

SCHEDULES

^{F1}SCHEDULE 1A

COLLECTIVE BARGAINING: RECOGNITION

F1 1999 NI 9

PART IV

DERECOGNITION: GENERAL

Ballot on derecognition

- 117.**—(1) This paragraph applies if the Court accepts an application under paragraph 106 or 107.
- (2) This paragraph also applies if—
- (a) the Court accepts an application under paragraph 112, and
 - (b) in the period mentioned in paragraph 116(1) there is no agreement or withdrawal as there described.
- (3) The Court must arrange 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 ballot must be conducted by a qualified independent person appointed by the Court.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) The Court may not decide that the ballot is to be conducted as mentioned in sub-paragraph (6)
- (c) 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;

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(b) factors put to the Court by the employer or the union (or unions).

[^{F1}(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

(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).]

(9) 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.

(10) An order under sub-paragraph (9)(a) shall be subject to negative resolution.

(11) As soon as is reasonably practicable after the Court is required under sub-paragraph (3) to arrange for the holding of a ballot it must inform the employer and the union (or unions)—

(a) that it is so required;

(b) of the name 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).

F1 2004 NI 19

118.—(1) An employer who is informed by the Court under paragraph 117(11) must comply with the following [^{F2} five] duties.

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

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

(4) The third duty is to do the following (so far as it is reasonable 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 117(11), 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 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 (a) or (b) but who ceases to be within the unit.

[^{F3}(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
- (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.]

(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 given under sub-paragraph (5), 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.

[^{F4}(8) Each of the powers specified in sub-paragraph (9) shall be taken to include power to issue Codes of Practice—

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- (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.]

F2	Word in Sch. 1A para. 118(1) substituted (8.1.2006) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)) , arts. 1(2), 3, Sch. 1 para. 9(7) ; S.R. 2005/571, art. 3, Sch. (with art. 5)
F3	Sch. 1A para. 118(4A)-(4E) inserted (8.1.2006) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)) , arts. 1(2), 3, Sch. 1 para. 9(8) ; S.R. 2005/571, art. 3, Sch. (with art. 5)
F4	Sch. 1A para. 118(8)(9) substituted (8.1.2006) for Sch. 1A para. 118(8) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)) , arts. 1(2), 3, Sch. 1 para. 9(9) ; S.R. 2005/571, art. 3, Sch. (with art. 5)

119.—(1) If the Court is satisfied that the employer has failed to fulfil any of the^{F5} duties imposed on him] by paragraph 118, 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—
- (a) the ballot has been arranged in consequence of an application under paragraph 106 or 107,
 - (b) the Court is satisfied that the employer has failed to comply with an order under sub-paragraph (1), and
 - (c) the ballot has not been held,

the Court may refuse the application.

^{F6}(3)

(4) If the Court refuses an application 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.

F5	Words in Sch. 1A para. 119(1) substituted (8.1.2006) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)) , arts. 1(2), 3, Sch. 1 para. 9(10) ; S.R. 2005/571, art. 3, Sch. (with art. 5)
F6	Sch. 1A para. 119(3) repealed (8.1.2006) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)) , arts. 1(2), 3, 30(2), Sch. 1 para. 21(22), Sch. 3 ; S.R. 2005/571, art. 3, Sch. (with art. 5)

^{F7}**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.
- (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.

F7 Sch. 1A paras. 119A-119I 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. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

- 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.

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F7 Sch. 1A paras. 119A-119I 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. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

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).

F7 Sch. 1A paras. 119A-119I 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. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

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).

F7 Sch. 1A paras. 119A-119I 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. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

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

- (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.

F7 Sch. 1A paras. 119A-119I 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. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

- 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.

F7 Sch. 1A paras. 119A-119I 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. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

- 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.

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F7 Sch. 1A paras. 119A-119I 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. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

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).

F7 Sch. 1A paras. 119A-119I 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. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

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.]

F7 Sch. 1A paras. 119A-119I 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. 13(1)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

120.—(1) This paragraph applies if the holding of a ballot has been arranged under paragraph 117(3), whether or not it has been cancelled.

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

- (a) as to half, by the employer, and

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

[^{F8}(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.]
- (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.

F8 Sch. 1A para. 120(6A) 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. 21(23)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

121.—(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.

[^{F9}(1A) The duty in sub-paragraph (1) does not apply if the Court makes arrangements under paragraph 119C(3)(b).]

- (2) The Court must inform the employer and the union (or unions) of the result of the ballot.
- (3) If the result is that the proposition that the bargaining arrangements should be ended is 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 bargaining arrangements are to cease to have effect on a date specified by the Court in the declaration.
- (4) If the result is otherwise the Court must refuse the application under paragraph 106, 107 or 112.
- (5) If a declaration is issued under sub-paragraph (3) the bargaining arrangements shall cease to have effect accordingly.
- (6) The Department may by order amend sub-paragraph (3) so as to specify a different degree of support.

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

F9 Sch. 1A para. 121(1A) inserted (8.1.2006) by Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)), arts. 1(2), 3, **Sch. 1 para. 13(2)**; S.R. 2005/571, art. 3, **Sch.** (with art. 5)

Status:

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