EMPLOYMENT RELATIONS (NORTHERN IRELAND) ORDER 2004

S.I. 2004 3078

EXPLANATORY MEMORANDUM

COMMENTARY ON ARTICLES
Schedule 1

Amendment of Schedule 1a to the 1995 Order
Schedule 1A to the 1995 Order (inserted by Schedule 1 to the Employment Relations (Northern Ireland) Order 1999) established a statutory procedure for the recognition and derecognition of trade unions for the purposes of collective bargaining on behalf of a particular group of workers.

Determination of appropriate bargaining unit
Paragraphs 1 and 4 clarify how an appropriate bargaining unit is to be determined by the Industrial Court (IC). ***Paragraph 2*** provides a power for the IC to reduce the 20-day period for the parties to agree a bargaining unit. ***Paragraph 3*** imposes a duty on the employer to supply information to the union(s) and the IC in relation to workers in the union's proposed bargaining unit.

Union communications with workers after acceptance of application
Paragraph 5 inserts new paragraphs 19C to 19F after paragraph 19B of Schedule 1A (which is inserted by paragraph 4 of this order). At present, a union may only formally communicate with workers during the period within which a ballot ordered by the IC is to be conducted. ***Paragraph 5*** provides a right for a union to communicate with the workers in the bargaining unit from the point when the IC accepts an application for recognition. This communication takes place via a suitable independent person.

Circumstances in which the IC must arrange a ballot
Paragraph 6 provides greater discretion to the IC when deciding whether a significant number of union members do not want the union to bargain on their behalf by empowering the IC to assess the credibility of the evidence it receives. It also provides the same discretion when the IC is deciding whether to arrange a ballot in respect of a new bargaining unit which has been agreed or determined under Part III of the Schedule, and more than 50% of the workers in that new bargaining unit are members of the union.

Power of the IC to extend notification period
Paragraph 7 amends paragraph 24 of Schedule 1A. Paragraph 24 provides a fixed period in which the union and employer jointly may notify the IC that they do not wish the IC to arrange a ballot. ***Paragraph 7***gives the IC the ability to extend the notification period on the request of both parties to give the parties more time to try to reach a voluntary agreement on recognition.

Postal votes for workers absent from ballot at workplace
Paragraph 8 amends paragraphs 25 and 117 of Schedule 1A. Paragraph 25 applies where the IC arranges to hold a ballot on union recognition and provides that the ballot must be conducted, depending on the IC preference, at a workplace, by post or by a combination of these methods.

Paragraph 117 mirrors these provisions in the case of ballots on derecognition. ***Paragraph 8*** amends the provisions of these paragraphs to allow workers who are allotted a vote at the workplace to vote by post if they are unable for reasons specific to them to attend their workplace on the day of the ballot.

Additional duties on employers informed of ballots

Paragraph 9 places two new duties on employers who have been informed by the IC under paragraph 25(9) of Schedule 1A that a ballot is required. In addition to the existing three duties, there now is a new fourth duty on 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 relevant meeting between the union(s) and the workers constituting the bargaining unit, unless that offer is reasonable in the circumstances. The new fifth duty on the employer is not to take or threaten to take action against a worker solely or mainly because that worker attended or took part in a relevant meeting or because that worker indicated that he intended to attend or to take part in such a meeting.

Unfair practices in relation to recognition ballots

Paragraph 10 inserts into Schedule 1A new paragraphs 27A to 27F which deal with complaints of unfair practices by either party with a view to influencing the outcome of the ballot and the consequences when a complaint is well-founded.

Application where agreement does not cover pay, hours and holidays

Paragraph 11 clarifies that a union may apply to the IC for recognition when any one or more of the "core bargaining" topics (pay, hours and holidays) are not included in a pre-existing agreement between the employer and workers.

