
STATUTORY INSTRUMENTS

1999 No. 2790 (N.I. 9)

NORTHERN IRELAND

The Employment Relations (Northern Ireland) Order 1999

Made - - - - *12th October 1999*
Laid before Parliament *26th October 1999*
Coming into operation on days to be appointed under
Article 1(2)

At the Court at Buckingham Palace, the 12th day of October 1999

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order is made only for purposes corresponding to those of the Employment Relations Act 1999 (other than sections 22, 27, 39 and 40):

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (as modified by section 46(2) of the said Act of 1999) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introduction

Title and commencement

1.—(1) This Order may be cited as the Employment Relations (Northern Ireland) Order 1999.

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

Interpretation

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

(2) In this Order—

“the Department” means the Department of Economic Development;

“the Employment Rights Order” means the Employment Rights (Northern Ireland) Order 1996;

“the Trade Union and Labour Relations Order” means the Trade Union and Labour Relations (Northern Ireland) Order 1995.

Trade Unions

Collective bargaining: recognition

- 3.—(1) The Trade Union and Labour Relations Order shall be amended as follows.
- (2) After Part IV there shall be inserted—

“PART IVA

COLLECTIVE BARGAINING: RECOGNITION

Recognition of trade unions

44A. Schedule 1A shall have effect.”.

- (3) Immediately before Schedule 2 there shall be inserted the Schedule set out in Schedule 1 to this Order.

Detriment related to trade union membership

4. Schedule 2 shall have effect.

Blacklists

- 5.—(1) The Department may make regulations prohibiting the compilation of lists which—
 - (a) contain details of members of trade unions or persons who have taken part in the activities of trade unions; and
 - (b) are compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers.
- (2) The Department may make regulations prohibiting—
 - (a) the use of lists to which paragraph (1) applies;
 - (b) the sale or supply of lists to which paragraph (1) applies.
- (3) Regulations under this Article may, in particular—
 - (a) confer jurisdiction (including exclusive jurisdiction) on industrial tribunals;
 - (b) include provision for or about the grant and enforcement of specified remedies by courts and tribunals;
 - (c) include provision for the making of awards of compensation calculated in accordance with the regulations;
 - (d) include provision permitting proceedings to be brought by trade unions on behalf of members in specified circumstances;
 - (e) include provision about cases where an employee is dismissed by his employer and the reason or principal reason for the dismissal, or why the employee was selected for dismissal, relates to a list to which paragraph (1) applies;
 - (f) create criminal offences;

- (g) in specified cases or circumstances, extend liability for a criminal offence created under sub-paragraph (f) to a person who aids the commission of the offence or to a person who is an agent, principal, employee, employer or officer of a person who commits the offence;
 - (h) provide for specified obligations or offences not to apply in specified circumstances;
 - (i) include consequential provision, including provision amending a statutory provision.
- (4) Regulations under this Article creating an offence may not provide for it to be punishable—
- (a) by imprisonment;
 - (b) by a fine in excess of level 5 on the standard scale in the case of an offence triable only summarily; or
 - (c) by a fine in excess of the statutory maximum in the case of summary conviction for an offence triable either on indictment or summarily.
- (5) In this Article—
- “list” includes any index or other set of items whether recorded electronically or by any other means; and
 - “worker” has the meaning given by Article 15.
- (6) Subject to paragraph (5), expressions used in this Article and in the Trade Union and Labour Relations Order have the same meaning in this Article as in that Order.

Ballots and notices

6. Schedule 3 shall have effect.

Training

7.—(1) In Part IVA of the Trade Union and Labour Relations Order (collective bargaining: recognition) as inserted by Article 3, there shall be inserted after Article 44A—

“Training

44B.—(1) This Article applies where—

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

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

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

(3) The date set for a meeting under paragraph (2) must not be later than—

- (a) in the case of a first meeting, the end of the period of six months starting with the day on which this Article first applies in relation to a bargaining unit, and

- (b) in the case of each subsequent meeting, the end of the period of six months starting with the day of the previous meeting.
- (4) The employer shall, before the period of two weeks ending with the date of a meeting, provide to the trade union any information—
 - (a) without which the union’s representatives would be to a material extent impeded in participating in the meeting, and
 - (b) which it would be in accordance with good industrial relations practice to disclose for the purposes of the meeting.
- (5) Article 40(1) of the 1992 Order shall apply in relation to the provision of information under paragraph (4) as it applies in relation to the disclosure of information under Article 39 of that Order.
- (6) The employer shall take account of any written representations about matters raised at a meeting which he receives from the trade union within the period of four weeks starting with the date of the meeting.
- (7) Where more than one trade union is recognised as entitled to conduct collective bargaining on behalf of a bargaining unit, a reference in this Article to “the trade union” is a reference to each trade union.
- (8) Where at a meeting under this Article (Meeting 1) an employer indicates his intention to convene a subsequent meeting (Meeting 2) before the expiry of the period of six months beginning with the date of Meeting 1, for the reference to a period of six months in paragraph (2)(b) there shall be substituted a reference to the expected period between Meeting 1 and Meeting 2.
- (9) The Department may by order amend any of paragraphs (2) to (6).
- (10) No order shall be made under paragraph (9) unless a draft has been laid before, and approved by resolution of, the Assembly.

Article 44B: complaint to industrial tribunal

- 44C.—**(1) A trade union may present a complaint to an industrial tribunal that an employer has failed to comply with his obligations under Article 44B in relation to a bargaining unit.
- (2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—
 - (a) before the end of the period of three months beginning with the date of the alleged failure, or
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
 - (3) Where an industrial tribunal finds a complaint under this Article well-founded it—
 - (a) shall make a declaration to that effect, and
 - (b) may make an award of compensation to be paid by the employer to each person who was, at the time when the failure occurred, a member of the bargaining unit.
 - (4) The amount of the award shall not, in relation to each person, exceed two weeks' pay.
 - (5) For the purpose of paragraph (4) a week’s pay—
 - (a) shall be calculated in accordance with Chapter IV of Part I of the Employment Rights Order (taking the date of the employer’s failure as the calculation date), and
 - (b) shall be subject to the limit in Article 23(1) of that Order.

- (6) Proceedings for enforcement of an award of compensation under this Article—
 - (a) may, in relation to each person to whom compensation is payable, be commenced by that person, and
 - (b) may not be commenced by a trade union.”.

(2) In Article 149(2) of the Trade Union and Labour Relations Order after “1(2),” there shall be inserted “44B(9),”.

Unfair dismissal connected with recognition: interim relief

8. In Articles 163(1)(b) and 164(1) of the Employment Rights Order (interim relief) after “136(1)” there shall be inserted “or in paragraph 161(2) of Schedule 1A to the Trade Union and Labour Relations Order”.

Leave for family reasons, etc.

Maternity and parental leave

9. The provisions set out in Part I of Schedule 4 shall be substituted for Part IX of the Employment Rights Order.

Time-off for dependants

10. The provisions set out in Part II of Schedule 4 shall be inserted after Article 85 of the Employment Rights Order.

Consequential amendments

11. Part III of Schedule 4 (which makes amendments consequential on Articles 9 and 10) shall have effect.

Disciplinary and grievance hearings

Right to be accompanied

- 12.—(1) This Article applies where a worker—
- (a) is required or invited by his employer to attend a disciplinary or grievance hearing, and
 - (b) reasonably requests to be accompanied at the hearing.
- (2) Where this Article applies the employer must permit the worker to be accompanied at the hearing by a single companion who—
- (a) is chosen by the worker and is within paragraph (3),
 - (b) is to be permitted to address the hearing (but not to answer questions on behalf of the worker), and
 - (c) is to be permitted to confer with the worker during the hearing.
- (3) A person is within this paragraph if he is—
- (a) employed by a trade union of which he is an official within the meaning of the Trade Union and Labour Relations Order,
 - (b) an official of a trade union (within that meaning) whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker’s companion at disciplinary or grievance hearings, or

- (c) another of the employer's workers.
- (4) If—
 - (a) a worker has a right under this Article to be accompanied at a hearing,
 - (b) his chosen companion will not be available at the time proposed for the hearing by the employer, and
 - (c) the worker proposes an alternative time which satisfies paragraph (5),the employer must postpone the hearing to the time proposed by the worker.
- (5) An alternative time must—
 - (a) be reasonable, and
 - (b) fall before the end of the period of five working days beginning with the first working day after the day proposed by the employer.
- (6) An employer shall permit a worker to take time off during working hours for the purpose of accompanying another of the employer's workers in accordance with a request under paragraph (1) (b).
- (7) Articles 92(3) and (4), 93, 95 and 247(1) of the Employment Rights Order (time off for carrying out trade union duties) shall apply in relation to paragraph (6) as they apply in relation to Article 92(1) of that Order.

Complaint to industrial tribunal

- 13.**—(1) A worker may present a complaint to an industrial tribunal that his employer has failed, or threatened to fail, to comply with Article 12(2) or (4).
- (2) A tribunal shall not consider a complaint under this Article in relation to a failure or threat unless the complaint is presented—
- (a) before the end of the period of three months beginning with the date of the failure or threat, or
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (3) Where a tribunal finds that a complaint under this Article is well-founded it shall order the employer to pay compensation to the worker of an amount not exceeding two weeks' pay.
- (4) Chapter IV of Part I of the Employment Rights Order (calculation of a week's pay) shall apply for the purposes of paragraph (3); and in applying that Chapter the calculation date shall be taken to be—
- (a) in the case of a claim which is made in the course of a claim for unfair dismissal, the date on which the employer's notice of dismissal was given or, if there was no notice, the effective date of termination, and
 - (b) in any other case, the date on which the relevant hearing took place (or was to have taken place).
- (5) The limit in Article 23(1) of the Employment Rights Order (maximum amount of week's pay) shall apply for the purposes of paragraph (3).
- (6) No award shall be made under paragraph (3) in respect of a claim which is made in the course of a claim for unfair dismissal if the tribunal makes a supplementary award under Article 162A(2) of the Employment Rights Order (internal appeal procedures).

Detriment and dismissal

14.—(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that he—

- (a) exercised or sought to exercise the right under Article 12(2) or (4), or
- (b) accompanied or sought to accompany another worker (whether of the same employer or not) pursuant to a request under that Article.

(2) Article 71 of the Employment Rights Order shall apply in relation to contraventions of paragraph (1) as it applies in relation to contraventions of certain Articles of that Order.

(3) A worker who is dismissed shall be regarded for the purposes of Part XI of the Employment Rights Order as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that he—

- (a) exercised or sought to exercise the right under Article 12(2) or (4), or
- (b) accompanied or sought to accompany another worker (whether of the same employer or not) pursuant to a request under that Article.

(4) Articles 140 and 141 of that Order (qualifying period of employment and upper age limit) shall not apply in relation to paragraph (3).

(5) Articles 163 to 167 of that Order (interim relief) shall apply in relation to dismissal for the reason specified in paragraph (3)(a) or (b) as they apply in relation to dismissal for a reason specified in Article 163(1)(b) of that Order.

(6) In the application of Chapter II of Part XI of that Order in relation to paragraph (3), a reference to an employee shall be taken as a reference to a worker.

Interpretation

15.—(1) In Articles 12 to 14 and this Article “worker” means an individual who is—

- (a) a worker within the meaning of Article 3(3) of the Employment Rights Order,
- (b) an agency worker,
- (c) a home worker, or
- (d) a person in Crown employment within the meaning of Article 236 of that Order, other than a member of the naval, military, air or reserve forces of the Crown.

(2) In paragraph (1) “agency worker” means an individual who—

- (a) is supplied by a person (“the agent”) to do work for another (“the principal”) by arrangement between the agent and the principal,
- (b) is not a party to a worker’s contract, within the meaning of Article 3(3) of that Order, relating to that work, and
- (c) is not a party to a contract relating to that work under which he undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any professional or business undertaking carried on by the individual;

and, for the purposes of Articles 12 to 14, both the agent and the principal are employers of an agency worker.

(3) In paragraph (1) “home worker” means an individual who—

- (a) contracts with a person, for the purposes of the person’s business, for the execution of work to be done in a place not under the person’s control or management, and

(b) is not a party to a contract relating to that work under which the work is to be executed for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any professional or business undertaking carried on by the individual; and, for the purposes of Articles 12 to 14, the person mentioned in sub-paragraph (a) is the home worker's employer.

(4) For the purposes of Article 12 a disciplinary hearing is a hearing which could result in—

- (a) the administration of a formal warning to a worker by his employer,
- (b) the taking of some other action in respect of a worker by his employer, or
- (c) the confirmation of a warning issued or some other action taken.

(5) For the purposes of Article 12 a grievance hearing is a hearing which concerns the performance of a duty by an employer in relation to a worker.

(6) For the purposes of Article 12(5)(b) 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.

Contracting out and conciliation

16. Articles 12 to 15 shall be treated as provisions of Chapter I of Part VI of the Employment Rights Order for the purposes of—

- (a) Article 245(1), (2)(e) and (f) and (3) to (5) of that Order (restrictions on contracting out); and
- (b) Article 20(1)(c) of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation).

National security employees

17. Articles 12 to 15 shall not apply in relation to a person employed for the purposes of—

- (a) the Security Service; or
- (b) the Secret Intelligence Service.

Other rights of individuals

Unfair dismissal of striking workers

18. Schedule 5 shall have effect.

Collective agreements: detriment and dismissal

19.—(1) The Department may make regulations about cases where a worker—

- (a) is subjected to detriment by his employer, or
- (b) is dismissed,

on the grounds that he refuses to enter into a contract which includes terms which differ from the terms of a collective agreement which applies to him.

- (2) The regulations may make provision which applies only in specified classes of case.
- (3) In this Article—

“collective agreement” has the meaning given by Article 2(2) of the Industrial Relations (Northern Ireland) Order 1992;

“employer” and “worker” have the same meaning as in Article 2(2) of the Trade Union and Labour Relations Order.

(4) The payment of higher wages or higher rates of pay or overtime or the payment of any signing on or other bonuses or the provision of other benefits having a monetary value to other workers employed by the same employer shall not constitute a detriment to any worker not receiving the same or similar payments or benefits within the meaning of paragraph (1)(a) so long as—

- (a) there is no inhibition in the contract of employment of the worker receiving the same from being the member of any trade union, and
- (b) the said payments of higher wages or rates of pay or overtime or bonuses or the provision of other benefits are in accordance with the terms of a contract of employment and reasonably relate to services provided by the worker under that contract.

Agreement to exclude dismissal rights

20.—(1) In Article 240 of the Employment Rights Order (fixed-term contracts) paragraph (1) (agreement to exclude unfair dismissal provisions) shall be omitted; and paragraphs (2) to (5) shall have effect in consequence.

(2) In Articles 68(4), 69(2), 70(2), 70A(2) and 70B(2) of that Order—

- (a) the words from the beginning to “the dismissal,” shall be omitted, and
- (b) for “that Part” there shall be substituted “Part XI”.

(3) In Article 68A(4) of that Order the words from “, unless” to the end shall be omitted.

(4) In Schedule 2 to the Shops (Sunday Trading &.) (Northern Ireland) Order 1997, paragraph 11(5) shall be omitted.

(5) In—

- (a) section 23(4) of the National Minimum Wage Act 1998; and
- (b) paragraph 1(3) of Schedule 3 to the Tax Credits Act 1999,

the words from “except” to the end shall be omitted.

(6) Article 240(1) of the Employment Rights Order does not prevent Part XI of that Order from applying to a dismissal which is regarded as unfair by virtue of Article 131 or 135 of that Order (pregnancy and childbirth, and assertion of statutory right).

