

SCHEDULES

^{F1}SCHEDULE 1A

COLLECTIVE BARGAINING: RECOGNITION

F1 [1999 NI 9](#)

PART I RECOGNITION

F1 functions transf. by SR 1999/481

Non-textual amendments applied to the whole Legislation can be found in the Introduction

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.

[^{F1}(3A) References to an appropriate bargaining unit's being decided by the Court are to a bargaining unit's being decided by the Court to be appropriate under paragraph 19(2) or (3) or 19A(2) or (3).]

(4) References to the employer are to the employer of the workers constituting the bargaining unit concerned.

(5) References to the parties are to the union (or unions) and the employer.

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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).

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(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^{[F2} of independence].

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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.

^{[F3}(5A) Sub-paragraph (5B) applies to an agency worker whose contract within regulation 3(1)(b) of the Agency Workers Regulations (Northern Ireland) 2011 (contract with the temporary work agency) is not a contract of employment.

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

(6) The Department may by order—

- (a) provide that sub-paragraphs (1) to (5) are not to apply, or are not to apply in specified circumstances, or
- (b) vary the number of workers for the time being specified in sub-paragraph (1).

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

F3 Sch. 1A para. 7(5A)(5B) inserted (5.12.2011) by [Agency Workers Regulations \(Northern Ireland\) 2011](#) (S.R. 2011/350), reg. 23(2), [Sch. 2 para. 7\(2\)](#)

8. The request is not valid unless it—

- (a) is in writing,
- (b) identifies the union or unions and the bargaining unit, and
- (c) states that it is made under this Schedule.

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

Parties agree

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

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

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

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

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

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

(7) The second period is—

- (a) the period of 20 working days starting with the day after that on which the first period ends, or
- (b) such longer period (so starting) as the parties may from time to time agree.

Employer rejects request

11.—(1) This paragraph applies if—

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

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- (b) before the end of the first period the employer informs the union (or unions) that the employer does not accept the request (without indicating a willingness to negotiate).
- (2) The union (or unions) may apply to the Court to decide both these questions—
 - [^{F4}(a) whether the proposed bargaining unit is appropriate;]
 - (b) whether the union has (or unions have) the support of a majority of the workers constituting the appropriate bargaining unit.

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Negotiations fail

- 12.**—(1) Sub-paragraph (2) applies if—
- (a) the employer informs the union (or unions) under paragraph 10(2), and
 - (b) no agreement is made before the [^{F5} end] of the second period.
- (2) The union (or unions) may apply to the Court to decide both these questions—
- [^{F5}(a) whether the proposed bargaining unit is appropriate;]
 - (b) whether the union has (or unions have) the support of a majority of the workers constituting the appropriate bargaining unit.
- (3) Sub-paragraph (4) applies if—
- (a) the employer informs the union (or unions) under paragraph 10(2), and
 - (b) before the end of the second period the parties agree a bargaining unit but not that the union is (or unions are) to be recognised as entitled to conduct collective bargaining on behalf of the unit.
- (4) The union (or unions) may apply to the Court to decide the question whether the union has (or unions have) the support of a majority of the workers constituting the bargaining unit.
- (5) But no application may be made under this paragraph if within the period of 10 working days starting with the day after that on which the employer informs the union (or unions) under paragraph 10(2) the employer proposes that the Agency be requested to assist in conducting the negotiations and—
- (a) the union rejects (or unions reject) the proposal, or
 - (b) the union fails (or unions fail) to accept the proposal within the period of 10 working days starting with the day after that on which the employer makes the proposal.

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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.

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- (2) A relevant application is an application under paragraph 11 or 12.
- (3) In relation to a relevant application, the relevant bargaining unit is—
 - (a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
 - (b) the agreed bargaining unit, where the application is under paragraph 12(4).
- (4) Within the acceptance period the Court must decide, with regard to each relevant application, whether the 10 per cent test is satisfied.
- (5) The 10 per cent test is satisfied if members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit.
- (6) The acceptance period is—
 - (a) the period of 10 working days starting with the day after that on which the Court receives the last relevant application, or
 - (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.
- (7) If the Court decides that—
 - (a) the 10 per cent test is satisfied with regard to more than one of the relevant applications, or
 - (b) the 10 per cent test is satisfied with regard to none of the relevant applications,the Court must not accept any of the relevant applications.
- (8) If the Court decides that the 10 per cent test is satisfied with regard to one only of the relevant applications the Court—
 - (a) must proceed under paragraph 15 with regard to that application, and
 - (b) must not accept any of the other relevant applications.
- (9) The Court must give notice of its decision to the parties.
- (10) If by virtue of this paragraph the Court does not accept an application, no further steps are to be taken under this Part in relation to that application.

- 15.—**(1) This paragraph applies to these applications—
 - (a) any application with regard to which no decision has to be made under paragraph 14;
 - (b) any application with regard to which the Court must proceed under this paragraph by virtue of paragraph 14.
- (2) Within the acceptance period the Court must decide whether—
 - (a) the request for recognition to which the application relates is valid within the terms of paragraphs 5 to 9, and
 - (b) the application is made in accordance with paragraph 11 or 12 and admissible within the terms of paragraphs 33 to 42.
 - (3) In deciding those questions the Court must consider any evidence which it has been given by the employer or the union (or unions).
 - (4) If the Court decides that the request is not valid or the application is not made in accordance with paragraph 11 or 12 or is not admissible—
 - (a) the Court must give notice of its decision to the parties,
 - (b) the Court must not accept the application, and
 - (c) no further steps are to be taken under this Part.
 - (5) If the Court decides that the request is valid and the application is made in accordance with paragraph 11 or 12 and is admissible it must—

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

Withdrawal of application

16.—(1) If an application under paragraph 11 or 12 is accepted by the Court, the union (or unions) may not withdraw the application—

- (a) after the Court issues a declaration under paragraph^{F6} 19F(5) or] 22(2), or
 - (b) after the union (or the last of the unions) receives notice under paragraph 22(3) or 23(2).
- (2) If an application is withdrawn by the union (or unions)—
- (a) the Court must give notice of the withdrawal to the employer, and
 - (b) no further steps are to be taken under this Part.

