

Review of the Employment Relations Act 1999

Government Response to the Public Consultation

December 2003

FOREWORD

Last February, the DTI published the Government's initial findings of the review of the Employment Relations Act 1999. On the evidence assembled in the consultation document, we concluded that the Act had worked successfully. Key advances in collective and individual employment rights were made by the Act and the review shows that these changes are both workable and beneficial. The review also shows that the problems that have thwarted earlier attempts to legislate in the difficult area of union recognition have been avoided. However, there were areas where we thought the law was unclear or inflexible, and we set out a number of proposals to tackle these shortcomings.

I would like to offer my thanks to all those who responded to the consultation document. A summary of their views is given here. These responses, from a broad range of stakeholders, should be read in conjunction with the analysis and statistical evidence presented in the consultation document. In discussing these responses, this document presents the final findings of the review.

Respondents have by and large confirmed our judgment that, on the basis of the available evidence, the provisions of the Act are operating in a very satisfactory way. The final conclusions of the review therefore confirm the initial assessment in the consultation document. In most cases, we have adopted the proposals outlined in the consultation document developing them in light of the points raised by respondents.

In line with our commitment to retain the essential features of the trade union reforms of the 1980s, we do not intend to use this review to initiate other wider changes. However, there is one significant exception to that general approach. As discussed in Chapter 6 of this document, the Government intends to create greater scope for unions to exclude or expel individuals from membership whose offensive political conduct is currently protected by trade union law.

Last month, the Queen's Speech confirmed that the Government would come forward with an Employment Relations Bill in this session. The findings of the review that require primary legislation will be taken forward in the Bill, which is also published today.



A handwritten signature in black ink that reads "Gerry Sutcliffe". The signature is written in a cursive style with a long horizontal stroke at the bottom.

Parliamentary Under Secretary of State for Employment Relations, Competition and Consumers.

2 December 2003.

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CHAPTER 1: INTRODUCTION

1.1 In July 2002, the Government announced a review of the Employment Relations Act 1999. The terms of reference for the review are as follows:

“The Government has reformed the labour market to build a durable and fair basis for constructive employment relations. By a range of measures, the UK labour market is achieving high levels of employment and combining fairness and flexibility.

In line with commitments made in the 1998 ‘Fairness at Work White Paper’, the Government will review the operation of the statutory union recognition and derecognition procedures in the Employment Relations Act 1999. The review will also look at the operation of the other provisions of the Act.

The review will be carried out by the DTI through full public consultation. The DTI will complete this task to a timetable enabling any legislative recommendations which the review may make to be introduced within the lifetime of this Parliament.”

1.2 Following informal discussions with unions, employer groups and others, the DTI published a consultation document on 27 February 2003. Copies of the consultation document were provided to those organisations with whom the Department had undertaken informal consultation, those who had expressed a prior interest in similar consultations, and other significant contacts. It was also available on the website or to order. About 500 copies of the printed version of the consultation document have been sent out.

1.3 The deadline for responses was 22 May 2003. In total, we received 71 contributions. This document summarises the representations received. The responses, except those made in confidence, are available in the DTI library and can be accessed on request by contacting the Information and Library Services in the DTI on 020 7215 6226.

1.4 The replies came from the following groups:

| | |
|--|----|
| Unions or union groups | 36 |
| Employer organisations | 15 |
| Individual employers | 5 |
| Solicitors and legal organisations | 10 |
| Others* | 5 |
| Total | 71 |
| *comprising individuals responding in a personal capacity, academic researchers and public sector organisations. | |

A list of those respondents, who were willing to have their names and responses disclosed, can be found at **Annex A**. Sources of further information, including how to order copies of this document, are given at **Annex B**.

1.5 The consultation document sought comments on the initial findings of the review and the proposals to change the legal framework. The Government also asked respondents to consider whether they had any other evidence for the review to take into account.

1.6 This summary follows the order of the February consultation document. It gives an account of the views expressed in response to each of the areas in which the Government made a proposal. Not every respondent is cited in each case, not least because submissions repeated views already expressed by others. For example, several unions indicated that where they had no specific comment to make on a particular proposal, they endorsed the TUC's position. The total number of respondents on each issue is given before the main points are summarised.

1.7 In bold lettering at the end of each section, the Government's response to the views received is presented. These responses constitute the final conclusions and findings of the review of the Employment Relations Act 1999.

1.8 In general, the final conclusions of the review confirm the initial findings of the consultation document. With a few exceptions, the Government proposes to proceed with the proposals to change the law presented in the consultation document.

1.9 Many respondents offered views on issues which were not explicitly mentioned in the consultation document and which were not directly affected by the Act. Where possible, this document contains a summary of these additional views, although discussion of them is generally more limited. However, Chapter 6 contains a separate section dealing with the law regulating the ability of unions to exclude or expel individuals from membership, and indicates that the Government intends changing the law in this area.

Regulatory Impact Assessment (RIA)

1.10 The consultation document contained a Regulatory Impact Assessment (RIA) assessing the emerging findings of the review. Respondents were asked to submit views on the analysis and information presented in the RIA. No respondents offered comments in this respect, although some made reference to costs when considering specific issues.

1.11 A regulatory impact assessment of each final recommendation of this review that requires primary legislation can be found as part of the RIA for the Employment Relations Bill. The RIA will be available on the DTI website, details of which are given in **Annex B**.

1.12 The legislative changes being introduced to improve the workings of the Act and other legislation covering trade unions are not expected to significantly change the overall balance of financial benefits and costs arising from the original legislation. There will be some modest benefits in terms of reductions in time, cost and uncertainty to employers, trade unions and other parties (e.g. the Central Arbitration Committee). Equally, implementation of the changes will incur some limited costs to the parties.

CHAPTER 2: STATUTORY RECOGNITION

General

2.1 The Employment Relations Act 1999 established a statutory procedure whereby unions can be recognised or derecognised by an employer for collective bargaining purposes where a majority of the relevant workforce want this. The initial findings of the review, as presented in Chapter 2 of the consultation document, were that the procedure was working well overall. However, the consultation document did set out a number of proposals for change on various aspects of the statutory procedure. 64 respondents expressed a view on some specific aspect of the statutory recognition procedure. Of these, 21 respondents also expressed a view about the general operation of the statutory recognition procedure. We are grateful for all of the responses received.

2.2 A large majority of those commenting agreed with the Government's assessment that the statutory procedure had on the whole worked well, although most wished the Government to amend it in some way. Unions in general echoed the assessment of the Trades Union Congress (TUC), which stated that the procedure had been successful as far as it goes, but that it required substantial reform to be truly effective from the TUC's perspective. Employer groups suggested they were generally content with the procedure, which had worked as intended. The Confederation of British Industry (CBI) suggested that the fundamental principles should be retained, while the Institute of Directors (IoD) stated its continued opposition in principle to the idea of statutory union recognition. Respondents generally agreed that the Act has encouraged voluntary recognition deals.

The Small Firms Threshold

2.3 In the consultation document the Government proposed to retain the small firms threshold whereby the statutory procedure does not apply to employers with fewer than 21 workers. 42 respondents expressed a view on this issue.

2.4 Unions expressed strong opposition to the retention of the threshold, raising a number of arguments for its abolition. They challenged the premise that there is low demand for recognition in small firms; described the refusal to extend this right to 4.5 million workers in small firms as unfair; stressed the potential benefits of recognition for small firms in helping ensure compliance with employment regulations; argued that the threshold does not comply with international treaty obligations and the *Wilson and Palmer* judgment; and alleged that the legislation was discriminatory against women and ethnic minorities. The TUC and some unions suggested there might be a simplified procedure for very small employers to reduce the administrative burden on them.

2.5 As well as unions, Popularis, Professor Stephen Wood of the University of Sheffield and Dr Sian Moore of the London School of Economics (who had carried out a study of the statutory procedure in operation), the Haldane Society of Socialist Lawyers, Thompsons, and Community Enterprise Wales all registered their opposition to the threshold.

2.6 Employer groups supported the Government's arguments for the retention of the threshold pointing to the administrative burden of the procedure on small firms. The British Print Industry Federation (BPIF) stated that, according to its estimates, a small company could lose up to 50% of its profit margins as a result of going through the procedure. The Small Business Council (SBC) and Small Business Service (SBS) reported support for the threshold among small businesses, with employers wishing to retain discretion over recognition. These two organisations carried out discussions with a small sample of relevant employers. The DTI additionally conducted a meeting with several small employers with experience of recognition. In general, these face-to-face discussions showed a great variation of practices towards employee relations and the management of people at work.

2.7 Having considered all the evidence put before it during the consultation, the Government remains of the opinion that demand for union recognition in firms employing fewer than 21 workers is low. The Government notes that unions have not provided any data in support of their claim that the exclusion may discriminate against women and minority ethnic workers. It does not, in any case, accept that the exclusion of small firms from the statutory recognition procedure constitutes

discrimination against these categories of workers, even if it were shown that they were over-represented in such small organisations. A simplified procedure for firms currently below the threshold is undesirable: it would create boundary problems and significantly complicate the Central Arbitration Committee's (CAC's) tasks in operating what is already a very complex procedure.

2.8 Whilst there is evidence that recognition can work for some small employers, the Government is not persuaded that such experiences are representative of this very diverse sector, which remains largely non-unionised and often lacks the organisational structures, human resource functions and flexibility that facilitate collective bargaining arrangements in larger enterprises. The Government remains of the view that it would be inappropriate to impose collective bargaining on very small employers and therefore does not propose to make any changes to the threshold.

The 10% Membership and 'Majority Likely' Requirements

2.9 In the consultation document the Government proposed no changes to the 10% Membership or 'Majority likely' admissibility tests. 17 respondents expressed a view on this issue.

2.10 Few respondents commented specifically on the 10% membership test. Professor Wood and Dr Moore, Thompsons, Prospect and the IoD concurred with the Government's assessment that it has not presented problems. The Associated Society of Locomotive Engineers and Firemen (ASLEF) argued that it is relatively unimportant, to the extent that it is unnecessary, whilst Travers Smith Braithwaite argued that it should be set at 25%.

2.11 Unions generally favoured the removal of the majority likely test. The TUC argued that the Government was confusing the concept of workers supporting recognition with the (less stringent) test of whether they favour it, and suggested that if the test were retained, the onus should be on the employer to demonstrate that insufficient numbers of workers favoured recognition. Unions argued that without formal access at an earlier stage in the

process, evidence of support is difficult to compile, especially as workers may be reluctant to support recognition fearing that the CAC must pass such evidence to their employer.

2.12 Employer groups favoured retention of the tests, but several groups such as the CBI and the Engineering Employers' Federation (EEF) suggested the CAC should apply the majority likely test with more rigour, and not 'give the benefit of the doubt to unions'.

2.13 The Government is of the view that the tests as currently applied strike the right balance. After reviewing all the evidence submitted, the Government remains convinced that the assessment outlined in the February consultation document is correct and proposes no changes to the 10% or majority likely tests. However, on assessment of the responses to the consultation, the Government proposes changes to the rules on the disclosure of confidential information which will address some union concerns in this area.

Automatic Recognition

2.14 In the consultation document the Government proposed making no changes to the procedure for the award of recognition without a ballot or the provisions allowing the CAC to order a ballot despite majority membership, where at least one qualifying condition is met. 31 respondents expressed a view on this issue.

2.15 Several unions argued that a ballot should never be held in circumstances where membership was greater than 50% of the bargaining unit. They argued that employers use this provision simply to delay the process. The TUC proposed that the CAC should not exercise its discretion unless an employer requests it and can provide proof that they are likely to win a ballot.

2.16 Employer groups largely suggested that a ballot should be held in all cases, or at least where the employer requests one. The CBI and Clarks solicitors suggested that the evidence of CAC ballots to date supports the view expressed by several employer organisations that union membership cannot be automatically equated with support for

collective bargaining. The CBI claimed that where membership was higher than 45% or 50%, a greater proportion of ballots were lost by unions than were won.

2.17 The Government continues to believe that majority union membership is a good indicator of majority support for recognition. However, it also recognises that there may be circumstances where this is not so. The procedure caters for this in the CAC's discretion to call a ballot despite majority membership. The statistics on CAC-ordered ballots do not support the CBI's claims. The figures provided in the February consultation document make clear that in 4 cases where the union lost the ballot despite appearing to have majority membership, the union concerned had acknowledged that membership was under 50% by the time of the ballot. When this is taken into account the proportion of ballots won or lost by unions claiming 45 - 50% membership up to December 2002 is roughly the same. In the same period unions lost 3 of the 7 ballots that the CAC called where a union did have a majority of the relevant workforce in membership. Rather than demonstrating that unions are more likely to lose ballots where they have majority membership, the Government believes that the statistics indicate that the CAC's discretion in this regard has been exercised appropriately. The Government believes the procedure has worked well in this area and therefore intends to maintain the current arrangement.

