

*These notes refer to the Employment Relations Act 1999
(c.26) which received Royal Assent on 27 July 1999*

EMPLOYMENT RELATIONS ACT 1999

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

3. The majority of the provisions of this Act form part of a package of reforms to employment and trade union law outlined in the Government's White Paper, *Fairness at Work*, published in May 1998 (Cm 3968) and developed in the light of consultation, as announced by the Secretary of State for Trade and Industry on 17 December 1998 (Commons Hansard WA cols 692-693).
4. The Act comprises:
 - new statutory procedures for the recognition and derecognition of trade unions for collective bargaining, to apply when unions and employers are unable to reach agreement voluntarily, and a requirement for employers to inform and consult unions recognised under the statutory procedure on their training policies and plans;
 - changes to the law on trade union membership, to prevent discrimination by omission and the blacklisting of people on grounds of trade union membership or activities;
 - changes to the law on industrial action, in particular to certain aspects of the ballot requirements and to enable dismissed strikers to complain of unfair dismissal in certain circumstances;
 - new rights and changes in family-related employment rights, aimed at making it easier for workers to balance the demands of work and the family;
 - a new right for workers to be accompanied in certain disciplinary and grievance hearings;
 - other changes in individual employment rights; and
 - other, miscellaneous provisions.
5. Most of the Act consists of amendments to the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") and the Employment Rights Act 1996 ("the 1996 Act"). With a few exceptions (notably provisions relating to the National Minimum Wage), the Act does not generally extend to Northern Ireland. Section 46(2), however, provides for an Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 to be subject to the negative rather than the affirmative resolution procedure and to be made only for purposes corresponding to those of this Act.

Trade union recognition and derecognition

6. The Act gives effect to the Government's proposals for a new system of trade union recognition, as set out in Chapter 4 of *Fairness at Work*. These were informed by discussions between the CBI and TUC and further developed in the light of the consultation on the White Paper, as announced on 17 December 1998. The statutory procedure for which the Act provides is intended for use only if attempts to reach a

voluntary agreement on recognition fail and to act as a means of resolving the dispute without recourse to industrial action.

Trade unions and individual employment rights related to trade unions

7. The Act contains provisions on three other matters to do with trade unions and related individual employment rights:
 - to protect workers against discrimination by omission on the grounds of trade union membership or non-membership or trade union activities;
 - to protect workers against blacklisting on the grounds of trade union membership or activities; and
 - to remove the requirement for trade unions in certain circumstances to identify to employers those workers who will be balloted or called out on industrial action.
8. Although the Act will not affect the right of employers and employees to agree individual contracts, even where a union is recognised for collective bargaining in respect of the bargaining unit where the employees work, it does provide for employees to be protected against being forced into accepting individual contracts in such circumstances.
9. The Act contains provisions aimed at clarifying and simplifying the present law on industrial action ballots and notice in a number of respects.

Family-related employment rights

10. In Chapter 5 of *Fairness at Work*, the Government set out proposals aimed at helping employees to combine work and family life satisfactorily by simplifying and extending existing maternity rights and introducing new rights to three months' parental leave for men and women when they have a baby or adopt a child and to time off for urgent family reasons, in line with the provisions of the Parental Leave Directive. The Act implements these proposals by conferring basic rights to maternity and parental leave and to time off for dependants and giving the Secretary of State powers to make regulations on the details of maternity and parental leave. The regulations will be made following public consultation.

Right to be accompanied in disciplinary and grievance hearings

11. The Act provides that employees should have the right to be accompanied by a fellow employee or trade union representative of their choice in disciplinary and grievance procedures.

Other rights of individuals

12. The Act:
 - a) provides in certain circumstances for employees to be protected from dismissal for taking part in lawfully organised official industrial action;
 - b) prohibits the use of waivers for unfair dismissal but not redundancy payments in fixed term contracts;
 - c) contains regulation-making powers for the Secretary of State to ensure that part-time workers receive no less favourable treatment than full-time workers. (It is intended that there should be further public consultation on the regulations, which will be brought into force by April 2000 in order to implement the Part-Time Work Directive);

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- d) exempts residential members of religious and other similar communities from the National Minimum Wage Act 1998, giving effect to a recommendation from the Low Pay Commission; and
- e) contains order-making powers for the Secretary of State to extend the coverage of some or all existing employment rights by regulation to specified categories of individual.

Other, miscellaneous provisions

- 13. The Act makes a number of provisions on institutional matters:
 - a) The new statutory recognition and derecognition procedures create a new role for the Central Arbitration Committee. The Act amends the arrangements for the appointment of CAC members and for the proceedings of the CAC in respect of cases under the new procedures.
 - b) The Act abolishes the Commissioner for the Rights of Trade Union Members (CRTUM) and the Commissioner for Protection Against Unlawful Industrial Action (CPAUIA). (The Commissioners' main functions are to provide assistance to individuals taking or contemplating certain legal proceedings against unions or union officials.) The Act gives new powers to the Certification Officer to hear complaints involving most aspects of the law where CRTUM is currently empowered to provide assistance.
 - c) The Act provides that the general duty of ACAS should be "to promote the improvement of industrial relations", repealing the current emphasis given by the 1992 Act to ACAS's functions in relation to the settlement of trade disputes.
 - d) The Act provides for the annual reports of ACAS, the CAC and the Certification Officer to be produced on a financial rather than calendar year basis.
- 14. The Act also:
 - a) provides statutory authority for the Secretary of State to make funding available to assist and develop partnerships at work;
 - b) amends and extends the order-making power in the Employment Agencies Act 1973 under which the Secretary of State regulates the industry, amends the prohibition on charging fees to people seeking work, amends and extends the range of premises that may be entered by inspectors, lengthens the time limit for prosecutions under the 1973 Act, and provides for information obtained under the compulsory powers in the 1973 Act to be disclosed for the purposes of any criminal proceedings and not just those relating to offences under that Act;
 - c) removes limits restricting certain employment rights, broadly, to those who ordinarily work in Great Britain;
 - d) increases the limit on the compensatory award for unfair dismissal from £12,000 to £50,000, consolidates the existing system of special and additional awards into a single award to apply in cases where an employer fails to comply with a re-employment order, and provides that compensation will not be subject to the monetary limit where an individual has been dismissed unfairly under the provisions of the Public Interest Act 1998 or for reasons relating to health and safety matters;
 - e) gives the Secretary of State a power to make regulations requiring employees to be given the same protections in specified circumstances falling outside the scope of the EC Acquired Rights Directive as they have under the UK's implementing legislation in circumstances which do fall within the scope of that Directive;

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- f) provides for Inland Revenue officers to be able to pass information obtained in respect of tax and national insurance contributions to their National Minimum Wage colleagues and others for use in enforcing the NMW;
- g) makes a technical amendment to the School Standards and Framework Act 1998 to reflect the reduction in June 1999 of the unfair dismissal qualifying period from two years to one year; and
- h) amends the law under which Ministers can exclude Crown servants from certain employment rights on grounds of national security, giving staff of the security and intelligence services in particular better access to employment tribunals.