



## FAIRNESS AT WORK

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by Command of her Majesty.  
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## **FOREWORD**

### **By the Prime Minister**

This White Paper is part of the Government's programme to replace the notion of conflict between employers and employees with the promotion of partnership. It goes along with our emphasis on education and skills - not overburdensome regulation - in the labour market, as the best means of equipping business and people for a modern economy. It complements our prudent economic management and our proposals for encouraging small businesses and stimulating long-term investment.

The White Paper steers a way between the absence of minimum standards of protection at the workplace, and a return to the laws of the past. It is based on the rights of the individual, whether exercised on their own or with others, as a matter of their choice. It matches rights and responsibilities. It seeks to draw a line under the issue of industrial relations law.

There will be no going back. The days of strikes without ballots, mass picketing, closed shops and secondary action are over. Even after the changes we propose, Britain will have the most lightly regulated labour market of any leading economy in the world. But it cannot be just to deny British citizens basic canons of fairness - rights to claim unfair dismissal, rights against discrimination for making a free choice of being a union member, rights to unpaid parental leave - that are a matter of course elsewhere.

These proposals, together with the introduction of a minimum wage - set sensibly, implemented sensibly - put a very minimum infrastructure of decency and fairness around people in the workplace. They have been extensively consulted upon with business and industry. They offer the right way forward for the future.

My aim and that of my colleagues is to build a fair and prosperous society in the UK based on a strong and competitive economy. This White Paper is a major contribution to that goal. It is about how a competitive and growing economy itself requires a culture of fairness and opportunity at work so that Britain can harness the talents of all our people.

My ambition for this White Paper goes far wider than the legal changes we propose. It is nothing less than to change the culture of relations in and at work - and to reflect a new relationship between work and family life. It is often said that a change of culture cannot be brought about by a change in the framework of law. But a change in law can reflect a new culture, can enhance its understanding and support its development.

Already modern and successful companies draw their success from the existence and development of partnership at work. Those who have learnt to cherish and foster the creativity of their whole workforce have found a resource of innovation and inventiveness that drives their companies forward as well as enriching their lives.

So the new culture we want to nurture and spread is one of voluntary understanding and co-operation because it has been recognised that the prosperity of each is bound up in the prosperity of all.

Against such a background the law is there to give shape and support to these new understandings and as a last resort to help resolve differences and disputes if they should arise.

The three pillars of our industrial policy are the pursuit of strong markets, modern companies and the creation of an enterprise economy.

This White Paper sets out a framework for the second of these aims and, in so doing, the foundation for the third. It builds on the prompt action we have already taken, for example to restore the right to join trade unions at GCHQ, to sign the Social Chapter, to implement the Working Time Directive and to put in place a national minimum wage. It has at its centre our proposals for a fair balance of rights and responsibilities at work. We make a range of proposals - some minor, some more far-reaching in their scope. We intend, subject to the consultation following publication of this document, to legislate to carry it into effect and then to allow a proper process of acceptance, adjustment and stability. So what we set out here are our proposals for an industrial relations settlement for this Parliament.

## **CHAPTER ONE**

### **Building Prosperity**

**1.1** The Government's aim is to enhance Britain's prosperity and to enable that greater prosperity to spread throughout the community. To achieve such prosperity, Britain must be competitive, at home and in world markets.

**1.2** In order to compete successfully, we need a sound and stable economy. The Government is committed to economic stability, based on low inflation, sound public finances and open markets. We are determined there will be no return to economic boom and bust.

**1.3** If Britain is to succeed in the new competitive world marketplace, it has no future as a low-skill, low-wage, low-quality, low-value economy. Instead, Britain has to aim high - high quality, high performance, high skills, high productivity, high value - if it is to be competitive. The Government's strategy for achieving competitiveness rests on three pillars:

- creating strong markets, in which the stimulus of competition promotes innovation and the adoption of best business practices. To promote such markets, the Government has already introduced the Competition Bill and is encouraging further liberalisation in world trade;
- encouraging modern companies, which develop and build on the strengths and commitment of their workforce, work with all their partners in constructive business relationships and are open to new ideas from outside and within the firm; and
- creating an enterprising nation, in which new ideas flourish and both individuals and companies feel able to take the risks required to exploit them.

**1.4** In each of these areas, we will achieve more if we understand the importance of strong partnerships - with our European Union partners in opening trade, between science and business in promoting innovation, or between employers and their employees.(1)

**1.5** This White Paper is concerned with the way in which employees - individually or collectively - and their employers interact. The Government believes that if these relationships are properly developed and managed companies will have the best chance to enhance their performance and profitability - and so our national prosperity.

**1.6** The Government launched an audit of the competitiveness of the UK economy in July 1997, and has established an Advisory Group on Competitiveness. Five working parties, drawn from the business community, the trade unions and the academic world, have been developing proposals in the areas of best practice, the information age, innovation, investment and workforce development. Their conclusions will inform the proposals in the Competitiveness White Paper which the Government intends to publish in the autumn of 1998.

**1.7** The Government has a comprehensive programme of policies designed to achieve its objective of improving competitiveness by creating a modern framework for UK business. That programme includes the proposals for employment law in this White Paper.

## **A Framework for the Future**

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**1.8** Within Britain's flexible and efficient labour market, the Government is proposing in this White Paper a framework in which the development of strong partnerships at work can flourish as the best way of improving fairness at work. But the framework it proposes is not just about the application of employment law. It is designed to help develop a culture in all businesses and organisations in which fairness is second nature and underpins competitiveness. Such cultural change will lead in due course to more positive relationships between employers and employees than the letter of the law can ever achieve.

**1.9** The three main elements of the framework are:

- provisions for the basic fair treatment of employees. Unless minimum rights are established, effective relationships in companies cannot prosper. The White Paper establishes new ground rules for fair treatment, allowing employees to form effective relationships with employers - including new rights which recognise the changing nature of work. People must not be deterred from contributing to competitiveness through flexible working arrangements.
- new procedures for collective representation at work. While many employers and employees will continue to choose direct relationships without the involvement of third parties, these procedures will provide a new settlement which will enable trade unions to be recognised for collective bargaining where the relevant workforce chooses such representation.
- policies that enhance family life while making it easier for people - both men and women - to go to work with less conflict between their responsibilities at home and at work.

## **The European Dimension**

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**1.10** Some of the policies in these areas stem from decisions taken in the European Union. Britain was not involved in these decisions in the past and, as a result, played no role in shaping them. In the future it will be fully involved. At the Amsterdam and Employment Summits in 1997, the UK was in the forefront of establishing new principles for the development of EU policies. In particular, it promoted the need to develop

policies that combine fairness, employability and competitiveness. Business can be assured the Government will work with its European partners to promote competitiveness as well as fairness across Europe. Some aspects of the social models developed in Europe before the advent of global markets have arguably become incompatible with competitiveness. The Government is developing a model which it believes is right for the UK in a modern world and should promote the debate on economic reform throughout the EU.

## **The Way Ahead**

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**1.11** This White Paper is an action plan for this Parliament. The measures proposed will take time to implement and to bed in and we do not envisage further legislation. But it is more than that. It is a statement of the Government's principles in this area: principles which provide a blueprint for the development of partnership in the longer term - a blueprint for a lasting model. At the forefront of these principles is a belief that fairness at work and competitiveness go hand in hand, and that one must reinforce the other. That is the cardinal principle the Government has applied to the policies in this White Paper and will continue to apply if new proposals come from Europe or elsewhere.

**1.12** The Government is confident that the White Paper will serve Britain well in the long term, not least because it is the product of extensive consultation. The legislative changes are designed to support the more far-reaching change in culture. It is important to give both time to work. Employers and employees will need to adjust to new ways of working together. The greatest benefits will accrue in the long-term improvement in the performance of British industry.

