

UNION RECOGNITION
Employment Relations Act 1999



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On 27 July 1999 the Employment Relations Act, the Fairness at Work legislation, became law.

The Act is the most significant legislative advance for working people and their trade unions for more than 20 years. It shifts the balance of legal rights at the workplace.

This leaflet deals with the new legislation on trade union recognition which came into force on 6 June 2000.

There are separate leaflets on family friendly rights and trade union and individual rights.

RECOGNITION

Statutory right to trade union recognition

(Section 1 and Schedule 1)

This is the most controversial provision of the legislation, taking up 59 pages of the 123 page Act. The complexity of the provisions increased as the Bill made its way through Parliament.

The written request

(paragraphs 4 -9)

The recognition procedure begins with the union making a written request for recognition, identifying the proposed bargaining unit. The bargaining unit is the particular workplace or group of workers that the union wants to represent. The request may be made by two or more unions acting jointly, but the unions must have certificates of independence. The request is made to the Central Arbitration Committee (CAC).

The CAC will not consider the request if another union is already recognised for workers in the bargaining unit.

Small employers

(paragraph 7)

Because firms who employ fewer than 21 employees (taking into account employees in associated companies) are excluded from the legislation, the CAC will reject automatically any request for recognition in small firms. Employees with associated employers incorporated outside Britain are not included unless they usually work in Britain. There are special rules for merchant shipping.

First and second periods

(paragraphs 10 - 12)

The next stage is the "first period" which lasts 10 working days from the employer receiving the request. During this time the employer can accept the request, the union is recognised and the procedure ends. If the employer does not accept the request, but agrees to negotiate, there are 20 working days for the employer to agree recognition in negotiations, failing that the union can refer the matter to the CAC. If the employer rejects the request or fails to reply, the union may refer the matter to the CAC.

More than one application is made

(paragraphs 14, 38)

If separate applications are made by more than one union, which overlap bargaining units, special rules apply where neither application has yet been accepted.

The CAC must consider whether each union's membership amounts to 10% or more of their proposed bargaining unit. If both or neither meet the "10% test", neither application can proceed. If one meets the test, but the other does not, the application which meets the 10% test can proceed.

If the CAC has already accepted an application, a subsequent claim by another union will not be allowed.

Acceptance period and admissibility

(paragraphs 15, 33 - 42)

The CAC has a period of 10 working days to consider whether the application can be accepted. The application must be in a form specified by the CAC and the union must notify the employer. There are different issues which may affect admissibility

Union already recognised

(paragraph 35)

Where there is a collective agreement covering some or all of the bargaining unit under which a union (or unions) is recognised, an application from another union is not admissible. This applies even if the existing recognition does not cover pay, hours or holidays and if the recognised union has only a low membership in the bargaining unit. However if the existing recognised union does not have a certificate of independence and the agreement is 3 years old, the recognition agreement cannot stop an application by an independent union.

Sufficient support

(paragraph 36)

When the union refers the matter, the CAC must determine if the union has sufficient support in the bargaining unit: the test for this is at least 10% of the proposed bargaining unit are members of the union and a majority of the proposed bargaining unit are likely to favour recognition. A petition may count as evidence.

Joint applications

(paragraph 37)

Where a joint application is made by two or more unions they must be able to demonstrate that they will co-operate with each other in a way likely to maintain stable and effective collective bargaining

arrangements and will engage in single table bargaining if the employer wishes.

Three year rule

(paragraphs 39 - 42)

A union cannot make a repeat application covering the same or similar bargaining unit within three years of a previous application. This applies three years from the application or from a declaration that the union is not recognised or from a declaration that bargaining arrangements are to cease to have effect.

Withdrawing applications

(paragraphs 16 and 17)

A union may not withdraw an application once the CAC has notified the union either that recognition is granted or that there must be a ballot. The employer and union may jointly agree that an application does not proceed before the end of the notification period for the ballot.