Part-time work: discrimination

21.—(1) The Department shall make regulations for the purpose of securing that persons in part-time employment are treated, for such purposes and to such extent as the regulations may specify, no less favourably than persons in full-time employment.

(2) The regulations may—

- (a) specify classes of person who are to be taken to be, or not to be, in part-time employment;
- (b) specify classes of person who are to be taken to be, or not to be, in full-time employment;
- (c) specify circumstances in which persons in part-time employment are to be taken to be, or not to be, treated less favourably than persons in full-time employment;
- (d) make provision which has effect in relation to persons in part-time employment generally or provision which has effect only in relation to specified classes of persons in part-time employment.

- (3) The regulations may—
- (a) confer jurisdiction (including exclusive jurisdiction) on industrial tribunals;
 - (b) create criminal offences in relation to specified acts or omissions by an employer, by an organisation of employers, by an organisation of workers or by an organisation existing for the purposes of a profession or trade carried on by the organisation's members;
 - (c) in specified cases or circumstances, extend liability for a criminal offence created under sub-paragraph (b) to a person who aids the commission of the offence or to a person who is an agent, principal, employee, employer or officer of a person who commits the offence;
 - (d) provide for specified obligations or offences not to apply in specified circumstances;
 - (e) make provision about notices or information to be given, evidence to be produced and other procedures to be followed;
 - (f) amend, apply with or without modifications, or make provision similar to any provision of the Employment Rights Order (including, in particular, Parts VI, XI and XV) or the Trade Union and Labour Relations Order;
 - (g) provide for the provisions of specified agreements to have effect in place of provisions of the regulations to such extent and in such circumstances as may be specified;
 - (h) include consequential provision, including provision amending a statutory provision.
- (4) Without prejudice to the generality of this Article the regulations may make any provision which appears to the Department to be necessary or expedient—
- (a) for the purpose of implementing Council Directive [97/81/EC](#) on the framework agreement on part-time work in its application to terms and conditions of employment;
 - (b) for the purpose of dealing with any matter arising out of or related to the United Kingdom's obligations under that Directive;
 - (c) for the purpose of any matter dealt with by the framework agreement or for the purpose of applying the provisions of the framework agreement to any matter relating to part-time workers.
- (5) Regulations under this Article which create an offence—
- (a) shall provide for it to be triable summarily only, and
 - (b) may not provide for it to be punishable by imprisonment or by a fine in excess of level 5 on the standard scale.

Part-time work: code of practice

- 22.—(1) The Department may issue codes of practice containing guidance for the purpose of—
- (a) eliminating discrimination in the field of employment against part-time workers;
 - (b) facilitating the development of opportunities for part-time work;
 - (c) facilitating the flexible organisation of working time taking into account the needs of workers and employers;
 - (d) any matter dealt with in the framework agreement on part-time work annexed to Council Directive [97/81/EC](#).
- (2) The Department may revise a code and issue the whole or part of the revised code.
- (3) A person's failure to observe a provision of a code does not make him liable to any proceedings.
- (4) A code—
- (a) is admissible in evidence in proceedings before an industrial tribunal, and

- (b) shall be taken into account by an industrial tribunal in any case in which it appears to the tribunal to be relevant.

Code of practice: supplemental

23.—(1) Before issuing or revising a code of practice under Article 22 the Department shall consult such persons as it considers appropriate.

(2) Before issuing a code the Department shall—

- (a) publish a draft code,
- (b) consider any representations made to it about the draft,
- (c) if the Department thinks it appropriate, modify the draft in the light of any representations made to it.

(3) If, having followed the procedure under paragraph (2), the Department decides to issue a code, the Department shall lay a draft code before the Assembly.

(4) If the draft code is approved by resolution of the Assembly, the Department shall issue the code in the form of the draft.

(5) In this Article and Article 22(3) and (4)—

- (a) a reference to a code includes a reference to a revised code,
- (b) a reference to a draft code includes a reference to a draft revision, and
- (c) a reference to issuing a code includes a reference to issuing part of a revised code.

Power to confer rights on individuals

24.—(1) This Article applies to any right conferred on an individual against an employer (however defined) under any of the following—

- (a) the Industrial Relations (Northern Ireland) Order 1992;
- (b) the Trade Union and Labour Relations Order;
- (c) the Employment Rights Order;
- (d) the Shops (Sunday Trading &.) (Northern Ireland) Order 1997;
- (e) this Order;
- (f) any instrument made under section 2(2) of the European Communities Act 1972.

(2) The Department may by order make provision which has the effect of conferring any such right on individuals who are of a specified description.

(3) The reference in paragraph (2) to individuals includes a reference to individuals expressly excluded from exercising the right.

(4) An order under this Article may—

- (a) provide that individuals are to be treated as parties to workers' contracts or contracts of employment;
- (b) make provision as to who are to be regarded as the employers of individuals;
- (c) make provision which has the effect of modifying the operation of any right as conferred on individuals by the order;
- (d) include such consequential provisions as the Department thinks fit.

(5) An order under this Article may make provision in such way as the Department thinks fit, whether by amending statutory provisions or otherwise.

(6) Article 250(4) of the Employment Rights Order (which is superseded by this Article) shall be omitted.

(7) Any order made or having effect as if made under Article 250(4), so far as effective immediately before the coming into operation of this Article, shall have effect as if made under this Article.

The Industrial Court, the Agency, Commissioners and Certification Officer

The Industrial Court

25. For Articles 91 and 92 of the Industrial Relations (Northern Ireland) Order 1992 there shall be substituted—

“The Industrial Court

91.—(1) There shall continue to be a body called the Industrial Court.

(2) The functions of the Court shall be performed on behalf of the Crown, but the Court shall not be subject to directions of any kind from any Minister of the Crown or Northern Ireland department as to the manner in which it is to exercise any of its functions.

The members of the Court

91A.—(1) The Industrial Court shall consist of members appointed by the Department.

(2) The Department shall appoint a member as chairman, and may appoint a member as deputy chairman or members as deputy chairmen.

(3) The Department may appoint as members only persons experienced in industrial relations, and they shall include some persons whose experience is as representatives of employers and some whose experience is as representatives of workers.

(4) Before making an appointment under paragraph (1) or (2) the Department shall consult the Agency and may consult other persons.

(5) At any time when the chairman of the Industrial Court is absent or otherwise incapable of acting, or there is a vacancy in the office of chairman, and the Court has a deputy chairman or deputy chairmen—

(a) the deputy chairman, if there is only one, or

(b) if there is more than one, such of the deputy chairmen as they may agree or in default of agreement as the Department may direct,

may perform any of the functions of chairman of the Court.

(6) At any time when every person who is chairman or deputy chairman is absent or otherwise incapable of acting, or there is no such person, such member of the Court as the Department may direct may perform any of the functions of the chairman of the Court.

(7) The members of the Court shall hold and vacant office in accordance with their terms of appointment.

(8) The Department shall pay to the members of the Court such remuneration and such travelling and other allowances as may be determined by the Department with the approval of the Department of Finance and Personnel and may pay to any other persons such allowances as the Department may, with the approval of the Department of Finance and Personnel, determine for the purposes of, or in connection with, their attendance at proceedings of the Court.

Proceedings of the Court

92.—(1) For the purposes of discharging any of its functions, the Court shall consist of such of the members of the Court as the chairman may direct.

(2) If in any case the Court cannot reach a unanimous decision on its award, the chairman shall decide the matter acting with the full powers of an umpire.

(3) The Department may make, or authorise the Industrial Court to make, rules regulating the procedure of the Court and such rules may provide—

- (a) for references in certain cases to a single member of the court;
- (b) for the Court to sit in two or more divisions;
- (c) for the Court to sit with assessors;
- (d) for the Court, or any division of the Court, to act notwithstanding any vacancy in its number;
- (e) for enabling questions as to the interpretation of any award to be settled without any fresh reference;
- (f) for the cases in which persons may appear by counsel or solicitor in proceedings before the Court.

(4) Except as provided by rules under paragraph (3)(f), no person shall be entitled to appear in any proceedings before the Court by counsel or solicitor.

(5) Where any trade dispute referred to the Court under Article 84(2)(e) involves questions as to wages or as to hours of work or otherwise as to the terms and conditions of or affecting employment which are regulated by any statutory provision, the Court shall not make any award which is inconsistent with that statutory provision.

(6) Subject to paragraphs (1) to (5), the Court shall determine its own procedure.

(7) The Arbitration Act (Northern Ireland) 1937 shall not apply to any proceedings before the Court.

(8) In relation to the discharge of the Court's functions under Schedule 1A to the Trade Union and Labour Relations Order—

- (a) Article 92A and paragraph (7) shall apply; and
- (b) paragraphs (1) to (6) shall not apply.

Proceedings of the Court under Schedule 1A to the Trade Union and Labour Relations Order

92A.—(1) For the purpose of discharging its functions under Schedule 1A to the Trade Union and Labour Relations Order in any particular case, the Industrial Court shall consist of a panel established under this Article.

(2) The chairman of the Court shall establish a panel or panels, and a panel shall consist of these three persons appointed by him—

- (a) the chairman or a deputy chairman of the Court, who shall be chairman of the panel;
- (b) a member of the Court whose experience is as a representative of employers;
- (c) a member of the Court whose experience is as a representative of workers.

(3) The chairman of the Court shall decide which panel is to deal with a particular case.

(4) A panel may at the discretion of its chairman sit in private where it appears expedient to do so.

- (5) If—
- (a) a panel cannot reach a unanimous decision on a question arising before it, and
 - (b) a majority of the panel have the same opinion,
- the question shall be decided according to that opinion.
- (6) If—
- (a) a panel cannot reach a unanimous decision on a question arising before it, and
 - (b) a majority of the panel do not have the same opinion,
- the chairman of the panel shall decide the question acting with the full powers of an umpire.
- (7) The Department may make, or authorise the Court to make, rules regulating the procedure of the Court in discharging its functions under Schedule 1A to the Trade Union and Labour Relations Order.
- (8) Subject to the above provisions, a panel shall determine its own procedure.
- (9) The Court may correct in any decision or declaration of the Court under Schedule 1A to the Trade Union and Labour Relations Order any clerical mistake or error arising from an accidental slip or omission.
- (10) If any question arises as to the interpretation of a decision or declaration of the Court under that Schedule any party may apply to the Court for a decision; and the Court shall decide the question after hearing the parties or, if the parties consent, without a hearing and shall notify the parties.”.

The Agency: general duty

26. In Article 83(1) of the Industrial Relations (Northern Ireland) Order 1992 (general duty of the Agency) the words from “, in particular” to the end shall be omitted.

Abolition of Commissioners

- 27.—(1) These offices shall cease to exist—
- (a) the office of Northern Ireland Commissioner for the Rights of Trade Union Members;
 - (b) the office of Northern Ireland Commissioner for Protection Against Unlawful Industrial Action.
- (2) In the Trade Union and Labour Relations Order these provisions shall cease to have effect—
- (a) Part VII (provision by the Northern Ireland Commissioner for the Rights of Trade Union Members of assistance in relation to certain proceedings);
 - (b) Articles 121 and 122 (provision of assistance by Northern Ireland Commissioner for Protection Against Unlawful Industrial Action in relation to certain proceedings);
 - (c) Part IX (Commissioners' appointment, remuneration, staff, reports, accounts, etc.).
- (3) In Article 11A of the Industrial Relations (Northern Ireland) Order 1992 (statement to members of union following annual return) in the third paragraph of paragraph (6)(a) (application for assistance from the Northern Ireland Commissioner for the Rights of Trade Union Members) for the words from “may” to “case,” there shall be substituted “should”.

The Certification Officer for Northern Ireland

28. Schedule 6 shall have effect.

Miscellaneous

Partnerships at work

29.—(1) The Department may spend money or provide money to other persons for the purpose of encouraging and helping employers (or their representatives) and employees (or their representatives) to improve the way they work together.

(2) Money may be provided in such way as the Department thinks fit (whether as grants or otherwise) and on such terms as it thinks fit (whether as to repayment or otherwise).

Employment agencies

30. Schedule 7 shall have effect.

Employment rights: employment outside Northern Ireland

31.—(1) For Article 239 of the Employment Rights Order substitute—

“Employment outside Northern Ireland

239.—(1) The provisions to which this paragraph applies do not apply to employment where under his contract of employment an employee ordinarily works outside Northern Ireland.

(2) Paragraph (1) applies to—

- (a) Part II;
- (b) Chapter II of Part VI;
- (c) Articles 92 to 95;
- (d) Articles 221 and 222.”.

(2) In Article 242 of that Order (mariners) after paragraph (6) insert—

“(7) The provisions mentioned in paragraph (8) apply to employment on board a ship registered in the register maintained under section 8 of the Merchant Shipping Act 1995 if and only if—

- (a) the ship’s entry in the register specifies a port in Northern Ireland as the port to which the vessel is to be treated as belonging;
- (b) under his contract of employment the person employed does not work wholly outside Northern Ireland; and
- (c) the person employed is ordinarily resident in Northern Ireland.

(8) The provisions are—

- (a) Articles 40 to 42;
- (b) Parts IV and V and Chapter I of Part VI;
- (c) Part VII, apart from Articles 86 to 88;
- (d) Parts VIII and IX;
- (e) Articles 124 and 125; and
- (f) Part XI.”.

Unfair dismissal: special and additional awards

32.—(1) Articles 151(4)(b), 152(2) and (3) and 159 of the Employment Rights Order (which require, or relate to, the making of special awards by industrial tribunals in unfair dismissal cases) shall cease to have effect.

(2) In Article 151(3)(b) of the Employment Rights Order (amount of additional award) for “the appropriate amount” there shall be substituted “an amount not less than twenty-six nor more than fifty-two weeks' pay”; and paragraphs (5) and (6) of Article 151 shall cease to have effect.

(3) In Article 15 of the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 paragraph (1) shall cease to have effect.

Indexation of amounts, etc.

33.—(1) This Article applies to the sums specified in the following provisions—

- (a) Article 40(6) of the Trade Union and Labour Relations Order (right to membership of trade union: remedies);
- (b) Article 23(1) of the Employment Rights Order (maximum amount of a week's pay for purposes of certain calculations);
- (c) Article 63(1) of that Order (guarantee payments: limits);
- (d) Article 154(1) of that Order (unfair dismissal: minimum amount of basic award);
- (e) Article 158(1) of that Order (unfair dismissal: limit of compensatory award);
- (f) Article 231(1)(a) and (b) of that Order (employee's rights on insolvency of employer: maximum amount payable).

(2) If the retail prices index for September of a year is higher or lower than the index for the previous September, the Department shall as soon as practicable make an order in relation to each sum mentioned in paragraph (1)—

- (a) increasing each sum, if the new index is higher, or
- (b) decreasing each sum, if the new index is lower,

by the same percentage as the amount of the increase or decrease of the index.

(3) In making the calculation required by paragraph (2) the Department shall—

- (a) in the case of sums mentioned in paragraph (1)(a), (d) and (e), round the result up to the nearest £100;
- (b) in the case of sums mentioned in paragraph (1)(b) and (f), round the result up to the nearest £10; and
- (c) in the case of the sums mentioned in paragraph (1)(c), round the result up to the nearest 10 pence.

(4) For the sum specified in Article 158(1) of the Employment Rights Order (unfair dismissal: limit of compensatory award) there shall be substituted the sum of £50,000 (subject to paragraph (2) above).