**1.13** However, the Government recognises that on some measures further consultation will be required. In particular, the Government is determined that all the changes proposed in this White Paper should avoid bureaucracy and unnecessary burdens on business. It will therefore listen closely to ideas about how change can be implemented without imposing such burdens, as well as to points on the proposals themselves.

**1.14** The Government's proposals for a framework of individual, collective and family-friendly rights will help to ensure the fair treatment of employees within a flexible and efficient labour market. This is a balanced approach consistent with enabling employers to find ways of ensuring that their companies are competitive. In consequence, it should provide confidence to employers and employees alike in building effective relationships, and so increase the growth of modern companies and the prosperity of Britain.

1 In this White Paper the term "employees" is generally used to cover all those who work for someone else rather than on their own account, regardless of whether or not they are strictly employed under a contract of employment.



## **CHAPTER TWO**

### **Modern Business at Work**

#### **Modern Companies**

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**2.1** Britain has more than a million businesses which employ people, ranging from the smallest with one or two employees to multi-site, international companies. The Government has taken a range of steps to assist British business. These include promoting economic stability, including giving operational independence to the Bank of England, keeping tight control over public finances and establishing a tough target for low inflation; setting the lowest rate of corporation tax in Europe; reforming the competition laws; reinvigorating the Private Finance Initiative; and introducing the right to interest on late payments. All these and further measures will help improve the performance and prosperity of British companies.

**2.2** The best modern companies, whether large or small, have some things in common:

- they seek to harness the talents of their employees in a relationship based on fairness and through a recognition that everybody involved in the business has an interest in its success;
- they ensure that everybody understands the business so that change is readily accepted and implemented, not feared;
- they set clear objectives for employees but also encourage them to exercise their initiative and to contribute their ideas to the development of the business; and
- they develop the workforce through training and work experience to respond to and lead change.

**2.3** None of this is easy for business. The pressures of global markets, hierarchical management attitudes and short-term approaches to costs and profits can all be obstacles. The values of the company have to be maintained in lean times as well as when business is good. The rewards for employees, in terms of the quality of work and job security as well as of pay, are great but so are the demands, particularly for those not used to rapid change.

**2.4** But despite the difficulties, the returns from effective partnership to the business and its employees are real whether it operates in local or global markets:

- where they have an understanding of the business, employees recognise the importance of responding quickly to changing customer and market requirements;
- where they are taken seriously, employees at every level come forward with ways to help the business innovate, for example by developing new products; and
- where they are well-prepared for change, employees can help the company to introduce and operate new technologies and processes, helping to secure employment within the business.

**2.5** In modern businesses relationships at work are flexible and tailored to the size and culture of the company or organisation. Sometimes, they are provided by a partnership between employers and trade unions which complements the direct relationship between employer and employee. On the other hand, some organisations achieve effective working relationships in other ways.

**2.6** The Government believes that each business should choose the form of relationship that suits it best. But the freedom to choose must apply to employees as well as employers, otherwise any commitment will be hollow and will neither create trust nor underpin competitiveness. This means that employers should not deny trade union recognition where it has the clear and demonstrated support of employees.

**2.7** Spreading good practice from the best organisations to the rest requires a change in the culture of employment relations. This will take time. But the Government is committed to bringing about such a change because it will benefit employees, business and our national competitiveness. It is therefore helping to spread the message about the achievements of the best companies, whether large or small, to explain that change need not be feared and to show there are real opportunities for business growth. To help employers and employees make informed choices the Government already produces guidance material on employment laws. It is now carrying out research into work-based partnership to identify examples of good practice. **In addition, the Government intends to make funds available to contribute to the training of managers and employee representatives in order to assist and develop partnerships at work.**

**2.8** Locally, Business Links are able to provide guidance themselves or to direct employers to appropriate sources of advice. The independent Advisory, Conciliation and Arbitration Service (ACAS) also produces guidance material and works with employers and employees to help them modernise their employment practices. The Government believes ACAS should give more emphasis to such work and will examine how it can do so in its five-yearly review of the Service later this year.

## **Britain's labour market**

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**2.9** Britain's labour market has seen large-scale structural changes. Global competitiveness and technological innovation have combined to alter traditional labour market patterns. Many of the changes have made a profound impact on the labour market in Britain.

**2.10** In many cases, these changes bring real and tangible benefits in terms of greater opportunity and higher employment. Britain needs a flexible and efficient labour market in which enterprise can flourish, companies can grow and wealth can be created.

**2.11** But in some cases the scale, speed and scope of labour market change has led to higher unemployment, and for those in work, greater insecurity and even fear. Unemployment is still too high - in Britain, and across Europe. Social exclusion is extensive, especially among particular groups of individuals. Unemployment in some families now crosses generations. One in five households in Britain - many more in some parts of our country - now have no-one in them in work.

**2.12** For those in work, the Government has two key objectives for the labour market: efficiency and fairness. We want to see efficiency because we want people to work well enough and hard enough to generate prosperity for the country as a whole. And we want to see fairness because people at work deserve to be treated decently - and they perform better when they are. Efficiency and fairness are wholly compatible. It is perfectly possible to have a modern, flexible and efficient labour market which is both a vital engine for economic growth and business output and a means for people to find well-paid and satisfying jobs.

**2.13** The keys to securing efficiency and fairness are employability and flexibility. Employability means ensuring that people are well prepared, trained and supported, both initially as they enter the labour market, and throughout their working lives. Flexibility means businesses being able to adapt quickly to changing demand, technology and competition. By enabling business success, flexibility promotes employment and prosperity. Companies which work with their employees to raise productivity and enhance customer service above the levels of their competitors, in the UK and elsewhere, are the companies that offer the best prospects for growth in employment, profits and pay. To support both employability and flexibility we need a labour market culture and a legislative framework which together promote economic growth, enhance competitiveness, encourage entrepreneurship and foster job creation.

**2.14** The Government recognises and welcomes the fact that for most employers and employees the law is not the determining factor in their relationships. In most workplaces employers and employees will reach agreements on the terms and conditions of employment which will reflect employees' productivity and business performance. These agreements will be voluntary, constructive and reached without conflict. But within the blend of fairness and efficiency, we need to set minimum standards of employment below which no-one in work will fall - including minimum standards of health and safety to ensure that we work in environments which are not hazardous, and for the first time ever in Britain a national minimum wage.

**2.15** The new legislative steps the Government is proposing in this White Paper will include a range of new rights at work. But in offering new rights we will demand that employees in return accept their responsibilities to co-operate with employers. There will be no return to the days of industrial conflict. The Government is committed to maintaining the key elements of the employment legislation of the 1980s. Laws on picketing, on ballots before industrial action and for increasing democratic accountability in trade unions have all helped to improve employment relations. They will stay. Within a

flexible and efficient labour market, the Government's approach will improve both fairness and competitiveness.

## CHAPTER THREE

### New Rights for Individuals

**3.1** Individual employment rights are important in the Government's approach to competitiveness and the labour market. Fair treatment of individuals enhances commitment and competitiveness. Flexibility and adaptability - both crucial to competitiveness - need to be underpinned by basic minimum standards. However, current individual rights do not wholly reflect the modern world of work. The Government has therefore reviewed individual rights and, in some cases, has already taken action.

**3.2** The Government has introduced legislation for a **national minimum wage** below which pay should not fall. This will be a single hourly rate for all regions, sectors and sizes of company. Together with tax and benefit reforms, the minimum wage will help to promote incentives for individuals to find and make the most of jobs. It will ensure greater fairness at work and remove the worst exploitation. It will promote competitiveness by encouraging firms to compete on quality rather than simply on labour costs and price. The Low Pay Commission has consulted widely and its report will propose the rate at which the minimum wage should be set.

