



# Trade Union and Labour Relations Act 1974

1974 CHAPTER 52

*Repeal of Industrial Relations Act 1971*

## **1 Repeal of Industrial Relations Act 1971 and re-enactment of certain provisions**

- (1) The Industrial Relations Act 1971 is hereby repealed.
- (2) Nevertheless, Schedule 1 to this Act shall have effect for re-enacting, with amendments consequential on the following sections of this Act and other amendments, the under-mentioned provisions of that Act, that is to say—
  - (a) Part I of that Schedule so re-enacts sections 2 to 4 (code of practice);
  - (b) Part II of that Schedule so re-enacts sections 22 to 33 (unfair dismissal);
  - (c) Part III of that Schedule so re-enacts sections 100, 106, 116, 118 and 159 and Schedule 6 (jurisdiction and procedure of industrial tribunals and other provisions with respect to those tribunals); and
  - (d) Part IV so re-enacts sections 146, 148, 149, 150, 151, 155, 161 and 162 (conciliation officers, and miscellaneous and supplementary provisions).
- (3) The repeal by this section of the following provisions of the 1971 Act, that is to say, sections 7(2) and (3), 11 to 18, 31, 32, 37 to 55, 76, 77, 99, 101 to 105, 111, 112, 114, 115, 129, 136, 138 to 145 and 160 and Schedule 1 (jurisdiction, functions and constitution of the National Industrial Relations Court) shall take effect on the passing of this Act and on the passing of this Act that Court is hereby abolished.

*Status and regulation of trade unions and employers' associations*

## **2 Status of trade unions**

- (1) A trade union which is not a special register body shall not be, or be treated as if it were, a body corporate, but—
  - (a) it shall be capable of making contracts;

- (b) all property belonging to the trade union shall be vested in trustees in trust for the union;
  - (c) subject to section 14 below, it shall be capable of suing and being sued in its own name, whether in proceedings relating to property or founded on contract or tort or any other cause of action whatsoever ;
  - (d) proceedings for any offence alleged to have been committed by it or on its behalf may be brought against it in its own name; and
  - (e) any judgment, order or award made in proceedings of any description brought against the trade union on or after the commencement of this section shall be enforceable, by way of execution, diligence, punishment for contempt or otherwise, against any property held in trust for the trade union to the like extent and in the like manner as if the union were a body corporate.
- (2) A trade union which is not a special register body shall not be registered as a company under the Companies Act 1948 and accordingly any registration of any such union under that Act (whenever effected) shall be void.
- (3) No trade union shall be registered under the Friendly Societies Act 1896 or the Industrial and Provident Societies Act 1965 and accordingly any registration of a trade union under either of those Acts (whenever effected) shall be void.
- (4) A trade union (other than a special register body) which, immediately before the commencement of this section, was a body corporate shall, on that commencement, cease to be a body corporate and the provisions of section 19 below (as well as this section and section 4 below) shall apply to the trade union on and after that commencement.
- (5) The purposes of any trade union which is not a special register body and, in so far as they relate to the regulation of relations between employers or employers' associations and workers, the purposes of any trade union which is such a body, shall not, by reason only that they are in restraint of trade, be unlawful so as—
- (a) to make any member of the trade union liable to criminal proceedings for conspiracy or otherwise; or
  - (b) to make any agreement or trust void or voidable ;
- nor shall any rule of a trade union which is not a special register body or, in so far as it so relates, any rule of any other trade union be unlawful or unenforceable by reason only that it is in restraint of trade.

### **3 Status of employers' associations**

- (1) An employers' association may be either a body corporate or an unincorporated association.
- (2) Where an employers' association is unincorporated—
- (a) it shall be capable of making contracts ;
  - (b) all property belonging to the employers' association shall be vested in trustees in trust for the association;
  - (c) subject to section 14 below, it shall be capable of suing and being sued in its own name, whether in proceedings relating to property or founded on contract or tort or any other cause of action whatsoever;
  - (d) proceedings for any offence alleged to have been committed by it or on its behalf may be brought against it in its own name ; and

- (e) any judgment, order or award made in proceedings of any description brought against the employers' association on or after the commencement of this section shall be enforceable, by way of execution, diligence, punishment for contempt or otherwise, against any property held in trust for the employers' association to the like extent and in the like manner as if the association were a body corporate.
- (3) Any employers' association which became a body corporate by virtue of section 74 of the 1971 Act shall cease to be a body corporate by virtue of that section at the expiration of the period of six months beginning with the commencement of this section and the provisions of section 19 below (as well as this section and section 4 below) shall apply to it on and after the expiration of that period, unless before the expiration of that period it has again become a body corporate.
  - (4) Nothing in section 434 of the Companies Act 1948 (associations of over twenty members for certain purposes must be incorporated or otherwise formed in special ways) shall be taken to prevent the formation of an employers' association which is neither registered as a company under that Act nor otherwise incorporated.
  - (5) The purposes of an unincorporated employers' association and, in so far as they relate to the regulation of relations between employers and workers or trade unions, the purposes of an employers' association which is a body corporate, shall not, by reason only that they are in restraint of trade, be unlawful so as—
    - (a) to make any member of the association liable to criminal proceedings for conspiracy or otherwise; or
    - (b) to make any agreement or trust void or voidable;nor shall any rule of an unincorporated employers' association or, in so far as it so relates, any rule of an employers' association which is a body corporate be unlawful or unenforceable by reason only that it is in restraint of trade.

#### **4 Supplementary provisions about property of trade unions and unincorporated employers' associations**

- (1) Sections 39 and 40 of the Trustee Act 1925 and sections 38 and 39 of the Trustee Act (Northern Ireland) 1958 (vesting of property on retirement of trustee or appointment of new trustee) shall, in their application to trustees in whom any property is vested in trust for a trade union or an unincorporated employers' association to which this subsection applies, each have effect as if for any reference to a deed there were substituted a reference to an instrument in writing and as if in subsection (4) of section 40 of the said Act of 1925 and of section 39 of the said Act of 1958 paragraphs (a) and (c) were omitted.
- (2) Subsection (1) above applies to a trade union (other than a special register body) and to an unincorporated employers' association whose name is (in either case) for the time being entered in the list of trade unions or of employers' associations under section 8 below.
- (3) An instrument in writing appointing a new trustee of a trade union or unincorporated employers' association to which subsection (1) above applies is referred to in this section as an "instrument of appointment" and an instrument in writing discharging a trustee of such a union or association is referred to as an "instrument of discharge"; and for the purposes of this section (and the sections of the Acts of 1925 and 1958 applied by subsection (1) above), where a trustee of such a union or association is appointed or discharged by a resolution taken by or on behalf of the union or

association, the written record of the resolution shall be treated as if it were the instrument in writing appointing or, as the case may be, discharging that trustee.