(5) In this Article “the retail prices index” means—

- (a) the general index of retail prices (for all items) published by the Office for National Statistics, or
- (b) where that index is not published for a month, any substituted index or figures published by that Office.

(6) An order under this Article shall be laid before the Assembly after being made.

Guarantee payments

34. For Article 63(7) of the Employment Rights Order (guarantee payments: limits) there shall be substituted—

- “(7) The Department may by order vary—
- (a) the length of the period specified in paragraph (2);
 - (b) a limit specified in paragraph (3) or (4).”.

Articles 32 to 34: consequential

35.—(1) Articles 23(2) to (4), 154(2), 158(2) and 231(2) of the Employment Rights Order (which confer power to increase sums) shall cease to have effect.

(2) An increase effected, before Article 33 comes into operation, by virtue of a provision repealed by this Article shall continue to have effect notwithstanding this Article (but subject to Article 33(2) and (4)).

Compensatory awards, etc.: removal of limits in certain cases

36.—(1) After Article 158(1) of the Employment Rights Order (limit of compensatory award etc.) there shall be inserted—

“(1A) Paragraph (1) shall not apply to compensation awarded, or a compensatory award made, to a person in a case where he is regarded as unfairly dismissed by virtue of Article 132, 134A, 137(3) or 137(5A).”.

(2) Article 162B of that Order (power to specify method of calculation of compensation where dismissal a result of protected disclosure) shall cease to have effect.

Transfer of undertakings

37.—(1) This Article applies where regulations under section 2(2) of the European Communities Act 1972 (general implementation of Treaties) make provision for the purpose of implementing, or for a purpose concerning, a Community obligation of the United Kingdom which relates to the treatment of employees on the transfer of an undertaking or business or part of an undertaking or business.

(2) The Department may by regulations make the same or similar provision in relation to the treatment of employees in circumstances other than those to which the Community obligation applies (including circumstances in which there is no transfer, or no transfer to which the Community obligation applies).

(3) Regulations under this Article shall be subject to negative resolution.

National security

38. Schedule 8 shall have effect.

General

Orders and regulations

39.—(1) An order or regulations to which this paragraph applies shall—

- (a) be laid before the Assembly as soon as may be after it is made;
- (b) come into operation on such date as may be specified therein; and

- (c) cease to have effect on the expiration of a period of six months from the date on which it came into operation unless, before the expiration of that period, it is approved by a resolution of the Assembly.
- (2) Paragraph (1) applies to—
 - (a) regulations under Article 5, 19 or 21;
 - (b) an order under Article 24.
- (3) Regulations and orders under this Order may contain incidental, supplementary, transitional or saving provisions.

Repeals

40. The statutory provisions mentioned in Schedule 9 are repealed (or revoked) to the extent specified in column 3 of that Schedule.

A.K. Galloway
Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Article 3.

COLLECTIVE BARGAINING: RECOGNITION

The Schedule to be inserted immediately before Schedule 2 to the Trade Union and Labour Relations Order is as follows—

“SCHEDULE 1A

COLLECTIVE BARGAINING: RECOGNITION

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.

(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.

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 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 under Article 6 of the 1992 Order that it is independent.

7.—(1) The request is not valid unless the employer, taken with any associated employer or employers, employs—

(a) at least 21 workers on the day the employer receives the request, or

(b) an average of at least 21 workers in the 13 weeks ending with that day.

(2) To find the average under sub-paragraph (1)(b)—

(a) take the number of workers employed in each of the 13 weeks (including workers not employed for the whole of the week);

(b) aggregate the 13 numbers;

(c) divide the aggregate by 13.

(3) For the purposes of sub-paragraph (1)(a) any worker employed by an associated company incorporated outside Northern Ireland must be ignored unless the day the request was made fell within a period during which he ordinarily worked in Northern Ireland.

(4) For the purposes of sub-paragraph (1)(b) any worker employed by an associated company incorporated outside Northern Ireland must be ignored in relation to a week unless the whole or any part of that week fell within a period during which he ordinarily worked in Northern Ireland.

(5) For the purposes of sub-paragraphs (3) and (4) a worker who is employed on board a ship registered in the register maintained under section 8 of the Merchant Shipping Act 1995 shall be treated as ordinarily working in Northern Ireland unless—

(a) the ship's entry in the register specifies a port outside Northern Ireland as the port to which the vessel is to be treated as belonging,

(b) the employer is wholly outside Northern Ireland, or

(c) the worker is not ordinarily resident in Northern Ireland.

(6) The Department may by order—

(a) provide that sub-paragraphs (1) to (5) are not to apply, or are not to apply in specified circumstances, or

(b) vary the number of workers for the time being specified in sub-paragraph (1).

(7) No order shall be made under sub-paragraph(6) unless a draft of it has been laid before, and approved by a resolution of, the Assembly.

8. The request is not valid unless it—

(a) is in writing,

(b) identifies the union or unions and the bargaining unit, and

(c) states that it is made under this Schedule.

9. The Department may by order prescribe the form of requests and the procedure for making them, and if it does so the request is not valid unless it complies with the order.

Parties agree

10.—(1) If before the end of the first period the parties agree a bargaining unit and that the union is (or unions are) to be recognised as entitled to conduct collective bargaining on behalf of the unit, no further steps are to be taken under this Part.

(2) If before the end of the first period the employer informs the union (or unions) that the employer does not accept the request but is willing to negotiate, sub-paragraph (3) applies.

(3) The parties may conduct negotiations with a view to agreeing a bargaining unit and that the union is (or unions are) to be recognised as entitled to conduct collective bargaining on behalf of the unit.

(4) If such an agreement is made before the end of the second period no further steps are to be taken under this Part.

(5) The employer and the union (or unions) may request the Agency to assist in conducting the negotiations.

(6) The first period is the period of 10 working days starting with the day after that on which the employer receives the request for recognition.

(7) The second period is—

(a) the period of 20 working days starting with the day after that on which the first period ends, or

(b) such longer period (so starting) as the parties may from time to time agree.

Employer rejects request

11.—(1) This paragraph applies if—

(a) before the end of the first period the employer fails to respond to the request, or

(b) before the end of the first period the employer informs the union (or unions) that the employer does not accept the request (without indicating a willingness to negotiate).

(2) The union (or unions) may apply to the Court to decide both these questions—

(a) whether the proposed bargaining unit is appropriate or some other 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.

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 end of the second period.

(2) The union (or unions) may apply to the Court to decide both these questions—

(a) whether the proposed bargaining unit is appropriate or some other 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

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- (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.

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—

- (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 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.

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

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- (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 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 24(5) and arising from the application.

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—
 - (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.

19.—(1) This paragraph applies if—

- (a) the Court accepts an application under paragraph 11(2) or 12(2), and
- (b) the parties have not agreed an appropriate bargaining unit at the end of the appropriate period.
- (2) The Court must decide the appropriate bargaining unit within—
 - (a) the period of 10 working days starting with the day after that on 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.
- (3) In deciding the appropriate bargaining unit 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 (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 proposed bargaining unit and of any other employees of the employer whom the Court considers relevant;
 - (e) the location of workers.
- (5) The Court must give notice of its decision to the parties.

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, or the Court has decided an appropriate bargaining unit, and
 - (c) that bargaining unit differs from the proposed bargaining unit.
- (2) Within the decision period the Court must decide whether the application is invalid within the terms of paragraphs 43 to 50.
- (3) In deciding whether the application is invalid, the Court must consider any evidence which it has been given by the employer or the union (or unions).
- (4) If the Court decides that the application is invalid—
- (a) the Court must give notice of its decision to the parties,
 - (b) the Court must not proceed with the application, and
 - (c) no further steps are to be taken under this Part.
- (5) If the Court decides that the application is not invalid it must—
- (a) proceed with the application, and
 - (b) give notice to the parties that it is so proceeding.
- (6) The decision period is—
- (a) the period of 10 working days starting with the day after that on which the parties agree an appropriate bargaining unit or the Court decides an appropriate bargaining unit, or
 - (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.

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, 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.

22.—(1) This paragraph applies if—

- (a) the Court proceeds with an application in accordance with paragraph 20 or 21, 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;
 - (b) a significant number of the union members within the bargaining unit inform the Court that they do not want the union (or unions) to conduct collective bargaining on their behalf;

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- (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.

23.—(1) This paragraph applies if—

- (a) the Court proceeds with an application in accordance with paragraph 20 or 21, 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.

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.

(5) The notification period is the period of 10 working days starting—

- (a) for the purposes of sub-paragraph (2)(a), 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) for the purposes of sub-paragraph (2)(b), with that day or (if later) the day on which the employer receives the Court's notice under paragraph 22(3) or 23(2).

25.—(1) This paragraph applies if the Court arranges under paragraph 24 for the holding of a ballot.

(2) The ballot must be conducted by a qualified independent person appointed by the Court.,

(3) The ballot must be conducted within—

- (a) the period of 20 working days starting with the day after that on which the qualified independent person is appointed, or
- (b) such longer period (so starting) as the Court may decide.

(4) The ballot must be conducted—

- (a) at a workplace or workplaces decided by the Court,
- (b) by post, or
- (c) by a combination of the methods described in sub-paragraphs (a) and (b),

depending on the Court's preference.

- (5) In deciding how the ballot is to be conducted the Court must take into account—
 - (a) the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace or workplaces;
 - (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)
- (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).
- (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).

26.—(1) An employer who is informed by the Court under paragraph 25(9) must comply with the following three 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 union 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.
- (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.

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(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.

(8) Each of the following powers shall be taken to include power to issue Codes of Practice about reasonable access for the purposes of sub-paragraph (3)—

- (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.

27.—(1) If the Court is satisfied that the employer has failed to fulfil any of the three duties imposed 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.

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.

(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.

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.

(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.

Consequences of recognition

30.—(1) This paragraph applies if the Court issues a declaration under this Part that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit.

(2) The parties may in the negotiation period conduct negotiations with a view to agreeing a method by which they will conduct collective bargaining.

(3) If no agreement is made in the negotiation period the employer or the union (or unions) may apply to the Court for assistance.

(4) The negotiation period is—

(a) the period of 30 working days starting with the start day, or

(b) such longer period (so starting) as the parties may from time to time agree.

(5) The start day is the day after that on which the parties are notified of the declaration.

31.—(1) This paragraph applies if an application for assistance is made to the Court under paragraph 30.

(2) The Court must try to help the parties to reach in the agreement period an agreement on a method by which they will conduct collective bargaining.

(3) If at the end of the agreement period the parties have not made such an agreement the Court must specify to the parties the method by which they are to conduct collective bargaining.

(4) Any method specified under sub-paragraph (3) is to have effect as if it were contained in a legally enforceable contract made by the parties.

(5) But if the parties agree in writing—

(a) that sub-paragraph (4) shall not apply, or shall not apply to particular parts of the method specified by the Court, or

(b) to vary or replace the method specified by the Court,

the written agreement shall have effect as a legally enforceable contract made by the parties.

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(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 parties may apply to the Court for assistance.

(3) Paragraph 31 applies as if “paragraph 30” (in each place) read “paragraph 30 or paragraph 32”.

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 pay, hours or holidays.

(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 under Article 6 of the 1992 Order that it is independent,
- (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).

36.—(1) An application under paragraph 11 or 12 is not admissible unless the Court decides that—

- (a) members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit, and
- (b) a majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union (or unions) as entitled to conduct collective bargaining on behalf of the bargaining unit.

(2) The relevant bargaining unit is—

- (a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
- (b) the agreed bargaining unit, where the application is under paragraph 12(4).

(3) The Court must give reasons for the decision.

37.—(1) This paragraph applies to an application made by more than one union under paragraph 11 or 12.

(2) The application is not admissible unless—

- (a) the unions show that they will co-operate with each other in a manner likely to secure and maintain stable and effective collective bargaining arrangements, and
- (b) the unions show that, if the employer wishes, they will enter into arrangements under which collective bargaining is conducted by the unions acting together on behalf of the workers constituting the relevant bargaining unit.

(3) The relevant bargaining unit is—

- (a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
- (b) the agreed bargaining unit, where the application is under paragraph 12(4).

38.—(1) This paragraph applies if—

- (a) the Court accepts a relevant application relating to a bargaining unit or proceeds under paragraph 20 with an application relating to a bargaining unit,
- (b) the application has not been withdrawn,
- (c) no notice has been given under paragraph 17(2),

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- (d) the Court has not issued a declaration under paragraph 22(2), 27(2), 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).

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 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 held 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).

41.—(1) This paragraph applies if the Court issues a declaration under paragraph 121(3) that bargaining arrangements are to cease to have effect; and this is so whether the ballot concerned is held 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).

42.—(1) This paragraph applies for the purposes of paragraphs 39 to 41.

(2) It is for the Court to decide whether one bargaining unit is the same or substantially the same as another, but in deciding the Court may take account of the views of any person it believes has an interest in the matter.

General provisions about validity

43.—(1) Paragraphs 44 to 50 apply if the Court has to decide under paragraph 20 whether an application is valid.

- (2) In those paragraphs—
- (a) references to the application in question are to that application, and
 - (b) references to the relevant bargaining unit are to the bargaining unit agreed by the parties or decided by the Court.

44.—(1) The application in question is invalid if the Court is satisfied that there is already in force a collective agreement under which a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of any workers falling within the relevant bargaining unit.

- (2) But sub-paragraph (1) does not apply to the application in question if—
- (a) the union (or unions) recognised under the collective agreement and the union (or unions) making the application in question are the same, and
 - (b) the matters in respect of which the union is (or unions are) entitled to conduct collective bargaining do not include pay, hours or holidays.

(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 under Article 6 of the 1992 Order that it is independent,
- (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

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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.

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 22(2), 27(2), 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).

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 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 held 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.

49.—(1) This paragraph applies if the Court issues a declaration under paragraph 121(3) that bargaining arrangements are to cease to have effect; and this is so whether the ballot concerned is held 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.

50.—(1) This paragraph applies for the purposes of paragraphs 47 to 49.

(2) It is for the Court to decide whether one bargaining unit is the same or substantially the same as another, but in deciding the Court may take account of the views of any person it believes has an interest in the matter.

Competing applications

51.—(1) For the purposes of this paragraph—

- (a) the original application is the application referred to in paragraph 38(1) or 46(1), and
- (b) the competing application is the other application referred to in paragraph 38(2) or the application in question referred to in paragraph 46(2);

but an application cannot be an original application unless it was made under paragraph 11(2) or 12(2).

- (2) This paragraph applies if—
 - (a) the Court decides that the competing application is not admissible by reason of paragraph 38 or is invalid by reason of paragraph 46,
 - (b) at the time the decision is made the parties to the original application have not agreed the appropriate bargaining unit under paragraph 18, and the Court has not decided the appropriate bargaining unit under paragraph 19, 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.

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 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 24(5) 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.

Other interpretation

- 53.**—(1) This paragraph applies for the purposes of this Part.

(2) In relation to an agreement for recognition, references to the bargaining unit are to the group of workers (or the groups taken together) to which the agreement for recognition relates.

(3) In relation to an agreement for recognition, references to the parties are to the union (or unions) and the employer who are parties to the agreement.

54.—(1) This paragraph applies for the purposes of this Part.

(2) Except in paragraph 63(2), in relation to an agreement for recognition references to collective bargaining are to negotiations relating to the matters in respect of which the union is (or unions are) recognised as entitled to conduct negotiations under the agreement for recognition.

(3) In paragraph 63(2) the reference to collective bargaining is to negotiations relating to pay, hours and holidays.

