RECOGNITION AND THE LAW

SUMMARY

1. The following paper summarises the main points made in a recent talk given to the Employment Lawyers Association on the 18th April 2012. For those who wish to access the full copy of the notes please visit the ELA website.

VOLUNTARY RECOGNITION

2. Leaving aside the detailed history of the development of industrial relations which is beyond the scope of this paper, to properly analyse recognition and its implications it is at least helpful to have a broad understanding of the way the system of industrial relations in the UK works. A central feature is the emphasis on voluntary relationships and agreements between employers and trade unions. The vast majority of recognition agreements are based on voluntary agreements between particular employers or groups of employers and particular unions which recognise the right of the unions concerned to collectively bargain on behalf their membership with the employers concerned. In essence, a voluntary recognition agreement between a trade union and an employer is a collective agreement freely entered into by the parties.

3. The central emphasis on the voluntary nature of the relationship between trade unions and employers is reflected in the statutory presumption that a collective agreement is not intended by the parties to be a legally enforceable contract:

> *"(1) A collective agreement shall be conclusively presumed not to have been intended by the parties to be a legally enforceable contract unless the agreement---*
> *(a) is in writing, and*
> (b) *contains a provision which (however expressed) states that the parties intend that the agreement shall be a legally enforceable*

contract." (section 179, Trade Union & Labour Relations (Consolidation) Act, 1992: known as "TULRA").

4. Thus, in practice, a voluntary recognition agreement between a trade union or unions and an employer or group of employers is highly unlikely to be a legally enforceable one. The general position is that trade unions and employers have preferred and continue to prefer to reach voluntary arrangements. Indeed, many such agreements will contain an express clause stating that the agreement is not intended to be legally binding.

Recognition and its scope

5. Usually a voluntary recognition agreement expressly provides for the extent of that recognition i.e. the matters that will be the subject of collective bargaining. As would be expected, at the centre of such matters are usually the terms and conditions of employment. Given that it is a voluntary process the starting point is thus that it is a matter for the parties to a recognition agreement to agree who it will apply to and the ambit of the matters for which the union is recognised for the purposes of collective bargaining.

6. Any agreement will be likely to include a number of subjects which are commonly identified as being being important to the Union in its future relationship with the employer, including negotiations about:

(a) the terms and conditions of employment of particular groups or grades of employees on behalf of whom the union is recognised;

(b) facilities for the union's representatives to be able to carry out their role such as time off for trade union duties; access to an office, equipment etc. This may well extend to the deduction of trade union subscriptions

via the employer's payroll system where a trade union member indicates that they accept such an arrangement. Such deduction at source facilities can obviously be of great assistance to trade unions by avoiding the less predictable task of collecting subscriptions in cash or via an individual's personal direct debit arrangements.

(c) the machinery by which negotiation and/or consultation will take place. For example, in larger employers with a number of workplaces in different parts of the country there may be a provision for a national joint committee of some sort made up of representatives of the management and trade union which meets to deal with defined matters which have national application, for example, major conditions of employment; wage negotiations and possibly occupational grading. In voluntary agreements it is a matter for the parties themselves to produce the sort of arrangements that most suit their needs. Equally, there are often provisions for a workplace joint committee made up of union representatives and managers which operates to deal with identified matters at that workplace. It is not unusual for agreements to be reached as to the number of shop stewards and the constituencies that they will represent to ensure that a structure is fully representative and satisfactory to both the employer and union involved.

(d) if there are matters which are to be the subject of consultation rather than negotiation then such matters are identified.

7. Equally, employers are also likely to have a number of issues that they will wish to ensure are dealt with in a recognition agreement, for example, a procedure which provides for the avoidance of disputes via, for example, discussion of disputed issues within the joint management/trade union structures and

provision that no consideration of industrial action is to take place until such a procedure is exhausted. Such procedures often include a provision for the involvement of senior union officials where disputes remain unresolved between local officials and the employer. In a limited number of cases there may also be provision made for arbitration to apply to any remaining disputes.

8. The effect of recognised unions being involved in bringing about major changes to the terms and conditions of employment of large workforces as a result of collective bargaining has been clearly illustrated relatively recently in the national health service where a lengthy bargaining exercise resulted in an agreement known as “Agenda For Change” which established a unified pay and grading structure covering the large majority of NHS staff throughout the country. The agreement is thus likely to also have avoided large multi-party equal pay disputes.

