
STATUTORY INSTRUMENTS

2004 No. 3078 (N.I. 19)

NORTHERN IRELAND

The Employment Relations (Northern Ireland) Order 2004

Made - - - - - 17th November 2004

Laid - - - - - 30th November 2004

*Coming into operation in accordance with Article
1(2)*

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At the Court at Buckingham Palace, the 17th day of November 2004

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order in Council is made only for purposes corresponding to those of the Employment Relations Act 2004 (c.24) (other than sections 43 to 46):

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c.1) (as modified by section 58 of the said Act of 2004) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Employment Relations (Northern Ireland) Order 2004.

(2) Parts II to VI shall not come into operation until such day or days as the Department may by order appoint.

(3) An order under paragraph (2) may contain such transitional provisions and savings as the Department considers necessary or expedient in connection with the coming into operation of any of the provisions of this Order.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c.33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“the Department” means the Department for Employment and Learning;

“the Employment Rights Order” means the Employment Rights (Northern Ireland) Order 1996 (NI 16);

“the 1992 Order” means the Industrial Relations (Northern Ireland) Order 1992 (NI 5);

“the 1995 Order” means the Trade Union and Labour Relations (Northern Ireland) Order 1995 (NI 12).

UNION RECOGNITION

Amendment of Schedule 1A to the 1995 Order

3. Schedule 1A to the 1995 Order is amended as set out in Schedule 1.

Information required by the Agency for ballots and ascertaining union membership

4.—(1) After Article 84 of the 1992 Order insert—

“Information required by the Agency for purposes of settling recognition disputes

84AA.—(1) This Article applies where the Agency is exercising its functions under Article 84 with a view to bringing about a settlement of a recognition dispute.

(2) The parties to the recognition dispute may jointly request the Agency or a person nominated by the Agency to do either or both of the following—

- (a) hold a ballot of the workers involved in the dispute;
- (b) ascertain the union membership of the workers involved in the dispute.

(3) In the following provisions of this Article references to the Agency include references to a person nominated by the Agency; and anything done by such a person under this Article shall be regarded as done in the exercise of the functions of the Agency mentioned in paragraph (1).

(4) At any time after the Agency has received a request under paragraph (2), it may require any party to the recognition dispute—

- (a) to supply the Agency with specified information concerning the workers involved in the dispute, and
- (b) to do so within such period as it may specify.

(5) The Agency may impose a requirement under paragraph (4) only if it considers that it is necessary to do so—

- (a) for the exercise of the functions mentioned in paragraph (1); and
- (b) in order to enable or assist it to comply with the request.

(6) The recipient of a requirement under this Article must, within the specified period, supply the Agency with such of the specified information as is in the recipient’s possession.

(7) A request under paragraph (2) may be withdrawn by any party to the recognition dispute at any time and, if it is withdrawn, the Agency shall take no further steps to hold the ballot or to ascertain the union membership of the workers involved in the dispute.

(8) If a party to a recognition dispute fails to comply with paragraph (6), the Agency shall take no further steps to hold the ballot or to ascertain the union membership of the workers involved in the dispute.

(9) Nothing in this Article requires the Agency to comply with a request under paragraph (2).

(10) In this Article—

“party”, in relation to a recognition dispute, means each of the employers, employers’ associations and trade unions involved in the dispute;

“a recognition dispute” means a trade dispute between employers and workers which is connected wholly or partly with the recognition by employers or employers’ associations of the right of a trade union to represent workers in negotiations, consultations or other procedures relating to any of the matters mentioned in sub-paragraphs (a) to (f) of Article 96(1);

“specified” means specified in a requirement under this Article; and

“workers” has the meaning given in Article 96(5).”.

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LAW RELATING TO INDUSTRIAL ACTION

Information about employees to be balloted on industrial action

5.—(1) Article 105 of the 1995 Order (notice of ballot and sample voting paper for employers) is amended as follows.

(2) In paragraph (1)(b) for “paragraph (3)” substitute “paragraph (2F)”.

(3) For paragraph (2)(c) substitute—

“(c) containing—

(i) the lists mentioned in paragraph (2A) and the figures mentioned in paragraph (2B), together with an explanation of how those figures were arrived at, or

(ii) where some or all of the employees concerned are employees from whose wages the employer makes deductions representing payments to the union, either those lists and figures and that explanation or the information mentioned in paragraph (2C).”

(4) After paragraph (2) insert—

“(2A) The lists are—

(a) a list of the categories of employee to which the employees concerned belong, and

(b) a list of the workplaces at which the employees concerned work.

(2B) The figures are—

(a) the total number of employees concerned,

(b) the number of the employees concerned in each of the categories in the list mentioned in paragraph (2A)(a), and

(c) the number of the employees concerned who work at each workplace in the list mentioned in paragraph (2A)(b).

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(2C) The information referred to in paragraph (2)(c)(ii) is such information as will enable the employer readily to deduce—

- (a) the total number of employees concerned,
- (b) the categories of employee to which the employees concerned belong and the number of the employees concerned in each of those categories, and
- (c) the workplaces at which the employees concerned work and the number of them who work at each of those workplaces.

(2D) The lists and figures supplied under this Article, or the information mentioned in paragraph (2C) that is so supplied, must be as accurate as is reasonably practicable in the light of the information in the possession of the union at the time when it complies with paragraph (1)(a).

(2E) For the purposes of paragraph (2D) information is in the possession of the union if it is held, for union purposes—

- (a) in a document, whether in electronic form or any other form, and
- (b) in the possession or under the control of an officer or employee of the union.

(2F) The sample voting paper referred to in sub-paragraph (b) of paragraph (1) is—

- (a) a sample of the form of voting paper which is to be sent to the employees concerned, or
- (b) where the employees concerned are not all to be sent the same form of voting paper, a sample of each form of voting paper which is to be sent to any of them.

(2G) Nothing in this Article requires a union to supply an employer with the names of the employees concerned.

(2H) In this Article references to the “employees concerned” are references to those employees of the employer in question who the union reasonably believes will be entitled to vote in the ballot.

(2I) For the purposes of this Article, the workplace at which an employee works is—

- (a) in relation to an employee who works at or from a single set of premises, those premises, and
- (b) in relation to any other employee, the premises with which his employment has the closest connection.”.

(5) Omit paragraphs (3) to (3B).

(6) In paragraph (5) for “paragraph (3)” substitute “paragraph (2F)”.

Entitlement to vote in ballot on industrial action

6. In Article 108(1) of the 1995 Order (entitlement to vote in ballot on industrial action) after “induced” insert “by the union”.

Inducement of members not accorded entitlement to vote

7.—(1) In Article 115B of the 1995 Order (small accidental failures to comply with certain provisions in relation to industrial action ballot to be disregarded) in paragraph (1), at the end add “for all purposes (including, in particular, those of Article 115A(c))”.

(2) In Article 29 of that Order (right of union member to ballot before industrial action), in paragraph (2), omit “and” at the end of sub-paragraph (b) and after that sub-paragraph insert—

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

Information about employees to be contained in notice of industrial action

8.—(1) Article 118 of the 1995 Order (notice to employers of industrial action) is amended as follows.

(2) In paragraph (3)—

(a) for sub-paragraph (a) substitute—

“(a) contains—

(i) the lists mentioned in paragraph (3A) and the figures mentioned in paragraph (3B), together with an explanation of how those figures were arrived at, or

(ii) where some or all of the affected employees are employees from whose wages the employer makes deductions representing payments to the union, either those lists and figures and that explanation or the information mentioned in paragraph (3C); and”.

(b) omit sub-paragraph (c) and the word “and” immediately preceding it.

(3) After paragraph (3) insert—

“(3A) The lists referred to in paragraph (3)(a) are—

(a) a list of the categories of employee to which the affected employees belong, and

(b) a list of the workplaces at which the affected employees work.

(3B) The figures referred to in paragraph (3)(a) are—

(a) the total number of the affected employees,

(b) the number of the affected employees in each of the categories in the list mentioned in paragraph (3A)(a), and

(c) the number of the affected employees who work at each workplace in the list mentioned in paragraph (3A)(b).

(3C) The information referred to in paragraph (3)(a)(ii) is such information as will enable the employer readily to deduce—

(a) the total number of affected employees,

(b) the categories of employee to which the affected employees belong and the number of the affected employees in each of those categories, and

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(c) the workplaces at which the affected employees work and the number of them who work at each of those workplaces.

(3D) The lists and figures supplied under this Article, or the information mentioned in paragraph (3C) that is so supplied, must be as accurate as is reasonably practicable in the light of the information in the possession of the union at the time when it complies with paragraph (1).

(3E) For the purposes of paragraph (3D) information is in the possession of the union if it is held, for union purposes—

- (a) in a document, whether in electronic form or any other form, and
- (b) in the possession or under the control of an officer or employee of the union.

(3F) Nothing in this Article requires a union to supply an employer with the names of the affected employees.”.

(4) In paragraph (5), for “is one of the affected employees” substitute “falls within a notified category of employee, and the workplace at which he works is a notified workplace”.

(5) For paragraph (5A) substitute—

“(5B) In paragraph (5)—

- (a) a “notified category of employee” means—
 - (i) a category of employee that is listed in the notice, or
 - (ii) where the notice contains the information mentioned in paragraph (3C), a category of employee that the employer (at the time he receives the notice) can readily deduce from the notice is a category of employee to which some or all of the affected employees belong, and
- (b) a “notified workplace” means—
 - (i) a workplace that is listed in the notice, or
 - (ii) where the notice contains the information mentioned in paragraph (3C), a workplace that the employer (at the time he receives the notice) can readily deduce from the notice is the workplace at which some or all of the affected employees work.”

(5C) In this Article references to the “affected employees” are references to those employees of the employer who the union reasonably believes will be induced by the union, or have been so induced, to take part or continue to take part in the industrial action.

(5D) For the purposes of this Article, the workplace at which an employee works is—

- (a) in relation to an employee who works at or from a single set of premises, those premises, and
- (b) in relation to any other employee, the premises with which his employment has the closest connection.”.

(6) In paragraph (8), after “(5)” insert “, (5C)”.

Dismissal where employees taking protected industrial action locked out

9.—(1) Article 144A of the Employment Rights Order (dismissal in connection with participation in official industrial action) is amended as follows.

