



# Employment Relations Act 2004

## 2004 CHAPTER 24

### PART 1

#### UNION RECOGNITION

#### **1 Application for decision on whether proposed bargaining unit is appropriate**

(1) In paragraph 11(2) of Schedule A1 to the 1992 Act (application to CAC where employer fails to respond to or rejects request for recognition), for paragraph (a) substitute—

“(a) whether the proposed bargaining unit is appropriate;”.

(2) In paragraph 12(2) of that Schedule (application to CAC where negotiations with employer fail), for paragraph (a) substitute—

“(a) whether the proposed bargaining unit is appropriate;”.

#### **Commencement Information**

II S. 1 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch. (with art. 6)

#### **2 Power of the CAC to end period for agreement on bargaining unit**

(1) Paragraph 18 of Schedule A1 to the 1992 Act (appropriate bargaining unit) is amended as follows.

(2) In sub-paragraph (2), after “is” insert “ (subject to any notice under sub-paragraph (3), (4) or (5)) ”.

(3) After that sub-paragraph add—

“(3) If, during the appropriate period, the CAC concludes that there is no reasonable prospect of the parties' agreeing an appropriate bargaining unit before the time when (apart from this sub-paragraph) the appropriate period

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would end, the CAC may, by a notice given to the parties, declare that the appropriate period ends with the date of the notice.

- (4) If, during the appropriate period, the parties apply to the CAC for a declaration that the appropriate period is to end with a date (specified in the application) which is earlier than the date with which it would otherwise end, the CAC may, by a notice given to the parties, declare that the appropriate period ends with the specified date.
- (5) If the CAC has declared under sub-paragraph (4) that the appropriate period ends with a specified date, it may before that date by a notice given to the parties specify a later date with which the appropriate period ends.
- (6) A notice under sub-paragraph (3) must contain reasons for reaching the conclusion mentioned in that sub-paragraph.
- (7) A notice under sub-paragraph (5) must contain reasons for the extension of the appropriate period.”

#### **Commencement Information**

**I2** S. 2 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch. (with art. 6)

### **3 Duty of employer to supply information to union**

After paragraph 18 of Schedule A1 to the 1992 Act insert—

- “18A (1) This paragraph applies if the CAC accepts an application under paragraph 11(2) or 12(2).
- (2) Within 5 working days starting with the day after that on which the CAC gives the employer notice of acceptance of the application, the employer must supply the following information to the union (or unions) and the CAC—
    - (a) a list of the categories of worker in the proposed bargaining unit,
    - (b) a list of the workplaces at which the workers in the proposed bargaining unit work, and
    - (c) the number of workers the employer reasonably believes to be in each category at each workplace.
  - (3) The lists and numbers supplied under this paragraph must be as accurate as is reasonably practicable in the light of the information in the possession of the employer at the time when he complies with sub-paragraph (2).
  - (4) The lists and numbers supplied to the union (or unions) and to the CAC must be the same.
  - (5) For the purposes of this paragraph, the workplace at which a worker works is—
    - (a) if the person works at or from a single set of premises, those premises, and
    - (b) in any other case, the premises with which the worker’s employment has the closest connection.”

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### Commencement Information

**I3** S. 3 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch. (with art. 6)

## 4 Determination of appropriate bargaining unit

For paragraph 19 of Schedule A1 to the 1992 Act substitute—

- “19 (1) This paragraph applies if—
- (a) the CAC accepts an application under paragraph 11(2) or 12(2),
  - (b) the parties have not agreed an appropriate bargaining unit at the end of the appropriate period (defined by paragraph 18), and
  - (c) at the end of that period either no request under paragraph 19A(1)(b) has been made or such a request has been made but the condition in paragraph 19A(1)(c) has not been met.
- (2) Within the decision period, the CAC must decide whether the proposed bargaining unit is appropriate.
- (3) If the CAC decides that the proposed bargaining unit is not appropriate, it must also decide within the decision period a bargaining unit which is appropriate.
- (4) The decision period is—
- (a) the period of 10 working days starting with the day after that with which the appropriate period ends, or
  - (b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.
- 19A (1) This paragraph applies if—
- (a) the CAC accepts an application under paragraph 11(2) or 12(2),
  - (b) during the appropriate period (defined by paragraph 18), the CAC is requested by the union (or unions) to make a decision under this paragraph, and
  - (c) the CAC is, either at the time the request is made or at a later time during the appropriate period, of the opinion that the employer has failed to comply with the duty imposed by paragraph 18A.
- (2) Within the decision period, the CAC must decide whether the proposed bargaining unit is appropriate.
- (3) If the CAC decides that the proposed bargaining unit is not appropriate, it must also decide within the decision period a bargaining unit which is appropriate.
- (4) The decision period is—
- (a) the period of 10 working days starting with the day after the day on which the request is made, or
  - (b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

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- 19B (1) This paragraph applies if the CAC has to decide whether a bargaining unit is appropriate for the purposes of paragraph 19(2) or (3) or 19A(2) or (3).
- (2) The CAC must take these matters into account—
- (a) the need for the unit to be compatible with effective management;
  - (b) the matters listed in sub-paragraph (3), so far as they do not conflict with that need.
- (3) The matters are—
- (a) the views of the employer and of the union (or unions);
  - (b) existing national and local bargaining arrangements;
  - (c) the desirability of avoiding small fragmented bargaining units within an undertaking;
  - (d) the characteristics of workers falling within the bargaining unit under consideration and of any other employees of the employer whom the CAC considers relevant;
  - (e) the location of workers.
- (4) In taking an employer’s views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the CAC must take into account any view the employer has about any other bargaining unit that he considers would be appropriate.
- (5) The CAC must give notice of its decision to the parties.”

#### Commencement Information

**I4** S. 4 in force at 6.4.2005 by [S.I. 2005/872](#), art. 4, [Sch.](#) (with art. 6)

## 5 Union communications with workers after acceptance of application

- (1) After paragraph 19B of Schedule A1 to the 1992 Act (which is inserted by section 4) insert—

### “Union communications with workers after acceptance of application

- 19C (1) This paragraph applies if the CAC accepts an application under paragraph 11(2) or 12(2) or (4).
- (2) The union (or unions) may apply to the CAC for the appointment of a suitable independent person to handle communications during the initial period between the union (or unions) and the relevant workers.
- (3) In the case of an application under paragraph 11(2) or 12(2), the relevant workers are—
- (a) in relation to any time before an appropriate bargaining unit is agreed by the parties or decided by the CAC, those falling within the proposed bargaining unit, and

