



# Employment Act 1988

## 1988 CHAPTER 19

### PART I

#### TRADE UNIONS

##### *Rights of trade union members*

#### **1 Right to a ballot before industrial action.**

- (1) A member of a trade union who claims [<sup>F1</sup>that members of the union, including himself, are likely to be or have been induced by the union to take part or to continue to take part in industrial action which does not have the support of a ballot] may apply to the court for an order under this section.
- (2) Where, on an application under this section, the court is satisfied [<sup>F2</sup>that the application is well-founded]the court shall make such order as it considers appropriate for requiring the union to take steps . . . <sup>F3</sup>for ensuring that there is no, or no further, inducement of members of the union to take part or to continue to take part in that action and that no such member engages in any conduct after the making of the order by virtue of having been induced before the making of the order to take part or to continue to take part in the action.
- (3) [<sup>F4</sup>For the purposes of this section an act shall be taken to have been done by a trade union if it was authorised or endorsed by the union; and the provisions of subsections (3) to (7) of section 15 of the Employment Act 1982 apply for the purpose of determining whether an act is to be taken to have been so authorised or endorsed.

Those provisions also apply in relation to proceedings for failure to comply with an order under this section as they apply in relation to the original proceedings.]

- (4) . . . . . <sup>F4</sup>
- (5) For the purposes of an application under this section . . . <sup>F5</sup> industrial action is without the support of a ballot unless—
  - (a) the trade union has held one or more ballots in respect of that action;

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- (b) the applicant has been accorded entitlement to vote in the ballot or, as the case may be, in one of them;
  - (c) section 11 of the 1984 Act (requirements to be satisfied in relation to ballots on industrial action) has been satisfied in relation to the ballot in which the applicant was accorded entitlement to vote;
  - (d) the majority voting in that ballot have answered “Yes”—
    - (i) in the case of action which consists in a strike, to a question (however framed) which requires the person answering it to say, by answering “Yes” or “No”, whether he is prepared to take part or, as the case may be, to continue to take part in a strike;
    - (ii) in the case of action which consists in action short of a strike, to a question (however framed) which requires the person answering it to say, by answering “Yes” or “No”, whether he is prepared to take part or, as the case may be, to continue to take part in such action;
    - (iii) in the case of action which consists in action to which both of the questions mentioned in sub-paragraphs (i) and (ii) above are applicable, to the question or questions applicable to that part of the action in which the applicant is likely to be, or has been, induced to take part or to continue to take part;
  - and
  - (e) [<sup>F6</sup>the requirements of section 7 of the Employment Act 1990 are satisfied.]
- (6) In this section references to an inducement, in relation to a member of a trade union, include references to an inducement which is or would be ineffective, whether because of that member’s unwillingness to be influenced by it or for any other reason.
- (7) In this section—
- “date of the ballot” has the same meaning as in Part II of the 1984 Act;
  - “industrial action” means any strike or other industrial action by persons employed under contracts of employment;
  - “strike” means any concerted stoppage of work.
- (8) Nothing in this section shall be construed as requiring a trade union to hold separate ballots

#### Textual Amendments

- F1** Words substituted by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(1), **Sch. 2 para. 3(2)** (subject as mentioned in [S.I. 1990/2378](#), **art. 6(b)**)
- F2** Words substituted for S. 1(2)(a)–(c) by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(1), **Sch. 2 para. 3(3)** (subject as mentioned in [S.I. 1990/2378](#), **art. 6(b)**)
- F3** Words repealed by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(1)(2), Sch. 2 para. 3(3), **Sch. 3**
- F4** [S. 1\(3\)](#) substituted for [S. 1\(3\)\(4\)](#) by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(1), **Sch. 2 para. 3(4)** (subject as mentioned in [S.I. 1990/2378](#), **art. 6(b)**)
- F5** Words repealed by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(1)(2), Sch. 2 para. 3(5), **Sch. 3** (subject as mentioned in [S.I. 1990/2378](#), **art. 6(b)**)
- F6** [S. 1\(5\)\(e\)](#) substituted by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 16(1), **Sch. 2 para. 3(5)**

