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SCHEDULES

^{F1}SCHEDULE A1

COLLECTIVE BARGAINING: RECOGNITION

Textual Amendments

F1 Sch. A1 (paras. 1-173) inserted (6.6.2000) by 1999 c. 26, s. 1(3), Sch. 1; S.I. 2000/1338, art. 2(d)

Modifications etc. (not altering text)

C1 Sch. A1 (paras. 1-173) applied (14.8.2000) by S.I. 2000/1282, art. 2(5)(a)

C1 Sch. A1 modified (temp. from 6.4.2005) by The Employment Relations Act 2004 (Commencement No.3 and Transitional Provisions) Order 2005 (S.I. 2005/872), arts. 4, 21, Sch. (with arts. 6-21)

PART IX

GENERAL

VALID FROM 06/04/2005

^{F1}Rights of appeal against demands for costs

Textual Amendments

F1 Sch. A1 para. 165A and preceding cross-heading inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 14, 59(2)-(4); S.I. 2005/872, art. 4, Sch. (with arts. 6-21)

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

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- (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- (7) If a person has appealed under this paragraph against a demand and the appeal has not been withdrawn or finally determined, the demand—
- (a) is not enforceable until the appeal has been withdrawn or finally determined, but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.]

Power to amend

- 166 (1) If the CAC represents to the Secretary of State that paragraph 22 or 87 has an unsatisfactory effect and should be amended, he may by order amend it with a view to rectifying that effect.
- (2) He may amend it in such way as he thinks fit, and not necessarily in a way proposed by the CAC (if it proposes one).
- (3) An order under this paragraph shall be made by statutory instrument.
- (4) 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.

VALID FROM 06/04/2005

- [^{F2}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.]

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Textual Amendments

- F2** Sch. A1 para. 166A inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 16, 59(2)-(4); S.I. 2005/872, art. 4, Sch. (with arts. 6-21)

VALID FROM 06/04/2005

- [^{F3}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—
- the power of ACAS under section 199(1);
 - the power of the Secretary of State under section 203(1)(a).
- (5) An order under this paragraph may—
- include supplementary or incidental provisions (including provision amending this Schedule), and
 - 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.]

Textual Amendments

- F3** Sch. A1 para. 166B inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 17, 59(2)-(4); S.I. 2005/872, art. 4, Sch. (with arts. 6-21)

Guidance

- 167 (1) The Secretary of State may issue guidance to the CAC on the way in which it is to exercise its functions under paragraph 22 or 87.
- (2) The CAC must take into account any such guidance in exercising those functions.
- (3) However, no guidance is to apply with regard to an application made to the CAC before the guidance in question was issued.
- (4) The Secretary of State must—

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- (a) lay before each House of Parliament any guidance issued under this paragraph, and
- (b) arrange for any such guidance to be published by such means as appear to him to be most appropriate for drawing it to the attention of persons likely to be affected by it.

Method of conducting collective bargaining

- 168 (1) After consulting ACAS the Secretary of State may by order specify for the purposes of paragraphs 31(3) and 63(2) a method by which collective bargaining might be conducted.
- (2) If such an order is made the CAC—
- (a) must take it into account under paragraphs 31(3) and 63(2), but
 - (b) may depart from the method specified by the order to such extent as the CAC thinks it is appropriate to do so in the circumstances.
- (3) An order under this paragraph shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Directions about certain applications

- 169 (1) The Secretary of State may make to the CAC directions as described in subparagraph (2) in relation to any case where—
- (a) two or more applications are made to the CAC,
 - (b) each application is a relevant application,
 - (c) each application relates to the same bargaining unit, and
 - (d) the CAC has not accepted any of the applications.
- (2) The directions are directions as to the order in which the CAC must consider the admissibility of the applications.
- (3) The directions may include—
- (a) provision to deal with a case where a relevant application is made while the CAC is still considering the admissibility of another one relating to the same bargaining unit;
 - (b) other incidental provisions.
- (4) A relevant application is an application under paragraph 101, 106, 107, 112 or 128.

VALID FROM 31/12/2004

F⁴ Effect of union amalgamations and transfers of engagements

Textual Amendments

- F4** Sch. A1 paras. 169A-169C and preceding cross-headings inserted (31.12.2004) by [Employment Relations Act 2004 \(c. 24\)](#), ss. 18, 59(2)-(4); S.I. 2004/3342, art. 4 (with arts. 6-12)

- 169A (1) The Secretary of State may by order make provision for any case where—

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- (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.

VALID FROM 31/12/2004

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.

VALID FROM 31/12/2004

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.]

Directions about certain applications

- 169 (1) The Secretary of State may make to the CAC directions as described in sub-paragraph (2) in relation to any case where—
- (a) two or more applications are made to the CAC,
 - (b) each application is a relevant application,
 - (c) each application relates to the same bargaining unit, and
 - (d) the CAC has not accepted any of the applications.

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- (2) The directions are directions as to the order in which the CAC must consider the admissibility of the applications.
- (3) The directions may include—
 - (a) provision to deal with a case where a relevant application is made while the CAC is still considering the admissibility of another one relating to the same bargaining unit;
 - (b) other incidental provisions.
- (4) A relevant application is an application under paragraph 101, 106, 107, 112 or 128.

Notice of declarations

- 170 (1) If the CAC issues a declaration under this Schedule it must notify the parties of the declaration and its contents.
- (2) The reference here to the parties is to—
- (a) the union (or unions) concerned and the employer concerned, and
 - (b) if the declaration is issued in consequence of an application by a worker or workers, the worker or workers making it.

VALID FROM 06/04/2005

^{F5}Supply of information to CAC

Textual Amendments

F5 Sch. A1 para. 170A and preceding cross-heading inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), [ss. 19](#), 59(2)-(4); S.I. 2005/872, [art. 4](#), Sch. (with arts. 6-21)

- 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.

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- (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.
- (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.]

CAC's general duty

- 171 In exercising functions under this Schedule in any particular case the CAC must have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace, so far as having regard to that object is consistent with applying other provisions of this Schedule in the case concerned.

VALID FROM 06/04/2005

F⁶ “Pay” and other matters subject to collective bargaining

Textual Amendments

- F6** Sch. A1 para. 171A and preceding cross-heading inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), [ss. 20, 59\(2\)-\(4\)](#); S.I. 2005/872, [art. 4](#), Sch. (with arts. 6-21)

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- 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;
 - (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.]

General interpretation

- 172 (1) References in this Schedule to the CAC are to the Central Arbitration Committee.
- (2) For the purposes of this Schedule in its application to a part of Great Britain a working day is a day other than—
- (a) a Saturday or a Sunday,
 - (b) Christmas day or Good Friday, or
 - (c) a day which is a bank holiday under the ^{M1}Banking and Financial Dealings Act 1971 in that part of Great Britain.

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Marginal Citations

M1 1971 c. 80.

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