, accordingly, sub-paragraphs (2) and (3) of paragraph 120 shall be omitted and the reference in sub-paragraph (4) of that paragraph to the employer and the union (or each of the unions) shall be construed as a reference to the party or parties which bear the costs in accordance with the Court's determination.

**F146** Sch. 1A paras. 119A-119I inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**119G.**—(1) Paragraphs 119A to 119C, 119E and 119F apply in relation to an application under paragraph 112 as they apply in relation to an application under paragraph 106 or 107 but with the modifications specified in this paragraph.

(2) References in those paragraphs (and, accordingly, in paragraph 119H(3)) to a party shall be read as including references to the applicant worker or workers; but this is subject to sub-paragraph (3).

(3) The reference in paragraph 119A(1) to a party informed under paragraph 117(11) shall be read as including a reference to the applicant worker or workers.

**F146** Sch. 1A paras. 119A-119I inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**119H.**—(1) This paragraph applies in relation to an application under paragraph 112 in the cases specified in sub-paragraphs (2) and (3).

(2) The first case is where the Court issues a declaration under paragraph 119C(2) and the declaration states that the unfair practice used consisted of or included—

- (a) the use of violence, or
- (b) the dismissal of a union official.

(3) The second case is where the Court has made an order under paragraph 119C(3)(a) and—

- (a) it is satisfied that the party subject to the order has failed to comply with it, or
- (b) it makes another declaration under paragraph 119C(2) in relation to a complaint against that party.

(4) If the party concerned is the employer, the Court may order him to refrain from further campaigning in relation to the ballot.

(5) If the party concerned is a union, the Court may issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the Court in the declaration.

(6) If the party concerned is the applicant worker (or any of the applicant workers), the Court may refuse the application under paragraph 112.

(7) If a declaration is issued under sub-paragraph (5) the bargaining arrangements shall cease to have effect accordingly.

(8) The powers conferred by this paragraph are in addition to those conferred by paragraph 119C(3).

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**F146** Sch. 1A paras. 119A-119I inserted (8.1.2006) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)), arts. 1(2), 3, **Sch. 1 para. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**119I.**—(1) This paragraph applies if—

- (a) a ballot has been arranged in consequence of an application under paragraph 112,
- (b) the Court has given the employer an order under paragraph 119(1), 119C(3) or 119H(4), and
- (c) the ballot for the purposes of which the order was made (or any other ballot for the purposes of which it has effect) has not been held.

(2) The applicant worker (or each of the applicant workers) and the union (or each of the unions) is entitled to enforce obedience to the order.

(3) The order may be enforced in the same way as an order of the county court.]

**F146** Sch. 1A paras. 119A-119I inserted (8.1.2006) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)), arts. 1(2), 3, **Sch. 1 para. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**120.**—(1) This paragraph applies if the holding of a ballot has been arranged under paragraph 117(3), whether or not it has been cancelled.

(2) The gross costs of the ballot shall be borne—

- (a) as to half, by the employer, and
- (b) as to half, by the union (or unions).

(3) If there is more than one union they shall bear their half of the gross costs—

- (a) in such proportions as they jointly indicate to the person appointed to conduct the ballot, or
- (b) in the absence of such an indication, in equal shares.

(4) The person appointed to conduct the ballot may send to the employer and the union (or each of the unions) a demand stating—

- (a) the gross costs of the ballot, and
- (b) the amount of the gross costs to be borne by the recipient.

(5) In such a case the recipient must pay the amount stated to the person sending the demand, and must do so within the period of 15 working days starting with the day after that on which the demand is received.

(6) If the amount stated is not paid in accordance with sub-paragraph (5) it shall, if a county court so orders, be recoverable as if it were payable under an order of that court.

[<sup>F147</sup>(6A) Where an amount is recoverable from a union under sub-paragraph (6) execution may be carried out, to the same extent and in the same manner as if the union were a body corporate, against any property held in trust for the union other than protected property as defined in Article 23(2) of the 1992 Order.]

(7) References to the costs of the ballot are to—

- (a) the costs wholly, exclusively and necessarily incurred in connection with the ballot by the person appointed to conduct it,
- (b) such reasonable amount as the person appointed to conduct the ballot charges for his services, and
- (c) such other costs as the employer and the union (or unions) agree.

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**F147** Sch. 1A para. 120(6A) inserted (8.1.2006) by *Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19))*, arts. 1(2), 3, **Sch. 1 para. 21(23)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

**121.**—(1) As soon as is reasonably practicable after the Court is informed of the result of a ballot by the person conducting it, the Court must act under this paragraph.

[<sup>F148</sup>(1A) The duty in sub-paragraph (1) does not apply if the Court makes arrangements under paragraph 119C(3)(b).]

(2) The Court must inform the employer and the union (or unions) of the result of the ballot.

(3) If the result is that the proposition that the bargaining arrangements should be ended is supported by—

(a) a majority of the workers voting, and

(b) at least 40 per cent of the workers constituting the bargaining unit,

the Court must issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the Court in the declaration.

(4) If the result is otherwise the Court must refuse the application under paragraph 106, 107 or 112.

(5) If a declaration is issued under sub-paragraph (3) the bargaining arrangements shall cease to have effect accordingly.

(6) The Department may by order amend sub-paragraph (3) so as to specify a different degree of support.

