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## SCHEDULES

### <sup>F1</sup>SCHEDULE A1

#### COLLECTIVE BARGAINING: RECOGNITION

##### Textual Amendments

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

##### Modifications etc. (not altering text)

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

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

#### PART IV

##### DERECOGNITION: GENERAL

###### *Introduction*

- 96 (1) This Part of this Schedule applies if the CAC has issued a declaration that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit.
- (2) In such a case references in this Part of this Schedule to the bargaining arrangements are to the declaration and to the provisions relating to the collective bargaining method.
- (3) For this purpose the provisions relating to the collective bargaining method are—
- (a) the parties' agreement as to the method by which collective bargaining is to be conducted,
  - (b) anything effective as, or as if contained in, a legally enforceable contract and relating to the method by which collective bargaining is to be conducted, or
  - (c) any provision of Part III of this Schedule that a method of collective bargaining is to have effect.
- 97 For the purposes of this Part of this Schedule the relevant date is the date of the expiry of the period of 3 years starting with the date of the CAC's declaration.
- 98 References in this Part of this Schedule to the parties are to the employer and the union (or unions) concerned.

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*Employer employs fewer than 21 workers*

- 99 (1) This paragraph applies if—
- (a) the employer believes that he, taken with any associated employer or employers, employed an average of fewer than 21 workers in any period of 13 weeks, and
  - (b) that period ends on or after the relevant date.
- (2) If the employer wishes the bargaining arrangements to cease to have effect, he must give the union (or each of the unions) a notice complying with sub-paragraph (3) and must give a copy of the notice to the CAC.
- (3) A notice complies with this sub-paragraph if it—
- (a) identifies the bargaining arrangements,
  - (b) specifies the period of 13 weeks in question,
  - (c) states the date on which the notice is given,
  - (d) is given within the period of 5 working days starting with the day after the last day of the specified period of 13 weeks,
  - (e) states that the employer, taken with any associated employer or employers, employed an average of fewer than 21 workers in the specified period of 13 weeks, and
  - (f) states that the bargaining arrangements are to cease to have effect on a date which is specified in the notice and which falls after the end of the period of 35 working days starting with the day after that on which the notice is given.
- (4) To find the average number of workers employed by the employer, taken with any associated employer or employers, in the specified period of 13 weeks—
- (a) take the number of workers employed in each of the 13 weeks (including workers not employed for the whole of the week);
  - (b) aggregate the 13 numbers;
  - (c) divide the aggregate by 13.
- (5) For the purposes of sub-paragraph (1)(a) any worker employed by an associated company incorporated outside Great Britain must be ignored in relation to a week unless the whole or any part of that week fell within a period during which he ordinarily worked in Great Britain.
- (6) For the purposes of sub-paragraph (5) a worker who is employed on board a ship registered in the register maintained under section 8 of the Merchant Shipping Act 1995 shall be treated as ordinarily working in Great Britain unless—
- (a) the ship's entry in the register specifies a port outside Great Britain as the port to which the vessel is to be treated as belonging,
  - (b) the employment is wholly outside Great Britain, or
  - (c) the worker is not ordinarily resident in Great Britain.
- (7) An order made under paragraph 7(6) may also—
- (a) provide that sub-paragraphs (1) to (6) of this paragraph and paragraphs 100 to 103 are not to apply, or are not to apply in specified circumstances, or
  - (b) vary the number of workers for the time being specified in sub-paragraphs (1)(a) and (3)(e).

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VALID FROM 06/04/2005

- [<sup>F1</sup>99A(1) A notice given for the purposes of paragraph 99(2) (“the notice in question”) is invalidated by this paragraph if—
- (a) a relevant application was made, or an earlier notice under paragraph 99(2) was given, within the period of 3 years prior to the date when the notice in question was given,
  - (b) the relevant application, or that earlier notice, and the notice in question relate to the same bargaining unit, and
  - (c) the CAC accepted the relevant application or (as the case may be) decided under paragraph 100 that the earlier notice under paragraph 99(2) complied with paragraph 99(3).
- (2) A relevant application is an application made to the CAC—
- (a) by the employer under paragraph 106, 107 or 128, or
  - (b) by a worker (or workers) under paragraph 112.]