**3.3** The Government is also promoting individual rights by supporting Richard Shepherd's Private Member's Bill on **public interest disclosure**, or "whistleblowing". This is expected to gain Royal Assent by this summer. The Bill will provide protection against dismissal or victimisation for employees who responsibly raise concerns about criminal offences, failures to meet legal obligations, miscarriages of justice, health, safety and environmental dangers and "cover ups" of these matters. It will encourage resolution of concerns through proper workplace procedures, but it will protect those who, in the last resort, have to go public. The Bill has broad support from employers and trade unions.

**3.4** The Government also supported the **Employment Rights (Dispute Resolution) Act** introduced by Lord Archer of Sandwell. This Act improves and streamlines the procedures of industrial tribunals. Industrial tribunals should be seen as a last resort. It is better if employers and employees can settle disputes voluntarily, between themselves or with the assistance of a third party. The Act encourages the use of internal procedures and promotes a new voluntary arbitration scheme, developed by ACAS, to settle unfair dismissal claims. This new scheme will be introduced in the spring of 1999. The Government hopes that the voluntary arbitration alternative provided by ACAS will create a change of culture so that individuals who have been dismissed unfairly are more likely to get their jobs back. The Act also extends ACAS's conciliation role to redundancy payments cases. By streamlining dispute resolution and encouraging voluntary settlement, the Act should reduce the incidence and costs of high profile, hostile disputes.

**3.5** Nevertheless, some disputes will still have to be resolved by industrial tribunals. Tribunals must be seen to be fair to both parties. Where a tribunal finds that individuals

have been unfairly dismissed, they should receive a proper remedy. Tribunals issue very few re-employment orders, so the amount of compensation for unfair dismissal is very important. Although many awards are well below the current limit on compensation, which the Government has recently increased, the existence of a limit prevents some individuals from being fully compensated for their loss. The likelihood of proper compensation being awarded should also encourage employers to put proper voluntary systems in place. The current cap on compensation for unfair dismissal, which has steadily fallen in real terms, provides no such incentive. **The Government therefore proposes to abolish the maximum limit on such awards.** Abolition in sex discrimination claims has not led to a significant rise in the number of cases and although race discrimination cases have risen, these are relatively few in number.

**3.6** The Government is also considering whether the **limits on additional and special awards** should be retained. A tribunal may grant an additional award when an employer fails to comply with a re-employment order. Higher special awards may be made if the dismissal was because the employee:

- was, or was not, a trade union member;
- had taken certain types of action on health and safety grounds;
- had exercised a role as the trustee of a pension fund;
- had represented, or been a candidate to represent, other employees in a consultation on redundancy or on the transfer of a business.

**3.7** There are minimum and maximum limits on both additional and special awards. It is therefore possible to receive an award without having suffered any loss. On the other hand, the upper limit may act as a deterrent to someone exercising a legitimate role or right. This issue has surfaced recently in the context of the Public Interest Disclosure Bill, which is aimed at protecting “whistleblowers”. A majority of the respondents to the consultation exercise on this Bill, including the CBI and the TUC, took the view that there should be no limit on compensation awarded under the Bill. The Government’s view is that it would wish the compensation to be in line with other employment rights. The Government has therefore proposed that awards made under the Public Interest Disclosure Bill should attract a higher special award as described in paragraph 3.6. An alternative approach to special awards would be to allow tribunals to award aggravated damages in these limited circumstances. **The Government would welcome views.**

**3.8** Many of the limits on compensation awards have, by law, to be reviewed annually. Others are reviewed at the Secretary of State’s discretion. Reviews are time consuming, costly and produce results which could generally have been predicted. **The Government therefore proposes to introduce legislation to index-link limits, subject to a maximum rate.** This does not apply to awards for unfair dismissal where the Government proposes abolition of the limit.

**3.9** **The period of employment before employees qualify for protection against unfair dismissal is currently set at two years.** As the economy becomes more dynamic, leading to more frequent job changes, the Government is concerned that this period is too

long and a better balance between competitiveness and fairness would be achieved if it were reduced:

- employees would be less inhibited about changing jobs and thereby losing their protection, which should help to promote a more flexible labour market;
- more employers would see the case for introducing good employment practices, which should encourage a more committed and productive workforce.

**3.10** Some employers claim that a long qualification period is needed to allow mistakes made in recruitment to be rectified without heavy costs. The Government accepts such mistakes happen but believes that the present period is longer than is needed to allow them to come to light and be dealt with. For all these reasons, and to increase protection against arbitrary dismissal, **the Government therefore proposes to reduce the qualifying period to one year.**

**3.11** Over 850,000 people in the UK have contracts for a fixed term or a fixed task, of whom some 160,000 have a contract for over 2 years. Fixed term contracts allow employers to engage people to work on short-term tasks or jobs which have a fixed duration. An important aspect of the law governing such contracts is that it allows **employees to waive their rights to unfair dismissal and statutory redundancy payments.** This allows employers to take on fixed term contract staff for specific projects without the fear of claims for unfair dismissal or redundancy when the project is completed. However, some employees are obliged to accept fixed term contracts and to waive these employment rights for open-ended jobs.

**3.12** The Government has identified and considered a number of options for tackling this problem. The main options are:

- promoting best practice by encouraging employers to limit the use of waivers;
- restricting the waiver to redundancy payments; or
- complete prohibition.

**3.13** The Government does not believe that promoting best practice alone would deter unscrupulous employers, but complete prohibition would remove a useful flexibility for genuine employers. The Government therefore favours prohibiting the use of waivers for unfair dismissal but allowing them for redundancy payments. Short-term workers know when they start work that their job will come to an end on an agreed date and do not therefore have the same claim for redundancy compensation when it finishes. In contrast, such employees can reasonably expect to be as protected against unfair dismissal as permanent employees. **The Government would welcome views on this approach and the alternatives.**

**3.14** Some 200,000 people in the UK work under **zero hours contracts.** These contracts do not specify particular hours: the person may be required at any or at specified times. These contracts maximise flexibility for employers and suit some people who want occasional earnings. Many employers ensure the contracts are used sensibly, but they

have the potential to be abused. For example, in theory, employees could be asked to “clock off” and so lose pay in quiet periods but without being able to leave the premises. Being “on call” might also create difficulties in claiming benefit, even though no work was being done or money earned.

**3.15** The Government wishes to retain the flexibility these contracts offer business and believes that the National Minimum Wage and Working Time Directive will provide important basic protections against some of the potential abuses.

**3.16 The Government would welcome views on whether further action should be taken to address the potential abuse of zero hours contracts and, if so, how to take this forward without undermining labour market flexibility.**

**3.17** The Government wants to see flexibility in the labour market. But it must be coupled with fairness. In the interests of both employers and employees, greater flexibility in both working patterns and contracts must be reflected in employment legislation.

**3.18** As a first step, the National Minimum Wage Bill is designed to ensure that the minimum wage applies to all those who work for another person, not just those employed under a contract of employment. The Government will take a similar approach in implementing the Working Time Directive. It now intends to consult on the idea of **legislation enabling it similarly to extend the coverage of some or all existing employment rights by regulation**. The Government will consult fully on specific changes before exercising this power. The rules governing the conduct of employment agencies are also under review.

## CHAPTER FOUR

### Collective Rights

**4.1** Individual rights provide the essential underpinning of effective working relationships. Individuals seek and obtain jobs, and agree employment contracts with their employer. Individual employees have the right to expect fair treatment at work, and decent employment standards. Most employers recognise this. Individual employees also have the responsibility to work diligently and to the best of their ability to fulfil their part of the employment contract. Most employees recognise this. Employers and employees value individual success, individual achievement and individual ambition. Good employers have in place a range of policies and practices for their employees designed to ensure that individuals are able to make the maximum contribution they can to the success of the enterprise.