(2) In paragraph (3) for the words from “within” to the end substitute “within the protected period”.

(3) After paragraph (7) insert—

“(7A) For the purposes of this Article “the protected period”, in relation to the dismissal of an employee, is the sum of the basic period and any extension period in relation to that employee.

(7B) The basic period is 12 weeks beginning with the first day of protected industrial action.

(7C) An extension period in relation to an employee is a period equal to the number of days falling on or after the first day of protected industrial action (but before the protected period ends) during the whole or any part of which the employee is locked out by his employer.

(7D) In paragraphs (7B) and (7C), the “first day of protected industrial action” means the day on which the employee starts to take protected industrial action (even if on that day he is locked out by his employer).”.

Date of dismissal

10.—(1) Article 144A of the Employment Rights Order is also amended as follows.

(2) In paragraph (3) for “it takes place” substitute “the date of the dismissal is”.

(3) In paragraph (4)(a) for “it takes place” substitute “the date of the dismissal is”.

(4) In paragraph (5)(a) for “it takes place” substitute “the date of the dismissal is”.

(5) After paragraph (9) add—

“(10) In this Article “date of dismissal” has the meaning given by Article 144(7).”.

Dismissal after end of protected period

11.—(1) In Article 144A(6) of the Employment Rights Order (dismissal after end of protected period), after sub-paragraph (d) insert—

“(e) where there was agreement to use either of the services mentioned in sub-paragraphs (c) and (d), the matters specified in Article 144B.”.

(2) After Article 144A of the Employment Rights Order insert—

“Conciliation and mediation: supplementary provisions

144B.—(1) The matters referred to in paragraph (6)(e) of Article 144A are those specified in paragraphs (2) to (5); and references in this Article to “the service provider” are to any person who provided a service mentioned in paragraph (6)(c) or (d) of that Article.

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(2) The first matter is: whether, at meetings arranged by the service provider, the employer or, as the case may be, a union was represented by an appropriate person.

(3) The second matter is: whether the employer or a union, so far as requested to do so, co-operated in the making of arrangements for meetings to be held with the service provider.

(4) The third matter is: whether the employer or a union fulfilled any commitment given by it during the provision of the service to take particular action.

(5) The fourth matter is: whether, at meetings arranged by the service provider between the parties making use of the service, the representatives of the employer or a union answered any reasonable question put to them concerning the matter subject to conciliation or mediation.

(6) For the purposes of paragraph (2) an “appropriate person” is—

(a) in relation to the employer—

(i) a person with the authority to settle the matter subject to conciliation or mediation on behalf of the employer, or

(ii) a person authorised by a person of that type to make recommendations to him with regard to the settlement of that matter, and

(b) in relation to a union, a person who is responsible for handling on the union’s behalf the matter subject to conciliation or mediation.

(7) For the purposes of paragraph (4) regard may be had to any timetable which was agreed for the taking of the action in question or, if no timetable was agreed, to how long it was before the action was taken.

(8) In any proceedings in which regard must be had to the matters referred to in Article 144A(6)(e)—

(a) notes taken by or on behalf of the service provider shall not be admissible in evidence;

(b) the service provider must refuse to give evidence as to anything communicated to him in connection with the performance of his functions as a conciliator or mediator if, in his opinion, to give the evidence would involve his making a damaging disclosure; and

(c) the service provider may refuse to give evidence as to whether, for the purposes of paragraph (5), a particular question was or was not a reasonable one.

(9) For the purposes of paragraph (8)(b) a “damaging disclosure” is—

(a) a disclosure of information which is commercially sensitive, or

(b) a disclosure of information that has not previously been disclosed which relates to a position taken by a party using the conciliation or mediation service on the settlement of the matter subject to conciliation or mediation,

to which the person who communicated the information to the service provider has not consented.”.

RIGHTS OF TRADE UNION MEMBERS, WORKERS AND EMPLOYEES

Detriments and inducements in respect of membership etc. of independent trade union

Extension of protection against detriment for union membership etc.

12.—(1) Article 73 of the Employment Rights Order (action short of dismissal on grounds related to union membership or activities) is amended in accordance with paragraphs (2) to (5).

(2) For “An employee” in each of paragraphs (1) and (3), and “an employee” in each of paragraphs (2) and (4), substitute “A worker” and “a worker” respectively.

(3) In paragraph (2)—

(a) for “employee’s” substitute “worker’s”; and

(b) after “contract of employment” insert “(or other contract personally to do work or perform services)”.

(4) In paragraph (3), for “his contract of employment” substitute “a contract of employment”.

(5) For paragraph (6) substitute—

“(6) This Article does not apply where—

(a) the worker is an employee; and

(b) the detriment in question amounts to dismissal.

(7) In this Chapter—

“worker” means an individual who works, or normally works as mentioned in paragraphs (a) to (c) of the definition of “worker” in Article 2(2) of the 1995 Order; and

“employer” means—

(a) in relation to a worker, the person for whom he works;

(b) in relation to a former worker, the person for whom he worked.”.

(6) In the heading to Article 73 of the Employment Rights Order, and in the Chapter heading immediately preceding it, for “Action short of dismissal” substitute “Detriment”.

(7) In Article 74(1) of the Employment Rights Order, for “An employee” substitute “A worker or former worker”.

(8) In Article 247 of the Employment Rights Order after paragraph (2) insert—

“(2A) The remedy of a person for infringement of the right conferred on him by Article 73 is by way of a complaint under Article 74 and not otherwise.”.

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Detriment for use of union services or refusal of inducement

13.—(1) Article 73 of the Employment Rights Order (action short of dismissal on grounds related to union membership or activities) is also amended in accordance with paragraphs (2) to (6).

(2) In paragraph (1), omit “or” at the end of sub-paragraph (b) and after that sub-paragraph insert—

“(ba) preventing or deterring him from making use of trade union services at an appropriate time, or penalising him for doing so, or”.

(3) In paragraph (2)—

(a) for “(1)(b)” substitute “(1)”; and

(b) in sub-paragraph (b), after “the activities of a trade union” insert “or (as the case may be) make use of trade union services”.

(4) After paragraph (2) insert—

“(2A) In this Article—

(a) “trade union services” means services made available to the worker by an independent trade union by virtue of his membership of the union, and

(b) references to a worker’s “making use” of trade union services include his consenting to the raising of a matter on his behalf by an independent trade union of which he is a member.

(2B) If an independent trade union of which a worker is a member raises a matter on his behalf (with or without his consent), penalising the worker for that is to be treated as penalising him as mentioned in paragraph (1)(ba).

(2C) A worker also has the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place because of the worker’s failure to accept an offer made in contravention of Article 77A or 77B.

(2D) For the purposes of paragraph (2C), not conferring a benefit that, if the offer had been accepted by the worker, would have been conferred on him under the resulting agreement shall be taken to be subjecting him to a detriment as an individual (and to be a deliberate failure to act).”

(5) In paragraph (5) (references to being etc. a member of a union to include being etc. a member of a branch or section) omit “; and references to taking part in the activities of a trade union shall be similarly construed”.

(6) After that paragraph insert—

“(5A) References in this Chapter—

(a) to taking part in the activities of a trade union, and

(b) to services made available by a trade union by virtue of membership of the union,

shall be construed in accordance with paragraph (5).”

(7) In Article 75 of the Employment Rights Order (consideration of complaint under Article 74), omit paragraphs (3) to (5).

(8) Omit Article 19 of the Employment Relations (Northern Ireland) Order 1999 (NI 9) (which is superseded by this Article and Article 15).

Inducements relating to union membership or activities

14.—(1) After Article 77 of the Employment Rights Order insert—

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INDUCEMENTS

Inducements relating to union membership or activities

77A.—(1) A worker has the right not to have an offer made to him by his employer for the sole or main purpose of inducing the worker—

- (a) not to be or seek to become a member of an independent trade union,
- (b) not to take part, at an appropriate time, in the activities of an independent trade union,
- (c) not to make use, at an appropriate time, of trade union services, or
- (d) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions.

(2) In paragraph (1) “an appropriate time” means—

- (a) a time outside the worker’s working hours, or
- (b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union or (as the case may be) make use of trade union services.

(3) In paragraph (2) “working hours”, in relation to a worker, means any time when, in accordance with his contract of employment (or other contract personally to do work or perform services), he is required to be at work.

(4) In paragraphs (1) and (2)—

- (a) “trade union services” means services made available to the worker by an independent trade union by virtue of his membership of the union, and
- (b) references to a worker’s “making use” of trade union services include his consenting to the raising of a matter on his behalf by an independent trade union of which he is a member.

(5) A worker or former worker may present a complaint to an industrial tribunal on the ground that his employer has made him an offer in contravention of this Article.

PART IV

Inducements relating to collective bargaining

77B.—(1) A worker who is a member of an independent trade union which is recognised, or seeking to be recognised, by his employer has the right not to have an offer made to him by his employer if—

- (a) acceptance of the offer, together with other workers' acceptance of offers which the employer also makes to them, would have the prohibited result, and
- (b) the employer's sole or main purpose in making the offers is to achieve that result.

(2) The prohibited result is that the workers' terms of employment, or any of those terms, will not (or will no longer) be determined by collective agreement negotiated by or on behalf of the union.

(3) It is immaterial for the purposes of paragraph (1) whether the offers are made to the workers simultaneously.

(4) Having terms of employment determined by collective agreement shall not be regarded for the purposes of Article 77A (or Article 73 or 136) as making use of a trade union service.

(5) A worker or former worker may present a complaint to an industrial tribunal on the ground that his employer has made him an offer in contravention of this Article.

Time limit for proceedings

77C. An industrial tribunal shall not consider a complaint under Article 77A or 77B unless it is presented—

- (a) before the end of the period of three months beginning with the date when the offer was made or, where the offer is part of a series of similar offers to the complainant, the date when the last of them was made, or
- (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.

Consideration of complaint

77D.—(1) On a complaint under Article 77A it shall be for the employer to show what was his sole or main purpose in making the offer.

(2) On a complaint under Article 77B it shall be for the employer to show what was his sole or main purpose in making the offers.

(3) On a complaint under Article 77A or 77B, in determining any question whether the employer made the offer (or offers) or the purpose for which he did so, no account shall be taken of any pressure which was exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.