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- (b) in relation to any time after an appropriate bargaining unit is so agreed or decided, those falling within the bargaining unit agreed or decided upon.
  - (4) In the case of an application under paragraph 12(4), the relevant workers are those falling within the bargaining unit agreed by the parties.
  - (5) The initial period is the period starting with the day on which the CAC informs the parties under sub-paragraph (7)(b) and ending with the first day on which any of the following occurs—
    - (a) the application under paragraph 11 or 12 is withdrawn;
    - (b) the CAC gives notice to the union (or unions) of a decision under paragraph 20 that the application is invalid;
    - (c) the CAC notifies the union (or unions) of a declaration issued under paragraph 19F(5) or 22(2);
    - (d) the CAC informs the union (or unions) under paragraph 25(9) of the name of the person appointed to conduct a ballot.
  - (6) A person is a suitable independent person if—
    - (a) he satisfies such conditions as may be specified for the purposes of paragraph 25(7)(a) by an order under that provision, or is himself specified for those purposes by such an order, and
    - (b) there are no grounds for believing either that he will carry out any functions arising from his appointment otherwise than competently or that his independence in relation to those functions might reasonably be called into question.
  - (7) On an application under sub-paragraph (2) the CAC must as soon as reasonably practicable—
    - (a) make such an appointment as is mentioned in that sub-paragraph, and
    - (b) inform the parties of the name of the person appointed and the date of his appointment.
  - (8) The person appointed by the CAC is referred to in paragraphs 19D and 19E as “the appointed person”.
- 19D (1) An employer who is informed by the CAC under paragraph 19C(7)(b) must comply with the following duties (so far as it is reasonable to expect him to do so).
- (2) The duties are—
    - (a) to give to the CAC, within the period of 10 working days starting with the day after that on which the employer is informed under paragraph 19C(7)(b), the names and home addresses of the relevant workers;
    - (b) if the relevant workers change as a result of an appropriate bargaining unit being agreed by the parties or decided by the CAC, to give to the CAC, within the period of 10 working days starting with the day after that on which the bargaining unit is agreed or the CAC’s decision is notified to the employer, the names and home addresses of those who are now the relevant workers;

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- (c) to give to the CAC, as soon as reasonably practicable, the name and home address of any worker who joins the bargaining unit after the employer has complied with paragraph (a) or (b);
  - (d) to inform the CAC, as soon as reasonably practicable, of any worker whose name has been given to the CAC under paragraph (a), (b) or (c) and who ceases to be a relevant worker (otherwise than by reason of a change mentioned in paragraph (b)).
- (3) Nothing in sub-paragraph (2) requires the employer to give information to the CAC after the end of the initial period.
- (4) As soon as reasonably practicable after the CAC receives any information under sub-paragraph (2), it must pass it on to the appointed person.
- 19E (1) During the initial period, the appointed person must if asked to do so by the union (or unions) send to any worker—
- (a) whose name and home address have been passed on to him under paragraph 19D(4), and
  - (b) who is (so far as the appointed person is aware) still a relevant worker,
- any information supplied by the union (or unions) to the appointed person.
- (2) The costs of the appointed person shall be borne—
- (a) if the application under paragraph 19C was made by one union, by the union, and
  - (b) if that application was made by more than one union, by the unions in such proportions as they jointly indicate to the appointed person or, in the absence of such an indication, in equal shares.
- (3) The appointed person may send to the union (or each of the unions) a demand stating his costs and the amount of those costs to be borne by the recipient.
- (4) In such a case the recipient must pay the amount stated to the person sending the demand and must do so within the period of 15 working days starting with the day after that on which the demand is received.
- (5) In England and Wales, if the amount stated is not paid in accordance with sub-paragraph (4) it shall, if a county court so orders, be recoverable by execution issued from that court or otherwise as if it were payable under an order of that court.
- (6) Where an amount is recoverable under sub-paragraph (5) execution may be carried out, to the same extent and in the same manner as if the union were a body corporate, against any property held in trust for the union other than protected property as defined in section 23(2).
- (7) References to the costs of the appointed person are to—
- (a) the costs wholly, exclusively and necessarily incurred by the appointed person in connection with handling during the initial period communications between the union (or unions) and the relevant workers,

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- (b) such reasonable amount as the appointed person charges for his services, and
  - (c) such other costs as the union (or unions) agree.
- 19F (1) If the CAC is satisfied that the employer has failed to fulfil a duty mentioned in paragraph 19D(2), and the initial period has not yet ended, the CAC may order the employer—
- (a) to take such steps to remedy the failure as the CAC considers reasonable and specifies in the order, and
  - (b) to do so within such period as the CAC considers reasonable and specifies in the order;
- and in this paragraph a “remedial order” means an order under this sub-paragraph.
- (2) If the CAC is satisfied that the employer has failed to comply with a remedial order and the initial period has not yet ended, the CAC must as soon as reasonably practicable notify the employer and the union (or unions) that it is satisfied that the employer has failed to comply.
- (3) A remedial order and a notice under sub-paragraph (2) must draw the recipient’s attention to the effect of sub-paragraphs (4) and (5).
- (4) Sub-paragraph (5) applies if—
- (a) the CAC is satisfied that the employer has failed to comply with a remedial order,
  - (b) the parties have agreed an appropriate bargaining unit or the CAC has decided an appropriate bargaining unit,
  - (c) in the case of an application under paragraph 11(2) or 12(2), the CAC, if required to do so, has decided under paragraph 20 that the application is not invalid, and
  - (d) the initial period has not yet ended.
- (5) The CAC may issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit.”
- (2) In each of paragraphs 22(1)(a) and 23(1)(a) of Schedule A1 to the 1992 Act (procedure when CAC proceeds with an application in accordance with paragraph 20 or 21), after “or 21” insert “ (and makes no declaration under paragraph 19F(5)) ”.
- (3) In paragraph 26 of that Schedule (duties of employer where ballot on union recognition is to be held), in sub-paragraph (4)(c), for “(a) or (b) but” substitute “ 19D or paragraph (a) or (b) of this sub-paragraph and ”.
- (4) In that paragraph, after sub-paragraph (4E) (which is inserted by section 9) insert—
- “(4F) Sub-paragraph (4)(a) does not apply to names and addresses that the employer has already given to the CAC under paragraph 19D.
- (4G) Where (because of sub-paragraph (4F)) the employer does not have to comply with sub-paragraph (4)(a), the reference in sub-paragraph (4)(b) to the time when the employer complied with sub-paragraph (4)(a) is to be read as a reference to the time when the employer is informed under paragraph 25(9).
- (4H) If—

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- (a) a person was appointed on an application under paragraph 19C, and
  - (b) the person appointed to conduct the ballot is not that person,
- the CAC must, as soon as is reasonably practicable, pass on to the person appointed to conduct the ballot the names and addresses given to it under paragraph 19D.”

- (5) In that paragraph, in sub-paragraph (6) for “given under sub-paragraph (5)” substitute “passed on to him under paragraph 19D or this paragraph”.

#### Commencement Information

**I5** S. 5 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch. (with art. 6)

### 6 Circumstances in which the CAC must arrange a ballot

- (1) In paragraph 22(4) of Schedule A1 to the 1992 Act (qualifying conditions requiring the CAC to hold a ballot of workers in bargaining unit), for paragraph (b) substitute—

“(b) the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;”.

