

# EMPLOYMENT RELATIONS ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY

#### Part One: Union Recognition

##### Additional duties on employers informed of ballots

68. *Section 9* places new duties on employers who have been informed by the CAC under paragraph 25(9) of Schedule A1 that a ballot is required. At present, an employer who is so informed must comply with three duties. The first duty is to co-operate generally, in connection with the ballot, with the union (or unions) and with the person appointed to conduct the ballot. The second duty is to give the union (or unions) such access to the workers in the bargaining unit as is reasonable to enable the union to inform the workers of the purpose of the ballot and to seek their support and their opinions on the issues involved. The third duty is to supply to the CAC the names and home addresses of the workers in the bargaining unit, and to update that information when workers leave or join the bargaining unit.
69. *Subsection (3)* amends paragraph 26 of Schedule A1 to the 1992 Act by inserting sub-paragraphs (4A) to (4E). Sub-paragraphs (4A) and (4B) introduce two new duties in addition to the three duties mentioned above. Paragraph 26(4A) places a fourth duty on the employer to refrain from making an offer to any or all of the workers in the bargaining unit which has the effect, or is likely to have the effect, of inducing any or all of those workers not to attend a relevant meeting, unless that offer is reasonable in the circumstances. Paragraph 26(4B) places a fifth duty on the employer not to take or threaten to take action against a worker solely or mainly because that worker attended or took part in a relevant meeting or because that worker indicated that he intended to attend or to take part in such a meeting.
70. Paragraph 26(4C) defines a relevant meeting as one which is organised either in accordance with an access agreement reached in relation to the employer's duty to provide reasonable access, or as a result of an order of the CAC under paragraph 27 of the Schedule (where the CAC is satisfied that the employer has failed to comply with one of his duties) and further is a meeting which the employer is required to allow the worker in question to attend under the terms of the agreement or the order.
71. Paragraph 26(4D) makes provision in relation to the second duty (to provide reasonable access to the union) under paragraph 26(3) of Schedule A1 by making clear that an employer will have failed to comply with that duty if:
- he unreasonably refuses a request for a meeting between the union (or unions) and any of the workers in the bargaining unit to take place without the employer or a representative of his being present; or
  - he or a representative of his attends such a meeting without having been invited to do so; or

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

- he seeks to record or otherwise be informed of what occurred at the meeting, unless it is reasonable in the circumstances for him to do so; or
  - he refuses to give an undertaking that he will not seek to record or be informed of the proceeding unless it is reasonable for him to do so in the circumstances.
72. This paragraph does not affect the generality of the second duty under paragraph 26(3); an employer could fail to comply with that duty even where his actions are not those mentioned in paragraph 26(4D).
73. Paragraph 26(4E) makes clear that the fourth and fifth duties do not confer new rights on workers, but also do not affect any other right a worker may have.
74. *Subsection (4)* makes it clear that Acas (under its powers under section 199(1) of the 1992 Act) and the Secretary of State (under powers under section 203(1)(a) of the same Act) can issue Codes of Practice in respect of both the second and fourth duties on the employer.
75. *Subsections (6) to (10)* make amendments with the same effect to paragraphs 118 and 119 of the Schedule, which deal with the duties on employers informed of ballots pursuant to an application for derecognition of a union (or unions).