#### Textual Amendments

- F1** Sch. A1 para. 99A inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 12(4), 59(2)-(4); S.I. 2005/872, art. 4, Sch. (with arts. 6-21)

- 100 (1) Within the validation period the CAC must decide whether the notice complies with paragraph 99(3).
- (2) If the CAC decides that the notice does not comply with paragraph 99(3)—
- (a) the CAC must give the parties notice of its decision, and
  - (b) the employer’s notice shall be treated as not having been given.
- (3) If the CAC decides that the notice complies with paragraph 99(3) it must give the parties notice of the decision.
- (4) The bargaining arrangements shall cease to have effect on the date specified under paragraph 99(3)(f) if—
- (a) the CAC gives notice under sub-paragraph (3), and
  - (b) the union does not (or unions do not) apply to the CAC under paragraph 101.
- (5) The validation period is—
- (a) the period of 10 working days starting with the day after that on which the CAC receives the copy of the notice, or
  - (b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.
- 101 (1) This paragraph applies if—
- (a) the CAC gives notice under paragraph 100(3), and
  - (b) within the period of 10 working days starting with the day after that on which the notice is given, the union makes (or unions make) an application to the CAC for a decision whether the period of 13 weeks specified under

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paragraph 99(3)(b) ends on or after the relevant date and whether the statement made under paragraph 99(3)(e) is correct.

- (2) An application is not admissible unless—
    - (a) it is made in such form as the CAC specifies, and
    - (b) it is supported by such documents as the CAC specifies.
  - (3) An application is not admissible unless the union gives (or unions give) to the employer—
    - (a) notice of the application, and
    - (b) a copy of the application and any documents supporting it.
  - (4) An application is not admissible if—
    - (a) a relevant application was made within the period of 3 years prior to the date of the application,
    - (b) the relevant application and the application relate to the same bargaining unit, and
    - (c) the CAC accepted the relevant application.
  - (5) A relevant application is an application made to the CAC—
    - (a) by the union (or the unions) under this paragraph,
    - (b) by the employer under paragraph 106, 107 or 128, or
    - (c) by a worker (or workers) under paragraph 112.
- 102 (1) The CAC must give notice to the parties of receipt of an application under paragraph 101.
- (2) Within the acceptance period the CAC must decide whether the application is admissible within the terms of paragraph 101.
  - (3) In deciding whether an application is admissible the CAC must consider any evidence which it has been given by the employer or the union (or unions).
  - (4) If the CAC decides that the application is not admissible—
    - (a) the CAC must give notice of its decision to the parties,
    - (b) the CAC must not accept the application,
    - (c) no further steps are to be taken under this Part of this Schedule, and
    - (d) the bargaining arrangements shall cease to have effect on the date specified under paragraph 99(3)(f).
  - (5) If the CAC decides that the application is admissible it must—
    - (a) accept the application, and
    - (b) give notice of the acceptance to the parties.
  - (6) The acceptance period is—
    - (a) the period of 10 working days starting with the day after that on which the CAC receives the application, or
    - (b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.
- 103 (1) If the CAC accepts an application it—

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- (a) must give the employer and the union (or unions) an opportunity to put their views on the questions whether the period of 13 weeks specified under paragraph 99(3)(b) ends on or after the relevant date and whether the statement made under paragraph 99(3)(e) is correct;
  - (b) must decide the questions within the decision period and must give reasons for the decision.
- (2) If the CAC decides that the period of 13 weeks specified under paragraph 99(3)(b) ends on or after the relevant date and that the statement made under paragraph 99(3)(e) is correct the bargaining arrangements shall cease to have effect on the termination date.
- (3) If the CAC decides that the period of 13 weeks specified under paragraph 99(3)(b) does not end on or after the relevant date or that the statement made under paragraph 99(3)(e) is not correct, the notice under paragraph 99 shall be treated as not having been given.
- (4) The decision period is—
  - (a) the period of 10 working days starting with the day after that on which the CAC gives notice of acceptance of the application, or
  - (b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.
- (5) The termination date is the later of—
  - (a) the date specified under paragraph 99(3)(f), and
  - (b) the day after the last day of the decision period.

