

Annex A: Outline of Part I of the Statutory Recognition Procedure

A1. The statutory procedure is contained in Schedule I of the Act. The following is a short guide as to how the procedure operates in respect of a union(s) seeking recognition (Part I of the Schedule).³² It is not a definitive statement of the law, and does not cover every permutation of circumstances. Instead, the intention is to assist the reader in following the issues considered during the review and options identified for reform. It does not go into the operation of other sections of the statutory process, such as handling changes to bargaining units, and derecognition procedures.

A2. There are a number of stages in the process, usually with a specific timetable for each. These timescales can generally be extended, either by a decision of the CAC alone, or following consent of the parties. The philosophy underpinning the process is that voluntary resolution of claims is the preferred route, and this is encouraged even after union application to the CAC. If statutory recognition for collective bargaining is awarded, this is in respect of pay, hours and holidays only.

Stage 1 – Trade union writes to the employer seeking recognition

A3. For a request to be valid, the employer (together with associated employers) must employ 21 or more workers. Only independent unions have access to the statutory procedure. The entire process is triggered by the union writing to the employer, requesting recognition, and identifying the bargaining unit of the workers concerned.

A4. The employer has 10 working days in which to respond. If the employer agrees voluntarily to recognise the union (or unions), the statutory recognition procedure is regarded as closed. However, the parties can have such an agreement declared by the CAC as an agreement for recognition. In such instances, if the parties subsequently fail to agree on the bargaining method, they can approach the CAC for assistance and determination. The agreement cannot then be terminated by the employer for a period of three years. This applies to a voluntary agreement at whichever stage in the process it is agreed.

A5. Alternatively, if the employer agrees to negotiate, the parties have 20 days to conclude discussions – or longer by mutual agreement. The parties may call on the services of Acas to

³² Fuller guidance on the Schedule appears on the CAC web site: www.cac.gov.uk

assist with this process. If the employer refuses to negotiate or does not respond to the union's letter or, if negotiations fail to reach an agreement, the union may make an application to the CAC.

Stage 2 – Application by trade union to the CAC

A6. The CAC has 10 days to decide, against a number of criteria, whether to accept the application. These criteria include a requirement for at least 10% of the workers in the bargaining unit to be members of the union, and for the CAC to be satisfied that a majority of the workers in the bargaining unit would be likely to favour recognition. In addition, 3 years must have passed since any previous application by the union was accepted by the CAC in respect of the bargaining unit in question.

Stage 3 – Agreement or determination of the bargaining unit

A7. If the union's application is accepted, the parties have a period of 20 days to agree a bargaining unit if they have not already done so. If the parties fail to agree the unit, then the CAC will determine it. In doing so, the CAC must take a number of matters into account, in particular the need for the unit to be compatible with effective management. The CAC has 10 days to make this decision. If the bargaining unit agreed/determined is different from that originally proposed by the union, then the CAC must re-apply the acceptance criteria in respect of the new bargaining unit.

Stage 4 – Determining whether to award recognition

A8. Once the bargaining unit is established, the CAC must decide whether to declare the union to be automatically recognised, or to hold a ballot. If the CAC is satisfied that a majority of the workers in the bargaining unit are union members, it must make a declaration of recognition, unless it decides that a ballot should be held due to any of three conditions: if the CAC is satisfied that a ballot should be held in the interests of good industrial relations; if a significant number of members inform it that they do not want the union to conduct collective bargaining on their behalf; or if membership evidence is produced which leads it to conclude there are doubts whether a significant number of the union members want the union to conduct collective bargaining on their behalf.

Stage 5 – Recognition ballot

A9. A ballot is held if the union does not have majority membership in the bargaining unit, or if the CAC decides despite majority membership that a ballot should still be held for any of the reasons given in Stage 4 above. The CAC gives a 10-day notice period for the holding of the ballot. Unless during this period the union, or the parties jointly, inform the CAC that they do not wish the ballot to be held, the CAC will appoint a Qualified Independent Person (QIP) to conduct the ballot, which must take place within 20 days of his/her appointment. The CAC must also determine the form of the ballot: workplace, postal, or a combination of these methods. During the ballot the employer has a general duty to co-operate with the ballot.