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Notice to cease consideration of application

17.—(1) This paragraph applies if the Court has received an application under paragraph 11 or 12 and—

- (a) it has not decided whether the application is admissible, or
 - (b) it has decided that the application is admissible.
- (2) No further steps are to be taken under this Part if, before the final event occurs, the parties give notice to the Court that they want no further steps to be taken.
- (3) The final event occurs when the first of the following occurs—
- (a) the Court issues a declaration under paragraph^{F7} 19F(5) or] 22(2) in consequence of the application;
 - (b) the last day of the notification period ends;
- and the notification period is that defined by paragraph^{F7} 24(6)] and arising from the application.

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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^{F8} (subject to any notice under sub-paragraph (3), (4) or (5))]

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- (a) the period of 20 working days starting with the day after that on which the Court gives notice of acceptance of the application, or
- (b) such longer period (so starting) as the Court must specify to the parties by notice containing reasons for the extension.

[^{F8}(3) If, during the appropriate period, the Court concludes that there is no reasonable prospect of the parties' agreeing an appropriate bargaining unit before the time when (apart from this sub-paragraph) the appropriate period would end, the Court may, by a notice given to the parties, declare that the appropriate period ends with the date of the notice.

(4) If, during the appropriate period, the parties apply to the Court for a declaration that the appropriate period is to end with a date (specified in the application) which is earlier than the date with which it would otherwise end, the Court may, by a notice given to the parties, declare that the appropriate period ends with the specified date.

(5) If the Court has declared under sub-paragraph (4) that the appropriate period ends with a specified date, it may before that date by a notice given to the parties specify a later date with which the appropriate period ends.

(6) A notice under sub-paragraph (3) must contain reasons for reaching the conclusion mentioned in that sub-paragraph.

(7) A notice under sub-paragraph (5) must contain reasons for the extension of the appropriate period.]

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[^{F9}**18A.**—(1) This paragraph applies if the Court accepts an application under paragraph 11(2) or 12(2).

(2) Within 5 working days starting with the day after that on which the Court gives the employer notice of acceptance of the application, the employer must supply the following information to the union (or unions) and the Court—

- (a) a list of the categories of worker in the proposed bargaining unit,
- (b) a list of the workplaces at which the workers in the proposed bargaining unit work, and
- (c) the number of workers the employer reasonably believes to be in each category at each workplace.

(3) The lists and numbers supplied under this paragraph must be as accurate as is reasonably practicable in the light of the information in the possession of the employer at the time when he complies with sub-paragraph (2).

(4) The lists and numbers supplied to the union (or unions) and to the Court must be the same.

(5) For the purposes of this paragraph, the workplace at which a worker works is—

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

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[^{F10}**19.**—(1) This paragraph applies if—

- (a) the Court accepts an application under paragraph 11(2) or 12(2),

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- (b) the parties have not agreed an appropriate bargaining unit at the end of the appropriate period (defined by paragraph 18), and
 - (c) at the end of that period either no request under paragraph 19A(1)(b) has been made or such a request has been made but the condition in paragraph 19A(1)(c) has not been met.
- (2) Within the decision period, the Court must decide whether the proposed bargaining unit is appropriate.
- (3) If the Court decides that the proposed bargaining unit is not appropriate, it must also decide within the decision period a bargaining unit which is appropriate.
- (4) The decision period is—
- (a) the period of 10 working days starting with the day after that with which the appropriate period ends, or
 - (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.]

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- 19A.**—(1) This paragraph applies if—
- (a) the Court accepts an application under paragraph 11(2) or 12(2),
 - (b) during the appropriate period (defined by paragraph 18), the Court is requested by the union (or unions) to make a decision under this paragraph, and
 - (c) the Court is, either at the time the request is made or at a later time during the appropriate period, of the opinion that the employer has failed to comply with the duty imposed by paragraph 18A.
- (2) Within the decision period, the Court must decide whether the proposed bargaining unit is appropriate.
- (3) If the Court decides that the proposed bargaining unit is not appropriate, it must also decide within the decision period a bargaining unit which is appropriate.
- (4) The decision period is—
- (a) the period of 10 working days starting with the day after the day on which the request is made, or
 - (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.
- 19B.**—(1) This paragraph applies if the Court has to decide whether a bargaining unit is appropriate for the purposes of paragraph 19(2) or (3) or 19A(2) or (3).
- (2) The Court must take these matters into account—
- (a) the need for the unit to be compatible with effective management;
 - (b) the matters listed in sub-paragraph (3), so far as they do not conflict with that need.
- (3) The matters are—
- (a) the views of the employer and of the union (or unions);
 - (b) existing national and local bargaining arrangements;
 - (c) the desirability of avoiding small fragmented bargaining units within an undertaking;
 - (d) the characteristics of workers falling within the bargaining unit under consideration and of any other employees of the employer whom the Court considers relevant;

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(e) the location of workers.

(4) In taking an employer's views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the Court must take into account any view the employer has about any other bargaining unit that he considers would be appropriate.

(5) The Court must give notice of its decision to the parties.

F¹¹ Union communications with workers after acceptance of application

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19C.—(1) This paragraph applies if the Court accepts an application under paragraph 11(2) or 12(2) or (4).

(2) The union (or unions) may apply to the Court for the appointment of a suitable independent person to handle communications during the initial period between the union (or unions) and the relevant workers.

(3) In the case of an application under paragraph 11(2) or 12(2), the relevant workers are—

- (a) in relation to any time before an appropriate bargaining unit is agreed by the parties or decided by the Court, those falling within the proposed bargaining unit, and
- (b) in relation to any time after an appropriate bargaining unit is so agreed or decided, those falling within the bargaining unit agreed or decided upon.

(4) In the case of an application under paragraph 12(4), the relevant workers are those falling within the bargaining unit agreed by the parties.