#### *Employer's request to end arrangements*

- 104 (1) This paragraph and paragraphs 105 to 111 apply if after the relevant date the employer requests the union (or each of the unions) to agree to end the bargaining arrangements.
- (2) The request is not valid unless it—
    - (a) is in writing,
    - (b) is received by the union (or each of the unions),
    - (c) identifies the bargaining arrangements, and
    - (d) states that it is made under this Schedule.
- 105 (1) If before the end of the first period the parties agree to end the bargaining arrangements no further steps are to be taken under this Part of this Schedule.
- (2) Sub-paragraph (3) applies if before the end of the first period—
    - (a) the union informs the employer that the union does not accept the request but is willing to negotiate, or
    - (b) the unions inform the employer that the unions do not accept the request but are willing to negotiate.
  - (3) The parties may conduct negotiations with a view to agreeing to end the bargaining arrangements.
  - (4) If such an agreement is made before the end of the second period no further steps are to be taken under this Part of this Schedule.

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- (5) The employer and the union (or unions) may request ACAS to assist in conducting the negotiations.
- (6) The first period is the period of 10 working days starting with the day after—
- (a) the day on which the union receives the request, or
  - (b) the last day on which any of the unions receives the request.
- (7) The second period is—
- (a) the period of 20 working days starting with the day after that on which the first period ends, or
  - (b) such longer period (so starting) as the parties may from time to time agree.
- 106 (1) This paragraph applies if—
- (a) before the end of the first period the union fails (or unions fail) to respond to the request, or
  - (b) before the end of the first period the union informs the employer that it does not (or unions inform the employer that they do not) accept the request (without indicating a willingness to negotiate).
- (2) The employer may apply to the CAC for the holding of a secret ballot to decide whether the bargaining arrangements should be ended.
- 107 (1) This paragraph applies if —
- (a) the union informs (or unions inform) the employer under paragraph 105(2), and
  - (b) no agreement is made before the end of the second period.
- (2) The employer may apply to the CAC for the holding of a secret ballot to decide whether the bargaining arrangements should be ended.
- (3) But no application may be made if within the period of 10 working days starting with the day after that on which the union informs (or unions inform) the employer under paragraph 105(2) the union proposes (or unions propose) that ACAS be requested to assist in conducting the negotiations and—
- (a) the employer rejects the proposal, or
  - (b) the employer fails to accept the proposal within the period of 10 working days starting with the day after that on which the union makes (or unions make) the proposal.
- 108 (1) An application under paragraph 106 or 107 is not admissible unless—
- (a) it is made in such form as the CAC specifies, and
  - (b) it is supported by such documents as the CAC specifies.
- (2) An application under paragraph 106 or 107 is not admissible unless the employer gives to the union (or each of the unions)—
- (a) notice of the application, and
  - (b) a copy of the application and any documents supporting it.
- 109 (1) An application under paragraph 106 or 107 is not admissible if—
- (a) a relevant application was made within the period of 3 years prior to the date of the application under paragraph 106 or 107,

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- (b) the relevant application and the application under paragraph 106 or 107 relate to the same bargaining unit, and
  - (c) the CAC accepted the relevant application.
- (2) A relevant application is an application made to the CAC—
  - (a) by the union (or the unions) under paragraph 101,
  - (b) by the employer under paragraph 106, 107 or 128, or
  - (c) by a worker (or workers) under paragraph 112.
- 110 (1) An application under paragraph 106 or 107 is not admissible unless the CAC decides that—
  - (a) at least 10 per cent of the workers constituting the bargaining unit favour an end of the bargaining arrangements, and
  - (b) a majority of the workers constituting the bargaining unit would be likely to favour an end of the bargaining arrangements.
- (2) The CAC must give reasons for the decision.
- 111 (1) The CAC must give notice to the parties of receipt of an application under paragraph 106 or 107.
- (2) Within the acceptance period the CAC must decide whether—
  - (a) the request is valid within the terms of paragraph 104, and
  - (b) the application is made in accordance with paragraph 106 or 107 and admissible within the terms of paragraphs 108 to 110.
- (3) In deciding those questions the CAC must consider any evidence which it has been given by the employer or the union (or unions).
- (4) If the CAC decides that the request is not valid or the application is not made in accordance with paragraph 106 or 107 or is not admissible—
  - (a) the CAC must give notice of its decision to the parties,
  - (b) the CAC must not accept the application, and
  - (c) no further steps are to be taken under this Part of this Schedule.
- (5) If the CAC decides that the request is valid and the application is made in accordance with paragraph 106 or 107 and is admissible it must—
  - (a) accept the application, and
  - (b) give notice of the acceptance to the parties.
- (6) The acceptance period is—
  - (a) the period of 10 working days starting with the day after that on which the CAC receives the application, or
  - (b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