- (2) In paragraph 87(4) of that Schedule (qualifying conditions requiring the CAC to hold a ballot of workers in new bargaining unit), for paragraph (b) substitute—

“(b) the CAC has evidence, which it considers to be credible, from a significant number of the union members within the new bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;”.

#### Commencement Information

**I6** S. 6 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch. (with art. 6)

### 7 Power of the CAC to extend notification period

In paragraph 24 of Schedule A1 to the 1992 Act (notification to halt arrangements for ballot), for sub-paragraph (5) substitute—

“(5) The notification period is, in relation to notification by the union (or unions)

- (a) the period of 10 working days starting with the day on which the union (or last of the unions) receives the CAC’s notice under paragraph 22(3) or 23(2), or
- (b) such longer period so starting as the CAC may specify to the parties by notice.

(6) The notification period is, in relation to notification by the union (or unions) and the employer—

- (a) the period of 10 working days starting with the day on which the last of the parties receives the CAC’s notice under paragraph 22(3) or 23(2), or



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(b) such longer period so starting as the CAC may specify to the parties by notice.

(7) The CAC may give a notice under sub-paragraph (5)(b) or (6)(b) only if the parties have applied jointly to it for the giving of such a notice.”

#### Commencement Information

**I7** S. 7 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch. (with art. 6)

### 8 Postal votes for workers absent from ballot at workplace

(1) In paragraph 25 of Schedule A1 to the 1992 Act (recognition ballots), after sub-paragraph (6) insert—

“(6A) If the CAC decides that the ballot must (in whole or in part) be conducted at a workplace (or workplaces), it may require arrangements to be made for workers—

(a) who (but for the arrangements) would be prevented by the CAC’s decision from voting by post, and

(b) who are unable, for reasons relating to those workers as individuals, to cast their votes in the ballot at the workplace (or at any of them),

to be given the opportunity (if they request it far enough in advance of the ballot for this to be practicable) to vote by post; and the CAC’s imposing such a requirement is not to be treated for the purposes of sub-paragraph (6) as a decision that the ballot be conducted as mentioned in sub-paragraph (4) (c).”

(2) In paragraph 117 of that Schedule (derecognition ballots), after sub-paragraph (8) insert—

“(8A) If the CAC decides that the ballot must (in whole or in part) be conducted at a workplace (or workplaces), it may require arrangements to be made for workers—

(a) who (but for the arrangements) would be prevented by the CAC’s decision from voting by post, and

(b) who are unable, for reasons relating to those workers as individuals, to cast their votes in the ballot at the workplace (or at any of them),

to be given the opportunity (if they request it far enough in advance of the ballot for this to be practicable) to vote by post; and the CAC’s imposing such a requirement is not to be treated for the purposes of sub-paragraph (8) as a decision that the ballot be conducted as mentioned in sub-paragraph (6) (c).”

#### Commencement Information

**I8** S. 8 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch. (with art. 7)

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## 9 Additional duties on employers informed of ballots

- (1) Paragraph 26 of Schedule A1 to the 1992 Act (duties of employer informed of requirement to arrange ballot on recognition etc) is amended in accordance with subsections (2) to (4).
- (2) In sub-paragraph (1) for “three” substitute “ five ”.
- (3) After sub-paragraph (4) insert—
  - “(4A) The fourth duty is to refrain from making any offer to any or all of the workers constituting the bargaining unit which—
    - (a) has or is likely to have the effect of inducing any or all of them not to attend any relevant meeting between the union (or unions) and the workers constituting the bargaining unit, and
    - (b) is not reasonable in the circumstances.
  - (4B) The fifth duty is to refrain from taking or threatening to take any action against a worker solely or mainly on the grounds that he—
    - (a) attended or took part in any relevant meeting between the union (or unions) and the workers constituting the bargaining unit, or
    - (b) indicated his intention to attend or take part in such a meeting.
  - (4C) A meeting is a relevant meeting in relation to a worker for the purposes of sub-paragraphs (4A) and (4B) if—
    - (a) it is organised in accordance with any agreement reached concerning the second duty or as a result of a step ordered to be taken under paragraph 27 to remedy a failure to comply with that duty, and
    - (b) it is one which the employer is, by such an agreement or order as is mentioned in paragraph (a), required to permit the worker to attend.
  - (4D) Without prejudice to the generality of the second duty imposed by this paragraph, an employer is to be taken to have failed to comply with that duty if—
    - (a) he refuses a request for a meeting between the union (or unions) and any or all of the workers constituting the bargaining unit to be held in the absence of the employer or any representative of his (other than one who has been invited to attend the meeting) and it is not reasonable in the circumstances for him to do so,
    - (b) he or a representative of his attends such a meeting without having been invited to do so,
    - (c) he seeks to record or otherwise be informed of the proceedings at any such meeting and it is not reasonable in the circumstances for him to do so, or
    - (d) he refuses to give an undertaking that he will not seek to record or otherwise be informed of the proceedings at any such meeting unless it is reasonable in the circumstances for him to do either of those things.

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- (4E) The fourth and fifth duties do not confer any rights on a worker; but that does not affect any other right which a worker may have.”
- (4) For sub-paragraph (8) substitute—
- “(8) Each of the powers specified in sub-paragraph (9) shall be taken to include power to issue Codes of Practice—
- (a) about reasonable access for the purposes of sub-paragraph (3), and
  - (b) about the fourth duty imposed by this paragraph.
- (9) The powers are—
- (a) the power of ACAS under section 199(1);
  - (b) the power of the Secretary of State under section 203(1)(a).”
- (5) In paragraph 27(1) of that Schedule (remedial order in case of employer’s failure to comply with duties under paragraph 26) for “three duties imposed” substitute “duties imposed on him ”.
- (6) Paragraph 118 of that Schedule (duties of employer informed of requirement to arrange ballot on derecognition etc) is amended in accordance with subsections (7) to (9).
- (7) In sub-paragraph (1) for “three” substitute “ five ”.
- (8) After sub-paragraph (4) insert—
- “(4A) The fourth duty is to refrain from making any offer to any or all of the workers constituting the bargaining unit which—
- (a) has or is likely to have the effect of inducing any or all of them not to attend any relevant meeting between the union (or unions) and the workers constituting the bargaining unit, and
  - (b) is not reasonable in the circumstances.
- (4B) The fifth duty is to refrain from taking or threatening to take any action against a worker solely or mainly on the grounds that he—
- (a) attended or took part in any relevant meeting between the union (or unions) and the workers constituting the bargaining unit, or
  - (b) indicated his intention to attend or take part in such a meeting.
- (4C) A meeting is a relevant meeting in relation to a worker for the purposes of sub-paragraph (4A) and (4B) if—
- (a) it is organised in accordance with any agreement reached concerning the second duty or as a result of a step ordered to be taken under paragraph 119 to remedy a failure to comply with that duty, and
  - (b) it is one which the employer is, by such an agreement or order as is mentioned in paragraph (a), required to permit the worker to attend.
- (4D) Without prejudice to the generality of the second duty imposed by this paragraph, an employer is to be taken to have failed to comply with that duty if—
- (a) he refuses a request for a meeting between the union (or unions) and any or all of the workers constituting the bargaining unit to be held in the absence of the employer or any representative of his (other

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than one who has been invited to attend the meeting) and it is not reasonable in the circumstances for him to do so,

- (b) he or a representative of his attends such a meeting without having been invited to do so,
- (c) he seeks to record or otherwise be informed of the proceedings at any such meeting and it is not reasonable in the circumstances for him to do so, or
- (d) he refuses to give an undertaking that he will not seek to record or otherwise be informed of the proceedings at any such meeting unless it is reasonable in the circumstances for him to do either of those things.