A10. In addition, the employer must give the union access to the workers in the bargaining unit during the balloting period. A statutory Code of Practice on access applies. The employer must also supply to the CAC the names and addresses of the workers in the bargaining unit. This information is used by the QIP for the ballot itself, and also to distribute union literature to the workers (if the union wishes, and at the union's cost). The costs of the ballot are borne equally by the parties. If the result of the ballot is that the union's application is supported by a majority of all those voting, and at least 40% of those entitled to vote, the CAC must issue a declaration that the union is recognised for the purposes of collective bargaining on behalf of the bargaining unit. Otherwise the union is not recognised.

Stage 6 – Method of Collective Bargaining

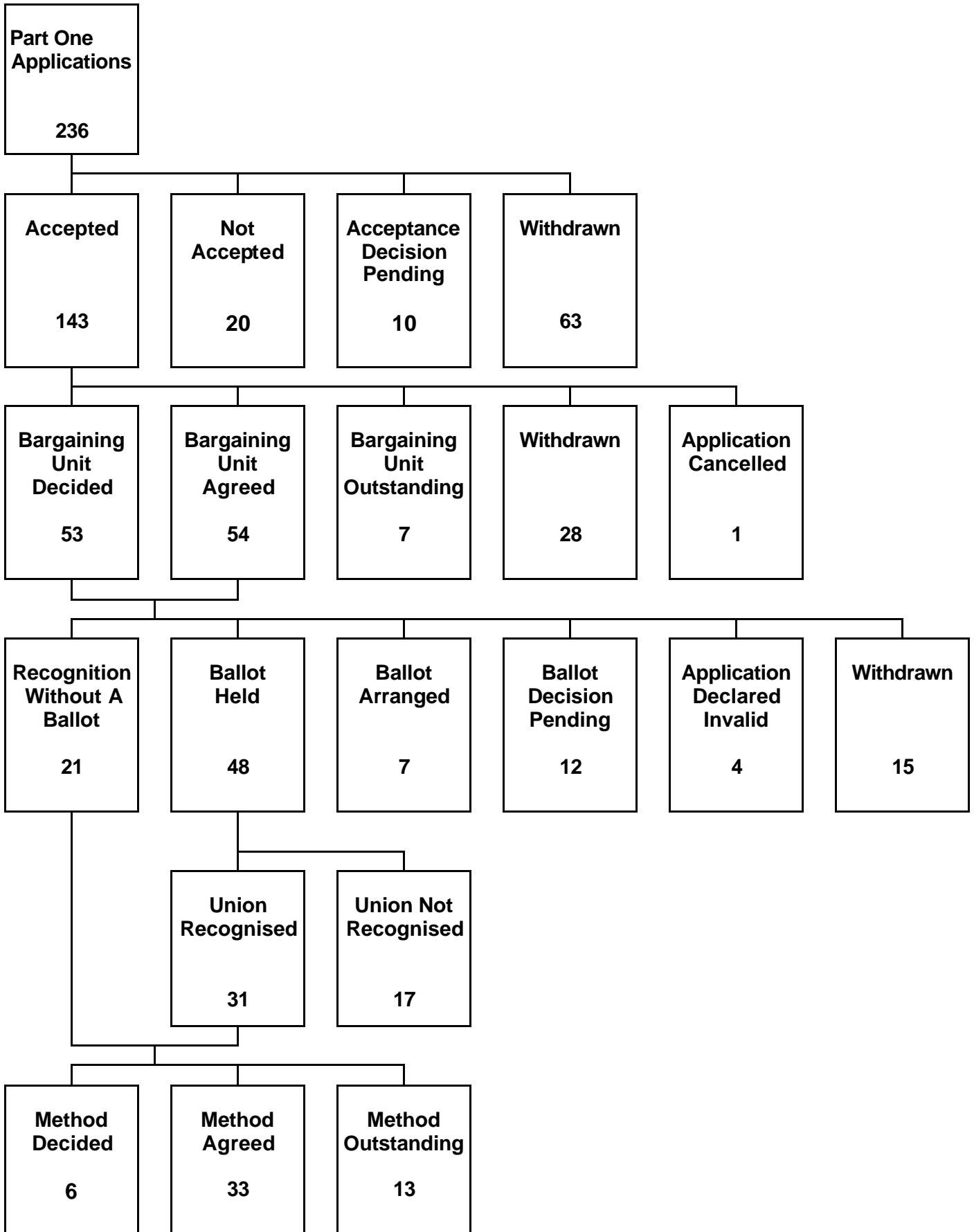
A11. Following recognition, the parties have a period of 30 days (or longer if they agree to extend it), to reach an agreement on the way in which they will conduct their collective bargaining. If the parties do not agree a method, they can approach the CAC for assistance. There is a 20-day period for the CAC to broker an agreement. If there is still no agreement, the CAC determines the bargaining method. In doing so, the CAC must take into account the method specified in an order by the Secretary of State, although it may depart from this method as it thinks appropriate in the particular circumstances.