Determination of type of agreement

55.—(1) This paragraph applies if one or more of the parties to an agreement applies to the Court for a decision whether or not the agreement is an agreement for recognition.

(2) The Court must give notice of receipt of an application under sub-paragraph (1) to any parties to the agreement who are not parties to the application.

(3) The Court must within the decision period decide whether the agreement is an agreement for recognition.

(4) If the Court decides that the agreement is an agreement for recognition it must issue a declaration to that effect.

(5) If the Court decides that the agreement is not an agreement for recognition it must issue a declaration to that effect.

(6) The decision period is—

(a) the period of 10 working days starting with the day after that on which the Court receives the application under sub-paragraph (1), or

(b) such longer period (so starting) as the Court may specify to the parties to the agreement by notice containing reasons for the extension.

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—

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- (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 under Article 6 of the 1992 Order that it is independent.

(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).

61.—(1) An application to the Court is not admissible unless—

- (a) it is made in such form as the Court specifies, and
- (b) it is supported by such documents as the Court specifies.

(2) An application which is made by a union (or unions) to the Court is not admissible unless the union gives (or unions give) to the employer—

- (a) notice of the application, and
- (b) a copy of the application and any documents supporting it.

(3) An application which is made by an employer to the Court is not admissible unless the employer gives to the union (or each of the unions)—

- (a) notice of the application, and
- (b) a copy of the application and any documents supporting it.

Court's response to application

62.—(1) The Court must give notice to the parties of receipt of an application under paragraph 58 or 59.

(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.

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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).

(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—

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- (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.

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).

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- (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.

(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—

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- (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.(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.

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- (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 (1)(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.

- 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—
 - (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;
 - (b) a significant number of the union members within the new unit inform the Court 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;

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- (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.

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, but as if references to the bargaining unit were references to the new unit.

(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).

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.

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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

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—

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- (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—
- (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.
- (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 100 to 103 are not to apply, or are not to apply in specified circumstances, or
 - (b) vary the number of workers for the time being specified in sub-paragraphs (1)(a) and (3)(e).

100.—(1) 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.

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.

(4) An application is not admissible if—

- (a) a relevant application was made within the period of 3 years prior to the date of the application,
- (b) the relevant application and the application relate to the same bargaining unit, and
- (c) the Court accepted the relevant application.

(5) A relevant application is an application made to the Court—

- (a) by the union (or the unions) under this paragraph,
- (b) by the employer under paragraph 106, 107 or 128, or
- (c) by a worker (or workers) under paragraph 112.

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,

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- (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.

(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.

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)—

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- (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 within the period of 3 years prior to the date of the application under paragraph 106 or 107,
- (b) the relevant application and the application under paragraph 106 or 107 relate to the same bargaining unit, and
- (c) the Court accepted the relevant application.

(2) A relevant application is an application made to the Court—

- (a) by the union (or the unions) under paragraph 101,
- (b) by the employer under paragraph 106, 107 or 128, or
- (c) by a worker (or workers) under paragraph 112.

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 within the period of 3 years prior to the date of the application under paragraph 112,
- (b) the relevant application and the application under paragraph 112 relate to the same bargaining unit, and
- (c) the Court accepted the relevant application.

(2) A relevant application is an application made to the Court—

- (a) by the union (or the unions) under paragraph 101,
- (b) by the employer under paragraph 106, 107 or 128, or
- (c) by a worker (or workers) under paragraph 112.

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

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- (b) give notice of the acceptance to the worker (or workers), the employer and the union (or unions).
- (6) The acceptance period is—
 - (a) the period of 10 working days starting with the day after that on which the Court receives the application, or
 - (b) such longer period (so starting) as the Court may specify to the worker (or workers), the employer and the union (or unions) by notice containing reasons for the extension.

116.—(1) If the Court accepts the application, in the negotiation period the Court must help the employer, the union (or unions) and the worker (or workers) with a view to—

- (a) the employer and the union (or unions) agreeing to end the bargaining arrangements, or
- (b) the worker (or workers) withdrawing the application.
- (2) The negotiation period is—
 - (a) the period of 20 working days starting with the day after that on which the Court gives notice of acceptance of the application, or
 - (b) such longer period (so starting) as the Court may decide with the consent of the worker (or workers), the employer and the union (or unions).

Ballot on derecognition

117.—(1) This paragraph applies if the Court accepts an application under paragraph 106 or 107.

- (2) This paragraph also applies if—
 - (a) the Court accepts an application under paragraph 112, and
 - (b) in the period mentioned in paragraph 116(1) there is no agreement or withdrawal as there described.
- (3) The Court must arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether the bargaining arrangements should be ended.
- (4) The ballot must be conducted by a qualified independent person appointed by the Court.
- (5) The ballot must be conducted within—
 - (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).
- (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).

118.—(1) An employer who is informed by the Court under paragraph 117(11) must comply with the following three 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.

(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.

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(8) Each of the following powers shall be taken to include power to issue Codes of Practice about reasonable access for the purposes of sub-paragraph (3)—

- (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.

119.—(1) If the Court is satisfied that the employer has failed to fulfil any of the three duties imposed 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.

(3) If—

- (a) the ballot has been arranged in consequence of an application under paragraph 112, and
- (b) the ballot has not been held,

an order under sub-paragraph (1), on being recorded in the county court, may be enforced in the same way as an order of that court.

(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.

120.—(1) This paragraph applies if the holding of a ballot has been arranged under paragraph 117(3), whether or not it has been cancelled.

(2) The gross costs of the ballot shall be borne—

- (a) as to half, by the employer, and
- (b) as to half, by the union (or unions).

(3) If there is more than one union they shall bear their half of the gross costs—

- (a) in such proportions as they jointly indicate to the person appointed to conduct the ballot, or
- (b) in the absence of such an indication, in equal shares.

(4) The person appointed to conduct the ballot may send to the employer and the union (or each of the unions) a demand stating—

- (a) the gross costs of the ballot, and
- (b) the amount of the gross costs to be borne by the recipient.

(5) In such a case the recipient must pay the amount stated to the person sending the demand, and must do so within the period of 15 working days starting with the day after that on which the demand is received.

(6) If the amount stated is not paid in accordance with sub-paragraph (5) it shall, if a county court so orders, be recoverable as if it were payable under an order of that court.

(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.

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.

(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.

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 22(2) 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.

123.—(1) This Part also applies if—

(a) the Court has issued a declaration under paragraph 22(2) 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

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- (b) anything effective as, or as if contained in, a legally enforceable contract by virtue of paragraph 31.

124.—(1) This Part also applies if the Court has issued a declaration under paragraph 87(2) that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit.

(2) In such a case references in this Part to the bargaining arrangements are to—

- (a) the declaration, and
- (b) paragraph 87(6)(b).

125. For the purposes of this Part the relevant date is the date of the expiry of the period of 3 years starting with the date of the Court’s declaration.

126. References in this Part of this Schedule to the parties are to the employer and the union (or unions) concerned.

Employer’s request to end arrangements

127.—(1) The employer may after the relevant date request the union (or each of the unions) to agree to end the bargaining arrangements.

(2) The request is not valid unless it—

- (a) is in writing,
- (b) is received by the union (or each of the unions),
- (c) identifies the bargaining arrangements,
- (d) states that it is made under this Schedule, and
- (e) states that fewer than half of the workers constituting the bargaining unit are members of the union (or unions).

128.—(1) If before the end of the negotiation period the parties agree to end the bargaining arrangements no further steps are to be taken under this Part.

(2) If no such agreement is made before the end of the negotiation period, the employer may apply to the Court for the holding of a secret ballot to decide whether the bargaining arrangements should be ended.

(3) The negotiation period is the period of 10 working days starting with the day after—

- (a) the day on which the union receives the request, or
- (b) the last day on which any of the unions receives the request;

or such longer period (so starting) as the parties may from time to time agree.

129.—(1) An application under paragraph 128 is not admissible unless—

- (a) it is made in such form as the Court specifies, and
- (b) it is supported by such documents as the Court specifies.

(2) An application under paragraph 128 is not admissible unless the employer gives to the union (or each of the unions)—

- (a) notice of the application, and
- (b) a copy of the application and any documents supporting it.

130.—(1) An application under paragraph 128 is not admissible if—

- (a) a relevant application was made within the period of 3 years prior to the date of the application under paragraph 128,
 - (b) the relevant application and the application under paragraph 128 relate to the same bargaining unit, and
 - (c) the Court accepted the relevant application.
- (2) A relevant application is an application made to the Court—
- (a) by the union (or the unions) under paragraph 101,
 - (b) by the employer under paragraph 106, 107 or 128, or
 - (c) by a worker (or workers) under paragraph 112.

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 reference in paragraph 119(2)(a) to paragraph 106 or 107 were to paragraph 106, 107 or 128;
 - (b) the reference in paragraph 121(4) to paragraph 106, 107 or 112 were to paragraph 106, 107, 112 or 128.

PART VI

DERECOGNITION WHERE UNION NOT INDEPENDENT

Introduction

134.—(1) This Part applies if—

- (a) an employer and a union (or unions) have agreed that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a group or groups of workers, and
- (b) the union does not have (or none of the unions has) a certificate under Article 6 of the 1992 Order that it is independent.

(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.

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 under Article 6 of the 1992 Order that it is independent.

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).

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(2) In such a case paragraph 142(1) or 145(3) shall cease to apply from the time when the Court is satisfied as mentioned in sub-paragraph (1)(b).

144.—(1) This paragraph applies if the Court is subsequently satisfied that—

- (a) the Certification Officer has come to a decision on the application (or each of the applications) mentioned in paragraph 143(1)(b), and
- (b) his decision is that the union (or any of the unions) which made an application under Article 6 of the 1992 Order is independent.

(2) In such a case—

- (a) the Court must give the worker (or workers), the employer and the union (or unions) notice that it is so satisfied, and
- (b) the application under paragraph 137 shall be treated as not having been made.

145.—(1) This paragraph applies if the Court is subsequently satisfied that—

- (a) the Certification Officer has come to a decision on the application (or each of the applications) mentioned in paragraph 143(1)(b), and
- (b) his decision is that the union (or each of the unions) which made an application under Article 6 of the 1992 Order is not independent.

(2) The Court must give the worker (or workers), the employer and the union (or unions) notice that it is so satisfied.

(3) In the new negotiation period the Court must help the employer, the union (or unions) and the worker (or workers) with a view to—

- (a) the employer and the union (or unions) agreeing to end the bargaining arrangements, or
- (b) the worker (or workers) withdrawing the application.

(4) The new negotiation period is—

- (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 reference in paragraph 119(3)(a) to paragraph 112 were to paragraph 112 or 137;
 - (b) the reference in paragraph 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).

Derecognition: other cases

- 148.**—(1) This paragraph applies if as a result of a declaration by the Court another union is (or other unions are) recognised as entitled to conduct collective bargaining on behalf of a group of workers at least one of whom falls within the bargaining unit.
- (2) The Court must issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the Court in the declaration.
- (3) If a declaration is issued under sub-paragraph (2) the bargaining arrangements shall cease to have effect accordingly.
- (4) It is for the Court to decide whether sub-paragraph (1) is fulfilled, but in deciding the Court may take account of the views of any person it believes has an interest in the matter.

PART VII

LOSS OF INDEPENDENCE

Introduction

149.—(1) This Part applies if the Court has issued a declaration that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit.

(2) In such a case references in this Part to the bargaining arrangements are to the declaration and to the provisions relating to the collective bargaining method.

(3) For this purpose the provisions relating to the collective bargaining method are—

- (a) the parties' agreement as to the method by which collective bargaining is to be conducted,
- (b) anything effective as, or as if contained in, a legally enforceable contract and relating to the method by which collective bargaining is to be conducted, or
- (c) any provision of Part III that a method of collective bargaining is to have effect.

150.—(1) This Part also applies if—

- (a) the parties have agreed that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit,
- (b) the Court has specified to the parties under paragraph 63(2) the method by which they are to conduct collective bargaining, and
- (c) the parties have not agreed in writing to replace the method or that paragraph 63(3) shall not apply.

(2) In such a case references in this Part to the bargaining arrangements are to—

- (a) the parties' agreement mentioned in sub-paragraph (1)(a), and
- (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.

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;
- (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;

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- (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).

Employees with fixed-term contracts

163. Article 240(1) of the Employment Rights Order (fixed-term contracts) does not prevent Part XI of that Order from applying to a dismissal which is regarded as unfair by virtue of paragraph 161 or 162.

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

Power to amend

166.—(1) If the Court represents to the Department that paragraph 22 or 87 has an unsatisfactory effect and should be amended, the Department may by order amend it with a view to rectifying that effect.

(2) The Department may amend it in such way as the Department thinks fit, and not necessarily in a way proposed by the Court (if it proposes one).

(3) 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.

Guidance

167.—(1) The Department may issue guidance to the Court on the way in which it is to exercise its functions under paragraph 22 or 87.

(2) The Court must take into account any such guidance in exercising those functions.

(3) However, no guidance is to apply with regard to an application made to the Court before the guidance in question was issued.

(4) The Department must—

(a) lay before the Assembly any guidance issued under this paragraph, and

(b) arrange for any such guidance to be published by such means as appear to the Department to be most appropriate for drawing it to the attention of persons likely to be affected by it.

Method of conducting collective bargaining

168.—(1) After consulting the Agency the Department may by order specify for the purposes of paragraphs 31(3) and 63(2) a method by which collective bargaining might be conducted.

(2) If such an order is made the Court—

(a) must take it into account under paragraphs 31(3) and 63(2), but

(b) may depart from the method specified by the order to such extent as the Court thinks it is appropriate to do so in the circumstances.

(3) An order under this paragraph shall be subject to negative resolution.

Directions about certain applications

169.—(1) The Department may make to the Court directions as described in sub-paragraph (2) in relation to any case where—

(a) two or more applications are made to the Court,

(b) each application is a relevant application,

(c) each application relates to the same bargaining unit, and

(d) the Court has not accepted any of the applications.

(2) The directions are directions as to the order in which the Court must consider the admissibility of the applications.

(3) The directions may include—

(a) provision to deal with a case where a relevant application is made while the Court is still considering the admissibility of another one relating to the same bargaining unit;

(b) other incidental provisions.

(4) A relevant application is an application under paragraph 101, 106, 107, 112 or 128.

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

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- (b) if the declaration is issued in consequence of an application by a worker or workers, the worker or workers making it.

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.

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

Article 4.

UNION MEMBERSHIP: DETRIMENT

Introduction

- 1. The Employment Rights Order shall be amended as provided in this Schedule.

Detriment

2.—(1) Article 73 (action short of dismissal on grounds related to union membership or activities) shall be amended as follows.

(2) In paragraph (1) for “have action short of dismissal taken against him as an individual by his employer” substitute “be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place”.

(3) In paragraph (3) for “have action short of dismissal taken against him” substitute “be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place”.

(4) In paragraph (4) for “action short of dismissal taken against him” substitute “a detriment to which he has been subjected as an individual by an act of his employer taking place”.

- (5) After paragraph (5) insert—

“(6) For the purposes of this Article and Article 74, detriment is detriment short of dismissal.”.

Complaints to industrial tribunal

3.—(1) Article 74 shall be amended as follows.

(2) In paragraph (1) for “action has been taken against him” substitute “he has been subjected to a detriment”.

(3) In paragraph (2)(a) for the words from “action to which” to “those actions” substitute “act or failure to which the complaint relates or, where that act or failure is part of a series of similar acts or failures (or both) the last of them”.