(4E) The fourth and fifth duties do not confer any rights on a worker; but that does not affect any other right which a worker may have.”

(9) For sub-paragraph (8) substitute—

“(8) Each of the powers specified in sub-paragraph (9) shall be taken to include power to issue Codes of Practice—

- (a) about reasonable access for the purposes of sub-paragraph (3), and
- (b) about the fourth duty imposed by this paragraph.

(9) The powers are—

- (a) the power of ACAS under section 199(1);
- (b) the power of the Secretary of State under section 203(1)(a).”

(10) In paragraph 119(1) of that Schedule (remedial order in case of employer’s failure to comply with duties under paragraph 118) for “three duties imposed” substitute “duties imposed on him ”.

VALID FROM 01/10/2005

## **10 Unfair practices in relation to recognition ballots**

(1) After paragraph 27 of Schedule A1 to the 1992 Act insert—

“27A (1) Each of the parties informed by the CAC under paragraph 25(9) must refrain from using any unfair practice.

(2) A party uses an unfair practice if, with a view to influencing the result of the ballot, the party—

- (a) offers to pay money or give money’s worth to a worker entitled to vote in the ballot in return for the worker’s agreement to vote in a particular way or to abstain from voting,
- (b) makes an outcome-specific offer to a worker entitled to vote in the ballot,
- (c) coerces or attempts to coerce a worker entitled to vote in the ballot to disclose—
  - (i) whether he intends to vote or to abstain from voting in the ballot, or

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- (ii) how he intends to vote, or how he has voted, in the ballot,
    - (d) dismisses or threatens to dismiss a worker,
    - (e) takes or threatens to take disciplinary action against a worker,
    - (f) subjects or threatens to subject a worker to any other detriment, or
    - (g) uses or attempts to use undue influence on a worker entitled to vote in the ballot.
  - (3) For the purposes of sub-paragraph (2)(b) an “outcome-specific offer” is an offer to pay money or give money’s worth which—
    - (a) is conditional on the issuing by the CAC of a declaration that—
      - (i) the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit, or
      - (ii) the union is (or unions are) not entitled to be so recognised, and
    - (b) is not conditional on anything which is done or occurs as a result of the declaration in question.
  - (4) The duty imposed by this paragraph does not confer any rights on a worker; but that does not affect any other right which a worker may have.
  - (5) Each of the following powers shall be taken to include power to issue Codes of Practice about unfair practices for the purposes of this paragraph—
    - (a) the power of ACAS under section 199(1);
    - (b) the power of the Secretary of State under section 203(1)(a).
- 27B
- (1) A party may complain to the CAC that another party has failed to comply with paragraph 27A.
  - (2) A complaint under sub-paragraph (1) must be made on or before the first working day after—
    - (a) the date of the ballot, or
    - (b) if votes may be cast in the ballot on more than one day, the last of those days.
  - (3) Within the decision period the CAC must decide whether the complaint is well-founded.
  - (4) A complaint is well-founded if—
    - (a) the CAC finds that the party complained against used an unfair practice, and
    - (b) the CAC is satisfied that the use of that practice changed or was likely to change, in the case of a worker entitled to vote in the ballot—
      - (i) his intention to vote or to abstain from voting,
      - (ii) his intention to vote in a particular way, or
      - (iii) how he voted.

*Status: Point in time view as at 06/04/2005. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 2004, Part 1. (See end of Document for details)*

- (5) The decision period is—
- (a) the period of 10 working days starting with the day after that on which the complaint under sub-paragraph (1) was received by the CAC, or
  - (b) such longer period (so starting) as the CAC may specify to the parties by a notice containing reasons for the extension.
- (6) If, at the beginning of the decision period, the ballot has not begun, the CAC may by notice to the parties and the qualified independent person postpone the date on which it is to begin until a date which falls after the end of the decision period.
- 27C (1) This paragraph applies if the CAC decides that a complaint under paragraph 27B is well-founded.
- (2) The CAC must, as soon as is reasonably practicable, issue a declaration to that effect.
- (3) The CAC may do either or both of the following—
- (a) order the party concerned to take any action specified in the order within such period as may be so specified, or
  - (b) give notice to the employer and to the union (or unions) that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.
- (4) The CAC may give an order or a notice under sub-paragraph (3) either at the same time as it issues the declaration under sub-paragraph (2) or at any other time before it acts under paragraph 29.
- (5) The action specified in an order under sub-paragraph (3)(a) shall be such as the CAC considers reasonable in order to mitigate the effect of the failure of the party concerned to comply with the duty imposed by paragraph 27A.
- (6) The CAC may give more than one order under sub-paragraph (3)(a).
- 27D (1) This paragraph applies if the CAC issues a declaration under paragraph 27C(2) and the declaration states that the unfair practice used consisted of or included—
- (a) the use of violence, or
  - (b) the dismissal of a union official.
- (2) This paragraph also applies if the CAC has made an order under paragraph 27C(3)(a) and—
- (a) it is satisfied that the party subject to the order has failed to comply with it, or
  - (b) it makes another declaration under paragraph 27C(2) in relation to a complaint against that party.

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*Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 2004, Part 1. (See end of Document for details)*

- (3) If the party concerned is the employer, the CAC may issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit.
  - (4) If the party concerned is a union, the CAC may issue a declaration that the union is (or unions are) not entitled to be so recognised.
  - (5) The powers conferred by this paragraph are in addition to those conferred by paragraph 27C(3).
- 27E
- (1) This paragraph applies if the CAC issues a declaration that a complaint under paragraph 27B is well-founded and—
    - (a) gives a notice under paragraph 27C(3)(b), or
    - (b) issues a declaration under paragraph 27D.
  - (2) If the ballot in connection with which the complaint was made has not been held, the CAC shall take steps to cancel it.
  - (3) If that ballot is held, it shall have no effect.
- 27F
- (1) This paragraph applies if the CAC gives a notice under paragraph 27C(3)(b).
  - (2) Paragraphs 24 to 29 apply in relation to that notice as they apply in relation to a notice given under paragraph 22(3) or 23(2) but with the modifications specified in sub-paragraphs (3) to (6).
  - (3) In each of sub-paragraphs (5)(a) and (6)(a) of paragraph 24 for “10 working days” substitute “ 5 working days ”.
  - (4) An employer’s duty under paragraph (a) of paragraph 26(4) is limited to—
    - (a) giving the CAC the names and home addresses of any workers in the bargaining unit which have not previously been given to it in accordance with that duty;
    - (b) giving the CAC the names and home addresses of those workers who have joined the bargaining unit since he last gave the CAC information in accordance with that duty;
    - (c) informing the CAC of any change to the name or home address of a worker whose name and home address have previously been given to the CAC in accordance with that duty; and
    - (d) informing the CAC of any worker whose name had previously been given to it in accordance with that duty who has ceased to be within the bargaining unit.
  - (5) Any order given under paragraph 27(1) or 27C(3)(a) for the purposes of the cancelled or ineffectual ballot shall have effect (to the extent that the CAC specifies in a notice to the parties) as if it were made for the purposes of the ballot to which the notice under paragraph 27C(3)(b) relates.