(5) The initial period is the period starting with the day on which the Court informs the parties under sub-paragraph (7)(b) and ending with the first day on which any of the following occurs—

- (a) the application under paragraph 11 or 12 is withdrawn;
- (b) the Court gives notice to the union (or unions) of a decision under paragraph 20 that the application is invalid;
- (c) the Court notifies the union (or unions) of a declaration issued under paragraph 19F(5) or 22(2);
- (d) the Court informs the union (or unions) under paragraph 25(9) of the name of the person appointed to conduct a ballot.

(6) A person is a suitable independent person if—

- (a) he satisfies such conditions as may be specified for the purposes of paragraph 25(7)(a) by an order under that provision, or is himself specified for those purposes by such an order, and
- (b) there are no grounds for believing either that he will carry out any functions arising from his appointment otherwise than competently or that his independence in relation to those functions might reasonably be called into question.

(7) On an application under sub-paragraph (2) the Court must as soon as reasonably practicable—

- (a) make such an appointment as is mentioned in that sub-paragraph, and
- (b) inform the parties of the name of the person appointed and the date of his appointment.

(8) The person appointed by the Court is referred to in paragraphs 19D and 19E as “the appointed person”.

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19D.—(1) An employer who is informed by the Court under paragraph 19C(7)(b) must comply with the following duties (so far as it is reasonable to expect him to do so).

(2) The duties are—

- (a) to give to the Court, within the period of 10 working days starting with the day after that on which the employer is informed under paragraph 19C(7)(b), the names and home addresses of the relevant workers;
- (b) if the relevant workers change as a result of an appropriate bargaining unit being agreed by the parties or decided by the Court, to give to the Court, within the period of 10 working days starting with the day after that on which the bargaining unit is agreed or the Court's decision is notified to the employer, the names and home addresses of those who are now the relevant workers;
- (c) to give to the Court, as soon as reasonably practicable, the name and home address of any worker who joins the bargaining unit after the employer has complied with paragraph (a) or (b);
- (d) to inform the Court, as soon as reasonably practicable, of any worker whose name has been given to the Court under paragraph (a), (b) or (c) and who ceases to be a relevant worker (otherwise than by reason of a change mentioned in paragraph (b)).

(3) Nothing in sub-paragraph (2) requires the employer to give information to the Court after the end of the initial period.

(4) As soon as reasonably practicable after the Court receives any information under sub-paragraph (2), it must pass it on to the appointed person.

19E.—(1) During the initial period, the appointed person must if asked to do so by the union (or unions) send to any worker—

- (a) whose name and home address have been passed on to him under paragraph 19D(4), and
- (b) who is (so far as the appointed person is aware) still a relevant worker,

any information supplied by the union (or unions) to the appointed person.

(2) The costs of the appointed person shall be borne—

- (a) if the application under paragraph 19C was made by one union, by the union, and
- (b) if that application was made by more than one union, by the unions in such proportions as they jointly indicate to the appointed person or, in the absence of such an indication, in equal shares.

(3) The appointed person may send to the union (or each of the unions) a demand stating his costs and the amount of those costs to be borne by the recipient.

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

(5) If the amount stated is not paid in accordance with sub-paragraph (4) it shall, if a county court so orders, be recoverable by execution issued from that court or otherwise as if it were payable under an order of that court.

(6) Where an amount is recoverable under sub-paragraph (5) execution may be carried out, to the same extent and in the same manner as if the union were a body corporate, against any property held in trust for the union other than protected property as defined in Article 23(2) of the 1992 Order.

(7) References to the costs of the appointed person are to—

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- (a) the costs wholly, exclusively and necessarily incurred by the appointed person in connection with handling during the initial period communications between the union (or unions) and the relevant workers,
- (b) such reasonable amount as the appointed person charges for his services, and
- (c) such other costs as the union (or unions) agree.

19F.—(1) If the Court is satisfied that the employer has failed to fulfil a duty mentioned in paragraph 19D(2), and the initial period has not yet ended, the Court may order the employer—

- (a) to take such steps to remedy the failure as the Court considers reasonable and specifies in the order, and
- (b) to do so within such period as the Court considers reasonable and specifies in the order;

and in this paragraph a “remedial order” means an order under this sub-paragraph.

(2) If the Court is satisfied that the employer has failed to comply with a remedial order and the initial period has not yet ended, the Court must as soon as reasonably practicable notify the employer and the union (or unions) that it is satisfied that the employer has failed to comply.

(3) A remedial order and a notice under sub-paragraph (2) must draw the recipient's attention to the effect of sub-paragraphs (4) and (5).

(4) Sub-paragraph (5) applies if—

- (a) the Court is satisfied that the employer has failed to comply with a remedial order,
- (b) the parties have agreed an appropriate bargaining unit or the Court has decided an appropriate bargaining unit,
- (c) in the case of an application under paragraph 11(2) or 12(2), the Court, if required to do so, has decided under paragraph 20 that the application is not invalid, and
- (d) the initial period has not yet ended.

(5) The Court may issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit.]

Union recognition

20.—(1) This paragraph applies if—

- (a) the Court accepts an application under paragraph 11(2) or 12(2),
- (b) the parties have agreed an appropriate bargaining unit at the end of the appropriate period^{F12} (defined by paragraph 18)], or the Court has decided an appropriate bargaining unit, and
- (c) that bargaining unit differs from the proposed bargaining unit.

(2) Within the decision period the Court must decide whether the application is invalid within the terms of paragraphs 43 to 50.

(3) In deciding whether the application is invalid, the Court must consider any evidence which it has been given by the employer or the union (or unions).

(4) If the Court decides that the application is invalid—

- (a) the Court must give notice of its decision to the parties,
- (b) the Court must not proceed with the application, and
- (c) no further steps are to be taken under this Part.