(7) No order shall be made under sub-paragraph(6) unless a draft of it has been laid before, and approved by a resolution of, the Assembly.

**F148** Sch. 1A para. 121(1A) inserted (8.1.2006) by *Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19))*, arts. 1(2), 3, **Sch. 1 para. 13(2)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

## PART V

### DERECOGNITION WHERE RECOGNITION AUTOMATIC

#### *Introduction*

**122.**—(1) This Part of this Schedule applies if—

(a) the Court has issued a declaration under paragraph<sup>F149</sup> 19F(5), 22(2), 27(2) or 27D(3)] that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit, and

(b) the parties have agreed under paragraph 30 or 31 a method by which they will conduct collective bargaining.

(2) In such a case references in this Part to the bargaining arrangements are to—

(a) the declaration, and

(b) the parties' agreement.

**F149** 2004 NI 19

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**123.**—(1) This Part also applies if—

- (a) the Court has issued a declaration under paragraph<sup>F150</sup> 19F(5), 22(2), 27(2) or 27D(3)] that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit, and
- (b) the Court has specified to the parties under paragraph 31(3) the method by which they are to conduct collective bargaining.

(2) In such a case references in this Part to the bargaining arrangements are to—

- (a) the declaration, and
- (b) anything effective as, or as if contained in, a legally enforceable contract by virtue of paragraph 31.

**F150** 2004 NI 19

**124.**—(1) This Part also applies if the Court has issued a declaration under paragraph 87(2) that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit.

(2) In such a case references in this Part to the bargaining arrangements are to—

- (a) the declaration, and
- (b) paragraph 87(6)(b).

**125.** For the purposes of this Part the relevant date is the date of the expiry of the period of 3 years starting with the date of the Court's declaration.

**126.** References in this Part of this Schedule to the parties are to the employer and the union (or unions) concerned.

#### *Employer's request to end arrangements*

**127.**—(1) The employer may after the relevant date request the union (or each of the unions) to agree to end the bargaining arrangements.

(2) The request is not valid unless it—

- (a) is in writing,
- (b) is received by the union (or each of the unions),
- (c) identifies the bargaining arrangements,
- (d) states that it is made under this Schedule, and
- (e) states that fewer than half of the workers constituting the bargaining unit are members of the union (or unions).

**128.**—(1) If before the end of the negotiation period the parties agree to end the bargaining arrangements no further steps are to be taken under this Part.

(2) If no such agreement is made before the end of the negotiation period, the employer may apply to the Court for the holding of a secret ballot to decide whether the bargaining arrangements should be ended.

(3) The negotiation period is the period of 10 working days starting with the day after—

- (a) the day on which the union receives the request, or
- (b) the last day on which any of the unions receives the request;

or such longer period (so starting) as the parties may from time to time agree.

**129.**—(1) An application under paragraph 128 is not admissible unless—

- (a) it is made in such form as the Court specifies, and
- (b) it is supported by such documents as the Court specifies.

(2) An application under paragraph 128 is not admissible unless the employer gives to the union (or each of the unions)—

- (a) notice of the application, and
- (b) a copy of the application and any documents supporting it.

**130.**—(1) An application under paragraph 128 is not admissible if—

- (a) a relevant application was made<sup>[F151]</sup>, or a notice under paragraph 99(2) was given,] within the period of 3 years prior to the date of the application under paragraph 128,
- (b) the relevant application<sup>[F151]</sup>, or notice under paragraph 99(2),] and the application under paragraph 128 relate to the same bargaining unit, and
- (c) the Court accepted the relevant application<sup>[F151]</sup> or (as the case may be) decided under paragraph 100 that the notice complied with paragraph 99(3)].

(2) A relevant application is an application made to the Court—

*Sub-para. (a) rep. by 2004 NI 19*

- (b) by the employer under paragraph 106, 107 or 128, or
- (c) by a worker (or workers) under paragraph 112.

**F151** [2004 NI 19](#)

**131.**—(1) An application under paragraph 128 is not admissible unless the Court is satisfied that fewer than half of the workers constituting the bargaining unit are members of the union (or unions).

(2) The Court must give reasons for the decision.

**132.**—(1) The Court must give notice to the parties of receipt of an application under paragraph 128.

(2) Within the acceptance period the Court must decide whether—

- (a) the request is valid within the terms of paragraph 127, and
- (b) the application is admissible within the terms of paragraphs 129 to 131.

(3) In deciding those questions the Court must consider any evidence which it has been given by the parties.

(4) If the Court decides that the request is not valid or the application is not admissible—

- (a) the Court must give notice of its decision to the parties,
- (b) the Court must not accept the application, and
- (c) no further steps are to be taken under this Part.

(5) If the Court decides that the request is valid and the application is admissible it must—

- (a) accept the application, and
- (b) give notice of the acceptance to the parties.

(6) The acceptance period is—

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- (a) the period of 10 working days starting with the day after that on which the Court receives the application, or
- (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.

#### *Ballot on derecognition*

**133.**—(1) Paragraph 117 applies if the Court accepts an application under paragraph 128 (as well as in the cases mentioned in paragraph 117(1) and (2)).

(2) Paragraphs 118 to 121 apply accordingly, but as if—

- (a) the<sup>F152</sup> references in paragraphs 119(2)(a) and 119D(3)] to paragraph 106 or 107 were to paragraph 106, 107 or 128;
- (b) the<sup>F152</sup> references in paragraphs 119A(3)(a)(ii), 119E(1)(b) and 121(4)] to paragraph 106, 107 or 112 were to paragraph 106, 107, 112 or 128.

