

# EMPLOYMENT RELATIONS ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Trade unions*

#### *Section 1 and Schedule 1: Collective bargaining: Recognition*

#### **Part IV: Derecognition: General**

79. The statutory derecognition process set out in Part IV applies only where a declaration of recognition has been made by the CAC under Part I or III. Applications for derecognition may only be accepted three or more years after the CAC's original decision. In other circumstances, Part IV does not apply, but if a voluntarily-recognised union is derecognised it may then apply for recognition under Part I.
80. *Paragraph 96* provides that the derecognition procedure applies to a union recognised through a CAC declaration. *Paragraph 97* provides that derecognition may not take place until three or more years after a CAC declaration was made.
81. The statutory recognition procedure in Part I does not apply to an employer with fewer than 21 workers. If, at least three years after a CAC decision, an employer has fewer than 21 workers, it can notify the union that it will therefore be derecognised. The union may appeal to the CAC under *paragraph 101* if it believes the request is unfounded.
82. *Paragraph 99* provides that if the employer employs an average of fewer than 21 workers (using the same definition as in paragraph 7) over a period of thirteen weeks, he may at the end of that period give notice to the union of the fact and state that the existing bargaining arrangements will not apply from a given date, which must be at least 35 working days after the union is notified.
83. *Paragraph 100* gives the CAC 10 working days from the date it receives an application from an employer under paragraph 99 in which to decide on its validity. If it finds that the employer's notification was not valid, the collective bargaining arrangements will remain in place; otherwise the CAC must notify the union and employer that the notification is valid and, under *paragraph 101*, the union then has 10 working days in which to make an application to the CAC disputing the employer's claim. If the notice is not challenged, or if the challenge is unsuccessful, the notice will take effect and the collective bargaining arrangements will end on the date specified in the notice. If the CAC rules under *paragraph 102* that the employer's application is not correct, recognition continues.
84. *Paragraphs 104-111* apply if the employer requests the union to end the bargaining arrangements. (These paragraphs are broadly similar to paragraphs 10-12 and 15, which deal with a request for recognition.) If the union was recognised voluntarily, and the CAC did not impose a method for collective bargaining, then this procedure does not apply and the employer may derecognise at any time without going through the statutory procedure in this Part.

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(c.26) which received Royal Assent on 27 July 1999*

85. *Paragraph 104* has the effect that a request to end the bargaining arrangements may be made under this Part only once three or more years have passed since the union was recognised.
86. *Paragraph 105* provides that the derecognition procedure is to end if the parties agree to end the bargaining arrangements within ten working days of the request. If the union agrees to negotiate, then the parties have 20 working days, plus whatever remains of the initial ten working day period, to reach agreement. They can extend the period for negotiation by mutual consent. If the parties agree that the union should remain recognised, it is sufficient for them to take no further action. The CAC would not be asked to make a decision under paragraphs 106 or 107, and the bargaining arrangements would remain in force. Paragraph 105(5) is for the avoidance of doubt; there is no requirement to involve ACAS.
87. *Paragraph 106* provides that if the union either does not respond to or rejects the request before the end of the first (ten working day) period, the employer may apply to the CAC to hold a secret ballot to decide whether a majority of workers support derecognition.
88. *Paragraph 107* provides that if the employer and union fail to reach agreement by the end of the second period, the employer may apply to the CAC to hold a secret ballot to decide whether a majority of workers support derecognition. *Paragraph 108* contains general procedural requirements for applications to the CAC. *Paragraph 109* means the application must be rejected if the CAC accepted another application for derecognition under Part IV or V in the previous 3 years.
89. *Paragraph 110* provides that, if the CAC is to decide whether a union should be derecognised, it must first be satisfied that derecognition is likely to have sufficient support in the bargaining unit to make proceeding with the application worthwhile. The test for this is that at least 10% of the bargaining unit favour an end to the collective bargaining arrangements and a majority of the workers in the bargaining unit would be likely to do so. This is essentially the same test as in paragraph 20 or 36 for recognition applications.
90. *Paragraphs 112-116* apply to applications for derecognition by workers. The provisions apply equally if one or many workers in the bargaining unit formally request an end to collective bargaining arrangements. For simplicity these notes refer to applications by a single worker but such references should be read as covering applications by a group of workers as well.
91. *Paragraph 112* provides that three or more years after recognition, a worker may apply to the CAC to end the collective bargaining arrangements. *Paragraph 113* means the application must be rejected if the CAC accepted another application for derecognition under Part IV or V in the previous 3 years. *Paragraph 114* provides that the CAC may not proceed with an application unless at least 10% of the bargaining unit favour an end to the collective bargaining arrangements and a majority of the bargaining unit are likely to do so. (This is essentially the same test as in paragraph 110).
92. *Paragraph 116* requires the CAC to help the employer, union and worker with a view either to the employer's and union's agreeing to end the bargaining arrangements or the worker's withdrawing the application in the 20 working days after the application is accepted. If an agreement is reached or the application is withdrawn, the CAC will take no further action. Otherwise, it must hold a ballot under the provisions of paragraphs 117-121.
93. *Paragraphs 117-121* make provision for the holding of ballots on applications for derecognition, mirroring the procedures for recognition ballots under paragraphs 25-29. Paragraph 121 provides that if the ending of bargaining arrangements is supported by a majority of those who vote and at least 40% of the workers constituting the bargaining unit, the CAC must declare that the bargaining arrangements will cease to have effect from a specified date; otherwise, the application must be refused and the union will

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remain recognised. The degree of support needed for derecognition may, like that needed for recognition, be altered by the Secretary of State by order subject to the affirmative resolution procedure.