**4.2** But individual contracts of employment are not always agreements between equal partners. Good employers and employees recognise that there is a basic justification in terms of fairness at work for fair representation of all employees. Collective representation of individuals at work can be the best method of ensuring that employees are treated fairly, and it is often the preferred option of both employers and employees.

**4.3** Collective representation can help achieve important business objectives, including good communication. It can facilitate negotiation on terms and conditions without preventing the recognition of good individual performance. Representatives who are respected by other employees can help employers to explain the company's circumstances and the need for change. Collective representation can give employees a more effective voice in discussion with employers by drawing on a wide range of expertise and experience in the company.

**4.4** Improving information and consultation is a primary objective of collective arrangements. These are important in all companies but there is particular need in large multinational companies, where management decisions may be taken far away from the employees affected. The Government therefore welcomes the extension to the UK of the **European Works Council Directive**. This sets out sensible minimum standards for informing and consulting employees at European level, in companies or groups with over 1,000 employees and 150 in each of at least two member states. The Directive was extended to the UK in December 1997 and the Government will give it effect in national law by December 1999. The Government will consult widely on the details of this national legislation, and draw on the experience of the many UK-based international companies which have already successfully introduced the provisions of the Directive.

**4.5** The Government is working to achieve agreement on proposals for the European Company Statute. This will also cover employee involvement. But it is important that such mechanisms reflect the requirements of individual organisations. That is why the Government is not persuaded of the need for a directive on information and consultation

in companies operating only at national level. It is difficult to reconcile with subsidiarity and would cut across existing practices in member states to no benefit.

## **Collective Arrangements involving Trade Unions**

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**4.6** Employers and employees now have available a wide range of representational mechanisms. Many employers and employees choose representational methods not involving trade unions, which achieve good employment relations. The role of trade unions in centralised collective bargaining on pay and conditions has declined, reflecting decentralised decision-taking in many organisations.

**4.7** But many equally successful British companies and organisations operate with employers and employees selecting trade unions to act as their main means of representation. Of the 50 largest UK companies, 44 recognise trade unions. Trade unions can make the task of forging effective partnerships easier for employers and employees. In recent years they have changed to reflect change in business. Many trade unions now focus much more strongly on working with management to develop a flexible, skilled and motivated workforce. Trade unions can be a force for fair treatment, and a means of driving towards innovation and partnerships.

**4.8** The Government believes every employee should be free to decide to join a trade union. But equally every employee should be free not to join. Trade unions should be voluntary organisations. The abolition of the closed shop was one of the many employment law reforms of the 1980s that were justified and will remain.<sup>(1)</sup> There will be no return to the closed shop.

**4.9** But some of the reforms were damaging. For example, the requirement that employees re-authorise deductions from their pay for trade union subscriptions every three years put a burden on business and is not popular with employers. The requirement will therefore be removed shortly by an order under the Deregulation and Contracting Out Act 1994. Individuals will retain the right to opt out of deductions at any time.

**4.10** The Government accepts the importance of voluntary choices, and believes that mutually-agreed arrangements for representation, whether involving trade unions or not, are the best ways for employers and employees to move forward. Where agreements are reached voluntarily, they are most likely to be successful and suited to the needs of the enterprise.

**4.11** However, there will be occasions where employees want the benefit of representation at work, but are unable to secure agreement to it from their employer. The Government believes strongly that these will form a very small minority of cases, and that even then the prospects of voluntary agreement must be exhaustively examined. But as part of setting in place minimum standards, **the Government will bring forward**

**legislation to provide for representation and recognition where a majority of the relevant workforce wants it.** The prime purpose of this is to offer greater protection and security at work for the vulnerable. The extent of trade union growth and organisation is dependent on trade unions being able to convince employers and employees of their value - how much help they can bring to the success of an enterprise for employers, and how much active support they can offer employees. Where trade unions are able to demonstrate value to employers they are more likely to be recognised, and where they are able to demonstrate value to employees they are more likely to win members.

**4.12** If employees believe that their interests are best served through a trade union voice, the Government believes that the business will gain by accommodating this wish. Businesses and other organisations are unlikely to establish a successful partnership for change and competitiveness while overriding the wishes of a substantial group of employees.

**4.13** But it is vital that a clear framework and process are established governing decisions on trade union recognition. This must encourage dispute resolution. Neither the business nor employees will gain from protracted, possibly hostile, disagreement which can only damage future relationships whether or not a trade union is eventually recognised.

**4.14** The Government invited the CBI and TUC to discuss these issues and to try to narrow their differences. Following discussions, those organisations produced a statement setting out the points on which they agreed, in whole or in part, and recording their remaining differences. The Government is grateful for their efforts.

**4.15** The Government is proposing a new system of recognition. Its starting-point is voluntary agreement. Only where this proves impossible should another means be invoked. Setting out the procedure will help ensure that employers, employees and trade unions all understand clearly what will happen if they cannot agree. This should in practice lessen the likelihood of further stages of the procedure being necessary.

**4.16** The Government believes that, where a clear majority of employees wishes to be represented by a trade union, the new procedure will enable that union to be recognised by their employer without the disputes which have resulted from recognition claims under the current law. A statutory procedure offers a means of settling disputes without industrial action. The reason it is important to have clear support at a workplace is twofold. First, without real and substantial support amongst employees, collective bargaining simply will not work. Second, since collective bargaining has an impact on all employees, not just those claiming union representation, it is right that it should only be granted in circumstances where substantial support is demonstrated.

**4.17** In drawing up its proposals, the Government has been determined to introduce a procedure which will work, which will improve fairness and which will complement and enhance competitiveness, prosperity and growth. To deter insubstantial claims, the new procedure will rest on trade unions being able to demonstrate initially that they have

baseline support among employees before a recognition claim can proceed. The group of employees to whom trade union recognition will apply if they choose it - the bargaining unit - will be clearly defined to avoid disagreements. To demonstrate beyond dispute that a vote for recognition enjoys genuine and widespread support among employees, recognition will be awarded only where the vote in favour exceeds a minimum specified level. Many small companies recognise trade unions already. Many do not. In many small firms, employment relations are managed not just on an individual level, but on a personal level. In these circumstances statutory requirements on trade union recognition would be inappropriate. So the provisions will not apply to companies below a set threshold. Just as employees have the right to join or not to join a trade union, employers will have available a parallel procedure to end recognition arrangements if employee support for them reduces significantly. And to deter unwarranted attempts to obtain recognition or derecognition, there will be a minimum time period to allow employment arrangements to demonstrate their validity.

**4.18** So the essential features of the Government's proposal are:

- there will be a legal procedure, with time limits attached to various stages;
- the procedure will encourage the parties to reach voluntary agreements wherever possible. If, exceptionally, this proves impossible, a restructured and reinforced Central Arbitration Committee (CAC) will decide any of the following issues on which the parties are unable to agree:
  - whether a trade union has reasonable support among the employees for whom it is seeking recognition. This will rule out frivolous applications;
  - what is the appropriate bargaining unit. Where there is disagreement over the bargaining unit proposed by the union, the CAC will apply criteria(2) including the need for effective management, existing bargaining arrangements and the desirability of avoiding fragmented units within an undertaking. Employers must and will be free to organise their business in the way they choose;
  - whether a sufficient majority of employees support recognition: the CAC will award recognition where a ballot shows that a majority of those voting and at least 40% of those eligible to vote are in favour of recognition. This number will be reviewed after the legislation has been in place for a period of time so that it can be altered if it is shown to be unworkable.
  - the procedure to be followed for negotiations between an employer and a trade union. Recognition will cover pay, hours and holidays. **The Government invites views on whether it should also cover training.** The parties would of course be free to reach voluntary agreements on the issues to be covered;
- there will be a similar procedure for derecognition. **The Government invites views on exactly how this should work;**
- new applications for recognition or derecognition will not be considered by the CAC until three years after the date on which a previous application was determined;

- the procedure will not apply to firms with 20 or fewer employees.
- A simpler procedure should apply where employees are actually already members of a trade union. Where over half the workforce are in union membership already, so that they have clearly demonstrated through membership their desire for the union to bargain for them, then recognition should be automatic without a ballot.

