

**2005 No. 345 (C. 27)**

**EMPLOYMENT**

**The Employment Relations (2004 Order) (Commencement No. 3 and Transitional Provisions) Order (Northern Ireland) 2005**

*Made* - - - -

*21st July 2005*

The Department for Employment and Learning, in exercise of the powers conferred on it by Article 1(2) and (3) of the Employment Relations (Northern Ireland) Order 2004(a), and of all other powers enabling it in that behalf, hereby makes the following Order:

**Citation**

1. This Order may be cited as the Employment Relations (2004 Order) (Commencement No. 3 and Transitional Provisions) Order (Northern Ireland) 2005.

**Interpretation**

2. In this Order—

“the 2004 Order” means the Employment Relations (Northern Ireland) Order 2004;

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

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

“the 1992 Order” means the Industrial Relations (Northern Ireland) Order 1992(d);

“Schedule 1A” means Schedule 1A to the 1995 Order; and

“the Court” means the Industrial Court.

**Appointed Day**

3. The day appointed for the coming into operation of the provisions of the 2004 Order specified in the Schedule is 24th July 2005.

**Transitional provisions**

4. The coming into operation of the provisions of the 2004 Order specified in the Schedule is subject to the transitional provisions in Articles 5 to 18.

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(a) S.I. 2004/3078 (N.I. 19)  
(b) S.I. 1996/1919 (N.I. 16)  
(c) S.I. 1995/1980 (N.I. 12)  
(d) S.I. 1992/807 (N.I. 5)

**5.—(1)** The amendments made to Schedule 1A by paragraphs 1 to 5, 6(1) and 7 of Schedule 1 to the 2004 Order do not apply to any application for recognition which is accepted by the Court under paragraph 15(5) of Schedule 1A before the appointed day.

(2) The amendments made to Schedule 1A by paragraph 6(2) of Schedule 1 to the 2004 Order do not apply to any application for a decision which is accepted by the Court under paragraph 68(5) or 76(5) of Schedule 1A before the appointed day.

**6.** The provisions inserted into Schedule 1A by paragraph 8 of Schedule 1 to the 2004 Order do not apply where, before the appointed day, the Court has informed the parties in accordance with paragraph 25(9) or 117(11) of Schedule 1A.

**7.** The amendments made to Schedule 1A by paragraph 11 of Schedule 1 to the 2004 Order do not apply to any application which is made to the Court under paragraph 11 or 12 of Schedule 1A before the appointed day.

**8.—(1)** The amendments made to Schedule 1A by paragraph 12 of Schedule 1 to the 2004 Order do not apply in relation to any notice which the employer gives, for the purposes of paragraph 99(2) of Schedule 1A, to the union (or each of the unions) before the appointed day.

(2) Notwithstanding their repeal by Schedule 3 to the 2004 Order, paragraphs 101(4) and (5), 109(2)(a), 113(2)(a) and 130(2)(a) of Schedule 1A will apply in relation to any notice which the employer gives, for the purposes of paragraph 99(2) of Schedule 1A, before the appointed day.

**9.** The provisions inserted into Schedule 1A by paragraphs 14 and 21(8) of Schedule 1 to the 2004 Order do not apply in relation to any demand which the person appointed to conduct the ballot sends, under paragraph 28(4) or 120(4) of Schedule 1A, to the employer and the union (or each of the unions) before the appointed day.

**10.** The amendments made to Article 144A of the 1996 Order by Articles 9, 10 and 11 of the 2004 Order, and the provision inserted into the 1996 Order by Article 11 of the 2004 Order, do not apply to protected industrial action taken by an employee where the employee starts to take the action before the appointed day.

**11.** The amendments made to the 1996 Order by paragraphs 11, 12 and 13 of Schedule 2 to the 2004 Order do not apply in the case of any dismissal where the effective date of termination (within the meaning of Article 129 of the 1996 Order) is before the appointed day.

**12.** The amendments made to the 1996 Order by Articles 20 and 21 of the 2004 Order do not apply in the case of any dismissal where the effective date of termination (within the meaning of Article 129 of the 1996 Order) is before the appointed day or in the case of any detriment where the act or deliberate failure to act is before the appointed day.

**13.** The provisions inserted into the 1992 Order by Article 22 of the 2004 Order do not apply to any application or complaint which is made to the Certification Officer before the appointed day.