Employer's notice to end bargaining arrangements

Paragraph 12amends those provisions in Part IV of Schedule 1A which deal with a notice by an employer that he wishes bargaining arrangements which are the result of an earlier declaration of statutory recognition by the IC to cease to have effect. Such notice may be given if the employer believes that he, taken with any associated employer(s), employed an average of fewer than 21 workers in a given 13 week period, and if three years have passed since the IC awarded recognition. Currently if the union has successfully challenged an employer's notice to end bargaining arrangements or has won a derecognition ballot in the previous three years it cannot challenge a further notice by the employer, thus allowing the union to be derecognised without having an opportunity to put its views to the IC. This paragraph rectifies this anomaly by providing that a previous relevant application does not render an application by the union challenging the further notice inadmissible. The Article also provides that any unsuccessful application or notice to derecognise the union by the employer or a worker (or workers) renders any further such notice or application inadmissible for a period of three years.

Unfair practice in relation to derecognition ballots

Paragraph 13 inserts into Schedule 1A new paragraphs 119A to 119I which concern unfair practices during derecognition ballots. In particular, the provisions: create a duty on the parties to refrain from unfair practices; set out how complaints of unfair practices are to be handled; and provide for the consequences of a decision by the IC that a complaint of unfair practice is well-founded.

Appeals against demands for costs

Paragraph 14 inserts a new paragraph 165A into Schedule 1A. It provides a right of appeal for the union(s) and/or employer against a demand for costs from a qualified independent person for the conduct of a ballot, or from an appointed person for sending information to the relevant workers.

Power to amend Schedule 1A to the 1995 Order

Paragraph 15 amends paragraph 166 of Schedule 1A. At present paragraph 166 contains limited powers for the Department to amend paragraphs 22 and 87 of the Schedule, by order, if the IC informs the Department that either of these paragraphs has an unsatisfactory effect. This paragraph

widens the scope of paragraph 166, by giving the Department a general power to amend any provision of the Schedule, if requested to do so by the IC.

Means of communicating with workers
Paragraph 16 inserts a new paragraph 166A in Schedule 1A. Paragraph 166A gives the Department power to make by affirmative resolution an order providing that the employer must give to the IC, in addition to the workers' home addresses, an address of a specified kind, which may include any address or number to which information can be sent by any means.

Unfair practices: power to make provision about periods before notice of ballot
Paragraph 17 inserts a new paragraph 166B into Schedule 1A. This paragraph gives the Department power to make an order prohibiting employers and unions from using specified unfair practices during a specified period. In this context "specified "means specified in an order made under this paragraph.

Power to make provision about effect of amalgamations etc.
Paragraph 18 inserts new paragraphs 169A, 169B and 169C into Schedule 1A. Paragraph 169A gives the Department power to make an order providing for any case where anything has been done under or for the purposes of the Schedule by or in relation to a union and that union amalgamates or transfers all or any of its engagements. Paragraph 169B contains a similar order making power for the Department to provide for groups of workers where the employer is no longer their employer by reason of a business transfer or otherwise. Paragraph 169C provides that an order under new paragraphs 169A or 169B must be approved by a resolution of the Assembly.

Information about union membership and employment in bargaining unit
Paragraph 19 inserts a new paragraph 170A into Schedule 1A. The new paragraph provides a power for the IC to require the employer, the union(s) and applicant workers to give to an IC case manager specified information to help inform its decisions under the Schedule. It also specifies the IC's processes in handling and making use of such information.

"Pay" and other matters subject to collective bargaining
Paragraph 20 inserts a new paragraph 171A into Schedule 1A. An IC declaration of recognition is for collective bargaining on pay, hours and holidays. Paragraph 171A(1) clarifies that for the purposes of the Schedule, the definition of "pay" does not include any matters relating to a worker's membership of an occupational or personal pension scheme, his rights under that scheme, or his employer's contributions to it. Paragraph 171A (2) to (4) permit the Department by order to amend relevant parts of the Schedule to add matters relating to pensions to the core bargaining topics.