Bargaining unit

(paragraphs 18 and 19)

The CAC then has 20 working days to get the union and employer to agree the bargaining unit. If there is no agreement, the CAC must decide the bargaining unit within 10 working days. The identity of the bargaining unit will be the crux of most applications as levels of membership and results of ballots must all be measured against the workers in the bargaining unit. Unions want bargaining units with high levels of union membership and support. Employers want the opposite.

The primary consideration for the CAC is the need for the bargaining unit to be compatible with effective management, but it must also take into account the views of the union and employer, the existing bargaining arrangements, the desirability of avoiding small and fragmented bargaining units and the characteristics and location of workers.

Different bargaining unit

(paragraphs 20 and 43 - 50)

If the bargaining unit decided by the CAC or agreed by the parties differs from that originally proposed by the union, the CAC must once again assess whether the application is valid using the criteria for admissibility, eg: is the union likely to have majority support and is another union already recognised.

Majority membership

(paragraph 22)

If a majority of the bargaining unit are members of the union, the CAC may issue a declaration that the union is recognised for collective bargaining. However, this is not an automatic process.

The CAC must order a ballot if it is satisfied that one of three conditions apply:

- that it is in the interests of good industrial relations to hold a ballot
- that a significant number of union members in the bargaining unit inform the CAC that they do not want recognition
- that membership evidence is produced which leads the CAC to doubt whether a significant number want recognition.

This is an area which opens up the most scope for challenge by employers. The government is to keep this provision under review to check it does not undermine the operation of the recognition procedures.

Ballot

(paragraphs 23 -29)

A ballot will take place if a majority of the bargaining unit are not members, or where the CAC orders it. Unless the unions (on their own or with the employer) notify the CAC that they do not want this to proceed.

A scrutineer must be appointed and the ballot completed within 20 working days.

There are legal duties on the employer to co-operate with the ballot, provide lists of names and give the union access to campaign. There is a statutory code of practice which sets out the access requirements in more detail. This is intended to deal with obstruction from employers. The CAC has the power to order the employer to take steps to adhere to the code and, if they refuse to do so, to order that recognition is granted.

The CAC decides if the ballot should be workplace or postal, or a combination of the two. The cost of the ballot is shared between the union and the employer.

To secure recognition, a union needs a vote in favour from a majority of those voting and 40% of those balloted.

Recognition granted

(paragraphs 30 -32)

If a union is recognised after a declaration by the CAC or ballot, but cannot agree with the employer a method for conducting collective bargaining, either party can ask the CAC for assistance.

The CAC must allow 30 working days for the parties to reach agreement, plus a further 20 working days with the active assistance of the CAC. If agreement is not reached, the CAC determines a bargaining procedure. The government has published a model procedure, but the CAC is not obliged to adopt this procedure in every case. The procedure determined by the CAC will be legally enforceable, but can be enforced in the courts only by an order of specific performance which obliges the parties to comply with the procedure or face being in contempt of court. This also applies where the CAC has ordered

recognition, and the parties have agreed the procedure, but it is not being carried out.

Voluntary recognition

(paragraphs 52 - 63)

There are special procedures where there is voluntary recognition with an employer. The employer is prevented from terminating the agreement for a period of 3 years (unless the agreement provides otherwise). The Act sets out a similar procedure for determining the method of collective bargaining when the parties cannot agree and for determining a legally enforceable method of bargaining.

Changes affecting bargaining unit

(paragraphs 64 - 95)

The government has introduced a substantial new chunk to the legislation dealing with changes to the bargaining unit following statutory recognition where bargaining arrangements have been agreed by the parties or determined by the CAC.

Either party can apply to the CAC to reconsider recognition if it believes changes in the bargaining unit mean the original unit is no longer appropriate.

These include:

- change in the organisation or structure of the business
- change of the activities carried on by the employer in course of business
- substantial change in the number of workers in the unit

There is a substantial risk that this will become a charter for employers to rig changes in the bargaining unit in the hope of getting out of statutory recognition arrangements. There are also similar provisions where the employer claims that the original bargaining unit has ceased to exist.

