
EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into operation on 8th January 2006, Articles 5 and 8 and paragraphs 9, 10 and 13 of Schedule 1 to the Employment Relations (Northern Ireland) Order 2004 (“the 2004 Order”).

This is the fourth commencement order made under the 2004 Order and it brings into operation the majority of the outstanding provisions which were not commenced by the three previous orders.

The Order brings into operation paragraphs 9, 10 and 13 of Schedule 1 to the 2004 Order. These provisions amend Schedule 1A to the Trade Union and Labour Relations (Northern Ireland) Order 1995 (“the 1995 Order”).

Paragraph 9 of Schedule 1 to the 2004 Order places new duties on employers who are notified by the Industrial Court (“the Court”) that a ballot on the question of union recognition or derecognition for collective bargaining purposes is to be held. The existing duty on employers to give a union access to workers in a bargaining unit is clarified by provisions setting out circumstances in which an employer will be taken to have failed to comply with that duty. Additionally, two new duties will also apply. The first of these will require the employer to refrain from making an offer to any or all of the workers in the bargaining unit which has the effect, or is likely to have the effect, of inducing any or all of those workers not to attend a meeting with the union (arranged either in accordance with an agreement between the union and the employer or with a direction of the Court) unless that offer is reasonable in the circumstances. Secondly, the employer must not take or threaten to take action against a worker solely or mainly because that worker has attended or taken part in a meeting of the type described above or because he has indicated that he intends to attend or take part in such a meeting.

Paragraph 10 of Schedule 1 to the 2004 Order inserts paragraphs 27A to 27F into Schedule 1A to the 1995 Order. These paragraphs provide that parties informed by the Court that a recognition ballot is to be held must refrain from using any unfair practice, as described in paragraph 27A(2). Unfair practices include offering incentives in the form of money or money’s worth in return for an individual agreeing to vote in a particular way or to abstain from voting or in the event of a specific outcome resulting from the ballot. Unfair practices also include coercion and threats of or actual dismissal or disciplinary action where such practices are carried out with a view to influencing the outcome of the ballot. The provisions inserted by paragraph 10 of Schedule 1 to the 2004 Order lay down the procedures to be followed where the Court receives a complaint that an unfair practice has been used and provides for the consequences of a decision of the Court that a complaint of unfair practice is well-founded.

Paragraph 13 of Schedule 1 to the 2004 Order inserts paragraphs 119A to 119I into Schedule 1A to the 1995 Order. These provisions deal with unfair practices during derecognition ballots. The provisions closely resemble those inserted by paragraph 10 of Schedule 1 to the 2004 Order, applying the same or very similar provisions for defining unfair practices and the consequences for a party which commits them within the context of a derecognition ballot. There are additional provisions to deal with the situation where a worker has made an application to derecognise a union.

Article 5 of the 2004 Order amends Article 105 of the 1995 Order which specifies the information required to be contained in a ballot notice (which gives advance notice in writing to an employer of a ballot for industrial action). Article 105 of the 1995 Order presently requires a union conducting an industrial action ballot to provide certain information in a notice to an employer. The notice provided must contain information in the union’s possession which would help the employer to make plans and bring information to the attention of the employees which the union intends to ballot and has

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to include information, if the union has it, as to the number of employees involved, their category of work and workplace. Article 5 of the 2004 Order makes changes to the information which the union is required to supply and provides for the supply of specific information in the form of lists of categories of employees and their workplaces and figures relating to the number of employees in each category and at each workplace. The provisions also allow for unions to meet their obligations under Article 105 of the 1995 Order by referring in their notice to union members who pay their union subscription through deductions from pay (i.e. the practice known as “check-off”).

Article 8 of the 2004 Order amends Article 118 of the 1995 Order which specifies the information required to be contained in an industrial action notice. Article 118 of the 1995 Order currently requires a union to provide employers with certain information relating to proposed industrial action. This includes information in the union’s possession which would help the employer to make plans and bring information to the attention of the employees which the union intends to induce and has to include information, if the union has it, as to the number of employees involved, their category of work and workplace. Article 8 of the 2004 Order makes changes to the information which the union is required to supply. The changes are similar to those made by Article 5 of the 2004 Order in relation to ballot notices. They allow for the provision of information by way of lists and figures and by reference to “check-off” information.

The Order contains transitional provisions.