

Trade Union Recognition

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Introduction

The Blair government introduced a statutory recognition procedure whereby an independent trade union may request an employer to recognise it for the purposes of collective bargaining. If the employer refuses to do so, the trade union may apply to the Central Arbitration Committee (CAC) for a declaration of recognition if it can demonstrate sufficient levels of support.

Since it came into force almost 25 years ago the statutory recognition procedure has been beset with problems which have frustrated the ambitions of its authors and the expectations of trade unions. As the Amazon dispute highlighted in 2024, the procedure is not effective when confronted with well organised employer campaigns designed to resist recognition.

What does the Act say?

The Employment Rights Act makes several changes to the existing procedure:

- Currently, applications to the CAC are only admissible where the union (i) has a minimum of 10% support among the workers in the bargaining unit; *and* (ii) can demonstrate that it is likely to win a recognition ballot. The Act does away with this second requirement so that unions will only need to demonstrate 10% membership of the proposed bargaining unit. It also allows for that 10% threshold to be lowered by future secondary legislation to anywhere between 2% and 10%.
- Where the CAC directs that a ballot should be held to gauge worker support for recognition, the union must currently win the support of a majority of those voting and at least 40% of the workers in the bargaining unit. The Act removes this latter requirement so that the support of a majority of those voting is all that is required.
- Currently, an independent trade union cannot make an application for recognition where the employer has already recognised a non-independent trade union. The Act reverses that rule so that recognition of a non-independent union can't any longer block an independent union's application.
- In a set of provisions that mirror the new framework for trade union access, the Act firms up the existing right of an applicant trade union to access workers in the bargaining unit.
- The Act makes several changes to the rules that prohibit 'unfair practices' during the recognition procedure. These include extending both the legislation and a Code of Practice on access and unfair practices during recognition and derecognition ballots to apply from the point when the CAC accepts a trade union application.
- The Act prevents employers from packing workplaces out with new recruits who are not union members, in order to dilute union support and either render a trade union application inadmissible or skew the composition of the bargaining unit prior to a ballot.

Additionally, the Government has recently confirmed its intention to introduce secondary legislation allowing for all trade union ballots, including recognition ballots, to be conducted electronically or at the workplace.

What are the defects?

Though these are all welcome changes, they leave the basic scheme of the recognition procedure largely intact. Importantly, they leave unchanged the fact that the recognition procedure only permits an application for recognition against a single employer, thus excluding the possibility of multi-employer or sector wide recognition. They also leave unchanged the central requirement, in the majority of cases, for a ballot of the affected workers. Ballots invite employers to engage in hostile campaigning, which can easily shade into unfair practices as the experience of GMB with Amazon showed. The Act also leaves unchanged the blanket exclusion of employers with fewer than 21 workers, meaning that between 80% and 90% of private sector employers are excluded from the procedure. Recent case law demonstrates how difficult it can be to achieve 'worker' status so that a trade union can bring an application on behalf of platform delivery and other casualised workers. Where a recognition application fails, the Act leaves unchanged the rule that a trade union may not bring another application for a period of three years.

What needs to be done?

- *Multi-employer and sector wide recognition applications should be permitted.*
- *The need for a ballot must be reduced and to that end a union should be able to claim **automatic recognition** if it can show (i) a minimum level of membership (between 2% and 10%) and (ii) majority support within the proposed bargaining unit. This would be similar (though not identical) to the majority support determination procedure in Australia.*
- *The Supreme Court decision in the **Deliveroo** case must be reversed. In that case it was held that food delivery riders were not to be regarded as workers, with the result that their trade union could not make an application for recognition, thereby denying them access to collective bargaining.*
- *If a recognition application is unsuccessful, the opportunity to make a fresh claim should be reduced from three years to three months.*



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