The 40% of the Bargaining Unit Ballot Threshold

2.18 In the consultation document the Government proposed to retain the 40% threshold for recognition ballots. 37 respondents expressed a view on this issue.

2.19 All unions expressing a view called for the abolition of the threshold. Several pointed out that such a barrier is not used in public elections and that few parliamentarians or councillors would in fact achieve election if it were. Several organisations argued that the threshold is an incentive for employers to encourage workers to abstain from voting. The TUC echoed this and suggested that the small number of cases lost on this hurdle was due to the fact that cases had been withdrawn because it was clear the test would not be met. The TUC and National Union of Journalists (NUJ) suggested that the impact of the

threshold had been far greater in voluntary ballots, where employers have insisted on adopting the statutory thresholds.

2.20 Employer groups who responded all supported retaining the threshold. The BPIF, in particular, ‘strongly resist’ its removal. Several expressed the view that it is in the interest of unions as well as employers to have the threshold in place, since where it is achieved there will be a greater acceptance of the resulting recognition arrangements.

2.21 The Government takes the view that the threshold has value in the interests of good industrial relations by demonstrating that the ballot result is representative. Without such a threshold employers could argue that recognition was awarded on the basis of the preferences of a minority of the workforce, an outcome which could have damaging implications for the credibility of the statutory procedure as a whole. On the basis of the available evidence the Government does not propose to make any changes in this area.

Determination of Bargaining Unit

2.22 In the consultation document the Government proposed no fundamental changes, but did propose to clarify the statute to make clear that the employer’s comments on the union’s proposed bargaining unit, and any counter proposal, are taken into account in determining whether the union’s proposal is compatible with the statutory criteria.

31 respondents expressed a view on this issue.

2.23 Employer groups claimed that the CAC’s handling of its duties in this area in the original court judgment in the *Kwik-Fit* case was correct (the effect of which was that equal weight should be given to the employer’s and union’s proposals for the bargaining unit). Most called for the CAC to be required to select the bargaining unit which is more, or most, compatible with effective management. The CBI argued that taking the union’s proposed bargaining unit as the starting point leads to units being proposed only because they reflect the concentration of union strength in an organisation, creating barriers to flexibility and, often, the need to duplicate the existing machinery for determining pay and conditions. Employer groups registered their opposition to the existing criteria for determining an

appropriate bargaining unit, suggesting that a proposed bargaining unit should be tested against its compatibility with 'day-to-day management' or against its likely impact on the organisation's competitiveness. The Work Foundation suggested further research was needed into the extent to which CAC-decided bargaining units are providing for effective management in practice.

2.24 Unions who took a view tended to support the eventual Court of Appeal decision in *Kwik-Fit*, but some argued that the 'effective management' criterion was weighted against unions. Some suggested it should be removed, others that it should not be over-riding. The TUC, however, indicated that, despite its objection to the effective management criterion when the Act was introduced, the CAC's approach to its application had generally been acceptable.

2.25 Almost all union respondents opposed the proposed clarification. They argued that it went further than mere 'clarification' and would risk undermining the CAC's approach, as upheld in *Kwik-Fit*, giving too much weight to employer views, and extending the scope for challenges to the CAC. Others, including the Law Society, the British Retail Consortium (BRC), the Food and Drink Federation (FDF) and the Employment Lawyers Association (ELA) supported the clarification. The CBI, however, believed the proposed amendment would do no more than reinforce what they regarded as the 'ambiguity in the present regulations'.

2.26 The Government remains of the view that to require the CAC to choose the bargaining unit which is more or most appropriate, having considered on an equal basis units proposed by union and employer, would constitute a significant change to the balance of the recognition system as a whole, and one that is not warranted by the available evidence. However, the Government does see value in clarifying that the employer's evidence has a role in testing the appropriateness of the union's proposed unit and in providing a possible alternative if it fails the test. Therefore, the Government confirms its intention to amend the statute to make clear that the employer's comments on the union's proposal and any counter proposal are taken into account in determining whether the union's proposed bargaining unit is appropriate.

Small and Fragmented Bargaining Units

2.27 In the consultation document the Government proposed no changes in this area. 7 respondents expressed a view on this issue.

2.28 Professor Wood and Dr Moore stated that there was no evidence that the schedule had not worked well in this respect. Some unions were critical of this criterion: ASLEF stated that its rulebook prevented it from representing larger bargaining units and proposed that the criterion be removed. GMB and Thompsons pointed to the possibility that the legislation allows employers to argue against a proposed bargaining unit on the grounds that it would leave other small fragmented groups of workers in other parts of the business.

2.29 Employer groups that responded called for the criterion to be strengthened by an amendment to ensure that the CAC should avoid small or fragmented units (rather than small and fragmented).

2.30 There is no barrier to unions proposing small bargaining units as long as these comply with the other statutory criteria, in particular with the effective management criterion. The Government sees no reason to change this: small bargaining units may be appropriate where they are distinct and have, for example, particular and distinct terms and conditions attached to them. The evidence is that the law has worked as intended and the Government therefore intends to make no changes in this area.

Treatment of Associated Employers

2.31 In the consultation document the Government welcomed views on the proposal to allow bargaining units to be comprised of workers from two or more associated companies. 30 respondents expressed a view on this issue.

2.32 There was a mixed response about changing the law in this area. Six unions, the Haldane Society and the Work Foundation supported the proposal. The Chartered Institute of Personnel and Development (CIPD) argued that where a common source of pay and

conditions exists the companies should be treated as one entity. Other unions, Thompsons and the TUC on balance opposed the proposal, arguing that it would invite employers to argue for the inclusion of subsidiary companies in order to dilute union membership levels. Employer organisations and individual employers registered opposition. It was argued that the proposed change would have significant knock-on effects on other parts of the procedure and that the CAC had demonstrated that it had sufficient powers to deal with these rare cases flexibly.

2.33 There is no consensus of opinion from unions for change on this issue and there is general opposition from employers. On balance, the Government believes that any benefit arising in certain cases from allowing the inclusion of associated employers would be outweighed by the increased legal complexity that this would entail. Therefore, the Government intends to make no change in this area of the procedure.

Changes during the CAC Process

2.34 In the consultation document, the Government proposed to make no reforms to Part III of the procedure. Part III covers the CAC's handling of claims that the bargaining unit is no longer appropriate or has ceased to exist where, following the determination of a bargaining method, there has been significant change. 9 respondents expressed a view on this issue.

2.35 GMB, Eversheds, FDF, Professor Wood and Dr Moore all supported the Government's stance. The TUC, Thompsons and other unions argued that the provisions in Part III of the Schedule were complex and unnecessary and should be removed. Where genuine and substantial change to the bargaining unit had occurred the employer should apply through the derecognition provisions.

2.36 There is very little evidence on which to base any judgment on the workability of this part of the procedure. Only two applications have been received by the CAC under Part III of the Schedule. One was not accepted because a method was not in place. In the second case the procedure seems to have operated smoothly: the CAC

decided that the bargaining unit was no longer appropriate and the parties subsequently agreed a new unit. As a result of this limited evidence the Government does not propose to make any change to Part III of the Schedule.

Ballots

2.37 In the consultation document the Government proposed allowing postal votes for workers unable to attend a workplace ballot and also proposed to introduce a power to apply non-postal voting methods to recognition ballots. 27 respondents expressed a view on these issues.

2.38 In general, respondents supported both options, although some wished to be reassured as to access and the security of any new voting methods. Employer organisations were strongly opposed to the use of employer IT systems for e-voting. Many respondents asked for further consultation and testing before e-voting was introduced in this context.

2.39 There was a general consensus in favour of both options. The Government confirms its intention to change the law so that workers who are unable to attend their workplace on the day of the ballot will be able to vote by post. The Government also intends to introduce a power for the Secretary of State to enable the CAC to order a recognition ballot to be conducted by electronic and other new voting methods. The Government notes the concerns of several respondents to extending voting methods, and will draw on the experience of e-voting in other settings, as well as public consultation, to satisfy itself that matters such as security and access are adequately addressed before the power is used.

Access Rights

2.40 In the consultation document the Government proposed that unions should be given earlier access to the bargaining unit by means of postal communication via a third party from the point of CAC acceptance of the union's application. Views were invited on

whether this could be extended to electronic systems of communication. 35 respondents expressed a view on these two ideas.

2.41 In general, unions welcomed the first proposal, but many of them stated that they would prefer greater access rights, either in the form of face-to-face contact with workers or access from the day on which the application is received (rather than when it is accepted). Unions voiced concerns that unequal rights of access had put employers at an advantage in ballots and had made it harder to gather information, recruit members and gather support for the admissibility tests. Several unions argued that the DTI Code of Practice on *'Access to Workers during Recognition and Derecognition Ballots'* should be reviewed and the parties should agree equitable access arrangements from acceptance.

2.42 Several employer groups stated their preference that union access, which might be disruptive in the workplace, should not be granted until the bargaining unit is determined. Eversheds echoed this, and suggested that earlier access would not be appropriate given that the exact relevant group of workers had not yet been identified. The IoD, FDF and BPIF all expressed the view that the Government proposal was acceptable.

2.43 Notwithstanding more general comments on access, with regard to electronic communication, several organisations supported the proposal subject to security concerns. As with e-voting in recognition ballots, employer groups stated their opposition to the use of workplace technology for this purpose.

2.44 The Government notes that unions have generally managed to gather the required evidence to pass the admissibility stage without physical access. There would be many difficulties in allowing union access at a stage when the status of the union's application is unclear. However, postal access from the point of acceptance would, in the Government's view, assist workers in achieving a better understanding of the request made by the union on their behalf and their employer's response, and would minimise any workplace disruption. Such a right for the union to send written communications to the workers in the bargaining unit via the Qualified Independent Person (QIP) already exists during the stage for CAC-ordered ballots. The Government therefore confirms its proposal to allow the union access to the

workers by means of postal communication, via a QIP, from acceptance of the union's application. In addition, the Government proposes to take a power for the Secretary of State to specify that such access (including written communication at the ballot stage) may be conducted via electronic and other forms of communication.

Definition of Collective Bargaining

2.45 In the consultation document the Government did not propose to add any items to the core bargaining issues under the schedule at this stage. However, it did propose to clarify that pensions shall not be regarded as pay for the specific purposes of the procedure, and to create a new reserve power to add pensions with a view to exercising that power once there is evidence that typical practice in voluntary recognition agreements is for pensions to be included as a bargaining topic.

2.46 Responses on these issues were received, and views were expressed about the suitability of training, equality and pensions as core bargaining topics for the statutory procedure.

(a) Training

2.47 Unions expressed disappointment with the Government's decision not to include training as a core topic for collective bargaining and variously echoed the TUC's arguments that inclusion would help the Government achieve its stated policies on skills in the workplace, that research indicates unions have a good track record in promoting skills, and that the omission of training was inconsistent with other Government policies, particularly that on Union Learning Representatives, who would be most effective within a framework for negotiation. The TUC suggested that the 'skills gap' between the UK and other European countries could be explained by the integral role of training in collective bargaining in these countries.

2.48 Professor Wood and Dr Moore called training a prime example of a potential topic for integrative bargaining and suggested its inclusion might lead to a partnership ethos,

breaking away from the image of bargaining as a zero-sum game. These respondents suggested that the Government might take a lead in this area rather than being led by typical practice, and suggested this issue be added to the proposed reserve power on pensions.

2.49 Employer groups universally supported the Government's position on training, arguing that whereas employee involvement in training issues was to be encouraged, bargaining was not. BPIF stated that training was a key issue on which it was in close discussion with unions, but that it should not be used as a bargaining chip to be traded off against pay and other conditions.

2.50 The Government recognises the importance of partnership and dialogue between employers and workers on training issues and has encouraged this by a variety of measures, including the placing of Union Learning Representatives on a statutory footing. The Government believes that such a partnership is best achieved by voluntary means. Aligning the scope of statutory recognition to the 'core' bargaining issues in voluntary deals acts as an encouragement for parties to reach voluntary agreements, which can be extended as they wish. As noted in the consultation document, the evidence suggests that while training may often appear in voluntary agreements, it is an item which is more likely to be discussed than bargained over. Therefore, the Government does not intend to add training to the current list of core bargaining issues for the purposes of the statutory recognition procedure.

(b) Equality

2.51 The TUC disagreed with the Government's assessment that equality issues were already covered in pay, hours and holidays and described it as 'extraordinary'. The TUC suggested that in light of complex new legislation, unions are well placed to help employers reach compliance, adding that collective workplace solutions would minimise the possibility of legal action. The Transport and General Workers Union (T&G) proposed that unions should have the right to help promote the interests of minority ethnic members and members with disabilities. They suggested that as a minimum maternity issues and

discrimination/dignity at work should be added to the bargaining agenda. Professor Stephen Wood and Dr Sian Moore suggested equality should be added to the reserve power on pensions.