(5) If the Court decides that the application is not invalid it must—

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- (a) proceed with the application, and
 - (b) give notice to the parties that it is so proceeding.
- (6) The decision period is—
- (a) the period of 10 working days starting with the day after that on which the parties agree an appropriate bargaining unit or the Court decides an appropriate bargaining unit, or
 - (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.

F12 2004 NI 19

- 21.**—(1) This paragraph applies if—
- (a) the Court accepts an application under paragraph 11(2) or 12(2),
 - (b) the parties have agreed an appropriate bargaining unit at the end of the appropriate period^{F13} (defined by paragraph 18)], or the Court has decided an appropriate bargaining unit, and
 - (c) that bargaining unit is the same as the proposed bargaining unit.
- (2) This paragraph also applies if the Court accepts an application under paragraph 12(4).
- (3) The Court must proceed with the application.

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- 22.**—(1) This paragraph applies if—
- (a) the Court proceeds with an application in accordance with paragraph 20 or 21^{F14} (and makes no declaration under paragraph 19F(5)], and
 - (b) the Court is satisfied that a majority of the workers constituting the bargaining unit are members of the union (or unions).
- (2) The Court must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit.
- (3) But if any of the three qualifying conditions is fulfilled, instead of issuing a declaration under sub-paragraph (2) the Court must give notice to the parties that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.
- (4) These are the three qualifying conditions—
- (a) the Court is satisfied that a ballot should be held in the interests of good industrial relations;
 - ^{F14}(b) the Court has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;]
 - (c) membership evidence is produced which leads the Court to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf.
- (5) For the purposes of sub-paragraph (4)(c) membership evidence is—
- (a) evidence about the circumstances in which union members became members;
 - (b) evidence about the length of time for which union members have been members, in a case where the Court is satisfied that such evidence should be taken into account.

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23.—(1) This paragraph applies if—

- (a) the Court proceeds with an application in accordance with paragraph 20 or 21^{F15} (and makes no declaration under paragraph 19F(5)), and
- (b) the Court is not satisfied that a majority of the workers constituting the bargaining unit are members of the union (or unions).

(2) The Court must give notice to the parties that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.

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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.

^{F16}(5) The notification period is, in relation to notification by the union (or unions)—

- (a) the period of 10 working days starting with the day on which the union (or last of the unions) receives the Court's notice under paragraph 22(3) or 23(2), or
- (b) such longer period so starting as the Court may specify to the parties by notice.

(6) The notification period is, in relation to notification by the union (or unions) and the employer

- (a) the period of 10 working days starting with the day on which the last of the parties receives the Court's notice under paragraph 22(3) or 23(2), or
- (b) such longer period so starting as the Court may specify to the parties by notice.

(7) The Court may give a notice under sub-paragraph (5)(b) or (6)(b) only if the parties have applied jointly to it for the giving of such a notice.]

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

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

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- (a) the period of 20 working days starting with the day after that on which the qualified independent person is appointed, or
 - (b) such longer period (so starting) as the Court may decide.
- (4) The ballot must be conducted—
- (a) at a workplace or workplaces decided by the Court,
 - (b) by post, or
 - (c) by a combination of the methods described in sub-paragraphs (a) and (b),
- depending on the Court's preference.
- (5) In deciding how the ballot is to be conducted the Court must take into account—
- (a) the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace or workplaces;
 - (b) costs and practicality;
 - (c) such other matters as the Court considers appropriate.
- (6) The Court may not decide that the ballot is to be conducted as mentioned in sub-paragraph (4) unless there are special factors making such a decision appropriate; and special factors include—
- (a) factors arising from the location of workers or the nature of their employment;
 - (b) factors put to the Court by the employer or the union (or unions).
- [^{F17}(6A) If the Court decides that the ballot must (in whole or in part) be conducted at a workplace (or workplaces), it may require arrangements to be made for workers—
- (a) who (but for the arrangements) would be prevented by the Court's decision from voting by post, and
 - (b) who are unable, for reasons relating to those workers as individuals, to cast their votes in the ballot at the workplace (or at any of them),
- to be given the opportunity (if they request it far enough in advance of the ballot for this to be practicable) to vote by post; and the Court's imposing such a requirement is not to be treated for the purposes of sub-paragraph (6) as a decision that the ballot be conducted as mentioned in sub-paragraph (4)(c).]
- (7) A person is a qualified independent person if—
- (a) he satisfies such conditions as may be specified for the purposes of this paragraph by order of the Department or is himself so specified, and
 - (b) there are no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the ballot might reasonably be called into question.
- (8) An order under sub-paragraph (7)(a) shall be subject to negative resolution.
- (9) As soon as is reasonably practicable after the Court is required under paragraph 24 to arrange for the holding of a ballot it must inform the parties—
- (a) that it is so required;
 - (b) of the nature of the person appointed to conduct the ballot and the date of his appointment;
 - (c) of the period within which the ballot must be conducted;
 - (d) whether the ballot is to be conducted by post or at a workplace or workplaces;
 - (e) of the workplace or workplaces concerned (if the ballot is to be conducted at a workplace or workplaces).

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26.—(1) An employer who is informed by the Court under paragraph 25(9) must comply with the following^[F18 five] duties.

(2) The first duty is to co-operate generally, in connection with the ballot, with the union (or unions) and the person appointed to conduct the ballot; and the second and third duties are not to prejudice the generality of this.

(3) The second duty is to give to the union (or unions) such access to the workers constituting the bargaining unit as is reasonable to enable the union(or unions) to inform the workers of the object of the ballot and to seek their support and their opinions on the issues involved.

(4) The third duty is to do the following (so far as it is reasonably to expect the employer to do so)—

- (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^[F19 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^[F19 19D or paragraph (a) or (b) of this sub-paragraph and] who ceases to be within the unit.

^{[F20(4A)} The fourth duty is to refrain from making any offer to any or all of the workers constituting the bargaining unit which—

- (a) has or is likely to have the effect of inducing any or all of them not to attend any relevant meeting between the union (or unions) and the workers constituting the bargaining unit, and
- (b) is not reasonable in the circumstances.