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*Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 2004, Part 1. (See end of Document for details)*

(6) The gross costs of the ballot shall be borne by such of the parties and in such proportions as the CAC may determine and, accordingly, sub-paragraphs (2) and (3) of paragraph 28 shall be omitted and the reference in sub-paragraph (4) of that paragraph to the employer and the union (or each of the unions) shall be construed as a reference to the party or parties which bear the costs in accordance with the CAC’s determination.”

(2) In paragraph 29 of that Schedule (duties of the CAC when informed of result of ballot), after sub-paragraph (1) insert—

“(1A) The duty in sub-paragraph (1) does not apply if the CAC gives a notice under paragraph 27C(3)(b).”

## 11 Application where agreement does not cover pay, hours and holidays

In each of paragraphs 35(2)(b) and 44(2)(b) of Schedule A1 to the 1992 Act (application neither inadmissible nor invalid by reason of existing agreement if the agreement does not include certain matters) for “pay, hours or holidays” substitute “all of the following: pay, hours and holidays (“the core topics”)”.

### Commencement Information

**19** S. 11 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch. (with art. 8)

## 12 Employer’s notice to end bargaining arrangements

(1) Paragraph 99 of Schedule A1 to the 1992 Act (employer’s notice to bring bargaining arrangements to an end on grounds that fewer than 21 workers employed) is amended in accordance with subsections (2) and (3).

(2) In sub-paragraph (3) (notice must comply with certain requirements), before paragraph (a) insert—

“(za) is not invalidated by paragraph 99A,”.

(3) In sub-paragraph (7)(a), for “100” substitute “99A”.

(4) After paragraph 99 of that Schedule insert—

“99A (1) A notice given for the purposes of paragraph 99(2) (“the notice in question”) is invalidated by this paragraph if—

- (a) a relevant application was made, or an earlier notice under paragraph 99(2) was given, within the period of 3 years prior to the date when the notice in question was given,
- (b) the relevant application, or that earlier notice, and the notice in question relate to the same bargaining unit, and
- (c) the CAC accepted the relevant application or (as the case may be) decided under paragraph 100 that the earlier notice under paragraph 99(2) complied with paragraph 99(3).

(2) A relevant application is an application made to the CAC—

- (a) by the employer under paragraph 106, 107 or 128, or



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- (b) by a worker (or workers) under paragraph 112.”
- (5) In paragraph 100(1) of that Schedule (the CAC must decide whether notice complies with paragraph 99(3)), at the beginning insert “ If an employer gives notice for the purposes of paragraph 99(2), ”.
- (6) In paragraph 101 of that Schedule (union’s application to challenge employer’s notice under paragraph 99), omit sub-paragraphs (4) and (5).
- (7) In paragraph 103 of that Schedule, after sub-paragraph (3) insert—
- “(3A) Sub-paragraph (3) does not prevent the notice from being treated for the purposes of the provisions mentioned in sub-paragraph (3B) as having been given.
- (3B) Those provisions are—
- (a) paragraphs 109(1), 113(1) and 130(1);
- (b) paragraph 99A(1) in its application to a later notice given for the purposes of paragraph 99(2).”
- (8) In sub-paragraph (1) of each of paragraphs 109, 113 and 130 of that Schedule (bar on applications for ending bargaining arrangements if relevant application made within previous 3 years)—
- (a) in paragraph (a), after “was made” insert “ , or a notice under paragraph 99(2) was given, ”;
- (b) in paragraph (b), after “the relevant application” insert “ , or notice under paragraph 99(2), ”; and
- (c) in paragraph (c), at the end insert “ or (as the case may be) decided under paragraph 100 that the notice complied with paragraph 99(3) ”.
- (9) In sub-paragraph (2) of each of those paragraphs (meaning of “relevant application”), omit paragraph (a).

#### Commencement Information

**I10** S. 12 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch. (with art. 9(1))

VALID FROM 01/10/2005

### 13 Unfair practices in relation to derecognition ballots

- (1) After paragraph 119 of Schedule A1 to the 1992 Act insert—

“119A (1) Each of the parties informed by the CAC under paragraph 117(11) must refrain from using any unfair practice.

- (2) A party uses an unfair practice if, with a view to influencing the result of the ballot, the party—

- (a) offers to pay money or give money’s worth to a worker entitled to vote in the ballot in return for the worker’s agreement to vote in a particular way or to abstain from voting,

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*Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 2004, Part 1. (See end of Document for details)*

- (b) makes an outcome-specific offer to a worker entitled to vote in the ballot,
  - (c) coerces or attempts to coerce a worker entitled to vote in the ballot to disclose—
    - (i) whether he intends to vote or to abstain from voting in the ballot, or
    - (ii) how he intends to vote, or how he has voted, in the ballot,
  - (d) dismisses or threatens to dismiss a worker,
  - (e) takes or threatens to take disciplinary action against a worker,
  - (f) subjects or threatens to subject a worker to any other detriment, or
  - (g) uses or attempts to use undue influence on a worker entitled to vote in the ballot.
- (3) For the purposes of sub-paragraph (2)(b) an “outcome-specific offer” is an offer to pay money or give money’s worth which—
- (a) is conditional on—
    - (i) the issuing by the CAC of a declaration that the bargaining arrangements are to cease to have effect, or
    - (ii) the refusal by the CAC of an application under paragraph 106, 107 or 112, and
  - (b) is not conditional on anything which is done or occurs as a result of that declaration or, as the case may be, of that refusal.
- (4) The duty imposed by this paragraph does not confer any rights on a worker; but that does not affect any other right which a worker may have.
- (5) Each of the following powers shall be taken to include power to issue Codes of Practice about unfair practices for the purposes of this paragraph—
- (a) the power of ACAS under section 199(1);
  - (b) the power of the Secretary of State under section 203(1)(a).
- 119B (1) A party may complain to the CAC that another party has failed to comply with paragraph 119A.
- (2) A complaint under sub-paragraph (1) must be made on or before the first working day after—
- (a) the date of the ballot, or
  - (b) if votes may be cast in the ballot on more than one day, the last of those days.
- (3) Within the decision period the CAC must decide whether the complaint is well-founded.
- (4) A complaint is well-founded if—
- (a) the CAC finds that the party complained against used an unfair practice, and