2.52 Employers opposed the inclusion of equality issues. The IoD suggested including equality on the bargaining agenda was unnecessary and possibly damaging for businesses. Coventry and Warwickshire Chamber of Commerce argued that this was a matter for voluntary deals.

2.53 The Government recognises that equal treatment in the workplace is an area of expanding interest for unions, one that is of growing importance as a theme of employer-union dialogue. The statutory procedure provides for negotiation on pay, hours and holidays. The Government believes that many equality issues will naturally form part of bargaining under these headings, though others will not. Whilst the Government encourages employers and their employees to engage on equality issues, it remains of the view that the statutory procedure should reflect the core issues which in practice form the basis of most recognition agreements. No evidence was presented suggesting that ‘equality’ has as yet established itself as a core topic of bargaining. The Government does not therefore intend to add equality to the current list of bargaining issues for the purposes of the statutory recognition procedure.

(c) Pensions

2.54 Unions largely rejected the Government’s decision to clarify that pensions were not included in pay, and argued for their inclusion in bargaining awards immediately. Many unions argued that to help support the Government’s broader pensions policies, or avert a pension crisis, the Government should take a lead on this issue and include pensions in statutory collective bargaining.

2.55 The Work Foundation suggested that it would like to see pensions included in statutory awards but saw practical difficulties, such as reconciling group pension schemes and individual bargaining units, and therefore supported the Government’s approach,

adding that partnership activity on pensions should be encouraged. Employers largely welcomed the clarification that pensions are not part of pay, but rejected any possible future extension of the core topics to include pensions. Several employers argued that a requirement to negotiate would limit the options open to management in making changes to pension schemes which are often dictated by financial necessity. Employers also called for extensive consultation before any reserve power in this area is used.

2.56 The Government looks forward to a time when there is more widespread partner engagement on pensions would make it a suitable core topic for the fall-back statutory procedure. At present, however, most voluntary agreements still do not include pensions. Therefore, the Government intends to clarify that pensions shall not be regarded as 'pay' for the specific purposes of the procedure for the present time. The Government confirms its proposal to give the Secretary of State an order-making power to add pensions to the three core topics, with a view to exercising that power when there is evidence that typical practice in voluntary recognition agreements is for pensions to be included as a bargaining topic.

'Top-up' Recognition

2.57 The Government proposed to clarify that the recognition procedure is available to a union which already has a voluntary agreement covering any of the workers in the proposed bargaining unit if that voluntary agreement does not include any one or more of pay, or hours, or holidays. 19 respondents expressed a view on this issue.

2.58 Both unions and employer groups gave virtually unqualified support to this proposal. The IoD, however, suggested the procedure should first require the union to apply to the employer to allow voluntary negotiations to take place; only if these failed should the union have recourse to the CAC.

2.59 Against the background of a broad consensus of support, the Government confirms its intention to clarify that unions will be able to access the statutory procedure where their voluntary agreements does not include any one or more of pay, or hours, or holidays.

Membership Checks and Other Information Issues

2.60 The consultation document raised five issues concerning the assessment of union membership levels and the disclosure of information to the CAC by one party or the other. These linked issues are discussed in the following paragraphs.

(a) Disclosure of Confidential Information to the CAC

2.61 In the consultation document the Government proposed to establish a general requirement on all parties to co-operate with a CAC membership check and to grant Acas-led ballots or membership checks a clear statutory basis. 24 respondents expressed a view on these issues.

2.62 The duty to co-operate with a CAC membership check was welcomed by all respondents who expressed a view, although some added the rider that data protection and confidentiality concerns must be satisfied. Some unions additionally requested that the CAC or the QIP be empowered to inspect data provided by the employer at the admissibility stage, for access and for ballot purposes. They argued that the legislation currently assumes that data provided by the employer is accurate whereas, for example, an employer may have an interest in exaggerating the number of workers in the union's proposed bargaining unit in order to make it more likely that the union will fail the admissibility tests.

2.63 The proposal to put Acas checks and ballots on a statutory basis received widespread support.

2.64 In view of widespread support for the proposed changes, the Government intends to establish in the procedure a duty on the parties to supply the CAC with data it requires to conduct membership checks. This will contain further protections to ensure that confidential information is not revealed to the other party. The Government acknowledges that the CAC may need to validate other evidence, such

as petitions. The Government therefore intends to extend the duty to supply data to cover these other types of information.

2.65 The Government confirms its intention to establish that where parties wish to involve the services of Acas in reaching a voluntary resolution of a recognition claim, Acas-run ballots or membership checks have a clear statutory basis. Acas will have a similar ability to require the parties to supply necessary information in order to facilitate these ballots or checks. The detailed arrangements for such ballots and checks will continue to be a matter for the parties to agree with the assistance of Acas.

(b) Legal Definition of Union Membership

2.66 At present the CAC uses the union rulebook as aid to the definition of union membership. In the consultation document, the Government invited views on the treatment of members who receive free or reduced-fee membership under the statutory procedure. 31 respondents expressed a view on this issue.

2.67 Employer groups largely, but not exclusively, called on the Government to define membership in law for these purposes, although their proposed definitions varied. Employers were concerned about the weight of support for recognition which could be attached to membership, particularly where free or reduced rates operate. It was also suggested that there should be a minimum period of fully paid up membership for it to be counted by the CAC.

2.68 Unions maintained that this was a matter for union rule-books, and that the existing freedom to set and operate fees as they see fit should remain. A number of unions defended their rights to charge a reduced fee on the basis that in pre-recognition workplaces they cannot offer members their full range of services, and that there was a need for fees to reflect the varying circumstances of members such as apprentices and the 'low paid'. In addition, the TUC pointed out that even in circumstances of majority membership, if an employer challenges the basis of likely support for recognition, the CAC is able to hold a ballot. Therefore, given this discretion and the majority likely requirement, they considered that there was no basis for introducing a further check on membership.

2.69 The Government notes there are strong arguments on either side of the debate. However, where there are doubts that union membership reflects support for collective bargaining within the bargaining unit, the procedure allows for this to be tested further. The Government considers this safeguard to have operated effectively and, on balance, does not propose to establish a legal definition of union membership.

(c) Union Membership Checks after Point of Acceptance

2.70 In the consultation document the Government proposed not to ‘freeze’ membership levels at the point of acceptance for the remainder of a CAC application. 13 respondents expressed a view on this issue.

2.71 Unions generally opposed this position. In addition to Professor Wood and Dr Moore, some unions pointed to an alleged unfairness which had arisen in cases where membership density had fallen because of employer changes to the bargaining unit (such as recruitment or redundancies of staff), during the CAC process.

2.72 There was strong support for the Government’s approach among those employer groups that commented. The EEF stated that new checks ensured crucial decisions were based on an up-to-date position in terms of members and workers.

2.73 There are various reasons why the level of union membership may vary during a CAC application. These variations may favour employer or union, depending on the circumstances of the case. Whichever way it cuts, it is important that decisions on recognition reflect the available evidence, and for this to be as up-to-date as possible. The Government continues to believe, on weighing up the risks and benefits involved, that the appropriate approach is to maintain the current system permitting the CAC to reassess membership levels at key points in its consideration of an application.

(d) Petitions of Support

2.74 In the consultation document the Government opposed making rules prescribing the form which petitions in support of recognition should take. It did, however, seek views on whether there may be value in further non-statutory guidance from the CAC for parties considering the submission of a petition. 18 respondents expressed a view on this issue.

2.75 Several employer groups called for greater consistency in the way petitions were drawn up and scrutinised. It was argued that petitions should be covered by regulations rather than guidance and that they should be more closely scrutinised in relation to the legitimacy of the signatures, and the period during which the petition was circulated. A minority of employer organisations, however, did support the Government's proposal for more guidance.

2.76 The TUC and some other unions agreed that further non-statutory guidance would be helpful, while maintaining that it must not be prescriptive. GMB, the Union of Construction, Allied Trades and Technicians (UCATT) and Thompsons disagreed, arguing that no further guidance was necessary or desirable.

2.77 The Government remains of the view that it would not be appropriate to prescribe in regulations the form petitions must take. It is for the CAC to consider the evidence put before it on the facts of each case. Although employers and unions disagree over its status, there does appear to be general support from both employers and unions for more guidance being available to parties considering petitions. Therefore, the Government will ask the CAC to consider reviewing its current guidance.

(e) Disclosure of Information by the Employer to the Union

2.78 In the consultation document, the Government proposed that the employer should be required to disclose information regarding workers in the bargaining unit at the CAC stage for negotiating the bargaining unit. This was with a view to encouraging voluntary resolution of these negotiations. 27 respondents expressed a view on this issue.

2.79 Professor Wood and Dr Moore supported the Government's view that the sooner a shared picture of the workforce can be achieved, the greater the chance of agreement being reached on the bargaining unit. The FDF agreed that provision of accurate information was in the best interests of all parties. Unions also generally welcomed the proposal, but many suggested that the information should be shared at an earlier point in the process. The IoD however disagreed with the proposed requirement.

2.80 The Government notes that unions would welcome information about workers in the bargaining unit at an earlier point in the procedure. However, prior to CAC acceptance, the standing of the claim has not been established, and it would be inappropriate to place such an obligation on employers at that stage. Moreover, the purpose of the Government's proposal is to assist in the specific circumstance of agreeing the bargaining unit. This intention was generally supported in responses to consultation. The Government remains of the view that where, following acceptance, the parties have still to agree the bargaining unit, the employer should be required to disclose to the union the number of workers in the claimed bargaining unit, together with their category and workplace location.

Timescales

2.81 The consultation document made two proposals concerning the timetable for applications under the statutory procedure. Respondents' views on these issues are discussed in turn in the following paragraphs. An additional issue, relating to the ballot notification period was raised during the consultation period. This is also addressed in the following paragraphs.

(a) 20-day Period for Negotiation

2.82 In the consultation document the Government proposed to give the CAC a power to reduce the 20-day period for negotiating the bargaining unit. 25 respondents expressed a view on this issue.

2.83 The TUC and unions were generally in favour of this proposal. There was a concern that employers may use the 20-day period to undermine support for recognition rather than to negotiate with the union. In contrast, there was opposition from some employers groups who saw no evidence of the need for such a change, which, it was argued, would save little time and in all likelihood apply to few cases.

2.84 The CAC has powers to extend virtually all the statutory time periods in the procedures. However, even in those cases where both parties acknowledge they will not agree a bargaining unit, the CAC has no power to reduce the 20-day negotiating period. The parties and the process must simply mark time. While the Government notes objections to this change it continues to believe that it is sensible and logical to adjust this arrangement so that the CAC may reduce the 20-day period where the parties jointly request it, or where the CAC considers there is no reasonable prospect of the parties agreeing the bargaining unit. The Government intends to change the law accordingly.

(b) Time Limit on Applications to the CAC

2.85 In the consultation document the Government did not favour the idea that a time limit should be introduced covering the period between the union's initial request to the employer and any subsequent application to the CAC.

2.86 Professor Wood and Dr Moore agreed with this approach, suggesting that research had confirmed union policy was to treat the statutory procedure as a 'last resort', and not use it 'indiscriminately and ahead of any systematic recruitment of members'. All of the unions that expressed a view agreed, suggesting that flexibility encouraged voluntary settlements, and that a time limit might encourage more ill-founded CAC applications to be

made. The EEF, however, believed that the absence of a time limit was unfair to employers and left them uncertain about the union's plans. They suggested a time limit of three months for the subsequent submission of a claim to the CAC.

2.87 In the absence of evidence that unions are unduly delaying application to the CAC following their request to an employer, the Government is not convinced that employers are disadvantaged by the absence of a time limit. There are however, good grounds to believe that a new time limit could produce unwelcome side effects for the statutory procedure. Therefore, the Government proposes to make no change in this area.

(c) Ballot Notification Period

2.88 It was raised in consultation that the CAC has no power to lengthen the 10-day ballot notification period, unlike other statutory periods in the procedure. It cannot therefore extend the period in order to assist parties seeking to reach a voluntary deal at this stage in the process. While parties can sometimes find some extra time to negotiate in the short period before the appointment of a QIP to run the ballot, this is likely to be only a brief interlude and any agreement reached during this time cannot qualify as an 'agreement for recognition'. This would be an unfortunate disincentive to conclude such a voluntary agreement.

2.89 The Government will change the law to allow the CAC to extend the 10-day ballot notification period where both parties request this for the purpose of negotiating a voluntary settlement. This will enable agreements formed after the existing 10-day ballot period to qualify as being 'agreements for recognition', and act as a further incentive for the conclusion of voluntary deals during the statutory process.

Withdrawn Applications

2.90 In the consultation document the Government proposed no change to the handling of withdrawn applications. 10 respondents expressed a view on this issue.