(4) In determining whether an employer's sole or main purpose in making offers was the purpose mentioned in Article 77B(1), the matters taken into account must include any evidence—

- (a) that when the offers were made the employer had recently changed or sought to change, or did not wish to use, arrangements agreed with the union for collective bargaining,
- (b) that when the offers were made the employer did not wish to enter into arrangements proposed by the union for collective bargaining, or
- (c) that the offers were made only to particular workers, and were made with the sole or main purpose of rewarding those particular workers for their high level of performance or of retaining them because of their special value to the employer.

Remedies

77E.—(1) Paragraphs (2) and (3) apply where the industrial tribunal finds that a complaint under Article 77A or 77B is well-founded.

(2) The tribunal—

- (a) shall make a declaration to that effect, and
- (b) shall make an award to be paid by the employer to the complainant in respect of the offer complained of.

(3) The amount of the award shall be £2,500 (subject to any adjustment of the award that may fall to be made under Part IV of the Employment (Northern Ireland) Order 2003).

(4) Where an offer made in contravention of Article 77A or 77B is accepted—

- (a) if the acceptance results in the worker's agreeing to vary his terms of employment, the employer cannot enforce the agreement to vary, or recover any sum paid or other asset transferred by him under the agreement to vary;
- (b) if as a result of the acceptance the worker's terms of employment are varied, nothing in Article 77A or 77B makes the variation unenforceable by either party.

(5) Nothing in this Article or Articles 77A and 77B prejudices any right conferred by Article 73 or 76.

(6) In ascertaining any amount of compensation under Article 76, no reduction shall be made on the ground—

- (a) that the complainant caused or contributed to his loss, or to the act or failure complained of, by accepting or not accepting an offer made in contravention of Article 77A or 77B, or
- (b) that the complainant has received or is entitled to an award under this Article.

PART IV

Interpretation and other supplementary provisions

77F.—(1) References in Articles 77A to 77E to being or becoming a member of a trade union include references—

- (a) to being or becoming a member of a particular branch or section of that union, and
- (b) to being or becoming a member of one of a number of particular branches or sections of that union.

(2) References in those Articles—

- (a) to taking part in the activities of a trade union, and
- (b) to services made available by a trade union by virtue of membership of the union,

shall be construed in accordance with paragraph (1).

(3) In Articles 77A to 77—

“worker” means an individual who works, or normally works as mentioned in paragraphs (a) to (c) of the definition of “worker” in Article 2(2) of the 1995 Order; and

“employer” means—

- (a) in relation to a worker, the person for whom he works;
- (b) in relation to a former worker, the person for whom he worked.”.

(2) In Article 247 of the Employment Rights Order after paragraph (2A) insert—

“(2B) The remedy of a person for infringement of the right conferred on him by Article 77A or Article 77B is by way of a complaint under that Article and not otherwise.”.

Dismissal for use of union services or refusal of inducement

15.—(1) Article 136 of the Employment Rights Order (dismissal on grounds related to union membership or activities) is amended as follows.

(2) In paragraph (1), omit “or” at the end of each of sub-paragraphs (a) and (b) and after sub-paragraph (b) insert—

- “(ba) had made use, or proposed to make use, of trade union services at an appropriate time,
- (bb) had failed to accept an offer made in contravention of Article 77A or 77B, or”.

(3) In paragraph (2)—

- (a) for “(1)(b)” substitute “(1)”; and
- (b) in sub-paragraph (b), after “the activities of a trade union” insert “or (as the case may be) make use of trade union services”.

(4) After paragraph (2) insert—

“(2A) In this Article—

- (a) “trade union services” means services made available to the employee by an independent trade union by virtue of his membership of the union, and

(b) references to an employee's "making use" of trade union services include his consenting to the raising of a matter on his behalf by an independent trade union of which he is a member.

(2B) Where the reason or one of the reasons for the dismissal was that an independent trade union (with or without the employee's consent) raised a matter on behalf of the employee as one of its members, the reason shall be treated as falling within paragraph (1)(ba)."

(5) In paragraph (4) (references to being etc. a member of a union to include being etc. a member of a branch or section) omit "; and references to taking part in the activities of a trade union shall be similarly construed".

(6) After that paragraph add—

“(5) References in this Article—

(a) to taking part in the activities of a trade union, and

(b) to services made available by a trade union by virtue of membership of the union,

shall be construed in accordance with paragraph (4).”.

Other rights of workers and employees

Expulsion from trade union attributable to conduct

16.—(1) Article 38 of the 1995 Order (right not to be expelled from trade union) is amended as follows.

(2) In paragraph (2)(d) for "his conduct" substitute "conduct of his (other than excluded conduct) and the conduct to which it is wholly or mainly attributable is not protected conduct".

(3) For paragraph (4) substitute—

“(4) For the purposes of paragraph (2)(d) "excluded conduct", in relation to an individual, means—

(a) conduct which consists in his being or ceasing to be, or having been or ceased to be, a member of another trade union,

(b) conduct which consists in his being or ceasing to be, or having been or ceased to be, employed by a particular employer or at a particular place, or

(c) conduct to which Article 32 (conduct for which an individual may not be disciplined by a union) applies or would apply if the references in that Article to the trade union which is relevant for the purposes of that Article were references to any trade union.

(4A) For the purposes of paragraph (2)(d) "protected conduct" is conduct which consists in the individual's being or ceasing to be, or having been or ceased to be, a member of a political party.”.

(4) In Article 40 of that Order (remedies for infringement of right not to be expelled), after paragraph (1) insert—

“(1A) If a tribunal makes a declaration under paragraph (1) and it appears to the tribunal that the expulsion was mainly attributable to

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conduct falling within Article 38(4A) it shall make a declaration to that effect.

(1B) If a tribunal makes a declaration under paragraph (1A) and it appears to the tribunal that the other conduct to which the expulsion was attributable consisted wholly or mainly of conduct of the complainant which was contrary to—

- (a) a rule of the union, or
- (b) an objective of the union,

it shall make a declaration to that effect.”

(1C) For the purposes of paragraph (1B), it is immaterial whether the complainant was a member of the union at the time of the conduct contrary to the rule or objective.

(1D) A declaration by virtue of paragraph (1B)(b) shall not be made unless the union shows that, at the time of the conduct of the complainant which was contrary to the objective in question, it was reasonably practicable for that objective to be ascertained—

- (a) if the complainant was not at that time a member of the union, by a member of the general public, and
- (b) if he was at that time a member of the union, by a member of the union.”

(5) In paragraph (3)(a) of that Article, after “declaration” insert “under paragraph (1)”.

(6) In paragraph (6) of that Article the words from “and, in a case” to the end shall cease to have effect.

(7) For paragraph (7) of that Article substitute—

“(7) If on the date on which the application was made the applicant had not been re-admitted to the union, the award shall not be less than £5,900.

(8) Paragraph (7) does not apply in a case where the tribunal which made the declaration under paragraph (1) also made declarations under paragraphs (1A) and (1B).”.

(8) In Articles 38 and 40 of the 1995 Order references to the conduct of an individual include references to conduct which took place before the coming into operation of this Article.

National security: powers of industrial tribunals

17. For paragraph (6) of Article 12 of the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) (procedure regulations in relation to cases involving issues of national security) substitute—

“(6) Industrial tribunal procedure regulations may enable a tribunal, if it considers it expedient in the interests of national security, to do in relation to particular proceedings before it anything of a kind which, by virtue of paragraph (5), industrial tribunal procedure regulations may enable the Secretary of State to direct a tribunal to do in relation to particular Crown employment proceedings.”

Role of companion at disciplinary or grievance hearings

18.—(1) For paragraph (2) of Article 12 of the Employment Relations (Northern Ireland) Order 1999 (NI 9) (duty of employers to permit workers to be accompanied at disciplinary and grievance hearings) substitute—

“(2A) Where this Article applies, the employer must permit the worker to be accompanied at the hearing by one companion who—

- (a) is chosen by the worker; and
- (b) is within paragraph (3).

(2B) The employer must permit the worker’s companion to—

- (a) address the hearing in order to do any or all of the following—
 - (i) put the worker’s case;
 - (ii) sum up that case;
 - (iii) respond on the worker’s behalf to any view expressed at the hearing;
- (b) confer with the worker during the hearing.

(2C) Paragraph (2B) does not require the employer to permit the worker’s companion to—

- (a) answer questions on behalf of the worker;
- (b) address the hearing if the worker indicates at it that he does not wish his companion to do so; or
- (c) use the powers conferred by that paragraph in a way that prevents the employer from explaining his case or prevents any other person at the hearing from making his contribution to it.”.

(2) In Article 13(1) of that Order (complaint to industrial tribunal), for “12(2)” substitute “12(2A), (2B)”.

(3) In Article 14 of that Order (right not to be subjected to a detriment or dismissal)—

- (a) in paragraphs (1)(a) and (3)(a) for “12(2)” substitute “12(2A), (2B)”; and
- (b) after paragraph (6) add—

“(7) References in this Article to a worker having accompanied or sought to accompany another worker include references to his having exercised or sought to exercise any of the powers conferred by Article 12(2A) or (2B).”.

Ways in which provision conferring rights on individuals may be made

19. In Article 24 of the Employment Relations (Northern Ireland) Order 1999 (NI 9) (power to confer on individuals of a specified description rights conferred by certain statutory provisions) in paragraph (5) (ways in which that power may be exercised) for the words from “whether” to the end substitute “including, in particular, amending, excluding or applying (with or without amendment) any statutory provision.”.

PART IV **Protection of employees in respect of jury service**

20.—(1) In Chapter I of Part VI of the Employment Rights Order (protection from suffering detriment in employment), before Article 68 insert—

“Jury service

67M.—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer on the ground that the employee—

- (a) has been summoned under the Juries (Northern Ireland) Order 1974 (NI 6) or the Coroners (Northern Ireland) Act 1959 (c.15) to attend for service as a juror, or
- (b) has been absent from work because he attended at any place in pursuance of being so summoned.

(2) This Article does not apply where the detriment in question amounts to dismissal within the meaning of Part XI.

(3) For the purposes of this Article, an employee is not to be regarded as having been subjected to a detriment by a failure to pay remuneration in respect of a relevant period unless under his contract of employment he is entitled to be paid that remuneration.