A12. The method becomes a contract between the parties. If either party believes the other is subsequently not following it, then the remedy is the seeking of an order of specific performance by the courts.

A13. Where the CAC has both awarded recognition, and determined the method of collective bargaining, the union has the further statutory right to be informed and consulted over training.

Annex B: CAC Caseload Statistics

As at 31 December 2002



CAC Ballot Results as at 31 December 2002

i) Recognition awarded

Case Number	Union	Employer	Type	Number in BU	Turnout		For		Against		% BU in favour of recognition	Membersh Level % *	
					No.	%	No.	%	No.	%			
1	126	TGWU	Kwik-Fit	P	574	469	81.7	466	99.4	3	0.6	81.2	27
2	89	TGWU	Britton Merlin	P	192	120	62.5	119	99.2	1	0.8	61.9	25
3	88	TGWU	Andrews (Sheffield)	P	181	136	75.1	133	97.8	3	2.2	73.5	45
4	188	TGWU	Grosvenor Casinos	P	970	604	62.3	589	97.5	15	2.5	60.7	25
5	101	GPMU	DSR	C	69	36	52.2	35	97.2	1	2.8	50.7	43
6	186	TGWU	Rest Assured Ltd	C	212	130	61.3	125	96.2	5	3.8	59.0	28
7	59	TGWU	Whitbread	P	130	112	86.2	107	95.5	5	4.5	82.3	22
8	75	BAJ	Mirror Group	P	553	333	60.2	317	95.2	16	4.8	57.3	26
9	11	MSF	Saudia Arabia	P	139	116	83.5	110	94.8	6	5.2	79.1	49
10	189	TGWU	Cytec Engineering	C	51	47	92.2	44	93.6	3	6.4	86.3	45
11	52	TGWU	Hozelock	C	266	200	75.2	186	93.0	14	7.0	69.9	35
12	123	TGWU	Lunar Caravans	P	141	103	73.1	95	92.2	8	7.8	67.4	53
13	124	TGWU	Snack Factory	P	263	204	77.9	183	89.7	21	10.3	69.6	37
14	110	TGWU	Riverstone Spinning	W	196	153	78.1	137	89.5	16	10.5	69.9	23
15	61	MSF	Aim Composites	P	106	68	64.2	60	88.2	8	11.8	56.6	35
16	97	TGWU	Optare Group	P	338	274	81.1	222	81.0	52	19.0	65.7	36
17	80	TGWU	Chilton	W	63	41	65.1	33	80.5	8	19.5	52.4	46
18	182	GMB	Ifor Williams	P	398	300	75.4	236	78.7	64	21.3	59.3	34
19	73	BALPA	Easyjet	P	300	261	87.0	195	74.7	66	25.3	65.0	43
20	19	AEEU	Huntleigh Healthcare	W	172	157	91.3	117	74.5	40	25.5	68.0	56
21	128	BECTU	MTV Europe	P	131	74	56.5	54	73.0	20	27.0	41.2	16
22	129	AEEU	Honda	C	4045	3120	77.1	2272	72.8	848	27.2	56.2	37
23	146	BALPA	Excel Airways	P	56	47	83.9	34	72.3	13	27.7	60.7	72
24	74	URTU	James Irlam	P	467	277	59.3	189	68.2	88	31.8	40.5	20
25	166	TGWU	Nacam UK	C	161	157	97.5	104	66.2	53	33.8	64.6	24
26	93	ISTC	Lowe & Fletcher	P	88	74	84.1	46	62.2	28	37.8	52.3	48
27	140	TGWU	Bacardi-Martini	P	235	196	83.5	122	62.2	74	37.8	51.9	33
28	183	GMB	Northbourne Ltd	P	25	23	92.0	14	60.9	9	39.1	56.0	57
29	72	GPMU	Derwent Information	P	595	420	70.6	244	58.1	176	41.9	41.0	27
30	185	ISTC	Cornelius Electronics	C	131	103	78.6	58	56.3	45	43.7	44.3	21
31	12	GPMU	Red Letter	W	50	48	96.0	25	52.1	23	47.9	50.0	60