*Workers' application to end arrangements*

- 112 (1) A worker or workers falling within the bargaining unit may after the relevant date apply to the CAC to have the bargaining arrangements ended.
- (2) An application is not admissible unless—
  - (a) it is made in such form as the CAC specifies, and

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- (b) it is supported by such documents as the CAC specifies.
  - (3) An application is not admissible unless the worker gives (or workers give) to the employer and to the union (or each of the unions)—
    - (a) notice of the application, and
    - (b) a copy of the application and any documents supporting it.
- 113 (1) An application under paragraph 112 is not admissible if—
- (a) a relevant application was made within the period of 3 years prior to the date of the application under paragraph 112,
  - (b) the relevant application and the application under paragraph 112 relate to the same bargaining unit, and
  - (c) the CAC accepted the relevant application.
- (2) A relevant application is an application made to the CAC—
- (a) by the union (or the unions) under paragraph 101,
  - (b) by the employer under paragraph 106, 107 or 128, or
  - (c) by a worker (or workers) under paragraph 112.
- 114 (1) An application under paragraph 112 is not admissible unless the CAC decides that—
- (a) at least 10 per cent of the workers constituting the bargaining unit favour an end of the bargaining arrangements, and
  - (b) a majority of the workers constituting the bargaining unit would be likely to favour an end of the bargaining arrangements.
- (2) The CAC must give reasons for the decision.
- 115 (1) The CAC must give notice to the worker (or workers), the employer and the union (or unions) of receipt of an application under paragraph 112.
- (2) Within the acceptance period the CAC must decide whether the application is admissible within the terms of paragraphs 112 to 114.
- (3) In deciding whether the application is admissible the CAC must consider any evidence which it has been given by the employer, the union (or unions) or any of the workers falling within the bargaining unit.
- (4) If the CAC decides that the application is not admissible—
- (a) the CAC must give notice of its decision to the worker (or workers), the employer and the union (or unions),
  - (b) the CAC must not accept the application, and
  - (c) no further steps are to be taken under this Part of this Schedule.
- (5) If the CAC decides that the application is admissible it must—
- (a) accept the application, and
  - (b) give notice of the acceptance to the worker (or workers), the employer and the union (or unions).
- (6) The acceptance period is—
- (a) the period of 10 working days starting with the day after that on which the CAC receives the application, or



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- (b) such longer period (so starting) as the CAC may specify to the worker (or workers), the employer and the union (or unions) by notice containing reasons for the extension.
- 116 (1) If the CAC accepts the application, in the negotiation period the CAC must help the employer, the union (or unions) and the worker (or workers) with a view to—
- (a) the employer and the union (or unions) agreeing to end the bargaining arrangements, or
  - (b) the worker (or workers) withdrawing the application.
- (2) The negotiation period is—
- (a) the period of 20 working days starting with the day after that on which the CAC gives notice of acceptance of the application, or
  - (b) such longer period (so starting) as the CAC may decide with the consent of the worker (or workers), the employer and the union (or unions).

#### *Ballot on derecognition*

- 117 (1) This paragraph applies if the CAC accepts an application under paragraph 106 or 107.
- (2) This paragraph also applies if—
- (a) the CAC accepts an application under paragraph 112, and
  - (b) in the period mentioned in paragraph 116(1) there is no agreement or withdrawal as there described.
- (3) The CAC must arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether the bargaining arrangements should be ended.
- (4) The ballot must be conducted by a qualified independent person appointed by the CAC.
- (5) The ballot must be conducted within—
- (a) the period of 20 working days starting with the day after that on which the qualified independent person is appointed, or
  - (b) such longer period (so starting) as the CAC may decide.
- (6) The ballot must be conducted—
- (a) at a workplace or workplaces decided by the CAC,
  - (b) by post, or
  - (c) by a combination of the methods described in sub-paragraphs (a) and (b), depending on the CAC's preference.
- (7) In deciding how the ballot is to be conducted the CAC must take into account—
- (a) the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace or workplaces;
  - (b) costs and practicality;
  - (c) such other matters as the CAC considers appropriate.
- (8) The CAC may not decide that the ballot is to be conducted as mentioned in sub-paragraph (6)(c) unless there are special factors making such a decision appropriate; and special factors include—