#### Modifications etc. (not altering text)

- C1** [S. 1](#) amended by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), **ss. 5(1)**, 7(2)

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## **2 Right not to be denied access to the courts etc.**

- (1) Notwithstanding anything in the rules of any trade union or in the practice of any court, where—
  - (a) a person who is or has been a member of a trade union commences proceedings in any court with respect to any relevant matter;
  - (b) that person has previously made a valid application to the union for that matter to be submitted for determination or conciliation in accordance with the union's rules; and
  - (c) those proceedings are commenced after the end of the period of six months beginning with the day on which the union received the application,the rules requiring or allowing that matter to be so submitted and the fact that any steps remain to be taken for the purposes of, or in connection with, the determination or conciliation of that matter shall be regarded for all purposes as irrelevant to any question whether those proceedings should be dismissed, stayed or sisted, or adjourned.
- (2) If a court is satisfied in any proceedings with respect to any relevant matter that any delay in the taking of steps for the purposes of, or in connection with, the determination or conciliation of that matter in accordance with the rules of any trade union was attributable to the unreasonable conduct of the person who commenced the proceedings, the court may, in relation to those proceedings, treat the period of six months specified in paragraph (c) of subsection (1) above as extended by such further period as the court considers appropriate.
- (3) Where any person has made an invalid application to a trade union for any relevant matter to be submitted for determination or conciliation in accordance with the union's rules, the application shall be deemed to be valid for the purposes of subsection (1) above unless the union informs that person, before the end of the period of twenty-eight days beginning with the day on which the union received the application, of all the respects in which the application contravened the requirements of those rules.
- (4) For the purposes of this section a matter is a relevant matter, in relation to a person who is or has been a member of a trade union, if—
  - (a) it is required or allowed under the rules of the union to be submitted for determination or conciliation in accordance with those rules; and
  - (b) a provision of the rules purporting to provide for such a determination or conciliation to be that person's only remedy in respect of that matter has no effect or, as the case may be, would have no effect if there were one.
- (5) In this section—
  - (a) references, in relation to a trade union, to its rules include references to any arbitration or other agreement entered into in pursuance of any requirement imposed by or under the rules of the union; and
  - (b) references to the taking of steps for the purposes of, or in connection with, the determination or conciliation of any matter which has been submitted for determination or conciliation in accordance with the rules of a trade union include references to the taking of any steps for the purposes of, or in connection with, any appeal, review or reconsideration under those rules of any determination or award made on that submission.
- (6) This section shall be without prejudice to any enactment or rule of law by virtue of which a court would, apart from this section, disregard any rules of a trade union, or

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any such fact as is mentioned in subsection (1) above, when determining whether to exercise any jurisdiction of the court or when determining how to exercise any such jurisdiction.