(4B) The fifth duty is to refrain from taking or threatening to take any action against a worker solely or mainly on the grounds that he—

- (a) attended or took part in any relevant meeting between the union (or unions) and the workers constituting the bargaining unit, or
- (b) indicated his intention to attend or take part in such a meeting.

(4C) A meeting is a relevant meeting in relation to a worker for the purposes of sub-paragraph (4A) and (4B) if—

- (a) it is organised in accordance with any agreement reached concerning the second duty or as a result of a step ordered to be taken under paragraph 27 to remedy a failure to comply with that duty, and
- (b) it is one which the employer is, by such an agreement or order as is mentioned in paragraph (a), required to permit the worker to attend.

(4D) Without prejudice to the generality of the second duty imposed by this paragraph, an employer is to be taken to have failed to comply with that duty if—

- (a) he refuses a request for a meeting between the union (or unions) and any or all of the workers constituting the bargaining unit to be held in the absence of the employer or any representative of his (other than one who has been invited to attend the meeting) and it is not reasonable in the circumstances for him to do so,
- (b) he or a representative of his attends such a meeting without having been invited to do so,

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- (c) he seeks to record or otherwise be informed of the proceedings at any such meeting and it is not reasonable in the circumstances for him to do so, or
- (d) he refuses to give an undertaking that he will not seek to record or otherwise be informed of the proceedings at any such meeting unless it is reasonable in the circumstances for him to do either of those things.

(4E) The fourth and fifth duties do not confer any rights on a worker; but that does not affect any other right which a worker may have.]

[^{F19}(4F) Sub-paragraph (4)(a) does not apply to names and addresses that the employer has already given to the Court under paragraph 19D.]

(4G) Where (because of sub-paragraph (4F)) the employer does not have to comply with sub-paragraph (4)(a), the reference in sub-paragraph (4)(b) to the time when the employer complied with sub-paragraph (4)(a) is to be read as a reference to the time when the employer is informed under paragraph 25(9).

(4H) If—

- (a) a person was appointed on an application under paragraph 19C, and
- (b) the person appointed to conduct the ballot is not that person,

the Court must, as soon as is reasonably practicable, pass on to the person appointed to conduct the ballot the names and addresses given to it under paragraph 19D.]

(5) As soon as is reasonably practicable after the Court receives any information under sub-paragraph (4) it must pass it on to the person appointed to conduct the ballot.

(6) If asked to do so by the union (or unions) the person appointed to conduct the ballot must send to any worker—

- (a) whose name and home address have been [^{F19} passed on to him under paragraph 19D or this paragraph], and
- (b) who is still within the unit (so far as the person so appointed is aware),

any information supplied by the union (or unions) to the person so appointed.

(7) The duty under sub-paragraph (6) does not apply unless the union bears (or unions bear) the cost of sending the information.

[^{F21}(8) Each of the powers specified in sub-paragraph (9) shall be taken to include power to issue Codes of Practice—

- (a) about reasonable access for the purposes of sub-paragraph (3), and
- (b) about the fourth duty imposed by this paragraph.

(9) The powers are—

- (a) the power of the Agency under Article 90 of the 1992 Order;
- (b) the power of the Department under Article 95 of that Order..]

F18 Word in [Sch. 1A para. 26\(1\)](#) substituted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, [Sch. 1 para. 9\(2\)](#); S.R. 2005/571, art. 3, [Sch.](#) (with art. 5)

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F20 [Sch. 1A para. 26\(4A\)-\(4E\)](#) inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, [Sch. 1 para. 9\(3\)](#); S.R. 2005/571, art. 3, [Sch.](#) (with art. 5)

F21 [Sch. 1A para. 26\(8\)\(9\)](#) substituted (8.1.2006) for [Sch. 1A para. 26\(8\)](#) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, [Sch. 1 para. 9\(4\)](#); S.R. 2005/571, art. 3, [Sch.](#) (with art. 5)

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27.—(1) If the Court is satisfied that the employer has failed to fulfil any of the^{F22} duties imposed on him] by paragraph 26, and the ballot has not been held, the Court may order the employer—

- (a) to take such steps to remedy the failure as the Court considers reasonable and specifies in the order, and
- (b) to do so within such period as the Court considers reasonable and specifies in the order.

(2) If the Court is satisfied that the employer has failed to comply with an order under sub-paragraph (1), and the ballot has not been held, the Court may issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit.

(3) If the Court issues a declaration under sub-paragraph (2) it shall take steps to cancel the holding of the ballot; and if the ballot is held it shall have no effect.

F22 Words in [Sch. 1A para. 27\(1\)](#) substituted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, [Sch. 1 para. 9\(5\)](#); S.R. 2005/571, art. 3, [Sch.](#) (with art. 5)

^{F23}**27A.**—(1) Each of the parties informed by the Court under paragraph 25(9) must refrain from using any unfair practice.

(2) A party uses an unfair practice if, with a view to influencing the result of the ballot, the party—

- (a) offers to pay money or give money's worth to a worker entitled to vote in the ballot in return for the worker's agreement to vote in a particular way or to abstain from voting,
- (b) makes an outcome-specific offer to a worker entitled to vote in the ballot;
- (c) coerces or attempts to coerce a worker entitled to vote in the ballot to disclose—
 - (i) whether he intends to vote or to abstain from voting in the ballot, or
 - (ii) how he intends to vote, or how he has voted, in the ballot,
- (d) dismisses or threatens to dismiss a worker,
- (e) takes or threatens to take disciplinary action against a worker,
- (f) subjects or threatens to subject a worker to any other detriment, or
- (g) uses or attempts to use undue influence on a worker entitled to vote in the ballot.

(3) For the purposes of sub-paragraph (2)(b) an “outcome-specific offer” is an offer to pay money or give money's worth which—

- (a) is conditional on the issuing by the Court of a declaration that—
 - (i) the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit, or
 - (ii) the union is (or unions are) not entitled to be so recognised, and
- (b) is not conditional on anything which is done or occurs as a result of the declaration in question.

