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SCHEDULES

^{F1}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 II

VOLUNTARY RECOGNITION

Agreements for recognition

- 52 (1) This paragraph applies for the purposes of this Part of this Schedule.
- (2) An agreement is an agreement for recognition if the following conditions are fulfilled in relation to it—
- the agreement is made in the permitted period between a union (or unions) and an employer in consequence of a request made under paragraph 4 and valid within the terms of paragraphs 5 to 9;
 - under the agreement the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a group or groups of workers employed by the employer;
 - if sub-paragraph (5) applies to the agreement, it is satisfied.
- (3) The permitted period is the period which begins with the day on which the employer receives the request and ends when the first of the following occurs—
- the union withdraws (or unions withdraw) the request;
 - the union withdraws (or unions withdraw) any application under paragraph 11 or 12 made in consequence of the request;
 - the CAC gives notice of a decision under paragraph 14(7) which precludes it from accepting such an application under paragraph 11 or 12;
 - the CAC gives notice under paragraph 15(4)(a) or 20(4)(a) in relation to such an application under paragraph 11 or 12;
 - the parties give notice to the CAC under paragraph 17(2) in relation to such an application under paragraph 11 or 12;

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- (f) the CAC issues a declaration under paragraph 22(2) in consequence of such an application under paragraph 11 or 12;
 - (g) the CAC is notified under paragraph 24(2) in relation to such an application under paragraph 11 or 12;
 - (h) the last day of the notification period ends (the notification period being that defined by paragraph 24(5) and arising from such an application under paragraph 11 or 12);
 - (i) the CAC is required under paragraph 51(3) to cancel such an application under paragraph 11 or 12.
- (4) Sub-paragraph (5) applies to an agreement if—
- (a) at the time it is made the CAC has received an application under paragraph 11 or 12 in consequence of the request mentioned in sub-paragraph (2), and
 - (b) the CAC has not decided whether the application is admissible or it has decided that it is admissible.
- (5) This sub-paragraph is satisfied if, in relation to the application under paragraph 11 or 12, the parties give notice to the CAC under paragraph 17 before the final event (as defined in paragraph 17) occurs.

Other interpretation

- 53 (1) This paragraph applies for the purposes of this Part of this Schedule.
- (2) In relation to an agreement for recognition, references to the bargaining unit are to the group of workers (or the groups taken together) to which the agreement for recognition relates.
- (3) In relation to an agreement for recognition, references to the parties are to the union (or unions) and the employer who are parties to the agreement.
- 54 (1) This paragraph applies for the purposes of this Part of this Schedule.
- (2) The meaning of collective bargaining given by section 178(1) shall not apply.
- (3) Except in paragraph 63(2), in relation to an agreement for recognition references to collective bargaining are to negotiations relating to the matters in respect of which the union is (or unions are) recognised as entitled to conduct negotiations under the agreement for recognition.
- (4) In paragraph 63(2) the reference to collective bargaining is to negotiations relating to pay, hours and holidays.

Determination of type of agreement

- 55 (1) This paragraph applies if one or more of the parties to an agreement applies to the CAC for a decision whether or not the agreement is an agreement for recognition.
- (2) The CAC must give notice of receipt of an application under sub-paragraph (1) to any parties to the agreement who are not parties to the application.
- (3) The CAC must within the decision period decide whether the agreement is an agreement for recognition.
- (4) If the CAC decides that the agreement is an agreement for recognition it must issue a declaration to that effect.

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- (5) If the CAC decides that the agreement is not an agreement for recognition it must issue a declaration to that effect.
- (6) The decision period is—
 - (a) the period of 10 working days starting with the day after that on which the CAC receives the application under sub-paragraph (1), or
 - (b) such longer period (so starting) as the CAC may specify to the parties to the agreement by notice containing reasons for the extension.