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- (a) factors arising from the location of workers or the nature of their employment;
  - (b) factors put to the CAC by the employer or the union (or unions).
- (9) A person is a qualified independent person if—
- (a) he satisfies such conditions as may be specified for the purposes of this paragraph by order of the Secretary of State or is himself so specified, and
  - (b) there are no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the ballot might reasonably be called into question.
- (10) An order under sub-paragraph (9)(a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) As soon as is reasonably practicable after the CAC is required under sub-paragraph (3) to arrange for the holding of a ballot it must inform the employer and the union (or unions)—
- (a) that it is so required;
  - (b) of the name of the person appointed to conduct the ballot and the date of his appointment;
  - (c) of the period within which the ballot must be conducted;
  - (d) whether the ballot is to be conducted by post or at a workplace or workplaces;
  - (e) of the workplace or workplaces concerned (if the ballot is to be conducted at a workplace or workplaces).
- 118 (1) An employer who is informed by the CAC under paragraph 117(11) must comply with the following three duties.
- (2) The first duty is to co-operate generally, in connection with the ballot, with the union (or unions) and the person appointed to conduct the ballot; and the second and third duties are not to prejudice the generality of this.
- (3) The second duty is to give to the union (or unions) such access to the workers constituting the bargaining unit as is reasonable to enable the union (or unions) to inform the workers of the object of the ballot and to seek their support and their opinions on the issues involved.
- (4) The third duty is to do the following (so far as it is reasonable to expect the employer to do so)—
- (a) to give to the CAC, within the period of 10 working days starting with the day after that on which the employer is informed under paragraph 117(11), the names and home addresses of the workers constituting the bargaining unit;
  - (b) to give to the CAC, as soon as is reasonably practicable, the name and home address of any worker who joins the unit after the employer has complied with paragraph (a);
  - (c) to inform the CAC, as soon as is reasonably practicable, of any worker whose name has been given to the CAC under paragraph (a) or (b) but who ceases to be within the unit.
- (5) As soon as is reasonably practicable after the CAC receives any information under sub-paragraph (4) it must pass it on to the person appointed to conduct the ballot.

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- (6) If asked to do so by the union (or unions) the person appointed to conduct the ballot must send to any worker—
    - (a) whose name and home address have been given under sub-paragraph (5), and
    - (b) who is still within the unit (so far as the person so appointed is aware),any information supplied by the union (or unions) to the person so appointed.
  - (7) The duty under sub-paragraph (6) does not apply unless the union bears (or unions bear) the cost of sending the information.
  - (8) Each of the following powers shall be taken to include power to issue Codes of Practice about reasonable access for the purposes of sub-paragraph (3)—
    - (a) the power of ACAS under section 199(1);
    - (b) the power of the Secretary of State under section 203(1)(a).
- 119 (1) If the CAC is satisfied that the employer has failed to fulfil any of the three duties imposed by paragraph 118, and the ballot has not been held, the CAC may order the employer—
- (a) to take such steps to remedy the failure as the CAC considers reasonable and specifies in the order, and
  - (b) to do so within such period as the CAC considers reasonable and specifies in the order.
- (2) If—
- (a) the ballot has been arranged in consequence of an application under paragraph 106 or 107,
  - (b) the CAC is satisfied that the employer has failed to comply with an order under sub-paragraph (1), and
  - (c) the ballot has not been held,
- the CAC may refuse the application.
- (3) If—
- (a) the ballot has been arranged in consequence of an application under paragraph 112, and
  - (b) the ballot has not been held,
- an order under sub-paragraph (1), on being recorded in the county court, may be enforced in the same way as an order of that court.
- (4) If the CAC refuses an application under sub-paragraph (2) it shall take steps to cancel the holding of the ballot; and if the ballot is held it shall have no effect.

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<sup>[F2119A]</sup>(1) Each of the parties informed by the CAC under paragraph 117(11) must refrain from using any unfair practice.

