

## SCHEDULES

### <sup>F1</sup>SCHEDULE 1A

#### COLLECTIVE BARGAINING: RECOGNITION

**F1** 1999 NI 9

### PART IX

#### GENERAL

##### *<sup>F1</sup>Rights of appeal against demands for costs*

**F1** 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(7) If a person has appealed under this paragraph against a demand and the appeal has not been withdrawn or finally determined, the demand—

- (a) is not enforceable until the appeal has been withdrawn or finally determined, but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>[F2]</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.

(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>[F2]</sup> sub-paragraph (2)(b)] unless a draft of it has been laid before, and approved by a resolution of, the Assembly.

**F2** 2004 NI 19

<sup>[F3]</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.]

**F3** 2004 NI 19

<sup>[F4]</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.]

**F4**    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>F5</sup>Effect of union amalgamations and transfers of engagements*

**F5** 2004 NI 19

**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>F6</sup>Supply of information to the Court*

**F6** 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).

(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 <sup>F7</sup>. . . 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.]

**F7** Words in [Sch. 1A para. 170A\(9\)](#) repealed (3.8.2010) by [Employment Act \(Northern Ireland\) 2010 \(c. 12\)](#), ss. 7, 8(2), [Sch. 1 para. 5](#), [Sch. 2](#)

#### *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>8</sup> “ Pay ” and other matters subject to collective bargaining*

**F8** 2004 NI 19

**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.

**Changes to legislation:**

There are currently no known outstanding effects for the The Trade Union and Labour Relations (Northern Ireland) Order 1995, PART IX.