

EMPLOYMENT RELATIONS ACT 2004

EXPLANATORY NOTES

COMMENTARY

Part One: Union Recognition

Power to amend Schedule A1 of the 1992 Act

104. *Section 15* amends paragraph 166 of Schedule A1. At present paragraph 166 contains limited powers for the Secretary of State to amend paragraphs 22 and 87 of the Schedule, by order, if the CAC informs the Secretary of State that either of these paragraphs has an unsatisfactory effect.
105. *Section 15* widens the scope of paragraph 166, by giving the Secretary of State a general power to amend any provision of the Schedule, if requested to do so by the CAC.
106. *Subsection (2)* replaces paragraphs 166(1) and (2) and inserts new paragraphs 166(2A) and 166(2B).
107. New sub-paragraphs 166(1) and (2) provide for the CAC to ask the Secretary of State to amend any provision of the Schedule if it considers that the provision has an unsatisfactory effect and should be amended. The Secretary of State may seek to rectify the problem either by using other powers to amend the Schedule where the provision is among those to which the powers apply or by using the new power in paragraph 166(2)(b).
108. Sub-paragraph (2A) clarifies that the Secretary of State has a discretion to amend the Schedule in any way and not just in a way suggested by the CAC. Sub-paragraph (2B) makes clear that the Secretary of State may use the powers, mentioned in sub-paragraph (2)(a), to amend the Schedule without the need for any representation from the CAC.
109. This section will not alter the requirement in paragraph 166 that any change to the Schedule, whether under the specific or general power, must be by means of an order that is approved by both Houses of Parliament.