

## SCHEDULES

*Schedule 1 rep. by 1996 NI 16*

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

#### COLLECTIVE BARGAINING: RECOGNITION

**F1** [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>F2</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.

**F2** [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>F3</sup> of independence].

**F3** 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.

<sup>F4</sup>(5A) Sub-paragraph (5B) applies to an agency worker whose contract within regulation 3(1) (b) of the Agency Workers Regulations (Northern Ireland) 2011 (contract with the temporary work agency) is not a contract of employment.

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(5B) For the purposes of sub-paragraphs (1) and (2), the agency worker is to be treated as having a contract of employment with the temporary work agency for the duration of the assignment with the employer (and “assignment” has the same meaning as in those Regulations).]

(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).

(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.

**F4** Sch. 1A para. 7(5A)(5B) inserted (5.12.2011) by Agency Workers Regulations (Northern Ireland) 2011 (S.R. 2011/350), reg. 23(2), Sch. 2 para. 7(2)

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

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- (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>F5</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.

**F5** [2004 NI 19](#)

#### *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>F6</sup> end] of the second period.
- (2) The union (or unions) may apply to the Court to decide both these questions—
- [<sup>F6</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.

**F6** [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—
  - (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—

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- (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.

#### *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>[F7]</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.

**F7** 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>[F8]</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>[F8]</sup> 24(6)] and arising from the application.

**F8** 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>[F9]</sup> (subject to any notice under sub-paragraph (3), (4) or (5))]

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- (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>F9</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 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.]

**F9** [2004 NI 19](#)

[<sup>F10</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.]

**F10** [2004 NI 19](#)

[<sup>F11</sup>**19.**—(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 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
  - (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.]

**F11** 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.

*F<sup>12</sup>Union communications with workers after acceptance of application*

**F12** 2004 NI 19

**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”.

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**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;
- (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—

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- (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.

(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>F13</sup> (defined by paragraph 18)], 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—

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- (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.

**F13** 2004 NI 19

- 21.**—(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>F14</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.

**F14** 2004 NI 19

- 22.**—(1) This paragraph applies if—
- (a) the Court proceeds with an application in accordance with paragraph 20 or 21<sup>F15</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>F15</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.

**F15** 2004 NI 19

**23.**—(1) This paragraph applies if—

- (a) the Court proceeds with an application in accordance with paragraph 20 or 21<sup>F16</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.

**F16** 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>F17</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.]

**F17** 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—

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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.
- (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;
  - (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>F18</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).

**F18 2004 NI 19**

**26.**—(1) An employer who is informed by the Court under paragraph 25(9) must comply with the following<sup>[F19 five]</sup> 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)—

- (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>[F20 unit]</sup> 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>[F20 19D</sup> or paragraph (a) or (b) of this subparagraph and] who ceases to be within the unit.

<sup>[F21(4A)</sup> 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 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,

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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.]

[<sup>F20</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).

(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>F20</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>F22</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..]

**F19** 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)

**F20** 2004 NI 19

**F21** 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)

**F22** 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>F23</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.

**F23** 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>F24</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.

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**F24** 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
- (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.

**F24** 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).

**F24** 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.

(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).

**F24** 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.

**F24** 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;

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- (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.]

**F24** 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>F25</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.

**F25** 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>F26</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.

(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.

**F26** 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—

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- (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.

#### *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>F27</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”.

**F27** 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>F28</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>F28</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.

(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).

**F28** 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—

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- (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>[F29</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
- (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).

**F29** 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>[F30</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>[F30</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).

**F30** 2004 NI 19

**41.**—(1) This paragraph applies if the Court issues a declaration under paragraph<sup>F31</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>F31</sup> arranged] under Part IV or Part V.

- (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).

**F31** 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.

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- (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>F32</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>F32</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.
- (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.

**F32** 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>F33</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).

**F33** 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>F34</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>F34</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.

**F34** 2004 NI 19

**49.**—(1) This paragraph applies if the Court issues a declaration under paragraph<sup>F35</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>F35</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.

**F35** 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.

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### *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>F36</sup> or 19A], in relation to the application, and
- (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.

**F36** 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>[F37]</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>[F37]</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.
- (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.

**F37** 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.

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(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.

#### *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
- (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>F38</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).

**F38** [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.

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(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.

(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.

### 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).

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- (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).

(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—

- (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.

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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—

- (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;
  - (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.

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(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
- (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—
  - (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.

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(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.

(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>F39</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.

**F39** 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—
- (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—

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- (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
  - (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>F40</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.

**F40** 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.

(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>[F41]</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>[F41]</sup> or 27D(3).