(4) In paragraph (3) “a relevant period” means any period during which the employee is absent from work because of his attendance at any place in pursuance of being summoned as mentioned in paragraph (1)(a).”.

(2) In Article 71(1) of that Order (application to industrial tribunal), after “Article” insert “67M.”.

(3) After Article 130A of that Order insert—

“Jury service

130B.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

- (a) has been summoned under the Juries (Northern Ireland) Order 1974 or the Coroners Act (Northern Ireland) 1959 (c.15) to attend for service as a juror, or
- (b) has been absent from work because he attended at any place in pursuance of being so summoned.

(2) Paragraph (1) does not apply in relation to an employee who is dismissed if the employer shows—

- (a) that the circumstances were such that the employee’s absence in pursuance of being so summoned was likely to cause substantial injury to the employer’s undertaking,
- (b) that the employer brought those circumstances to the attention of the employee,
- (c) that the employee refused or failed to apply to be excused from attending in pursuance of being so summoned, and

(d) that the refusal or failure was not reasonable.

(4) In Article 137 of that Order (redundancy), for paragraph (1)(c) substitute—

“(c) it is shown that any of paragraphs (2A) to (7D) applies.”.

(5) In that Article, before paragraph (3) insert—

“(2A) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 130B (unless the case is one to which paragraph (2) of that Article applies).”

(6) In Article 140(3) of that Order (exceptions to one year qualifying period of continuous employment for claims of unfair dismissal), before sub-paragraph (b) insert—

“(aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies.”.

(7) In Article 141(2) of that Order (exceptions to upper age limit for claims of unfair dismissal), before sub-paragraph (b) insert—

“(aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies.”.

(8) In Article 143(2) of that Order (cases where employee may complain of unfair dismissal despite participation in unofficial industrial action) before sub-paragraph (a) insert—

“(aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies;”.

(9) In Article 144(2) of that Order (cases where industrial tribunal to determine whether dismissal of an employee is unfair despite limitation in paragraph (1) of that Article) before sub-paragraph (a) insert—

“(aa) paragraph (1) of Article 130B (read with paragraph (2) of that Article) applies;”.

Flexible working

21.—(1) After paragraph (6B) of Article 137 of the Employment Rights Order (unfair dismissal by reason of redundancy) insert—

“(6C) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in Article 135C.”.

(2) In Article 141(2) of that Order (exceptions to upper age limit for claims for unfair dismissal), after sub-paragraph (fg) insert—

“(fh) Article 135C applies.”.

(3) In Article 143(2) of that Order (cases where employee may complain of unfair dismissal despite participation in unofficial industrial action) after sub-paragraph (ccc) insert—

“(d) Article 135C applies;”.

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(4) In Article 144(2) of that Order (cases where industrial tribunal to determine whether dismissal of an employee is unfair despite limitation in paragraph (2) of that Article) after sub-paragraph (cc) insert—

“(d) Article 135C applies;”.

PART V

THE CERTIFICATION OFFICER

Striking out by Certification Officer of applications or complaints

22.—(1) After Article 70 of the 1992 Order, insert—

“Striking out

70ZA.—(1) At any stage of proceedings on an application or complaint made to the Certification Officer, he may—

- (a) order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,
- (b) order anything in the application or complaint, or in any response, to be amended or struck out on those grounds, or
- (c) order the application or complaint, or any response, to be struck out on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or complainant or (as the case may be) respondent has been scandalous, vexatious, or unreasonable.

(2) The Certification Officer may order an application or complaint made to him to be struck out for excessive delay in proceeding with it.

(3) An order under this Article may be made on the Certification Officer’s own initiative and may also be made—

- (a) if the order sought is to strike out an application or complaint, or to amend or strike out anything in an application or complaint, on an application by the respondent, or
- (b) if the order sought is to strike out any response, or to amend or strike out anything in any response, on an application by the person who made the application or complaint mentioned in paragraph (1).

(4) Before making an order under this Article, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.

(5) Paragraph (4) shall not be taken to require the Certification Officer to send a notice under that paragraph if the party against whom it is proposed that the order under this Article should be made has been given an opportunity to show cause orally why the order should not be made.

(6) Nothing in this Article prevents the Certification Officer from making further provision under Article 70(1) about the striking out of proceedings on any application or complaint made to him.

(7) In this Article—

“response” means any response made by a trade union or other body in the exercise of a right to be heard, or to make representations, in response to the application or complaint;

“respondent” means any trade union, or other body, that has such a right.”.

(2) In Article 70(4)(a) of the 1992 Order (appeals from decisions of Certification Officer to Court of Appeal) for “or 37” substitute “37 or 70ZA”.

Amalgamations: approval, listing and certification

23.—(1) In Article 74 of the 1995 Order (approval of instrument of amalgamation or transfer) for paragraph (2) substitute—

“(2) If the Certification Officer is satisfied—

(a) that an instrument of amalgamation complies with the requirements of any regulations in force under this Part, and

(b) that he is not prevented from approving the instrument of amalgamation by paragraph (3),

he shall approve the instrument.

(3) The Certification Officer shall not approve an instrument of amalgamation if it appears to him that the proposed name of the amalgamated union is the same as the name under which another organisation—

(a) was on 30th June 1992 registered as a trade union under the Trade Union Acts (Northern Ireland) 1871 to 1965, or

(b) is for the time being entered in the list of trade unions or in the list of employers’ associations kept under the 1992 Order or under the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52),

or if the proposed name is one so nearly resembling any such name as to be likely to deceive the public.

(4) Paragraph (3) does not apply if the proposed name is the name of one of the amalgamating unions.

(5) If the Certification Officer is satisfied that an instrument of transfer complies with the requirements of any regulations in force under this Part, he shall approve the instrument.”.

(2) After Article 82 of that Order insert—

“Listing and certification after amalgamation

82A.—(1) Paragraph (2) applies if when an instrument of amalgamation is registered by the Certification Officer under this Part each of the amalgamating unions is entered in the list of trade unions.

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(2) The Certification Officer shall—

- (a) enter, with effect from the amalgamation date, the name of the amalgamated union in the list of trade unions, and
- (b) remove, with effect from that date, the names of the amalgamating unions from that list.

(3) Paragraph (4) applies if when an instrument of amalgamation is registered by the Certification Officer under this Part each of the amalgamating unions has a certificate of independence which is in force.

(4) The Certification Officer shall issue to the amalgamated trade union, with effect from the amalgamation date, a certificate that the union is independent.

(5) In this Article “the amalgamation date” means the date on which the instrument of amalgamation takes effect.

Supply of information by amalgamated union

82B.—(1) If an instrument of amalgamation is registered under this Part by the Certification Officer and the amalgamated union is entered in the list of trade unions in accordance with Article 82A, that union shall send to him, in such manner and form as he may require—

- (a) a copy of the rules of the union,
- (b) a list of its officers, and
- (c) the address of its head or main office.

(2) The information required to be sent under paragraph (1) must be accompanied by any fee prescribed for the purpose under Article 89.

(3) The information must be sent—

- (a) before the end of the period of six weeks beginning with the date on which the instrument of amalgamation takes effect, or
- (b) if the Certification Officer considers that it is not reasonably practicable for the amalgamated union to send it in that period, before the end of such longer period, beginning with that date, as he may specify to the amalgamated union.

(4) If any of paragraphs (1) to (3) are not complied with by the amalgamated union, the Certification Officer shall remove its name from the list of trade unions.”.

(3) In Article 90(2) of the 1995 Order (modifications of Part VI in its application to unincorporated employers’ associations)—

- (a) omit “and” at the end of sub-paragraph (b) and after that sub-paragraph insert—

“(ba) as if the references in Articles 82A and 82B to the list of trade unions were to the list of employers’ associations, and”; and

- (b) in sub-paragraph (c), after “82(3)” insert “, 82A(3) and (4)”.

(4) In Article 2(2) of that Order (definitions for the purposes of the Order) at the appropriate place insert—

““certificate of independence” means a certificate issued under—

- (a) Article 6 of the 1992 Order,
- (b) Article 82A(4), or

(c) section 6(6) or 101A(4) of the Trade Union and Labour Relations (Consolidation) Act 1992;”.

(5) In each of paragraphs 6, 35(4)(a), 44(4)(a), 60(4), 134(1)(b) and 138 of Schedule 1A to that Order (requirements for union to be independent) for the words “under Article 6 of the 1992 Order that it is independent” substitute “of independence”.

Restriction on grounds of appeal from Certification Officer

24.—(1) In Article 5 of the 1992 Order for paragraph (8) (appeal against decision of Certification Officer relating to the list of trade unions or employers’ associations) substitute—

“(8) An organisation aggrieved by the refusal of the Certification Officer to enter its name in the relevant list, or by a decision of his to remove its name from that list, may appeal to the High Court on any question of law arising in the proceedings before, or arising from the decision of, the Certification Officer.”.

(2) In Article 6 of the 1992 Order for paragraph (9) (appeal against decision of Certification Officer relating to certificate of independence) substitute—

“(9) A trade union aggrieved by the refusal of the Certification Officer to issue it with a certificate of independence or by a decision of his to withdraw its certificate may appeal to the High Court on any question of law arising in the proceedings before, or arising from the decision of, the Certification Officer.”.

PART VI

MISCELLANEOUS

Enforcement officers for agricultural wages legislation

25.—(1) Before Article 11 of the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 (NI 22) (in this Article referred to as “the 1977 Order”) insert—

“Appointment of officers

10A.—(1) The Department—

- (a) may appoint officers to act for the purposes of this Order; and
- (b) may, instead of or in addition to appointing any officers under this Article, arrange with any Minister of the Crown or public body, that officers of that Minister or body shall act for those purposes.

(2) In paragraph (1) “public body” means—

- (a) a department of the Government of the United Kingdom;
- (b) a Northern Ireland department; or
- (c) a body performing functions on behalf of the Crown.

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(3) When acting for the purposes of this Order, an officer shall, if so required, produce some duly authenticated document showing his authority so to act.

(4) If it appears to an officer that any person with whom he is dealing while acting for the purposes of this Order does not know that he is an officer so acting, the officer shall identify himself as such to that person.”.

