

SCHEDULES

^{F1}SCHEDULE 1A

COLLECTIVE BARGAINING: RECOGNITION

F1 [1999 NI 9](#)

PART I

RECOGNITION

Union recognition

20.—(1) This paragraph applies if—

- (a) the Court accepts an application under paragraph 11(2) or 12(2),
- (b) the parties have agreed an appropriate bargaining unit at the end of the appropriate period^{F1} (defined by paragraph 18)], or the Court has decided an appropriate bargaining unit, and
- (c) that bargaining unit differs from the proposed bargaining unit.

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

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

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

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

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

- (a) proceed with the application, and
- (b) give notice to the parties that it is so proceeding.

(6) The decision period is—

- (a) the period of 10 working days starting with the day after that on which the parties agree an appropriate bargaining unit or the Court decides an appropriate bargaining unit, or
- (b) such longer period (so starting) as the Court may specify to the parties by notice containing reasons for the extension.

F1 [2004 NI 19](#)

Status: Point in time view as at 01/01/2006. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the The Trade Union and Labour Relations (Northern Ireland) Order 1995, Cross Heading: Union recognition. (See end of Document for details)

21.—(1) This paragraph applies if—

- (a) the Court accepts an application under paragraph 11(2) or 12(2),
 - (b) the parties have agreed an appropriate bargaining unit at the end of the appropriate period^[F2] (defined by paragraph 18)], or the Court has decided an appropriate bargaining unit, and
 - (c) that bargaining unit is the same as the proposed bargaining unit.
- (2) This paragraph also applies if the Court accepts an application under paragraph 12(4).
- (3) The Court must proceed with the application.

F2 2004 NI 19

22.—(1) This paragraph applies if—

- (a) the Court proceeds with an application in accordance with paragraph 20 or 21^[F3] (and makes no declaration under paragraph 19F(5)], and
 - (b) the Court is satisfied that a majority of the workers constituting the bargaining unit are members of the union (or unions).
- (2) The Court must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit.
- (3) But if any of the three qualifying conditions is fulfilled, instead of issuing a declaration under sub-paragraph (2) the Court must give notice to the parties that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.
- (4) These are the three qualifying conditions—
- (a) the Court is satisfied that a ballot should be held in the interests of good industrial relations;
 - ^[F3](b) the Court has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;]
 - (c) membership evidence is produced which leads the Court to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf.
- (5) For the purposes of sub-paragraph (4)(c) membership evidence is—
- (a) evidence about the circumstances in which union members became members;
 - (b) evidence about the length of time for which union members have been members, in a case where the Court is satisfied that such evidence should be taken into account.

F3 2004 NI 19

23.—(1) This paragraph applies if—

- (a) the Court proceeds with an application in accordance with paragraph 20 or 21^[F4] (and makes no declaration under paragraph 19F(5)], and
- (b) the Court is not satisfied that a majority of the workers constituting the bargaining unit are members of the union (or unions).

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

F4 2004 NI 19

24.—(1) This paragraph applies if the Court gives notice under paragraph 22(3) or 23(2).

(2) Within the notification period—

- (a) the union (or unions), or
- (b) the union (or unions) and the employer,

may notify the Court that the party making the notification does not (or the parties making the notification do not) want the Court to arrange for the holding of the ballot.

(3) If the Court is so notified—

- (a) it must not arrange for the holding of the ballot,
- (b) it must inform the parties that it will not arrange for the holding of the ballot, and why, and
- (c) no further steps are to be taken under this Part.

(4) If the Court is not so notified it must arrange for the holding of the ballot.

[^{F5}(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.]

F5 2004 NI 19

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

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

(3) The ballot must be conducted within—

- (a) the period of 20 working days starting with the day after that on which the qualified independent person is appointed, or
- (b) such longer period (so starting) as the Court may decide.

(4) The ballot must be conducted—

- (a) at a workplace or workplaces decided by the Court,
- (b) by post, or
- (c) by a combination of the methods described in sub-paragraphs (a) and (b),

depending on the Court's preference.

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- (5) In deciding how the ballot is to be conducted the Court must take into account—
- (a) the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace or workplaces;
 - (b) costs and practicality;
 - (c) such other matters as the Court considers appropriate.
- (6) The Court may not decide that the ballot is to be conducted as mentioned in sub-paragraph (4) unless there are special factors making such a decision appropriate; and special factors include—
- (a) factors arising from the location of workers or the nature of their employment;
 - (b) factors put to the Court by the employer or the union (or unions).
- [^{F6}(6A) If the Court decides that the ballot must (in whole or in part) be conducted at a workplace (or workplaces), it may require arrangements to be made for workers—
- (a) who (but for the arrangements) would be prevented by the Court's decision from voting by post, and
 - (b) who are unable, for reasons relating to those workers as individuals, to cast their votes in the ballot at the workplace (or at any of them),
- to be given the opportunity (if they request it far enough in advance of the ballot for this to be practicable) to vote by post; and the Court's imposing such a requirement is not to be treated for the purposes of sub-paragraph (6) as a decision that the ballot be conducted as mentioned in sub-paragraph (4)(c).]
- (7) A person is a qualified independent person if—
- (a) he satisfies such conditions as may be specified for the purposes of this paragraph by order of the Department or is himself so specified, and
 - (b) there are no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the ballot might reasonably be called into question.
- (8) An order under sub-paragraph (7)(a) shall be subject to negative resolution.
- (9) As soon as is reasonably practicable after the Court is required under paragraph 24 to arrange for the holding of a ballot it must inform the parties—
- (a) that it is so required;
 - (b) of the nature of the person appointed to conduct the ballot and the date of his appointment;
 - (c) of the period within which the ballot must be conducted;
 - (d) whether the ballot is to be conducted by post or at a workplace or workplaces;
 - (e) of the workplace or workplaces concerned (if the ballot is to be conducted at a workplace or workplaces).