- (2) A party uses an unfair practice if, with a view to influencing the result of the ballot, the party—
  - (a) offers to pay money or give money's worth to a worker entitled to vote in the ballot in return for the worker's agreement to vote in a particular way or to abstain from voting,

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- (b) makes an outcome-specific offer to a worker entitled to vote in the ballot,
  - (c) coerces or attempts to coerce a worker entitled to vote in the ballot to disclose—
    - (i) whether he intends to vote or to abstain from voting in the ballot, or
    - (ii) how he intends to vote, or how he has voted, in the ballot,
  - (d) dismisses or threatens to dismiss a worker,
  - (e) takes or threatens to take disciplinary action against a worker,
  - (f) subjects or threatens to subject a worker to any other detriment, or
  - (g) uses or attempts to use undue influence on a worker entitled to vote in the ballot.
- (3) For the purposes of sub-paragraph (2)(b) an “outcome-specific offer” is an offer to pay money or give money’s worth which—
- (a) is conditional on—
    - (i) the issuing by the CAC of a declaration that the bargaining arrangements are to cease to have effect, or
    - (ii) the refusal by the CAC of an application under paragraph 106, 107 or 112, and
  - (b) is not conditional on anything which is done or occurs as a result of that declaration or, as the case may be, of that refusal.
- (4) The duty imposed by this paragraph does not confer any rights on a worker; but that does not affect any other right which a worker may have.
- (5) Each of the following powers shall be taken to include power to issue Codes of Practice about unfair practices for the purposes of this paragraph—
- (a) the power of ACAS under section 199(1);
  - (b) the power of the Secretary of State under section 203(1)(a).

### Textual Amendments

- F2** Sch. A1 paras. 119A-119I inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), ss. 13(1), 59(2)-(4); S.I. 2005/2419, art. 3 (with arts. 5-7)

VALID FROM 01/10/2005

- 119B (1) A party may complain to the CAC that another party has failed to comply with paragraph 119A.
- (2) A complaint under sub-paragraph (1) must be made on or before the first working day after—
- (a) the date of the ballot, or
  - (b) if votes may be cast in the ballot on more than one day, the last of those days.
- (3) Within the decision period the CAC must decide whether the complaint is well-founded.
- (4) A complaint is well-founded if—

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- (a) the CAC finds that the party complained against used an unfair practice, and
  - (b) the CAC is satisfied that the use of that practice changed or was likely to change, in the case of a worker entitled to vote in the ballot—
    - (i) his intention to vote or to abstain from voting,
    - (ii) his intention to vote in a particular way, or
    - (iii) how he voted.
- (5) The decision period is—
- (a) the period of 10 working days starting with the day after that on which the complaint under sub-paragraph (1) was received by the CAC, or
  - (b) such longer period (so starting) as the CAC may specify to the parties by a notice containing reasons for the extension.
- (6) If, at the beginning of the decision period, the ballot has not begun, the CAC may by notice to the parties and the qualified independent person postpone the date on which it is to begin until a date which falls after the end of the decision period.

#### Textual Amendments

- F2** Sch. A1 paras. 119A-119I inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), ss. 13(1), 59(2)-(4); S.I. 2005/2419, art. 3 (with arts. 5-7)

VALID FROM 01/10/2005

- 119C (1) This paragraph applies if the CAC decides that a complaint under paragraph 119B is well-founded.
- (2) The CAC must, as soon as is reasonably practicable, issue a declaration to that effect.
  - (3) The CAC may do either or both of the following—
    - (a) order the party concerned to take any action specified in the order within such period as may be so specified, or
    - (b) make arrangements for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether the bargaining arrangements should be ended.
  - (4) The CAC may give an order or make arrangements under sub-paragraph (3) either at the same time as it issues the declaration under sub-paragraph (2) or at any other time before it acts under paragraph 121.
  - (5) The action specified in an order under sub-paragraph (3)(a) shall be such as the CAC considers reasonable in order to mitigate the effect of the failure of the party complained against to comply with the duty imposed by paragraph 119A.
  - (6) The CAC may give more than one order under sub-paragraph (3)(a).

