

## **EMPLOYMENT RELATIONS ACT 2004**

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### **EXPLANATORY NOTES**

#### **COMMENTARY**

#### **Part Three: Rights of Trade Union Members, Workers and Employees**

#### **Role of companion at disciplinary or grievance hearing**

263. *Section 37* clarifies the role of the companion at disciplinary hearings by amending section 10 of the 1999 Act. New subsections (2A), (2B) and (2C) replace the current subsection (2). New subsection (2A) reiterates that the employer must permit the worker to choose the companion as long as the companion falls within the category of people in subsection (3) (which is not being amended).
264. New subsection (2B) expands on what the employer must permit the companion to do at a hearing. Paragraph (a) of subsection (2B) provides that the companion will now be able to address the hearing to (i) put the worker's case; (ii) sum up that case; and (iii) respond on the worker's behalf to any view expressed at the hearing. Paragraph (b) of subsection (2B) repeats the current provision in the 1999 Act that the companion may confer with the worker during the hearing. The companion is thus able to address the hearing on more than one occasion, and is entitled to respond to views expressed.
265. New subsection (2C) provides that the employer is not required to permit the companion to answer questions on the worker's behalf (paragraph (a)), address the hearing if the worker indicates that he does not wish the companion to do so (paragraph (b)), or use the powers in a way that prevents the employer from explaining his case or any other person making his contribution (paragraph (c)).
266. *Subsection (2)* of section 37 ensures that references to the right to be accompanied in section 11 of the 1999 Act refer to the extended meaning specified in subsections (2A) and (2B).
267. *Subsection (3)* adds a new subsection (3A) to section 12 of the 1999 Act. It makes it clear that where a worker attends a hearing as a companion of another worker, he is protected against detriment and dismissal not only in respect of the act of accompanying the worker but also for addressing or seeking to address the hearing (as permitted under new subsection (2B)).