11. Where recognition for collective bargaining purposes has been agreed it is normal to include a term in individual contracts of employment that expressly incorporates the product of such bargaining. Thus, although the recognition agreement and collective agreements that are reached between a particular employer and trade unions are not in themselves legally enforceable and thus rarely in themselves give rise to legal issues, the product of the bargaining can be legally enforceable as between the individual covered by the collective bargain and their employer via the incorporation of the terms into individual contracts of employment.

12. In summary, voluntary recognition agreements can cover whatever matters the parties to such agreement wish to cover including negotiations about terms and conditions of employment, the actual mechanism by which bargaining and/or consultation will take place with the Union; the facilities to be provided for the

union and its representatives and the contents of collective disputes and individual grievance and disciplinary procedures.

13. As a voluntary agreement of recognition is a non-legally enforceable agreement there is no legal restriction on withdrawing from such a recognition agreement. Of course, the practical effects of so doing may be considerable including a highly likely attempt on the part of the Union concerned to persuade the employer to retain its recognised relationship via a dispute including industrial action or the use of the statutory recognition procedure (see below). This paper cannot extend into the intricacies of lawful industrial action, but suffice it to say that a dispute about recognition is defined as a trade dispute within the meaning of section 218 of TULRA and thus potentially attracts legal immunity from tort actions subject to compliance with the necessary procedural requirements involving balloting to achieve lawful industrial action.

TUPE

14. Under Regulation 6 of TUPE 2006, a relevant transfer can have the effect of transferring an existing voluntary recognition agreement. However, please note in particular the requirement of Regulation 6(1) is that:

> *"(1) This regulation applies where after a relevant transfer the transferred organised grouping of resources or employees maintains an identity distinct from the remainder of the transferee's undertaking."*

15. On the wording of Regulation 6(1) there is thus potential for an argument that after a relevant transfer (under Regulation 3) there is no grouping with the required identity distinct from the remainder of the transferee's undertaking. In any event, even if the gateway required by Regulation 6(1) is factually open,

what is the effect of the transferred recognition agreement under Regulation 6(2)?

"6(2) Where before such a transfer an independent trade union is recognised to any extent by the transferor in respect of employees of any description who in consequence of the transfer become employees of the transferee, then, after the transfer---

(a) the trade union shall be deemed to have been recognised by the transferee to the same extent in respect of employees of that description so employed; and

(b) any agreement for recognition may be varied or rescinded accordingly."

16. It thus appears that any transferred recognition agreement can legitimately be brought to an end in the hands of the transferee if the transferee so chooses. Given that a voluntary recognition agreement is not legally enforceable this may be seen as being a logical consequence of that position i.e. if the transferor could have brought the agreement to an end there is no logical reason why the rights of the transferee should be any less in respect of that agreement.

17. Please note also that there is an express provision in the Regulations giving a statutory definition of recognition under the TUPE Regulations, as set out in Regulation 2 dealing with Interpretation:
"*(2) recognised has the meaning given to the expression by section 178(3) of the 1992 Act."*

As set out below, that provision allows a trade union to argue that in practice it is recognised even if an employer denies that it is.

Recognition under section 178 TULRA 1992

18. As indicated above, this section can potentially be relied upon to establish the fact that a trade union is in practice recognised even where an employer denies that it is. In particular, please note the terms of section 178 TULRA:

> *"**178 Collective agreements and collective bargaining***
>
> *(1) In this Act 'collective agreement' means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers' associations and relating to one or more of the matters specified below; and 'collective bargaining' means negotiations relating to or connected with one or more of those matters.*
>
> (2) The matters referred to above are—
>
> *(a) terms and conditions of employment, or the physical conditions in which any workers are required to work;*
>
> *(b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;*
>
> *(c) allocation of work or the duties of employment between workers or groups of workers;*
>
> *(d) matters of discipline;*
>
> *(e) a worker's membership or non-membership of a trade union;*
>
> *(f) facilities for officials of trade unions; and*
>
> *(g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.*
>
> *(3) In this Act 'recognition', in relation to a trade union, means the recognition of the union by an employer, or two or more associated employers, **to any extent*** (my emphasis)*, for the purpose of collective bargaining; and 'recognised' and other related expressions shall be construed accordingly*."