**4.19** The Government intends that any trade union with a certificate of independence from the Certification Officer should be able to invoke the procedure, but the CAC will not deal with competing, well-founded claims from trade unions. These must be resolved by the trade unions before the procedure is invoked. There will be protection against discrimination for employees who campaign for or against recognition, including special protection for any employees who are dismissed simply for asking for recognition. Trade unions will have reasonable access to employees during the campaign. The procedure will be as simple, clear and quick as possible, with reasonable sanctions to ensure compliance. It is intended to avoid disruption to existing recognition arrangements. A fuller description of how the procedure will work is set out in Annex I.

**4.20** The Government has listened carefully to all the views put to it, and has designed these proposals to be fair, reasonable and workable. They will avoid disruption of existing arrangements, which can of course continue unchanged. As under existing law, individual employees will continue to have the right, should they wish, to agree terms with their employer. The new system will take some time to bed in. We confidently expect the proposals contained in this White Paper will contribute to improving relations at work. We will, of course, need to keep under review how the new law works in practice and make adjustments should any element of it prove unworkable. We will take the powers necessary to do this.

**4.21** A further area where the Government believes there is a need to correct an anomaly is the provision which means that **employees taking industrial action risk dismissal for breaking their contracts**. Almost all industrial action is in breach of contract. If the industrial action is unofficial - that is, not endorsed by the trade union - then an employee dismissed for breach of contract cannot claim unfair dismissal. If the action is official, a claim can be made only if the employer has acted selectively - for example, by dismissing only some of those taking action.

**4.22** The Government has no plans to change the position in relation to those dismissed for taking unofficial action. However, in relation to employees dismissed for taking part in lawfully organised official industrial action, the Government believes that the current regime is unsatisfactory and illogical. **The Government believes that in general employees dismissed for taking part in lawfully organised official industrial action should have the right to complain of unfair dismissal to a tribunal.** In any particular case the tribunal would not get involved in looking at the merits of the dispute; its role would be to decide whether the employer had acted fairly and reasonably taking into account all the circumstances of the case.

**4.23** The Government is considering how to implement this in a simple and workable fashion which avoids unnecessary burdens on the tribunal system or ACAS. **The Government therefore invites views on:**

- the tests which should be applied to determine whether dismissals in these circumstances are fair; and
- procedural aspects such as the possibility of grouped actions and whether compensation should be at a flat rate or calculated individually as for other unfair dismissals.

**4.24** The Government is also concerned that the law **currently allows for some discrimination against those involved in trade union activities**. The House of Lords ruled in “Wilson and Palmer”<sup>(3)</sup> that the law allowed an employer to discriminate by omission against an employee on grounds of trade union membership, non-membership or activities.

**4.25** The Government believes that such discrimination is contrary to its commitment to ensuring individuals are free to choose whether or not to join a trade union. In addition, when a company has recognised a trade union it is important that trade union representatives are active in promoting effective dialogue with employees. The current law may deter employees from being involved in such activity. **The Government therefore proposes to make it unlawful to discriminate by omission on grounds of trade union membership, non-membership or activities**. The law already provides protection against discrimination in recruitment on the basis of trade union membership. **The Government also proposes to prohibit blacklisting of trade union members.**

**4.26 The law and Code of Practice on industrial action ballots and notice<sup>(4)</sup> also need reform.** Present provisions are unnecessarily complex and rigid. This makes it difficult for trade unions and their members to understand their rights and responsibilities. Complexity leads to disputes. One study suggests that three quarters of the legal actions brought by employers against trade unions concern the ballot and notice provisions. This is damaging to business efficiency, as well as to trade unions. **The Government therefore intends to simplify the law and Code and welcomes views on how this should be done.**

**4.27** A particular difficulty is the legal requirement on trade unions in certain circumstances to give to employers the names of those they will ballot. Trade unions are reluctant to do so because some members may not wish their trade union to disclose their names to the employer. The Government agrees that trade unions should not be forced to disclose their members’ names. **It therefore intends to amend the law to make clear that while the trade union’s notice to the employer should still identify as accurately as reasonably practicable the group or category of employees concerned, it need not give names.**

**4.28** The Government is concerned that individual employees, whether or not they are trade union members and whether or not their trade union is recognised, should be able if

need be to defend or advance their interests at work effectively. Most employers treat people fairly, but a minority do not. The law should protect employees from intimidation, and assist those who might have difficulties in representing themselves.

**4.29** The ACAS Code of Practice on Disciplinary Practice and Procedures in Employment recommends that employees should have the right to be accompanied by a trade union representative or fellow employee of their choice in disciplinary procedures. The Government believes this recommendation should be made a statutory right. **It therefore proposes to create a legal right for employees to be accompanied by a fellow employee or trade union representative of their choice during grievance and disciplinary procedures.** This would not imply any duty on trade unions or other employees to accompany a colleague if they did not wish to do so. However, anyone who did accompany another employee would be protected against dismissal or other action for doing so.

**4.30** The previous Government created two organisations to help people bring legal action against trade unions. The Commissioner for the Rights of Trade Union Members (CRTUM) pays legal costs or obtains legal advice for members bringing cases against their trade unions. The Commissioner for Protection Against Unlawful Industrial Action (CPAUIA) does the same for people seeking to stop a trade union organising industrial action unlawfully. These offices are held by the same person, supported by five staff.

**4.31** The Government has no wish to protect poorly run trade unions, just as it will not protect poor employers. But these arrangements are inefficient and unnecessary. CRTUM has assisted only nine applicants each year on average. CPAUIA has assisted only one, which did not lead to a court case. And, as in any civil case, the Government wants people to consider the alternatives to going to court. **The Government therefore intends to abolish CRTUM and CPAUIA and give new powers to the Certification Officer** to hear complaints involving most aspects of the law where CRTUM is currently empowered to provide assistance. This will enable trade union members to secure their rights more easily and effectively.

**4.32** As the business world becomes more open and competitive, the pressures on businesses to slim down through redundancies, more flexible contracting-out arrangements, or to develop through merger and acquisition will intensify. The Government has already consulted on new arrangements governing **the provision of information and consultation when redundancies are planned or a business is to be transferred, and on the protection of employment when a business is transferred.** The existing provisions have been widely criticised and the Government intends to amend them. Employers will in future have clearer obligations to inform and consult recognised trade unions or, in their absence, other independent employee representatives. Where businesses are transferred, the law will strike the right balance between safeguarding employees' existing rights and enabling businesses to adapt to changing circumstances.

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1 Other measures which will remain include those on picketing, secondary action, ballots and notice before strikes, unofficial action, elections for certain trade union offices and rights to join the trade union of one's choice and not to be unjustifiably disciplined.

2 The full proposed criteria are set out in paragraph (v) of Annex I.

3 IRLR [1995] 258.

4 Copies of the current Code are available from the DTI Orderline - tel 0870 1502 500; fax 0870 1502 333 - quoting URN 95/915. The Code is also on the Internet at <http://www.dti.gov.uk/access/pl962.htm>

## **CHAPTER FIVE**

### **Family-Friendly Policies**

**5.1** Competitiveness depends on the UK making the best use of the talents of as many people as possible. The larger the number of people - particularly skilled people - to which business can look, the better. We also need to ensure that as many people as possible who want to work should have the chance to do so.