**F152** 2004 NI 19

## PART VI

### DERECOGNITION WHERE UNION NOT INDEPENDENT

#### *Introduction*

**134.**—(1) This Part applies if—

- (a) an employer and a union (or unions) have agreed that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a group or groups of workers, and
  - (b) the union does not have (or none of the unions has) a certificate<sup>F153</sup> of independence].
- (2) In such a case references in this Part to the bargaining arrangements are to—
- (a) the parties' agreement mentioned in sub-paragraph (1)(a), and
  - (b) any agreement between the parties as to the method by which they will conduct collective bargaining.

**F153** 2004 NI 19

**135.** In this Part references to the parties are to the employer and the union (or unions).

**136.** In this Part references to the bargaining unit are to the group of workers referred to in paragraph 134(1)(a) (or the groups taken together).

#### *Workers' application to end arrangements*

**137.**—(1) A worker or workers falling within the bargaining unit may apply to the Court to have the bargaining arrangements ended.

- (2) An application is not admissible unless—
  - (a) it is made in such form as the Court specifies, and



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(b) it is supported by such documents as the Court specifies.

(3) An application is not admissible unless the worker gives (or workers give) to the employer and to the union (or each of the unions)—

(a) notice of the application, and

(b) a copy of the application and any documents supporting it.

**138.** An application under paragraph 137 is not admissible if the Court is satisfied that any of the unions has a certificate<sup>F154</sup> of independence].

**F154** 2004 NI 19

**139.**—(1) An application under paragraph 137 is not admissible unless the Court decides that—

(a) at least 10 per cent of the workers constituting the bargaining unit favour an end of the bargaining arrangements, and

(b) a majority of the workers constituting the bargaining unit would be likely to favour an end of the bargaining arrangements.

(2) The Court must give reasons for the decisions.

**140.** An application under paragraph 137 is not admissible if the Court is satisfied that—

(a) the union (or any of the unions) has made an application to the Certification Officer under Article 6 of the 1992 Order for a certificate that it is independent, and

(b) the Certification Officer has not come to a decision on the application (or each of the applications).

**141.**—(1) The Court must give notice to the worker (or workers), the employer and the union (or unions) of receipt of an application under paragraph 137.

(2) Within the acceptance period the Court must decide whether the application is admissible within the terms of paragraphs 137 to 140.

(3) In deciding whether the application is admissible the Court must consider any evidence which it has been given by the employer, the union (or unions) or any of the workers falling within the bargaining unit.

(4) If the Court decides that the application is not admissible—

(a) the Court must give notice of its decision to the worker (or workers), the employer and the union (or unions),

(b) the Court must not accept the application, and

(c) no further steps are to be taken under this Part.

(5) If the Court decides that the application is admissible it must—

(a) accept the application, and

(b) give notice of the acceptance to the worker (or workers), the employer and the union (or unions).

(6) The acceptance period is—

(a) the period of 10 working days starting with the day after that on which the Court receives the application, or

(b) such longer period (so starting) as the Court may specify to the worker (or workers), the employer and the union (or unions) by notice containing reasons for the extension.

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**142.**—(1) If the Court accepts the application, in the negotiation period the Court must help the employer, the union (or unions) and the worker (or workers) with a view to—

- (a) the employer and the union (or unions) agreeing to end the bargaining arrangements, or
- (b) the worker (or workers) withdrawing the application.

(2) The negotiation period is—

- (a) the period of 20 working days starting with the day after that on which the Court gives notice of acceptance of the application, or
- (b) such longer period (so starting) as the Court may decide with the consent of the worker (or workers), the employer and the union (or unions).

**143.**—(1) This paragraph applies if—

- (a) the Court accepts an application under paragraph 137,
- (b) during the period mentioned in paragraph 142(1) or 145(3) the Court is satisfied that the union (or each of the unions) has made an application to the Certification Officer under Article 6 of the 1992 Order for a certificate that it is independent, that the application (or each of the applications) to the Certification Officer was made before the application under paragraph 137 and that the Certification Officer has not come to a decision on the application (or each of the applications), and
- (c) at the time the Court is so satisfied there has been no agreement or withdrawal as described in paragraph 142(1) or 145(3).

(2) In such a case paragraph 142(1) or 145(3) shall cease to apply from the time when the Court is satisfied as mentioned in sub-paragraph (1)(b).

**144.**—(1) This paragraph applies if the Court is subsequently satisfied that—

- (a) the Certification Officer has come to a decision on the application (or each of the applications) mentioned in paragraph 143(1)(b), and
- (b) his decision is that the union (or any of the unions) which made an application under Article 6 of the 1992 Order is independent.

(2) In such a case—

- (a) the Court must give the worker (or workers), the employer and the union (or unions) notice that it is so satisfied, and
- (b) the application under paragraph 137 shall be treated as not having been made.

**145.**—(1) This paragraph applies if the Court is subsequently satisfied that—

- (a) the Certification Officer has come to a decision on the application (or each of the applications) mentioned in paragraph 143(1)(b), and
- (b) his decision is that the union (or each of the unions) which made an application under Article 6 of the 1992 Order is not independent.