### **3 Right not to be unjustifiably disciplined.**

- (1) An individual who is or has at any time been a member of a trade union shall have the right not to be unjustifiably disciplined by that union.
- (2) For the purposes of this section and sections 4 and 5 below an individual who is disciplined by a trade union is unjustifiably disciplined if the actual or supposed conduct which constitutes the reason, or one of the reasons, for disciplining him is—
  - (a) conduct falling within subsection (3) below; or
  - (b) something which is believed by the union to amount to any such conduct.
- (3) Conduct by an individual falls within this subsection if—
  - (a) it consists in a failure to participate in or support any strike or other industrial action (whether by members of the trade union in question or by others) or indicates opposition to, or a lack of support for, any such strike or industrial action;
  - (b) it consists in a failure to contravene, for any purpose connected with any such strike or other industrial action, any requirement imposed on that individual by or under a contract of employment or any other agreement between that individual and a person for whom he works or normally works;
  - (c) it consists in the making (whether by the bringing of proceedings or otherwise) of any assertion that the union, any official or representative of the union or any trustee of any of the union's property has contravened, or is proposing to contravene, any requirement which is, or is thought to be, imposed by or under the rules of the union or any other agreement or by or under any enactment or rule of law;
  - (d) it consists in encouraging or assisting any person to perform an obligation imposed on that person by a contract of employment or any other agreement between that person and a person for whom he works or normally works or to make or to attempt to vindicate any such assertion as is mentioned in paragraph (c) above;
  - (e) it involves the Commissioner or the Certification Officer being consulted or asked to provide advice or assistance with respect to any matter whatever or involves any other person being consulted or asked to provide advice or assistance with respect to a matter which forms, or might form, the subject matter of any such assertion as is mentioned in paragraph (c) above;
  - (f) it consists in a contravention of any requirement imposed by or in consequence of any determination constituting an infringement of the right under this section of that individual or of any other individual; or
  - (g) it consists in proposing to engage in conduct falling within any of paragraphs (a) to (f) above or in doing anything preparatory or incidental to engaging in any such conduct;

but an act, omission or statement by any individual does not fall within this subsection by reason of its being comprised in conduct falling within any of paragraphs (a) to (g) above if it is shown that that act, omission or statement is one in respect of which individuals would be disciplined by the union irrespective of whether their acts, omissions or statements were in connection with conduct falling within any of paragraphs (a) to (f) above.

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- (4) An individual who has been disciplined by a trade union shall not be treated for the purposes of this section and sections 4 and 5 below as having been unjustifiably disciplined if it is shown—
- (a) that the reason or one of the reasons for disciplining him was that he made any such assertion as is mentioned in subsection (3)(c) above or encouraged or assisted any other person to make or to attempt to vindicate any such assertion;
  - (b) that that assertion was false and that, in making it or, as the case may be, in encouraging or assisting any other person to make or to attempt to vindicate it, that individual acted either in the belief that it was false or otherwise in bad faith; and
  - (c) that there was no other reason for disciplining him or that the only other reasons were reasons in respect of which he does not fall to be treated for those purposes as having been unjustifiably disciplined.
- (5) For the purposes of this section and sections 4 and 5 below an individual is disciplined by a trade union if a determination is made, or purportedly made, under the rules of the union or is made by an official of the union or by a number of persons including such an official—
- (a) that that individual should be expelled from the union or from any branch or section of the union;
  - (b) that that individual should pay any sum to the union, to any branch or section of the union or to any other person whatever;
  - (c) that sums tendered by that individual in respect of any obligation to pay subscriptions or other sums to the union, or to any branch or section of the union, should be treated as unpaid or as paid for a different purpose;
  - (d) that that individual should be deprived (whether indefinitely or for a specified period and whether in all circumstances or only in particular circumstances) of, or of access to, any of the benefits, services or facilities which would otherwise be provided or made available to him by virtue of his membership of the union, or of any branch or section of the union;
  - (e) that another trade union, or a branch or section of another trade union, should be encouraged or advised not to accept that individual as a member; or
  - (f) that that individual should be subjected to any other detriment.
- (6) In this section—
- “enactment” includes an enactment contained in this Act or in any Act passed after this Act;
  - “representative”, in relation to a trade union, means any person acting or purporting to act—
- (a) in his capacity as a member of the union; or
  - (b) on the instructions or advice of a person acting or purporting to act in that capacity or in the capacity of an official of the union.
- (7) The right conferred by this section is in addition to (and not in substitution for) any right which exists otherwise than by virtue of this section; and, without prejudice to any remedy for the infringement of any such other right and subject to subsection (8) below, the only remedies for any infringement of the right conferred by this section shall be those provided by sections 4 and 5 below.
- (8) Where a determination made in infringement of any individual’s right under this section requires the payment of any sum or the performance of any other obligation,

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no person shall be entitled in any proceedings to rely on that determination for the purpose of recovering that sum or of enforcing that obligation.