(4) Where by any enactment or instrument the transfer of securities of any description is required to be effected or recorded by means of entries in a register, then, if—

- (a) there is produced to the person who is authorised or required to keep the register, a copy of an instrument of appointment or of an instrument of discharge which contains or has attached to it a list identifying the securities of that description held in trust for the union or association to which the instrument relates at the date of the appointment or discharge; and
- (b) it appears to that person that any of the securities so identified are included in the register kept by him,

he shall, notwithstanding anything in section 75 or 117 of the Companies Act 1948 or any other enactment or instrument regulating the keeping of the register, make such entries as may be necessary to give effect to the instrument of appointment or of discharge.

(5) A document which purports to be a copy of an instrument of appointment or of an instrument of discharge containing or having attached to it such a list and to be certified to be a copy of such an instrument in accordance with subsection (6) below shall be taken to be a copy of such an instrument unless the contrary is proved.

(6) The certificate referred to in subsection (5) above shall be given by the president and general secretary (or persons occupying positions equivalent to those of president and general secretary) of the union or association to which the instrument relates and, in the case of an instrument to which the list of securities is attached, shall appear both on the instrument and on the list.

(7) Nothing done for the purposes of or in pursuance of subsection (4) above shall be taken to affect any person with notice of any trust or to impose on any person a duty to inquire into any matter.

(8) In relation to a trade union or an employers' association whose principal office is situated in Scotland, references in this section to the appointment and to the discharge of a trustee shall be construed as including respectively references to the assumption and to the resignation of a trustee, and references to an instrument appointing, and to an instrument discharging, a trustee shall be construed accordingly.

## **5 Rights of workers as to arbitrary or unreasonable exclusion or expulsion from trade union**

(1) Subject to the provisions of this section, every worker shall have the right not to be—

- (a) excluded from membership,
- (b) expelled from membership,

of a trade union or a branch or section of a trade union by way of arbitrary or unreasonable discrimination.

(2) The exclusion or expulsion of a worker from membership of a union, branch or section shall not be deemed to be arbitrary or unreasonable if the worker is of a description different from that or those of the majority of the members of that union, branch or section (as the case may be) or does not possess the appropriate qualifications for such membership.

- (3) A worker aggrieved by his exclusion or expulsion from any trade union, branch or section may apply to an industrial tribunal in accordance with industrial tribunal regulations for a declaration that he is entitled to be a member of that union, branch or section.
- (4) Where any such declaration has been made and has not been implemented by the union, branch or section concerned within any period specified in the declaration or if no such period is specified within a reasonable period, the worker may apply to the High Court or, in Scotland, the Court of Session for an injunction, interdict or such other relief (including compensation) as the Court may think just and expedient in all the circumstances of the case.
- (5) Nothing in this section or section 2(5) above shall prejudice or in any way reduce the common law rights of a person who has applied to join, but not been given membership of, or who claims to be and to remain a member of, or who has been expelled from, a trade union.

## **6 Provisions as to rules of trade unions and employers' associations**

- (1) The rules of every trade union and employers' association shall contain provisions in respect of the matters mentioned in the following subsections of this section.
- (2) The rules must specify the name of the trade union or employers' association, the address of its principal office and the objects for which it was established.
- (3) The rules must make provision as to the purposes for which, and the manner in which, any property or funds of the trade union or employers' association are authorised to be applied or invested.
- (4) If any financial benefits are to be available for members of the trade union or employers' association out of its property or funds, the rules must make provision as to the amounts of those benefits and the circumstances in which they are to be available to members.
- (5) The rules must specify the manner in which any rules of the trade union or employers' association can be made, altered or revoked.
- (6) The rules must make provision for the election or appointment of officers and for the manner in which officers can be removed from office.
- (7) The rules must make provision—
  - (a) for the election of a governing body and for its re-election at reasonable intervals ;
  - (b) for the manner in which members of the governing body can be removed from office.
- (8) If the trade union or employers' association has officials (whether they are shop stewards, workplace representatives or other officials) who are not officers of the trade union or employers' association, the rules must make provision for their election or appointment and for the manner in which they can be removed from office.
- (9) The rules must make provision as to the manner in which, for any purposes of the trade union or employers' association, elections are to be held or ballots taken, including the following:—
  - (a) notification of vacancies and qualification of candidates ;

- (b) making of nominations ;
  - (c) canvassing or content of election addresses, where these are permitted;
  - (d) eligibility for voting in any such election or ballot;
  - (e) procedure preparatory to any election or ballot;
  - (f) the procedure for counting and scrutiny of the votes and ballot papers ; and
  - (g) the procedure for the declaration or notification of the result of any such election or ballot.
- (10) The rules must specify the descriptions of persons who are eligible for membership of the trade union or employers' association or a branch or section of the trade union or employers' association and the procedure for dealing with applications for membership, including provision for appeals against decisions of the committee or other body responsible for determining such applications.
- (11) The rules must specify—
- (a) the offences for which the trade union or employers' association is entitled under the rules to expel a member or take other disciplinary action, and the penalties applicable for each of those offences;
  - (b) the procedure for the hearing of cases in which offences against the rules are alleged ; and
  - (c) the procedure with respect to appeals against any decision on any such hearing.
- (12) The rules must prescribe a procedure for settling disputes between a member and the trade union or employers' association or an officer of the trade union or employers' association.
- (13) In making provision for any hearing or a determination of any question, whether in relation to an alleged offence, an appeal or a dispute, the rules shall be so framed as not to depart from, or permit any departure from, the rules of natural justice.