ii) Recognition not awarded

Case Number	Union	Employer	Type	Number in BU	Turnout		For		Against		% BU in favour of recognition	Membership Level %	
					No.	%	No.	%	No.	%			
32	169	Unifi	Bank Hapoalim	P	46	29	63.0	18	62.1	11	37.9	39.1	27
33	157	Amicus & GMB	Alan Worswick	P	29	28	96.6	14	50.0	14	50.0	48.3	41
34	178	GPMU	Ritrama (UK) Ltd	C	53	52	98.1	25	48	27	52.0	47.2	57
35	57	MSF	Teachers Group	P	47	32	68.1	15	46.9	17	53.1	31.9	36
36	34	BAJ	Essex Chronicle	P	50	43	86.0	20	46.5	23	53.5	40.0	49
37	94	MSF	Unipart	P	130	117	90.0	52	44.4	65	55.6	40.0	60
38	90	UNIFI	Turkiye Is Bankasi	P	17	14	82.4	6	42.9	8	57.1	35.3	63
39	60	MSF	APW New Forest	P	112	60	53.5	23	38.3	37	61.7	20.5	32
40	54	BFAWU	Seabrook Crisps	W	239	218	91.2	80	36.7	138	63.3	33.5	23
41	99	GPMU	The Printworks	P	88	79	89.8	29	36.7	50	63.3	33.0	43
42	120	Amicus	GE Caledonian	C	730	692	94.8	243	35.1	449	64.9	33.3	30
43	164	GPMU	Opasco	P	25	12	48.0	4	33.3	8	66.7	16.0	54
44	70	BALPA	Ryanair	P	245	140	57.1	46	32.9	94	67.1	18.8	49
45	111	TGWU	King Asia Foods	W	154	125	81.2	39	31.2	86	68.8	25.3	55
46	86	TGWU	William Beckett	W	34	33	97.1	10	30.3	23	69.7	29.4	32
47	82	AEEU	Honeywell Garrett	C	90	89	98.9	25	28.1	64	71.9	27.8	56
48	121	TGWU	Economic Skips	P	47	35	74.5	4	11.4	31	88.6	8.5	56

* The membership figures quoted are the latest available in the process – at either the acceptance, revalidation, or recognition without a ballot stage. In four cases the union had over 50% at the acceptance stage, but did not claim recognition without a ballot – Cases 111, 123, 164 and 178. In another case while the union had 60% at the acceptance stage, the CAC subsequently found it did not have the majority membership required for recognition without a ballot – Case 94.

Key

Type: P = postal, W = workplace, C = combination.

BU = Bargaining unit.

Annex C: Issues raised by the Better Regulation Task Force

C1. The Better Regulation Task Force (BRTF), an independent advisory body which examines the effects of Government regulation, wrote to the Secretary of State for Trade and Industry on 7 June 2002 identifying four areas of trade union law where regulation might impose unnecessary or burdensome restrictions on union behaviour. In one of these areas – the quasi-judicial role of the Certification Officer in hearing complaints against unions by their members – the Task Force’s suggestions relate to the operation of the Employment Relations Act 1999. The others fall outside the scope of the review. However, the Government considers it sensible to use this consultation document to announce its response to all four points.

Election of union presidents

C2. The law requires the following union officials to be elected by postal ballot every five years or less:

- union presidents (or equivalent);
- general secretaries (or equivalent); and
- a member of a union’s executive.

C3. There are various exceptions to this requirement. For example, there is no need to have statutory elections for presidents and general secretaries whose role is largely ceremonial because they are both non-voting members of the executive and their term of office is 13 months or less.

C4. Presidents are usually members of a union’s executive. This means they can be the subject of two elections – first, to join or remain in the executive and second, to become or remain union president. The BRTF considers that the need to hold two ballots imposes a “costly administrative burden” on trade unions. They propose that if a President is an elected member of an executive, only the statutory election to the executive should be required.

C5. The role of most union presidents is largely ceremonial, acting as a figurehead for the union at home and abroad. Presidents generally chair union conferences and meetings of union executives. However, their influence over decision-making within unions can hardly be distinguished from that exercised by other executive members. There therefore appears to be no obvious reason why these positions are so vital to the interests of union members as to require what is in effect a double election. Such elections can be expensive. As a rule of thumb, it costs about 75p - £1 to ballot an individual member. So, it would cost approximately £45,000-£60,000 for a medium-sized union of 60,000 members to elect its President.