(2) In Article 11 of the 1977 Order (officers)—

(a) for the heading substitute “Powers of officers”;

(b) omit paragraphs (1) and (4); and

(c) in paragraph (2) for “appointed under paragraph (1)” substitute “acting for the purposes of this Order”.

(3) An appointment made under Article 11(1) of the 1977 Order which is in force immediately before the date on which this Article comes into operation shall have effect on and after that date as if made under Article 10A of the 1977 Order (which is inserted by paragraph (1)).

Additional case in which election for president of union not required

26.—(1) Article 12 of the 1995 Order (requirement to hold elections for certain positions in trade unions) is amended as follows.

(2) In paragraph (2), omit the words after sub-paragraph (d).

(3) After paragraph (4) insert—

“(4A) This Part also does not apply to the position of president if—

(a) the holder of that position was elected or appointed to it in accordance with the rules of the union,

(b) at the time of his election or appointment as president he held a position mentioned in sub-paragraph (a), (b) or (d) of paragraph (2) by virtue of having been elected to it at a qualifying election,

(c) it is no more than five years since—

(i) he was elected, or re-elected, to the position mentioned in sub-paragraph (b) which he held at the time of his election or appointment as president, or

(ii) he was elected to another position of a kind mentioned in that sub-paragraph at a qualifying election held after his election or appointment as president of the union, and

(d) he has, at all times since his election or appointment as president, held a position mentioned in sub-paragraph (a), (b) or (d) of paragraph (2) by virtue of having been elected to it at a qualifying election.”.

(4) In paragraph (5), at the beginning, insert “In paragraph (4)”.

(5) After paragraph (5) insert—

“(5A) In paragraph (4A) “qualifying election” means an election satisfying the requirements of this Part.

(5B) The “requirements of this Part” referred to in paragraphs (1) and (5A) are those set out in Articles 13 to 19.”.

Body corporate acting as auditor of trade union or employers' association

27.—(1) Schedule 1 to the 1992 Order (annual returns and auditors) is amended as follows.

(2) Renumber paragraph 17 as sub-paragraph (1) of that paragraph and after that sub-paragraph add—

“(2) In the case of an auditor which is a body corporate or partnership, its right to attend or be heard at a meeting is exercisable by an individual authorised by it to act as its representative at the meeting.”

(3) After paragraph 18 (auditor's report) insert—

“18A.—(1) The report shall state the names of, and be signed by, the auditor or auditors.

(2) Any reference in this Schedule to signature by an auditor is, where the office of auditor is held by a body corporate or partnership, to signature in the name of the body corporate or partnership by an individual authorised to sign on its behalf.”.

Means of voting in ballots and elections

28.—(1) The Department may by order provide, in relation to any description of ballot or election authorised or required by the 1995 Order, that any ballot or election of that description is to be conducted by such one or more permissible means as the responsible person determines.

(2) A “permissible means” is a means of voting that the order provides is permissible for that description of ballot or election.

(3) “The responsible person” is a person specified, or of a description specified, by the order.

(4) An order under this Article may—

- (a) include provision about the determinations that may be made by the responsible person, including provision requiring specified factors to be taken into account, or specified criteria to be applied, in making a determination;
- (b) allow the determination of different means of voting for voters in different circumstances;
- (c) allow a determination to be such that voters have a choice of means of voting.

(5) The means that an order specifies as permissible means must, in the case of any description of ballot or election, include (or consist of) postal voting.

(6) An order under this Article may include supplemental, incidental and consequential provisions.

(7) An order under this Article may—

- (a) modify the provisions of the 1995 Order;
- (b) exclude or apply (with or without modifications) any provision of that Order;

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(c) make provision as respects any ballot or election conducted by specified means which is similar to any provision of that Order relating to ballots or elections.

(8) No order may be made under this Article unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

(9) The Department shall not make an order under this Article which provides that a means of voting is permissible for a description of ballot or election unless it considers—

(a) that a ballot or election of that description conducted by that means could, if particular conditions were satisfied, meet the required standard; and

(b) that, in relation to any ballot or election of that description held after the order comes into operation, the responsible person will not be permitted to determine that that means must or may be used by any voters unless he has taken specified factors into account or applied specified criteria.

(10) In specifying in an order under this Article factors to be taken into account or criteria to be applied by the responsible person, the Department must have regard to the need for ballots and elections to meet the required standard.

(11) For the purposes of paragraphs (9) and (10) a ballot or election meets “the required standard” if it is such that—

(a) those entitled to vote have an opportunity to do so;

(b) votes cast are secret;

(c) the risk of any unfairness or malpractice is minimised.

(12) In this Article “specified” means specified in an order under this Article.

Provision of money for trade union modernisation

29.—(1) The Department may provide money to a trade union to enable or assist it to do any or all of the following—

(a) improve the carrying out of any of its existing functions;

(b) prepare to carry out any new function;

(c) increase the range of services it offers to persons who are or may become members of it;

(d) prepare for an amalgamation or the transfer of any or all of its engagements;

(e) ballot its members (whether as a result of a requirement imposed by the 1995 Order or otherwise).

(2) No money shall be provided to a trade union under this Article unless at the time when the money is provided the union has a certificate of independence.

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

(4) If money is provided to a trade union under this Article, the terms on which it is so provided shall be deemed to include a prohibition (“a political fund prohibition”) on any of it being added to the political fund of the union.

(5) If a political fund prohibition is contravened, the Department—

- (a) is entitled to recover from the trade union as a debt due to it an amount equal to the amount of money added to the union's political fund in contravention of the prohibition (whether or not that money continues to form part of the political fund); and
 - (b) must take such steps as are reasonably practicable to recover that amount.
- (6) An amount recoverable under paragraph (5) is a liability of the trade union's political fund.
- (7) Paragraph (5) does not prevent money provided to a trade union under this Article from being provided on terms containing further sanctions for a contravention of the political fund prohibition.
- (8) In this Article—
- (a) "trade union" has the meaning assigned to it by Article 3(1) of the 1992 Order; but
 - (b) paragraph (2) does not apply to a trade union which consists wholly or mainly of constituent or affiliated organisations or representatives of such organisations, as described in sub-paragraph (b) of the definition in Article 3(1) of that Order.

Amendments and repeals

30.—(1) Schedule 2 (which makes minor and consequential amendments) has effect.

(2) The statutory provisions specified in Schedule 3 are hereby repealed to the extent specified there.

A. K. Galloway
Clerk of the Privy Council

SCHEDULES

Article 3

SCHEDULE 1

AMENDMENTS TO SCHEDULE 1A TO THE 1995 ORDER

Application for decision on whether proposed bargaining unit is appropriate

1.—(1) In paragraph 11(2) of Schedule 1A to the 1995 Order (application to the Court where employer fails to respond to or rejects request for recognition), for paragraph (a) substitute—

“(a) whether the proposed bargaining unit is appropriate;”.

(2) In paragraph 12(2) of that Schedule (application to the Court where negotiations with employer fail), for paragraph (a) substitute—

“(a) whether the proposed bargaining unit is appropriate;”.

Power of the Court to end period for agreement on bargaining unit

2.—(1) Paragraph 18 of Schedule 1A to the 1995 Order (appropriate bargaining unit) is amended as follows.

(2) In sub-paragraph (2), after “is” insert “(subject to any notice under sub-paragraph (3), (4) or (5))”.

(3) After that sub-paragraph add—

“(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.”.

Duty of employer to supply information to union

3. After paragraph 18 of Schedule 1A to the 1995 Order insert—

“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 worker’s employment has the closest connection.”.

Determination of appropriate bargaining unit

4. For paragraph 19 of Schedule 1A to the 1995 Order substitute—

“19.—(1) This paragraph applies if—

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

19A.—(1) This paragraph applies if—

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- (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;
- (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.”.

Union communications with workers after acceptance of application

5.—(1) After paragraph 19B of Schedule 1A to the 1995 Order (which is inserted by paragraph 4) insert—

“Union communications with workers after acceptance of application

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—

- (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.

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(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.”.

(2) In each of paragraphs 22(1)(a) and 23(1)(a) of Schedule 1A to the 1995 Order (procedure when the Court proceeds with an application in accordance with paragraph 20 or 21), after “or 21” insert “(and makes no declaration under paragraph 19F(5))”.

(3) In paragraph 26 of that Schedule (duties of employer where ballot on union recognition is to be held), in sub-paragraph (4)(c), for “(a) or (b) but” substitute “19D or paragraph (a) or (b) of this sub-paragraph and”.

(4) In that paragraph, after sub-paragraph (4E) (which is inserted by paragraph 9) insert—

“(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) In that paragraph, in sub-paragraph (6) for “given under sub-paragraph (5)” substitute “passed on to him under paragraph 19D or this paragraph”.

Circumstances in which the Court must arrange a ballot

6.—(1) In paragraph 22(4) of Schedule 1A to the 1995 Order (qualifying conditions requiring the Court to hold a ballot of workers in bargaining unit), for paragraph (b) substitute—

“(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;”.

(2) In paragraph 87(4) of that Schedule (qualifying conditions requiring the Court to hold a ballot of workers in new bargaining unit), for paragraph (b) substitute—

“(b) the Court has evidence, which it considers to be credible, from a significant number of the union members within the new bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;”.

Power of the Court to extend notification period

7. In paragraph 24 of Schedule 1A to the 1995 Order (notification to halt arrangements for ballot), for sub-paragraph (5) substitute—

“(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.”.

Postal votes for workers absent from ballot at workplace

8.—(1) In paragraph 25 of Schedule 1A to the 1995 Order (recognition ballots), after sub-paragraph (6) insert—

“(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).”.

(2) In paragraph 117 of that Schedule (derecognition ballots), after sub-paragraph (8) insert—

“(8A) 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

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(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 (8) as a decision that the ballot be conducted as mentioned in sub-paragraph (6)(c)."

Additional duties on employers informed of ballots

9.—(1) Paragraph 26 of Schedule 1A to the 1995 Order (duties of employer informed of requirement to arrange ballot on recognition etc) is amended in accordance with sub-paragraphs (2) to (4).

(2) In sub-paragraph (1) for "three" substitute "five".

(3) After sub-paragraph (4) insert—

"(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,

- (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.”.

(4) For sub-paragraph (8) substitute—

“(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..”