## **7 Right to terminate membership of trade union**

Every member of a trade union, or branch or section thereof, shall have the right, on giving reasonable notice and complying with any reasonable conditions, to terminate his membership at any time of the trade union or branch or section thereof.

## **8 Lists of trade unions and employers' associations**

- (1) The Registrar of Friendly Societies (in this Act referred to as the Registrar) shall maintain a list of trade unions and a list of employers' associations containing the names of those organisations which are entitled to have their names entered therein under the following provisions of this section.
- (2) The Registrar shall enter in the list of trade unions or employers' associations, as the case may be, the name of every organisation of workers or of employers which—
- (a) was on 30th September 1971 registered (whether by that or any other name) as a trade union under the Trade Union Acts 1871 to 1964 ; or
  - (b) has since that date been formed by the amalgamation of a number of such organisations each of which was so registered; or
  - (c) was immediately before the commencement of this section affiliated to the Trades Union Congress; or

- (d) was immediately before that commencement registered as a trade union under section 68(4) of the 1971 Act or as an employers' association under section 72(4) of that Act;
- except an organisation which appears to him not to be a trade union or, as the case may be, employers' association within the meaning of this Act.
- (3) Any organisation of workers or of employers, whenever formed, whose name is not entered in the relevant list may apply to the Registrar to have its name so entered and, subject to subsection (5) below, the Registrar shall, if satisfied that the organisation is a trade union or employers' association and that subsection (4) below has been complied with, enter the name of that organisation in the relevant list.
- (4) An application under subsection (3) above shall be made in such form and manner as the Registrar may require and be accompanied by a fee of £10 or such other fee as may be prescribed by regulations made by the Secretary of State and also by—
- (a) a copy of the rules of the organisation ;
  - (b) a list of its officers ;
  - (c) the address of its head or main office ; and
  - (d) the name under which it is or is to be known.
- (5) The Registrar shall not under subsection (3) above enter the name of an organisation in the relevant list if that name is—
- (a) the same as a name under which another organisation was registered as a trade union under the Trade Union Acts 1871 to 1964 on 30th September 1971 or was registered at any time as a trade union or employers' association under the 1971 Act or is for the time being entered in either list; or
  - (b) a name so nearly resembling any such name as to be likely to deceive the public.
- (6) If it appears to the Registrar, whether on application made to him or otherwise, that an organisation whose name is entered in the relevant list is not a trade union or employers' association or that its rules do not comply with the provisions of this Act, he may remove its name from the relevant list, but shall not do so without giving the organisation notice of his intention to do so and without considering any representations made to him by the organisation during a period specified in the notice (being not less than twenty-eight days beginning with the date of the notice).
- (7) Any organisation aggrieved by the refusal of the Registrar to enter its name in the relevant list or by a decision of his to remove its name from that list may appeal to the High Court, or in Scotland the Court of Session, within the time and in the manner directed by rules of court; and on any such appeal the Court, if satisfied that that name should be or remain so entered, shall declare that fact and give directions to the Registrar accordingly.
- (8) Rules of court may provide for excluding, in the case of appeals under subsection (7) above, so much of section 63(1) of the Supreme Court of Judicature (Consolidation) Act 1925 as requires appeals to the High Court to be heard and determined by a divisional court; but no appeal to the Court of Appeal shall be brought against a decision of the High Court on an appeal under that subsection except with the leave of the High Court or the Court of Appeal.
- (9) The Registrar shall at all reasonable hours keep available for public inspection (free of charge) copies of the lists of trade unions and employers' associations, as for the time being in force, and a copy of each list shall be included in the annual report made

by the Chief Registrar of Friendly Societies under section 6 of the Friendly Societies Act 1896.

- (10) On the application of any organisation whose name is included in the list of trade unions or employers' associations the Registrar shall issue it with a certificate that its name is included in the relevant list; and any document purporting to be such a certificate shall be evidence (and in Scotland sufficient evidence) that the name of the organisation is entered in the relevant list and that the organisation is a trade union or employers' association, as the case may be.

## **9 Application of existing Acts referring to registered trade unions, employers' associations, etc.**

- (1) An enactment passed, or an instrument made under an enactment, before the commencement of this section which refers (or is to be construed as referring) to a trade union registered under the Trade Union Acts 1871 to 1964 or a trade union or employers' association registered under the 1971 Act, shall, on and after that commencement, have effect as if it referred to a trade union or employers' association within the meaning of this Act.
- (2) Where an enactment passed, or an instrument made under an enactment, before the commencement of this section refers (or is to be construed as referring) to an organisation of workers or to an organisation of employers (within the meaning of the 1971 Act), it shall, on and after that commencement, have effect as if it referred to a trade union or an employers' association, as the case may be.
- (3) Subsections (1) and (2) above shall not apply to any enactment contained in the Income and Corporation Taxes Act 1970 or any other enactment relating to income tax or corporation tax.

## **10 Duty to keep accounting records**

- (1) This section applies to every trade union and every employers' association except one which consists wholly or mainly of representatives of constituent or affiliated organisations (of the description referred to in subsection (1)(b)(ii) or subsection (2)(b)(ii) of section 28 below).
- (2) Every trade union and every employers' association to which this section applies shall—
- (a) cause to be kept proper accounting records with respect to its transactions and its assets and liabilities ; and
  - (b) establish and maintain a satisfactory system of control of its accounting records, its cash holdings and all its receipts and remittances.
- (3) For the purposes of paragraph (a) above proper accounting records shall not be taken to be kept with respect to the matters mentioned in that paragraph if there are not kept such records as are necessary to give a true and fair view of the state of the affairs of the trade union or employers' association and to explain its transactions.
- (4) Where a trade union or employers' association consists of or includes branches or sections, then—
- (a) any duty falling upon the union or association in relation to a branch or section under this section shall be treated as having been discharged to the extent

to which a branch or section discharges that duty instead of the union or association ; and

- (b) any duty falling upon a branch or section under this section by reason of its being a trade union or employers' association shall be treated as having been discharged to the extent to which the union or association of which it is a branch or section discharges that duty instead of the branch or section.