**14.** The amendments made to the 1995 Order by Article 23(1) of the 2004 Order do not apply to any instrument submitted to the Certification Officer for approval before the appointed day.

**15.** The provisions inserted into the 1995 Order by Article 23(2) and (3) of the 2004 Order do not apply to any application for registration of an instrument of amalgamation or transfer which is sent to the Certification Officer before the appointed day.

**16.** The amendments made to the 1992 Order by Article 24 of the 2004 Order do not apply to any refusal or decision of the Certification Officer made before the appointed day.

**17.** The amendments made to the 1995 Order by paragraph 4 of Schedule 2 to the 2004 Order do not apply to any order made under Article 57(3) of the 1995 Order before the appointed day.

**18.** Until the appointed day for the coming into operation of paragraphs 10 and 13 of Schedule 1 to the 2004 Order, the references in Schedule 1A to paragraphs 27D(3), 27D(4), 119A(3)(a)(ii), 119D(3), 119D(4), 119E(1)(b), 119H(1), 119H(5) and 119I(1)(a) (which paragraphs 21(10) to

(15), (20), (21) and (24) to (27) of Schedule 1 to the 2004 Order insert into Schedule 1A) shall be of no effect.

Sealed with the Official Seal of the Department for Employment and Learning on 21st July 2005.



*T. Devine*  
A senior officer of the  
Department for Employment and Learning

## SCHEDULE

Article 3

### PROVISIONS OF THE EMPLOYMENT RELATIONS (NORTHERN IRELAND) ORDER 2004 COMING INTO OPERATION ON 24th JULY 2005

<i>Provisions</i>	<i>Subject matter of provisions</i>
Article 3	Amendment of Schedule 1A to the 1995 Order
Article 4	Information required by the Agency for ballots and ascertaining union membership
Article 6	Entitlement to vote in ballot on industrial action
Article 7	Inducement of members not accorded entitlement to vote
Article 9	Dismissal where employees taking protected industrial action locked out
Article 10	Date of dismissal
Article 11	Dismissal after end of protected period
Article 20	Protection of employees in respect of jury service
Article 21	Flexible working
Article 22	Striking out by Certification Officer of applications or complaints
Article 23	Amalgamations: approval, listing and certification
Article 24	Restriction on grounds of appeal from Certification Officer
Article 25	Enforcement officers for agricultural wages legislation
Article 26	Additional case in which election for president of union not required
Article 27	Body corporate acting as auditor of trade union or employers' association
Article 29	Provision of money for trade union modernisation

In Schedule 1 (Amendments to Schedule 1A to the 1995 Order)–

- (i) paragraphs 1 to 8;
- (ii) paragraphs 11 and 12;
- (iii) paragraph 14;
- (iv) paragraphs 16 and 17; and
- (v) paragraphs 19 to 21 (with the exception of paragraph 21(22) and (23)).

In Schedule 2 (Amendments)–

- (i) paragraphs 1 and 2;
  - (ii) paragraphs 4 to 7;
  - (iii) paragraphs 11 to 13;
  - (iv) paragraphs 16 and 17;
  - (v) paragraphs 20 and 21; and
- Article 30(1) so far as it relates to those

paragraphs.

In Schedule 3 (Repeals) the entries relating to—

- (i) The Agricultural Wages (Regulation) (Northern Ireland) Order 1977<sup>(a)</sup>;
- (ii) the 1992 Order;
- (iii) Articles 12, 29 and 90 of the 1995 Order and the paragraphs of Schedule 1A to that Order (with the exception of paragraph 119(3));
- (iv) Article 236 of the 1996 Order;  
and

Article 30(2) so far as it relates to those repeals.

<sup>(a)</sup> S.I. 1977/2151 (N.I. 22)

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into operation the provisions of the Employment Relations (Northern Ireland) Order 2004 (“the 2004 Order”) listed in the Schedule to the Order which comes into operation on 24th July 2005. They comprise the majority of the provisions of the 2004 Order which were not commenced by earlier commencement orders.