#### **4 Complaint of infringement of right under section 3.**

- (1) An individual who claims that he has been unjustifiably disciplined by a trade union may present a complaint against the union to an industrial tribunal that his right under section 3 above has been infringed.
- (2) A tribunal shall not entertain a complaint presented by any individual against a trade union under this section unless it is presented to the tribunal before the end of the period of three months beginning with the date of the making of the determination which the individual claims constituted an infringement of his right or within such further period as the tribunal considers reasonable in a case where it is satisfied as to one or both of the matters mentioned in subsection (3) below.
- (3) The matters referred to in subsection (2) above are—
  - (a) that it was not reasonably practicable for the complaint to be presented before the end of the period of three months; and
  - (b) that any delay in the making of the complaint is wholly or partly attributable to any reasonable attempt, otherwise than under this section, to appeal against the determination to which the complaint relates or to have that determination reconsidered or reviewed.
- (4) Where, on a complaint presented by any individual against a trade union under this section, the tribunal finds that that individual has been unjustifiably disciplined by that union, the tribunal shall make a declaration that the complaint is well-founded.
- (5) An appeal shall lie to the Employment Appeal Tribunal on any question of law arising from any decision of, or arising in any proceedings before, an industrial tribunal under this section.
- (6) Where an individual who is, or is seeking to be, in employment to which section 4 of the <sup>M1</sup>Employment Act 1980 applies (employment governed by a union membership agreement) is refused membership of, or is expelled from, a trade union in pursuance of a determination which constitutes an infringement of his right under section 3 above—
  - (a) that individual shall not be entitled to present any complaint under this section in respect of that determination; but
  - (b) the refusal or expulsion shall be regarded as unreasonable for the purposes of the said section 4 (unreasonable exclusion or expulsion from a trade union in a case where a person is, or is seeking to be, in employment to which that section applies).
- (7) Any provision in an agreement shall be void in so far as it purports—
  - (a) to exclude or limit the right conferred by section 3 above or the operation of this section or section 5 below; or
  - (b) to preclude any individual from presenting a complaint under this section or from making an application under section 5 below;

but this subsection shall not apply to an agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action in accordance with section 133(2) or (3) of the 1978 Act (conciliation).

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#### Marginal Citations

M1 1980 c. 42.

### 5 Further remedies for infringement of right under section 3.

- (1) An individual whose complaint against a trade union under section 4 above has been declared to be well-founded may make an application in accordance with subsection (2) below for one or both of the following, that is to say—
  - (a) an award of compensation to be paid to him by the union; and
  - (b) an order that the union pay to him an amount equal to any sum which he has paid in pursuance of a determination falling within subsection (5)(b) of section 3 above.
- (2) If at the time when the application under this section is made—
  - (a) the determination constituting the infringement of the applicant's right under section 3 above has not been revoked; or
  - (b) the trade union in question has failed to take all such steps as are necessary for securing the reversal of anything done for the purpose of giving effect to that determination,the application shall be to the Employment Appeal Tribunal; and, in any other case, it shall be to an industrial tribunal.
- (3) An industrial tribunal or the Employment Appeal Tribunal shall not entertain an application under this section if it is made before the end of the period of four weeks beginning with the date of the declaration under section 4 above or after the end of the period of six months beginning with that date.
- (4) Where the Employment Appeal Tribunal or any industrial tribunal is satisfied, on an application under this section, that it would (but for this subsection) be required by virtue of subsection (2) above to dismiss the application, it may, instead of dismissing it, transfer the application to an industrial tribunal or, as the case may be, to the Employment Appeal Tribunal; and an application transferred under this subsection shall be proceeded with as if it had been made in accordance with that subsection at the time when it was originally made.
- (5) Subject to the following provisions of this section, the amount of compensation awarded on an application under this section shall be such as the industrial tribunal or, as the case may be, the Employment Appeal Tribunal considers just and equitable in all the circumstances.
- (6) In determining the amount of compensation to be awarded under this section, the industrial tribunal or the Employment Appeal Tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable at common law in England and Wales or, as the case may be, in Scotland.
- (7) Where the industrial tribunal or the Employment Appeal Tribunal finds that the infringement which is the subject matter of the application was to any extent caused or contributed to by any action of the applicant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