## **11 Duties as to annual returns, auditors and members' superannuation schemes**

- (1) This section applies to every trade union and every employers' association to which section 10 above applies except a union or association which has been in existence for less than 12 months.
- (2) Every trade union and every employers' association to which this section applies shall send the Registrar as respects every calendar year a return relating to its affairs.
- (3) Every trade union and every employers' association to which this section applies shall appoint an auditor or auditors to audit the accounts contained in its annual return.
- (4) Every trade union and every employers' association to which this section applies shall at the request of any person, supply him with a copy of its rules and of its most recent annual return either free of charge or on payment of a reasonable charge.
- (5) The Registrar shall at all reasonable hours keep available for public inspection, either free of charge or on payment of a reasonable charge, copies of all annual returns sent to him under this section.
- (6) The provisions of Part I of Schedule 2 to this Act shall have effect with respect to the annual return and to the qualifications, appointment, removal and functions of auditors of trade unions and employers' associations to which this section applies.
- (7) The provisions of Part II of Schedule 2 to this Act shall have effect with respect to members' superannuation schemes maintained or to be maintained by trade unions or employers' associations to which this section applies.
- (8) Where a trade union or employers' association consists of or includes branches or sections, then—
  - (a) any duty falling upon the union or association in relation to a branch or section under this section or Schedule 2 to this Act shall be treated as having been discharged to the extent to which a branch or section discharges that duty instead of the union or association ; and
  - (b) any duty falling upon a branch or section under this section or Schedule 2 to this Act by reason of its being a trade union or employers' association shall be treated as having been discharged to the extent to which the union or association of which it is a branch or section discharges that duty instead of the branch or section.

## **12 Offences**

- (1) If a trade union or an employers' association refuses or wilfully neglects to perform a duty imposed on it by or under any of the provisions of section 10 or 11 above or Schedule 2 to this Act the trade union or employers' association shall be guilty of an offence.

- (2) Subject to subsection (3) below, any offence committed by a trade union or an employers' association under subsection (1) above shall be deemed to have been also committed by—
- (a) every officer of that trade union or employers' association who is bound by the rules of the union or association to discharge on its behalf the duty breach of which constitutes that offence ; or
  - (b) if there is no such officer, every member of the general committee of management of the union or association.
- (3) In any proceedings brought against an officer or member by virtue of subsection (2) above in respect of any breach of duty, it shall be a defence for him to prove that he had reasonable cause to believe, and did believe, that some other person who was competent to discharge that duty was authorised to discharge it instead of him and had discharged it or would do so.
- (4) A person who wilfully alters or causes to be altered a document which is required for the purposes of any of the provisions of section 10 or 11 above or Schedule 2 to this Act, with intent to falsify the document or to enable a trade union or employers' association to evade any of those provisions, shall be guilty of an offence.
- (5) For every offence committed under this section the trade union, employers' association or other person guilty of the offence shall be liable on summary conviction—
- (a) in the case of an offence under subsection (1) above, to a fine not exceeding £100 ;
  - (b) in the case of an offence under subsection (4) above, to a fine not exceeding £400.

*Restrictions on legal liability and legal proceedings*

**13 Acts in contemplation or furtherance of trade disputes**

- (1) An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable in tort on the ground only—
- (a) that it induces another person to break a contract of employment; or
  - (b) that it consists in his threatening that a contract of employment (whether one to which he is a party or not) will be broken or that he will induce another person to break a contract of employment to which that other person is a party.
- (2) For the avoidance of doubt it is hereby declared that an act done by a person in contemplation or furtherance of a trade dispute is not actionable in tort on the ground only that it is an interference with the trade, business or employment of another person, or with the right of another person to dispose of his capital or his labour as he wills.
- (3) For the avoidance of doubt it is hereby declared that—
- (a) an act which by reason of subsection (1) or (2) above is itself not actionable ;
  - (b) a breach of contract in contemplation or furtherance of a trade dispute ;
- shall not be regarded as the doing of an unlawful act or as the use of unlawful means for the purpose of establishing liability in tort.
- (4) An agreement or combination by two or more persons to do or procure the doing of any act in contemplation or furtherance of a trade dispute shall not be actionable in

tort if the act is one which, if done without any such agreement or combination, would not be actionable in tort.

#### **14 Immunity of trade unions and employers' associations to actions in tort**

- (1) Subject to subsection (2) below, no action in tort shall lie in respect of any act—
- (a) alleged to have been done by or on behalf of a trade union which is not a special register body or by or on behalf of an unincorporated employers' association ; or
  - (b) alleged to have been done, in connection with the regulation of relations between employers or employers' associations and workers or trade unions, by or on behalf of a trade union which is a special register body or by or on behalf of an employers' association which is a body corporate; or
  - (c) alleged to be threatened or to be intended to be done as mentioned in paragraph (a) or (b) above;
- against the union or association in its own name, or against the trustees of the union or association, or against any members or officials of the union or association on behalf of themselves and all other members of the union or association.
- (2) Subsection (1) above shall not affect the liability of a trade union or employers' association to be sued in respect of the following, if not arising from an act done in contemplation or furtherance of a trade dispute, that is to say—
- (a) any negligence, nuisance or breach of duty (whether imposed on them by any rule of law or by or under any enactment) resulting in personal injury to any person; or
  - (b) without prejudice to paragraph (a) above, breach of any duty so imposed in connection with the ownership, occupation, possession, control or use of property (whether real or personal or, in Scotland, heritable or moveable).
- (3) In this section " personal injury" includes any disease and any impairment of a person's physical or mental condition.

#### **15 Peaceful picketing**

It shall be lawful for one or more persons in contemplation or furtherance of a trade dispute to attend at or near—

- (a) a place where another person works or carries on business; or
- (b) any other place where another person happens to be, not being a place where he resides,

for the purpose only of peacefully obtaining or communicating information, or peacefully persuading any person to work or abstain from working.

#### **16 No compulsion to work**

No court shall, whether by way of—

- (a) an order for specific performance or specific implement of a contract of employment, or
- (b) an injunction or interdict restraining a breach or threatened breach of such a contract,

compel an employee to do any work or attend at any place for the doing of any work.