The Order brings into operation a number of provisions which amend Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995 (“the 1995 Order”). These include provisions clarifying how the appropriate bargaining unit is to be determined by the Industrial Court (“the Court”) (paragraphs 1 and 4 of Schedule 1 to the 2004 Order). There are provisions addressing issues as to communications between the union and the bargaining unit, for example, paragraph 5 of Schedule 1 to the 2004 Order which provides for the appointment of a suitable independent person to handle union correspondence with members of a bargaining unit when the Court has accepted an application for recognition. Paragraph 8 of Schedule 1 to the 2004 Order provides for postal voting for workers away from the workplace at the time of a workplace ballot. Paragraph 20 confirms that, in relation to collective bargaining, “pay” does not include occupational or personal pension schemes. A number of provisions are designed to speed up the recognition or derecognition process, for example, paragraph 2 of Schedule 1 to the 2004 Order which enables the Court to terminate the period for reaching agreement on a bargaining unit, paragraph 3 of Schedule 1 to the 2004 Order which requires the employer to provide certain information to the union and paragraph 7 of Schedule 1 to the 2004 Order which enables the Court to extend the period for the parties to reach agreement without the need for a time-consuming ballot.

The Order commences Article 4 of the 2004 Order which gives the Labour Relations Agency, (“the Agency”) the power to require information from parties where it is asked to settle a recognition dispute.

A number of provisions of the 2004 Order which the Order commences deal with the law relating to industrial action. In particular, Article 9 of the 2004 Order amends the protections which the Employment Rights (Northern Ireland) Order 1996 (“the 1996 Order”) provides for employees taking lawfully-organised, official industrial action. The protected period is extended from eight to twelve weeks and “locked out” days are disregarded when calculating this period. Article 11 of the 2004 Order introduces new matters to which a tribunal is to have regard when assessing whether an employer has taken reasonable procedural steps to resolve a dispute with a union. The duty to have regard to these matters applies where the parties have accepted that the services of a conciliator or mediator will be used.

The Order also commences provisions of the 2004 Order which deal with a number of rights for workers and employees, for example, Article 20 of the 2004 Order amends the 1996 Order to provide that an employee has the right not to be dismissed or treated detrimentally because he serves on a jury or is summoned to do so. The 1996 Order is further amended to provide that selection for redundancy, where the reason or one of the principle reasons is connected to the employee’s jury service, will be treated as an unfair dismissal. The right to bring a claim for unfair dismissal in relation to jury service is not subject to the requirement for one year’s qualifying service, nor is it restricted to those who have not reached their employer’s or the normal retirement age for their job or are otherwise below 65. Similarly Article 21 of the 2004 Order extends certain protections to those taking advantage of the statutory provisions relating to flexible working. Thus, an employee dismissed for making a flexible working application can complain of unfair dismissal even when involved in official or unofficial industrial action. Flexible workers, those apply to be so or complaining in relation to some aspect of their treatment as such, are protected in respect of unfair dismissal and are not subject to the requirements as to length of service or age.

The Order commences Articles 22 to 24 of the 2004 Order, which make amendments to the procedures relating to the exercise of functions by the Certification Officer. These include new powers to deal with vexatious cases and litigants.

The Order also commences Article 29 of the 2004 Order, which deals with the provision of money for trade union modernisation. Money may only be provided for certain specified purposes and is deemed to be provided on terms which prohibit any of it being added to a union's political fund.

The Order contains a number of transitional provisions to deal with particular matters which are on-going at the time of commencement.

#### **NOTE AS TO EARLIER COMMENCEMENT ORDERS**

*(This note is not part of the Order)*

The following provisions of the Employment Relations (Northern Ireland) Order 2004 have been brought into operation by commencement orders made before the date of this Order—

<i>Provisions</i>	<i>Date of Commencement</i>	<i>S.R. Number</i>
Articles 12-15 and 18	26th December 2004	2004 No. 519 (C. 30)
In Schedule 2, paragraphs 8-10, 14, 15, 18, 19, 22, 23, 24(1), (3) and (4), 25, and Article 30(1) so far as it relates to those paragraphs	26th December 2004	2004 No. 519 (C. 30)
In Schedule 3, the entries relating to Articles 73, 75, 136 and 161 of the Employment Rights (Northern Ireland) Order 1996; the entry relating to Article 19 of the Employment Relations (Northern Ireland) Order 1999, and Article 30(2) so far as it relates to those repeals	26th December 2004	2004 No. 519 (C. 30)
Articles 17, 19 and 28	13th March 2005	2005 No. 73 (C. 6)
In Schedule 1, paragraphs 15 and 18	13th March 2005	2005 No. 73 (C. 6)

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