F6 2004 NI 19

26.—(1) An employer who is informed by the Court under paragraph 25(9) must comply with the following^{F7} three duties.

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

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

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

- (a) to give to the Court, within the period of 10 working days starting with the day after that on which the employer is informed under paragraph 25(9), the names and home addresses of the workers constituting the bargaining unit;
- (b) to give to the Court, as soon as is reasonably practicable, the name and home address of any worker who joins the^[F8] unit] after the employer has complied with paragraph (a);
- (c) to inform the Court, as soon as is reasonably practicable, of any worker whose name has been given to the Court under paragraph^[F8] 19D or paragraph (a) or (b) of this sub-paragraph and] who ceases to be within the unit.

^[F8F9](4F) Sub-paragraph (4)(a) does not apply to names and addresses that the employer has already given to the Court under paragraph 19D.

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

(4H) If—

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

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

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

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

- (a) whose name and home address have been^[F8] passed on to him under paragraph 19D or this paragraph], and
- (b) who is still within the unit (so far as the person so appointed is aware),

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

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

^{F7}(8) Each of the following powers shall be taken to include power to issue Codes of Practice about reasonable access for the purposes of sub-paragraph (3)—

- (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.

F7 prosp. (until 08/01/06) subst. by 2004 NI 19

F8 2004 NI 19

F9 prosp. (until 08/01/06) insertion by 2004 NI 19

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27.—(1) If the Court is satisfied that the employer has failed to fulfil any of the^{F10} three duties imposed by paragraph 26, and the ballot has not been held, the Court may order the employer—

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

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

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

F10 prosp. (until 08/01/06) subst. by 2004 NI 19

VALID FROM 08/01/2006

[^{F11}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;

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(b) the power of the Department under Article 95 of that Order.

F11 Sch. 1A paras. 27A-27F inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

VALID FROM 08/01/2006

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

(2) A complaint under sub-paragraph (1) must be made on or before the first working day after—

- (a) the date of the ballot, or
- (b) if votes may be cast in the ballot on more than one day, the last of those days.

(3) Within the decision period the Court must decide whether the complaint is well-founded.

(4) A complaint is well-founded if—

- (a) the Court finds that the party complained against used an unfair practice, and
- (b) the Court is satisfied that the use of that practice changed or was likely to change, in the case of a worker entitled to vote in the ballot—
 - (i) his intention to vote or to abstain from voting,
 - (ii) his intention to vote in a particular way, or
 - (iii) how he voted.

(5) The decision period is—

- (a) the period of 10 working days starting with the day after that on which the complaint under sub-paragraph (1) was received by the Court, or
- (b) such longer period (so starting) as the Court may specify to the parties by a notice containing reasons for the extension.

(6) If, at the beginning of the decision period, the ballot has not begun, the Court may by notice to the parties and the qualified independent person postpone the date on which it is to begin until a date which falls after the end of the decision period.

F11 Sch. 1A paras. 27A-27F inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

VALID FROM 08/01/2006

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

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(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).

F11 Sch. 1A paras. 27A-27F inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

VALID FROM 08/01/2006

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).

F11 Sch. 1A paras. 27A-27F inserted (8.1.2006) by [Employment Relations \(Northern Ireland\) Order 2004 \(S.I. 2004/3078 \(N.I. 19\)\)](#), arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

VALID FROM 08/01/2006

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.

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(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.

F11 Sch. 1A paras. 27A-27F inserted (8.1.2006) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)), arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

VALID FROM 08/01/2006

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.

(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.]

F11 Sch. 1A paras. 27A-27F inserted (8.1.2006) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)), arts. 1(2), 3, **Sch. 1 para. 10**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

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

(2) The gross costs of the ballot shall be borne—

- (a) as to half, by the employer, and
- (b) as to half, by the union (or unions).

(3) If there is more than one union they shall bear their half of the gross costs—

- (a) in such proportions as they jointly indicate to the person appointed to conduct the ballot, or

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(b) in the absence of such an indication, in equal shares.

(4) The person appointed to conduct the ballot may send to the employer and the union (or each of the unions) a demand stating—

(a) the gross costs of the ballot, and

(b) the amount of the gross costs to be borne by the recipient.

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

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

[^{F12}(6A) Where an amount is recoverable from a union under subparagraph (6) execution may be carried out, to the same extent and in the same manner as if the union were a body corporate, against any property held in trust for the union other than protected property as defined in Article 23(2) of the 1992 Order.]

(7) References to the costs of the ballot are to—

(a) the costs wholly, exclusively and necessarily incurred in connection with the ballot by the person appointed to conduct it,

(b) such reasonable amount as the person appointed to conduct the ballot charges for his services, and

(c) such other costs as the employer and the union (or unions) agree.

F12 2004 NI 19

29.—(1) As soon as is reasonably practicable after the Court is informed of the result of a ballot by the person conducting it, the Court must act under this paragraph.

^{F13}(2) The Court must inform the employer and the union (or unions) of the result of the ballot.

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

(a) a majority of the workers voting, and

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

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

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

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

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

F13 prosp. (until 08/01/06) insertion by 2004 NI 19

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