C6. Before this law came into effect, it had been the long-standing practice of some unions for executives to appoint or elect a President from within their own number, without a ballot of the entire membership. This approach was particularly helpful to unions if a President resigned from his post in mid-term on, say, health grounds. A new President could then be appointed quickly. **In response to the BRTF's suggestion, the Government therefore intends to remove the requirement for union presidents (or, where a union has no such position, their equivalents) to be elected by a secret postal ballot of the entire membership, provided they are already elected members of the union executive.**

Union political funds

C7. The 1992 Act requires trade unions to hold a postal ballot of their entire membership to establish a political fund. Further, the law requires unions to hold review ballots at least every ten years thereafter to confirm whether union members still wish to devote union resources for expenditure on political objectives. Given the expense involved in running the review ballots and the existence of other legal safeguards against abuse, the BRTF asked whether it was still valid to require the union to hold review ballots.

C8. The Government understands the case for reform. However, these ballots serve an important democratic function and ensure that union members can at regular intervals collectively authorise their union's involvement in political activities. **The Government will therefore retain the requirement on unions to hold review ballots at least every ten years.**

C9. The Government is aware that the law on political fund ballots (and on other statutory union ballots and elections) is complex. **The Government considers these ballots and elections should remain covered by statutory provisions but it invites views on simplifying the burdens they impose.**

Requirement for the Certification Officer to hold hearings

C10. Union members may complain about certain alleged breaches of union rules or statute to the Certification Officer (CO). The Task Force was concerned that the CO had insufficient powers to deal with weak or vexatious complaints without involving both him and the respondent union in a time-consuming and costly consideration of the complaint. This issue is discussed in some detail in Chapter 4 of this consultation document.

Balloting

C11. Unions are required by statute to hold a number of secret ballots and elections. For example, they are required to ballot before calling on their members to take industrial action. At present, all these statutory ballots must be postal. The BRTF considers that unions should be allowed to use a wider range of balloting methods, including telephone or internet balloting. It suggests that the independent scrutineers of these ballots should be given discretion to decide which method should be used, provided they are satisfied that the chosen method would be safe and satisfactory.

C12. The Government wishes to encourage modern methods of voting, where appropriate. As yet, it is unclear whether such forms of balloting would always be efficient and abuse-proof when applied in this setting. Consideration must also be given to individuals who for a variety of reasons might be unable to use electronic voting methods, and who would therefore be disenfranchised. **The Government therefore intends to give the Secretary of State a power to change by order the balloting method used in statutory union ballots and elections.** This power would give the flexibility needed to widen the range of balloting methods, when there was evidence that the method was sufficiently developed to apply safely and economically to this type of ballot.

Annex D: Regulatory Impact Assessment

Purpose and intended effect

D1. The Government announced on 11 July 2002 a review the Employment Relations Act 1999. The purpose of the review is to assess whether the various changes to employment legislation introduced by the Act have been effective in meeting the policy objectives of supporting a flexible and fair labour market and to further the Government's aims of promoting full employment, productive workplaces and fair standards at work.

D2. The review has largely concentrated on the provisions in the Act relating to the framework of industrial relations, especially the statutory requirement on employers to recognise a trade union where the majority of the workforce want a union to bargain collectively on their behalf.

D3. The main conclusion of the review is that the legislation is generally working well. It has improved employment standards at work in a way that is consistent with effective management, and has fostered productivity; it has promoted legal certainty and benefited the overall climate of industrial relations. It has operated in a manner consistent with the promotion of partnership at work. Nevertheless, the review has identified a number of areas where changes would improve the working of the Act. The impact of these proposals is considered in this assessment.

Risks

D4. The proposals are intended to address practical difficulties in the operation of the legislation identified during the review.

D5. The proposed changes remove potential risks of legal uncertainty or of unnecessary delay or cost that could arise from the legislation as drafted.

Business sectors affected

D6. All sectors are covered by the Employment Relations Act 1999 and hence by these proposals.

D7. In practice, the likely impact of these changes will vary by sector. Experience to date of applications to the Central Arbitration Committee (CAC) for union recognition shows the following sectoral pattern:

Business Sector	Number of Applications	As % of Total Applications
Manufacturing	113	47.88
Transport and Communication	41	17.37
Other Business Services	40	16.95
Wholesale & Retail	12	5.08
Other Occupations	11	4.66
Finance	10	4.24
Other Community Services	6	2.54
Education	2	0.85
Construction	1	0.42
Total	236	99.99

Source: CAC, June 2000 – 31 December 2002

Costs and benefits

D8. The Employment Relations Act 1999 itself helps to reduce the scope for workplace disputes by establishing statutory procedures for trade union recognition when this enjoys the clear support of the workforce. It also encourages parties (via the right to be accompanied) to resolve disputes more reasonably and expertly.