**5.2** But work and parenthood can create conflicting pressures. Parents, both men and women, need time with their children and time to create a supportive home in which their children can thrive. When they are at work they need confidence that their children are being well cared for so that they can concentrate on the job in hand. Helping employees to combine work and family life satisfactorily is good not only for parents and children but also for businesses.

**5.3** Many successful modern companies, both large and small, have therefore adopted a culture and practices in support of the family. To the mutual benefit of the employee and the business, they allow flexibility over hours and working from home allowing parents to spend more time with their children. They provide time off for family crises. Some provide childcare facilities or fund employees' use of nurseries. They know how important it is to retain staff in whom they have invested and on whom they depend. The Government wishes to support and reinforce such a family-friendly culture in business. In the future it will become increasingly important to enable employees to balance satisfactorily family responsibilities and work, and children to benefit from parental care.

**5.4** The Government is already taking action including through:

- a National Childcare Strategy which will meet the needs of children and support their parents in combining work and family life. The Strategy will encourage businesses to provide access to good quality childcare for their employees or to develop policies such as flexible working which help parents look after their children themselves;
- the development of ways to encourage working from home by raising its status;
- the Working Families Tax Credit, giving financial support to working families;
- research into the needs of small businesses in this area and employment issues for women;
- promoting a focus in the EU on family-friendly policies, including through the recent UK Presidency Conference on the Future of Work.

**5.5** To ensure that all parents are better able to balance work and family life, voluntary measures need to be underpinned by a statutory framework. In addition to measures to improve family incomes, the Government's two main priorities are to tackle excessively long working hours and to give parents greater flexibility. The National Minimum Wage and the implementation of the Working Time Directive will help to support working parents. The Government also welcomes the Part-Time Work Directive, which will

remove discrimination against part-time workers and increase access to part-time work. This will mean better quality part-time jobs and more choice, which will help parents, women and men, to combine work with family life. The Government will implement this Directive by April 2000 and will consult both employers' and employees' bodies and other interested parties before doing so.

**5.6** To tackle excessively long working hours the Government will implement the Working Time Directive and Young Workers Directive. There is no advantage to employers in exhausted employees. On the contrary, the need to work within fair, maximum hours is likely to promote more efficient working practices and innovation.

**5.7** The **Working Time Directive** will enable people to balance better their work and home lives. It specifies:

- minimum daily and weekly rest periods;
- rest breaks;
- annual paid holidays;
- a limit of 48 hours a week on the average time which employees can be required to work (except by voluntary agreement); and
- restrictions on hours worked at night.

**5.8** The **Young Workers Directive** has similar but tighter provisions for employees under 18 years old.

**5.9** Draft regulations to implement these Directives were published for consultation on 8 April. Replies are due by 5 June 1998. The regulations are designed to allow maximum flexibility through agreements between employers, employees and trade unions.

**5.10** The European Commission is expected soon to propose the extension of the Working Time Directive to currently excluded sectors, including transport, sea fishing and the offshore oil and gas industry. The inclusion of some sectors gives rise to difficulties. The Government will therefore be working closely with the Commission and other member states to arrive at sensible arrangements which reflect both employee and employer interests.

**5.11** To ensure that it is easier for parents to balance work and family life, the Government will introduce a series of new measures as it implements the **Parental Leave Directive**:

- three months' parental leave for men and women when they have a baby or adopt a child, plus protection from dismissal for exercising this right; and
- time off for urgent family reasons to help employees look after a sick child or deal with a crisis at home.

**5.12** The Government will implement this Directive by December 1999. Before doing so, it needs to consider how to achieve a coherent package of rights, including existing rights, for parents which supports competitiveness.

**5.13** First, the new rights need to be properly integrated with existing employment rights for pregnant women. These have developed piecemeal and their complexity and potential for abuse have been criticised by employers, employees, the judiciary and the House of Commons Employment Committee. The Government will therefore review existing maternity provisions alongside the new rights to achieve a coherent package that is easier to understand and operate. The Government then intends to legislate to create a framework of basic rights, supported by regulations on the details. The Government will consult on the regulations. However, before the framework and the regulations can be finalised a number of issues have to be resolved and the Government wishes to consult.

**5.14** Women have a right to 14 weeks' **maternity leave** but 18 weeks' pay. This is confusing to both employers and employees. Many employers see benefits in aligning the two periods. **The Government proposes to extend maternity leave to 18 weeks.**

**5.15** The Parental Leave Directive is flexible about how such leave should be taken:

- in a single block or as an annual allowance;
- full or part-time;
- at any time up to the child's eighth birthday or a lower age, or with some required to be taken at the time of birth or adoption;
- under individual arrangements agreed between the employer and the employee.

**5.16** As far as possible employers and employees should be encouraged to make whatever arrangements best suit their own circumstances. However, legislation is needed to deal with special cases, such as what happens if an employee changes jobs before taking his or her full parental leave allowance. **In order for the Government to ensure that a proper legislative framework is created, it would welcome views on the options set out here.**

**5.17** Employees have to **give notice of maternity leave**. The current requirements are complex and can be simplified. The Government would welcome views on how this should be achieved and what statutory provision is required for the new rights to parental leave.

**5.18** At present women qualify for 14 weeks' maternity leave from day one of their employment, for paid leave if they have worked for 6 months and for extended maternity leave after two years' work for the same employer. The Parental Leave Directive allows for a qualifying period of up to a year for the right to parental leave.

**5.19** The Government believes that these **qualifying periods** should be aligned as far as practicable. **It therefore proposes that the right to extended maternity leave and parental leave should both apply after one year.**

**5.20 Contracts of employment** continue during the 14 weeks of statutory maternity leave. The law does not specify what then happens to the contracts of women who take longer periods. This has led to confusion and litigation. The Parental Leave Directive requires that the status of the contract during parental leave is set out clearly in legislation.

**5.21** Because of the uncertainty over the state of the contract during extended maternity leave, problems can arise when a woman is made redundant while on leave. There are particular difficulties if she cannot return to work on the day she intended to because she is sick. These uncertainties would be significantly reduced if it were clear that the contract of employment continued during the absence. There would be some costs to employers: for example, a woman in this position would continue to accrue service for the purposes of leave and seniority. However, provided it was not discriminatory, the contract could specify what terms applied during absence from work. **The Government therefore proposes that legislation should provide for the contract of employment to continue during the whole period of maternity or parental leave, unless it is expressly terminated by either party, by dismissal or resignation.**

**5.22** At present women returning from maternity leave have a right to their old job. If this is not practicable, they generally must be given a suitable alternative, with equivalent terms and conditions of employment. The Parental Leave Directive requires that employees should be guaranteed their job back, or a suitable equivalent, after parental leave. Employees who are not guaranteed their old job back will be deterred from taking parental leave, thus undermining its purpose. **The Government therefore proposes to provide similar rights of return after parental leave as already apply after maternity leave.**

**5.23** Currently, parents who adopt a child have no statutory right to take leave from work. Any leave they take must be agreed with their employer, and they have no guarantee of their job back. The Government believes this is wrong and unfair. Adoption is valuable to society, and adoptive parents have as much need as others to spend time with their children. **The Government therefore welcomes the recognition of adoptive parents' rights in the Parental Leave Directive and proposes to provide three months' parental leave for adoptive parents.** It does not, however, intend that adoptive mothers should have the same maternity rights as birth mothers.

**5.24 Small firms** often have particular problems. For example, small firms may find it easier to cope with employees taking leave in a series of short absences rather than as a block.

**5.25** Current legislation already recognises the difficulties very small firms may face in holding a job open for a long time. In limited circumstances, they may be able to show that they cannot realistically take a woman back after the longer period of maternity absence. European requirements do not allow any exemption from the provisions relating to maternity or parental leave, but they do provide for special provision to be made in relation to small firms.

