

# **EMPLOYMENT RELATIONS ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

#### **Part One: Union Recognition**

##### **Union communications with workers after acceptance of application**

45. *Section 5* inserts paragraphs 19C to 19F after paragraph 19B (which is inserted by section 4). At present, a union(s) may only formally communicate with workers during the period for a CAC ordered ballot. Section 5 provides a right for the union(s) to communicate with the workers in the bargaining unit from the point of the CAC's acceptance of the union's application. This communication takes place via a suitable independent person.
46. Paragraphs 19C(1) and (2) provide that, following the acceptance of its application by the CAC, the union(s) may request the CAC to appoint a suitable person for the purpose of communicating with the relevant workers.
47. Paragraph 19C(3) makes clear that if the information is to be sent before the bargaining unit is agreed by the parties or determined by the CAC, the relevant workers are the workers in the union's proposed bargaining unit. If the information is to be sent after the bargaining unit has been agreed by the parties or determined by the CAC, the relevant workers are the workers in the unit that has been agreed or determined.
48. Paragraph 19C(4) provides that where an application has been made under paragraph 12(4) (where the parties have already agreed a bargaining unit before the union's application to the CAC) then the relevant workers are the workers in the agreed unit.
49. Paragraph 19C(5) provides that the union's right of communication starts from the day on which the CAC informs the parties of the name of the suitable independent person and ends when the first of the following occurs:
  - the union's application is withdrawn;
  - the CAC declares the application invalid following the agreement or determination of a new bargaining unit which is different from the union's proposed unit;
  - the CAC issues a declaration that the union(s) are recognised without a ballot; or
  - the CAC gives notice to the parties of the appointment of a suitable independent person to conduct the ballot (the union's right of communication continues throughout the ballot period by virtue of the existing provision in paragraph 26(6) of Schedule A1).
50. Paragraph 19C(6) defines the suitable independent person as someone who either satisfies the conditions specified by order for a qualified independent persons (QIPs) to conduct statutory recognition and derecognition ballots or is actually named in that order. To qualify as a suitable independent person, there must also be no reason to doubt that the person in question will conduct their functions competently and independently.

*These notes refer to the Employment Relations Act 2004  
(c.24) which received Royal Assent on 16 September 2004*

51. Paragraph 19D(1) and (2) set out duties of the employer which apply from the time he is informed by the CAC of the appointment of the suitable independent person. These are to give to the CAC, within 10 working days, the names and home addresses of all the relevant workers and to update this information if the relevant workers change as the result of agreement or decision on the bargaining unit, or if workers join or leave the bargaining unit.
52. Under paragraph 19D(4) the CAC must pass this information to the suitable independent person as soon as possible.
53. Paragraph 19E provides that the suitable independent person must, on the request of the union(s), send to any worker whose name and home address has been passed to him and who is still a relevant worker, any information supplied to him by the union. The suitable independent person's costs (defined in new paragraph 19E(7)) are to be paid by the union(s) on receipt of a demand.
54. Under paragraph 19E(5) if that demand is not paid within 15 working days then in England and Wales it is (subject to any appeal under paragraph 165A of Schedule A1 (see paragraphs 101 to 103)) to be recoverable by execution issued from a county court. Paragraph 19E(6) sets out that execution may be carried out as though the union were a body corporate against any property held in trust for the union which is not protected property. Protected property is defined by section 23 of the 1992 Act as property that:
  - belongs to the trustees in a capacity other than their capacity as trustees of the union;
  - belongs to a member of the union, otherwise than jointly or in common with the other members of that union;
  - belongs to an official of the union who is neither a member nor a trustee;
  - is part of a lawfully constituted political fund; or
  - is part of a beneficial fund.
55. Paragraph 19F sets out the sanction for a failure by the employer to comply with his duties under the new paragraph 19D(2). If the CAC is satisfied that the employer has failed to comply and the union's right of communication has not yet ended, the CAC may order the employer to remedy that failure within a specified time period. If the CAC is satisfied that the employer has failed to comply with that order, it must notify the union(s) and the employer of that failure, drawing their attention to its discretion to award recognition without a ballot if certain conditions hold. These are:
  - that the CAC is satisfied that the employer has failed to comply with an order under paragraph 19F(1);
  - that the parties have agreed or the CAC has decided an appropriate bargaining unit;
  - that if the validity tests have been applied under paragraph 20 these have been passed; and
  - that the union's right of communication has not ended.
56. *Subsections (2), (3) and (5)* makes consequential amendments to certain cross-references. *Subsection (4)* provides that where the CAC decides that there must be a ballot, the employer is not required to provide the names and addresses of the relevant workers where he has already done so under the paragraphs inserted by subsection (1) of this section, and that if the QIP appointed to conduct the ballot is not the same person as was appointed under the paragraphs inserted by that subsection, the CAC must pass the relevant information to the new QIP as soon as possible.