(5) In paragraph 27(1) of that Schedule (remedial order in case of employer’s failure to comply with duties under paragraph 26) for “three duties imposed” substitute “duties imposed on him”.

(6) Paragraph 118 of that Schedule (duties of employer informed of requirement to arrange ballot on derecognition etc) is amended in accordance with sub-paragraphs (7) to (9).

(7) In sub-paragraph (1) for “three” substitute “five”.

(8) After sub-paragraph (4) insert—

“(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 119 to remedy a failure to comply with that duty, and

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(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,

(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.”.

(9) For sub-paragraph (8) substitute—

“(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.”

(10) In paragraph 119(1) of that Schedule (remedial order in case of employer’s failure to comply with duties under paragraph 118) for “three duties imposed” substitute “duties imposed on him”.

Unfair practices in relation to recognition ballots

10. After paragraph 27 of Schedule 1A to the 1995 Order insert—

“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.
- 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,

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(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.

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).

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).

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.

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;

(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.

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(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."

(2) In paragraph 29 of that Schedule (duties of the Court when informed of result of ballot), after sub-paragraph (1) insert—

"(1A) The duty in sub-paragraph (1) does not apply if the Court gives a notice under paragraph 27C(3)(b)."

Application where agreement does not cover pay, hours and holidays

11. In each of paragraphs 35(2)(b) and 44(2)(b) of Schedule 1A to the 1995 Order (application neither inadmissible nor invalid by reason of existing agreement if the agreement does not include certain matters) for "pay, hours or holidays" substitute "all of the following: pay, hours and holidays ("the core topics")".

Employer's notice to end bargaining arrangements

12.—(1) Paragraph 99 of Schedule 1A to the 1995 Order (employer's notice to bring bargaining arrangements to an end on grounds that fewer than 21 workers employed) is amended in accordance with subsections (2) and (3).

(2) In sub-paragraph (3) (notice must comply with certain requirements), before paragraph (a) insert—

"(za) is not invalidated by paragraph 99A,".

(3) In sub-paragraph (7)(a), for "100" substitute "99A".

(4) After paragraph 99 of that Schedule insert—

"99A.—(1) A notice given for the purposes of paragraph 99(2) ("the notice in question") is invalidated by this paragraph if—

- (a) a relevant application was made, or an earlier notice under paragraph 99(2) was given, within the period of 3 years prior to the date when the notice in question was given,
- (b) the relevant application, or that earlier notice, and the notice in question relate to the same bargaining unit, and
- (c) the Court accepted the relevant application or (as the case may be) decided under paragraph 100 that the earlier notice under paragraph 99(2) complied with paragraph 99(3).

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

- (a) by the employer under paragraph 106, 107 or 128, or
- (b) by a worker (or workers) under paragraph 112."

(5) In paragraph 100(1) of that Schedule (the Court must decide whether notice complies with paragraph 99(3)), at the beginning insert "If an employer gives notice for the purposes of paragraph 99(2),".

- (6) In paragraph 101 of that Schedule (union's application to challenge employer's notice under paragraph 99), omit sub-paragraphs (4) and (5).
- (7) In paragraph 103 of that Schedule, after sub-paragraph (3) insert—
- “(3A) Sub-paragraph (3) does not prevent the notice from being treated for the purposes of the provisions mentioned in sub-paragraph (3B) as having been given.
- (3B) Those provisions are—
- (a) paragraphs 109(1), 113(1) and 130(1);
- (b) paragraph 99A(1) in its application to a later notice given for the purposes of paragraph 99(2).”.
- (8) In sub-paragraph (1) of each of paragraphs 109, 113 and 130 of that Schedule (bar on applications for ending bargaining arrangements if relevant application made within previous 3 years)—
- (a) in paragraph (a), after “was made” insert “, or a notice under paragraph 99(2) was given,”;
- (b) in paragraph (b), after “the relevant application” insert “, or notice under paragraph 99(2),”; and
- (c) in paragraph (c), at the end insert “or (as the case may be) decided under paragraph 100 that the notice complied with paragraph 99(3)”.
- (9) In sub-paragraph (2) of each of those paragraphs (meaning of “relevant application”), omit paragraph (a).

Unfair practices in relation to derecognition ballots

- 13.—(1) After paragraph 119 of Schedule 1A to the 1995 Order insert—
- “119A.—(1) Each of the parties informed by the Court under paragraph 117(11) 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.

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(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—

(i) the issuing by the Court of a declaration that the bargaining arrangements are to cease to have effect; or

(ii) the refusal by the Court of an application under paragraph 106.107 or 112 , and

(b) is not conditional on anything which is done or occurs as a result of that declaration or, as the case may be, of that refusal.

(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.

119B.—(1) A party may complain to the Court that another party has failed to comply with paragraph 119A.

(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.

119C.—(1) This paragraph applies if the Court decides that a complaint under paragraph 119B 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) make arrangements for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether the bargaining arrangements should be ended.

(4) The Court may give an order or make arrangements 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 121.

(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 complained against to comply with the duty imposed by paragraph 119A.

(6) The Court may give more than one order under sub-paragraph (3)(a).

119D.—(1) This paragraph applies if the Court issues a declaration under paragraph 119C(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 119C(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 119C(2) in relation to a complaint against that party.

(3) If the party concerned is the employer, the Court may refuse the employer's application under paragraph 106 or 107.

(4) If the party concerned is a union, the Court may issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the Court in the declaration.

(5) If a declaration is issued under sub-paragraph (4) the bargaining arrangements shall cease to have effect accordingly.

(6) The powers conferred by this paragraph are in addition to those conferred by paragraph 119C(3).

119E.—(1) This paragraph applies if the Court issues a declaration that a complaint under paragraph 119B is well-founded and—

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- (a) makes arrangements under paragraph 119C(3)(b),
- (b) refuses under paragraph 119D(3) or 119H(6) an application under paragraph 106, 107 or 112, or
- (c) issues a declaration under paragraph 119D(4) or 119H(5).

(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.

119F.—(1) This paragraph applies if the Court makes arrangements under paragraph 119C(3)(b).

(2) Paragraphs 117(4) to (11) and 118 to 121 apply in relation to those arrangements as they apply in relation to arrangements made under paragraph 117(3) but with the modifications specified in sub-paragraphs (3) to (5).

(3) An employer's duty under paragraph (a) of paragraph 118(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;
- (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.

(4) Any order given under paragraph 119(1) or 119C(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 for which arrangements are made under paragraph 119C(3)(b).

(5) 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 120 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.

119G.—(1) Paragraphs 119A to 119C, 119E and 119F apply in relation to an application under paragraph 112 as they apply in relation to an application under paragraph 106 or 107 but with the modifications specified in this paragraph.

(2) References in those paragraphs (and, accordingly, in paragraph 119H(3)) to a party shall be read as including references to the applicant worker or workers; but this is subject to sub-paragraph (3).

(3) The reference in paragraph 119A(1) to a party informed under paragraph 117(11) shall be read as including a reference to the applicant worker or workers.

119H.—(1) This paragraph applies in relation to an application under paragraph 112 in the cases specified in sub-paragraphs (2) and (3).

(2) The first case is where the Court issues a declaration under paragraph 119C(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.

(3) The second case is where the Court has made an order under paragraph 119C(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 119C(2) in relation to a complaint against that party.

(4) If the party concerned is the employer, the Court may order him to refrain from further campaigning in relation to the ballot.

(5) If the party concerned is a union, the Court may issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the Court in the declaration.

(6) If the party concerned is the applicant worker (or any of the applicant workers), the Court may refuse the application under paragraph 112.

(7) If a declaration is issued under sub-paragraph (5) the bargaining arrangements shall cease to have effect accordingly.

(8) The powers conferred by this paragraph are in addition to those conferred by paragraph 119C(3).

119I.—(1) This paragraph applies if—

- (a) a ballot has been arranged in consequence of an application under paragraph 112,
- (b) the Court has given the employer an order under paragraph 119(1), 119C(3) or 119H(4), and
- (c) the ballot for the purposes of which the order was made (or any other ballot for the purposes of which it has effect) has not been held.

(2) The applicant worker (or each of the applicant workers) and the union (or each of the unions) is entitled to enforce obedience to the order.

(3) The order may be enforced in the same way as an order of the county court.”.

(2) In paragraph 121 of that Schedule (duties of the Court when informed of result of ballot), after sub-paragraph (1) insert—

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“(1A) The duty in sub-paragraph (1) does not apply if the Court makes arrangements under paragraph 119C(3)(b).”.

Appeals against demands for costs

14. In Part IX of Schedule 1A to the 1995 Order, before paragraph 166 (and before the cross-heading immediately preceding that paragraph) insert—

“Rights of appeal against demands for costs

165A.—(1) This paragraph applies where a demand has been made under paragraph 19E(3), 28(4) or 120(4).

(2) The recipient of the demand may appeal against the demand within 4 weeks starting with the day after receipt of the demand.

(3) An appeal under this paragraph lies to an industrial tribunal.

(4) On an appeal under this paragraph against a demand under paragraph 19E(3), the tribunal shall dismiss the appeal unless it is shown that—

(a) the amount specified in the demand as the costs of the appointed person is too great, or

(b) the amount specified in the demand as the amount of those costs to be borne by the recipient is too great.

(5) On an appeal under this paragraph against a demand under paragraph 28(4) or paragraph 120(4), the tribunal shall dismiss the appeal unless it is shown that—

(a) the amount specified in the demand as the gross costs of the ballot is too great, or

(b) the amount specified in the demand as the amount of the gross costs to be borne by the recipient is too great.

(6) If an appeal is allowed, the tribunal shall rectify the demand and the demand shall have effect as if it had originally been made as so rectified.

(7) If a person has appealed under this paragraph against a demand and the appeal has not been withdrawn or finally determined, the demand—

(a) is not enforceable until the appeal has been withdrawn or finally determined, but

(b) as from the withdrawal or final determination of the appeal shall be enforceable as if paragraph (a) had not had effect.”.

Power to amend Schedule 1A to the 1995 Order

15.—(1) Paragraph 166 of Schedule 1A to the 1995 Order (power of Department to amend that Schedule) is amended as follows.

(2) For sub-paragraphs (1) and (2) substitute—

“(1) This paragraph applies if the Court represents to the Department that a provision of this Schedule has an unsatisfactory effect and should be amended.

