



Employment Protection Act 1975

1975 CHAPTER 71

PART I

MACHINERY FOR PROMOTING THE IMPROVEMENT OF INDUSTRIAL RELATIONS

Advisory, Conciliation and Arbitration Service, etc.

1 Advisory, Conciliation and Arbitration Service

- (1) There shall be a body to be known as the Advisory, Conciliation and Arbitration Service, in this Act referred to as " the Service ".
- (2) The Service shall be charged with the general duty of promoting the improvement of industrial relations, and in particular of encouraging the extension of collective bargaining and the development and, where necessary, reform of collective bargaining machinery.
- (3) The provisions (so far as applicable) of Parts I and III of Schedule 1 to this Act shall have effect with respect to the Service.

2 Conciliation

- (1) Where a trade dispute exists or is apprehended the Service may, at the request of one or more parties to the dispute or otherwise, offer the parties to the dispute its assistance with a view to bringing about a settlement.
- (2) The assistance offered by the Service may be by way of conciliation or by other means, and may include the appointment of a person other than an officer or servant of the Service to offer assistance to the parties to the dispute with a view to bringing about a settlement.
- (3) In exercising its functions under subsection (1) above, the Service shall have regard to the desirability of encouraging the parties to a dispute to use any appropriate agreed procedures for negotiation or the settlement of disputes.

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- (4) The Service shall designate officers of the Service to perform the functions of conciliation officers under any enactment (including any provision of this Act or any Act passed after this Act) in respect of matters which are or could be the subject of proceedings before an industrial tribunal, and accordingly any reference in any such enactment to a conciliation officer is a reference to an officer designated under this subsection.

3 Arbitration

- (1) Where a trade dispute exists or is apprehended the Service may, at the request of one or more parties to the dispute and with the consent of all the parties to the dispute, refer all or any of the matters to which the dispute relates for settlement to the arbitration of—
- (a) one or more persons appointed by the Service for that purpose (not being an officer or servant of the Service); or
 - (b) the Central Arbitration Committee constituted under section 10 below.
- (2) In exercising its functions under subsection (1) above, the Service shall consider the likelihood of the dispute being settled by conciliation and, where there exist appropriate agreed procedures for negotiation or the settlement of disputes, shall not refer a matter for settlement to arbitration under that subsection unless those procedures have been used and have failed to result in a settlement or unless, in the opinion of the Service, there is a special reason which justifies arbitration under that subsection as an alternative to those procedures.
- (3) Where in any case more than one arbitrator is appointed under subsection (1)(a) above the Service shall appoint one of the arbitrators to act as chairman.
- (4) An award by an arbitrator appointed under subsection (1)(a) above may be published if the Service so decides and all the parties consent.
- (5) Part I of the Arbitration Act 1950 shall not apply to an arbitration under this section.
- (6) In the application of this section to Scotland, references to an arbitrator shall be construed as references to an arbiter.

4 Advice

- (1) The Service shall, if it thinks fit, on request or otherwise, provide, without charge, to employers, employers' associations, workers and trade unions such advice as it thinks appropriate on any matter concerned with industrial relations or employment policies, including the following—
- (a) the organisation of workers or employers for the purpose of collective bargaining;
 - (b) the recognition of trade unions by employers ;
 - (c) machinery for the negotiation of terms and conditions of employment, and for joint consultation ;
 - (d) procedures for avoiding and settling disputes and workers' grievances ;
 - (e) questions relating to communication between employers and workers;
 - (f) facilities for officials of trade unions ;
 - (g) procedures relating to the termination of employment;
 - (h) disciplinary matters;
 - (i) manpower planning, labour turnover and absenteeism ;

- (j) recruitment, retention, promotion and vocational training of workers;
 - (k) payment systems, including job evaluation and equal pay.
- (2) The Service may publish general advice on any matter concerned with industrial relations or employment policies, including any of the matters referred to in paragraphs (a) to (k) of subsection (1) above.