2.91 Some employers disagreed with the Government position and suggested a financial penalty should be applied where a union withdraws a case in order, to compensate the employer for time and resources spent. The FDF and those unions who expressed a view agreed with the Government approach.

2.92 In the Government’s opinion there continues to be no supporting evidence that unions are typically making speculative applications only to withdraw them. In addition, there is the possibility that any penalty for withdrawal could encourage unions to pursue all claims to a final CAC determination in order to avoid the penalty, so wasting CAC and employer resource. Therefore, the Government reaffirms its intention not to make any change in this area.

Effective Date for an Existing Collective Bargaining Agreement

2.93 In the consultation document the Government proposed no change to the existing procedure for determining the effective date of a recognition agreement. Currently an application is inadmissible if an existing collective agreement, covering any of the workers in the proposed bargaining unit, has been concluded at any time prior to the CAC's decision on the admissibility of a union's application. 8 respondents expressed a view on this issue.

2.94 The TUC and other unions did not support a change in the law although they thought a distinction should be made between how the law treated agreements made with independent, as opposed to non-independent unions. There was little employer comment on this area, although the FDF did state agreement with the Government’s position.

2.95 Specifying an effective date at any point prior to CAC acceptance of an application has the potential to lead to the CAC making determinations in respect of existing voluntary deals: a recipe for undermining voluntarism and for generating inter-union disputes. The Government is not attracted to limiting the operation of the law in this area so that agreements with non-independent unions would not have the same effect. Therefore, the Government intends to make no change in this area.

Treatment of Non-independent Unions

2.96 In the consultation document the Government did not propose any changes to the arrangements for derecognising a non-independent union. 14 respondents expressed a view on this issue.

2.97 Respondent unions opposed the current arrangements and thought that an existing agreement with a non-independent union should not block an application by an independent one. Unions claimed that requiring individuals to apply for derecognition left them exposed to victimisation: independent trade unions should be allowed to apply instead. The CBI and FDF expressed support for the Government's decision. In addition, it was observed that non-independent unions were not a major feature of employment relations.

2.98 The primacy of voluntary agreements is an important cornerstone of the statutory procedure. The Government believes that where parties have established such arrangements, including those involving non-independent unions, the procedure should not seek to undermine them. However, where workers who are subject to an agreement involving a non-independent union wish to end this, the procedure should and does provide a mechanism for derecognition. The Government has seen no evidence of any widespread recognition of non-independent unions by employers as a device to avoid recognition claims by independent unions. The Government intends to make no change to the law in this area.

Three-year Moratorium Following an Unsuccessful Application

2.99 In the consultation document the Government proposed no change to the three-year moratorium following an unsuccessful application for recognition. 13 respondents expressed a view on this issue.

2.100 Employer groups stressed that the moratorium should be retained. Some unions argued that the moratorium was unfair in circumstances where the bargaining unit had changed and/or the union had recruited more members. It was suggested that unions

should be able to re-apply within three years where there are substantial changes to the bargaining unit. Another union suggested the period be reduced to one year. The TUC claimed that if the procedure required the employer to provide information to the union before it made an application, this would be fairer as unions would not mistakenly overestimate support, and then be barred from re-applying for three years.

2.101 The Government considers that unions do not experience undue difficulty in compiling information for the purposes of demonstrating that a majority of the bargaining unit is likely to favour recognition. The Government sees no reason to suppose that unions regularly overestimate support for recognition. The Government does not intend to change the three-year bar on union re-application. To do otherwise could lead to uncertainty and the possibility of constant disruption to workplace employment relations.

Detriment and Dismissal

2.102 In the consultation document the Government proposed to consider further and keep the law under review in this area. 30 respondents expressed a view on this issue.

2.103 This was an area where unions expressed great unease about the operation of the procedure. Several unions claimed evidence of workers facing intimidation by employers during recognition claims. Unions have also reported employer actions aimed at disrupting attendance at union access meetings by, say, providing incentives to remain at work or by timetabling conflicting events. Unions sought greater protections against unfair campaigning activities by an employer during a recognition case. The cornerstone of the union approach was, as set out by the TUC, that there should be an 'unfair labour practices' provision, effective from the date when the union's application is accepted, with automatic recognition ultimately awarded where employers are in breach. The Haldane Society of Socialist Lawyers suggested that during a recognition dispute the presumption should be that a worker is dismissed for reasons related to the dispute, and it should be for the employer to show otherwise. The Work Foundation suggested harassment and victimisation should be added to all of the detriment and dismissal provisions throughout the legislation. Professor Wood and Dr Moore suggested that the existing Code of Practice

on Access could be transformed into statutory regulation, as a basis for any unfair labour practices law.

2.104 The CIPD suggested that determining unfair labour practices would involve qualitative judgments, which would be difficult to make. Other employer organisations alleged examples of intimidatory tactics by unions, and argued that any unfair labour practices clause must apply to both sides. They urged caution in changing the law in this direction, as the proliferation of claims and counter claims could lead to a slowing of an applications process.

2.105 Parties often have strongly held views about recognition claims. Whilst they should be allowed to communicate their opinions, the Government recognises that intimidatory behaviour by any party during the process, especially at the ballot stage, is reprehensible. Such behaviour, though still untypical of recognition cases, appears to be increasing. However, as outlined in the consultation document, there are a number of difficulties with the unfair labour practices approach. In the Government's view, these difficulties have not been adequately resolved by respondents. Having weighed the risks and potential benefits of change in this area, the Government is not convinced on the evidence presented so far that new behavioural rules, applicable to both employers and unions, should be added to the statutory procedure.

Change of Employer Identity

2.106 In situations where an employer's identity changes during the course of the procedure, or after a CAC declaration of recognition, the Government proposed in the consultation document to require the CAC to treat the new employer as if it were the original employer. 24 respondents expressed a view on this issue.

2.107 Respondents largely agreed with this proposal. Coventry and Warwickshire Chamber of Commerce suggested that previous recognition should not be automatically transferred. The TUC and other union respondents additionally suggested that after a

TUPE transfer, unions should be able to apply for extension of a transferred recognition agreement to other staff in the new organisation.

2.108 The statutory recognition procedure deals with many different situations and contains numerous references to ‘the employer’. The Government does not believe that the procedure can be amended by applying a simple ‘rule of thumb’ to cover all these different circumstances, especially where several employers take over responsibility for parts of a bargaining unit covered by a single existing recognition award. Therefore, the Government intends to take an order-making power to provide in regulations that, following a change of employer identity, responsibility for awards or outstanding applications can be re-assigned from the original employers to their successors with the aim of achieving continuity of treatment for the workers concerned. The Government will of course consult on these regulations in draft.

Change of Union Identity

2.109 The Government also proposed in the consultation document to allow the CAC to continue with an application for recognition or to apply an existing award of recognition where the union in question is involved in a merger, in the name of the newly merged union. 12 respondents expressed a view on this issue.

2.110 Most respondents expressed agreement with this proposal, although further details were sought.

2.111 Similarly as in relation to changes in employer identity, amendments to the law in this area will be complex. Therefore, the Government intends to take an order-making power to provide in regulations that the new union should be treated as the original union following a merger. This power will also enable the Government to set out the working of the statutory procedure in situations where unions split or otherwise change their identity. In addition, the Government intends to make amendments to the law relating to the duties of the Certification Officer, which will provide for the automatic listing of a new union where two or more listed trade unions amalgamate and the automatic issuing of a certificate of independence

to the new union where all the amalgamating unions are independent. These changes to the law should help ensure that the ownership of awards and applications can seamlessly transfer to the newly merged union.

Miscellaneous Issues

2.112 The consultation document sought views on a cluster of other, diverse issues concerning the statutory procedures. Responses on these various issues are discussed in the following paragraphs.

(a) Appeals

2.113 In the consultation document the Government did not propose to introduce a new right to appeal decisions by the CAC. 14 respondents expressed a view on this issue.

2.114 Generally, employer groups argued for the introduction of an appeal mechanism. The CBI suggested a significant number of employers were unhappy with the CAC consideration of their case, and claimed that the low number of judicial reviews undertaken to date was symptomatic, not of employer contentment with decisions, but of the difficulty in pursuing that route.

2.115 Unions agreed with the Government's stance, stressing that a route to appeal would increase delays in the system. The TUC urged the Government not to add to the 'legalism' in the statutory procedure. Others claimed that the specialist nature of the CAC rendered an appeals mechanism inappropriate.

2.116 In the Government's view, the arguments for not having an appeal mechanism as set out in the consultation document are still persuasive. The Government therefore confirms its intention not to create a further mechanism for appeals against decisions of the CAC.

(b) Amending the Statutory Procedure

2.117 The Government proposed in the consultation document to allow the Secretary of State to amend the statutory procedure by order where requested to do so by the CAC. 18 respondents expressed a view on this issue.

2.118 The majority of those responding (both unions and employer groups) broadly supported this power but insisted that any changes should be subject to consultation and the Parliamentary affirmative resolution procedure. The IoD opposed, suggesting that changes should require full debate and primary legislation. Thompsons similarly opposed, insisting that changes should not be made hastily and in isolation from their impact on other parts of the procedure.

2.119 The Secretary of State already has powers to make certain specific changes in the procedure by order. As previously argued, the procedure is long and technical, with many parts as yet untested. The Government believes it is therefore sensible for the Secretary of State to have a more wide-ranging power to amend, without the need to use primary legislation. However, the Government is sensitive to concerns regarding how this would be used. The Government intends therefore that the use of such powers would be triggered by a CAC request, and would be subject to the affirmative resolution procedure in Parliament. The Government would not look to make any significant revisions to the procedure without having conducted appropriate consultation.

(c) Enforcement of the Bargaining Procedure

2.120 In the consultation document the Government proposed no new mechanism for enforcing an award of collective bargaining. 13 respondents expressed a view on this issue.

2.121 Unions pointed to the lack of any requirement to bargain in good faith. The TUC said it was monitoring recognition deals to see whether employers are simply 'going through the motions'. If evidence were to emerge of this happening, they would request

legislation providing for the CAC to determine terms to be incorporated into individual workers' contracts. The ELA pointed to existing duties in the law on consultation for collective redundancies and business transfers, claiming this issue as one area where the courts look, in effect, at whether parties have acted in good faith. The FDF and Eversheds supported the Government position.

2.122 On a related matter, the EEF suggested that collective agreements following a statutory award should, with the agreement of the employer and the union, be deemed in law to be automatically incorporated into the individual contracts of employment of all the workers in the bargaining unit without any need to seek their consent. Collectively agreed terms and conditions would thus be enforceable in law. This arises from a concern that workers might reject changes to their terms and conditions which have been collectively agreed by union and employer.

2.123 Any legal duty to bargain in ‘good faith’ places the statutory body given the task of deciding this question a very difficult judgment to make. Although problem cases have been cited, the Government is still of the view that the current law takes the right approach, there being no widespread evidence of parties not following procedures once a method has been decided. The Government intends to make no change to the law in this area. The Government believes that the concern expressed by the EEF to be a relatively rare occurrence. In the past, employers have found workable ways to resolve any difficulties which arising if workers are unhappy about the content of collective agreements. The Government does not consider the issue requires any amendment of statute.

(d) Definition of ‘Workers’ for the Purpose of the Statutory Procedure

2.124 In the consultation document the Government noted there had been calls to widen the definition of a worker for the statutory procedure but concluded that the issuer should be considered as part of the separate and ongoing DTI review of employment status in relation to statutory employment rights. 17 responses were received on this matter from trade unions.

2.125 Respondents accepted the logic of waiting for the outcome of the Employment Status Review, but urged a speedy conclusion to that exercise, pointing to alleged definitional problems they had experienced in CAC cases. The Musicians Union (MU), Broadcasting, Entertainment, Cinematograph and Theatre Union (BECTU) and the NUJ referred to freelance and casual worker members, whom they said faced difficulty in determining their employment status under recognition law. They sought a wider definition of workers and greater clarity in the existing definition.

2.126 The Government notes the views expressed. The position remains that definitional issues are being considered as part of the continuing Government review of employment status (see paragraph 5.23 in Chapter 5 on the Employment Status Review).

(e) Seafarers

2.127 In the consultation document the Government proposed no changes to the treatment of seafarers under the statutory procedure, but referred to the separate Department of Transport (DfT) review of the employment position of seafarers.

3 respondents expressed a view on this issue.

2.128 The TUC called for the extension of employment rights to seafarers, and asked for the DfT review to be completed swiftly. The National Union of Rail, Maritime And Transport Workers (RMT) called the present rules unduly complex and asked for them to be simplified so that seafarers can seek union recognition on the same basis as shore based workers.

2.129 Policy responsibility for seafarers lies with DfT. Through the Shipping Task Force, the DfT have been considering concerns about the position of seafarers and are looking at different mechanisms to ensure that seafarers are adequately protected.