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- (b) the CAC is satisfied that the use of that practice changed or was likely to change, in the case of a worker entitled to vote in the ballot—
      - (i) his intention to vote or to abstain from voting,
      - (ii) his intention to vote in a particular way, or
      - (iii) how he voted.
  - (5) The decision period is—
    - (a) the period of 10 working days starting with the day after that on which the complaint under sub-paragraph (1) was received by the CAC, or
    - (b) such longer period (so starting) as the CAC may specify to the parties by a notice containing reasons for the extension.
  - (6) If, at the beginning of the decision period, the ballot has not begun, the CAC may by notice to the parties and the qualified independent person postpone the date on which it is to begin until a date which falls after the end of the decision period.
- 119C
- (1) This paragraph applies if the CAC decides that a complaint under paragraph 119B is well-founded.
  - (2) The CAC must, as soon as is reasonably practicable, issue a declaration to that effect.
  - (3) The CAC may do either or both of the following—
    - (a) order the party concerned to take any action specified in the order within such period as may be so specified, or
    - (b) make arrangements for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether the bargaining arrangements should be ended.
  - (4) The CAC may give an order or make arrangements under sub-paragraph (3) either at the same time as it issues the declaration under sub-paragraph (2) or at any other time before it acts under paragraph 121.
  - (5) The action specified in an order under sub-paragraph (3)(a) shall be such as the CAC considers reasonable in order to mitigate the effect of the failure of the party complained against to comply with the duty imposed by paragraph 119A.
  - (6) The CAC may give more than one order under sub-paragraph (3)(a).
- 119D
- (1) This paragraph applies if the CAC issues a declaration under paragraph 119C(2) and the declaration states that the unfair practice used consisted of or included—
    - (a) the use of violence, or
    - (b) the dismissal of a union official.
  - (2) This paragraph also applies if the CAC has made an order under paragraph 119C(3)(a) and—

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- (a) it is satisfied that the party subject to the order has failed to comply with it, or
  - (b) it makes another declaration under paragraph 119C(2) in relation to a complaint against that party.
- (3) If the party concerned is the employer, the CAC may refuse the employer's application under paragraph 106 or 107.
- (4) If the party concerned is a union, the CAC may issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the CAC in the declaration.
- (5) If a declaration is issued under sub-paragraph (4) the bargaining arrangements shall cease to have effect accordingly.
- (6) The powers conferred by this paragraph are in addition to those conferred by paragraph 119C(3).
- 119E (1) This paragraph applies if the CAC issues a declaration that a complaint under paragraph 119B is well-founded and—
- (a) makes arrangements under paragraph 119C(3)(b),
  - (b) refuses under paragraph 119D(3) or 119H(6) an application under paragraph 106, 107 or 112, or
  - (c) issues a declaration under paragraph 119D(4) or 119H(5).
- (2) If the ballot in connection with which the complaint was made has not been held, the CAC shall take steps to cancel it.
- (3) If that ballot is held, it shall have no effect.
- 119F (1) This paragraph applies if the CAC makes arrangements under paragraph 119C(3)(b).
- (2) Paragraphs 117(4) to (11) and 118 to 121 apply in relation to those arrangements as they apply in relation to arrangements made under paragraph 117(3) but with the modifications specified in sub-paragraphs (3) to (5).
- (3) An employer's duty under paragraph (a) of paragraph 118(4) is limited to—
- (a) giving the CAC the names and home addresses of any workers in the bargaining unit which have not previously been given to it in accordance with that duty;
  - (b) giving the CAC the names and home addresses of those workers who have joined the bargaining unit since he last gave the CAC information in accordance with that duty;
  - (c) informing the CAC of any change to the name or home address of a worker whose name and home address have previously been given to the CAC in accordance with that duty; and
  - (d) informing the CAC of any worker whose name had previously been given to it in accordance with that duty who has ceased to be within the bargaining unit.

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- (4) Any order given under paragraph 119(1) or 119C(3)(a) for the purposes of the cancelled or ineffectual ballot shall have effect (to the extent that the CAC specifies in a notice to the parties) as if it were made for the purposes of the ballot for which arrangements are made under paragraph 119C(3)(b).
  - (5) The gross costs of the ballot shall be borne by such of the parties and in such proportions as the CAC may determine and, accordingly, sub-paragraphs (2) and (3) of paragraph 120 shall be omitted and the reference in sub-paragraph (4) of that paragraph to the employer and the union (or each of the unions) shall be construed as a reference to the party or parties which bear the costs in accordance with the CAC's determination.
- 119G
- (1) Paragraphs 119A to 119C, 119E and 119F apply in relation to an application under paragraph 112 as they apply in relation to an application under paragraph 106 or 107 but with the modifications specified in this paragraph.
  - (2) References in those paragraphs (and, accordingly, in paragraph 119H(3)) to a party shall be read as including references to the applicant worker or workers; but this is subject to sub-paragraph (3).
  - (3) The reference in paragraph 119A(1) to a party informed under paragraph 117(11) shall be read as including a reference to the applicant worker or workers.
- 119H
- (1) This paragraph applies in relation to an application under paragraph 112 in the cases specified in sub-paragraphs (2) and (3).
  - (2) The first case is where the CAC issues a declaration under paragraph 119C(2) and the declaration states that the unfair practice used consisted of or included—
    - (a) the use of violence, or
    - (b) the dismissal of a union official.
  - (3) The second case is where the CAC has made an order under paragraph 119C(3)(a) and—
    - (a) it is satisfied that the party subject to the order has failed to comply with it, or
    - (b) it makes another declaration under paragraph 119C(2) in relation to a complaint against that party.
  - (4) If the party concerned is the employer, the CAC may order him to refrain from further campaigning in relation to the ballot.
  - (5) If the party concerned is a union, the CAC may issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the CAC in the declaration.
  - (6) If the party concerned is the applicant worker (or any of the applicant workers), the CAC may refuse the application under paragraph 112.

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(7) If a declaration is issued under sub-paragraph (5) the bargaining arrangements shall cease to have effect accordingly.

(8) The powers conferred by this paragraph are in addition to those conferred by paragraph 119C(3).

119I (1) This paragraph applies if—

- (a) a ballot has been arranged in consequence of an application under paragraph 112,
- (b) the CAC has given the employer an order under paragraph 119(1), 119C(3) or 119H(4), and
- (c) the ballot for the purposes of which the order was made (or any other ballot for the purposes of which it has effect) has not been held.

(2) The applicant worker (or each of the applicant workers) and the union (or each of the unions) is entitled to enforce obedience to the order.

(3) The order may be enforced—

- (a) in England and Wales, in the same way as an order of the county court;
- (b) in Scotland, in the same way as an order of the sheriff.”