19. The circumstances in which issues relying on alleged recognition under section 178 (3) can be pursued usually arise where there have been some dealings between an employer and a trade union on behalf of its members in relation

to that employer and perhaps a shop steward claims that they are not being given time off work to carry out their trade union duties as required by section 168 TULRA or a member claims that they have not been given time off to take part in trade union activities under section 170 TULRA. Complaints can be made to the Employment Tribunal that an employer has failed to permit such time off as required by the particular section. The sections require that the person making the complaint is either an official (section 168) or a member of (section 170) an independent trade union which is "recognised" by the employer.

20. The issue of whether a trade union was in fact "recognised" thus in practice falls to be decided as a preliminary step to the assessment of whether or not an employer has complied with the requirements of the section in respect of the time off.

21. Trade unions on occasions pursue test cases such as this where they believe that there is sufficient evidence that they are "recognised" within the limited requirements to achieve such status provided for under section 178. In particular, please note that in order to be considered "recognised" for the purposes of the statutory rights in issue section 178(3) it is only necessary that a trade union is recognized by an employer *"..to any extent, for the purpose of collective bargaining"*. That definition has to be read alongside the definition of collective bargaining under section 178(1) and (2) i.e. that *"collective bargaining means negotiations relating to or connected with one or more…"* of the matters set out in section 178(2) TULRA.

22. It is to be noted that in order to achieve "recognition" within the meaning of TULRA all that is required is (a) **"**negotiations" (b**) "**to any extent**"** (c) related to or connected with one or more of the matters set out in 178(2)(a) to (f)**.** Negotiations about any one of the matters referred to any of the matters set

out at s.178(2) is sufficient to establish statutory recognition under the section with the rights that it brings (which I deal with below in detail).

23. Whether or not there have been "negotiations" within the meaning of section 178 are issues of law and fact. These issues have been the subject of consideration by the Courts for a considerable period of time but practitioners will probably still find useful the consideration given to the issues involved by the Court of Appeal in National Union of Gold, Silver and Allied Trades v. Albury Brothers Ltd [1978] IRLR 504:

> *"19. Therefore it seems to me that recognition entails accepting a trade union to some extent as the representative of the employees for the purpose of carrying on negotiations in relation to or connected with one or more of the matters set out in s.29(1) of the 1974 Act. Thus it entails not merely a willingness to discuss but also to negotiate in relation to one or more such matters. That is to say, to negotiate with a view to striking a bargain upon an issue, and thus it involves a positive mental decision. How that decision will be manifested will of course vary from case to case. There may be a declaration. It may be that dealings between the parties will have reached a point where one can use the expression "it goes without saying".*

24. Thus it is important bear in mind when facing such issues that a formal agreement is not required to establish such recognition. A course of conduct can do it, but ultimately there has to be some evidence of "negotiations". The mere participation by a trade union in disciplinary or grievance procedures is not likely to establish such "negotiations". Equally, mere consultation is unlikely to cross that threshold. However, it needs to be borne in mind that where there are dealings with a trade union on behalf of employees it may be that the interpretation of the factual content of those dealings may be subject to the scrutiny of an employment tribunal to establish whether they amount to negotiations and thus recognition within the meaning of section 178(3) TULRA.

RECOGNITION APPLICATIONS TO THE CENTRAL ARBITRATION COMMITTEE "CAC", SCHEDULE A1 TULRA

25. Again the scope of this paper does not extend to the history but suffice it to say that the provisions in TULRA concerning collective bargaining and recognition were inserted as a result of the then Labour Government's Employment Relations Act, 1999.

26. The relevant statutory framework is contained in the dense and extensive provisions set out in Schedule A1 of TULRA. It extends to 172 paragraphs. When faced with issues relating to these provisions it is obviously necessary to consider the wording carefully. Although, there is a detailed and complex procedure set out in the Schedule it is noteworthy that the underlying aim of the procedure is, in practice, to produce a voluntary agreement between the parties in accordance with the long-established emphasis on the voluntary nature of industrial relations in this country described at the opening of this paper.

Core considerations

27. (a) before a union can apply to the CAC for recognition it must make a request in writing to the employer concerned for recognition for collective bargaining purposes. That request must identify the union and, most importantly, the central concept to the statutory procedure, "the bargaining unit" i.e. the group of employees in relation to which recognition is being sought. Careful thought needs to be given to the bargaining unit by the Union before making the request to the employer as the practical possibility of negotiations in relation to the claimed bargaining unit are very often the focus of dispute and resistance to any application.

(b) applications to the CAC for recognition for collective bargaining purposes have a somewhat limited ambit extending only to the issues of pay, hours and holidays.

(c) small employers are exempt from the provisions as applications cannot be accepted if the employer employs a total of fewer than 21 workers.