The CAC must consider whether the original unit still exists and is appropriate. If it determines that a different bargaining unit is appropriate, it must effectively reconsider the recognition issue for the new unit. If the new unit includes workers covered by another statutory recognition agreement, the CAC must declare both sets of arrangements at an end for the workers who overlap bargaining units and must make arrangements for them. If the new unit overlaps with an existing voluntary recognition agreement, the statutory arrangements for the workers in the overlapping part come to an end, but the voluntary arrangements continue.

DERECOGNITION

Principles

(paragraphs 96 - 98)

The Bill provides procedures for derecognition which are essentially a mirror image of the recognition procedures. An application for derecognition cannot be made within 3 years of recognition being granted. The procedure applies if recognition was ordered or the CAC determined the method of bargaining.

Fewer than 21 workers

(paragraphs 99 - 103)

If there are fewer than 21 workers employed by the employer (including those with associated employers) more than 3 years after recognition was awarded, the employer can apply to the CAC to derecognise. The CAC must notify the union, which can challenge the employer's figures. If the CAC agrees that the number has fallen below 21, derecognition will be ordered.

Ballot

(paragraphs 104 - 121)

If 3 years have elapsed since an order for recognition, an employer may request that the union agrees to end recognition. If agreement is not reached, the employer can apply for a ballot if the CAC is satisfied there is sufficient support for a ballot to make an application for derecognition worthwhile. An individual worker may make an application on the same basis.

If the CAC is satisfied there is sufficient support, it will order a ballot. There are similar duties to cooperate and provide information and access. Derecognition will only be ordered where there is the support of the majority of those voting and 40% of those entitled to vote.

Automatic recognition

(paragraphs 122 - 133)

Where recognition was granted under the automatic procedure, on grounds of majority membership, an employer will not be able to initiate a derecognition ballot if a majority of the bargaining unit remain in membership. However if it does not, then 3 years or more after the original recognition, the employer may apply to initiate a derecognition ballot.

Non-independent unions

(paragraphs 134 - 155)

Workers are able to apply for a ballot to derecognise a union which is recognised by an employer, but does not have a certificate of independence. An application under this procedure has to be done before an application for recognition by an independent union covering the same bargaining unit. There are special provisions when an independent union ceases to be certified as independent.

**DETRIMENT
And dismissal**

(paragraphs 156 - 165)

The provisions on protection against detriment and dismissal for recognition reasons are similar to those for other statutory rights.

And recognition

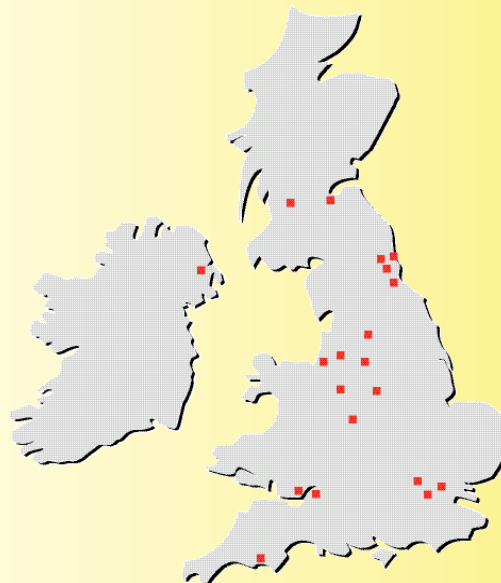
(Section 6 and schedule 1 paragraphs 156 - 165)

Under the new trade union recognition procedure workers are protected against dismissal or detriment for campaigning or voting for or against recognition. The contract of employment cannot override these rights, but the protection is confined to cases where the worker did not act unreasonably.

The legislation gives workers a right to make an emergency application for interim relief if dismissed on those grounds, adopting the same procedure as for dismissals on trade union grounds. Workers are also given protection against selection for redundancy on recognition grounds.

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