(2) The Court must give the worker (or workers), the employer and the union (or unions) notice that it is so satisfied.

(3) In the new negotiation period the Court must help the employer, the union (or unions) and the worker (or workers) with a view to—

- (a) the employer and the union (or unions) agreeing to end the bargaining arrangements, or
- (b) the worker (or workers) withdrawing the application.

(4) The new negotiation period is—

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- (a) the period of 20 working days starting with the day after that on which the Court gives notice under sub-paragraph (2), or
- (b) such longer period (so starting) as the Court may decide with the consent of the worker (or workers), the employer and the union (or unions).

**146.**—(1) This paragraph applies if—

- (a) the Court accepts an application under paragraph 137,
- (b) paragraph 143 does not apply, and
- (c) during the relevant period the Court is satisfied that a certificate of independence has been issued to the union (or any of the unions) under Article 6 of the 1992 Order.

(2) In such a case the relevant period is the period starting with the first day of the negotiation period (as defined in paragraph 142(2)) and ending with the first of the following to occur—

- (a) any agreement by the employer and the union (or unions) to end the bargaining arrangements;
- (b) any withdrawal of the application by the worker (or workers);
- (c) the Court being informed of the result of a relevant ballot by the person conducting it;

and a relevant ballot is a ballot held by virtue of this Part.

(3) This paragraph also applies if—

- (a) the Court gives notice under paragraph 145(2), and
- (b) during the relevant period the Court is satisfied that a certificate of independence has been issued to the union (or any of the unions) under Article 6 of the 1992 Order.

(4) In such a case, the relevant period is the period starting with the first day of the new negotiation period (as defined in paragraph 145(4)) and ending with the first of the following to occur—

- (a) any agreement by the employer and the union (or unions) to end the bargaining arrangements;
- (b) any withdrawal of the application by the worker (or workers);
- (c) the Court being informed of the result of a relevant ballot by the person conducting it;

and a relevant ballot is a ballot held by virtue of this Part.

(5) If this paragraph applies—

- (a) the Court must give the worker (or workers), the employer and the union (or unions) notice that it is satisfied as mentioned in sub-paragraph (1)(c) or (3)(b), and
- (b) the application under paragraph 137 shall be treated as not having been made.

#### *Ballot on derecognition*

**147.**—(1) Paragraph 117 applies if—

- (a) the Court accepts an application under paragraph 137, and
- (b) in the period mentioned in paragraph 142(1) or 145(3) there is no agreement or withdrawal as there described,

(as well as in the cases mentioned in paragraph 117(1) and (2)).

(2) Paragraphs 118 to 121 apply accordingly, but as if—

- (a) the<sup>F155</sup> references in paragraphs 119H(1) and 119I(1)(a) to paragraph 112 were to paragraph 112 or 137;

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- (b) the<sup>F155</sup> references in paragraphs 119A(3)(a)(ii), 119E(1)(b) and 121(4)] to paragraph 106, 107 or 112 were to paragraph 106, 107, 112 or 137;
- (c) the reference in paragraph 119(4) to the Court refusing an application under paragraph 119(2) included a reference to it being required to give notice under paragraph 146(5).

F155 2004 NI 19

#### *Derecognition: other cases*

**148.**—(1) This paragraph applies if as a result of a declaration by the Court another union is (or other unions are) recognised as entitled to conduct collective bargaining on behalf of a group of workers at least one of whom falls within the bargaining unit.

(2) The Court must issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the Court in the declaration.

(3) If a declaration is issued under sub-paragraph (2) the bargaining arrangements shall cease to have effect accordingly.

(4) It is for the Court to decide whether sub-paragraph (1) is fulfilled, but in deciding the Court may take account of the views of any person it believes has an interest in the matter.

## PART VII

### LOSS OF INDEPENDENCE

#### *Introduction*

**149.**—(1) This Part applies if the Court has issued a declaration that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit.

(2) In such a case references in this Part to the bargaining arrangements are to the declaration and to the provisions relating to the collective bargaining method.

(3) For this purpose the provisions relating to the collective bargaining method are—

- (a) the parties' agreement as to the method by which collective bargaining is to be conducted,
- (b) anything effective as, or as if contained in, a legally enforceable contract and relating to the method by which collective bargaining is to be conducted, or
- (c) any provision of Part III that a method of collective bargaining is to have effect.

**150.**—(1) This Part also applies if—

- (a) the parties have agreed that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit,
- (b) the Court has specified to the parties under paragraph 63(2) the method by which they are to conduct collective bargaining, and
- (c) the parties have not agreed in writing to replace the method or that paragraph 63(3) shall not apply.

(2) In such a case references in this Part to the bargaining arrangements are to—

- (a) the parties' agreement mentioned in sub-paragraph (1)(a), and

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- (b) anything effective as, or as if contained in, a legally enforceable contract by virtue of paragraph 63.

**151.** References in this Part to the parties are to the employer and the union (or unions) concerned.

#### *Loss of certificate*

**152.—**(1) This paragraph applies if—

- (a) only one union is a party, and
- (b) under Article 6 of the 1992 Order the Certification Officer withdraws the union's certificate of independence.

(2) This paragraph also applies if—

- (a) more than one union is a party, and
- (b) under Article 6 of the 1992 Order the Certification Officer withdraws the certificate of independence of each union (whether different certificates are withdrawn on the same or on different days).

