



Employment Protection Act 1975

1975 CHAPTER 71

PART I

MACHINERY FOR PROMOTING THE IMPROVEMENT OF INDUSTRIAL RELATIONS

Trade union recognition

11 Reference of recognition issue to Service

- (1) A recognition issue may be referred by an independent trade union to the Service by written application in such form as the Service may require.
- (2) In this Act " recognition ", in relation to a trade union, means the recognition of the union by an employer, or two or more associated employers, to any extent, for the purpose of collective bargaining.
- (3) In this section and sections 12 to 14 below, " recognition issue " means an issue arising from a request by a trade union for recognition by an employer, or two or more associated employers, including, where recognition is already accorded to some extent, a request for further recognition.

12 Inquiry and report on recognition issue

- (1) Subject to subsection (2) below, when a recognition issue is referred to the Service under section 11 above the Service shall examine the issue, shall consult all parties who it considers will be affected by the outcome of the reference and shall make such inquiries as it thinks fit.
- (2) The Service may decline to proceed on a reference under section 11 above if it is of the opinion that the issue referred is substantially the same as an issue which has previously been the subject of a reference under that section, or of an application under section 13 below, unless the trade union shows that the circumstances have changed to such an extent as to justify a new reference.

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- (3) At all times after a recognition issue has been referred to the Service and before the Service has reported on it—
- (a) the Service shall have regard to the desirability of encouraging the settlement of the issue by agreement and shall, where appropriate, seek to assist such a settlement by conciliation; and
 - (b) the trade union or unions which made the reference may, by notice in writing, withdraw the reference, and one or more such unions may, by notice in writing, withdraw from the reference, and in the latter case only such unions as remain parties to the reference may be recommended for recognition.
- (4) If the issue has not been settled and the reference not withdrawn the Service shall prepare a written report setting out its findings, any advice in connection with those findings and any recommendation for recognition and the reasons for it, or, where no such recommendation is made, the reasons for not making any recommendation.
- (5) A recommendation for recognition shall specify—
- (a) the employer or employers and the trade union or unions to which it relates;
 - (b) the description or descriptions of workers in respect of which recognition is recommended ;
 - (c) whether the recommendation is for recognition generally or in respect of one or more specified matters;
 - (d) the level or levels at which recognition is recommended.
- (6) A recommendation for recognition may be subject to such conditions, to be complied with on the part of the trade union, as the Service thinks fit, and any conditions shall be set out in the report.
- (7) The Service shall send a copy of the report to every trade union and employer concerned in the recognition issue and to such other persons as it thinks fit.

13 Application for variation or revocation of recommendation

- (1) At any time when a recommendation of the Service has been made and has not been—
- (a) superseded by agreement, whether express or implied, between the employer and the union ;
 - (b) superseded by another recommendation under section 12 above; or
 - (c) revoked on an application under this section,
- an application may be made under this section for the variation or revocation of that recommendation.
- (2) Such an application may be made—
- (a) jointly by all the trade unions and employers to whom the recommendation relates; or
 - (b) by any trade union or employer to whom the recommendation relates,
- and in each case the application shall be in writing and in such form as the Service may require.
- (3) Where the Service is of the opinion that the issue raised by an application which is not a joint application such as is referred to in subsection (2)(a) above is substantially the same as an issue which has previously been the subject of a reference under section 11 above or of an application under this section, it may decline to proceed with that application unless the applicant shows—

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- (a) that the, reconsideration of the recommendation is justified because circumstances have changed or further information has become available ; or
 - (b) that a condition to which the recommendation is subject is no longer being sufficiently complied with.
- (4) Subject to subsection (3) above, on receipt of an application under this section the Service shall examine the issue raised by the application, shall consult such persons and make such inquiries as it thinks fit and, if the application is not settled or withdrawn, shall report on it stating its conclusions and the reasons for them.
- (5) A variation or revocation may be subject to such conditions, to be complied with on the part of the trade union or the employer, as the Service thinks fit, and any conditions shall be set out in the report.
- (6) A variation or revocation shall take effect—
- (a) in the case of an unconditional variation or revocation, on the date when the Service transmits its report to the parties to whom the recommendation relates; and
 - (b) in the case of a conditional variation or revocation, on the date on which the Service, on the application of the party by whom the condition or conditions were to be complied with, transmits to the other party its opinion that the condition or all the conditions have been sufficiently complied with.