**5.26** The Government wants to ensure sufficient flexibility in implementing the Directive to meet the needs of all employers, large and small. **It seeks views on the particular difficulties small firms might face in complying with the rights proposed in this chapter, and on how these might be alleviated.**

**5.27** The Parental Leave Directive provides a right for employees to take time off work for **urgent family reasons** in cases of sickness or accident.

**5.28** Currently, there is no statutory right to take time off to deal with a family emergency. This is generally left to employers' discretion. The Government believes that it is right for employees to feel secure that necessary time off will be allowed, although employers cannot be expected to provide frequent or long-term time off. Legislation already provides rights to reasonable time off for specified reasons, for example to arrange training if the employee is being made redundant, or to carry out public duties. Industrial tribunals also take into account the needs of the business in deciding whether an employer has reasonably refused time off. In the same way, **the Government proposes to provide a right to reasonable time off for family emergencies, which will apply to all employees regardless of length of service.**

**5.29 Dismissal on grounds of pregnancy** or exercising a right to maternity leave is automatically unfair, regardless of length of service. The Parental Leave Directive requires similar protection for parents taking parental leave. The Government believes that employees should be able to take family leave secure that they will not be victimised as a result. **The Government therefore proposes to ensure that employees are protected against dismissal or other action if they exercise their rights to parental leave and time off for urgent family reasons.**

## **CHAPTER SIX**

### **The Way Ahead**

**6.1** This White Paper proposes key principles and a framework of measures to promote partnership at work and competitiveness through the fair treatment of employees. It covers all the measures that the Government already has in hand or is considering for this Parliament.

**6.2** In part, the White Paper is consultative. A list of proposals and issues on which views are sought is at Annex II. Responses should be sent by 31 July 1998 to:

Ms B Cooper  
ER1  
Department of Trade and Industry  
2.C.43  
1 Victoria Street  
London  
SW1H 0ET

or by e-mail to **[beccy.cooper@irdv.dti.gov.uk](mailto:beccy.cooper@irdv.dti.gov.uk)**

(Responses on issues which are already the subject of consultation should be sent to the person specified in the relevant consultation document by the time stated.)

**6.3** Following consultation, the Government intends to move forward swiftly on all areas covered in the White Paper and will legislate as necessary at the earliest opportunity.

## **ANNEX I**

### **A Statutory Procedure for Trade Union Recognition**

#### **The procedure for obtaining recognition**

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**(i)** An independent trade union, or group of two or more independent unions acting jointly, which wishes to be recognised in a business with more than 20 employees will submit a formal request to the employer, in writing, specifying the group of employees on behalf of whom it is seeking recognition ('the bargaining unit'). (For simplicity the following description refers to a single union, but such references should be read as covering two or more unions acting jointly.) Employers will remain free to recognise voluntarily unions which do not hold a certificate of independence, and existing recognition of such unions can continue, but non-independent unions may not invoke the statutory procedure to obtain recognition.

**(ii)** The employer will have 14 days from the receipt of the request to respond; if the employer agrees to the request then the formal procedure will be closed; if the employer, while not accepting the request, for example because he does not agree that the group of employees proposed by the union is an appropriate bargaining unit, is willing to negotiate with the union, then the employer and union will have at least 28 days in which to try to reach an agreement. If both parties consent, they may invite ACAS to assist them in reaching an agreement. They may continue to negotiate for as long as both sides are willing.

**(iii)** If the employer does not respond to the union request within 14 days, or if he rejects it and refuses to negotiate, the union may, at the end of that period, make an immediate application for the Central Arbitration Committee:

- a. to determine whether the bargaining unit proposed by the union is appropriate, and if not, to specify what would be an appropriate bargaining unit; and/or
- b. to determine whether the union has the support of a majority of the employees in the appropriate bargaining unit.

The CAC, having received an eligible application, will first examine whether there is prima facie evidence that the union enjoys a reasonable level of support such as to make it likely that there could be a majority in favour of union recognition in the bargaining unit. Evidence of reasonable support might take the form of membership records or a petition signed by a sufficient number of employees. The employer too may submit evidence. If the CAC is not satisfied that the union has sufficient support, it will not proceed with the application. In consultation with interested parties, the Government will draw up guidance for the CAC on how reasonable support should be defined.

**(iv)** A union may also make an application for the CAC to determine either or both of the above questions if the employer and union have been unable to agree on one or both issues and at least 28 days have elapsed since the employer first responded to the union's

request. However, the CAC will not entertain an application if, within 14 days of responding to the union's request, the employer proposed, without conditions, that the parties seek the assistance of ACAS but the union refused. Nor will the CAC entertain an application if it has evidence that another trade union is already recognised in respect of some or all of the employees concerned. In the event that two or more unions separately make applications with reasonable support in respect of the same group or overlapping groups of employees, the CAC will cease all work on those applications.

As indicated above, two or more unions may combine to seek joint recognition in respect of a group of employees, and may, if necessary, submit a joint application to the CAC. Where competing or overlapping applications have been made, they may be withdrawn, whereupon a single union or two or more acting jointly may recommence the procedure for recognition by making a single request for recognition. The TUC may attempt to resolve disputes between its affiliates but this will not be part of the statutory procedure.

(v) Where the CAC decides to proceed with an application, it will first try to broker an agreement between the employer and union, allowing up to 28 days for this stage; if at the end of that period the employer and union remain at odds over whether the bargaining unit proposed by the union is appropriate, the CAC will, normally within seven days, determine the appropriate bargaining unit(s). In doing so, the CAC should take particular account of the bargaining unit's compatibility with the need for effective management, as well as:

- the views of the employer and of the union;
- any existing national or local bargaining arrangements;
- the desirability as a general rule of avoiding small, fragmented bargaining units within an undertaking;
- the characteristics of the employees in the bargaining group proposed by the union and of any other of the employer's employees whom the CAC consider relevant; and
- the location of employees.

The CAC may decide that the appropriate bargaining unit is that proposed by the union, a group proposed by the employer, or a different group identified by the CAC (which might be the whole of the employer's workforce or any smaller group).

If the CAC decides on a different bargaining unit to that proposed by the union, it will be able to reject any application if the union cannot show a reasonable level of support for recognition in that unit (see (iii) above). The union itself may feel it has no chance of success in a ballot, and should therefore be able to withdraw its application at any time. Equally, if the employer drops his objections to the union application, the parties should be able to reach an agreed settlement and discontinue the procedure at any time.

(vi) Once the bargaining unit has been agreed, or decided by the CAC, the employer may accept that the union enjoys the support of a majority of the workforce. In this case the CAC will issue a declaration that the union is recognised for the bargaining unit in

question. The CAC will also issue a declaration if it is satisfied, having examined carefully suitable evidence from the union and, if he wishes, from the employer, that more than 50% of the bargaining unit are members of the union seeking recognition. Otherwise the CAC will arrange for a secret ballot of the bargaining unit to be conducted by an independent body which is qualified to act as a scrutineer in industrial action ballots. The ballot will normally be carried out within 21 days of the determination of the bargaining unit. During that period, the employer will grant the union reasonable access to the employees to be balloted. The Government is minded to ask ACAS to draw up a statutory Code of Practice to help employers and unions understand what reasonable access means in practice. Employees who campaign for or against recognition or union membership will be protected against dismissal or action short of dismissal. If the scrutineer is satisfied, for example after consulting the employer and the union, that there is no risk of improper interference, the ballot may be conducted at the workplace. Otherwise it will be a postal ballot with voting papers sent to employees' home addresses. The employer will be under a legal duty to co-operate with both the body conducting the ballot and the trade union, to provide both with the names and, if the ballot is postal, addresses of the employees to be balloted. As far as is reasonably practicable, every member of the bargaining unit agreed or decided by the CAC will be entitled and able to vote, but nobody else. The cost of the ballot will be shared equally between the employer and the union.