D9. The changes proposed following the Review are not expected to change significantly the overall balance of benefits and costs arising from the original Act. 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 CAC). Equally, implementation of the changes will incur some limited costs to the parties. Both are at a level where they are so small as to make quantification difficult.

D10. This impact assessment therefore considers the benefits and costs of individual proposals in two parts: a discussion of broad areas where some impact might be expected; and a briefer tabulated assessment of other more detailed proposals.

Implementation Costs

D11. Whenever employment law changes, parties have to become familiar with the new legislation.

D12. In this case, the proposals for change refer to very specific circumstances, such as when an employer is faced by a recognition claim or making a strategic decision about its approach to standard employment contracts. These are quite specific circumstances and will, for most managers, be relatively rare. It is therefore likely that managers will in general have to 're-learn' the requirements of the legislation regardless of the changes made as a result of this review. In this case, there is no additional familiarisation cost.

D13. Within trade unions, there will be some individuals (particularly full-time officials) who have frequent engagement with issues such as union recognition or industrial action. These individuals may need to spend a small amount of time appraising themselves of the new proposals and how they affect their work. The precise number of individuals affected is not known but is likely to be small (no more than a few hundred). Even if these individuals spent a few hours of their time on familiarisation, the total one-off cost to trade unions cannot be expected to amount to much more than £100,000.

Proposed changes to statutory union recognition procedure

D14. The purpose of the recognition provisions is to improve the climate of workplace employment relations by enabling union representation when there is clear evidence of workplace support. Empirical evidence suggests that the relationship between management and employees – often termed the ‘climate’ of employment relations – is a factor affecting workplace outcomes. A poor workplace climate can damage morale and employee commitment, in turn associated with drivers of business performance.³³ The policy objective can be achieved even where union recognition does not ensue from a statutory recognition claim, by the parties reaching a voluntary arrangement

D16. Indeed, the impact of the Act is likely to have occurred largely through encouraging employers and trade unions to reach recognition agreements voluntarily and outside of the statutory process. The TUC have logged 1,000 new voluntary agreements from 1998 to 2002, with over 700 of these occurring since the introduction of the statutory procedures.³⁴ There is clear evidence of an increase in the number of voluntary recognition agreements reached both before and following the Act.

D17. Use of the statutory recognition procedure itself has affected relatively small numbers of employers and employees to date. There were 52 CAC declarations of statutory recognition up to December 2002, covering some 12,000 employees.³⁵ To put this in context, the Labour Force Survey shows that 7.3 million employees were trade union members in autumn 2001.

D18. The principal costs of the statutory recognition procedure are the opportunity costs of the time involved in participating in the process that are borne by the parties (employers and trade unions). There will also be financial costs to the parties through, for example, legal fees or in arranging workplace ballots. The process also involves costs to the public sector, largely to the CAC.

D19. The proposed changes to the detailed workings of the statutory recognition procedure are not expected to lead to significant changes in the benefit-cost balance of the Act. This is because they are unlikely to change the probability of trade unions securing recognition and thus are unlikely to generate more applications or to change employers’ overall strategies on how they handle CAC applications. Instead, the changes will improve the way the procedure works, with modest reductions in time, cost and uncertainty to the parties concerned.

³³ See Chapter 12 of ‘Britain at Work’ (1999), the sourcebook of findings from the 1998 Workplace Employee Relations Survey (WERS).

³⁴ TUC, ‘Focus on Recognition’, (2003).

³⁵ These figures represent the number of workers covered by statutory recognition agreements awarded up to 31st December 2002. Source: CAC.

Proposal to amend legislation to clarify application procedures for 'top up' recognition

D20. The proposal allows trade unions to bring claims to widen the scope of existing voluntary recognition agreements to cover the minimum scope set out in the statutory procedure. In principle, this increased certainty could stimulate additional CAC cases where existing agreements do not cover pay, holidays and hours of work.

D21. It is not possible to estimate how many existing recognition agreements do not cover all the areas covered by the statutory procedure.³⁶ However, information drawn from an analysis of the context of relatively new voluntary recognition agreements suggests that the number is small. In 2001/2002, a total of 306 union recognition agreements were reached, 24 on a statutory basis, and 282 voluntary deals. Although the TUC report did not disclose any figures, the report stated that, of this number, "the overwhelming majority" of voluntary agreements covered at least pay, hours and holidays.