(4) After paragraph (2) insert—

“(3) For the purposes of paragraph (2)—

(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.

(4) For the purposes of paragraph (3), in the absence of evidence establishing the contrary an employer shall 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.”.

Consideration of complaint

4.—(1) Article 75 shall be amended as follows.

(2) In paragraph (1) for “action was taken against the complainant” substitute “he acted or failed to act”.

(3) In paragraph (2) for “action was taken by the employer or the purpose for which it was taken” substitute “the employer acted or failed to act, or the purpose for which he did so”.

(4) In paragraph (3)—

(a) for “action was taken by the employer against the complainant” substitute “the employer acted or failed to act”;

(b) for the words from “took the action” to “would take” substitute “acted or failed to act, unless it considers that no reasonable employer would act or fail to act in the way concerned”.

(5) For paragraph (4) substitute—

“(4) Where the tribunal determines that—

(a) the complainant has been subjected to a detriment by an act or deliberate failure to act by his employer; and

(b) the act or failure took place in consequence of a previous act or deliberate failure to act by the employer,

sub-paragraph (a) of paragraph (3) is satisfied if the purpose mentioned in that sub-paragraph was the purpose of the previous act or failure.”.

Remedies

5. In Article 76 for “action” there shall be substituted “act or failure”—

(a) in paragraphs (1), (2) and (3)(a) and (b); and

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- (b) in paragraph (6), in the first place where “action” occurs.

Awards against third parties

- 6. In Article 77(1)—
 - (a) in sub-paragraph (a) for “action has been taken against the complainant by his employer” there shall be substituted “the complainant has been subjected to detriment by an act or failure by his employer taking place”;
 - (b) in sub-paragraph (b) for “take the action” there shall be substituted “act or fail to act in the way”.

SCHEDULE 3

Article 6.

BALLOTS AND NOTICES

Introduction

- 1. The Trade Union and Labour Relations Order shall be amended as provided by this Schedule.

Support of ballot

2.—(1) Article 104 (requirement of ballot before action by trade union) shall be amended as follows.

(2) In paragraph (3) (industrial action to be regarded as having support of ballot only if certain conditions are fulfilled) in sub-paragraph (a)(ii) for “113” substitute “112”, omit the word “and” at the end of sub-paragraph (b), and after sub-paragraph (b) insert—

“(bb) Article 115A does not prevent the industrial action from being regarded as having the support of the ballot; and”.

(3) In paragraph (4) for “109(1)” substitute “109(3)”.

(4) After paragraph (4) insert—

“(4A) If the requirements of Article 113 fall to be satisfied in relation to an employer, as respects that employer industrial action shall not be regarded as having the support of a ballot unless those requirements are satisfied in relation to that employer.”.

Documents for employers

3.—(1) Article 105 (notice of ballot and sample voting paper for employers) shall be amended as follows.

(2) In paragraph (2)(c) (notice of ballot must describe employees entitled to vote) for “describing (so that he can readily ascertain them) the employees of the employer” substitute “containing such information in the union’s possession as would help the employer to make plans and bring information to the attention of those of his employees”.

(3) After paragraph (3) insert—

“(3A) These rules apply for the purposes of sub-paragraph (c) of paragraph (2)—

- (a) if the union possesses information as to the number, category or work-place of the employees concerned, a notice must contain that information (at least);

- (b) if a notice does not name any employees, that fact shall not be a ground for holding that it does not comply with sub-paragraph (c) of paragraph (2).
- (3B) In paragraph (3) references to employees are to employees of the employer concerned.”.

Entitlement to vote

- 4. In Article 108 (entitlement to vote in ballot) paragraph (2) (position where member is denied entitlement to vote) shall be omitted.

Separate workplace ballots

- 5. The following shall be substituted for Article 109 (separate workplace ballots)—

“Separate workplace ballots

109.—(1) Subject to paragraph (2), this Article applies if the members entitled to vote in a ballot by virtue of Article 108 do not all have the same workplace.

(2) This Article does not apply if the union reasonably believes that all those members have the same workplace.

(3) Subject to Article 109A, a separate ballot shall be held for each workplace; and entitlement to vote in each ballot shall be accorded equally to, and restricted to, members of the union who—

- (a) are entitled to vote by virtue of Article 108; and
- (b) have that workplace.

(4) In this Article and Article 109A “workplace” in relation to a person who is employed means—

- (a) if the person works at or from a single set of premises, those premises; and
- (b) in any other case, the premises with which the person’s employment has the closest connection.

Separate workplaces: single and aggregate ballots

109A.—(1) Where Article 109(3) would require separate ballots to be held for each workplace, a ballot may be held in place of some or all of the separate ballots if one of paragraphs (2) to (4) is satisfied in relation to it.

(2) This paragraph is satisfied in relation to a ballot if the workplace of each member entitled to vote in the ballot is the workplace of at least one member of the union who is affected by the dispute.

(3) This paragraph is satisfied in relation to a ballot if entitlement to vote is accorded to, and limited to, all the members of the union who—

- (a) according to the union’s reasonable belief have an occupation of a particular kind or have any of a number of particular kinds of occupation; and
- (b) are employed by a particular employer, or by any of a number of particular employers, with whom the union is in dispute.

(4) This paragraph is satisfied in relation to a ballot if entitlement to vote is accorded to, and limited to, all the members of the union who are employed by a particular employer, or by any of a number of particular employers, with whom the union is in dispute.

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(5) For the purposes of paragraph (2) the following are members of the union affected by a dispute—

- (a) if the dispute relates (wholly or partly) to a decision which the union reasonably believes the employer has made or will make concerning a matter specified in paragraph (1)(a), (b) or (c) of Article 127 (meaning of “trade dispute”), members whom the decision directly affects;
- (b) if the dispute relates (wholly or partly) to a matter specified in paragraph (1)(d) of that Article, members whom the matter directly affects;
- (c) if the dispute relates (wholly or partly) to a matter specified in paragraph (1)(e) of that Article, persons whose membership or non-membership is in dispute;
- (d) if the dispute relates (wholly or partly) to a matter specified in paragraph (1)(f) of that Article, officials of the union who have used or would use the facilities concerned in the dispute”.

Voting

6.—(1) Article 110 (voting) shall be amended as follows.

(2) After paragraph (3) (voting paper must ask whether voter is prepared to take part in a strike or industrial action short of a strike) insert—

“(3A) For the purposes of paragraph (3) an overtime ban and a call-out ban constitute industrial action short of a strike.”.

(3) At the end of the statement in paragraph (5) (statement that industrial action may be a breach of employment contract to be set out on every voting paper) insert—

“However, if you are dismissed for taking part in strike or other industrial action which is called officially and is otherwise lawful, the dismissal will be unfair if it takes place fewer than eight weeks after you started taking part in the action, and depending on the circumstances may be unfair if it takes place later.”.

(4) In the definition of “strike” in Article 129 (interpretation) after “means” there shall be inserted “(except for the purposes of Article 110(3))”.

Conduct of ballot: merchant seamen

7. In Article 111 (conduct of ballot) for paragraphs (3) and (4) there shall be substituted—

“(3) Paragraph (4) applies to a merchant seaman if the trade union reasonably believes that—

- (a) he will be employed in a ship either at sea or at a place outside Northern Ireland at some time in the period during which votes may be cast; and
- (b) it will be convenient for him to receive a voting paper and to vote while on the ship or while at a place where the ship is rather than in accordance with paragraph (2).

(4) Where this paragraph applies to a merchant seaman he shall, if it is reasonably practicable—

- (a) have a voting paper made available to him while on the ship or while at a place where the ship is; and
- (b) be given an opportunity to vote while on the ship or while at a place where the ship is.”.

Inducement

8. After Article 115 insert—

“Inducement of member denied entitlement to vote

115A. Industrial action shall not be regarded as having the support of a ballot if the following conditions apply in the case of any person—

- (a) he was a member of the trade union at the time when the ballot was held;
- (b) it was reasonable at that time for the trade union to believe he would be induced to take part or, as the case may be, to continue to take part in the industrial action;
- (c) he was not accorded entitlement to vote in the ballot; and
- (d) he was induced by the trade union to take part or, as the case may be, to continue to take part in the industrial action.”.

Disregard of certain failures

9. After Article 115A there shall be inserted—

“Small accidental failures to be disregarded

115B.—(1) If—

- (a) in relation to a ballot there is a failure (or there are failures) to comply with a provision mentioned in paragraph (2) or with more than one of those provisions; and
- (b) the failure is accidental and on a scale which is unlikely to affect the result of the ballot or, as the case may be, the failures are accidental and taken together are on a scale which is unlikely to affect the result of the ballot,

the failure (or failures) shall be disregarded.

(2) The provisions are Article 108(1), Article 111(2) and Article 111(4).”.

Period of ballot's effectiveness

10. In Article 117 (period after which ballot ceases to be effective) for paragraph (1) there shall be substituted—

“(1) Subject to the following provisions, a ballot ceases to be effective for the purposes of Article 116(3)(b) in relation to industrial action by members of a trade union at the end of the period, beginning with the date of the ballot—

- (a) of four weeks; or
- (b) of such longer duration not exceeding eight weeks as is agreed between the union and the members' employer.”.

Notice of industrial action

11.—(1) Article 118 (notice to employers of industrial action) shall be amended as follows.

(2) In paragraph (3)(a) (notice relating to industrial action must describe employees intended to take part in industrial action) for “describes (so that he can readily ascertain them) the employees of the employer who” substitute “contains such information in the union's possession as would help the employer to make plans and bring information to the attention of those of his employees whom”.

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- (3) After paragraph (5) insert—
- “(5A) These rules apply for the purposes of sub-paragraph (a) of paragraph (3)—
 - (a) if the union possesses information as to the number, category or work-place of the employees concerned, a notice must contain that information (at least);
 - (b) if a notice does not name any employees, that fact shall not be a ground for holding that it does not comply with sub-paragraph (a) of paragraph (3).”.
- (4) In paragraph (7)—
- (a) insert at the beginning the words “Subject to paragraphs (7A) and (7B),”; and
 - (b) in sub-paragraph (a) the words “otherwise than to enable the union to comply with a court order or an undertaking given to a court” shall cease to have effect.
- (5) After paragraph (7) insert—
- “(7A) Paragraph (7) shall not apply where industrial action ceases to be authorised or endorsed in order to enable the union to comply with a court order or an undertaking given to a court.
 - (7B) Paragraph (7) shall not apply where—
 - (a) a union agrees with an employer, before industrial action ceases to be authorised or endorsed, that it will cease to be authorised or endorsed with effect from a date specified in the agreement (“the suspension date”) and that it may again be authorised or endorsed with effect from a date not earlier than a date specified in the agreement (“the resumption date”);
 - (b) the action ceases to be authorised or endorsed with effect from the suspension date; and
 - (c) the action is again authorised or endorsed with effect from a date which is not earlier than the resumption date or such later date as may be agreed between the union and the employer.”.
- (6) In paragraph (9) for “paragraph (7)” substitute “paragraphs (7) to (7B)”.

SCHEDULE 4

Articles 9, 10 and 11.

LEAVE FOR FAMILY REASONS, ETC.

PART I

MATERNITY LEAVE AND PARENTAL LEAVE
NEW PART IX OF EMPLOYMENT RIGHTS ORDER

“PART IX

CHAPTER I

MATERNITY LEAVE

Ordinary maternity leave

103.—(1) An employee may, provided that she satisfies any conditions which may be prescribed, be absent from work at any time during an ordinary maternity leave period.

(2) An ordinary maternity leave period is a period calculated in accordance with regulations made by the Department.

(3) Regulations under paragraph (2)—

- (a) shall secure that no ordinary maternity leave period is less than 18 weeks;
- (b) may allow an employee to choose, subject to any prescribed restrictions, the date on which an ordinary maternity leave period starts.

(4) Subject to Article 106, an employee who exercises her right under paragraph (1)—

- (a) is entitled to the benefit of the terms and conditions of employment which would have applied if she had not been absent,
- (b) is bound by any obligations arising under those terms and conditions (except in so far as they are inconsistent with paragraph (1)), and
- (c) is entitled to return from leave to the job in which she was employed before her absence.

(5) In paragraph (4)(a) “terms and conditions of employment”—

- (a) includes matters connected with an employee’s employment whether or not they arise under her contract of employment, but
- (b) does not include terms and conditions about remuneration.

(6) The Department may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this Article.

(7) An employee’s right to return under paragraph (4)(c) is a right to return—

- (a) with her seniority, pension rights and similar rights as they would have been if she had not been absent (subject to paragraph 5 of Schedule 5 to the Social Security (Northern Ireland) Order 1989 (equal treatment under pension schemes: maternity)), and
- (b) on terms and conditions not less favourable than those which would have applied if she had not been absent.

Compulsory maternity leave

104.—(1) An employer shall not permit an employee who satisfies prescribed conditions to work during a compulsory maternity leave period.

(2) A compulsory maternity leave period is a period calculated in accordance with regulations made by the Department.

(3) Regulations under paragraph (2) shall secure—

- (a) that no compulsory leave period is less than two weeks, and
- (b) that every compulsory maternity leave period falls within an ordinary maternity leave period.

(4) Subject to paragraph (5), any provision of or made under the Health and Safety at Work (Northern Ireland) Order 1978 shall apply in relation to the prohibition under paragraph (1) as if it were imposed by regulations under Article 17 of that Order.

(5) Article 31(1)(c) of the 1978 Order shall not apply in relation to the prohibition under paragraph (1); and an employer who contravenes that paragraph shall be—

- (a) guilty of an offence, and
- (b) liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Additional maternity leave

105.—(1) An employee who satisfies prescribed conditions may be absent from work at any time during an additional maternity leave period.

(2) An additional maternity leave period is a period calculated in accordance with regulations made by the Department.

(3) Regulations under paragraph (2) may allow an employee to choose, subject to prescribed restrictions, the date on which an additional maternity leave period ends.

(4) Subject to Article 106, an employee who exercises her right under paragraph (1)—

- (a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if she had not been absent,
- (b) is bound, for such purposes and to such extent as may be prescribed, by obligations arising under those terms and conditions (except in so far as they are inconsistent with paragraph (1)), and
- (c) is entitled to return from leave to a job of a prescribed kind.

(5) In paragraph (4)(a) “terms and conditions of employment”—

- (a) includes matters connected with an employee’s employment whether or not they arise under her contract of employment, but
- (b) does not include terms and conditions about remuneration.

(6) The Department may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this Article.

(7) The Department may make regulations making provision, in relation to the right to return under paragraph (4)(c), about—

- (a) seniority, pension rights and similar rights;
- (b) terms and conditions of employment on return.

Redundancy and dismissal

106.—(1) Regulations under Article 103 or 105 may make provision about redundancy during an ordinary or additional maternity leave period.

(2) Regulations under Article 103 or 105 may make provision about dismissal (other than by reason of redundancy) during an ordinary or additional maternity leave period.

(3) Regulations made by virtue of paragraph (1) or (2) may include—

- (a) provision requiring an employer to offer alternative employment;
- (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part XI).

(4) Regulations under Article 105 may make provision—

- (a) for Article 105(4)(c) not to apply in specified cases, and
- (b) about dismissal at the conclusion of an additional maternity leave period.