(vii) The body conducting the ballot will notify the result to the CAC, the employer and the union. The CAC will issue a declaration that the union is to be recognised for the bargaining unit agreed or decided by the CAC provided that a majority of those voting and at least 40% of those eligible to vote have supported recognition. Otherwise it will issue a declaration that the union is not recognised.

### **The consequences of recognition**

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(viii) Where a union has achieved recognition through this procedure (because the employer has agreed to recognition - see step (ii) above, or following the involvement of ACAS and/or the CAC), the employer and the union must try to reach a procedure agreement to give effect to recognition and set out how they will conduct collective bargaining. If both parties consent, they may invite ACAS to assist them. Such an agreement may, if the parties wish and so indicate in the agreement, be legally binding (as is the case under the existing law), and could then be enforced through the courts.

However, if, after three months from the date of the employer's agreement to recognition or the CAC declaration, as the case may be, no agreement has been reached, the union may apply to the CAC to have a default procedure agreement applied (though again negotiations can be extended if both sides agree). The CAC will first try to broker an agreement between the employer and the union. If at the end of a period which it

considers reasonable in the circumstances the CAC has been unable to reach an agreement with the parties, it may impose a collective bargaining procedure which will be legally binding on both parties. The procedure will be based on a model laid down in legislation and drawn up with the advice of ACAS, with such amendments as the CAC considers desirable in the specific circumstances. It will provide for collective bargaining to cover pay, hours and holidays as a minimum. There are conflicting views on whether training should also be included. The Government would welcome responses on this point. The parties may add other items if they wish.

The terms of agreements resulting from collective bargaining are normally incorporated into individual employees' contracts either explicitly or by custom and practice and thus set the minimum terms and conditions for all employees in the bargaining unit. Under the existing law an employer and employee can agree different terms if they wish. Since the current law allows flexibility and works well, the Government sees no reason to change it.

## **Enforcement**

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(ix) Since the procedure will be legally binding, by way of a deemed contract between employer and union, either party will be able to apply to a court if it believes the other is in breach of the procedure. A court could make an order for specific performance. Failure to comply with such an order could be a contempt of court.

(x) An independent union or an employer may also apply to the CAC in order to have the default procedure applied if it considers that the other party is not honouring the terms of a recognition agreement which is not legally binding, whether negotiated before the procedure came into force, outside this procedure or following a CAC recognition declaration. On receipt of such an application the CAC will notify the employer and allow the parties one month to try to reach an agreement. If they fail to do so, the CAC will impose a legally binding collective bargaining procedure in the same way as in the second paragraph of (viii).

## **Derecognition**

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(xi) There will be a broadly similar procedure for resolving disputes where an employer seeks to derecognise a union because he believes the majority of the bargaining unit no longer supports recognition. The Government invites views on how and in what circumstances this procedure should apply.

## **Renewed applications for recognition or derecognition**

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**(xii)** Where a union has unsuccessfully applied for recognition for a group of employees, the CAC will not entertain a new application by that union for recognition in respect of the same or substantially the same group within a period of three years from the date of the declaration on the first application. Similarly, the CAC will not entertain an application for derecognition within three years of either a recognition declaration or an unsuccessful request for derecognition.

## **Changing the bargaining unit**

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**(xiii)** There may be circumstances, eg following business restructuring, take-over, divestment, merger of unions, where it is appropriate for the bargaining unit to be changed. The law will need to make allowance for this. If, following a change in circumstances which affects the relevance of the bargaining unit, the employer and the union are unable to agree on whether the bargaining unit for which the union is recognised should change, either may apply to the CAC for a fresh determination of the bargaining unit. If the CAC determines that the bargaining unit should include employees who were not previously part of it, the employer may seek to invoke the derecognition procedure, in which case the normal procedure will apply. In all other circumstances the existing recognition arrangements will apply to the new bargaining unit subject to any modifications agreed between the employer and the union or judged appropriate by the CAC where it has applied a default procedure.

## **ANNEX II**

### **Summary of Proposals and Issues for Consultation**

#### **New Rights for Individuals**

The Government **proposes** to:

- 1.** reduce the qualifying period for protection against unfair dismissal to one year (paragraph 3.10)
- 2.** abolish the maximum limit on awards for unfair dismissal (paragraph 3.5)
- 3.** introduce legislation to index-link limits on statutory awards and payments, subject to a maximum rate (paragraph 3.8)

and the Government **invites views** on:

- 4.** whether the limits on additional and special awards should be retained, or tribunals should be able to award aggravated damages (paragraph 3.7)
- 5.** its options for changing the law which allows employees with fixed term contracts to waive their right to unfair dismissal and statutory redundancy payments (paragraph 3.13)
- 6.** whether further action should be taken to address the potential abuse of zero hours contracts and, if so, how to take this forward without undermining labour market flexibility (paragraph 3.16)
- 7.** whether legislation should be introduced to extend the coverage of some or all existing employment rights by regulation to all those who work for another person (paragraph 3.18)

#### **Collective Rights**

The Government **proposes** to:

- 8.** enable employees to have a trade union recognised by their employer where the majority of the relevant workforce wishes it. Statutory procedures for both recognition and derecognition will be introduced (paragraph 4.11)
- 9.** change the law in line with its belief that in general those dismissed for taking part in lawfully organised official industrial action should have the right to complain to a tribunal of unfair dismissal (paragraph 4.22)
- 10.** make it unlawful to discriminate by omission on grounds of trade union membership, non-membership or activities (paragraph 4.25)

11. prohibit blacklisting of trade unionists (paragraph 4.25)
12. amend the law on industrial action ballots and notice to make clear that, while the union's notice to the employer should still identify as accurately as reasonably practicable the group or category of employees concerned, it need not give names (paragraph 4.27)
13. create a legal right for employees to be accompanied by a fellow employee or trade union representative of their choice during grievance and disciplinary procedures (paragraph 4.29)
14. abolish the CRTUM and CPAUIA and give new powers to the Certification Officer to hear complaints involving most aspects of the law where CRTUM is currently empowered to provide assistance (paragraph 4.31)
15. make funds available to contribute to the training of managers and employee representatives in order to assist and develop partnerships at work (paragraph 2.7)

and the Government **invites views** on:

16. whether training should be among the matters automatically covered by an award of trade union recognition (paragraph 4.18)
17. how a procedure for derecognition should work (paragraph 4.18)
18. how protection against dismissal for those taking part in lawfully organised industrial action should be implemented (paragraph 4.23)
19. how to simplify the law and Code of Practice on industrial action ballots and notice (paragraph 4.26)

### **Family-Friendly Policies**

The Government **proposes** to:

20. extend maternity leave to 18 weeks, to align it with maternity pay (paragraph 5.14)
21. give employees rights to extended maternity absence and to parental leave after one year's service (paragraph 5.19)
22. provide for the contract of employment to continue during the whole period of maternity or parental leave, unless it is expressly terminated by either party, by dismissal or resignation (paragraph 5.21)
23. provide similar rights for employees to return to their jobs after parental leave as currently apply after maternity absence (paragraph 5.22)

24. provide three months' parental leave for adoptive parents (paragraph 5.23)
25. provide a right to reasonable time off for family emergencies, which will apply to all employees regardless of length of service (paragraph 5.28)
26. ensure that employees are protected against dismissal or detriment if they exercise their rights to parental leave and time off for urgent family reasons (paragraph 5.29)

and **invites views** on:

27. simplifying notice of maternity leave (paragraph 5.17)
28. its options for framing legislation to comply with the Parental Leave Directive (paragraph 5.16)
29. the particular difficulties small firms might face in complying with the Directive on parental leave (paragraph 5.26)