(f) Technical Issues

2.130 The Government proposes to make a number of technical amendments to correct incorrect cross-references and inconsistencies in the legislation. In addition, the Government intends to amend the procedures for the employer or worker(s) to apply for the derecognition of a union following a CAC award of statutory recognition. This change will close a loophole that prevents a union from challenging an attempt by the employer to derecognise in certain situations. It will also ensure that there is a three-year moratorium on further attempts to derecognise a union following a failed application for derecognition under any of these parts of the procedure.

CHAPTER 3: TRADE UNION AND INDUSTRIAL ACTION LAW

3.1 In Chapter 3 of the consultation document respondents were asked to give views on the operation of those parts of the 1999 Act, excepting union recognition, which changed trade union and industrial action law. Respondents were also invited to comment on the Government's proposals to amend trade union law to comply with the European Court of Human Rights (ECtHR) judgment in the *Wilson and Palmer* cases¹.

Discrimination on Grounds of Trade Union Membership or Non-membership

3.2 In the consultation document the Government stated that the provisions of the 1999 Act that made it unlawful to discriminate on grounds of trade union membership or non-membership by omission were working well. Respondents confirmed this view. The Government therefore intends to retain these protections.

The Wilson and Palmer cases

3.3 In the consultation document the Government assessed the implications of the judgment by the European Court of Human Rights (ECtHR) in the *Wilson and Palmer* cases. To ensure that the UK fully complied with the European Convention of Human Rights (ECHR), the Government proposed making the following changes to trade union law in response to that judgment:

- i) to repeal sections 148(3)-148(5) of the Trade Union and Labour Relations (Consolidation) Act 1992 (the so-called Ullswater Amendment);
- ii) to repeal section 17 of the Employment Relations Act 1999;
- iii) to establish a clear positive right for members of independent unions to use their union's services; and

¹ The judgment was issued on 2 July 2002 and, in full, concerned the applications of Wilson and the National Union of Journalists; Palmer, Wyeth and others and the National Union of Rail, Maritime and Transport Workers; Doolan and Others v the United Kingdom (Application Nos. 30668/96, 30671/96 and 30678/96).

- iv) to maintain some freedom for workers in unionised settings to enter individualised contracts by specifying where entering such contracts would not constitute trade union discrimination.

36 respondents expressed a view on this issue.

3.4 Respondents gave sharply differing interpretations of the implications of the ECtHR judgment. The CBI, EEF and other employer organisations considered that the judgment did not require major changes to trade union law other than the repeals of the Ullswater Amendment and section 17 of the 1999 Act. The CBI argued that the changes to trade union law under the present Government had in large measure already dealt with the compliance issue. The TUC, GMB, the Institute of Employment Rights (IER) and others considered that the judgment required more far-reaching changes to ensure that unions and their members enjoyed a 'right to be heard'. Among the various changes which these unions, the IER and others proposed were:

- establishing a right for a worker to be represented by a union official at virtually all disciplinary and grievance hearings;
- abolishing the small firms' threshold in the statutory recognition procedure;
- introducing an explicit right to strike; and
- providing for unions (as well as individual union members) to make claims against employers where unlawful inducements to forfeit union membership or representation have allegedly occurred.

3.5 Turning to the individual proposals mentioned in the consultation document there was general agreement from all parties that the Ullswater Amendment should be repealed. For example, Eversheds stated that the Government had no option but to repeal the Ullswater Amendment. Several unions, and Mr David Wilson (an applicant in the *Wilson and Palmer* cases), welcomed the Government's intention to remove it from the legislation. CIPD thought it unlikely that its removal would cause any problems.

3.6 There was a similar unanimity of view that section 17 of the 1999 Act should be repealed, with no respondent opposing the proposal.

3.7 Opinion was more widely spread on the proposal to establish a positive right for members of independent unions to use their union's services. Most unions and the Law Society welcomed the proposal though some unions, for example the T&G, were uncertain what the right might entail. Employers were more sceptical: wanting to see the detail before finalising a view. The ELA called the proposed right 'sensible'. Eversheds recognised the need to create the right, but agreed with the Newspaper Society and the CIPD that controls should be in place to ensure that 'time off' for using union services was not excessive. The Haldane Society of Socialist Lawyers welcomed the proposal, suggesting that the range of union services to which the right applies should include those in the field of collective bargaining. The TUC added that the law on dismissal, and action short of dismissal, on grounds of trade union membership or activities should be amended to provide protection against discrimination for using union services. The National Union of Teachers (NUT) argued that union members should have the right to instruct or permit a union to make representations to the employer. Thompsons called for the right to be extended to all workers and not just to employees.

3.8 The proposal concerning individualised contracts was generally welcomed by employer groups. Both employer groups and unions were cautious about giving a final view without considering the detail of proposed legislation. Eversheds, CIPD, EEF and FDF agreed with the Government's approach. The CBI stressed that the Government must protect the ability of employers to offer individual contracts. Unions were concerned about the proposal. For example, T&G and NUT stated that it could not envisage a situation in which any employer would offer individualised contracts without any accompanying inducement to relinquish union representation. Unison doubted whether clarification of entitlements to enter such contracts was needed and ASLEF claimed that clarification would run contrary to Article 11 of the European Convention on Human Rights. The TUC and other unions supported the idea that the law should make it unlawful for employers to offer financial inducements to workers to enter individualised contracts which undermined collective representation. The Public and Commercial Services Union (PCS) and the Educational Institute of Scotland (EIS) suggested it should be illegal to offer a financial inducement to enter a personal contract outside the terms of a collective agreement. Mr Wilson suggested the definition of inducements would need to include verbal ones. The ELA called the proposal sensible but envisaged problems drafting

appropriate legislation. Thompsons expressed fears that the clarification would undermine collective bargaining and the IER opposed the proposal.

3.9 In response to the consultation the Government reaffirms its view that the ECtHR judgment requires some important changes to trade union law, especially the law outlawing discrimination on grounds of trade union membership and activities. Though the incidents which gave rise to the *Wilson and Palmer* cases are less prevalent in today's improved climate of employment relations, it would be wrong to leave the law as it is. That would mean the law was unclear, as tribunals and courts tried to reinterpret its meaning in the light of the ECtHR judgment. Moreover, the Government intends that as a matter of principle trade union law should comply with the European Convention. The Government does, however, reject arguments that the judgment's discussion of the 'right to be heard' requires any changes to the statutory recognition procedure, the right to be accompanied or industrial action law. The current law provides adequate means for unions to communicate and interact with employers on behalf of their members. The judgment makes clear that the European Court does not consider that the Convention requires any particular treatment of trade unions by employers. The Government also considers that the judgment's passing references to the interests of the union do not require any overhaul of the law to enable unions to sue employers where their members have been discriminated against. The overriding focus of the Convention concerns the rights of individual people, not the entitlements of the organisations to which they belong.

3.10 In the light of this assessment, the Government confirms its intention to repeal the Ullswater Amendment and section 17 of the 1999 Act.

3.11 The Government also confirms its intention to provide union members with rights to use the services of their union. The Government intends to achieve this mainly by amending sections 146 and 152 of the 1992 Act which currently provide the core protections against anti-union discrimination by detriment or dismissal. The amendments would provide similar protections to individuals who are penalised for using their union's services. The protection should also explicitly cover the

circumstance where, arising out of a member's use of a union's services, the union makes a representation on behalf of that member. The definition of 'union services' would focus on those services received by union members as individuals, and should therefore exclude collective bargaining. The Government accepts the argument that there must be a limitation on the use of a union's services during working time to avoid workplace disruption and considers that this limit should be on the same lines as the existing limitation on engaging in union activities during working time.

3.12 The Government also confirms that the law should explicitly prohibit inducements or bribes being made to trade union members to forego union rights. Those were the particular employer behaviours that gave rise to the *Wilson and Palmer* cases, and they should be made unlawful. The Government intends to make it unlawful for an employer to make an offer to an individual with the main purpose of inducing that person to relinquish rights to belong (or not to belong) to a union, rights to engage in trade union activities or the proposed right to use union services. In addition, offers should be made unlawful whose main purpose is to induce a group of workers, who belong to a recognised union, to accept that their terms of employment should be determined outside collectively agreed procedures. The result is that it would be unlawful for an employer to offer an inducement to the union members in such a group to have their terms of employment determined outside the framework set by any existing collective bargaining arrangements. This limits the scope of employers to offer individualised contracts. To avoid inflexibility however, the law should allow employers to make offers where the sole or main purpose of the inducement is unconnected with the aim of undermining or narrowing the collective bargaining arrangements. In particular, the law should give room for employers and individuals to enter individualised contracts designed to reward or retain key workers.

3.13 To comply with the ECtHR judgment the Government also considers that certain trade union rights (not to suffer a detriment or be offered unlawful inducements) should apply to workers and not just to employees.

Blacklisting

3.14 The government proposed to finalise the drafting of regulations banning the production, dissemination and use of union blacklists, ready for their prompt introduction should the need arise. Draft regulations were published for consultation in a separate report, together with a draft Regulatory Impact Assessment.

3.15 GMB, T&G, UCATT and Eversheds favoured the introduction of regulations as soon as any evidence emerged of the problem reoccurring. The BPIF, PCS and EIS all broadly supported the regulations, but did not comment on whether or not they should be introduced immediately. The TUC, the Association of University Teachers (AUT), the Graphical, Paper and Media Union (GPMU), Thompsons, the Northern Ireland Public Service Union and the Work Foundation favoured the immediate introduction of regulations. The EEF did not believe that the regulations currently needed to be introduced and hoped they never would be. The Newspaper Society regarded the drafting of the regulations as unnecessary. The CBI hoped the Government would not find it necessary to introduce regulations. Unison proposed instead that it should be made unlawful to refuse employment on the grounds of previous trade union activity. No respondent reported any evidence or knowledge of blacklisting taking place in recent years.

3.16 The Government now intends to continue its policy of finalising the draft regulations, ready for their prompt introduction should the need arise. It will be publishing a separate response document with the revised regulations in due course.

Industrial Action Law

3.17 The consultation document repeated the Government's commitment to retain the essential features of the pre-1997 law on industrial action. In addition, the Government proposed to clarify and simplify the law on pre-ballot and pre-strike notices. Suggestions were also made to extend the ability of the courts to disregard small accidental failures to comply with industrial action law. 40 respondents expressed a view on these issues.

3.18 Various respondents, mostly unions, argued for major changes to industrial action law in addition to the proposals put forward in the consultation document. For example, the IER suggested that secondary action in support of lawful primary action should be made lawful. Several unions suggested that changes should be made to the definition of a trade dispute, pointing to the *University College London Hospital NHS Trust v Unison* case, where employees were prevented from taking industrial action in order to secure guarantees about future terms of employment following a prospective TUPE transfer. Unison suggested that the law on picketing should be relaxed and wanted to make it harder for employers to obtain injunctions by shifting the balance of convenience test away from the employer's favour. Some unions called for the law requiring unions to repudiate unofficial action to be replaced by a simple requirement to call off the action. They argued that the current law on repudiation imposed significant costs, and could inflame matters at a difficult time. The provisions concerning the suspension and resumption of action were criticised as confusing and as creating unnecessary obstacles in the way of resuming action.

3.19 The Government considers that the main features of the current law on industrial action are workable and unions have by and large successfully adapted to them. The rights and obligations on unions ensure adequate member involvement in the organisation of industrial action, minimise the danger of unnecessary disruption during strikes and help ensure that disputes are settled without any action being taken. Whereas the number of stoppages is at an all-time low, days lost through official and unofficial industrial action have increased somewhat. Against this background and fully mindful of its international obligations, the Government reaffirms its commitment to maintain the essential features of the pre-1997 law on industrial action.

3.20 The NUT and National Association of Schoolmasters Union of Women Teachers (NATFHE) raised issues surrounding deductions from pay for workers taking industrial action. They argued that the law was unclear. In particular, employers tended to treat holiday entitlement in differing ways, which in some cases could significantly increase the deduction made.

3.21 The Government notes these points but considers that imposing a statutory rule on deductions would not cater for the wide range of individual circumstances that exist in practice. As these unions acknowledge, individuals can take legal action against their employers where they consider deductions have been excessive.

Industrial Action Notices

3.22 In the consultation document the Government made various proposals to simplify and clarify the law on pre-ballot and pre-strike notices to ensure that the legal obligations on unions were clearly defined and corresponded to the capabilities of unions to provide the required information.

3.23 Unions, supported by the Haldane Society of Socialist Lawyers, the Work Foundation and the Law Society, generally welcomed the proposals. However, the Bakers, Food and Allied Workers Union (BFAWU) and Ceramic and Allied Trades Union (CATU) depicted the proposals as being cosmetic and some unions proposed dropping the requirements to issue two notices at both the pre-ballot and pre-strike stages. The TUC supported simplification, asking that unions be required to provide approximate numbers, instead of matrices. Unions discussed the problems faced in providing detailed information, citing in particular the difficulties associated with complex informational matrices and suggesting concerns that these matrices could identify the workers involved. The Information Commissioner suggested that the proposal seemed to make it less likely that member's personal details will be handed over. Unions also noted that the current law, especially the requirement to supply such information as enable the employer 'to make plans', produced a potentially open-ended requirement on them, which created great uncertainty.