Articles 103 to 105: supplemental

107.—(1) Regulations under Article 103, 104 or 105 may—

- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;
- (b) make provision for the consequences of failure to give notices, to produce evidence or to comply with other procedural requirements;
- (c) make provision for the consequences of failure to act in accordance with a notice given by virtue of sub-paragraph (a);
- (d) make special provision for cases where an employee has a right which corresponds to a right under this Chapter and which arises under her contract of employment or otherwise;
- (e) make provision modifying the effect of Chapter IV of Part I (calculation of a week's pay) in relation to an employee who is or has been absent from work on ordinary or additional maternity leave;
- (f) make provision applying, modifying or excluding a statutory provision, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to ordinary, compulsory or additional maternity leave.

(2) In Articles 103 to 105 “prescribed” means prescribed by regulations made by the Department.

CHAPTER II

PARENTAL LEAVE

Entitlement to parental leave

108.—(1) The Department shall make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment, and
- (b) as to having, or expecting to have, responsibility for a child,

to be absent from work on parental leave for the purpose of caring for a child.

(2) The regulations shall include provision for determining—

- (a) the extent of an employee's entitlement to parental leave in respect of a child;

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(b) when parental leave may be taken.

(3) Provision under paragraph (2)(a) shall secure that where an employee is entitled to parental leave in respect of a child he is entitled to a period or total period of leave of at least three months; but this paragraph is without prejudice to any provision which may be made by regulations for cases in which—

(a) a person ceases to satisfy conditions under paragraph (1);

(b) an entitlement to parental leave is transferred.

(4) Provision under paragraph (2)(b) may, in particular, refer to—

(a) a child's age, or

(b) a specified period of time starting from a specified event.

(5) Regulations under paragraph (1) may—

(a) specify things which are, or are not, to be taken as done for the purpose of caring for a child;

(b) require parental leave to be taken as a single period of absence in all cases or in specified cases;

(c) require parental leave to be taken as a series of periods of absence in all cases or in specified cases;

(d) require all or specified parts of a period of parental leave to be taken at or by specified times;

(e) make provision about the postponement by an employer of a period of parental leave which an employee wishes to take;

(f) specify a minimum or maximum period of absence which may be taken as part of a period of parental leave;

(g) specify a maximum aggregate of periods of parental leave which may be taken during a specified period of time.

Rights during and after parental leave

109.—(1) Regulations under Article 108 shall provide—

(a) that an employee who is absent on parental leave is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he had not been absent,

(b) that an employee who is absent on parental leave is bound, for such purposes and to such extent as may be prescribed, by any obligations arising under those terms and conditions (except in so far as they are inconsistent with Article 108(1)), and

(c) that an employee who is absent on parental leave is entitled, subject to Article 110(1), to return from leave to a job of such kind as the regulations may specify.

(2) In paragraph (1)(a) “terms and conditions of employment”—

(a) includes matters connected with an employee's employment whether or not they arise under a contract of employment, but

(b) does not include terms and conditions about remuneration.

(3) Regulations under Article 108 may specify matters which are, or are not, to be treated as remuneration for the purposes of paragraph (2)(b).

(4) The regulations may make provision, in relation to the right to return mentioned in paragraph (1)(c), about—

- (a) seniority, pension rights and similar rights;
- (b) terms and conditions of employment on return.

Special cases

110.—(1) Regulations under Article 108 may make provision—

- (a) about redundancy during a period of parental leave;
- (b) about dismissal (other than by reason of redundancy) during a period of parental leave.

(2) Provision by virtue of paragraph (1) may include—

- (a) provision requiring an employer to offer alternative employment;
- (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part XI).

(3) Regulations under Article 108 may provide for an employee to be entitled to choose to exercise all or part of his entitlement to parental leave—

- (a) by varying the terms of his contract of employment as to hours of work, or
- (b) by varying his normal working practice as to hours of work,

in a way specified in or permitted by the regulations for a period specified in the regulations.

(4) Provision by virtue of paragraph (3)—

- (a) may restrict an entitlement to specified circumstances;
- (b) may make an entitlement subject to specified conditions (which may include conditions relating to obtaining the employer's consent);
- (c) may include consequential provision.

(5) Regulations under Article 108 may make provision permitting all or part of an employee's entitlement to parental leave in respect of a child to be transferred to another employee in specified circumstances.

(6) The reference in Article 109(1)(c) to absence on parental leave includes, where appropriate, a reference to a continuous period of absence attributable partly to maternity leave and partly to parental leave.

(7) Regulations under Article 108 may provide for specified provisions of the regulations not to apply in relation to an employee if any provision of his contract of employment—

- (a) confers an entitlement to absence from work for the purpose of caring for a child, and
- (b) incorporates or operates by reference to all or part of a collective agreement, or workforce agreement, of a kind specified in the regulations.

Supplemental

111.—(1) Regulations under Article 108 may, in particular—

- (a) make provision about notices to be given and evidence to be produced by employees to employers, by employers to employees, and by employers to other employers;
- (b) make provision requiring employers or employees to keep records;
- (c) make provision about other procedures to be followed by employees and employers;
- (d) make provision (including provision creating criminal offences) specifying the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;

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- (e) make provision specifying the consequences of failure to act in accordance with a notice given by virtue of sub-paragraph (a);
 - (f) make special provision for cases where an employee has a right which corresponds to a right conferred by the regulations and which arises under his contract of employment or otherwise;
 - (g) make provision applying, modifying or excluding a statutory provision, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to parental leave.
- (2) The regulations may make provision modifying the effect of Chapter IV of Part I (calculation of a week's pay) in relation to an employee who is or has been absent from work on parental leave.
- (3) Without prejudice to the generality of Article 108, the regulations may make any provision which appears to the Department to be necessary or expedient—
- (a) for the purpose of implementing Council Directive [96/34/EC](#) on the framework agreement on parental leave, or
 - (b) for the purpose of dealing with any matter arising out of or related to the United Kingdom's obligations under that Directive.

Complaint to industrial tribunal

- 112.—**(1) An employee may present a complaint to an industrial tribunal that his employer—
- (a) has unreasonably postponed a period of parental leave requested by the employee, or
 - (b) has prevented or attempted to prevent the employee from taking parental leave.
- (2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—
- (a) before the end of the period of three months beginning with the date (or last date) of the matters complained of, or
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (3) Where an industrial tribunal finds a complaint under this Article well-founded it—
- (a) shall make a declaration to that effect, and
 - (b) may make an award of compensation to be paid by the employer to the employee.
- (4) The amount of compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—
- (a) the employer's behaviour, and
 - (b) any loss sustained by the employee which is attributable to the matters complained of.”

PART II

TIME OFF FOR DEPENDANTS PROVISIONS TO BE INSERTED AFTER ARTICLE 85 OF THE EMPLOYMENT RIGHTS ORDER

“Dependants”

Time off for dependants

85A.—(1) An employee is entitled to be permitted by his employer to take a reasonable amount of time off during the employee’s working hours in order to take action which is necessary—

- (a) to provide assistance on an occasion when a dependant falls ill, gives birth or is injured or assaulted,
- (b) to make arrangements for the provision of care for a dependant who is ill or injured,
- (c) in consequence of the death of a dependant,
- (d) because of the unexpected disruption or termination of arrangements for the care of a dependant, or
- (e) to deal with an incident which involves a child of the employee and which occurs unexpectedly in a period during which an educational establishment which the child attends is responsible for him.

(2) Paragraph (1) does not apply unless the employee—

- (a) tells his employer the reason for his absence as soon as reasonably practicable, and
- (b) except where paragraph (a) cannot be complied with until after the employee has returned to work, tells his employer for how long he expects to be absent.

(3) Subject to paragraphs (4) and (5), for the purposes of this Article “dependant” means, in relation to an employee—

- (a) a spouse,
- (b) a child,
- (c) a parent,
- (d) a person who lives in the same household as the employee, otherwise than by reason of being his employee, tenant, lodger or boarder.

(4) For the purposes of paragraph (1)(a) or (b) “dependant” includes, in addition to the persons mentioned in paragraph (3), any person who reasonably relies on the employee—

- (a) for assistance on an occasion when the person falls ill or is injured or assaulted, or
- (b) to make arrangements for the provision of care in the event of illness or injury.

(5) For the purposes of paragraph (1)(d) “dependant” includes, in addition to the persons mentioned in paragraph (3), any person who reasonably relies on the employee to make arrangements for the provision of care.

(6) A reference in this Article to illness or injury includes a reference to mental illness or injury.

Complaint to industrial tribunal

85B.—(1) An employee may present a complaint to an industrial tribunal that his employer has unreasonably refused to permit him to take time off as required by Article 85A.

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- (2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—
 - (a) before the end of the period of three months beginning with the date when the refusal occurred, or
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (3) Where an industrial tribunal finds a complaint under paragraph (1) well-founded, it—
 - (a) shall make a declaration to that effect, and
 - (b) may make an award of compensation to be paid by the employer to the employee.
- (4) The amount of compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—
 - (a) the employer’s default in refusing to permit time off to be taken by the employee, and
 - (b) any loss sustained by the employee which is attributable to the matters complained of.”

PART III

CONSEQUENTIAL AMENDMENTS

The Employment Rights (Northern Ireland) Order 1996 (NI 16)

- 1. In Article 8(3) after sub-paragraph (b) insert “or”.
- 2. In Article 21(5)(b) for head (i) substitute—
 - “(i) where the day before that on which the suspension begins falls during a period of ordinary or additional maternity leave, the day before the beginning of that period,”.
- 3. After Article 70B insert—
 - “**Leave for family and domestic reasons**
 - 70C.**—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done for a prescribed reason.
 - (2) A prescribed reason is one which is prescribed by regulations made by the Department and which relates to—
 - (a) pregnancy, childbirth or maternity,
 - (b) ordinary, compulsory or additional maternity leave,
 - (c) parental leave, or
 - (d) time off under Article 85A.
 - (3) A reason prescribed under this Article in relation to parental leave may relate to action which an employee takes, agrees to take or refuses to take under or in respect of a collective or workforce agreement”.
- 4. In Article 71(1) for “or 70A” substitute “, 70A or 70C”.
- 5. In Articles 120(1)(c) and 121(3)(b) after “childbirth” insert “or on parental leave”.

6. In Article 124(4)(b) for “maternity leave period” substitute “ordinary or additional maternity leave period”.
7. In Article 130(6) for “Paragraphs (4) and (5) are” substitute “Paragraph (4) is”.
8. For Article 131 substitute—

“Leave for family reasons

131.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

- (a) the reason or principal reason for the dismissal is of a prescribed kind, or
 - (b) the dismissal takes place in prescribed circumstances.
- (2) In this Article “prescribed” means prescribed by regulations made by the Department.
- (3) A reason or set of circumstances prescribed under this Article must relate to—
- (a) pregnancy, childbirth or maternity,
 - (b) ordinary, compulsory or additional maternity leave,
 - (c) parental leave, or
 - (d) time off under Article 85A;

and it may also relate to redundancy or other factors.

(4) A reason or set of circumstances prescribed under paragraph (1) satisfies paragraph (3)(c) if it relates to action which an employee—

- (a) takes,
- (b) agrees to take, or
- (c) refuses to take,

under or in respect of a collective or workforce agreement which deals with parental leave.

(5) Regulations under this Article may apply any statutory provision, in such circumstances as may be specified and subject to any conditions specified, in relation to persons regarded as unfairly dismissed by reason of this Article”.

9. In Articles 143(2) and 144(2) for sub-paragraph (a) substitute—
“(a) Article 131 applies;”.
10. In Article 143(2) after sub-paragraph (cc) insert—
“(ccc) Article 135 applies in relation to time off under Article 85A;”.
11. In Article 144(2) after sub-paragraph (c) insert—
“(cc) Article 135 applies in relation to time off under Article 85A;”.
12. In Article 152(1)(b) for “to 162” substitute “and 161”.
13. In Article 237(2)—
 - (a) after sub-paragraph (aa) insert—
“(ab) Article 70C;”;
 - (b) in sub-paragraph (b) for “83 to 85” substitute “83 to 85B”.
14. In Article 243(1) after “Article 70,” insert “Article 70C,”.
15. In Article 244(2)—
 - (a) in sub-paragraph (b) for “and 70” substitute “, 70 and 70C”;

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- (b) in sub-paragraph (c) for “83 to 85” substitute “83 to 85B”;
- (c) in sub-paragraph (g) for head (i) substitute—
 - “(i) by Article 131, 132, 132A(d) or 134, or by Article 135 in its application in relation to time off under Article 85A.”.

16. In Article 251—

- (a) at the beginning of paragraph (1) insert “Subject to paragraph (1A),”;
- (b) after paragraph (1) insert—
 - “(1A) Regulations under Article 70C, 103, 104, 105, 108 or 131 shall—
 - (a) be laid before the Assembly as soon as may be after they are made;
 - (b) come into operation on such date as may be specified therein; and
 - (c) cease to have effect on the expiration of a period of six months from the date on which they came into operation unless, before the expiration of that period, they are approved by a resolution of the Assembly.”.

SCHEDULE 5

Article 18.

UNFAIR DISMISSAL OF STRIKING WORKERS

1. The Employment Rights Order shall be amended as provided by this Schedule.
2. In Article 137, in paragraph (1)(c) for “(7)” substitute “(7A)” and after paragraph (7) insert—
 - “(7A) This paragraph applies if—
 - (a) the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the reason mentioned in Article 144A (participation in official industrial action), and
 - (b) paragraph (3), (4) or (5) of that Article applies to the dismissal.”.
3. In Articles 140(3) and 141(2) at the end add
“or
 - (j) Article 144A applies”.
4. In Article 144 after paragraph (2) insert—
 - “(2A) This Article does not apply in relation to an employee who is regarded as unfairly dismissed by virtue of Article 144A.”.
5. In Article 144(8) after “this Article” insert “or Article 144A”.
6. After Article 144 insert—

“Participation in official industrial action

144A.—(1) For the purposes of this Article an employee takes protected industrial action if he commits an act which, or a series of acts each of which, he is induced to commit by an act which by virtue of Article 97 of the Trade Union and Labour Relations Order is not actionable in tort.

(2) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee took protected industrial action, and
 - (b) paragraph (3), (4) or (5) applies to the dismissal.
- (3) This paragraph applies to a dismissal if it takes place within the period of eight weeks beginning with the day on which the employee started to take protected industrial action.
- (4) This paragraph applies to a dismissal if—
- (a) it takes place after the end of that period, and
 - (b) the employee had stopped taking protected industrial action before the end of that period.
- (5) This paragraph applies to a dismissal if—
- (a) it takes place after the end of that period,
 - (b) the employee had not stopped taking protected industrial action before the end of that period, and
 - (c) the employer had not taken such procedural steps as would have been reasonable for the purposes of resolving the dispute to which the protected industrial action relates.
- (6) In determining whether an employer has taken those steps regard shall be had, in particular, to—
- (a) whether the employer or a union had complied with procedures established by any applicable collective or other agreement;
 - (b) whether the employer or a union offered or agreed to commence or resume negotiations after the start of the protected industrial action;
 - (c) whether the employer or a union unreasonably refused, after the start of the protected industrial action, a request that conciliation services be used;
 - (d) whether the employer or a union unreasonably refused, after the start of the protected industrial action, a request that mediation services be used in relation to procedures to be adopted for the purposes of resolving the dispute.
- (7) In determining whether an employer has taken those steps no regard shall be had to the merits of the dispute.
- (8) For the purposes of this Article no account shall be taken of the repudiation of any act by a trade union as mentioned in Article 21A of the Industrial Relations (Northern Ireland) Order 1992 in relation to anything which occurs before the end of the next working day (within the meaning of Article 143) after the day on which the repudiation takes place.
- (9) In relation to a complaint under Article 145 that a dismissal was unfair by virtue of this Article—
- (a) no order shall be made under Article 147 (reinstatement or re-engagement) until after the conclusion of protected industrial action by any employee in relation to the relevant dispute,
 - (b) regulations under Article 9 of the Industrial Tribunals (Northern Ireland) Order 1996 may make provision about the adjournment and renewal of applications (including provision requiring adjournment in specified circumstances), and
 - (c) regulations under Article 11 of that Order may require a pre-hearing review to be carried out in specified circumstances.”.