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### Textual Amendments

**F2** Sch. A1 paras. 119A-119I inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), ss. 13(1), 59(2)-(4); S.I. 2005/2419, art. 3 (with arts. 5-7)

VALID FROM 01/10/2005

- 119D (1) This paragraph applies if the CAC issues a declaration under paragraph 119C(2) and the declaration states that the unfair practice used consisted of or included—
- (a) the use of violence, or
  - (b) the dismissal of a union official.
- (2) This paragraph also applies if the CAC has made an order under paragraph 119C(3)
- (a) and—
    - (a) it is satisfied that the party subject to the order has failed to comply with it, or
    - (b) it makes another declaration under paragraph 119C(2) in relation to a complaint against that party.
- (3) If the party concerned is the employer, the CAC may refuse the employer's application under paragraph 106 or 107.
- (4) If the party concerned is a union, the CAC may issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the CAC in the declaration.
- (5) If a declaration is issued under sub-paragraph (4) the bargaining arrangements shall cease to have effect accordingly.
- (6) The powers conferred by this paragraph are in addition to those conferred by paragraph 119C(3).

### Textual Amendments

**F2** Sch. A1 paras. 119A-119I inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), ss. 13(1), 59(2)-(4); S.I. 2005/2419, art. 3 (with arts. 5-7)

VALID FROM 01/10/2005

- 119E (1) This paragraph applies if the CAC issues a declaration that a complaint under paragraph 119B is well-founded and—
- (a) makes arrangements under paragraph 119C(3)(b),
  - (b) refuses under paragraph 119D(3) or 119H(6) an application under paragraph 106, 107 or 112, or
  - (c) issues a declaration under paragraph 119D(4) or 119H(5).
- (2) If the ballot in connection with which the complaint was made has not been held, the CAC shall take steps to cancel it.
- (3) If that ballot is held, it shall have no effect.

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### Textual Amendments

**F2** Sch. A1 paras. 119A-119I inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), ss. 13(1), 59(2)-(4); S.I. 2005/2419, art. 3 (with arts. 5-7)

VALID FROM 01/10/2005

- 119F (1) This paragraph applies if the CAC makes arrangements under paragraph 119C(3)(b).
- (2) Paragraphs 117(4) to (11) and 118 to 121 apply in relation to those arrangements as they apply in relation to arrangements made under paragraph 117(3) but with the modifications specified in sub-paragraphs (3) to (5).
- (3) An employer's duty under paragraph (a) of paragraph 118(4) is limited to—
- (a) giving the CAC the names and home addresses of any workers in the bargaining unit which have not previously been given to it in accordance with that duty;
  - (b) giving the CAC the names and home addresses of those workers who have joined the bargaining unit since he last gave the CAC information in accordance with that duty;
  - (c) informing the CAC of any change to the name or home address of a worker whose name and home address have previously been given to the CAC in accordance with that duty; and
  - (d) informing the CAC of any worker whose name had previously been given to it in accordance with that duty who has ceased to be within the bargaining unit.
- (4) Any order given under paragraph 119(1) or 119C(3)(a) for the purposes of the cancelled or ineffectual ballot shall have effect (to the extent that the CAC specifies in a notice to the parties) as if it were made for the purposes of the ballot for which arrangements are made under paragraph 119C(3)(b).
- (5) The gross costs of the ballot shall be borne by such of the parties and in such proportions as the CAC may determine and, accordingly, sub-paragraphs (2) and (3) of paragraph 120 shall be omitted and the reference in sub-paragraph (4) of that paragraph to the employer and the union (or each of the unions) shall be construed as a reference to the party or parties which bear the costs in accordance with the CAC's determination.

### Textual Amendments

**F2** Sch. A1 paras. 119A-119I inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), ss. 13(1), 59(2)-(4); S.I. 2005/2419, art. 3 (with arts. 5-7)

VALID FROM 01/10/2005

- 119G (1) Paragraphs 119A to 119C, 119E and 119F apply in relation to an application under paragraph 112 as they apply in relation to an application under paragraph 106 or 107 but with the modifications specified in this paragraph.

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- (2) References in those paragraphs (and, accordingly, in paragraph 119H(3)) to a party shall be read as including references to the applicant worker or workers; but this is subject to sub-paragraph (3).
- (3) The reference in paragraph 119A(1) to a party informed under paragraph 117(11) shall be read as including a reference to the applicant worker or workers.

