



# Employment Relations Act 2004

## 2004 CHAPTER 24

### PART 1

#### UNION RECOGNITION

#### **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
  - (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- (a) the application under paragraph 11 or 12 is withdrawn;

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- (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;
  - (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.

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- (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,
  - (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;

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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—
      - (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 ”.

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**Commencement Information**

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

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