14 Inquiries under ss. 12 and 13

- (1) In the course of its inquiries into a recognition issue under section 12 or 13 above the Service shall ascertain the opinions of workers to whom the issue relates by any means it thinks fit, but if in any case it determines to take a formal ballot of those workers or any description of such workers, the following provisions of this section shall apply.
- (2) In making arrangements for any such ballot the Service shall have regard to the need for securing that every worker invited to take part in the ballot has an equal right and a fair opportunity of voting, and that the vote cast by any individual in the ballot will be kept secret.
- (3) Before taking any such ballot the Service shall give notice to every employer and union concerned in the reference or application, including every union known to the Service to have members among the workers proposed to be invited to take part in the ballot, of—
- (a) the description or descriptions of workers proposed to be invited to take part in the ballot;
 - (b) the question or questions on which the ballot is proposed to be taken ; and
 - (c) the manner in which the ballot is proposed to be taken ;
- and the Service shall consider any representations made by any such employer or union with respect to the proposals.
- (4) Subject to subsections (2) and (3) above, any such ballot may be conducted in such manner as the Service thinks fit.
- (5) Where a formal ballot has been taken in accordance with this section the Service shall arrange for—
- (a) the question or questions on which the ballot was taken ; and
 - (b) the results of the ballot on that question or on each such question,

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to be notified to every employer and union concerned in the reference or application, including every union known to the Service to have members among the workers invited to take part in the ballot.

- (6) An employer who is notified in accordance with subsection (5) above of the results of the ballot and who has workers among those invited to take part in the ballot shall arrange for those results to be notified to them.

15 Complaint of failure to comply with recommendation

- (1) A recommendation for recognition made by the Service under section 12 above, so far as it relates to employees, but not so far as it relates to workers who are not employees, shall become operative for the purpose of the following provisions of this Act—
- (a) in the case of an unconditional recommendation, at the end of the period of 14 days beginning with the date on which the Service's report under section 12 above is received by the employer ; and
 - (b) in the case of a conditional recommendation, at the end of the period of 14 days beginning with the date on which the Service, on the application of the union, notifies the employer of its opinion that the condition or all the conditions have been sufficiently complied with,
- and shall remain operative except in so far as it is—
- (i) superseded by agreement, whether express or implied, between the employer and the union ;
 - (ii) superseded by another recommendation under section 12 above; or
 - (iii) revoked on an application under section 13 above.
- (2) Where a recommendation is operative, then at any time after the end of the period of two months beginning with the date on which it became operative, the trade union may refer in writing to the Service a complaint that the employer is at the time of the complaint, wholly or in part, not complying with the recommendation, that is to say, that he is not then taking such action by way of or with a view to carrying on negotiations as might reasonably be expected to be taken by an employer ready and willing to carry on such negotiations as are envisaged by the recommendation.
- (3) When a complaint is referred to the Service under this section the Service shall attempt to settle the matter by conciliation.

16 Application arising from failure to comply with recommendation

- (1) If conciliation under section 15(3) above does not result in a settlement, the trade union which referred the complaint under that section may apply to the Central Arbitration Committee in accordance with the following provisions of this section.
- (2) The application shall be in writing and in such form as the Committee may require and shall consist of—
- (a) a complaint that the employer is not complying (within the meaning of section 15(2) above) with a recommendation of the Service; and
 - (b) a claim that in respect of one or more descriptions of employees covered by that recommendation their contracts should include the terms and conditions specified in the claim.

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- (3) An application under this section comprising a complaint on substantially the same grounds as those of a complaint in a previous application under this section, shall not be entertained by the Committee before the end of the period of 12 months beginning with the date on which the Committee made its award under subsection (6) below, or determined not to make such an award, on that previous application.
- (4) Subject to subsection (3) above, the Committee shall proceed to hear and determine the complaint and shall make a declaration stating whether it finds the complaint well founded, wholly or in part, and stating the reasons for its finding.
- (5) If the Committee finds the complaint wholly or partly well-founded, the declaration shall specify—
 - (a) the description or descriptions of employees in relation to whom the employer has failed to comply with the recommendation; and
 - (b) the matters in relation to which the employer has failed to comply with the recommendation.
- (6) If the Committee finds the complaint wholly or partly well-founded, it may, after hearing the parties, make an award that in respect of any description of employees specified in the declaration under subsection (5)(a) above the employer shall observe either—
 - (a) the terms and conditions specified in the claim by the trade union in accordance with subsection (2)(b) above; or
 - (b) other terms and conditions which the Committee considers appropriate, being in either case terms and conditions falling within the scope of the matters specified in the declaration under subsection (5)(b) above.
- (7) Any terms and conditions which by an award under subsection (6) above the employer is required to observe in respect of employees of his shall have effect as part of the contract of employment of any such employee, as from the date specified in the award, except in so far as they are superseded or varied—
 - (a) by a subsequent award under this section;
 - (b) by a collective agreement between the employer and the union for the time being representing that employee; or
 - (c) by express or implied agreement between the employee and the employer so far as that agreement effects an improvement in any terms and conditions having effect by virtue of the award.
- (8) Where—
 - (a) by virtue of any enactment, other than one contained in this section, providing for minimum remuneration or terms and conditions, a contract of employment is to have effect as modified by an award, order or other instrument under that enactment, and
 - (b) by virtue of an award under this section any terms and conditions are to have effect as part of that contract,that contract shall have effect in accordance with that award, order or other instrument or in accordance with the award under this section, whichever is the more favourable, in respect of any terms and conditions of that contract, to the employee.
- (9) No award shall be made under this section in respect of any terms and conditions of employment which are fixed by virtue of any enactment.