3.24 In contrast, employers tended to support the status quo and were concerned that the proposals would encourage sloppy record keeping by unions. The CBI stressed that the legislation must allow employers to plan for the consequences of a strike and, along with the EEF, also registered their opposition to any moves that made it easier to take industrial action. Eversheds suggested the current system contributes to the low level of strikes and argued that the 'making plans' formulation has not been shown to be

unworkable or uncertain in its effect. Employer groups argued that the matrices are useful. One respondent stated there was an air of unreality about claims that requirements on unions are onerous and suggested that unions should simply hand over the list of members to be balloted. The ELA warned of potential difficulties for employers if the information they receive is limited due to a lack of data at the union headquarters.

3.25 A few respondents suggested alternatives for the ‘making plans’ purpose of the notices. The FDF suggested that the purpose should be ‘to identify those employees who will strike for the purposes of encouraging them not to; minimising disruption; and facilitating health and safety’. The Managerial and Professional Staffs Association (MPA) suggested alternative was ‘to assess the effects of the industrial action’.

3.26 The Government rejects arguments that the requirement to produce notices should be repealed. Both notices serve useful purposes. However, the Government considers that the existing law is seriously deficient in so far as it places unrealistic and unclear obligations on unions. The law should therefore be amended by clearly defining what information the union needs to provide. The Government intends to remove the ‘making plans’ wording and the obligation to produce matrices. Instead, unions will have to provide two lists identifying the categories of worker involved and the workplaces involved. In addition, notices should also contain figures identifying, as accurately as is reasonably practicable, the total number of workers involved, the number of workers in each category, and the number of workers at each workplace. The law will continue to ensure that union members’ names are not revealed to ensure that individual membership can remain confidential. Additionally, notices should be based on only that information held by, or accessible to, the officers and employees of the union, not lay-officials. These arrangements would meet the key needs of employers to receive accurate and timely information on the scale and scope of industrial action.

3.27 The Government also intends to remove the unnecessary requirement for pre-strike notices to refer explicitly to a section of statute.

Disregarding Small Accidental Failures

3.28 The Government sought comments on a proposal to extend the ability of the courts to disregard small accidental failures to comply with all the technical requirements of the law. In the light of the courts' consideration of the *P v NASUWT* judgment, the consultation document suggested that a new disregard should be applied to provisions relating to the union's inducement of its members to take industrial action. It also suggested applying a new disregard to the provisions on notices.

3.29 Union respondents welcomed the proposals. The T&G stated that wrangles over details during a dispute were damaging and distracting. Prospect expressed uncertainty as to what it would mean in practice. GMB supported the proposed disregards, claiming that some employers deliberately harass unions on these issues.

3.30 Generally, employer groups were cautious about creating new disregards. For example, the IoD stated that employers should have the right to prevent unions from inducing those members who were not balloted, even if this is down to a mistake. The EEF stated it had particular problems accepting the proposal. However, London Borough of Camden Personnel Services suggested it was not too concerned with small accidental failures, as during a strike it was more interested in big issues.

3.31 The Law Society and Thompsons supported these ideas, a view that was provisionally shared by Eversheds. The ELA asked whether reform was needed given that the *P v NASUWT* case seemed to have provided a precedent.

3.32 Since the consultation document was published the House of Lords has given its judgment on the *P v NASUWT* appeal. The Government has studied the views expressed by the House of Lords and the other courts in this important case. It considers that it would be useful to embed these judgments in law by making it clear that unions can induce members to take action to whom it failed to accord an entitlement to vote, as long as that failure was small and accidental. The Government believes that, with this change, the law on inducement should be sufficiently flexible to deal with minor failures by unions. In view of the proposed

changes to the law on notices described above, unions should find it easier to meet the requirements of that law. The Government does not therefore propose introducing a disregard covering the notice provisions.

Dismissal of Striking Employees

3.33 The Government proposed in the consultation document to retain the eight-week period during which dismissals are automatically unfair, and retain the existing arrangements by which applications are made to tribunals. It sought views on whether 'lock-out' days should be exempted from the eight-week period. 36 respondents expressed a view on this issue.

3.34 Virtually all union respondents called for the repeal of the eight-week rule and many referred to the *Friction Dynamics* case as justifying that step. Many unions, for example, the Communication Workers Union (CWU), NUJ and GMB, called for indefinite protection. The T&G suggested that the present law provides an incentive to employers to prolong disputes. Prospect and ASLEF stated that the eight-week cut-off was arbitrary. ASLEF added that absence of evidence of abuse was not a reason for ignoring the need for more positive steps. Unison believe the right to strike should be made absolute, a point reiterated by the RMT which viewed the taking of industrial action as a basic human right. The RMT also rejected any moves toward compulsory arbitration, saying that it was up to the union and employer to sort out the dispute. Thompsons called the eight-week rule arbitrary and unfair. Several unions, including the T&G, UCATT and Prospect, stated that the law should provide interim relief for dismissed strikers. IER also called for interim relief, or for workers' contracts to be considered suspended whilst they were on strike.

3.35 Employer bodies opposed any extension of the eight-week period. The IoD stated it should be repealed, arguing that the protection increased the risk of strikes. Eversheds, picking up a point made by employer groups, stated that it was too soon to take a view as the law had been in place for a relatively short time and only one case had arisen under it so far. Several employer groups, including the CBI, argued that the regime should do more to encourage unions to settle disputes.

3.36 Notwithstanding their other comments on the legislation, unions generally supported the lock-out proposal. BFAWU suggested lock-outs should be made illegal. GMB supported the proposal but suggested that lock-outs would need to be defined. ASLEF suggested that periods where the union is negotiating should also be excluded from the eight-week period. Employer groups generally opposed the idea and some called for modifications to it. The Chemical Industries Association asked that closures on grounds of health, safety or environmental concerns should not be covered by this rule, a point supported by the ELA. The FDF suggested the proposal would be equitable only where the employer has imposed pre-conditions on the return to work. The CIPD, EEF and the Newspaper Society disagreed with the Government's proposal on lock-outs, while the CBI argued that lock-outs were justified where workers took action short of a strike. Thompsons supported the lock-out proposal, though Eversheds favoured no change. Professor Gillian Morris pointed out that neither the existing protections nor the lock-out proposal would prevent employers from instituting pre-emptive lock-outs in advance of planned industrial action and dismissing the locked-out employees before the action ever began. She also picked up a point made by several respondents that the legislation would need to give a clear definition of a lock-out.

3.37 In response to the evidence and views received, the Government reaffirms its intention to leave the basic period of protection at eight weeks. Whereas it is understandable that unions would want unlimited protection for their members, policy in this area must strike a balance with the interests of employers. The bulk of action is much shorter than eight weeks. Analyses by the Office of National Statistics show that 93% of stoppages from April 2000 to August 2003 lasted for less than this period. The Government is not persuaded on the evidence presented that interim relief is not suitable for this jurisdiction. However, the Government intends making two changes to the law in this area.

3.38 First, as proposed in the consultation document, the Government will legislate to ensure that lock-out days are disregarded in calculating the end of the eight-week period. The period will end only when 56 days have passed since the action began on which no lock-out occurred. This should ensure that employers do not try to sit out the eight weeks by using the lock-out tactic. The Government recognises the

potential benefits of providing a statutory definition of a lock-out, though it also understands the difficulties in drafting a definition which is precise, clear and well-targeted. Lock-outs are rare, and it is expected that this legislation will bite in few cases. Pre-emptive lock-outs are much rarer still and there is less need to reshape the law to deal with this unlikely possibility.

3.39 Second, the Government considers that the law should give a clearer indication of the responsibilities of both employers and unions to take reasonable procedural actions to resolve the dispute. This issue arose in the *Friction Dynamics* case where the employer participated only minimally in conciliation. There is therefore a need to state what essential actions are involved where parties engage in conciliation.

3.40 Since the consultation period ended there have been further developments in the *Friction Dynamics* case. The company has since gone into administration and there appears little prospect that the unfairly dismissed employees will receive their compensation in full. The Government is aware of allegations that the directors of Friction Dynamics may have acted improperly both before and after taking the company into administration, and there have been calls for a formal investigation by the appropriate authorities. This matter is currently under consideration by the DTI.

Right to be Accompanied

3.41 In the consultation document the Government proposed to clarify the law by setting out in more detail the circumstances in which the companion is allowed to address hearings, and to provide for appeals to the Employment Appeal Tribunal (EAT). 45 respondents expressed a view on the operation of this right.

3.42 There was a consensus among respondents that the legislation was, in general, working as intended. The TUC and unions welcomed the proposal to clarify the role of the companion, as did the Law Society, the BPIF and the Construction Confederation. The CBI and some other employer groups, though sceptical about the extent of any problem, indicated that they would accept the proposed change provided it did not erode the

distinction between a companion and a representative. Acas suggested the companion should be allowed to participate as fully as possible and that workers should be allowed reasonable time to confer privately with the companion.

3.43 All those who replied on the issue of appeals to the EAT welcomed the Government's proposal.

3.44 Respondents raised a number of other issues about the right. In particular, the TUC, and other union respondents, considered that workers should have a right to be represented and not accompanied. Several respondents, for example, the TUC, GMB, the NUJ and the GPMU, stated that the *Wilson and Palmer* judgment required this change. This idea did not receive support from employer organisations.

3.45 Unions also wanted clearer entitlements for the companion to confer with the worker in advance of hearings and to have prior access to relevant documentation which would be discussed at hearings. GMB, Prospect and the Haldane Society of Socialist Lawyers asked for stiffer penalties for employers who do not comply with the right. Several respondents including the TUC, EEF and the T&G wanted to clarify or extend the definition of grievance and disciplinary hearings to which the right to be accompanied applied. The TUC and CBI also proposed that where the worker was part of a recognised bargaining unit the right for a union official to act as the companion should be restricted to the recognised union.

3.46 On the basis of the views received the Government intends to proceed with the two proposals to change the law which it put forward in the consultation document.

3.47 The Government does not propose making any further changes to a right which has worked so well. In particular, the Government does not accept the argument that the right to be accompanied should be replaced by a right to be represented. The companion is there to provide support and not to substitute for the worker, as this change of wording would imply. The existing right was based on the long-standing advice given in the Acas '*Code of Practice of Disciplinary and*

Grievance Procedures', which has always referred to the companion in this context. Also, the Government considers that union interpretation of the *Wilson and Palmer* judgment is too broad. It does not imply that union recognition, or any particular form of representation, should be guaranteed by law.

3.48 The Acas Code advises that workers should be accompanied by an official of a recognised union when they are covered by a recognition agreement. There is no evidence to suggest that this guidance is being ignored to any significant degree. However, the Government does not wish to go beyond this by limiting the worker's choice of companion by law. There might be good reasons why members of a non-recognised union would wish an official from their own union to accompany them, especially where specialist knowledge relating to the occupation of the individual would be advantageous.

CHAPTER 4: THE INSTITUTIONAL FRAMEWORK

4.1 Chapter 4 of the consultation document discussed those parts of the 1999 Act which changed the law on the Central Arbitration Committee (CAC), Advisory, Conciliation and Arbitration Service (Acas), the Commissioner for the Rights of Trade Union Members (CRTUM), the Commissioner for Protection Against Unlawful Industrial Action (CPAUIA) and the Certification Officer (CO). This chapter discusses the responses received on these issues.

Central Arbitration Committee (CAC)

4.2 The Government also concluded that the existing system for fielding substitute panel members should continue, and that the CAC general duty should remain. In the consultation document the Government did not propose to require the CAC to provide full justification of its decisions, or to publish a set of rules of procedure, or to hold oral hearings. 14 respondents expressed a view on these issues.

(a) Justification of Decisions

4.3 Employer organisations argued that the CAC should be required to give full reasons for its decisions. The BRC suggested the reasons currently given by the CAC are not as transparent as they might be. For example, they suggested that the CAC should be required to do more than state it has ‘considered matters carefully’.

4.4 The evidence at the time of the consultation document supported the view that the CAC has displayed sound judgment in discharging its duties under the statutory procedure. The Government remains of this view and welcomes the CAC’s current practice of providing reasons for its decisions even where this is not required by statute. The Government is persuaded that the current system works well and does not intend to make changes in this area.

(b) Rules and Procedures

4.5 Eversheds suggested there was no need for formal rules, since in their experience proceedings are controlled very effectively and parties know exactly what is required of them. The EEF, however, proposed that the CAC should have powers to order parties to produce documentation.