(4) The duty imposed by this paragraph does not confer any rights on a worker; but that does not affect any other right which a worker may have.

(5) Each of the following powers shall be taken to include power to issue Codes of Practice about unfair practices for the purposes of this paragraph—

- (a) the power of the Agency under Article 90 of the 1992 Order;
- (b) the power of the Department under Article 95 of that Order.

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F23 Sch. 1A paras. 27A-27F inserted (8.1.2006) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)), arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

27B.—(1) A party may complain to the Court that another party has failed to comply with paragraph 27A.

- (2) A complaint under sub-paragraph (1) must be made on or before the first working day after—
 - (a) the date of the ballot, or
 - (b) if votes may be cast in the ballot on more than one day, the last of those days.
- (3) Within the decision period the Court must decide whether the complaint is well-founded.
- (4) A complaint is well-founded if—
 - (a) the Court finds that the party complained against used an unfair practice, and
 - (b) the Court is satisfied that the use of that practice changed or was likely to change, in the case of a worker entitled to vote in the ballot—
 - (i) his intention to vote or to abstain from voting,
 - (ii) his intention to vote in a particular way, or
 - (iii) how he voted.
- (5) The decision period is—
 - (a) the period of 10 working days starting with the day after that on which the complaint under sub-paragraph (1) was received by the Court, or
 - (b) such longer period (so starting) as the Court may specify to the parties by a notice containing reasons for the extension.
- (6) If, at the beginning of the decision period, the ballot has not begun, the Court may by notice to the parties and the qualified independent person postpone the date on which it is to begin until a date which falls after the end of the decision period.

F23 Sch. 1A paras. 27A-27F inserted (8.1.2006) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)), arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

27C.—(1) This paragraph applies if the Court decides that a complaint under paragraph 27B is well-founded.

- (2) The Court must, as soon as is reasonably practicable, issue a declaration to that effect.
- (3) The Court may do either or both of the following—
 - (a) order the party concerned to take any action specified in the order within such period as may be so specified, or
 - (b) give notice to the employer and to the union (or unions) that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.
- (4) The Court may give an order or a notice under sub-paragraph (3) either at the same time as it issues the declaration under sub-paragraph (2) or at any other time before it acts under paragraph 29.
- (5) The action specified in an order under sub-paragraph (3)(a) shall be such as the Court considers reasonable in order to mitigate the effect of the failure of the party concerned to comply with the duty imposed by paragraph 27A.
- (6) The Court may give more than one order under sub-paragraph (3)(a).

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F23 Sch. 1A paras. 27A-27F inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

27D.—(1) This paragraph applies if the Court issues a declaration under paragraph 27C(2) and the declaration states that the unfair practice used consisted of or included—

- (a) the use of violence, or
- (b) the dismissal of a union official.

(2) This paragraph also applies if the Court has made an order under paragraph 27C(3)(a) and—

- (a) it is satisfied that the party subject to the order has failed to comply with it, or
- (b) it makes another declaration under paragraph 27C(2) in relation to a complaint against that party.

(3) If the party concerned is the employer, the Court may issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit.

(4) If the party concerned is a union, the Court may issue a declaration that the union is (or unions are) not entitled to be so recognised.

(5) The powers conferred by this paragraph are in addition to those conferred by paragraph 27C(3).

F23 Sch. 1A paras. 27A-27F inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

27E.—(1) This paragraph applies if the Court issues a declaration that a complaint under paragraph 27B is well-founded and—

- (a) gives a notice under paragraph 27C(3)(b), or
- (b) issues a declaration under paragraph 27D.

(2) If the ballot in connection with which the complaint was made has not been held, the Court shall take steps to cancel it.

(3) If that ballot is held, it shall have no effect.

F23 Sch. 1A paras. 27A-27F inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

27F.—(1) This paragraph applies if the Court gives a notice under paragraph 27C(3)(b).

(2) Paragraphs 24 to 29 apply in relation to that notice as they apply in relation to a notice given under paragraph 22(3) or 23(2) but with the modifications specified in sub-paragraphs (3) to (6).

(3) In each of sub-paragraphs (5)(a) and (6)(a) of paragraph 24 for “10 working days” substitute 5 working days.

(4) An employer’s duty under paragraph (a) of paragraph 26(4) is limited to—

- (a) giving the Court the names and home addresses of any workers in the bargaining unit which have not previously been given to it in accordance with that duty;
- (b) giving the Court the names and home addresses of those workers who have joined the bargaining unit since he last gave the Court information in accordance with that duty;

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- (c) informing the Court of any change to the name or home address of a worker whose name and home address have previously been given to the Court in accordance with that duty; and
 - (d) informing the Court of any worker whose name had previously been given to it in accordance with that duty who has ceased to be within the bargaining unit.
- (5) Any order given under paragraph 27(1) or 27C(3)(a) for the purposes of the cancelled or ineffectual ballot shall have effect (to the extent that the Court specifies in a notice to the parties) as if it were made for the purposes of the ballot to which the notice under paragraph 27C(3)(b) relates.
- (6) The gross costs of the ballot shall be borne by such of the parties and in such proportions as the Court may determine and, accordingly, sub-paragraphs (2) and (3) of paragraph 28 shall be omitted and the reference in sub-paragraph (4) of that paragraph to the employer and the union (or each of the unions) shall be construed as a reference to the party or parties which bear the costs in accordance with the Court's determination.]

F23 Sch. 1A paras. 27A-27F inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

28.—(1) This paragraph applies if the holding of a ballot has been arranged under paragraph 24 whether or not it has been cancelled.