5 Inquiry

- (1) The Service may, if it thinks fit, inquire into any question relating to industrial relations generally or to industrial relations in any particular industry or in any particular undertaking or part of an undertaking.
- (2) The findings of any inquiry under this section, together with any advice given by the Service in connection with those findings, may be published by the Service if—
- (a) it appears to the Service that publication is desirable for the improvement of industrial relations, either generally or in relation to the specific question inquired into; and,
 - (b) after sending a draft of the findings to, and taking into account the views of, all the parties appearing to the Service to be concerned, the Service thinks fit.

6 Codes of Practice

- (1) The Service may issue Codes of Practice containing such practical guidance as the Service thinks fit for the purpose of promoting the improvement of industrial relations.
- (2) Without prejudice to the generality of subsection (1) above, the Service shall, in one or more Codes of Practice, provide practical guidance on the following matters in relation to the application of the following provisions of this Act, that is to say—
- (a) the disclosure of information, in accordance with sections 17 and 18 below, by employers to trade union representatives for the purpose of collective bargaining;
 - (b) the time off to be permitted by an employer—
 - (i) to a trade union official in accordance with section 57 below; and
 - (ii) to a trade union member in accordance with section 58 below.
- (3) When the Service proposes to issue a Code of Practice, it shall prepare and publish a draft of that Code, shall consider any representations made to it about the draft and may modify the draft accordingly.
- (4) If the Service determines to proceed with the draft, it shall transmit the draft to the Secretary of State who shall—
- (a) if he approves of it, lay it before both Houses of Parliament; and
 - (b) if he does not approve of it, publish details of his reasons for withholding approval.
- (5) In the case of a draft Code of Practice containing practical guidance on the matters referred to in paragraph (a) or (b) of subsection (2) above, if the draft is approved by resolution of each House of Parliament the Service shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Secretary of State may by order appoint.

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- (6) In the case of a draft Code of Practice not containing such practical guidance, if, within the period of forty days beginning with the day on which a copy of the draft is laid before each House of Parliament, or, if such copies are laid on different days, with the later of the two days, either House so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before Parliament of a new draft.
- (7) In reckoning the period of forty days referred to in subsection (6) above, no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (8) If no such resolution is passed as is referred to in subsection (6) above, the Service shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Secretary of State may by order appoint.
- (9) Without prejudice to section 123(3) below, an order under subsection (5) or subsection (8) above may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the Code of Practice thereby brought into operation.
- (10) The Service may from time to time revise the whole or any part of a Code of Practice issued under this section and issue that revised Code, and subsections (3) to (9) above shall apply (with appropriate modifications) to such a revised Code as they apply to the first issue of a Code.
- (11) A failure on the part of any person to observe any provision of a Code of Practice shall not of itself render him liable to any proceedings ; but in any proceedings before an industrial tribunal or the Central Arbitration Committee any Code of Practice issued under this section shall be admissible in evidence, and if any provision of such a Code appears to the tribunal or Committee to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

7 **Certification Officer**

- (1) The Secretary of State shall, after consultation with the Service, appoint an officer to be known as the Certification Officer.
- (2) The functions under the following Acts which before the commencement of this section were performed by the Chief Registrar of Friendly Societies or any assistant registrar shall become functions of the Certification Officer, that is to say.—
 - (a) the Trade Union Act 1913;
 - (b) the Trade Union (Amalgamations, etc.) Act 1964;
 - (c) the 1974 Act.
- (3) The provisions (so far as applicable) of Parts I and III of Schedule 1 to this Act shall have effect with respect to the Certification Officer.
- (4) The Certification Officer may appoint one or more assistant certification officers and shall appoint an assistant certification officer for Scotland.
- (5) The Certification Officer may delegate to an assistant certification officer such functions as he thinks appropriate and in particular may delegate to the assistant certification officer for Scotland such functions as he thinks appropriate in relation to organisations whose principal office is in Scotland.

- (6) References in any enactment (except in subsections (4) and (5) above, this subsection, Part I and paragraph 28 of Schedule 1 to this Act and the House of Commons Disqualification Act 1975) to the Certification Officer shall be construed as including, in relation to such functions as have been delegated in accordance with subsection (5) above, references to an assistant certification officer.