4.6 The Government remains of the view that the rules and procedures of the CAC are appropriate. However, the Government will introduce a power for the CAC to require the supply of certain information, where this is necessary to inform its decision-making (see paragraph 2.64 in Chapter 2).

(c) Changes of Panel Members

4.7 Employer groups also opposed the practice of changing panel members, with one organisation suggesting changes lead to poor decisions. The BRC asked for the Government to specify a skills base for prospective panel members, which they believed would lead to greater perceived fairness.

4.8 Whilst the Government sees value in continuity there is no evidence to suggest that changes in panel membership have led to poor decision-making. The Government believes that the flexibility to substitute panel members where necessary prevents delay in the procedure and is therefore advantageous. Panel members are appointed by the Secretary of State following a competitive process and selected against publicly available criteria. The Government confirms its intention not to change the law in this area.

(d) General CAC Duty

4.9 Most respondent unions supported the Government's stance. However, two respondents argued that the general duty should include a duty to promote collective bargaining. It was argued that this change was required in order to reflect the *Wilson and Palmer* judgment. The EEF believed that the general duty to promote fair and efficient practices conflicts with the specific duty under the statutory procedure to decide whether

the bargaining unit is compatible with effective management. They suggested this points to a need for reform of the bargaining unit criteria rather than the CAC's general duty.

4.10 The Government believes that it is implementing the requirements of the *Wilson and Palmer* judgment faithfully and that changing the general duty of the CAC is not required. A full discussion of the Government's response to the *Wilson and Palmer* judgment is given in Chapter 3. The Government is of the view that the duty of 'encouraging and promoting fair and efficient practices and arrangements in the workplace' is entirely consistent with the statutory criteria for the determination of an appropriate bargaining unit. In light of this the Government confirms its intention not to change the law in this area.

Advisory, Conciliation and Arbitration Service (Acas)

4.11 The Government proposed to retain the general duty of Acas. 11 respondents provided a view on this issue.

4.12 T&G, Eversheds, FDF and EEF agreed with the Government's approach. The TUC, GMB, UCATT, Unison, the NUJ and Thompsons called for the duty to include the promotion of collective bargaining. Thompsons suggested this would ensure the law complied with the European Convention on Human Rights following the *Wilson and Palmer* judgment.

4.13 The Government reaffirms its intention to retain the general duty on Acas in its current form, as it gives Acas the necessary discretion to set its own priorities. The *Wilson and Palmer* judgment is discussed in full in Chapter 3.

Commissioner for the Rights of Trade Union Members (CRTUM) and Commissioner for Protection Against Unlawful Industrial Action (CPAUIA)

4.14 The consultation document referred to the abolition of these bodies in the 1999 Act. No respondent called for their re-establishment.

4.15 The Government retains its position that the Commissioners should not be re-established.

Certification Officer (CO)

4.16 In the consultation document the Government proposed:

- i) giving the CO a power to strike out an application or complaint on the grounds that it is scandalous, misconceived or vexatious;
- ii) allowing the EAT to take into account proceedings before the CO when exercising its power to make restriction of proceedings orders against vexatious litigants; and
- iii) widening the CO's discretion not to meet the attendance costs of applicants attending hearings.

19 respondents, mostly unions, expressed a view on all or some of these proposals. All respondent unions supported the three proposals, and the EEF accepted them. GMB considered that recent decisions of the CO had revealed that the applications were without any merit. Whilst recognising that the proposals might appear a sensible precaution, the Law Society questioned whether the measures were necessary as there was no evidence presented in the consultation document that any abuse was occurring.

4.17 In the light of the responses received, the Government proposes to move ahead with all three proposals, the first two of which would require legislation. Indeed, the Government has already put in place a new scheme agreed with the CO for the reimbursement of attendance costs. Whereas there is limited evidence of widespread abuse of the CO's role at present, the Government considers it makes sense that some modest controls are put in place to deal with any potential future problems. The Government will ensure that the measures are based on the corresponding arrangements for employment tribunals, which have worked well and have become an accepted feature of the tribunal process.

CHAPTER 5: OTHER SECTIONS OF THE ACT

5.1 Chapter 5 of the consultation document examined the operation of the remaining sections of the Employment Relations Act 1999, most of which concern individual employment rights. Many of these sections are either minor in their effect or concern matters such as employment status, which are the subject of other Government reviews, or initiatives. The consultation document contained few proposals affecting these parts of the Act, and respondents tended to focus their comments exclusively on those suggestions. This chapter of the response document therefore concentrates on those limited areas where respondents gave a view.

5.2 Respondents also volunteered views on a number of individual employment rights, which were not discussed in the consultation document because they were not directly affected by the Act. The closing parts of this chapter discuss these additional points.

Tribunal Awards

5.3 The consultation document discussed the structure of tribunal awards, various changes to which were made in the Act. Each of these is discussed in turn. 25 respondents expressed a view on these issues.

(a) Index-linking

5.4 In the consultation document, the Government proposed retaining the index-linking system for annually adjusting tribunal awards. All respondents who expressed a view on index-linking agreed that it had worked as planned.

5.5 The Government therefore confirms its intention to retain the index-linking arrangements in their current form.

(b) TUPE Awards

5.6 The consultation document proposed no changes at this stage to the provisions on awards in TUPE (Transfer of Undertakings (Protection of Employment)) cases.

5.7 A small number of responses were received on this issue, which disclosed no strong call for change. GMB believes that the limits imposed in respect of TUPE claims are not an adequate implementation of European law requirements.

5.8 The Government confirms its intention to leave the provisions of TUPE unamended in this regard.

(c) Compensatory Awards

5.9 The Government proposed in the consultation document to retain the existing systems for calculating compensatory awards in unfair dismissal cases.

5.10 Various unions called for the awards to be uncapped. GMB suggested all awards should be raised to what they considered an adequate level and called for research into why the median award is in its view so low. GMB added, on one view of the law, that employees should not have to litigate twice in different courts to recover full losses. The Law Society questioned whether it was fair for some applicants to receive less than their full compensation and argued that the awards were not effective and dissuasive.

5.11 The Newspaper Society considered that the existing penalties were sufficient. The IoD suggested the upper limit of £50,000 on the compensatory award in ordinary unfair dismissal cases might have encouraged applications to tribunals. London Borough of Camden Personnel Services urged the Government not to create incentives for speculative applications to tribunals.

5.12 The compensatory award for unfair dismissal is based on the tribunal's assessment of the employee's loss of earnings between the dismissal and the tribunal hearing, the likely future loss of earnings, loss of pension rights, etc. The limit on compensatory awards for unfair dismissal was raised from £12,000 to £50,000 in October 1999 to ensure that the small number of higher-paid applicants

affected by the previous limit could be compensated appropriately for their losses. This limit has been increased annually in line with inflation to its current limit of £53,500. The Government is satisfied, therefore, that the current provisions are adequate to compensate most employees for their losses. There will always be a few high earners for whom the limit is too low but we believe that the present arrangements strike a reasonable balance between affording an effective and appropriate remedy for aggrieved employees and providing businesses with some certainty about potential costs. Higher claims can be made to the courts on grounds of breach of contract, where appropriate.

(d) Additional Awards

5.13 In the consultation document the Government sought views on raising the minimum and maximum limits for additional awards where an employer fails to comply with a reinstatement award.

5.14 Several union respondents addressed the system for calculating additional awards where an employer fails to comply with a reinstatement order. The TUC, Law Society, Thompsons and six unions suggested the limit of a week's pay for these purposes (currently £260) should be increased or abolished altogether. The Royal College of Nursing (RCN) suggested the additional award needed to be raised to ensure compliance. The British Airline Pilots Association (BALPA) asked for stiffer penalties for non-compliance.

5.15 Employer groups were generally of the view that there was no pressing need to increase the penalty for non-compliance. South East Employers (SEE) asked the Government not to underestimate the difficulties in re-employing a dismissed worker. EEF disagreed that refusal to comply with a tribunal order was, in effect, contempt of the tribunal, arguing that tribunals cannot order specific performance of contracts. They added that there was no convincing evidence of need for a change, and that the Government should seek to address this issue elsewhere in the system. CIPD suggested the penalty should be determined by what is adequate compensation, adding that some increase in the minimum and maximum awards may be justified.

5.16 The Government believes that the simplified arrangements introduced by the Employment Relations Act 1999, which included a new higher upper limit on compensatory awards, strike the right balance between compensating employees appropriately and imposing an additional financial penalty on those employers that do not comply with the tribunal's order.

(e) Special Awards

5.17 In the consultation document the Government indicated it would not reintroduce special awards.

5.18 Many union respondents, including GMB, T&G, UCATT, Prospect, PCS and ASLEF argued for these awards to be re-established. The views of the TUC largely represented the arguments of union respondents: they were concerned that the total amount of compensation received in cases of trade union discrimination had been reduced by a potentially large amount. The TUC regarded trade union discrimination as particularly reprehensible form of employer behaviour and argued that special awards should be reintroduced, preferably with no upper limit.

5.19 The Government recognises that trade union discrimination is a very serious issue. It considers that the same penalty should apply in all cases where re-employment is sought by applicants or ordered by the tribunal, regardless of the reason for dismissal. To do otherwise would create unwelcome complexity in the award system and differential treatment, which would be difficult to justify. The Government therefore reaffirms its decision not to reintroduce special awards.

Employment Outside Great Britain

5.20 The Government proposed no changes for the handling of employees outside Great Britain. 8 respondents expressed a view on this issue.

5.21 UCATT, Thompsons, the TUC and Unison all supported the Government view. The ELA asked the Government to consider the approach taken in discrimination legislation. The EEF asked for clarity, possibly through guidance. The Law Society suggested that the area is fraught with uncertainty. They and the Work Foundation pointed to two seemingly contradictory EAT decisions.

5.22 Concerns expressed by respondents centre on uncertainty about the circumstances in which employment rights in Great Britain (e.g. the right not to be unfairly dismissed) apply to employees working abroad following the abolition of territorial limits in the Employment Rights Act 1996. The Government's intention at the time of the abolition was that such rights would only apply if a case had sufficient connection with Great Britain. Since the consultation, case law, principally the Employment Appeal Tribunal case *Jackson v Ghost Ltd*, has clarified the position and confirmed that the abolition has had the effect that the Government intended. The Government is therefore satisfied that no change in the law is necessary.

Employment Status: Regulation-making Power

5.23 In the consultation document the Government proposed to change the regulation-making power to achieve flexibility and clarity in drafting employment status regulations. 11 respondents expressed a view on this issue.

5.24 The Newspaper Society and the Law Society asked for further consultation, although the latter was broadly in favour of the Government proposal. Prospect, FDF and the TUC supported the proposal. Paul Flynn MP argued that the present definitions are too narrow and that employers are able to draw up contracts in such a way that makes it impossible to determine a worker's status.

5.25 The TUC, UCATT and Prospect asked that work on the employment status review be expedited. Thompsons argued for the extension of all employment rights from employees to workers.

5.26 The DTI published a discussion document in July 2002 describing the present framework of employment status and rights in the UK and seeking views about the present coverage of statutory employment rights, mechanisms that might be used to address issues that arise, and the impact of changes on the UK labour market. The Government hopes to publish a response around the turn of the year. Any regulatory change would be subject to further consultation.

Additional Issues concerning Individual Employment Rights

5.27 As well as the issues mentioned above, several respondents raised other issues relating to individual employment rights in their submissions. Although these were largely outside the terms of reference of the review, they are set out here for completeness.

(a) Day-one Employment Rights

5.28 The TUC and some unions, such as the CWU and the Transport Salaried Staffs' Association (TSSA), echoed the call made in the TUC's *'Modern Rights for Modern Workplaces'* paper that all employment rights should be applicable from the time when a worker takes up a job. The BPIF registered opposition to such a proposal, pointing to the fact that employees, who are often the recipients of expensive training, are under no equivalent obligation to employers and can leave at any time (they doubted there was a legislative remedy for this situation but suggested the situation would be made worse if unfair dismissal applied from day one).

5.29 Many important employment rights apply as soon as an employee starts work. Where qualifying periods of employment apply, the Government believes that they are justified. For example, the qualifying period for unfair dismissal claims allows employers to rectify mistakes in recruitment without the risk of incurring costs, but is waived if dismissal is for a range of particularly serious reasons (such as pregnancy or maternity). We believe this achieves the right balance between fairness for employees and flexibility for employers.

(b) Notice Pay

5.30 The TUC pointed to the case of *Scotts Company (UK) v Budd*, suggesting that an aspect of notice rights legislation considered in the case was an unintended effect of the wording of the legislation.

5.31 Under the Employment Rights Act 1996 an employee who has been given notice but who is prevented from working because of sickness during the notice period, is entitled to a week's pay for each week of the 12 week statutory minimum notice period. However, as the *Scotts Company (UK) v Budd* case confirmed entitlement to notice pay is removed if the contractual notice period is at least a week longer than 12 weeks. This allows employers to contract out of statutory arrangements for minimum pay when the contractual notice period is more generous than the statutory one. It is therefore the Government's position that the effect referred to is intentional.

