

# ***SCOTTISH TRADES UNION CONGRESS***

## ***REVIEW OF THE EMPLOYMENT RELATIONS ACT 1999***

**MAY 2003**

The STUC represents some 630,000 workers in Scotland, the members of our 46 affiliated trade unions. As Scotland's trade union centre, our purpose is to co-ordinate, develop and articulate the views and policies of the trade union movement in Scotland and, through the creation of real social partnership, to promote trade unionism; equality and social justice; the creation and maintenance of high quality jobs and the public sector delivery of services.

We welcome the opportunity to submit views as part of the on-going DTI review of the Employment Relations Act 1999.

Our policies are determined by an Annual Congress, which meets in April. Attached, is a copy of a resolution on "Trade Union and Employment Rights", which was adopted at our 2003 Congress and should be read together with this submission.

### **Employment Relations Act 1999**

The STUC welcomed the introduction of the 1999 Employment Relations Act as a significant step towards a fairer system of individual and collective rights at work. However, we expressed concern that whilst the overall thrust of the Act was positive, particularly the new rights it provided for recognition and accompaniment, these and other provisions were not perfect.

Summarised below are the key changes we believe need to be made in the course of the current review of the Act:

## **1. Collective Rights**

### **1.1 Statutory Recognition**

- Training should be included in the list of matters specified for collective bargaining;
- The definition of pay should explicitly include occupational pensions;
- The 21 worker threshold should be abolished, so that all businesses are covered by the procedure regardless of how many workers are employed;
- The time periods for negotiation at various stages in the procedure should be halved;
- The additional qualifying conditions for automatic recognition (other than the 50% membership rule) should be removed;
- Unions should be given rights of access to the bargaining unit from the day on which their application is accepted;
- The 40% 'yes' vote requirement should be replaced with a requirement for the union to win a simple majority of those voting in the ballot;
- There should be legal protection against unfair labour practices during applications, with injunctive relief available to unions.

### **1.2 Industrial Action and Ballots**

- Workers should have a right to take industrial action without being deemed to have broken their contracts where a majority of workers in a bargaining unit support it;

- The 1992 TULRC Act should be amended so that unions do not have to provide detailed information to employers in notices;
- The 1992 Act should also be amended so that workers may take action where re-structuring or transfers are likely to affect their terms and conditions or where employers transfer production to an associated business in order to circumvent the effects of industrial action;
- It should be illegal for employers to make excessive deductions from wages of workers who have taken part in industrial action.

## **2. Individual Rights**

### **2.1 Disciplinary and Grievance Hearings**

- The word 'accompany' should be replaced with 'represent'; representatives should be given access to the worker in the workplace before the hearing and access to relevant documents; and it should be compulsory for all employers to have a grievance and disciplinary procedure based on the ACAS code.

### **2.2 Unfair Dismissal of Striking Workers**

- The eight weeks' limit should be removed so that protection against unfair dismissal remains during the entire period of industrial action.

## **Trade Union and Employment Rights**

“That this Congress acknowledges that the 1999 Employment Relations Act has positively influenced the ability of trade unions to secure recognition for their members both on a voluntary and a statutory basis.

“However, Congress has a number of concerns about the specific provisions contained within the Act and calls for a number of changes in the arrangements for statutory recognition, including:

1. that training and equality are added to the list of items covered by collective bargaining;
2. that the definition of pay explicitly includes occupational pensions;
3. that the 21 worker threshold, which unfairly denies five million workers the right to claim statutory recognition, is abolished so that all employers are covered by the legislation and all workers can benefit from its provisions;
4. that recognition is automatic in all cases where a Trade Union has 50% membership in the bargaining unit, without need for a ballot;
5. that unions are given rights of access to the bargaining unit from the day on which their application for recognition is accepted;
6. that provision on admissibility should be amended so that where a TUPE transfer has occurred a recognised union can apply for an extension of their bargaining rights to cover workers already employed in the company;

7. that the 40% “yes” vote requirement should be replaced with a requirement for the union to win a simple majority of those voting in the ballot;
8. that unions who have failed to achieve recognition through the statutory process are allowed to re-apply for recognition within the 3 year moratorium where they can demonstrate that their support has substantially increased or where a change in the bargaining unit has increased the percentage of their membership;
9. that legal protection against unfair labour practices during recognition applications is introduced, to protect workers from companies like BskyB, who threaten mass redundancies and relocation to avoid statutory recognition;
10. that the CAC is given powers to order the employer to disclose relevant information to the union before it submits its application to the CAC.

“Congress believes that the right to organise in trade unions, to recognition for collective bargaining purposes, and to be protected against discrimination in employment are basic human rights. Congress calls for the repeal of anti-union laws and their replacement with a framework of employment laws that provide positive rights and freedoms for workers and trade unions, including the right for workers to take solidarity action, and that complies with ILO conventions and the Social Charter of the Council of Europe.

“Congress calls on the Government to:

- repeal the legislation which obliges unions in a legitimate trade dispute to assist the employer by providing information to enable the employer to make strike breaking plans;
- remove the 8-week limit on protection from unfair dismissal for those involved in lawful industrial action with protection to remain in place over the entire period of industrial action;

- revise the law on fixed contract employment, and working time and holidays.

“Congress is disappointed that legislation, allegedly passed to protect individuals’ rights, has allowed some self-interested minorities to attempt to destabilise both the constitutionally agreed objectives and the day to day operation of trade unions to which they belong. Congress believes that the role played by the Certification Officer should also be reviewed, with particular regard to the appeal processes against decisions made by that office.

“Congress welcomes Government proposals to finally include seafarers under the provisions of the Race Relations Act and resolves to work with the maritime unions and Government to ensure that the Act is effectively enforced. Congress also urges the Government to include seafarers in all employment rights legislation as a first step to the implementation of UK employment standards to cover all seafarers on UK registered ships and in UK waters.

“Congress calls on the Government to implement the European Directive on Information and Consultation Rights into UK legislation in line with the true spirit and intent of the Directive.

“The implementation must provide for:

- 1) permanent arrangements for information and consultation through the representatives of independent trade unions recognised by employers or, in non-unionised situations, through representatives independently elected by workers;
- 2) a statutory procedure enabling recognised unions or employees to initiate negotiations with management about establishing information and consultation arrangements, with reference to the Central Arbitration Committee if management fails to respond;
- 3) statutory default arrangements providing a basic constitution for information and consultation;

- 4) clear requirements on timing and subject matter for consultation;
- 5) speedy and effective sanctions with strong enforcement mechanisms.

“Congress also calls on the government to stop obstructing and weakening the proposed European Directive on Temporary and Agency workers.

“Congress feels that there is a vital role for the Scottish Executive to play in the workplace. Congress calls upon the STUC to work with the Scottish Executive to draw up a Workers’ Charter, which promotes compliance with UK and European employment law and ILO Conventions, to the benefit of Scotland’s economic development. It must be made clear to employers that all and any economic or other assistance is dependent on fundamental observance of such a Charter.

“Congress resolves to support the 2003 British TUC march and rally for trade union and employment rights.”

**As adopted at STUC Annual Congress 2003**