8 Certification as independent trade union

- (1) A trade union whose name is entered on the list of trade unions maintained under section 8 of the 1974 Act may apply to the Certification Officer for a certificate that it is independent.
- (2) An application under subsection (1) above shall be made in such form and manner as the Certification Officer may require and shall be accompanied by a fee of £21 or such other fee as may be prescribed by regulations made by the Secretary of State.
- (3) The Certification Officer shall maintain a record showing details of all applications made under subsection (1) above and shall keep it available for public inspection (free of charge) at all reasonable hours.
- (4) If an application is made, or by virtue of subsection (12) below is treated as being made, by a trade union whose name is not entered on the list of trade unions maintained under section 8 of the 1974 Act, the Certification Officer shall refuse a certificate of independence and shall enter that refusal on the record maintained in accordance with subsection (3) above.
- (5) In the case of an application not falling within subsection (4) above, the Certification Officer shall—
- (a) determine whether the applicant trade union is independent ;
 - (b) enter his decision and the date of his decision on the record maintained in accordance with subsection (3) above; and
 - (c) if he determines that the trade union is independent, issue a certificate accordingly, or, if he determines that it is not, give reasons for his decision.
- (6) The Certification Officer shall not make any determination under subsection (5) above whether a trade union is independent until one month after the application has been entered on the record in accordance with subsection (3) above, and before making such a determination he shall make such inquiries as he thinks fit and shall take into account any relevant information submitted to him by any person.
- (7) The Certification Officer may at any time withdraw a certificate, in accordance with subsection (8) below, if he is of the opinion that the trade union in question is no longer independent.
- (8) Where the Certification Officer proposes to withdraw a certificate under subsection (7) above—
- (a) he shall notify the trade union concerned of the proposal;
 - (b) subsections (3), (5) and (6) above shall apply (with appropriate modifications) to such a proposal as they apply to an application under subsection (1) above ; and
 - (c) the Certification Officer shall confirm or withdraw the certificate accordingly.
- (9) A trade union aggrieved by the refusal of the Certification Officer to issue it with a certificate or by a decision of his to withdraw its certificate may appeal, in accordance

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with section 88(3) below, to the Employment Appeal Tribunal; and on any such appeal the Tribunal, if satisfied that the certificate should be issued or as the case may be should not be withdrawn, shall declare that fact and give directions to the Certification Officer accordingly.

- (10) Where the name of an organisation is removed from the list of trade unions maintained under section 8 of the 1974 Act, the Certification Officer shall cancel any certificate of independence in force in respect of that organisation by entering on the record the fact that the organisation's name has been removed from the said list and that the certificate is accordingly cancelled.
- (11) A certificate of independence which is in force, or, as the case may be, a refusal, withdrawal or cancellation of a certificate entered on the record, shall for all purposes be conclusive evidence that the trade union in question is, or, as the case may be, is not, independent; and a document purporting to be such a certificate or a certified copy of such an entry on the record, and to be signed by the Certification Officer or by any person authorised to act on his behalf, shall be taken to be such a certificate or a true copy of such an entry unless the contrary is proved.
- (12) If in any proceedings before any court, the Employment Appeal Tribunal, the Central Arbitration Committee, the Service, or an industrial tribunal a question arises as to whether a trade union is independent and there is no certificate of independence in force and no refusal, withdrawal or cancellation of a certificate recorded in relation to that trade union—
 - (a) the question shall not be decided in those proceedings, and those proceedings shall be stayed or, in Scotland, sisted until a certificate has been issued or refused by the Certification Officer; and
 - (b) the body before whom the proceedings are stayed, or sisted, may refer the question as to the independence of the trade union to the Certification Officer who shall proceed in accordance with subsections (3) to (6) above as if the reference were an application by that trade union.