SCHEDULE 6

Article 28.

THE CERTIFICATION OFFICER

Introduction

1. The Industrial Relations (Northern Ireland) Order 1992 shall be amended as provided by paragraphs 2 to 5.

Offenders

2.—(1) Article 13C (application to Certification Officer or court for declaration of breach of duty to secure positions not held by certain offenders) shall be amended as follows.

(2) In paragraph (2) (Certification Officer’s powers and duties) insert before sub-paragraph (a)—
“(aa) shall make such enquiries as he thinks fit.”.

(3) In paragraph (2)(a) (duty to give opportunity to be heard where Certification Officer considers it appropriate) omit “, where he considers it appropriate.”.

(4) Omit paragraphs (3) and (4) (different applications in respect of the same matter).

(5) After paragraph (5) insert—

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

(5B) The following provisions have effect if a person applies to the Certification Officer under this Article in relation to an alleged failure—

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

(5C) The following provisions have effect if a person applies to the High Court under this Article in relation to an alleged failure—

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

(6) In paragraph (6) (entitlement to enforce order) after “been made” insert “under paragraph (5) or (5A)”.

(7) After paragraph (6) insert—

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

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

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

Accounting records

3.—(1) Article 37 (remedy for failure to comply with request for access to accounting records) shall be amended as follows.

(2) In paragraph (7) (application to the court) for the words “for an order under this Article; and where, on such an application” substitute “or to the Certification Officer; and where, on an application to it” and for “that person” substitute “the applicant”.

(3) After paragraph (7) insert—

“(7A) On an application to him the Certification Officer shall—

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

(b) give the applicant and the trade union an opportunity to be heard.

(7B) Where the Certification Officer is satisfied that the claim is well-founded he shall make such order as he considers appropriate for ensuring that the applicant—

(a) is allowed to inspect the records requested,

(b) is allowed to be accompanied by an accountant when making the inspection of those records, and

(c) is allowed to take, or is supplied with, such copies of, or of extracts from, the records as he may require.

(7C) In exercising his functions under this Article the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.”.

(4) In paragraph (8) (court’s power to grant interlocutory relief) after “an application” insert “to it”.

(5) After paragraph (8) insert—

“(8A) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(8B) An order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.

(8C) If a person applies to the High Court under this Article in relation to an alleged failure he may not apply to the Certification Officer under this Article in relation to that failure.

(8D) If a person applies to the Certification Officer under this Article in relation to an alleged failure he may not apply to the High Court under this Article in relation to that failure.”.

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Procedure before, and appeals from, Certification Officer

4.—(1) Article 70 (procedure before, and appeals from, Certification Officer) shall be amended as follows.

(2) In paragraph (1) omit the words from “and, without prejudice” to the end.

(3) After paragraph (1) insert—

“(1A) He shall in particular make provision about the disclosure, and restriction of the disclosure, of the identity of an individual who has made or is proposing to make any such application or complaint.

(1B) Provision under paragraph (1A) shall be such that if the application or complaint relates to a trade union—

(a) the individual’s identity is disclosed to the union unless the Certification Officer thinks the circumstances are such that it should not be so disclosed;

(b) the individual’s identity is disclosed to such other persons (if any) as the Certification Officer thinks fit.”.

(4) After paragraph (3) insert—

“(4) An appeal lies to the Court of Appeal on any question of law arising in proceedings before or arising from any decision of the Certification Officer under—

(a) Article 13C or 37 of this Order;

(b) Article 5, Article 22, Part V, Article 84 or Part VIA of the Trade Union and Labour Relations (Northern Ireland) Order 1995.”.

5. After Article 70 there shall be inserted—

“Vexatious litigants

70A.—(1) The Certification Officer may refuse to entertain any application or complaint made to him under a provision of—

(a) this Order; or

(b) Parts II to VIA of the Trade Union and Labour Relations (Northern Ireland) Order 1995,

by a vexatious litigant.

(2) The Certification Officer must give reasons for such a refusal.

(3) Paragraph (1) does not apply to a complaint under Article 12E(1)(b) or to an application under Article 5 or 6 or paragraph 30 of Schedule 1.

(4) For the purposes of paragraph (1) a vexatious litigant is a person who is the subject of—

(a) an order which is made under section 32 of the Judicature (Northern Ireland) Act 1978,

(b) an order which is made under section 33(1) of the Employment Tribunals Act 1996 and which remains in force,

(c) a civil proceedings order or an all proceedings order which is made under section 42(1) of the Supreme Court Act 1981 and which remains in force, or

(d) an order which is made under section 1 of the Vexatious Actions (Scotland) Act 1898.

Vexatious litigants: applications disregarded

70B.—(1) For the purposes of a relevant enactment an application to the Certification Officer shall be disregarded if—

- (a) it was made under a provision mentioned in the relevant enactment, and
 - (b) it was refused by the Certification Officer under Article 70A(1).
- (2) The relevant enactments are—
- (a) Articles 13C(5B) and 37(8D); and
 - (b) Articles 6(8), 23(8), 46A(10), 56(8) and 90A(14) of the Trade Union and Labour Relations (Northern Ireland) Order 1995.”.

6. The Trade Union and Labour Relations Order shall be amended as provided by the following provisions of this Schedule.

Register of members

7. In Article 3 (duty to maintain register of members' names and addresses) the second sentence of paragraph (6) (application to Certification Officer does not prevent application to High Court) shall be omitted.

8. In Article 4 (securing confidentiality of register during ballots) the second sentence of paragraph (6) (application to Certification Officer does not prevent application to High Court) shall be omitted.

9.—(1) Article 5 (application to Certification Officer for declaration of breach of duty regarding register of members' names and addresses) shall be amended as follows.

(2) In paragraph (2)(b) (duty to give opportunity to be heard where Certification Officer considers it appropriate) omit “where he considers it appropriate.”.

(3) After paragraph (5) insert—

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

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

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

(4) After paragraph (8) insert—

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

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

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

- (a) that person may not apply under this Article in relation to that failure;
- (b) on an application by a different person under this Article in relation to that failure, the Certification Officer shall have due regard to any declaration, order,

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observations or reasons made or given by the High Court regarding that failure and brought to the Certification Officer's notice.”.

10.—(1) Article 6 (application to High Court for declaration of breach of duty regarding register of members' names and addresses) shall be amended as follows.

(2) Omit paragraph (2) (position where application in respect of the same matter has been made to Certification Officer).

(3) After paragraph (7) insert—

“(8) The following provisions have effect if a person applies under Article 5 in relation to an alleged failure—

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

Elections

11. In Article 21 (remedy for failure to comply with the duty regarding elections) the second sentence of paragraph (1) (application to Certification Officer does not prevent application to court) shall be omitted.

12.—(1) Article 22 (application to Certification Officer for declaration of breach of duty regarding elections) shall be amended as follows.

(2) In paragraph (2)(b) (duty to give opportunity to be heard where Certification Officer considers it appropriate) omit “where he considers it appropriate.”.

(3) After paragraph (5) insert—

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

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

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

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

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

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

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

(4) After paragraph (7) insert—

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

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

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

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

13.—(1) Article 23 (application to High Court for declaration of failure to comply with requirements regarding elections) shall be amended as follows.

(2) Omit paragraph (2) (position where application in respect of the same matter has been made to the Certification Officer).

(3) After paragraph (7) insert—

“(8) The following provisions have effect if a person applies under Article 22 in relation to an alleged failure—

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

Application of funds for political objects

14. After Article 46 there shall be inserted—

“Application of funds in breach of Article 45

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

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

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

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- (3) If he makes a declaration he shall specify in it—
 - (a) the provisions of Article 45 breached, and
 - (b) the amount of the funds applied in breach.
- (4) If he makes a declaration and is satisfied that the union has taken or agreed to take steps with a view to—
 - (a) remedying the declared breach, or
 - (b) securing that a breach of the same or any similar kind does not occur in future,he shall specify those steps in making the declaration.
- (5) If he makes a declaration he may make such order for remedying the breach as he thinks just under the circumstances.
- (6) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.
- (7) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.
- (8) Where an order has been made under this Article, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.
- (9) An order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.
- (10) If a person applies to the Certification Officer under this Article in relation to an alleged breach he may not apply to the High Court in relation to the breach; but nothing in this paragraph shall prevent such a person from exercising any right to appeal against or challenge the Certification Officer's decision on the application to him.
- (11) If—
 - (a) a person applies to the High Court in relation to alleged breach, and
 - (b) the breach is one in relation to which he could have made an application to the Certification Officer under this Article,he may not apply to the Certification Officer under this Article in relation to the breach.”.

Political ballot rules

15. In Article 54 (remedy for failure to comply with political ballot rules) the second sentence of paragraph (1) (application to Certification Officer does not prevent application to High Court) shall be omitted.

16.—(1) Article 55 (application to Certification Officer for declaration of failure to comply with political ballot rules) shall be amended as follows.

(2) In paragraph (2)(b) (duty to give opportunity to be heard where Certification Officer considers it appropriate) omit “where he considers it appropriate,”.

(3) After paragraph (5) insert—

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

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

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

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

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

(4) After paragraph (7) insert—

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

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

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

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

17.—(1) Article 56 (application to court for declaration of failure to comply with political ballot rules) shall be amended as follows.

(2) Omit paragraph (2) (position where application in respect of the same matter has been made to Certification Officer).

(3) After paragraph (7) insert—

“(8) The following provisions have effect if a person applies under Article 55 in relation to a matter—

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

Political fund

18.—(1) Article 57 (rules as to political fund) shall be amended as follows.

(2) After paragraph (2) insert—

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“(2A) On a complaint being made to him the Certification Officer shall make such enquiries as he thinks fit.”.

(3) After paragraph (3) insert—

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

Employers' associations

19.—(1) In Article 72(2) (provisions about application of funds for political objects to apply to unincorporated employers' associations) at the beginning insert “Subject to paragraphs (3) to (6),”.

(2) After Article 72(2) insert—

“(3) Paragraph (1) does not apply to these provisions—

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

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

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

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

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

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

Amalgamation or transfer of engagements

20.—(1) Article 84 (complaints about procedure relating to amalgamation or transfer of engagements) shall be amended as follows.

(2) After paragraph (2) insert—

“(2A) On a complaint being made to him the Certification Officer shall make such enquiries as he thinks fit.”.

(3) After paragraph (5) insert—

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

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

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

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

21. In Article 90 (provisions about amalgamations and similar matters to apply to unincorporated employers' associations) in paragraph (2)(c) after “82(3)” there shall be inserted “and 84(2A) and (6) to (9)”.

Breach of union rules

22. After Part VI there shall be inserted—

**“PART VIA
BREACH OF RULES**

Right to apply to Certification Officer

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

(2) The matters are—

- (a) the appointment or election of a person to, or the removal of a person from, any office;
- (b) disciplinary proceedings by the union (including expulsion);
- (c) the balloting of members on any issue other than industrial action;
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;
- (e) such other matters as may be specified in an order made by the Department.

(3) The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.

(4) A person may not apply under paragraph(1) in relation to a claim if he is entitled to apply under Article 55 in relation to the claim.

(5) No application may be made regarding—

- (a) the dismissal of an employee of the union;
- (b) disciplinary proceedings against an employee of the union.

(6) An application must be made—

- (a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or
- (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in paragraph (7).

(7) Those days are—

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- (a) the day on which the procedure is concluded, and
 - (b) the last day of the period of one year beginning with the day on which the procedure is invoked.
- (8) The reference in paragraph (1) to the rules of a union includes references to the rules of any branch or section of the union.
- (9) In paragraph (2)(c) “industrial action” means a strike or other industrial action by persons employed under contracts of employment.
- (10) For the purposes of paragraph (2)(d) a committee is an executive committee if—
- (a) it is a committee of the union concerned and has power to make executive decisions on behalf of the union or on behalf of a constituent body,
 - (b) it is a committee of a major constituent body and has power to make executive decisions on behalf of that body, or
 - (c) it is a sub-committee of a committee falling within sub-paragraph (a) or (b).
- (11) For the purposes of paragraph (2)(d) a decision-making meeting is—
- (a) a meeting of members of the union concerned (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union, is final as regards the union or which, under the rules of the union or a constituent body, is final as regards that body, or
 - (b) a meeting of members of a major constituent body (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union or the body, is final as regards that body.
- (12) For the purposes of paragraphs (10) and (11), in relation to the trade union concerned—
- (a) a constituent body is any body which forms part of the union, including a branch, group, section or region;
 - (b) a major constituent body is such a body which has more than 1,000 members.
- (13) No order shall be made under paragraph (2)(e) unless a draft of it has been laid before and approved by resolution of the Assembly.
- (14) If a person applies to the Certification Officer under this Article in relation to an alleged breach or threatened breach he may not apply to the High Court in relation to the breach or threatened breach; but nothing in this paragraph shall prevent such a person from exercising any right to appeal against or challenge the Certification Officer’s decision on the application to him.
- (15) If—
- (a) a person applies to the High Court in relation to an alleged breach or threatened breach, and
 - (b) the breach or threatened breach is one in relation to which he could have made an application to the Certification Officer under this Article,

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

Declarations and orders

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

- (2) If he accepts an application under Article 90A the Certification Officer—
 - (a) shall make such enquiries as he thinks fit,
 - (b) shall give the applicant and the union an opportunity to be heard,
 - (c) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,
 - (d) may make or refuse the declaration asked for, and
 - (e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.
- (3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—
 - (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
 - (b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.
- (4) The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (3)(a) specify the period within which the union is to comply with the requirement.
- (5) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this Article, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.
- (6) A declaration made by the Certification Officer under this Article may be relied on as if it were a declaration made by the High Court.
- (7) Where an enforcement order has been made, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.
- (8) An enforcement order made by the Certification Officer under this Article may be enforced in the same way as an order of the High Court.
- (9) An order under Article 90A(2)(e) may provide that, in relation to an application under Article 90A with regard to a prescribed matter, the preceding provisions of this Article shall apply with such omissions or modifications as may be specified in the order; and a prescribed matter is such matter specified under Article 90A(2)(e) as is prescribed under this paragraph.”

23. In Article 149(2) (regulations and orders) after “Article 1(2)” insert “, 90A(2)(e)”.

SCHEDULE 7

Article 30.

EMPLOYMENT AGENCIES

Introduction

1. The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 shall be amended as provided by this Schedule.

Status: This is the original version (as it was originally made).

General regulations

- 2.—(1) Article 6 (power to make general regulations) shall be amended as follows.
- (2) In paragraph (1) there shall be substituted for sub-paragraphs (g) and (h)—
 - “(g) restricting the services which may be provided by persons carrying on such agencies and businesses;
 - (h) regulating the way in which and the terms on which services may be provided by persons carrying on such agencies and businesses;
 - (j) restricting or regulating the charging of fees by persons carrying on such agencies and businesses.”.
- (3) After paragraph (1) there shall be inserted—
 - “(1A) A reference in paragraph (1)(g) and (h) to services includes a reference to services in respect of—
 - (a) persons seeking employment outside the United Kingdom;
 - (b) persons normally resident outside the United Kingdom seeking employment in the United Kingdom.”.
- (4) Paragraph (2) shall be omitted.