(2) In paragraph 121 of that Schedule (duties of the CAC when informed of result of ballot), after sub-paragraph (1) insert—

“(1A) The duty in sub-paragraph (1) does not apply if the CAC makes arrangements under paragraph 119C(3)(b).”

## 14 Appeals against demands for costs

In Part 9 of Schedule A1 to the 1992 Act, before paragraph 166 (and before the cross-heading immediately preceding that paragraph) insert—

### “Rights of appeal against demands for costs

165A (1) This paragraph applies where a demand has been made under paragraph 19E(3), 28(4) or 120(4).

(2) The recipient of the demand may appeal against the demand within 4 weeks starting with the day after receipt of the demand.

(3) An appeal under this paragraph lies to an employment tribunal.

(4) On an appeal under this paragraph against a demand under paragraph 19E(3), the tribunal shall dismiss the appeal unless it is shown that—

- (a) the amount specified in the demand as the costs of the appointed person is too great, or
- (b) the amount specified in the demand as the amount of those costs to be borne by the recipient is too great.

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- (5) On an appeal under this paragraph against a demand under paragraph 28(4) or paragraph 120(4), the tribunal shall dismiss the appeal unless it is shown that—
  - (a) the amount specified in the demand as the gross costs of the ballot is too great, or
  - (b) the amount specified in the demand as the amount of the gross costs to be borne by the recipient is too great.
- (6) If an appeal is allowed, the tribunal shall rectify the demand and the demand shall have effect as if it had originally been made as so rectified.
- (7) If a person has appealed under this paragraph against a demand and the appeal has not been withdrawn or finally determined, the demand—
  - (a) is not enforceable until the appeal has been withdrawn or finally determined, but
  - (b) as from the withdrawal or final determination of the appeal shall be enforceable as if paragraph (a) had not had effect.”

**Commencement Information**

**I11** S. 14 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch. (with art. 10)

**15 Power to amend Schedule A1 to the 1992 Act**

- (1) Paragraph 166 of Schedule A1 to the 1992 Act (power of Secretary of State to amend that Schedule) is amended as follows.
  - (2) For sub-paragraphs (1) and (2) substitute—
    - “(1) This paragraph applies if the CAC represents to the Secretary of State that a provision of this Schedule has an unsatisfactory effect and should be amended.
    - (2) The Secretary of State, with a view to rectifying the effect—
      - (a) may amend the provision by exercising (if applicable) any of the powers conferred on him by paragraphs 7(6), 29(5), 121(6), 166A, 166B, 169A, 169B and 171A, or
      - (b) may amend the provision by order in such other way as he thinks fit.
  - (2A) The Secretary of State need not proceed in a way proposed by the CAC (if it proposes one).
  - (2B) Nothing in this paragraph prevents the Secretary of State from exercising any of the powers mentioned in sub-paragraph (2)(a) in the absence of a representation from the CAC.”
- (3) In sub-paragraph (3), for “this paragraph” substitute “ sub-paragraph (2)(b) ”.

**Commencement Information**

**I12** S. 15 in force at 31.12.2004 by S.I. 2004/3342, art. 4(a) (with art. 6)

*Status: Point in time view as at 06/04/2005. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 2004, Part 1. (See end of Document for details)*

## 16 Means of communicating with workers

After paragraph 166 of Schedule A1 to the 1992 Act insert—

- “166A (1) This paragraph applies in relation to any provision of paragraph 19D(2), 26(4) or 118(4) which requires the employer to give to the CAC a worker’s home address.
- (2) The Secretary of State may by order provide that the employer must give to the CAC (in addition to the worker’s home address) an address of a specified kind for the worker.
- (3) In this paragraph “address” includes any address or number to which information may be sent by any means.
- (4) An order under this paragraph may—
- (a) amend this Schedule;
  - (b) include supplementary or incidental provision (including, in particular, provision amending paragraph 19E(1)(a), 26(6)(a) or 118(6)(a));
  - (c) make different provision for different cases or circumstances.
- (5) An order under this paragraph shall be made by statutory instrument.
- (6) No such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House of Parliament.”

### Commencement Information

**I13** S. 16 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch.

## 17 Unfair practices: power to make provision about periods before notice of ballot

After paragraph 166A of Schedule A1 to the 1992 Act (which is inserted by section 16) insert—

- “166B (1) The Secretary of State may by order provide that, during any period beginning and ending with the occurrence of specified events, employers and unions to which the order applies are prohibited from using such practices as are specified as unfair practices in relation to an application under this Schedule of a specified description.
- (2) An order under this paragraph may make provision about the consequences of a contravention of any prohibition imposed by the order (including provision modifying the effect of any provision of this Schedule in the event of such a contravention).
- (3) An order under this paragraph may confer functions on the CAC.
- (4) An order under this paragraph may contain provision extending for the purposes of the order either or both of the following powers to issue Codes of Practice—



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- (a) the power of ACAS under section 199(1);
  - (b) the power of the Secretary of State under section 203(1)(a).
- (5) An order under this paragraph may—
- (a) include supplementary or incidental provisions (including provision amending this Schedule), and
  - (b) make different provision for different cases or circumstances.
- (6) An order under this paragraph shall be made by statutory instrument.
- (7) No such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (8) In this paragraph “specified” means specified in an order under this paragraph.”

#### **Commencement Information**

**I14** S. 17 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch.

### **18 Power to make provision about effect of amalgamations etc.**

After paragraph 169 of Schedule A1 to the 1992 Act insert—

#### **“Effect of union amalgamations and transfers of engagements**

- 169A (1) The Secretary of State may by order make provision for any case where—
- (a) an application has been made, a declaration has been issued, or any other thing has been done under or for the purposes of this Schedule by, to or in relation to a union, or
  - (b) anything has been done in consequence of anything so done, and the union amalgamates or transfers all or any of its engagements.
- (2) An order under this paragraph may, in particular, make provision for cases where an amalgamated union, or union to which engagements are transferred, does not have a certificate of independence.

#### **Effect of change of identity of employer**

- 169B (1) The Secretary of State may by order make provision for any case where—
- (a) an application has been made, a declaration has been issued, or any other thing has been done under or for the purposes of this Schedule in relation to a group of workers, or
  - (b) anything has been done in consequence of anything so done, and the person who was the employer of the workers constituting that group at the time the thing was done is no longer the employer of all of the workers constituting that group (whether as a result of a transfer of the whole or part of an undertaking or business or otherwise).
- (2) In this paragraph “group” includes two or more groups taken together.

*Status: Point in time view as at 06/04/2005. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 2004, Part 1. (See end of Document for details)*

### **Orders under paragraphs 169A and 169B: supplementary**

- 169C (1) An order under paragraph 169A or 169B may—
- (a) amend this Schedule;
  - (b) include supplementary, incidental, saving or transitional provisions;
  - (c) make different provision for different cases or circumstances.
- (2) An order under paragraph 169A or 169B shall be made by statutory instrument.
- (3) No such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House of Parliament.”

