
STATUTORY INSTRUMENTS

2004 No. 3078 (N.I. 19)

The Employment Relations (Northern Ireland) Order 2004

- - - - - 17th November 2004

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^{F1}.
- (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.

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| F1 partly exercised by SR 2004/519, SR 2005/73, 345, 571 |
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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).

PART II
UNION RECOGNITION

Article 3—Amendments

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).”

PART III

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).

(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
- (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.