- (2) The gross costs of the ballot shall be borne—
 - (a) as to half, by the employer, and
 - (b) as to half, by the union (or unions).
- (3) If there is more than one union they shall bear their half of the gross costs—
 - (a) in such proportions as they jointly indicate to the person appointed to conduct the ballot, or
 - (b) in the absence of such an indication, in equal shares.
- (4) The person appointed to conduct the ballot may send to the employer and the union (or each of the unions) a demand stating—
 - (a) the gross costs of the ballot, and
 - (b) the amount of the gross costs to be borne by the recipient.
- (5) In such a case the recipient must pay the amount stated to the person sending the demand, and must do so within the period of 15 working days starting with the day after that on which the demand is received.
- (6) If the amount stated is not paid in accordance with sub-paragraph (5) it shall, if a county court so orders, be recoverable as if it were payable under an order of that court.

[^{F24}(6A) Where an amount is recoverable from a union under subparagraph (6) execution may be carried out, to the same extent and in the same manner as if the union were a body corporate, against any property held in trust for the union other than protected property as defined in Article 23(2) of the 1992 Order.]

- (7) References to the costs of the ballot are to—
 - (a) the costs wholly, exclusively and necessarily incurred in connection with the ballot by the person appointed to conduct it,
 - (b) such reasonable amount as the person appointed to conduct the ballot charges for his services, and
 - (c) such other costs as the employer and the union (or unions) agree.

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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.

[^{F25}(1A) The duty in sub-paragraph (1) does not apply if the Court gives a notice under paragraph 27C(3)(b).]

(2) The Court must inform the employer and the union (or unions) of the result of the ballot.

(3) If the result is that the union is (or unions are) supported by—

(a) a majority of the workers voting, and

(b) at least 40 per cent of the workers constituting the bargaining unit,

the Court must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit.

(4) If the result is otherwise the Court must issue a declaration that the union is (or unions are) not entitled to be so recognised.

(5) The Department may by order amend sub-paragraph (3) so as to specify a different degree of support.

(6) No order shall be made under sub-paragraph(5) unless a draft of it has been laid before, and approved by a resolution of, the Assembly.

F25 Sch. 1A para. 29(1A) inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 10(2)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

Consequences of recognition

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

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

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

(4) The negotiation period is—

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

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

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

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

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

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

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

(5) But if the parties agree in writing—

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- (a) that sub-paragraph (4) shall not apply, or shall not apply to particular parts of the method specified by the Court, or
 - (b) to vary or replace the method specified by the Court,
- the written agreement shall have effect as a legally enforceable contract made by the parties.
- (6) Specific performance shall be the only remedy available for breach of anything which is a legally enforceable contract by virtue of this paragraph.
- (7) If at any time before a specification is made under sub-paragraph (3) the parties jointly apply to the Court requesting it to stop taking steps under this paragraph, the Court must comply with the request.
- (8) The agreement period is—
- (a) the period of 20 working days starting with the day after that on which the Court receives the application under paragraph 30, or
 - (b) such longer period (so starting) as the Court may decide with the consent of the parties.

Method not carried out

- 32.**—(1) This paragraph applies if—
- (a) the Court issues a declaration under this Part that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit,
 - (b) the parties agree a method by which they will conduct collective bargaining, and
 - (c) one or more of the parties fails to carry out the agreement.
- (2) The^{F26} employer or the union (or unions)] may apply to the Court for assistance.
- (3) Paragraph 31 applies as if “paragraph 30” (in each place) read “paragraph 30 or paragraph 32”.

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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

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- (b) the matters in respect of which the union is (or unions are) entitled to conduct collective bargaining do not include^{F27} all of the following: pay, hours and holidays (“the core topics”)].
- (3) A declaration of recognition which is the subject of a declaration under paragraph 83(2) must for the purposes of sub-paragraph (1) be treated as ceasing to have effect to the extent specified in paragraph 83(2) on the making of the declaration under paragraph 83(2).
- (4) In applying sub-paragraph (1) an agreement for recognition (the agreement in question) must be ignored if—
 - (a) the union does not have (or none of the unions has) a certificate^{F27} of independence],
 - (b) at some time there was an agreement (the old agreement) between the employer and the union under which the union (whether alone or with other unions) was recognised as entitled to conduct collective bargaining on behalf of a group of workers which was the same or substantially the same as the group covered by the agreement in question, and
 - (c) the old agreement ceased to have effect in the period of three years ending with the date of the agreement in question.
- (5) It is for the Court to decide whether one group of workers is the same or substantially the same as another, but in deciding the Court may take account of the views of any person it believes has an interest in the matter.
- (6) The relevant bargaining unit is—
 - (a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
 - (b) the agreed bargaining unit, where the application is under paragraph 12(4).

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

- (a) members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit, and
 - (b) a majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union (or unions) as entitled to conduct collective bargaining on behalf of the bargaining unit.
- (2) The relevant bargaining unit is—
- (a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
 - (b) the agreed bargaining unit, where the application is under paragraph 12(4).
- (3) The Court must give reasons for the decision.

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

- (2) The application is not admissible unless—
- (a) the unions show that they will co-operate with each other in a manner likely to secure and maintain stable and effective collective bargaining arrangements, and
 - (b) the unions show that, if the employer wishes, they will enter into arrangements under which collective bargaining is conducted by the unions acting together on behalf of the workers constituting the relevant bargaining unit.
- (3) The relevant bargaining unit is—

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

38.—(1) This paragraph applies if—

- (a) the Court accepts a relevant application relating to a bargaining unit or proceeds under paragraph 20 with an application relating to a bargaining unit,
- (b) the application has not been withdrawn,
- (c) no notice has been given under paragraph 17(2),
- (d) the Court has not issued a declaration under paragraph^{[F28} 19F(5), 22(2), 27(2), 27D(3), 27D(4)], 29(3) or 29(4) in relation to that bargaining unit, and
- (e) no notification has been made under paragraph 24(2).

(2) Another relevant application is not admissible if—

- (a) at least one worker falling within the relevant bargaining unit also falls within the bargaining unit referred to in sub-paragraph (1), and
- (b) the application is made by a union (or unions) other than the union (or unions) which made the application referred to in sub-paragraph (1).

(3) A relevant application is an application under paragraph 11 or 12.