9 Custody of documents

- (1) The Certification Officer shall take custody of all annual returns, accounts, copies of rules and other documents submitted, for the purposes of the Trade Union Acts 1871 to 1964 or the Industrial Relations Act 1971 or the 1974 Act to the Chief Registrar of Friendly Societies or any assistant registrar, or to the Registrar of Trade Unions and Employers' Associations or any assistant registrar, and which are, on the commencement of this section, in the custody of the Chief Registrar of Friendly Societies or any assistant registrar.
- (2) The Certification Officer shall keep available for public inspection (either free of charge or on payment of a reasonable charge) at all reasonable hours such of the documents referred to in subsection (1) above as are, or were, available for public inspection in pursuance of any of the Acts referred to in that subsection.

10 Central Arbitration Committee

- (1) There shall be a body to be known as the Central Arbitration Committee, in this Act referred to as the " Committee ".

- (2) Any reference in any enactment, statutory instrument or other document to the Industrial Arbitration Board (whether by that or any other name) shall be construed as a reference to the Committee.
- (3) The provisions of Part II and (so far as applicable) Parts I and III of Schedule 1 to this Act shall have effect with respect to the Committee.

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.
- (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;

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- (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—
- (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,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

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- (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.
- (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.

Disclosure of information

17 General duty of employers to disclose information

- (1) For the purposes of all the stages of such collective bargaining between an employer and representatives of an independent trade union as is referred to in subsection (2) below, it shall be the duty of the employer, subject to section 18 below, to disclose to those representatives on request all such information relating to his undertaking as is in his possession, or that of any associated employer, and is both—
- (a) information without which the trade union representatives would be to a material extent impeded in carrying on with him such collective bargaining, and
 - (b) information which it would be in accordance with good industrial relations practice that he should disclose to them for the purposes of collective bargaining.

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- (2) The collective bargaining for the purposes of which an employer must disclose information under subsection (1) above is collective bargaining about matters, and in relation to descriptions of workers.—
- (a) in respect of which the trade union is recognised by that employer; or
 - (b) falling within the scope of an operative recommendation for recognition (within the meaning of section 15 above) relating to the union,
- and in this section and sections 19 to 21 below "representative", in relation to a trade union, means an official or other person authorised by the trade union to carry on such collective bargaining.
- (3) Where a request for information is made by trade union representatives under this section, the request shall, if the employer so requests, be in writing or be confirmed in writing.
- (4) In determining, for the purposes of subsection (1)(b) above, what would be in accordance with good industrial relations practice, regard shall be had to the relevant provisions of any Code of Practice issued by the Service under section 6 above, but not so as to exclude any other evidence of what that practice is.
- (5) Where an employer is required by virtue of this section to disclose any information to trade union representatives, the disclosure of it shall, if they so request, be in writing or be confirmed in writing.

18 Restrictions on general duty under s. 17

- (1) No employer shall, by virtue of section 17 above, be required to disclose—
- (a) any information the disclosure of which would be against the interests of national security, or
 - (b) any information which he could not disclose without contravening a prohibition imposed by or under an enactment, or
 - (c) any information which has been communicated to the employer in confidence, or which the employer has otherwise obtained in consequence of the confidence reposed in him by another person, or
 - (d) any information relating specifically to an individual, unless he has consented to its being disclosed, or
 - (e) any information the disclosure of which would cause substantial injury to the employer's undertaking for reasons other than its effect on collective bargaining, or
 - (f) any information obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings;
- and in formulating the provisions of any Code of Practice relating to the disclosure of information, the Service shall have regard to the provisions of this subsection.
- (2) In the performance of his duty under section 17 above an employer shall not be required—
- (a) to produce, or allow inspection of, any document (other than a document prepared for the purpose of conveying or confirming the information) or to make a copy of or extracts from any document, or
 - (b) to compile or assemble any information where the compilation or assembly would involve an amount of work or expenditure out of reasonable proportion to the value of the information in the conduct of collective bargaining.