(d) the CAC can declare the union to be recognized without any ballot if more than 50% of the workers in the specified bargaining unit are members of the union.

(e) if the CAC decides a ballot is necessary, recognition is granted if a majority of those voting and at least 40% of the workers in the bargaining unit vote in favour.

(f) if a declaration of recognition is made either party can request the assistance of the CAC to the parties to promote an agreement as to the bargaining procedure to be applied. If no agreement can be reached the CAC can specify a procedure to be followed. In such circumstances, the provisions of the Trade Union Recognition (Method of Collective Bargaining) Order 2000 SI No.1300 must be taken into account by the CAC when specifying a method by which the employer and the union are to conduct collective bargaining.

(g) a bargaining method imposed by the CAC has effect as if it were a legally binding contract between the employer and the union. If one party believes that the other is failing to respect the method, the first party can apply to the court for an order of specific performance which orders the other party to comply with the method. Failure to comply with such an order could constitute contempt of court.

Procedure

28. The procedural requirements are extensive and will not be repeated in full here. They need to be considered in detail if dealing in practice with an

application. Nonetheless, it may also be helpful to note the following important procedural steps and requirements:

(a) There are a number of admissibility tests before an application can be proceeded with. One of the most important from a practical point of view is that the statutory procedure cannot be used to disturb existing industrial relations arrangements where there is already an agreement in existence which recognizes a union for collective bargaining purposes, see R (on the application of the National Union of Journalists) v. Central Arbitration Committee and MGN Ltd [2006] IRLR 53 .The ambit of this test is a broad one and extends to any trade union whether or not it has a certificate of independence and the agreement covers one of the matters specified in section 178 of TULRA (referred to above at para.18) and covers one worker in the proposed bargaining unit. Equally, the procedure cannot be used to resolve inter-union disputes as to who should be recognized as competing applications for the same bargaining unit where more than one union has 10% of the membership of the bargaining unit cannot be proceeded with.

(b) Given the central importance of the "bargaining unit" to the whole process it is important to have in mind the mandatory considerations which the CAC must apply when deciding whether a bargaining unit is an appropriate one. Under paragraph 19B(2) and (3):

"(2) The CAC must take into account----

(a) the need for the unit to be compatible with effective management

(b) the matters listed in sub-paragraph (3) so far as they do not conflict with that need.

(3) The matters are

(a) the views of the employer and of the union (or unions);

(b) existing national and local bargaining arrangements;

(c) the desirability of avoiding small fragmented bargaining units within an undertaking;

(d) the characteristics of workers falling within the bargaining unit under consideration and of any other employees of the employer whom the CAC considers relevant;

(e) the location of the workers."

It will immediately appreciated from the generality of the above considerations that the scope for effective argument concerning the efficacy of particular bargaining units is substantial and is often pursued in practice as the definition of the constituency which is to be balloted can significantly affect the likely outcome of such a ballot. For consideration of the approach adopted by the CAC to bargaining units please see: R v. Central Arbitration Committee and another ex parte Kwik-Fit (GB) Ltd [2002] IRLR 395 CA; and R (on the application of Cable & Wireless Services Uk Ltd) v. Central Arbitration Committee and Communication Workers Union [2008] IRLR 425 .

(c) Following the resolution of any bargaining unit debate, the CAC has to decide whether a ballot is necessary. Unless the CAC is convinced that the majority of workers in the bargaining unit belong to the union making the application it has to call a ballot. It will be appreciated that again there may be substantial disagreements at this stage as to the evidence concerning such levels of membership. In the event of disputes an independent check can be carried out by a CAC appointed person.

(d) In any event, even if there is a majority of union members in the bargaining unit, under paragraph 22 the CAC can nonetheless hold a ballot where:

"(a) the CAC is satisfied that a ballot should be held in the interests of good industrial relations;

(b) the CAC has evidence, which it considers credible, from a significant number of union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;

(c) membership evidence is produced concerning the circumstances in which union members became members or the length of time that they have been members which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf."

(e) The CAC will notify the parties in writing if it decides that a ballot is necessary and will arrange for secret ballot to take place. It will also appoint a qualified independent person to conduct the ballot. Employers will need to be aware of the need to cooperate with the process including giving the union reasonable access to the employees in the bargaining unit. For detailed guidance please see the Code of Practice: Access and Unfair Practices During Recognition and Derecognition Ballots (2005) issued by the Secretary of State under s.203 TULRA.