(3) Sub-paragraph (4) shall apply on the day after—

- (a) the day on which the Certification Officer informs the union (or unions) of the withdrawal (or withdrawals), or
- (b) if there is more than one union, and he informs them on different days, the last of those days.

(4) The bargaining arrangements shall cease to have effect; and the parties shall be taken to agree that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit concerned.

#### *Certificate re-issued*

**153.—**(1) This paragraph applies if—

- (a) only one union is a party,
- (b) paragraph 152 applies, and
- (c) as a result of an appeal under Article 6 of the 1992 Order against the decision to withdraw the certificate, the Certification Officer issues a certificate that the union is independent.

(2) This paragraph also applies if—

- (a) more than one union is a party,
- (b) paragraph 152 applies, and
- (c) as a result of an appeal under Article 6 of the 1992 Order against a decision to withdraw a certificate, the Certification Officer issues a certificate that any of the unions concerned is independent.

(3) Sub-paragraph (4) shall apply, beginning with the day after—

- (a) the day on which the Certification Officer issues the certificate, or
- (b) if there is more than one union, the day on which he issues the first or only certificate.

(4) The bargaining arrangements shall have effect again; and paragraph 152 shall cease to apply.

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### *Miscellaneous*

**154.** Parts III to VI shall not apply in the case of the parties at any time when, by virtue of this Part, the bargaining arrangements do not have effect.

**155.** If—

- (a) by virtue of paragraph 153 the bargaining arrangements have effect again beginning with a particular day, and
- (b) in consequence Article 44B applies in relation to the bargaining unit concerned,

for the purposes of Article 44B(3) that day shall be taken to be the day on which Article 44B first applies in relation to the unit.

## PART VIII DETRIMENT

### *Detriment*

**156.—**(1) A worker has a right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer if the act or failure takes place on any of the grounds set out in sub-paragraph (2).

(2) The grounds are that—

- (a) the worker acted with a view to obtaining or preventing recognition of a union (or unions) by the employer under this Schedule;
- (b) the worker indicated that he supported or did not support recognition of a union (or unions) by the employer under this Schedule;
- (c) the worker acted with a view to securing or preventing the ending under this Schedule of bargaining arrangements;
- (d) the worker indicated that he supported or did not support the ending under this Schedule of bargaining arrangements;
- (e) the worker influenced or sought to influence the way in which votes were to be cast by other workers in a ballot arranged under this Schedule;
- (f) the worker influenced or sought to influence other workers to vote or to abstain from voting in such a ballot;
- (g) the worker voted in such a ballot;
- (h) the worker proposed to do, failed to do, or proposed to decline to do, any of the things referred to in paragraphs (a) to (g).

(3) A ground does not fall within sub-paragraph (2) if it constitutes an unreasonable act or omission by the worker.

(4) This paragraph does not apply if the worker is an employee and the detriment amounts to dismissal within the meaning of the Employment Rights Order.

(5) A worker may present a complaint to an industrial tribunal on the ground that he has been subjected to a detriment in contravention of this paragraph.

(6) Apart from the remedy by way of complaint as mentioned in sub-paragraph (5), a worker has no remedy for infringement of the right conferred on him by this paragraph.

**157.**—(1) An industrial tribunal shall not consider a complaint under paragraph 156 unless it is presented—

- (a) before the end of the period of 3 months starting with the date of the act or failure to which the complaint relates or, if that act or failure is part of a series of similar acts or failures (or both), the last of them, or
- (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.

(2) For the purposes of sub-paragraph (1)—

- (a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period;
- (b) a failure to act shall be treated as done when it was decided on.

(3) For the purposes of sub-paragraph (2), in the absence of evidence establishing the contrary an employer must be taken to decide on a failure to act—

- (a) when he does an act inconsistent with doing the failed act, or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

**158.** On a complaint under paragraph 156 it shall be for the employer to show the ground on which he acted or failed to act.

**159.**—(1) If the industrial tribunal finds that a complaint under paragraph 156 is well-founded it shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure complained of.

(2) The amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to the infringement complained of and to any loss sustained by the complainant which is attributable to the act or failure which infringed his right.

(3) The loss shall be taken to include—

- (a) any expenses reasonably incurred by the complainant in consequence of the act or failure complained of, and
- (b) loss of any benefit which he might reasonably be expected to have had but for that act or failure.

(4) In ascertaining the loss, the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of Northern Ireland.

(5) If the tribunal finds that the act or failure complained of was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

**160.**—(1) If the industrial tribunal finds that a complaint under paragraph 156 is well-founded and—

- (a) the detriment of which the worker has complained is the termination of his worker's contract, but
- (b) that contract was not a contract of employment,

any compensation awarded under paragraph 159 must not exceed the limit specified in sub-paragraph (2).

(2) The limit is the total of—

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- (a) the sum which would be the basic award for unfair dismissal, calculated in accordance with Article 153 of the Employment Rights Order, if the worker had been an employee and the contract terminated had been a contract of employment, and
- (b) the sum for the time being specified in Article 158 of that Order which is the limit for a compensatory award to a person calculated in accordance with Article 157 of that Order.

### *Dismissal*

**161.**—(1) For the purposes of Part XI of the Employment Rights Order (unfair dismissal) the dismissal of an employee shall be regarded as unfair if the dismissal was made—

- (a) for a reason set out in sub-paragraph (2), or
- (b) for reasons the main one of which is one of those set out in sub-paragraph (2).