Termination of agreement for recognition

- 56 (1) The employer may not terminate an agreement for recognition before the relevant period ends.
- (2) After that period ends the employer may terminate the agreement, with or without the consent of the union (or unions).
- (3) The union (or unions) may terminate an agreement for recognition at any time, with or without the consent of the employer.
- (4) Sub-paragraphs (1) to (3) have effect subject to the terms of the agreement or any other agreement of the parties.
- (5) The relevant period is the period of three years starting with the day after the date of the agreement.
- 57 (1) If an agreement for recognition is terminated, as from the termination the agreement and any provisions relating to the collective bargaining method shall cease to have effect.
- (2) For this purpose provisions relating to the collective bargaining method are—
 - (a) any agreement between the parties as to the method by which collective bargaining is to be conducted with regard to the bargaining unit, or
 - (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 with regard to the bargaining unit.

Application to CAC to specify method

- 58 (1) This paragraph applies if the parties make an agreement for recognition.
- (2) The parties may in the negotiation period conduct negotiations with a view to agreeing a method by which they will conduct collective bargaining.
- (3) If no agreement is made in the negotiation period the employer or the union (or unions) may apply to the CAC for assistance.
- (4) The negotiation period is—
 - (a) the period of 30 working days starting with the start day, or
 - (b) such longer period (so starting) as the parties may from time to time agree.
- (5) The start day is the day after that on which the agreement is made.
- 59 (1) This paragraph applies if—

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- (a) the parties to an agreement for recognition agree a method by which they will conduct collective bargaining, and
 - (b) one or more of the parties fails to carry out the agreement as to a method.
- (2) The employer or the union (or unions) may apply to the CAC for assistance.
- 60 (1) This paragraph applies if an application for assistance is made to the CAC under paragraph 58 or 59.
- (2) The application is not admissible unless the conditions in sub-paragraphs (3) and (4) are satisfied.
- (3) The condition is that the employer, taken with any associated employer or employers, must—
- (a) employ at least 21 workers on the day the application is made, or
 - (b) employ an average of at least 21 workers in the 13 weeks ending with that day.
- (4) The condition is that the union (or every union) has a certificate under section 6 that it is independent.
- (5) To find the average under sub-paragraph (3)(b)—
- (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.
- (6) For the purposes of sub-paragraph (3)(a) any worker employed by an associated company incorporated outside Great Britain must be ignored unless the day the application was made fell within a period during which he ordinarily worked in Great Britain.
- (7) For the purposes of sub-paragraph (3)(b) 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.
- (8) For the purposes of sub-paragraphs (6) and (7) 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.
- (9) An order made under paragraph 7(6) may also—
- (a) provide that sub-paragraphs (2), (3) and (5) to (8) of this paragraph 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-paragraph (3).
- 61 (1) An application to the CAC 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.

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- (2) An application which is made by a union (or unions) to the CAC 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.
- (3) An application which is made by an employer to the CAC 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.

CAC's response to application

- 62 (1) The CAC must give notice to the parties of receipt of an application under paragraph 58 or 59.
- (2) Within the acceptance period the CAC must decide whether the application is admissible within the terms of paragraphs 60 and 61.
- (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, 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 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.
- 63 (1) If the CAC accepts an application it must try to help the parties to reach in the agreement period an agreement on a method by which they will conduct collective bargaining.
- (2) If at the end of the agreement period the parties have not made such an agreement the CAC must specify to the parties the method by which they are to conduct collective bargaining.
- (3) Any method specified under sub-paragraph (2) is to have effect as if it were contained in a legally enforceable contract made by the parties.
- (4) But if the parties agree in writing—
 - (a) that sub-paragraph (3) shall not apply, or shall not apply to particular parts of the method specified by the CAC, or
 - (b) to vary or replace the method specified by the CAC,the written agreement shall have effect as a legally enforceable contract made by the parties.

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- (5) Specific performance shall be the only remedy available for breach of anything which is a legally enforceable contract by virtue of this paragraph.
- (6) If the CAC accepts an application, the applicant may not withdraw it after the end of the agreement period.
- (7) If at any time before a specification is made under sub-paragraph (2) the parties jointly apply to the CAC requesting it to stop taking steps under this paragraph, the CAC must comply with the request.
- (8) The agreement 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 parties may from time to time agree.

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