#### **Commencement Information**

**I15** S. 18 in force at 31.12.2004 by S.I. 2004/3342, art. 4(a)

### **19 Information about union membership and employment in bargaining unit**

After paragraph 170 of Schedule A1 to the 1992 Act insert—

#### **“Supply of information to CAC**

- 170A (1) The CAC may, if it considers it necessary to do so to enable or assist it to exercise any of its functions under this Schedule, exercise any or all of the powers conferred in sub-paragraphs (2) to (4).
- (2) The CAC may require an employer to supply the CAC case manager, within such period as the CAC may specify, with specified information concerning either or both of the following—
- (a) the workers in a specified bargaining unit who work for the employer;
  - (b) the likelihood of a majority of those workers being in favour of the conduct by a specified union (or specified unions) of collective bargaining on their behalf.
- (3) The CAC may require a union to supply the CAC case manager, within such period as the CAC may specify, with specified information concerning either or both of the following—
- (a) the workers in a specified bargaining unit who are members of the union;
  - (b) the likelihood of a majority of the workers in a specified bargaining unit being in favour of the conduct by the union (or by it and other specified unions) of collective bargaining on their behalf.
- (4) The CAC may require an applicant worker to supply the CAC case manager, within such period as the CAC may specify, with specified information concerning the likelihood of a majority of the workers in his bargaining unit being in favour of having bargaining arrangements ended.

*Status: Point in time view as at 06/04/2005. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 2004, Part 1. (See end of Document for details)*

- (5) The recipient of a requirement under this paragraph must, within the specified period, supply the CAC case manager with such of the specified information as is in the recipient's possession.
- (6) From the information supplied to him under this paragraph, the CAC case manager must prepare a report and submit it to the CAC.
- (7) If an employer, a union or a worker fails to comply with sub-paragraph (5), the report under sub-paragraph (6) must mention that failure; and the CAC may draw an inference against the party concerned.
- (8) The CAC must give a copy of the report under sub-paragraph (6) to the employer, to the union (or unions) and, in the case of an application under paragraph 112 or 137, to the applicant worker (or applicant workers).
- (9) In this paragraph—
  - “applicant worker” means a worker who—
    - (a) falls within a bargaining unit (“his bargaining unit”) and
    - (b) has made an application under paragraph 112 or 137 to have bargaining arrangements ended;
  - “the CAC case manager” means the member of the staff provided to the CAC by ACAS who is named in the requirement (but the CAC may, by notice given to the recipient of a requirement under this paragraph, change the member of that staff who is to be the CAC case manager for the purposes of that requirement);
  - “collective bargaining” is to be construed in accordance with paragraph 3; and
  - “specified” means specified in a requirement under this paragraph.”

#### Commencement Information

**I16** S. 19 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch.

## 20 “Pay” and other matters subject to collective bargaining

After paragraph 171 of Schedule A1 to the 1992 Act insert—

### “Pay” and other matters subject to collective bargaining

- 171A (1) In this Schedule “pay” does not include terms relating to a person's membership of or rights under, or his employer's contributions to—
- (a) an occupational pension scheme (as defined by section 1 of the Pension Schemes Act 1993), or
  - (b) a personal pension scheme (as so defined).
- (2) The Secretary of State may by order amend sub-paragraph (1).
- (3) The Secretary of State may by order—
- (a) amend paragraph 3(3), 54(4) or 94(6)(b) by adding specified matters relating to pensions to the matters there specified to which negotiations may relate;

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*Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 2004, Part 1. (See end of Document for details)*

- (b) amend paragraph 35(2)(b) or 44(2)(b) by adding specified matters relating to pensions to the core topics there specified.
- (4) An order under this paragraph may—
  - (a) include supplementary, incidental, saving or transitional provisions including provision amending this Schedule, and
  - (b) make different provision for different cases.
- (5) An order under this paragraph may make provision deeming—
  - (a) the matters to which any pre-commencement declaration of recognition relates, and
  - (b) the matters to which any pre-commencement method of collective bargaining relates,
 to include matters to which a post-commencement declaration of recognition or method of collective bargaining could relate.
- (6) In sub-paragraph (5)—
  - “pre-commencement declaration of recognition” means a declaration of recognition issued by the CAC before the coming into force of the order,
  - “pre-commencement method of collective bargaining” means a method of collective bargaining specified by the CAC before the coming into force of the order,
  - and references to a post-commencement declaration of recognition or method of collective bargaining shall be construed accordingly.
- (7) An order under this paragraph shall be made by statutory instrument; and no such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House of Parliament.”

#### Commencement Information

I17 S. 20 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch.

## 21 Information required by ACAS for ballots and ascertaining union membership

After section 210 of the 1992 Act insert—

### “210A Information required by ACAS for purposes of settling recognition disputes

- (1) This section applies where ACAS is exercising its functions under section 210 with a view to bringing about a settlement of a recognition dispute.
- (2) The parties to the recognition dispute may jointly request ACAS or a person nominated by ACAS to do either or both of the following—
  - (a) hold a ballot of the workers involved in the dispute;
  - (b) ascertain the union membership of the workers involved in the dispute.
- (3) In the following provisions of this section references to ACAS include references to a person nominated by ACAS; and anything done by such a person

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under this section shall be regarded as done in the exercise of the functions of ACAS mentioned in subsection (1).

- (4) At any time after ACAS has received a request under subsection (2), it may require any party to the recognition dispute—
- (a) to supply ACAS with specified information concerning the workers involved in the dispute, and
  - (b) to do so within such period as it may specify.
- (5) ACAS may impose a requirement under subsection (4) only if it considers that it is necessary to do so—
- (a) for the exercise of the functions mentioned in subsection (1); and
  - (b) in order to enable or assist it to comply with the request.
- (6) The recipient of a requirement under this section must, within the specified period, supply ACAS with such of the specified information as is in the recipient's possession.
- (7) A request under subsection (2) may be withdrawn by any party to the recognition dispute at any time and, if it is withdrawn, ACAS shall take no further steps to hold the ballot or to ascertain the union membership of the workers involved in the dispute.
- (8) If a party to a recognition dispute fails to comply with subsection (6), ACAS shall take no further steps to hold the ballot or to ascertain the union membership of the workers involved in the dispute.
- (9) Nothing in this section requires ACAS to comply with a request under subsection (2).
- (10) In this section—
- “party”, in relation to a recognition dispute, means each of the employers, employers' associations and trade unions involved in the dispute;
  - “a recognition dispute” means a trade dispute between employers and workers which is connected wholly or partly with the recognition by employers or employers' associations of the right of a trade union to represent workers in negotiations, consultations or other procedures relating to any of the matters mentioned in paragraphs (a) to (f) of section 218(1);
  - “specified” means specified in a requirement under this section; and
  - “workers” has the meaning given in section 218(5).”

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**Commencement Information**

**I18** S. 21 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch.

**Status:**

Point in time view as at 06/04/2005. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Employment Relations Act 2004, Part 1.