(2) The Department, with a view to rectifying the effect—

(a) may amend the provision by exercising (if applicable) any of the powers conferred on it by paragraphs 7(6), 29(5), 121(6), 166A, 166B, 169A, 169B and 171A, or

(b) may amend the provision by order in such other way as it thinks fit.

(2A) The Department need not proceed in a way proposed by the Court (if it proposes one).

(2B) Nothing in this paragraph prevents the Department from exercising any of the powers mentioned in sub-paragraph (2)(a) in the absence of a representation from the Court.”.

(3) In sub-paragraph (3), for “this paragraph” substitute “sub-paragraph (2)(b)”.

Means of communicating with workers

16. After paragraph 166 of Schedule 1A to the 1995 Order insert—

“166A.—(1) This paragraph applies in relation to any provision of paragraph 19D(2), 26(4) or 118(4) which requires the employer to give to the Court a worker’s home address.

(2) The Department may by order provide that the employer must give to the Court (in addition to the worker’s home address) an address of a specified kind for the worker.

(3) In this paragraph “address” includes any address or number to which information may be sent by any means.

(4) An order under this paragraph may—

(a) amend this Schedule;

(b) include supplementary or incidental provision (including, in particular, provision amending paragraph 19E(1)(a), 26(6)(a) or 118(6)(a)).

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

Unfair practices: power to make provision about periods before notice of ballot

17. After paragraph 166A of Schedule 1A to the 1995 Order (which is inserted by paragraph 16) insert—

“166B.—(1) The Department may by order provide that, during any period beginning and ending with the occurrence of specified events, employers and unions to which the order applies are prohibited from using such practices as are specified as unfair practices in relation to an application under this Schedule of a specified description.

(2) An order under this paragraph may make provision about the consequences of a contravention of any prohibition imposed by the order (including provision modifying the effect of any provision of this Schedule in the event of such a contravention).

(3) An order under this paragraph may confer functions on the Court.

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(4) An order under this paragraph may contain provision extending for the purposes of the order either or both of the following powers to issue Codes of Practice—

- (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.

(5) An order under this paragraph may include supplementary or incidental provisions (including provision amending this Schedule).

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

(7) In this paragraph “specified” means specified in an order under this paragraph.”.

Power to make provision about effect of amalgamations etc.

18. After paragraph 169 of Schedule 1A to the 1995 Order insert—

“Effect of union amalgamations and transfers of engagements

169A.—(1) The Department may by order make provision for any case where—

- (a) an application has been made, a declaration has been issued, or any other thing has been done under or for the purposes of this Schedule by, to or in relation to a union, or
- (b) anything has been done in consequence of anything so done,

and the union amalgamates or transfers all or any of its engagements.

(2) An order under this paragraph may, in particular, make provision for cases where an amalgamated union, or union to which engagements are transferred, does not have a certificate of independence.

Effect of change of identity of employer

169B.—(1) The Department by order make provision for any case where—

- (a) an application has been made, a declaration has been issued, or any other thing has been done under or for the purposes of this Schedule in relation to a group of workers, or
- (b) anything has been done in consequence of anything so done,

and the person who was the employer of the workers constituting that group at the time the thing was done is no longer the employer of all of the workers constituting that group (whether as a result of a transfer of the whole or part of an undertaking or business or otherwise).

(2) In this paragraph “group” includes two or more groups taken together.

Orders under paragraphs 169A and 169B: supplementary

169C.—(1) An order under paragraph 169A or 169B may—

- (a) amend this Schedule;

(b) include supplementary, incidental, saving or transitional provisions.

(2) No such order shall be made unless a draft of it has been laid before, and approved by a resolution of, the Assembly.”.

Information about union membership and employment in bargaining unit

19. After paragraph 170 of Schedule 1A to the 1995 Order insert—

“Supply of information to the Court

170A.—(1) The Court may, if it considers it necessary to do so to enable or assist it to exercise any of its functions under this Schedule, exercise any or all of the powers conferred in sub-paragraphs (2) to (4).

(2) The Court may require an employer to supply the Court case manager, within such period as the Court may specify, with specified information concerning either or both of the following—

- (a) the workers in a specified bargaining unit who work for the employer;
- (b) the likelihood of a majority of those workers being in favour of the conduct by a specified union (or specified unions) of collective bargaining on their behalf.

(3) The Court may require a union to supply the Court case manager, within such period as the Court may specify, with specified information concerning either or both of the following—

- (a) the workers in a specified bargaining unit who are members of the union;
- (b) the likelihood of a majority of the workers in a specified bargaining unit being in favour of the conduct by the union (or by it and other specified unions) of collective bargaining on their behalf.

(4) The Court may require an applicant worker to supply the Court case manager, within such period as the Court may specify, with specified information concerning the likelihood of a majority of the workers in his bargaining unit being in favour of having bargaining arrangements ended.

(5) The recipient of a requirement under this paragraph must, within the specified period, supply the Court case manager with such of the specified information as is in the recipient’s possession.

(6) From the information supplied to him under this paragraph, the Court case manager must prepare a report and submit it to the Court.

(7) If an employer, a union or a worker fails to comply with sub-paragraph (5), the report under sub-paragraph (6) must mention that failure; and the Court may draw an inference against the party concerned.

(8) The Court must give a copy of the report under sub-paragraph (6) to the employer, to the union (or unions) and, in the case of an application under paragraph 112 or 137, to the applicant worker (or applicant workers).

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(9) In this paragraph—

“applicant worker” means a worker who—

- (a) falls within a bargaining unit (“his bargaining unit”), and
- (b) has made an application under paragraph 112 or 137 to have bargaining arrangements ended;

“the Court case manager” means the member of the staff provided to the Court by the Department who is named in the requirement (but the Court may, by notice given to the recipient of a requirement under this paragraph, change the member of that staff who is to be the Court case manager for the purposes of that requirement);

“collective bargaining” is to be construed in accordance with paragraph 3; and

“specified” means specified in a requirement under this paragraph.”

“Pay” and other matters subject to collective bargaining

20. After paragraph 171 of Schedule 1A to the 1995 Order insert—

““Pay” and other matters subject to collective bargaining

171A.—(1) In this Schedule “pay” does not include terms relating to a person’s membership of or rights under, or his employer’s contributions to—

- (a) an occupational pension scheme (as defined by section 1 of the Pension Schemes (Northern Ireland) Act 1993 (c.49)), or
- (b) a personal pension scheme (as so defined).

(2) The Department may by order amend sub-paragraph (1).

(3) The Department may by order—

- (a) amend paragraph 3(2), 54(3) or 94(6)(b) by adding specified matters relating to pensions to the matters there specified to which negotiations may relate;
- (b) amend paragraph 35(2)(b) or 44(2)(b) by adding specified matters relating to pensions to the core topics there specified.

(4) An order under this paragraph may include supplementary, incidental, saving or transitional provisions including provision amending this Schedule.

(5) An order under this paragraph may make provision deeming—

- (a) the matters to which any pre-commencement declaration of recognition relates, and
- (b) the matters to which any pre-commencement method of collective bargaining relates,

to include matters to which a post-commencement declaration of recognition or method of collective bargaining could relate.

(6) In sub-paragraph (5)—

“pre-commencement declaration of recognition” means a declaration of recognition issued by the Court before the coming into force of the order,

“pre-commencement method of collective bargaining” means a method of collective bargaining specified by the Court before the coming into force of the order,

and references to a post-commencement declaration of recognition or method of collective bargaining shall be construed accordingly.

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

Minor and consequential amendments

21.—(1) Schedule 1A to the 1995 Order is amended as follows.

(2) In paragraph 2 (interpretation of Part I), after sub-paragraph (3) insert—

“(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).”

(3) In paragraph 12 (failure of negotiations) in sub-paragraph (1)(b) for “and” substitute “end”.

(4) In paragraph 16(1) (point after which application may not be withdrawn), in paragraph (a), after “paragraph” insert “19F(5) or”.

(5) In paragraph 17(3) (final event before which notice to cease consideration of application may be given)—

(a) in paragraph (a), after “paragraph” insert “19F(5) or”; and

(b) in the words after paragraph (b), for “24(5)” substitute “24(6)”.

(6) In each of paragraphs 20(1)(b) and 21(1)(b) (application of paragraphs 20 and 21), after “appropriate period” insert “(defined by paragraph 18)”.

(7) In paragraph 26 (duties of employer) in sub-paragraph (4)(b) for “union” substitute “unit”.

(8) In paragraph 28 (costs of a recognition ballot), after sub-paragraph (6) insert—

“(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.”

(9) In paragraph 32 (procedure where method of collective bargaining not carried out), in sub-paragraph (2), for “parties” substitute “employer or the union (or unions)”.

(10) In paragraph 38 (admissibility of other relevant applications), in subparagraph (1)(d), for “22(2), 27(2)” substitute “19F(5), 22(2), 27(2), 27D(3), 27D(4)”.

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(11) In paragraph 40 (bar on further application after declaration by the Court of non-entitlement to recognition), in sub-paragraph (1)—

- (a) after “under paragraph” insert “27D(4) or”; and
- (b) for “held” substitute “arranged”.

(12) In paragraph 41 (bar on further application after declaration by the Court of end of bargaining arrangements), in sub-paragraph (1)—

- (a) after “under paragraph” insert “119D(4), 119H(5) or”; and
- (b) for “held” substitute “arranged”.

(13) In paragraph 46 (invalidity of application where worker falls within another relevant bargaining unit), in sub-paragraph (1)(d), for “22(2), 27(2)” substitute “19F(5), 22(2), 27(2), 27D(3), 27D(4),”.

(14) In paragraph 48 (invalidity of application after declaration by the Court of non-entitlement to recognition), in sub-paragraph (1)—

- (a) after “under paragraph” insert “27D(4) or”; and
- (b) for “held” substitute “arranged”.

(15) In paragraph 49 (invalidity of application after declaration by the Court of end of bargaining arrangements), in sub-paragraph (1)—

- (a) after “under paragraph” insert “119D(4), 119H(5) or”; and
- (b) for “held” substitute “arranged.”

(16) In paragraph 51 (competing applications), in sub-paragraph (2)(b), after “19” insert “or 19A”.