## 17 Restriction on grant of ex parte injunctions and interdicts

Where an application for an injunction or interdict is made to a court in the absence of the party against whom the injunction or interdict is sought or any representative of his, and that party claims, or in the opinion of the court would be likely to claim, that he acted in contemplation or furtherance of a trade dispute, the court shall not grant the injunction or interdict unless satisfied that all steps which in the circumstances were reasonable have been taken with a view to securing that notice of the application and an opportunity of being heard with respect to the application have been given to that party.

### *Collective Agreements*

## 18 Enforceability of collective agreements

- (1) Subject to subsection (3) below, any collective agreement made before 1st December 1971 or after the commencement of this section 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 intended that the agreement shall be a legally enforceable contract.
- (2) Any such agreement which satisfies the conditions in subsection (1)(a) and (b) above shall be conclusively presumed to have been intended by the parties to be a legally enforceable contract.
- (3) If any such agreement is in writing and contains a provision which (however expressed) states that the parties intend that one or more parts of the agreement specified in that provision, but not the whole of the agreement, shall be a legally enforceable contract, then—
  - (a) the specified part or parts shall be conclusively presumed to have been intended by the parties to be a legally enforceable contract; and
  - (b) the remainder of the agreement shall be conclusively presumed not to have been intended by the parties to be such a contract, but a part of an agreement which by virtue of this paragraph is not a legally enforceable contract may be referred to for the purpose of interpreting a part of that agreement which is such a contract.
- (4) Notwithstanding anything in subsections (2) and (3) above, any terms of a collective agreement (whether made before or after the commencement of this section) which prohibit or restrict the right of workers to engage in a strike or other industrial action, or have the effect of prohibiting or restricting that right, shall not form part of any contract between any worker and the person for whom he works unless the collective agreement—
  - (a) is in writing ; and
  - (b) contains a provision expressly stating that those terms shall or may be incorporated in such a contract; and
  - (c) is reasonably accessible at his place of work to the worker to whom it applies and is available for him to consult during working hours; and
  - (d) is one where each trade union which is a party to the agreement is an independent trade union;

and unless the contract with that worker expressly or impliedly incorporates those terms in the contract.

- (5) Subsection (4) above shall have effect notwithstanding any provision to the contrary in any agreement (including a collective agreement or a contract with any worker).

### *Miscellaneous*

## **19 Transitional provisions for trade unions and employers' associations ceasing to be incorporated**

- (1) The provisions of this section shall have effect in relation to a trade union or an employers' association to which they are applied by section 2(4) or 3(3) above; and in this section " the relevant date" means the day on which, under section 2(4) or 3(3) above, such a trade union or employers' association ceases to be a body corporate.
- (2) On the relevant date—
- (a) all property vested in the trade union or in the employers' association immediately before that date shall by virtue of this paragraph (and without the execution of any instrument) vest in the trustees who, in accordance with subsection (3) below, are the appropriate trustees;
  - (b) all liabilities, obligations and rights of the trade union or of the employer's association subsisting immediately before that date shall, in so far as they are liabilities, obligations or rights affecting any property so vested (instead of continuing to be liabilities, obligations or rights of the union or association) become liabilities, obligations and rights of the trustees who, in accordance with subsection (3) below, are the appropriate trustees.
- (3) The appropriate trustees for the purposes of subsection (2) above are—
- (a) the trustees appointed in writing for the purposes of this section by or on behalf of the members of the trade union or employers' association ;
  - (b) in a case where no such trustees are appointed, the official trustees of the trade union or employers' association.
- (4) A certificate given by the official trustees of a trade union or employers' association that the persons named in the certificate are the appropriate trustees of that union or association for the purposes of subsection (2) above shall be conclusive evidence that those persons are the appropriate trustees of that union or association for those purposes; and a document which purports to be such a certificate shall be taken to be such a certificate unless the contrary is proved.
- (5) In this section " official trustees ", in relation to a trade union or an employers' association, means the two officers of the union or association who, on the relevant date, are the president and the general secretary of the union or association or occupy a position equivalent to that of president and general secretary respectively of a trade union or employers' association.
- (6) Nothing in section 12 of the Finance Act 1895 (which requires certain Acts to be stamped as conveyances on sale) shall be taken as applying to this Act.

**20 Power to alter certain rules of trade unions restricting the application of funds**

- (1) Where during the period commencing with 1st December 1970 and ending with the passing of this Act a trade union has—
- (a) made or amended any rule of the union so as to preclude any particular fund belonging to or held in trust for the union from being used for financing strikes or other industrial action; and
  - (b) has declared in its rules that the rule or the rule as so amended shall be incapable of revocation or alteration ;
- then, notwithstanding the declaration, the rule so made or amended may, subject to subsection (2) below, be revoked or amended.
- (2) No rule of a trade union shall be revoked or amended by virtue of subsection (1) above after the expiration of the period of four years beginning with the date of the passing of this Act; and nothing in that subsection shall be taken to authorise the amendment or revocation of a rule of a trade union otherwise than in accordance with the procedural rules of that union.

**21 Effect of abolition of National Industrial Relations Court on pending proceedings and decisions given**

- (1) In this section and sections 22 and 23 below—
- " the Court " means the National Industrial Relations Court;
- " abate ", in relation to any proceedings, means that the proceedings shall be treated as discontinued and, in relation to any decision, means that the decision, so far as not enforced, shall be unenforceable;
- " decision " includes a judgment, order or award and any reference to the giving of a decision shall be construed accordingly;
- " pending " means pending immediately before the passing of this Act;
- and for the purposes of this section and those sections proceedings shall be treated as pending in the Court or an industrial tribunal until a final decision is given in those proceedings by the Court or the tribunal, as the case may be.
- (2) On the passing of this Act, except in so far as provision is made by subsections (3) to (7) below for proceedings of the descriptions mentioned in those subsections—
- (a) proceedings commenced in the Court before 30th April 1974 and pending in the Court shall be transferred by virtue of this paragraph to the High Court or the Court of Session;
  - (b) proceedings commenced in the Court on or after 30th April 1974 or any decision in those proceedings shall abate;
  - (c) any right of appeal against any such decision other than a right saved by section 23(1) below shall be extinguished and any appeal from any such decision or any decision on any such appeal shall abate.
- (3) Where a complaint has been presented to the Court under section 103 of the 1971 Act (complaints by Registrar against registered union or employers' association), then, if the complaint was presented before 30th April 1974 and is pending in the Court, the complaint shall, on the passing of this Act, be transferred by virtue of this subsection to an industrial tribunal.
- (4) Where an appeal arising out of any proceedings or decision of an industrial tribunal has been instituted in the Court, then—