19 Complaint of failure to disclose information

- (1) An independent trade union may present to the Central Arbitration Committee, in writing in such form as the Committee may require, a complaint that an employer has failed to disclose to representatives of that trade union information which he was required to disclose to them by section 17 above, or to confirm any such information in writing in accordance with subsection (5) of that section.
- (2) If on receipt of such a complaint the Committee is of the opinion that the complaint is reasonably likely to be settled by conciliation, it shall refer the complaint to the Service and shall notify the trade union and employer accordingly, whereupon the Service shall seek to promote a settlement of the matter.
- (3) If the complaint is not settled or withdrawn and the Service is of the opinion that further attempts at conciliation are unlikely to result in a settlement it shall inform the Committee of its opinion.
- (4) If the complaint is not referred to the Service under subsection (2) above, or, if it is so referred, on the Service informing the Committee of its opinion in accordance with 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) On the hearing of a complaint under this section any person who the Committee considers has a proper interest in the complaint shall be entitled to be heard by the Committee, but a failure to accord a hearing to a person other than the trade union and employer directly concerned shall not affect the validity of any decision of the Committee in those proceedings.
- (6) If the Committee finds the complaint wholly or partly well-founded, the declaration shall specify—
 - (a) the information in respect of which the Committee finds that the complaint is well founded;
 - (b) the date (or, if more than one, the earliest date) on which the employer refused or failed to disclose, or, as the case may be, to confirm in writing, any of the information specified under paragraph (a) above; and
 - (c) a period (not being less than one week from the date of the declaration) within which the employer ought to disclose, or, as the case may be, to confirm in writing, the information specified under paragraph (a) above.
- (7) On a hearing of a complaint under this section a certificate signed by or on behalf of a Minister of the Crown and certifying that a particular request for information could not be complied with except by disclosing information the disclosure of which would have been against the interests of national security shall be conclusive evidence of that fact; and a document which purports to be such a certificate shall be taken to be such a certificate unless the contrary is proved.

20 Further complaint arising from failure to disclose information

- (1) At any time after the expiration of the period specified in a declaration under section 19(6)(c) above the trade union may present to the Committee, in writing in such form as the Committee may require, a complaint (hereafter in this section and section 21 below referred to as a "further complaint") that the employer has failed to

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disclose, or, as the case may be, to confirm in writing, to representatives of that union information specified in the declaration under section 19(6)(a) above.

- (2) On receipt of a further complaint 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.
- (3) On the hearing of a further complaint under this section any person who the Committee considers has a proper interest in the complaint shall be entitled to be heard by the Committee, but a failure to accord a hearing to a person other than the trade union and employer directly concerned shall not affect the validity of any decision of the Committee in those proceedings.
- (4) If the Committee finds the further complaint wholly or partly well-founded the declaration shall specify the information in respect of which the Committee finds that the complaint is well-founded.

21 Determination of claim and award

- (1) On or after presenting a further complaint under section 20 above, the trade union may present to the Committee, in writing, a claim in respect of one or more descriptions of employees (but not workers who are not employees) specified in the claim that their contracts should include the terms and conditions specified in the claim.
- (2) The right to present a claim under subsection (1) above shall expire, or, as the case may be, a claim so presented shall be treated as withdrawn, if at any time before the Committee makes an award under this section the employer discloses, or, as the case may be, confirms in writing, to representatives of the trade union the information specified in the declaration under section 19(6)(a) or, as the case may be, section 20(4) above.
- (3) If the Committee finds, or has found, the further 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 claim the employer shall, from a specified date, observe either—
 - (a) the terms and conditions specified in the claim; or
 - (b) other terms and conditions which the Committee considers appropriate.
- (4) The date specified in an award under subsection (3) above may be a date earlier than that on which the award is made but shall not be earlier than the date specified in accordance with section 19(6)(b) above in the declaration made by the Committee on the original complaint.
- (5) An award under subsection (3) above shall be made only in respect of a description of employees, and shall comprise only terms and conditions relating to matters.—
 - (a) in respect of which the trade union making the claim is recognised by the employer; or
 - (b) which fall within the scope of an operative recommendation for recognition (within the meaning of section 15 above) relating to the trade union making the claim.
- (6) Any terms and conditions which by an award under this section 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—

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- (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.

(7) 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.

- (8) 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.