#### Textual Amendments

**F2** Sch. A1 paras. 119A-119I inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), ss. 13(1), 59(2)-(4); S.I. 2005/2419, art. 3 (with arts. 5-7)

VALID FROM 01/10/2005

- 119H (1) This paragraph applies in relation to an application under paragraph 112 in the cases specified in sub-paragraphs (2) and (3).
- (2) The first case is where the CAC issues a declaration under paragraph 119C(2) and the declaration states that the unfair practice used consisted of or included—
    - (a) the use of violence, or
    - (b) the dismissal of a union official.
  - (3) The second case is where the CAC has made an order under paragraph 119C(3)
    - (a) and—
      - (a) it is satisfied that the party subject to the order has failed to comply with it, or
      - (b) it makes another declaration under paragraph 119C(2) in relation to a complaint against that party.
  - (4) If the party concerned is the employer, the CAC may order him to refrain from further campaigning in relation to the ballot.
  - (5) If the party concerned is a union, the CAC may issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the CAC in the declaration.
  - (6) If the party concerned is the applicant worker (or any of the applicant workers), the CAC may refuse the application under paragraph 112.
  - (7) If a declaration is issued under sub-paragraph (5) the bargaining arrangements shall cease to have effect accordingly.
  - (8) The powers conferred by this paragraph are in addition to those conferred by paragraph 119C(3).

#### Textual Amendments

**F2** Sch. A1 paras. 119A-119I inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), ss. 13(1), 59(2)-(4); S.I. 2005/2419, art. 3 (with arts. 5-7)



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VALID FROM 01/10/2005

- 119I (1) This paragraph applies if—
- (a) a ballot has been arranged in consequence of an application under paragraph 112,
  - (b) the CAC has given the employer an order under paragraph 119(1), 119C(3) or 119H(4), and
  - (c) the ballot for the purposes of which the order was made (or any other ballot for the purposes of which it has effect) has not been held.
- (2) The applicant worker (or each of the applicant workers) and the union (or each of the unions) is entitled to enforce obedience to the order.
- (3) The order may be enforced—
- (a) in England and Wales, in the same way as an order of the county court;
  - (b) in Scotland, in the same way as an order of the sheriff.]

#### Textual Amendments

- F2** Sch. A1 paras. 119A-119I inserted (1.10.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 13(1), 59(2)-(4)**; S.I. 2005/2419, **art. 3** (with arts. 5-7)

- 120 (1) This paragraph applies if the holding of a ballot has been arranged under paragraph 117(3), whether or not it has been cancelled.
- (2) The gross costs of the ballot shall be borne—
- (a) as to half, by the employer, and
  - (b) as to half, by the union (or unions).
- (3) If there is more than one union they shall bear their half of the gross costs—
- (a) in such proportions as they jointly indicate to the person appointed to conduct the ballot, or
  - (b) in the absence of such an indication, in equal shares.
- (4) The person appointed to conduct the ballot may send to the employer and the union (or each of the unions) a demand stating—
- (a) the gross costs of the ballot, and
  - (b) the amount of the gross costs to be borne by the recipient.
- (5) In such a case the recipient must pay the amount stated to the person sending the demand, and must do so within the period of 15 working days starting with the day after that on which the demand is received.
- (6) In England and Wales, if the amount stated is not paid in accordance with subparagraph (5) it shall, if a county court so orders, be recoverable by execution issued from that court or otherwise as if it were payable under an order of that court.
- (7) References to the costs of the ballot are to—
- (a) the costs wholly, exclusively and necessarily incurred in connection with the ballot by the person appointed to conduct it,

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- (b) such reasonable amount as the person appointed to conduct the ballot charges for his services, and
  - (c) such other costs as the employer and the union (or unions) agree.
  
- 121 (1) As soon as is reasonably practicable after the CAC is informed of the result of a ballot by the person conducting it, the CAC must act under this paragraph.
- (2) The CAC must inform the employer and the union (or unions) of the result of the ballot.
- (3) If the result is that the proposition that the bargaining arrangements should be ended is supported by—
  - (a) a majority of the workers voting, and
  - (b) at least 40 per cent of the workers constituting the bargaining unit,the CAC must issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the CAC in the declaration.
- (4) If the result is otherwise the CAC must refuse the application under paragraph 106, 107 or 112.
- (5) If a declaration is issued under sub-paragraph (3) the bargaining arrangements shall cease to have effect accordingly.
- (6) The Secretary of State may by order amend sub-paragraph (3) so as to specify a different degree of support; and different provision may be made for different circumstances.
- (7) An order under sub-paragraph (6) shall be made by statutory instrument.
- (8) No such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House of Parliament.

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**Changes to legislation:**

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