

# EMPLOYMENT RELATIONS (NORTHERN IRELAND) ORDER 2004

S.I. 2004 3078

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## EXPLANATORY MEMORANDUM

### COMMENTARY ON ARTICLES

#### Part Iii: Law Relating to Industrial Action

##### **Information about employees to be balloted on industrial action**

**Article 5** amends Article 105 of the 1995 Order, which specifies the information required to be contained in a notice from a trade union to an employer that the trade union intends to hold a ballot (notice of ballot). It simplifies the requirements of Article 105 by making changes to the information the union is required to supply.

##### **Entitlement to vote in ballot on industrial action**

**Article 6** clarifies that the members to whom the union must accord an entitlement to vote in an industrial action ballot are all the members it is reasonable for the union to believe will be induced by it to take part in the action. This puts beyond doubt that the union does not have to give such an entitlement to members who might take part in industrial action even though not induced to do so by the union.

##### **Inducement of members not accorded entitlement to vote**

**Article 7** amends Article 115B of the 1995 Order and inserts a new provision into Article 29 of that Order. The main effect is that where a union accidentally fails to ballot an insignificant number of those it intends to induce to take part in industrial action, it will not lose its protections against legal action because it induces them to take part in the action. Article 7(2) inserts a new paragraph into Article 29 of the 1995 Order. The effect of the new paragraph is to include Article 115A in the list of requirements, contravention of which gives union members the right to take legal action.

##### **Information about employees to be contained in notice of industrial action**

**Article 8** amends Article 118 of the 1995 Order, which specifies the information required to be contained in a notice of industrial action. Article 118 currently requires a union to provide each employer whom the union reasonably believes to employ members who will be induced to take part in the proposed industrial action with a notice. The notice must state whether the action is intended to be continuous or discontinuous and give, in the first case, the date on which it is intended to start and, in the second, the dates on which it is intended to take place. As the Article stands at present, the notice must contain information in the union's possession that would help the employer to make plans and bring information to the attention of the employees the union intends to induce, and must also include information, if the union has it, as to the number of employees involved, their category of work and workplace. The notice must be received by the employer at least 7 days before the first date on which the industrial action is intended to take place. Article 8 simplifies the requirements of Article 118 by making changes to the information the union is required to supply. The intention is to reduce the uncertainty currently present in Article 118 by making the information that the union must supply specific

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and removing the need for the union to determine what information has to be given to help the employer to make plans and bring information to the attention of the employees the union intends to induce. The provisions also allow for unions to meet their obligations by referring in the notice to union members who pay their union subscription by “check-off” (a method of paying union subscriptions directly from wages).

**Protections for striking employees**

**Article 9** amends the protections for striking employees in Article 144A of the 1996 Order by changing the length and scope of the period during which employees are protected from dismissal for taking lawfully organised industrial action. It extends the period from 8 to 12 weeks and provides for days on which the employees are locked out by the employer to be disregarded when determining the length of the period. Under the provisions of this Article the period will in effect end when 84 days have passed since the start of the action on which no lock-out has occurred. This means, for example, that where a lock out occurred on two days, the total period of protection becomes 86 days.

**Date of dismissal**

**Article 10** amends Article 144A of the 1996 Order by substituting “the date of the dismissal is” for the words “it takes place” (referring to when the dismissal takes place) at each place where they occur in the Article, and then defining the expression “the date of dismissal” in the same way as it is defined for the purposes of Article 144(7). The effect is to ensure that where Article 144A applies in relation to a dismissal with notice the dismissal is treated as occurring when the notice is given and not when the period of notice expires.

**Dismissal after end of protected period**

**Article 11** introduces new matters to which the tribunal is to have particular regard when assessing whether the employer has taken reasonable procedural steps to resolve the dispute with the union. The duty to have regard to those matters applies where the parties have accepted that the services of a conciliator or mediator will be used.