Charges

3. For Article 7(1) (restriction on demand or receipt of fee for finding or seeking to find employment) there shall be substituted—
 - “(1) Except in such cases or classes of case as the Department may prescribe—
 - (a) a person carrying on an employment agency shall not request or directly or indirectly receive any fee from any person for providing services (whether by the provision of information or otherwise) for the purpose of finding him employment or seeking to find him employment;
 - (b) a person carrying on an employment business shall not request or directly or indirectly receive any fee from an employee for providing services (whether by the provision of information or otherwise) for the purpose of finding or seeking to find another person, with a view to the employee acting for and under the control of that other person;
 - (c) a person carrying on an employment business shall not request or directly or indirectly receive any fee from a second person for providing services (whether by the provision of information or otherwise) for the purpose of finding or seeking to find a third person, with a view to the second person becoming employed by the first person and acting for and under the control of the third person.”.

Offences

4. After Article 9 there shall be inserted—

“Offences: extension of time limit

9A.—(1) For the purposes of paragraph (2) a relevant offence is an offence under Article 5B, 6(3), 7(2) or 9(2) for which proceedings are instituted by the Department.

(2) Notwithstanding Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981 (complaint to be made within 6 months of offence) a complaint relating to a relevant offence may be made at any time—

- (a) within 3 years after the date of the commission of the offence, and
- (b) within 6 months after the date on which evidence sufficient in the opinion of the Department to justify the proceedings came to its knowledge.

(3) For the purposes of this Article, a certificate of the Department as to the date on which evidence came to its knowledge is conclusive evidence.

Offences: cost of investigation

9B. The court in which a person is convicted of an offence under this Order may order him to pay to the Department a sum which appears to the court not to exceed the costs of the investigation which resulted in the conviction.”.

Regulations and orders

5. For Article 10(3) (regulations: procedure) there shall be substituted—

“(5) Regulations under Article 6(1) or 7(1) shall not be made unless a draft has been laid before, and approved by resolution of, the Assembly.

(6) Regulations under Article 11(5)(g) shall be subject to negative resolution.”.

Interpretation

6. In Article 11(2) (definition of employment agency) for “workers” (in each place) there shall be substituted “persons”.

Exemptions

7. For Article 11(5)(g) there shall be substituted—

“(g) any prescribed business or service, or prescribed class of business or service or business or service carried on or provided by prescribed persons or classes of person.”.

SCHEDULE 8

Article 38.

NATIONAL SECURITY

1. The following shall be substituted for Article 238 of the Employment Rights Order (national security)—

“National security

238. Part VA and Article 70B do not apply in relation to employment for the purposes of—

- (a) the Security Service; or
- (b) the Secret Intelligence Service.”.

2. Article 6(7) of the Industrial Tribunals (Northern Ireland) Order 1996 (composition of tribunal: national security) shall cease to have effect.

3. The following shall be substituted for Article 12 of that Order (national security, &.)—

“National security

12.—(1) If on a complaint under—

- (a) Article 74 of the Employment Rights Order (detriment: trade union membership), or
- (b) Article 145 of that Order (unfair dismissal),

it is shown that the action complained of was taken for the purpose of safeguarding national security, the industrial tribunal shall dismiss the complaint.

(2) Industrial tribunal procedure regulations may make provision about the composition of the tribunal (including provision disapplying or modifying Article 6) for the purposes of proceedings in relation to which—

- (a) a direction is given under paragraph (3), or
- (b) an order is made under paragraph (4).

(3) A direction may be given under this paragraph by the Secretary of State if—

- (a) it relates to particular Crown employment proceedings, and
- (b) the Secretary of State considers it expedient in the interests of national security.

(4) An order may be made under this paragraph by the President of the Industrial Tribunals and the Fair Employment Tribunal in relation to particular proceedings if he considers it expedient in the interests of national security.

(5) Industrial tribunal procedure regulations may make provision enabling the Secretary of State, if he considers it expedient in the interests of national security—

- (a) to direct a tribunal to sit in private for all or part of particular Crown employment proceedings;
- (b) to direct a tribunal to exclude the applicant from all or part of particular Crown employment proceedings;
- (c) to direct a tribunal to exclude the applicant’s representatives from all or part of particular Crown employment proceedings;
- (d) to direct a tribunal to take steps to conceal the identity of a particular witness in particular Crown employment proceedings;
- (e) to direct a tribunal to take steps to keep secret all or part of the reasons for its decision in particular Crown employment proceedings.

(6) Industrial tribunal procedure regulations may enable a tribunal, if it considers it expedient in the interests of national security, to do anything of a kind which a tribunal can be required to do by direction under paragraph (5)(a) to (e).

(7) In relation to cases where a person has been excluded by virtue of paragraph (5)(b) or (c) or (6), industrial tribunal procedure regulations may make provision—

- (a) for the appointment by the Attorney General for Northern Ireland of a person to represent the interests of the applicant,
- (b) about the publication and registration of reasons for the tribunal’s decision,
- (c) permitting an excluded person to make a statement to the tribunal before the commencement of the proceedings, or the part of the proceedings from which he is excluded.

(8) Proceedings are Crown employment proceedings for the purposes of this Article if the employment to which the complaint relates—

- (a) is Crown employment, or
- (b) is connected with the performance of functions on behalf of the Crown.

Confidential information

12A.—(1) Industrial tribunal procedure regulations may enable an industrial tribunal to sit in private for the purpose of hearing evidence from any person which in the opinion of the tribunal is likely to consist of—

- (a) information which he could not disclose without contravening a prohibition imposed by or by virtue of any statutory provision,
- (b) information which has been communicated to him in confidence or which he has otherwise obtained in consequence of the confidence reposed in him by another person, or
- (c) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in Article 96(1) of the Industrial Relations (Northern Ireland) Order 1992, cause substantial injury to any undertaking of his or in which he works.

(2) The reference in paragraph (1)(c) to any undertaking of a person or in which he works shall be construed, in relation to a person in Crown employment, as a reference to the national interest.

Restriction of publicity in cases involving national security

12B.—(1) This Article applies where a tribunal has been directed under Article 12(5) or has determined under Article 12(6)—

- (a) to take steps to conceal the identity of a particular witness, or
- (b) to take steps to keep secret all or part of the reasons for its decision.

(2) It is an offence to publish—

- (a) anything likely to lead to the identification of the witness, or
- (b) the reasons for the tribunal's decision or the part of its reasons which it is directed or has determined to keep secret.

(3) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Where a person is charged with an offence under this Article it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication in question was of, or included, the matter in question.

(5) A reference in this Article to publication includes a reference to inclusion in a programme which is included in a programme service, within the meaning of the Broadcasting Act 1990.”

Status: This is the original version (as it was originally made).

SCHEDULE 9

Article 40.

REPEALS

1. BALLOTS AND NOTICES

Chapter or Number	Short title	Extent of repeal
1995 NI 12.	The Trade Union and Labour Relations (Northern Ireland) Order 1995.	In Article 104(3) the word “and” at the end of subparagraph (b). Article 108(2). In Article 118(7)(a) the words “otherwise than to enable the union to comply with a court order or an undertaking given to a court”.

2. LEAVE FOR FAMILY REASONS, ETC.

Chapter or Number	Short title	Extent of repeal
1996 NI 16.	The Employment Rights (Northern Ireland) Order 1996.	In Article 2(3) the definitions of “maternity leave period” and “notified day of return”. Article 8(2). Article 8(3)(d) and the word “or” immediately preceding it. In Article 8(4) the words “or (subject to paragraph (2)) paragraph (3)(d)”. Article 22(3)(a) and (5)(a). Article 23(4)(a). In Article 127(1) the words “and Article 128”. Article 128. Article 129(6). Article 130(5). Article 137(2). Article 140(3)(a). Article 141(2)(a). Article 143(2)(d). Article 144(2)(d). Article 148(5). Article 149(4).

Chapter or Number	Short title	Extent of repeal
		Article 153(6).
		Article 162.
		Article 172.
		Article 180(7).
		Article 181(3).
		Article 191(2).
		Article 192(6).
		Article 197(7).
		In Article 239(3)(g) the words “(subject to paragraph (4))”.
		Article 239(4).
		In Article 242(2) the words “(subject to paragraph (3))”.
		Article 242(3).
		In Article 243(1) the words “, Article 172”.
		Article 250(3).
		In Article 251(3)(a) the words “104(3), 105(5), 111(3)”.
1996 NI 18.	The Industrial Tribunals (Northern Ireland) Order 1996.	In Article 15(2), sub-paragraph (b) and the word “or” immediately preceding it, and the words “, or which she held before her absence,”.
1997 NI 20.	The Shops (Sunday Trading &c.) (Ireland) Order 1997.	In Schedule 2 paragraph (Northern 1(11) and (12), paragraph 3(4), paragraph 3(5)(b) and the word “and” immediately preceding it, paragraph 9(4), paragraph 9(5)(b) and the word “and” immediately preceding it.
SR 1994 No. 379.	The Maternity (Compulsory Leave) Regulations (Northern Ireland) 1994.	The whole Regulations.

3. AGREEMENT TO EXCLUDE DISMISSAL RIGHTS

Chapter or Number	Short title	Extent of repeal
1995 NI 12.	The Trade Union and Labour Relations (Northern Ireland) Order 1995.	In Schedule 1A, paragraph 163.

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Chapter or Number	Short title	Extent of repeal
1996 NI 16.	The Employment Rights (Northern Ireland) Order 1996.	<p>In Article 68(4) the words from the beginning to “the dismissal,”.</p> <p>In Article 68A(4) the words from “, unless” to the end.</p> <p>In Article 69(2) the words from the beginning to “the dismissal,”.</p> <p>In Article 70(2) the words from the beginning to “the dismissal,”.</p> <p>In Article 70A(2) the words from the beginning to “the dismissal,”.</p> <p>In Article 70B(2) the words from the beginning to “the dismissal,”.</p> <p>Article 240(1).</p> <p>In Article 240(3) the words “(1) or”.</p> <p>In Article 245(2)(d) the words “(1) or”.</p>
1997 NI 20.	The Shops (Sunday Trading &.) (Northern Ireland) Order 1997.	In Schedule 2, paragraph 11(5).
1998 c. 39.	The National Minimum Wage Act 1998.	In section 23(4) the words from “except” to the end.
1999 c. 10.	The Tax Credits Act 1999.	In paragraph 1(3) of Schedule 3 the words from “except” to the end.
1999 NI	The Employment Relations (Northern Ireland) Order 1999.	Article 20(6).

4. POWER TO CONFER RIGHTS ON INDIVIDUALS

Chapter or Number	Short title	Extent of repeal
1996 NI 16.	The Employment Rights (Northern Ireland) Order 1996.	Article 250(4).

5. THE AGENCY: GENERAL DUTY

Chapter or Number	Short title	Extent of repeal
1992 NI 5.	The Industrial Relations (Northern Ireland) Order 1992.	In Article 83(1) the words from “, in particular” to the end.
1995 NI 12.	The Trade Union and Labour Relations (Northern Ireland) Order 1995.	Article 138(1).

6. COMMISSIONERS

Chapter or Number	Short title	Extent of repeal
1975 c. 25.	The Northern Ireland Assembly Disqualification Act Northern Ireland 1975.	In Part III of Schedule 1 the entry relating to— Commissioner for the Rights of Trade Union Members Northern Ireland Commissioner for Protection Against Unlawful Industrial Action.
1995 NI 12.	The Trade Union and Labour Relations (Northern Ireland) Order 1995.	In Article 32(3) the words “the Northern Ireland Commissioner for the Rights of Trade Union Members or”. Part VII. Articles 121 and 122. Part IX. In Schedule 2, the amendments to the Northern Ireland Assembly Disqualification Act 1975.
1996 NI 7.	The Commissioner for Complaints (Northern Ireland) Order 1996.	In Schedule 2 the entries relating to— Office of the Northern Ireland Commissioner for the Rights of Trade Union Members. Office of the Northern Ireland Commissioner for Protection Against Unlawful Industrial Action.

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7. THE CERTIFICATION OFFICER

Chapter or Number	Short title	Extent of repeal
1992 NI 5.	The Industrial Relations (Northern Ireland) Order 1992.	In Article 13C(2)(a) the words “, where he considers it appropriate,”. Article 13C(3) and (4). In Article 70(1) the words from “and, without prejudice” to the end.
1995 NI 12.	The Trade Union and Labour Relations (Northern Ireland) Order 1995.	In Article 3(6), the second sentence. In Article 4(6), the second sentence. In Article 5(2)(b) the words “where he considers it appropriate,”. Article 6(2). In Article 21(1), the second sentence. In Article 22(2)(b) the words “where he considers it appropriate,”. Article 23(2). In Article 54(1), the second sentence. In Article 55(2)(b) the words “where he considers it appropriate,”. Article 56(2). Article 69. Article 85.

8. EMPLOYMENT AGENCIES

Chapter or Number	Short title	Extent of repeal
1981 NI 20.	The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981.	Article 6(2).

9. EMPLOYMENT RIGHTS: EMPLOYMENT OUTSIDE NORTHERN IRELAND

Chapter or Number	Short title	Extent of repeal
1996 NI 16.	The Employment Rights (Northern Ireland) Order 1996.	In Article 242(6) the words “Article 239(6) does not apply to an employee, and”. Article 246(2). In Article 250(2) the words “(2), (3) and (5)”.
1997 NI 20.	The Shops (Sunday Trading &.) (Northern Ireland) Order 1997.	In Schedule 2, paragraph 10(14).

10. ARTICLES 32 TO 35

Chapter or Number	Short title	Extent of repeal
1996 NI 16.	Employment Rights (Northern Ireland) Order 1996.	Article 23(2) to (4). Article 151(4)(b) and the word “or” immediately before it. Article 151(5) and (6). Article 152(2) and (3). Article 154(2). article 158(2). Article 159. Article 231(2). In Article 251(3)(a) the words “23(2)” and “154(2), 158(2), 159(7), 231(2)”.
1997 NI 6.	The Race Relations (Northern Ireland) Order 1997.	In Schedule 2, paragraph 8(3).
1998 NI 8.	The Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998.	Article 15(1).
1998 NI 21.	The Fair Employment and Treatment (Northern Ireland) Order 1998.	In Schedule 3, the amendment to Article 151 of the Employment Rights Order.

11. COMPENSATORY AWARD: REMOVAL OF LIMIT IN CERTAIN CASES

Chapter or Number	Short title	Extent of repeal
1996 NI 16.	The Employment Rights (Northern Ireland) Order 1996.	In Article 146(4), the words “or in accordance with

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Chapter or Number	Short title	Extent of repeal
		regulations under Article 162B”.
		In Article 151(2) and (3), the words “and to regulations under Article 162B”.
		In Article 152(1), the words “Subject to regulations under Article 162B,”.
		Article 162B.
1998 NI 17.	The Public Interest Disclosure (Northern Ireland) Order 1998.	Article 1(3)(d).
		Article 12.

12. NATIONAL SECURITY

Chapter or Number	Short title	Extent of repeal
1996 NI 18.	The Industrial Tribunals (Northern Ireland) Order 1996.	Article 6(7).
1998 NI 17.	The Public Interest Disclosure (Northern Ireland) Order 1998.	Article 14.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for Northern Ireland corresponding to that made by the Employment Relations Act 1999 (other than sections 22, 27, 39 and 40).

It amends the law relating to employment, to trade unions and to employment agencies and businesses.