(17) In paragraph 52 (agreements for recognition), in sub-paragraph (3)—

- (a) in paragraph (f), after “paragraph”, where it first occurs, insert “19F(5) or”; and
- (b) in paragraph (h), for “24(5)” substitute “24(6)”.

(18) In paragraph 83 (duties of the Court where it decides new unit contains at least one worker falling within a statutory outside bargaining unit), in sub-paragraph (8), for “(1)(a)” substitute “(2)(a)”.

(19) In paragraph 89(5) (application of paragraphs 26 to 29), for the words from “but as if” onwards substitute “but as if—

- (a) references to the bargaining unit were references to the new unit, and
- (b) paragraph 26(4F) to (4H), and the references in paragraph 26(4) and (6) to paragraph 19D, were omitted.”

(20) In paragraph 89(8) (effect of declaration of entitlement to recognition), after “27(2)” insert “or 27D(3)”.

(21) In paragraph 89, after sub-paragraph (8) add—

“(9) Paragraphs (a) and (b) of sub-paragraph (7) also apply if the Court issues a declaration under paragraph 27D(4).”.

(22) In paragraph 119 (remedial orders) omit sub-paragraph (3).

(23) In paragraph 120 (costs of a derecognition ballot), after sub-paragraph (6) insert—

“(6A) Where an amount is recoverable from a union under sub-paragraph (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.”

(24) In paragraph 122(1) (first case in which Part V applies), in paragraph (a), for “22(2)” substitute “19F(5), 22(2), 27(2) or 27D(3)”.

(25) In paragraph 123(1) (second case in which Part V applies), in paragraph (a), for “22(2)” substitute “19F(5), 22(2), 27(2) or 27D(3)”.

(26) In paragraph 133(2) (ballot on de-recognition under Part V of that Schedule)—

(a) in paragraph (a), for “reference in paragraph 119(2)(a)” substitute “references in paragraphs 119(2)(a) and 119D(3)”; and

(b) in paragraph (b), for “reference in paragraph 121(4)” substitute “references in paragraphs 119A(3)(a)(ii), 119E(1)(b) and 121(4)”.

(27) In paragraph 147(2) (ballot on de-recognition under Part VI of that Schedule)—

(a) in paragraph (a), for “reference in paragraph 119(3)(a)” substitute “references in paragraphs 119H(1) and 119I(1)(a)”; and

(b) in paragraph (b), for “reference in paragraph 121(4)” substitute “references in paragraphs 119A(3)(a)(ii), 119E(1)(b) and 121(4)”.

SCHEDULE 2

Article 30

AMENDMENTS

The Industrial Relations (Northern Ireland) Order 1992 (NI 5)

1. In Article 92A (proceedings of the Court under Schedule 1A to the 1995 Order), after paragraph (10) add—

“(11) The reference in paragraph (1) to the Court’s functions under Schedule 1A to the Trade Union and Labour Relations Order does not include a reference to its functions under paragraph 166 of that Schedule.”

The Trade Union and Labour Relations (Northern Ireland) Order 1995 (NI 12)

2. In Article 21(3) (time limit for applications under Article 22 or 23 of that Order), for “No such application” substitute “Where an election has been held, no application under those Articles with respect to that election”.

3. In Article 34(6) (remedies for infringement of right not to be unjustifiably disciplined) for “Article 40(6)” substitute “Article 40(7)”.

4. In Article 57 (rules as to a union’s political fund), for paragraph (4) substitute—

“(4A) Where an order has been made under this Article, any person who is a member of the union and was a member at the time it was made

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

(4B) An order made by the Certification Officer under this Article may be enforced in the same way as an order of the county court”.

5. In Article 84 (complaints as regards passing of resolution on amalgamation or transfer of engagements) in paragraph (8) for “application” substitute “complaint”.

6. In Article 110(5) (statement which must appear on voting paper in ballot for industrial action) for “eight” substitute “12”.

7. In Article 116 (calling of industrial action with the support of a ballot), in paragraph (3)(b), for “take place” substitute “begin”.

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

8. In Article 73 (action short of dismissal on grounds related to union membership or activities), in each of paragraphs (1), (3) and (4), for “the purpose” substitute “the sole or main purpose”.

9. In Article 75 (consideration of complaint), in paragraph (1), for “the purpose” substitute “what was the sole or main purpose”.

10. In Article 77 (awards against third parties), in paragraph (1)(a), for “the purpose” substitute “the sole or main purpose”.

11. In Article 130(6) (provisions to which provision about determination of fairness of dismissal is subject), for “and 144” substitute “, 144 and 144A”.

12. In Article 140(3) (exceptions to one year qualifying period of continuous employment for claims for unfair dismissal), for sub-paragraph (b) substitute—

“(b) paragraph (1) of Article 131 (read with any regulations made under that Article) applies.”.

13. In Article 141(2) (exceptions to upper age limit for claims for unfair dismissal), for sub-paragraph (b) substitute—

“(b) paragraph (1) of Article 131 (read with any regulations made under that Article) applies.”.

14.—(1) Article 161 (matters to be disregarded in assessing contributory fault) is amended as follows.

(2) In paragraph (2), omit the word “or” at the end of sub-paragraph (b) and at the end of sub-paragraph (c) insert “, or

“(d) not to make use of services made available by any trade union or by a particular trade union or by one of a number of particular trade unions.”

(3) After that paragraph insert—

“(2A) Conduct or action of the complainant shall be disregarded in so far as it constitutes acceptance of or failure to accept an offer made in contravention of Article 77A or 77B.”

15. In Article 163(3) (application for interim relief), for “Article 136(1)(a) or (b)” substitute “Article 136(1)(a), (b) or (ba), or on Article 136(1)(bb) otherwise than in relation to an offer made in contravention of Article 77A(1)(d),”.

16.—(1) Article 236 (Crown employment) is amended as follows.

(2) In paragraph (4) omit the word “and” at the end of sub-paragraph (d) and after that sub-paragraph insert—

“(dd) the reference in Article 130B(2)(a) to the employer’s undertaking shall be construed as a reference to the national interest, and”.

(3) In that paragraph, in sub-paragraph (e), for “references” substitute “any other reference”.

17. In paragraph (2) of Article 237 (armed forces)—

(a) in sub-paragraph (aa), after “Articles” , where it first occurs, insert “67M”; and

(b) in sub-paragraph (e), after “Articles” insert “130B(2)”.

18.—(1) Article 239 (employment outside Northern Ireland) is amended as follows.

(2) In paragraph (2)(b), for “Chapter II” substitute “Chapters II and III”.

(3) After that paragraph add—

“(3) Chapters II and III of Part VI do not apply to employment where under his contract personally to do work or perform services a worker who is not an employee works outside Northern Ireland.”

19. In Article 242 (mariners) in paragraph (2) after “the employee” insert “(or, in the case of Articles 73 to 77F), the worker”.

20. In Article 243 (police) in paragraph (1) after Part “VA,” insert “Article 67M”.

21.—(1) Article 244 (national security, etc) is amended as follows.

(2) In paragraph (2)(b) after “Articles” where it first occurs insert “67M”.

(3) In paragraph (2)(g)—

(a) in head (i) after “Article” where it first occurs insert “130B”;

(b) in head (ii) for “(2)” substitute “(2A)”.

22. In Article 248 and 249(1) (death of employee or employer) after “employee”, wherever occurring, insert “or worker”.

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23. In Article 12(1) (action taken for purpose of safeguarding national security), for sub-paragraph (a) substitute—

“(a) Article 74, 77A or 77B of the Employment Rights Order (inducements and detriments in respect of trade union membership etc.),”.

The Employment Relations (Northern Ireland) Order 1999 (NI 9)

24.—(1) Article 33 (indexation of amounts) is amended as follows.

(2) In paragraph (1)(a) for “40(6)” substitute “40(7)”.

(3) In paragraph (1), after sub-paragraph (c) insert—

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“(ca) Article 77E(3) of that Order (unlawful inducements: amount of award);”.

(4) In paragraph (3)(a), after “paragraph (1)(a),” insert “, (ca),”.

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25. In each of Schedules 2, 3 and 4 (tribunal jurisdictions to which Articles 17, 19 and 27 apply), after the entry relating to Article 74 of the Employment Rights (Northern Ireland) Order 1996 insert—

“Article 77A of that Order (inducements relating to union membership or activities)

Article 77B of that Order (inducements relating to collective bargaining)”.

Article 30

SCHEDULE 3

REPEALS

| Short Title | Extent of repeal |
|-----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The Agricultural Wages (Regulation) (Northern Ireland) Order 1977 (NI 22). | Article 11(1) and (4). |
| The Industrial Relations (Northern Ireland) Order 1992 (NI 5). | Article 70(3). |
| The Trade Union and Labour Relations (Northern Ireland) Order 1995 (NI 12). | In Article 12(2) the words after sub-paragraph (d). In Article 29 the word “and” at the end of paragraph (2)(b). In Article 40(6) the words from “and, in a case” to the end. In Article 90 the word “and” at the end of paragraph (2)(b). Article 105(3) to (3B). In Article 118(3), sub-paragraph (c) and the word “and” immediately preceding it. In Schedule 1A, paragraphs 101(4) and (5), 109(2)(a), 113(2)(a), 119(3) and 130(2)(a). |
| The Employment Rights (Northern Ireland) Order 1996 (NI 16) | In Article 73 the word “or” at the end of paragraph (1)(b). In Article 73(5) the words from “and references” to the end. Article 75(3) to (5). In Article 136 in subsection (1) the word “or” |

| Short Title | Extent of repeal |
|-----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The Employment Relations (Northern Ireland) Order 1999 (NI 19). | <p>at the end of each of sub-paragraphs (a) and (b) and in subsection (4) the words from “and references” to the end.</p> <p>In Article 161 the word “or” at the end of paragraph (2)(b).</p> <p>In Article 236 the word “and” at the end of paragraph (4)(d).</p> <p>Article 19.</p> |

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made only for purposes corresponding to the purposes of the Employment Relations Act 2004 specified in section 58 of that Act. It amends the law relating to the recognition of trade unions and the taking of industrial action, makes provision about means of voting in certain ballots, the rights of trade union members, employees and workers and proceedings before the Certification Officer. The Order contains other miscellaneous amendments to employment relations law.