(c) Maternity/Parental Leave

5.32 The BPIF raised concerns over the complexity of legislation in this area, suggesting that it was nearly impossible for small businesses to follow, and asked that it be simplified.

5.33 The need for simplification of maternity leave and pay procedures was one of the messages the Government heard most frequently during the public consultation on *'Work and Parents: Competitiveness and Choice'* Green Paper. In response to this, measures introduced by the Employment Act 2002 have simplified maternity leave and pay, for example by harmonising eligibility and notice requirements. These changes benefit women and their employers. The new systems for paternity and adoption leave and pay were designed to reflect the new, simpler maternity arrangements. The Government has also made sure there is clear accessible guidance for employers and employees. In addition to this guidance, the Inland Revenue Employers' Helpline is available to give employers advice on statutory payments and the national Acas Helpline can advise both employers and employees

on leave and related issues. Interactive guidance is also available from the web at: www.tiger.gov.uk

(d) Bank Holidays and Working Time

5.34 The TUC repeated its call that the law be changed so that bank and public holidays cannot be counted as part of the statutory four weeks annual leave, and that the protection afforded by the Working Time Regulations be extended to excluded sectors.

5.35 The right to time off on bank holidays is, as it has always been, a contractual matter to be agreed between employers and employees. The Government has no plans to give workers the right to time off on bank and public holidays in addition to the statutory paid leave under the Working Time Regulations. The Working Time (Amendment) Regulations came into effect on 1 August 2003. These regulations mean that most workers, including the previously excluded sectors, are now entitled to limits on their working time, statutory rest entitlements, four-weeks paid annual leave and health assessments if they work at night. Junior doctors will be covered by the regulations from 1 August 2004.

CHAPTER 6: TRADE UNION REGULATION

6.1 The consultation document discussed four suggestions put forward by the Better Regulation Task Force (BRTF) to improve the regulation of trade unions. In discussing these suggestions, and the Government's reaction to them, respondents suggested other changes to ease or alter the regulatory burden on unions. This chapter discusses both strands of the responses received.

Suggestions made by the Better Regulation Task Force (BRTF)

6.2 17 respondents, mostly unions, gave views on the BRTF's suggestions.

(a) Election of Union Presidents

6.3 In the consultation document the Government accepted the BRTF's suggestion to remove the requirement for union presidents to be elected by statutory postal ballots where they are already members of the union executive.

6.4 10 responses to this proposal were received, all supporting the proposal. Whilst welcoming the proposal, GMB argued that the law should not require a particular method of appointing presidents.

6.5 The Government reaffirms its intention to lift the requirement on unions to hold a postal ballot of their membership when electing or appointing their presidents, or equivalent officials, when the person taking up this position is already a member of the union's executive who has been elected to that position by a statutory ballot. The law will not place requirements on unions as to the method by which presidents should be otherwise be appointed or elected.

(b) Union Political Funds

6.6 In the consultation document the Government indicated it would not pursue the BRTF's proposal to repeal the law requiring unions with political funds to hold ballots at least every ten years to confirm continued support for their funds. The Government invited views on other ways to simplify the law on political fund ballots.

6.7 Responding unions, including the TUC, called for the repeal of the requirement to hold review ballots. BFAWU, CATU and ASLEF suggested they serve no democratic purpose and UCATT claimed the ballots produce apathy. Several unions suggested that review ballots should be held only when requested by a significant number of members. The T&G suggested the cost of the ballots be refunded.

6.8 Few organisations suggested other ways to ease the burden of political fund ballots. GMB described its ideas to revise the guidelines issued by the Certification Officer regarding union rules for the holding of political fund ballots. The EIS added that the requirement to include details of the union's political fund in recruitment literature should be repealed. Prospect suggested the information required to be placed on the ballot papers is onerous and asked for simplification. Prospect also suggested that regulations on 'opting out' of paying the political levy should be harmonised between Great Britain and Northern Ireland. In Northern Ireland, union members are required to 'opt in' to contributing to a political fund, rather than contributing automatically and having the option to opt out.

6.9 The Government considers that the idea to have review ballots triggered by a certain number or proportion of union members would complicate the law rather than simplify it. In particular, this proposal would create problems:

- **in setting the appropriate trigger level for unions of differing sizes;**
- **in establishing independent arrangements to verify the passing of trigger levels; and**
- **in making the trigger proposal a feasible option in geographically and industrially dispersed unions where individual members often do not know the identity of other members.**

As the consultation has not presented a workable solution the Government considers that the existing requirement to hold review ballots should be retained.

6.10 State funding of these, and other statutory and non-statutory ballots, was available in the 1980s and early 1990s under the Trade Union Ballot Scheme. There may be a case to establish a similar scheme in today's conditions to encourage higher participation and the use of innovative balloting technologies. The Government will therefore keep this idea under review.

6.11 The ideas to simplify the burden of other aspects of law on political fund ballots appear to relate mainly to the Certification Officer's guidelines. These guidelines have recently been revised by the CO following extensive consultation with unions. They now provide greater freedom to unions in organising ballots in a cost-efficient way. The Government is therefore not convinced that any changes to the statute are required. On the question raised by Prospect about the law in Northern Ireland, the Department of Employment and Learning has carried out a separate consultation on the Employment Relations Act 1999, and is aware of this issue. In due course it will announce its intentions for the law in the territory.

(c) Requirement on the Certification Officer to Hold Hearings

6.12 The BRTF suggested that the Certification Officer should be given greater powers to deal with weak or vexatious complaints to avoid unnecessary hearings. This issue is discussed in Chapter 4 where the CO's powers are examined.

(d) Balloting

6.13 In responding to the BRTF suggestion for the law to provide for non-postal balloting, the consultation document put forward a proposal for the Secretary of State to be given a power to change by order the balloting methods used in statutory union ballots and elections.

6.14 The AUT, GMB, NUJ and UCATT supported the proposal, while Prospect offered a cautious welcome. The balloting organisation, Popularis, supported the extension of e-voting, but suggested using pilots. PCS agreed that any use of e-voting should be tested first, and asked that it complement rather than replace traditional ballots. The TUC asked that any use of e-voting should apply to all union ballots.

6.15 The Government reaffirms its intention to create a power for the Secretary of State to extend by order the balloting methods used in statutory union ballots and elections.

Other Aspects of Trade Union Regulation Raised by Respondents

6.16 Several unions, including the RMT and ASLEF, argued that the law regulating trade unions should be completely liberalised to allow unions to regulate their own internal affairs. Unions, they contended, should be administered in accordance with their own rule-books free from statutory constraints and free from all interference in their internal affairs.

6.17 The Government does not accept these arguments. Unions are extremely important organisations that regulate, or strongly influence, the employment relationship between many millions of people and their employers. That sets them apart from other voluntary organisations. The Government therefore believes that the relationship between unions and their members should be the subject of some regulation to provide necessary protections and proper standards of accountability. Much of the regulatory framework has been in place for over a decade and, by and large, unions have adapted to it. The Government believes it does not generally require amendment. However, there are two areas which respondents highlighted, where the Government agrees that some further changes are required.

(a) Trade Union Auditors

6.18 The TUC, GMB and others have pointed out that trade union law has not kept pace with company law in that the restriction on appointing bodies corporate as auditors (which has been abolished in company law) still applies. Several large auditors have been

incorporated and it is expected others will follow suit. That means unions may have to re-tender their auditing contracts from a pool which excludes some of the major practitioners in the field. This will carry an administrative cost, as well as denying unions the services which incorporated auditors provide.

6.19 The Government believes there is a good case to modernise trade union law by permitting bodies corporate to audit union accounts.

(b) Exclusion or Expulsion from Trade Union Membership

6.20 Several union respondents, including the TUC, GMB, Unison, and ASLEF, argued that the law excessively restricts the ability of unions to expel or exclude individuals from membership. In particular, there great concern was expressed that the law placed unions in an impossible position when they tried to exclude or expel individuals who were also members of far-right political parties. The TUC argued that unions should be free to decide their own admission and disciplinary rules and that this should be subject only to general laws such as those against impermissible discrimination. Other unions asked that they be free to exclude members who held political views antithetical to those of the union, especially on anti-racism policies. Unison and ASLEF also pointed out that the minimum level of compensation in such cases could exceed £5,000, and thereby encouraged individuals to take claims to tribunals.

6.21 The Government recognises the concerns of trade unions regarding their ability to exclude or expel individuals whose political activities are offensive to fellow union members and totally at odds with union policies. In particular, the law should not allow racists to hide behind their political party membership to avoid being expelled by unions. The Government intends to amend the law in this area to provide greater latitude for unions to expel or exclude such people. The Government also intends to re-examine the case for giving tribunals greater discretion when setting compensation levels. In devising detailed proposals, the Government is mindful that essential civil liberties and human rights must be respected.

ANNEX A: LIST OF RESPONDENTS

The following table gives a list of those respondents who responded publicly to the consultation on the Employment Relations Act review.

Advisory, Conciliation and Arbitration Service (Acas)
Associated Society of Locomotive Engineers and Firemen (ASLEF)
Association for College Management (ACM)
Association of University Teachers (AUT)
Bakers, Food and Allied Workers Union (BFAWU)
British Airline Pilots Association (BALPA)
British Association of Social Workers (BASW)
British Print Industry Federation (BPIF)
British Retail Consortium (BRC)
Broadcasting, Entertainment, Cinematograph and Theatre Union (BECTU)
Camden Personnel Services (London Borough of Camden)
Ceramic and Allied Trades Union (CATU)
Chartered Institute of Personnel and Development (CIPD)
Chemical Industries Association
Clarks Solicitors
Communication Workers Union (CWU)
Community Enterprise Wales
Confederation of British Industry (CBI)
CONNECT
Construction Confederation
Coventry and Warwickshire Chamber of Commerce
David Wilson
Educational Institute of Scotland (EIS)
Employment Lawyers Association (ELA)
Engineering Employers' Federation (EEF)
Eversheds LLP
Food and Drink Federation (FDF)
Gillian Morris
GMB
Graphical, Paper and Media Union (GPMU)
Haldane Society of Socialist Lawyers

Information Commissioner
Institute of Directors (IoD)
Institute of Employment Rights (IER)
KB Packaging
Law Society
Managerial and Professional Staffs Association (MPA)
Musicians Union (MU)
NATFHE
National Association of Schoolmasters Union of Women Teachers (NASUWT)
National Union of Journalists (NUJ)
National Union of Knitwear, Footwear and Apparel Trades (KFAT)
National Union of Rail, Maritime And Transport Workers (RMT)
National Union of Teachers (NUT)
Newspaper Society
Paul Flynn MP
POPULARIS
PROSPECT
Public and Commercial Services Union (PCS)
Royal College of Nursing (RCN)
Small Business Council (SBC)
Small Business Service (SBS)
Society of Chiropractors And Podiatrists (SCP)
South East Employers (SEE)
Scottish Trades Union Congress (STUC)
Thompsons Solicitors
Trade Union Congress (TUC)
Transport and General Workers Union (T&G)
Transport Salaried Staffs' Association (TSSA)
Travers Smith Braithwaite
UNIFI
Union of Construction, Allied Trades and Technicians (UCATT)
Union of Shop, Distributive and Allied Workers (USDAW)
UNISON
University of Sheffield
Work Foundation
Yorkshire Farm Bakery (On behalf of the Brethren)

ANNEX B: FURTHER INFORMATION

Copies of this response document, and the consultation document which preceded it, can be ordered from the DTI website at: www.dti.gov.uk/publications, or from the DTI Publications order line on 0870 150 2500. Welsh language copies of this document will also be available, on request, from the publications order line.

Information on the Employment Relations Bill and the electronic version of this document, and the consultation document, can be accessed from the DTI Employment Relations website at: www.dti.gov.uk/er/erbill_2003.htm. Telephone enquiries should be directed to DTI Enquiries on 0207 215 5000.

Other useful information, all of which is clearly signposted from the DTI Employment Relations website, can be obtained from the following sources:

Advisory, Conciliation and Arbitration Service (Acas)

Website: www.acas.org.uk

Acas helpline: 08457 474 747 (For textphone users 08456 061 600)

Central Arbitration Committee (CAC)

Website: www.cac.gov.uk

Tel: 020 7251 9747

Certification Officer (CO)

Website: www.certoffice.org

Tel: 020 7210 3734

Employment Tribunals (ET)

Website: www.employmenttribunals.gov.uk

Employment Appeal Tribunal (EAT)

Website: www.employmentappeals.gov.uk

Tel: 020 7273 1040

Tailored Interactive Guidance on Employment Rights (TIGER)

Website: www.tiger.gov.uk