- (a) in the case of an appeal which is pending in the Court and arose out of proceedings or a decision under the Contracts of Employment Act 1972 or the Redundancy Payments Act 1965 or on a complaint under the 1971 Act by an employee that he has been unfairly dismissed by his employer, the appeal shall on the passing of this Act be transferred by virtue of this paragraph, to the High Court or the Court of Session;
  - (b) in the case of an appeal of any other description, the appeal shall, if the proceedings in the industrial tribunal were commenced before 30th April 1974 and the appeal is pending in the Court, be transferred by virtue of this paragraph on the passing of this Act to the High Court or the Court of Session;
  - (c) in the case of an appeal of a description referred to in paragraph (b) above, where the proceedings in the industrial tribunal were commenced on or after 30th April 1974, the appeal or any decision on the appeal shall on the passing of this Act abate.
- (5) Where an appeal arising out of proceedings before the Chief Registrar of Trade Unions and Employers' Associations or any assistant registrar of his has been instituted and is pending in the Court, then—
- (a) if the decision appealed from was made under any provision of the Trade Union Act 1913 (funds for political purposes), the appeal shall on the passing of this Act be transferred by virtue of this paragraph to the High Court or the Court of Session;
  - (b) if the appeal is by way of case stated in proceedings on a complaint under section 4 of the Trade Union (Amalgamations, etc.) Act 1964 (complaints about resolutions to amalgamate), the appeal shall on the passing of this Act be so transferred by virtue of this paragraph ;
  - (c) if the appeal arises out of any other proceedings, the appeal or any decision on the appeal shall on the passing of this Act abate.
- (6) Where a complaint has been transferred by an industrial tribunal to the Court by virtue of section 111 of the 1971 Act and is pending in the Court, then—
- (a) in the case of a complaint by an employee that he has been unfairly dismissed by his employer, the complaint shall on the passing of this Act be transferred by virtue of this paragraph back to the tribunal from which it was so transferred;
  - (b) in the case of a complaint of any other description presented before 30th April 1974, the complaint shall on the passing of this Act be transferred by virtue of this paragraph back to the tribunal from which it was so transferred;
  - (c) in the case of a complaint of a description referred to in paragraph (b) above presented on or after 30th April 1974, the complaint or any decision on the complaint shall on the passing of this Act abate.
- (7) Where, under any provision of the 1971 Act, proceedings have been commenced in the Court at any time with a view to the making of a reference or request to the Commission on Industrial Relations, then—
- (a) if the proceedings are pending in the Court and no reference or request has been made in the proceedings, those proceedings shall on the passing of this Act abate;
  - (b) if a reference or request so made in those proceedings is outstanding immediately before the passing of this Act, the reference or request shall be treated as withdrawn on the passing of this Act, and, subject to subsection (10) below, those proceedings shall then abate ;

- (c) any order of the Court made in proceedings resulting from a reference or request to that Commission shall cease to have effect on the passing of this Act.
- (8) Where proceedings are transferred by virtue of subsection (2), (4) or (5) above, the proceedings shall be transferred, in the case of proceedings in England and Wales, to the High Court and, in the case of proceedings in Scotland, to the Court of Session and may be continued there accordingly.
- (9) Rules of court relating to proceedings so transferred may provide for excluding so much of section 63(1) of the Supreme Court of Judicature (Consolidation) Act 1925 as requires appeals to the High Court to be heard and determined by a divisional court; but no appeal to the Court of Appeal shall be brought against a decision of the High Court on an appeal transferred by virtue of any provision of this section except with the leave of the High Court or the Court of Appeal.
- (10) Where a reference or a request by the Court to the Commission on Industrial Relations is treated as withdrawn by virtue of subsection (7)(b) above, the Secretary of State may authorise the Commission to make a report of its findings and recommendations on that reference or request to those persons appearing to the Commission to be directly concerned, and to arrange for the report to be published in such manner as the Commission consider appropriate; and paragraph 43(1) of Schedule 3 to the 1971 Act (disclosure of information) shall not apply to that report.

## **22 Effect of repeals on pending proceedings and decisions given by industrial tribunals**

Where a complaint, other than a complaint that an employee has been unfairly dismissed by his employer, has been presented to an industrial tribunal under any provision of the 1971 Act on or after 30th April 1974, then, when the repeal of that provision by this Act takes effect—

- (a) the complaint or any decision on the complaint shall abate;
- (b) any right of appeal against any such decision which is exercisable before that repeal takes effect shall be extinguished;
- (c) any appeal from any such decision or any decision on any such appeal shall abate.

## **23 Provisions supplementary to sections 21 and 22**

- (1) A decision given by the Court before the passing of this Act—
  - (a) in proceedings commenced in the Court before 30th April 1974;
  - (b) on an appeal instituted in the Court on or after 30th April 1974 in proceedings in which, if the appeal had been pending in the Court immediately before the passing of this Act, the appeal would have been transferred by virtue of any provision of section 21 above; or
  - (c) on a complaint which, if it had been pending in the Court immediately before the passing of this Act, would have been transferred back to an industrial tribunal by virtue of section 21(6) above ;

may, so far as not enforced, be enforced after the passing of this Act as if it were a judgment of the High Court or the Court of Session, and any right of appeal from such a decision to the Court of Appeal or the Court of Session exercisable under paragraph 29 of Schedule 3 to the 1971 Act (appeals) shall continue to be exercisable, and any

appeal from such a decision (whether instituted before or after the passing of this Act) shall be heard and determined accordingly, after the repeal of that paragraph by this Act takes effect.