(2) The reasons are that—

- (a) the employee acted with a view to obtaining or preventing recognition of a union (or unions) by the employer under this Schedule;
- (b) the employee indicated that he supported or did not support recognition of a union (or unions) by the employer under this Schedule;
- (c) the employee acted with a view to securing or preventing the ending under this Schedule of bargaining arrangements;
- (d) the employee indicated that he supported or did not support the ending under this Schedule of bargaining arrangements;
- (e) the employee influenced or sought to influence the way in which votes were to be cast by other workers in a ballot arranged under this Schedule;
- (f) the employee influenced or sought to influence other workers to vote or to abstain from voting in such a ballot;
- (g) the employee voted in such a ballot;
- (h) the employee proposed to do, failed to do, or proposed to decline to do, any of the things referred to in paragraphs (a) to (g).

(3) A reason does not fall within sub-paragraph (2) if it constitutes an unreasonable act or omission by the employee.

### *Selection for redundancy*

**162.** For the purposes of Part XI of the Employment Rights Order (unfair dismissal) the dismissal of an employee shall be regarded as unfair if the reason or principal reason for the dismissal was that he was redundant but it is shown—

- (a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and
- (b) that the reason (or, if more than one, the principal reason) why he was selected for dismissal was one falling within paragraph 161(2).

*Para. 163 rep. by 1999 NI 9*



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#### *Exclusion of requirement as to qualifying period*

**164.** Articles 140 and 141 of the Employment Rights Order (qualifying period and upper age limit for unfair dismissal protection) do not apply to a dismissal which by virtue of paragraph 161 or 162 is regarded as unfair for the purposes of Part XI of that Order.

#### *Meaning of worker's contract*

**165.** References in this Part to a worker's contract shall be construed in accordance with Article 3(3) of the Employment Rights Order.

## PART IX GENERAL

#### *[<sup>F156</sup>Rights of appeal against demands for costs*

**F156** 2004 NI 19

**165A.**—(1) This paragraph applies where a demand has been made under paragraph 19E(3), 28(4) or 120(4).

(2) The recipient of the demand may appeal against the demand within 4 weeks starting with the day after receipt of the demand.

(3) An appeal under this paragraph lies to an industrial tribunal.

(4) On an appeal under this paragraph against a demand under paragraph 19E(3), the tribunal shall dismiss the appeal unless it is shown that—

- (a) the amount specified in the demand as the costs of the appointed person is too great, or
- (b) the amount specified in the demand as the amount of those costs to be borne by the recipient is too great.

(5) On an appeal under this paragraph against a demand under paragraph 28(4) or paragraph 120(4), the tribunal shall dismiss the appeal unless it is shown that—

- (a) the amount specified in the demand as the gross costs of the ballot is too great, or
- (b) the amount specified in the demand as the amount of the gross costs to be borne by the recipient is too great.

(6) If an appeal is allowed, the tribunal shall rectify the demand and the demand shall have effect as if it had originally been made as so rectified.

(7) If a person has appealed under this paragraph against a demand and the appeal has not been withdrawn or finally determined, the demand—

- (a) is not enforceable until the appeal has been withdrawn or finally determined, but
- (b) as from the withdrawal or final determination of the appeal shall be enforceable as if paragraph (a) had not had effect.]

#### *Power to amend*

**166.**—[<sup>F157</sup>(1) This paragraph applies if the Court represents to the Department that a provision of this Schedule has an unsatisfactory effect and should be amended.

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- (2) The Department, with a view to rectifying the effect—
- (a) may amend the provision by exercising (if applicable) any of the powers conferred on it by paragraphs 7(6), 29(5), 121(6), 166A, 166B, 169A, 169B and 171A, or
  - (b) may amend the provision by order in such other way as it thinks fit.
- (2A) The Department need not proceed in a way proposed by the Court (if it proposes one).
- (2B) Nothing in this paragraph prevents the Department from exercising any of the powers mentioned in sub-paragraph (2)(a) in the absence of a representation from the Court.]
- (3) No order shall be made under<sup>[F157]</sup> sub-paragraph (2)(b)] unless a draft of it has been laid before, and approved by a resolution of, the Assembly.

**F157** 2004 NI 19

- <sup>[F158]</sup>**166A.**—(1) This paragraph applies in relation to any provision of paragraph 19D(2), 26(4) or 118(4) which requires the employer to give to the Court a worker's home address.
- (2) The Department may by order provide that the employer must give to the Court (in addition to the worker's home address) an address of a specified kind for the worker.
- (3) In this paragraph “address” includes any address or number to which information may be sent by any means.
- (4) An order under this paragraph may—
- (a) amend this Schedule;
  - (b) include supplementary or incidental provision (including, in particular, provision amending paragraph 19E(1)(a), 26(6)(a) or 118(6)(a)).
- (5) No order shall be made under this paragraph unless a draft of it has been laid before, and approved by a resolution of, the Assembly.]