(f) As indicated above, the threshold for a trade union to be recognized for collective bargaining is a majority of those voting and at least 40% of the workers in the bargaining unit must vote in favour. It is interesting to note that currently political consideration is being given to requiring a similar minimum percentage of the voting constituency to be in favour of a strike for a strike ballot to be lawful (at present there is no minimum).

RIGHTS AND RECOGNITION

29. An independent trade union i.e. one that it is not under the domination or control of an employer or group of employers (see: s.5 TULRA), enjoys a number of statutory rights once it is recognised by an employer. The rights concerned are conferred whether or not recognition has been established as a result of a voluntary agreement or by way of the statutory procedure via the CAC.

(a) Time Off for Trade Union Duties: Section 168/169 TULRA

30. To obtain this right the person concerned must be an "official" of an independent trade union.

31. The official concerned has a right to reasonable time off with pay to carry out their functions such as, for example, negotiating and representing members in disciplinary or grievance proceedings. As what is reasonable can be a matter of some debate ACAS have produced some guidance: ACAS Code of Practice 3: Time Off for Trade Union Duties and Activities (Including Guidance on Time Off for Union Learning Representatives) 2010.

32. A complaint can be made to an Employment Tribunal that there has been a failure to permit such time off. Compensation which is considered just and equitable can be awarded (section 172 TULRA).

(b) Time Off for Trade Union Activities: Section 170 TULRA

33. An employer is required to allow reasonable time off to a member of an independent trade union for the purpose of taking part in (a) any activities of the union, and (b) any activities in relation to which the employee is acting as a representative of the union. What is reasonable is a matter of debate.

34. Unlike trade union duties there is no requirement under this section to allow such time with pay. However, as with other areas, there may be a voluntary

agreement reached in respect of such activities. The Code of Practice applicable to Trade Union Duties and Activities applies. Some examples of such activities are included in the Code (paras.36 to 39).As with trade union duties a complaint may be made to an Employment Tribunal that the section has been breached.

(c) Time Off for Union Learning Representatives: Section 168A TULRA

35. Union Learning Representatives ("ULRs") have a right to paid time off during working hours to carry out their functions provided that the employer has been informed by the union that the person concerned has been designated as a ULR. Their function is, in summary, the improvement of the education and training of fellow Union members. Again the applicable Code is that concerning Trade Union Duties and Activities (at paras 16 and 17).

(d) Right to Consultation concerning Collective Redundancies: Section 188 TULRA

36. This is a right which has inevitably produced a significant amount of litigation and debate. In summary, if an employer is proposing to dismiss as redundant 20 or more employees they are required to consult with the representatives of a recognized union and such consultation should begin:

> *"in good time and in any event-----*
>
> *(a) where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least 90 days, and*
>
> *(b) in otherwise, at least 30 days*
>
> *Before the first of the dismissals take effect."* (s.188(1A)).

37. For the purposes of such consultation the employer is required to disclose in writing to the representatives a range of information as set out in section 188(4).

38. Also note that the definition of redundancy has been widened to circumstances where there are no actual job losses but a workforce is dismissed and new terms and conditions of employment applied on re-engagement (s.195 TULRA).

39. Complaints are regularly made by a union that the consultation has been inadequate or non-existent or has not started early enough as required by section 188(1A) TULRA.

40. The remedy is potentially very expensive as the claim to an Employment Tribunal for a remedy for breach involves a protective award in respect of the description of employees who have been dismissed as redundant or whom it is proposed to dismiss as redundant. The Tribunal can order that the employees concerned be paid for a protected period of up to 90 days (section 189 TULRA). However it is important to note the terms of the remedy of a protective award under section 189(3). In particular, if an application is made after the consultation has taken place and a decision has been taken in respect of the extent of collective redundancies (as is usually the case) then the protective award is in respect of one or more descriptions of employees who have been dismissed as redundant. Where as a result of consultation the number of proposed redundancies have in practice been reduced then there is no remedy for those who have been retained by that process: see Securicor Omega Express Ltd v. GMB [2004] IRLR 9 .

(e) Right to information and consultation in connection with the transfer of undertaking under Regulation 13, TUPE 2006

41. Where trade unions are recognized:

"(2)....Long enough before a relevant transfer to enable the employer of any affected employees to consult the appropriate representatives of any affected employees, the employer shall inform those representatives....."

of particular matters such as the fact that a transfer is to take place, the date or proposed date and the reasons for it (see: Regulation 13(2)).