<sup>[F41]</sup>(9) Paragraphs (a) and (b) of sub-paragraph (7) also apply if the Court issues a declaration under paragraph 27D(4).]

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### *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
- (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
  - (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

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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.

(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>F42</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,
  - (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.
- [<sup>F43</sup>(5A) Sub-paragraph (5B) applies to an agency worker whose contract within regulation 3(1) (b) of the Agency Workers Regulations (Northern Ireland) 2011 (contract with the temporary work agency) is not a contract of employment.
- (5B) For the purposes of sub-paragraphs (1) and (4), the agency worker is to be treated as having a contract of employment with the temporary work agency for the duration of the assignment with the employer (and “assignment” has the same meaning as in those Regulations).]
- (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>F42</sup> 99A] to 103 are not to apply, or are not to apply in specified circumstances, or

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- (b) vary the number of workers for the time being specified in sub-paragraphs (1)(a) and (3)(e).

**F42** 2004 NI 19

**F43** Sch. 1A para. 99(5A)(5B) inserted (5.12.2011) by Agency Workers Regulations (Northern Ireland) 2011 (S.R. 2011/350), reg. 23(2), Sch. 2 para. 7(3)

**[<sup>F44</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.]

**F44** 2004 NI 19

**100.**—(1) [<sup>F45</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.

**F45** 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
  - (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>F46</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.

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- (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.

**F46** 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.

- (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
- (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>F47</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>F47</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>F47</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.

**F47** 2004 NI 19

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**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
  - (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>F48</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>F48</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>F48</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.

**F48** [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.
- 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

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- (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—
    - (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)
  - (c) 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>F49</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).

**F49** 2004 NI 19

**118.**—(1) An employer who is informed by the Court under paragraph 117(11) must comply with the following<sup>[F50]</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>[F51]</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—

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- (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 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,
  - (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>F52</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.]

**F50** 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)

**F51** *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)



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**F52** 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>F53</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.

<sup>F54</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.

**F53** 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)

**F54** 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>F55</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

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- (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.

**F55** 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—
  - (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.

**F55** 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).

**F55** 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
- (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).

**F55** 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.

**F55** 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)

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**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.

(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.

**F55** 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.

**F55** 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—

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- (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).

**F55** 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.]

**F55** 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.

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(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>F56</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.

**F56** 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>F57</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.

**F57** 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>F58</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.

**F58** [2004 NI 19](#)

**123.**—(1) This Part also applies if—

- (a) the Court has issued a declaration under paragraph<sup>F59</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.

**F59** [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.

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### *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>F60</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>F60</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>F60</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.

**F60** 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—

(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>F61</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>F61</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.

**F61** [2004 NI 19](#)

## PART VI

### DERECOGNITION WHERE UNION NOT INDEPENDENT

#### *Introduction*

**134.**—(1) This Part applies if—

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- (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>F62</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.

**F62** 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
  - (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>F63</sup> of independence].

**F63** 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.

**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—

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- (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—

- (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>F64</sup> references in paragraphs 119H(1) and 119I(1)(a)] to paragraph 112 were to paragraph 112 or 137;
- (b) the<sup>F64</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).

**F64** 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.

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## 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
- (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.

#### *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;

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- (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.

[<sup>F65</sup>(4) Article 147A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of sub-paragraph (1)(a).]

**F65** Sch. 1A para. 157(4) added (27.1.2020) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\), s. 29\(2\)](#), [Sch. 2 para. 10](#); S.R. 2020/1, art. 2(n)



**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—

- (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;

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- (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*

#### *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

### *F<sup>66</sup> Rights of appeal against demands for costs*

F66 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>[F67]</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>[F67]</sup> sub-paragraph (2)(b)] unless a draft of it has been laid before, and approved by a resolution of, the Assembly.

**F67** 2004 NI 19

<sup>[F68]</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.

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(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.]

**F68** 2004 NI 19

[<sup>F69</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.]

**F69** 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.

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### *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>F70</sup>Effect of union amalgamations and transfers of engagements*

**F70** 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

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(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>F71</sup>Supply of information to the Court*

**F71** 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.

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(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>F72</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.]

**F72** 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.

#### *[<sup>F73</sup> “ Pay ” and other matters subject to collective bargaining*

**F73** 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;

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- (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>F74</sup>.

**F74** 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.

### *Schedule 4—Repeals*

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- art. 40(6) sum substituted by [S.R. 2024/86 Sch. art. 3](#)
- art.145 restr. (prosp.) by [1998 c. 32 s.56\(5\)\(a\)](#)