**F158** 2004 NI 19

- <sup>[F159]</sup>**166B.**—(1) The Department may by order provide that, during any period beginning and ending with the occurrence of specified events, employers and unions to which the order applies are prohibited from using such practices as are specified as unfair practices in relation to an application under this Schedule of a specified description.
- (2) An order under this paragraph may make provision about the consequences of a contravention of any prohibition imposed by the order (including provision modifying the effect of any provision of this Schedule in the event of such a contravention).
- (3) An order under this paragraph may confer functions on the Court.
- (4) An order under this paragraph may contain provision extending for the purposes of the order either or both of the following powers to issue Codes of Practice—
- (a) the power of the Agency under Article 90 of the 1992 Order;
  - (b) the power of the Department under Article 95 of that Order.
- (5) An order under this paragraph may include supplementary or incidental provisions (including provision amending this Schedule).
- (6) No order shall be made under this paragraph unless a draft of it has been laid before, and approved by a resolution of, the Assembly.
- (7) In this paragraph “specified” means specified in an order under this paragraph.]

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**F159** 2004 NI 19

### *Guidance*

**167.**—(1) The Department may issue guidance to the Court on the way in which it is to exercise its functions under paragraph 22 or 87.

(2) The Court must take into account any such guidance in exercising those functions.

(3) However, no guidance is to apply with regard to an application made to the Court before the guidance in question was issued.

(4) The Department must—

(a) lay before the Assembly any guidance issued under this paragraph, and

(b) arrange for any such guidance to be published by such means as appear to the Department to be most appropriate for drawing it to the attention of persons likely to be affected by it.

### *Method of conducting collective bargaining*

**168.**—(1) After consulting the Agency the Department may by order specify for the purposes of paragraphs 31(3) and 63(2) a method by which collective bargaining might be conducted.

(2) If such an order is made the Court—

(a) must take it into account under paragraphs 31(3) and 63(2), but

(b) may depart from the method specified by the order to such extent as the Court thinks it is appropriate to do so in the circumstances.

(3) An order under this paragraph shall be subject to negative resolution.

### *Directions about certain applications*

**169.**—(1) The Department may make to the Court directions as described in sub-paragraph (2) in relation to any case where—

(a) two or more applications are made to the Court,

(b) each application is a relevant application,

(c) each application relates to the same bargaining unit, and

(d) the Court has not accepted any of the applications.

(2) The directions are directions as to the order in which the Court must consider the admissibility of the applications.

(3) The directions may include—

(a) provision to deal with a case where a relevant application is made while the Court is still considering the admissibility of another one relating to the same bargaining unit;

(b) other incidental provisions.

(4) A relevant application is an application under paragraph 101, 106, 107, 112 or 128.

### *<sup>F160</sup>Effect of union amalgamations and transfers of engagements*

**F160** 2004 NI 19

**Status:** Point in time view as at 08/01/2006.

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**169A.**—(1) The Department may by order make provision for any case where—

- (a) an application has been made, a declaration has been issued, or any other thing has been done under or for the purposes of this Schedule by, to or in relation to a union, or
- (b) anything has been done in consequence of anything so done,

and the union amalgamates or transfers all or any of its engagements.

(2) An order under this paragraph may, in particular, make provision for cases where an amalgamated union, or union to which engagements are transferred, does not have a certificate of independence.]

*Effect of change of identity of employer*

**169B.**—(1) The Department by order make provision for any case where—

- (a) an application has been made, a declaration has been issued, or any other thing has been done under or for the purposes of this Schedule in relation to a group of workers, or
- (b) anything has been done in consequence of anything so done,

and the person who was the employer of the workers constituting that group at the time the thing was done is no longer the employer of all of the workers constituting that group (whether as a result of a transfer of the whole or part of an undertaking or business or otherwise).

(2) In this paragraph “group” includes two or more groups taken together.

*Orders under paragraphs 169A and 169B: supplementary*

**169C.**—(1) An order under paragraph 169A or 169B may—

- (a) amend this Schedule;
- (b) include supplementary, incidental, saving or transitional provisions.

(2) No such order shall be made unless a draft of it has been laid before, and approved by a resolution of, the Assembly.

*Notice of declarations*

**170.**—(1) If the Court issues a declaration under this Schedule it must notify the parties of the declaration and its contents.

(2) The reference here to the parties is to—

- (a) the union (or unions) concerned and the employer concerned, and
- (b) if the declaration is issued in consequence of an application by a worker or workers, the worker or workers making it.

*[<sup>F161</sup>Supply of information to the Court]*

**F161** 2004 NI 19

**170A.**—(1) The Court may, if it considers it necessary to do so to enable or assist it to exercise any of its functions under this Schedule, exercise any or all of the powers conferred in sub-paragraphs (2) to (4).

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(2) The Court may require an employer to supply the Court case manager, within such period as the Court may specify, with specified information concerning either or both of the following—

- (a) the workers in a specified bargaining unit who work for the employer;
- (b) the likelihood of a majority of those workers being in favour of the conduct by a specified union (or specified unions) of collective bargaining on their behalf.

(3) The Court may require a union to supply the Court case manager, within such period as the Court may specify, with specified information concerning either or both of the following—

- (a) the workers in a specified bargaining unit who are members of the union;
- (b) the likelihood of a majority of the workers in a specified bargaining unit being in favour of the conduct by the union (or by it and other specified unions) of collective bargaining on their behalf.

(4) The Court may require an applicant worker to supply the Court case manager, within such period as the Court may specify, with specified information concerning the likelihood of a majority of the workers in his bargaining unit being in favour of having bargaining arrangements ended.