D22. Any additional CAC caseload is therefore expected to be very modest.

Proposals to give the CAC power to reduce the time period at one stage during the application/recognition process

D23. This is unlikely to have any significant impact on the costs of the recognition process to the affected parties, as it does not directly require any changes in the work required of each party. There may be some modest savings to the CAC from a more streamlined process, plus, of course, the benefit to all parties of speedier dispute resolution.

Proposed changes to the law governing collective employment relations

Proposals addressing discrimination on grounds of trade union membership or activities

D24. A series of proposals have been put forward to ensure that parts of UK law are in compliance with the European Convention on Human Rights. This follows from the Wilson and Palmer case. Although the ERA clarified that employers could not discriminate by omission against members who wished to use their union's services, the judgement requires the Government to make further changes in this area. The proposed changes are intended to establish a clear right for members of independent unions to use their unions' services. The proposals also remove the right of employers to discriminate against trade union members provided this is to further a change in the relationship with all or any class of employees. (A further proposal is to specify that individualised contracts will not constitute unlawful discrimination against union members that are not offered them, provided there is no inducement to relinquish union representation and no pre-condition in the contracts of employees to relinquish it.)

D25. These changes are only likely to have a significant impact on businesses or employees if inducement to relinquish union representation is currently widespread. There is no direct evidence on this point, but circumstantial evidence suggests that this form of employer action is no longer widespread (if it ever was in the first place). Inducement to relinquish representation was used by employers as a strategy to facilitate derecognition and the run-down of union

³⁶ In WERS, all the areas required by the CAC are treated as a single category, so it is not possible to say how many workplaces had some elements missing.

membership. The findings of both the 1998 WERS and more recent monitoring of trade union recognition by the TUC both suggest that employer derecognition has been a rare event since the end of the 1980s. Hence any effects on business practice are likely to be minimal.

Proposals to simplify the law on industrial action notices

D26. These proposals are likely to decrease the burden on trade unions in terms of information they are required to assemble and present. To date there appear to have been three high court challenges to proposed industrial action that were based largely on technical or procedural issues connected with the legislation on industrial action notices.³⁷ The likelihood of cases going to litigation over these issues is therefore quite small. However, the cost of contesting such a case can be substantial to the affected parties, and there are also costs in terms of official time and legal advice, for the union in protecting itself against a potential challenge. The proposed changes do not impede action when there are substantive grounds to challenge the conduct of a trade union. The changes would instead reduce the risk of challenges merely on technicalities when, for practical reasons, it may be very difficult for trade unions to be seen to have followed all the necessary requirements.

Call for views on amending the law on the use of employer lock-outs in industrial disputes

D27. Any proposals adopted along these lines are likely to have a small effect on the parties involved. Lock-outs are very rare in the UK and so in aggregate the expected costs and benefits of such activities are very small. However these proposals may lead to an improvement in the conduct of disputes by both parties involved and therefore help in reaching a quick and efficient settlement.

Proposals to allow the EAT to take into account proceedings before the Certification Officer (CO) in determining vexatious litigants, to allow the CO to strike out weak cases and to allow the CO to withhold expenses in certain cases

D28. These proposals will have an impact at the margin. The intended effect of the proposals is to improve the functioning of the judicial process (by ruling out weak cases). The main beneficiaries are therefore likely to be the taxpayer and trade unions – against whom action is taken.

D29. For illustration, a typical cost estimate for such a case is estimated to be £1,100 which consists of the cost of a solicitor for 2-3 days and a trade union official for one day³⁸ (although there is likely to be significant variation.)

D30. Total cost savings, however, are likely to be modest. Relatively few proceedings are brought against trade unions at present.

Proposal to introduce a reserve power for the Secretary of State to enable the CAC to order a recognition ballot to be carried out with electronic voting

³⁷ The three cases were London Underground Ltd vs. RMT (1 Feb 2001), Midland Mainline Ltd Vs RMT (22 June 2001), and Westminster City Council Vs Unison (March 2001).

³⁸ The average Weekly salary of a solicitor is £900.1 and £483.3 for a trade union official. NES 2002, pp 19 & 22. Note, the calculation is defined as $(0.5 \times 900.1) + (1/7 \times 483.3)$. The number £1100 comes from the fact that the legal fees are likely to be greater than the respective earnings and so they have been scaled upward by a factor of 2 to reflect this.