- (2) Without prejudice to section 38 of the Interpretation Act 1889 (effect of repeals) any decision given by any court or tribunal—
  - (a) in any proceedings (including proceedings under the 1971 Act) before the repeal by this Act of sections 153 and 154 of the 1971 Act (enforcement) takes effect, or
  - (b) in any proceedings transferred to any court by virtue of any provision of section 21 above ;

and falling to be enforced to any extent after that repeal takes effect shall not be enforceable against property of any description against which it would not have been enforceable before that repeal takes effect by virtue of any provision of the said section 153 or 154, as the case may be.

- (3) Where any right, obligation or liability has accrued or been incurred under any provision of the 1971 Act (other than a provision re-enacted in Schedule 1 to this Act) before the repeal of that provision by this Act takes effect, but no proceedings have been commenced in any court or tribunal to enforce that right, obligation or liability, no proceedings to enforce it (directly or indirectly and by whatever means) shall be commenced in any court or tribunal after that repeal takes effect.
- (4) If on an appeal from the Court after the passing of this Act the Court of Appeal would have exercised a power to order a new trial by the Court, the Court of Appeal shall order the re-hearing to be by the High Court.

## **24 Power to compensate for loss of office**

- (1) If it appears to the Secretary of State that a person who ceases to be a member of the Commission on Industrial Relations by reason of its abolition by this Act should receive compensation for loss of office, he may pay him out of moneys provided by Parliament such sum as he may with the approval of the Minister for the Civil Service determine.
- (2) If it appears to the Lord Chancellor that a person who ceases to be a member of the National Industrial Relations Court by reason of its abolition by this Act should receive compensation for loss of office, he may pay him out of moneys provided by Parliament such sum as he may with the approval of the Minister for the Civil Service determine.

## **25 Miscellaneous amendments, and transitional provisions and repeals**

- (1) Schedule 3 to this Act shall have effect for undoing certain amendments and repeals made by the 1971 Act in certain enactments specified in that Schedule, for continuing the effect of other amendments so made and for making minor amendments and amendments consequential on other provisions of this Act in other enactments so specified.
- (2) The transitional provisions in Schedule 4 shall have effect.
- (3) The enactments specified in Schedule 5 are hereby repealed to the extent specified in the third column of that Schedule.

### *Supplementary*

#### **26 Regulations and orders**

- (1) The Secretary of State may make regulations for any purpose for which regulations are authorised or required to be made under this Act.
- (2) Any power to make regulations under this Act shall be exercisable by statutory instrument.
- (3) A statutory instrument containing any such regulations, other than regulations required to be laid in draft before Parliament before being made, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Any power to make an order under any provision of this Act shall include power to revoke or vary the order by a subsequent order under that provision.

#### **27 Expenses**

There shall be defrayed out of moneys provided by Parliament—

- (a) any administrative expenses incurred by the Secretary of State in consequence of the provisions of this Act; and
- (b) any increase attributable to the provisions of this Act in the sums payable out of moneys so provided under any other enactment.

#### **28 Meaning of trade union and employers' association**

- (1) In this Act, except so far as the context otherwise requires, " trade union " means an organisation (whether permanent or temporary) which either—
  - (a) consists wholly or mainly of workers of one or more descriptions and is an organisation whose principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers' associations; or
  - (b) consists wholly or mainly of—
    - (i) constituent or affiliated organisations which fulfil the conditions specified in paragraph (a) above (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions), or
    - (ii) representatives of such constituent or affiliated organisations;and in either case is an organisation whose principal purposes include the regulation of relations between workers and employers or between workers and employers' associations, or include the regulation of relations between its constituent or affiliated organisations.
- (2) In this Act, except so far as the context otherwise requires, " employers' association " means an organisation (whether permanent or temporary) which either—
  - (a) consists wholly or mainly of employers or individual proprietors of one or more descriptions and is an organisation whose principal purposes include the regulation of relations between employers of that description or those descriptions and workers or trade unions; or
  - (b) consists wholly or mainly of—

- (i) constituent or affiliated organisations which fulfil the conditions specified in paragraph (a) above (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions), or
  - (ii) representatives of such constituent or affiliated organisations;
- and in either case is an organisation whose principal purposes include the regulation of relations between employers and workers or between employers and trade unions, or include the regulation of relations between its constituent or affiliated organisations.

## 29 Meaning of trade dispute

- (1) In this Act " trade dispute " means a dispute between employers and workers, or between workers and workers, which is connected with one or more of the following, that is to say—
- (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 as between workers or groups of workers ;
  - (d) matters of discipline ;
  - (e) the membership or non-membership of a trade union on the part of a worker ;
  - (f) facilities for officials of trade unions ; and
  - (g) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures.
- (2) A dispute between a Minister of the Crown and any workers shall, notwithstanding that he is not the employer of those workers, be treated for the purposes of this Act as a dispute between employer and those workers if the dispute relates—
- (a) to matters which have been referred for consideration by a joint body on which, by virtue of any provision made by or under any enactment, that Minister is represented ; or
  - (b) to matters which cannot be settled without that Minister exercising a power conferred on him by or under an enactment.
- (3) There is a trade dispute for the purposes of this Act even though it relates to matters occurring outside Great Britain, so long as the person or persons whose actions in Great Britain are said to be in contemplation or furtherance of a trade dispute relating to matters occurring outside Great Britain are likely to be affected in respect of one or more of the matters specified in subsection (1) of this section by the outcome of that dispute.
- (4) A dispute to which a trade union or employers' association is a party shall be treated for the purposes of this Act as a dispute to which workers or, as the case may be, employers are parties.
- (5) An act, threat or demand done or made by one person or organisation against another which, if resisted, would have led to a trade dispute with that other, shall, notwithstanding that because that other submits to the act or threat or accedes to the

demand no dispute arises, be treated for the purposes of this Act as being done or made in contemplation of a trade dispute with that other.

(6) In this section—

" employment " includes any relationship whereby one person personally does work or performs services for another;

" worker ", in relation to a dispute to which an employer is a party, includes any worker even if not employed by that employer.

(7) In the Conspiracy and Protection of Property Act 1875 " trade dispute " has the same meaning as in this Act.