(5) The recipient of a requirement under this paragraph must, within the specified period, supply the Court case manager with such of the specified information as is in the recipient's possession.

(6) From the information supplied to him under this paragraph, the Court case manager must prepare a report and submit it to the Court.

(7) If an employer, a union or a worker fails to comply with sub-paragraph (5), the report under sub-paragraph (6) must mention that failure; and the Court may draw an inference against the party concerned.

(8) The Court must give a copy of the report under sub-paragraph (6) to the employer, to the union (or unions) and, in the case of an application under paragraph 112 or 137, to the applicant worker (or applicant workers).

(9) In this paragraph—

“applicant worker” means a worker who—

- (a) falls within a bargaining unit (“his bargaining unit”), and
- (b) has made an application under paragraph 112 or 137 to have bargaining arrangements ended;

“the Court case manager” means the member of the staff provided to the Court by the Department who is named in the requirement (but the Court may, by notice given to the recipient of a requirement under this paragraph, change the member of that staff who is to be the Court case manager for the purposes of that requirement);

“collective bargaining” is to be construed in accordance with paragraph 3; and

“specified” means specified in a requirement under this paragraph.

#### *Court's general duty*

**171.** In exercising functions under this Schedule in any particular case the Court must have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace, so far as having regard to that object is consistent with applying other provisions of this Schedule in the case concerned.

*f<sup>162</sup> “ Pay ” and other matters subject to collective bargaining*

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**171A.**—(1) In this Schedule “pay” does not include terms relating to a person's membership of or rights under, or his employer's contributions to—

- (a) an occupational pension scheme (as defined by section 1 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49)), or
- (b) a personal pension scheme (as so defined).

(2) The Department may by order amend sub-paragraph (1).

(3) The Department may by order—

- (a) amend paragraph 3(2), 54(3) or 94(6)(b) by adding specified matters relating to pensions to the matters there specified to which negotiations may relate;
- (b) amend paragraph 35(2)(b) or 44(2)(b) by adding specified matters relating to pensions to the core topics there specified.

(4) An order under this paragraph may include supplementary, incidental, saving or transitional provisions including provision amending this Schedule.

(5) An order under this paragraph may make provision deeming—

- (a) the matters to which any pre-commencement declaration of recognition relates, and
- (b) the matters to which any pre-commencement method of collective bargaining relates,

to include matters to which a post-commencement declaration of recognition or method of collective bargaining could relate.

(6) In sub-paragraph (5)—

“pre-commencement declaration of recognition” means a declaration of recognition issued by the Court before the coming into force of the order,

“pre-commencement method of collective bargaining” means a method of collective bargaining specified by the Court before the coming into force of the order,

and references to a post-commencement declaration of recognition or method of collective bargaining shall be construed accordingly.

(7) No order shall be made under this paragraph unless a draft of it has been laid before, and approved by a resolution of, the Assembly.]

#### *General interpretation*

**172.**—(1) References in this Schedule to the Court are to the Industrial Court.

(2) For the purposes of this Schedule a working day is a day other than—

- (a) a Saturday or a Sunday,
- (b) Christmas day or Good Friday, or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in Northern Ireland.

(3) References in this Schedule to an associated employer shall be construed in accordance with Article 4 of the Employment Rights Order.

#### *Schedule 2—Amendments*

## SCHEDULE 3

Article 150(3).

### TRANSITIONAL PROVISIONS

#### General

**1.—**(1) An order under Article 1 may contain such transitional provisions as appear to the Department to be appropriate.

(2) Nothing in the following provisions of this Schedule prejudices the generality of sub-paragraph (1).

(3) Nothing in this Schedule prejudices the operation of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954<sup>F163</sup>.

**F163** 1954 c. 33 (NI)

#### Elections for certain trade union positions

**2.—**(1) Where a person was elected to a position to which Part III of this Order applies at an election held within the period of five years ending on 31st December 1993—

- (a) Article 12(1)(a) shall have effect as if it did not require that Part to be satisfied in relation to that election; and
- (b) the period of five years mentioned in Article 12(1)(b) shall be calculated from the date of that election.

(2) Sub-paragraph (1) does not apply if the only persons entitled to vote in the election were themselves persons holding positions to which Part III of this Order would have applied had that Part been in operation at the time.

#### Deduction of trade union subscriptions

**3.** For the purposes of Article 35 a deduction representing a payment to a trade union in respect of a worker's membership which is made in accordance with arrangements existing between his employer and the union immediately before the day on which that Article comes into operation under which deductions were made in his case before that day shall be treated as an authorised deduction where—

- (a) the day on which the deduction is made falls before the end of the period of one year beginning with the day on which that Article comes into operation, and
- (b) written notice from the worker stating that he does not wish such deductions to be made has not been received by the employer in time for it to be reasonably practicable for him to secure that the deduction is not made.

#### Political resolutions

**4.** Articles 66(1) and (2) of the 1992 Order shall, notwithstanding their repeal by this Order, continue to have effect in relation to resolutions mentioned in Article 66(1) of that Order, as if for references to provisions of the 1992 Order there were substituted references to the corresponding provisions of this Order.

**Status:**

Point in time view as at 08/01/2006.

**Changes to legislation:**

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Trade Union and Labour Relations (Northern Ireland) Order 1995. Any changes that have already been made by the team appear in the content and are referenced with annotations.