42. It is important to note that where trade unions are recognized the appropriate representatives are specifically identified as the trade union representatives. It is only in circumstances where there is no recognized trade union that consultation with other employee representatives becomes relevant (see: Regulation 13(3)).

43. Also I repeat that the meaning of "recognised" in the TUPE Regulations is the same as that set out at section 178(3) of TULRA (see: Regulation 2, Interpretation). Thus from the discussion of section 178 above it will be appreciated that a Union may argue that, in fact, it is recognized in accordance with section 178 and thus the employer's responsibility was to inform and consult its representatives in accordance with the Regulations. For relatively recent consideration of the issues which can arise see, Martello Professional Risks Ltd v. Barnes and another; Barnes v. Martello Professional Risks Ltd and others UKEAT/0121/09; UKEAT/0122/09.

44. The remedy for alleged failure to comply with the Regulations lies with the Employment Tribunal which can make a declaration and may order appropriate compensation to be paid to affected employees. The level of appropriate compensation is what a Tribunal considers to be just and equitable up to a level of 13 weeks' pay. It will be appreciated that in cases involving significant numbers of employees the potential financial awards can cumulatively amount to large sums of money.

(f) Right to information for the purposes of collective bargaining under section 181 TULRA

45. In order to try and promote effective bargaining section 181 imposes a duty to provide information to a recognised trade union for the purposes of collective

bargaining. The information to be provided by an employer is defined as information:

> *"(2)…(a) without which the trade union representatives would be to a material extent impeded in carrying out collective bargaining with him, and*
>
> *(b) which it would be in accordance with good industrial relations practice that he should disclose to them for the purposes of collective bargaining."*

46. The remedy for non-compliance is via an application to the Central Arbitration Committee. It will not come as a surprise, given the emphasis on the essential voluntary nature of the industrial relations system, that the ACAS Code of Practice covering Disclosure of Information to Trade Unions for Collective Bargaining Purposes (1998) advises that employers and trade unions should make efforts to reach a joint understanding on how the disclosure of information can be implemented most effectively. Furthermore, it encourages agreed procedures to resolve any disputes. Statutory restrictions on the ambit of the duty are set out in section 182. Also note that the CAC can refer any application to ACAS to explore the possibility of a conciliated settlement of the issue.

(g) Right to appoint Safety Representatives and require the establishment of Safety Committees: Safety Representatives and Safety Committee Regulations 1977

47. A recognised trade union has the right to appoint safety representatives from amongst the employees. Once appointed they have wide-ranging safety functions including investigation, representation and an ability to carry out inspections.

48. As with time off provisions for officials in respect of their trade union duties there are parallel provisions for time of with pay to be granted for the necessary performance of safety representative functions and also

undertaking reasonable training under the Health and Safety at Work Act, 1974.

49. Where at least two safety representatives request in writing that an employer establish a safety committee he is required to do so within three months of that request in consultation with the safety representatives who made the request and representatives of the recognized trade unions whose members work in the workplace concerned (Regulation 9).

50. As would be expected, complaints can be made to an Employment Tribunal that an employer has failed to allow time off and/or had failed to pay a safety representative as provided for by the Regulations. Furthermore, employees carrying out the functions of safety representatives or are members of safety committees have statutory protections against suffering any consequential detriment or being dismissed under sections 44 and 100 respectively of the Employment Rights Act, 1996.

(h) <u>The right to Consultation on Training under section 70B TULRA</u>

51. This section applies only where a trade union is recognized as a result of the application of the statutory recognition procedure and a method for the conduct of collective bargaining has been specified by the Central Arbitration Committee. Thus it does not apply where a voluntary agreement has been reached as a result of the application of the statutory procedure.

52. In these relatively restricted circumstances an employer can be required to hold consultative meetings with trade union representatives about the employer's policy on training for workers in the bargaining unit concerned and his plans to do so in the six months following the date of the meeting. Further, the employer is required to provide information to the trade union to facilitate this process. In the event of an employer's failure to comply a complaint can

be made to an Employment Tribunal and compensation can be ordered of up to two weeks' pay for each person in the bargaining unit.

CONCLUSION

53. The role and rights of recognised unions and their appointed representatives are self-evidently potentially very wide. They are consistent with the view that trade unions have an important role to play in consultation and negotiation about issues that affect their members at work. In effect the rights concerned can be seen as establishing a form of industrial democracy on behalf of those that the unions represent.

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