### **30 General provisions as to interpretation**

(1) In this Act, except so far as the context otherwise requires,—

" act " and " action " each includes omission and references to doing an act or taking action shall be construed accordingly;

" 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 mentioned in section 29(1) above ;

" contract of employment " means a contract of service or of apprenticeship, whether it is express or implied and (if it is express) whether it is oral or in writing;

" dismissal procedures agreement " means an agreement in writing with respect to procedures relating to dismissal made by or on behalf of one or more independent trade unions and one or more employers or employers' associations ;

" employee " means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment, otherwise than in police service ;

" employers' association " includes a combination of employers and employers' associations ;

" independent trade union " means a trade union which—

(a) is not under the domination or control of an employer or a group of employers or of one or more employers' associations; and

(b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control;

" individual proprietor " means an individual who is the owner of an undertaking ;

" 1971 Act " means the Industrial Relations Act 1971 ;

" official ", in relation to a trade union, means any person who is an officer of the union or of a branch or section of the union or who (not being such an officer) is a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them, including any person so elected or appointed who is an employee of the same employer as the members, or one or more of the members, whom he is to represent;

" police service " means service—

(a) in England and Wales as a member of a police force or as a special constable ;

- (b) as a constable within the meaning of the Police (Scotland) Act 1967 ;
- (c) as a member of any constabulary maintained by virtue of any enactment;  
or
- (d) in any other capacity by virtue of which a person has the powers or privileges of a constable;

" position ", in relation to an employee, means the following matters taken as a whole, that is to say, his status as an employee, the nature of his work and his terms and conditions of employment;

" Registrar " has the meaning assigned to it by section 8(1) above;

" special register body " means an organisation whose name was immediately before the commencement of sections 2 and 3 above entered in the special register maintained under section 84 of the 1971 Act and which for the time being is a company registered under the Companies Act 1948 or is incorporated by charter or letters patent;

" tort ", as respects Scotland, means any wrongful or negligent act giving rise to liability in reparation, and cognate expressions shall be construed accordingly;

" union membership agreement " means an agreement or arrangement which—

- (a) is made by or on behalf of, or otherwise exists between, one or more independent trade unions and one or more employers or employers' associations ; and
- (b) relates to employees of an identifiable class; and
- (c) has the effect of requiring the terms and conditions of employment of every employee of that class to include a condition that he must be or become a member of the union or one of the unions which is or are parties to the agreement or arrangement or of another appropriate independent trade union;

" worker " (subject to the following provisions of this section) means an individual regarded in whichever (if any) of the following capacities is applicable to him, that is to say, as a person who works or normally works or seeks to work—

- (a) under a contract of employment; or
- (b) under any other contract (whether express or implied, and, if express, whether oral or in writing) whereby he undertakes to do or perform personally any work or services for another party to the contract who is not a professional client of his; or
- (c) in employment under or for the purposes of a government department (otherwise than as a member of the naval, military or air forces of the Crown or of any women's service administered by the Defence Council) in so far as any such employment does not fall within paragraph (a) or (b) above,

otherwise than in police service.

- (2) Without prejudice to the generality of the definitions in subsection (1) of this section, in this Act—

- (a) " worker" includes an individual regarded in his capacity as one who works or normally works or seeks to work as a person providing general medical services, pharmaceutical services, general dental services or general ophthalmic services in accordance with arrangements made by an Area Health

Authority or Family Practitioner Committee under section 33, section 38, section 40 or section 41 of the National Health Service Act 1946 or by a Health Board under section 34, section 39, section 40 or section 42 of the National Health Service (Scotland) Act 1947; and

- (b) "employer" includes any Area Health Authority, Family Practitioner Committee or Health Board in accordance with whose arrangements a person provides or has provided or normally provides or seeks to provide any such service as aforesaid.
- (3) Subject to subsection (4) below, in this Act "successor", in relation to the employer of an employee, means a person who, in consequence of a change occurring (whether by virtue of a sale or other disposition or by operation of law) in the ownership of the undertaking or of part of the undertaking for the purposes of which the employee was employed, has become the owner of that undertaking or of that part of it, as the case may be.
- (4) Subsection (3) above shall have effect (subject to the necessary modifications) in relation to a case where—
- (a) the person by whom an undertaking or part of an undertaking is owned immediately before a change is one of the persons by whom (whether as partners, trustees or otherwise) it is owned immediately after the change, or
  - (b) the persons by whom an undertaking or part of an undertaking is owned immediately before a change (whether as partners, trustees or otherwise) include the persons by whom, or include one or more of the persons by whom, it is owned immediately after the change,
- as that subsection has effect where the previous owner and the new owner are wholly different persons; and any reference in this Act to a successor of an employer shall be construed accordingly.
- (5) For the purposes of this Act any two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control; and in this Act "associated employer" shall be construed accordingly.
- (6) For the purposes of this Act it is immaterial whether the law which (apart from this Act) governs any persons' employment is the law of the United Kingdom, or of a part of the United Kingdom, or not.
- (7) Except so far as the context otherwise requires, any reference in this Act to any enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.

### **31 Short title, commencement and extent**

- (1) This Act may be cited as the Trade Union and Labour Relations Act 1974.
- (2) This Act, except as provided by section 1(3) above and except sections 21 to 23 above, shall come into operation on such day as the Secretary of State may appoint by order made by statutory instrument, and different days may be so appointed for different purposes.
- (3) Any reference in this Act to the commencement of any provision of this Act shall be construed as a reference to the day appointed under this section for the coming into operation of that provision.

- (4) An order made under this section may make such transitional provision or savings as appear to the Secretary of State to be necessary or expedient in connection with the provisions of this Act which are thereby brought (wholly or in part) into operation, including such adaptations of those provisions or of any provision of this Act then in force as appear to the Secretary of State to be necessary or expedient in consequence of the partial operation of this Act (whether before, on or after the day appointed by the order).
- (5) The following provisions of this Act shall extend to Northern Ireland, that is to say, sections 4 and 19 and any provision of Schedule 3 or 5 to this Act which amends or repeals any provision of the House of Commons Disqualification Act 1957, the Trade Union (Amalgamations, etc.) Act (Northern Ireland) 1965, the Insurance Companies Act (Northern Ireland) 1968, the Merchant Shipping Act 1970 or the Insurance Companies Amendment Act 1973 or repeals any provision of the 1971 Act which extends to Northern Ireland, but except as aforesaid this Act shall not extend there.