D31. Electronic voting has the potential for benefits through reducing the costs of balloting employees on recognition and – if it was thought to increase employee turnout – increasing the legitimacy of recognition ballots. It is recognised, however, that issues of access might occur. Questions might arise, for example, about the use of employers’ electronic systems and the security and confidentiality issues this raises.

D32. If this power were to be activated, the secondary legislation required would be subject to a further Regulatory Impact Assessment.

More detailed changes

Proposal	Description of Likely Impact
<p>Allow union access to workers by means of postal communication, via a third party such as the Qualified Independent Person [Section 2.49 of the Consultation Document]</p>	<p>The cost is likely to be borne by the union, while letters are likely to be read during the employees’ own time. Furthermore, unions themselves will judge the cost effectiveness of this method and so decide whether to do it or not. Therefore the compliance costs are likely to be minimal/zero.</p>
<p>Seeking views on the treatment of associated employers [Section 2.38 of the Consultation Document]</p>	<p>Here the government is looking at linking bargaining units together where there may be circumstances in which the ‘appropriate’ bargaining unit would be one encompassing more than one associated employer, and the Schedule should allow the CAC to make such a determination where appropriate. This is only likely to be used in a small number of cases so the impact in terms of costs and benefits is likely to be small.</p>
<p>Clarify that pensions shall not be regarded as ‘pay’ for the specific purposes of the procedure for the present time. At the same time, the Government proposes 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 recognition agreements is for pensions to be included as a bargaining topic. [Section 2.53 of the Consultation Document]</p>	<p>The effect of the second proposal will be to bring the statutory recognition procedure into line with possible future voluntary bargaining practices by allowing pensions to be considered as one of the core topics. The first proposal will simply provide greater clarity, rather than affect the outcomes of CAC decisions, nor will the coverage of pensions be affected. It may have a potential benefit in that it may decrease the scope for future litigation.</p>
<p>Establishment of a general requirement on both the unions and employer to co-operate with a CAC membership check [Section 2.62 of the Consultation Document]</p>	<p>Unions and employers generally co-operate anyway so this general requirement is unlikely to impose additional costs. Its main benefit is likely to be that it clarifies</p>

Document]	expectations – but this is likely to be very small.
Establish that Acas-run ballots or checks have a clear statutory basis [Section 2.63 of the Consultation Document]	This may lead to cheaper ballots, by clarifying their status under data protection legislation reducing the paperwork involved in the procedure of conducting checks, e.g. writing letters to employees to request information for checks etc. From June 2001 – May 2002, Acas ran 70 ballots and 99 checks.
Give CAC a power to reduce the 20-day bargaining unit negotiation period. [Section 2.84 of the Consultation Document]	The overall impact of this depends on how the power is exercised. If it is on a limited basis, its effect will be to slightly reduce the costs to the CAC as unions will not need to wait for the appropriate time to elapse before proceeding to the next stage.
Change the law to deal with changes in union circumstances and related circumstances [Section 2.119 of the Consultation Document]	Very few such circumstances do arise therefore the main benefit is the simplification of the process for trade unions and CAC, and a modest cost saving to employers.
Require the employer to disclose the number of workers in the bargaining unit, together with their grade and location, at the CAC stage for negotiating the bargaining unit [Section 2.72 of the Consultation Document]	This unlikely to have any significant cost impact on employers for two reasons. Firstly, they will already have this information and secondly, they may have to provide this information later on in the bargaining stage anyway.

Securing compliance

D33. There is no evidence at present that employers or trade unions find it difficult to comply with the provisions of the Act. As the proposed changes are mainly technical, compliance should remain high.

Impact on small business

D34. Small businesses are least likely to be affected by the proposed changes. Firms with less than 21 workers are not covered at all by the statutory recognition procedures. Relatively few small businesses recognise trade unions and unions in the past have tended to concentrate their recruitment and recognition activities on larger enterprises where these activities are most cost-effective.

Competition assessment

D35. The technical changes proposed will not affect the degree of competition in affected sectors.

Monitoring and evaluation

D36. The Review has drawn on feedback from stakeholders together with analysis of existing management information from the CAC and drawing on relevant academic research. A combination of analysis of CAC processes, monitoring of legal cases as and when they emerge, and review of relevant research will be used to monitor and evaluate the new proposals once they have been implemented.