(4) The relevant bargaining unit is—

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

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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^{[F29} 27D(4) or] 29(4) that a union is (or unions are) not entitled to be recognised as entitled to conduct collective bargaining on behalf of a bargaining unit; and this is so whether the ballot concerned is^{[F29} arranged] under this Part or Part III.

(2) An application under paragraph 11 or 12 is not admissible if—

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- (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).

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41.—(1) This paragraph applies if the Court issues a declaration under paragraph^{F30} 119D(4), 119H(5) or] 121(3) that bargaining arrangements are to cease to have effect; and this is so whether the ballot concerned is^{F30} arranged] under Part IV or Part V.

- (2) An application under paragraph 11 or 12 is not admissible if—
- (a) the application is made within the period of 3 years starting with the day after that on which the declaration was issued,
 - (b) the relevant bargaining unit is the same or substantially the same as the bargaining unit to which the bargaining arrangements mentioned in sub-paragraph (1) relate, and
 - (c) the application is made by the union which was a party (or unions which were parties) to the proceedings leading to the declaration.
- (3) The relevant bargaining unit is—
- (a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
 - (b) the agreed bargaining unit, where the application is under paragraph 12(4).

F30 2004 NI 19

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

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

General provisions about validity

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

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

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

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- (2) But sub-paragraph (1) does not apply to the application in question if—
- (a) the union (or unions) recognised under the collective agreement and the union (or unions) making the application in question are the same, and
 - (b) the matters in respect of which the union is (or unions are) entitled to conduct collective bargaining do not include^{F31} all of the following: pay, hours and holidays (“the core topics”)].
- (3) A declaration of recognition which is the subject of a declaration under paragraph 83(2) must for the purposes of sub-paragraph (1) be treated as ceasing to have effect to the extent specified in paragraph 83(2) on the making of the declaration under paragraph 83(2).
- (4) In applying sub-paragraph (1) an agreement for recognition (the agreement in question) must be ignored if—
- (a) the union does not have (or none of the unions has) a certificate^{F31} of independence],
 - (b) at some time there was an agreement (the old agreement) between the employer and the union under which the union (whether alone or with other unions) was recognised as entitled to conduct collective bargaining on behalf of a group of workers which was the same or substantially the same as the group covered by the agreement in question, and
 - (c) the old agreement ceased to have effect in the period of three years ending with the date of the agreement in question.
- (5) It is for the Court to decide whether one group of workers is the same or substantially the same as another, but in deciding the Court may take account of the views of any person it believes has an interest in the matter.

F31 2004 NI 19

- 45.** The application in question is invalid unless the Court decides that—
- (a) members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit, and
 - (b) a majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union (or unions) as entitled to conduct collective bargaining on behalf of the bargaining unit.
- 46.—**(1) This paragraph applies if—
- (a) the Court accepts an application under paragraph 11 or 12 relating to a bargaining unit or proceeds under paragraph 20 with an application relating to a bargaining unit,
 - (b) the application has not been withdrawn,
 - (c) no notice has been given under paragraph 17(2),
 - (d) the Court has not issued a declaration under paragraph^{F32} 19F(5), 22(2), 27(2), 27D(3), 27D(4),] 29(3) or 29(4) in relation to that bargaining unit, and
 - (e) no notification has been made under paragraph 24(2).
- (2) The application in question is invalid if—
- (a) at least one worker falling within the relevant bargaining unit also falls within the bargaining unit referred to in sub-paragraph (1), and
 - (b) the application in question is made by a union (or unions) other than the union(or unions) which made the application referred to in sub-paragraph (1).

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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^{F33} 27D(4) or] 29(4) that a union is (or unions are) not entitled to be recognised as entitled to conduct collective bargaining on behalf of a bargaining unit; and this is so whether the ballot concerned is^{F33} arranged] under this Part or Part III.

- (2) The application in question is invalid if—
- (a) the application is made within the period of 3 years starting with the date of the declaration,
 - (b) the relevant bargaining unit is the same or substantially the same as the bargaining unit mentioned in sub-paragraph (1), and
 - (c) the application is made by the union (or unions) which made the application leading to the declaration.

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49.—(1) This paragraph applies if the Court issues a declaration under paragraph^{F34} 119D(4), 119H(5) or] 121(3) that bargaining arrangements are to cease to have effect; and this is so whether he ballot concerned is^{F34} arranged] under Part IV or Part V.

- (2) The application in question is invalid if—
- (a) the application is made within the period of 3 years starting with the day after that on which the declaration was issued,
 - (b) the relevant bargaining unit is the same or substantially the same as the bargaining unit to which the bargaining arrangements mentioned in sub-paragraph (1) relate, and
 - (c) the application is made by the union which was a party (or unions which were parties) to the proceedings leading to the declaration.

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

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

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Competing applications

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

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

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

(2) This paragraph applies if—

- (a) the Court decides that the competing application is not admissible by reason of paragraph 38 or is invalid by reason of paragraph 46,
- (b) at the time the decision is made the parties to the original application have not agreed the appropriate bargaining unit under paragraph 18, and the Court has not decided the appropriate bargaining unit under paragraph 19^{F35} or 19A], in relation to the application, and
- (c) the 10 per cent test (within the meaning given by paragraph 14) is satisfied with regard to the competing application.

(3) In such a case—

- (a) the Court must cancel the original application,
- (b) the Court must give notice to the parties to the application that it has been cancelled,
- (c) no further steps are to be taken under this Part in relation to the application, and
- (d) the application shall be treated as if it had never been admissible.

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Changes to legislation:

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Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 1A para. 157(4) added by [2016 c. 15 \(N.I.\) Sch. 2 para. 10](#)
- art. 33(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 4](#)
- art. 36(1A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 5](#)
- art. 39(1) art. 39 renumbered as art. 39(1) by [2016 c. 15 \(N.I.\) Sch. 2 para. 6\(2\)](#)
- art. 39(2) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 6\(3\)](#)
- art. 44C(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 7](#)
- art. 61(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 8](#)
- art. 147A and cross-heading inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 9](#)