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- (8) The amount of compensation awarded against a trade union on an application under this section shall not exceed the aggregate of—
- (a) an amount equal to thirty times the limit for the time being imposed by paragraph 8(1)(b) of Schedule 14 to the 1978 Act (maximum amount of a week's pay for purpose of calculating basic award in unfair dismissal cases); and
  - (b) an amount equal to the limit for the time being imposed by section 75 of that Act (maximum compensatory award in such cases),
- and, in the case of an application to the Employment Appeal Tribunal, shall not be less than the amount for the time being specified in section 73(4A) of that Act (minimum basic award in certain cases of unfair dismissal).
- (9) In determining the amount of any compensation to be awarded against a trade union on an application under this section any reduction or increase which is required to be made by virtue of subsection (8) above shall be made—
- (a) before any reduction is made by virtue of subsection (6) or (7) above; and
  - (b) before any reduction is made on account of sums already paid by the union by way of compensation in respect of the determination to which the application relates or in respect of anything done for the purpose of giving effect to that determination;
- and, accordingly, where the case so requires, the reductions mentioned in paragraphs (a) and (b) above shall be applied to the maximum or, as the case may be, minimum award under subsection (8) above.
- (10) An appeal shall lie to the Employment Appeal Tribunal on a question of law arising from any decision of, or arising in proceedings before, an industrial tribunal under this section.

## **6 Right to inspect union's accounting records.**

- (1) It shall be the duty of a trade union to keep its accounting records available for inspection in pursuance of this section from their creation until the end of the period of six years beginning with the 1st January following the end of the period to which the records relate.
- (2) Where—
- (a) at a time when a trade union is required under subsection (1) above to keep any accounting records available for inspection, any person who is a member of the union makes a request to the union to be allowed access to any of those records; and
  - (b) none of the records that are the subject matter of the request relates to a period other than one which includes a time when that person was a member of the union,
- it shall be the duty of the union to comply with the request in accordance with subsection (3) below and, if the period mentioned in subsection (1) above expires before the request is complied with, to continue to keep those records available for inspection by that person until the request is complied with.
- (3) The trade union shall perform its duty to comply with a request under subsection (2) above—



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- (a) by making arrangements with the person who made the request for that person to be allowed, before the end of the period of twenty-eight days beginning with the day on which the request was made, to inspect the records which are the subject matter of the request;
  - (b) by allowing that person and any accountant who may accompany him for the purpose to inspect those records at the time and place arranged; and
  - (c) by securing that at the time of the inspection that person is allowed to take, or is supplied with, such copies of, or of extracts from, any records inspected by him as he may require.
- (4) Except where the parties to any arrangements made under subsection (3) above otherwise agree, an inspection under any such arrangements of any accounting records shall be at a reasonable hour and at the place where the records are normally kept.
- (5) A trade union shall not be required to allow a person inspecting any accounting records under this section to be accompanied by an accountant if the accountant fails to enter into such agreement as the union may reasonably require for protecting the confidentiality of the records.
- (6) Where—
  - (a) a trade union complies with a request made by any person under subsection (2) above; and
  - (b) that person had been informed by the union, before any arrangements were made in pursuance of that request—
    - (i) of the union's intention to charge for allowing that person to inspect the records to which the request relates, for allowing that person to take any copies of, or of extracts from, those records or for supplying any such copies; and
    - (ii) of the principles in accordance with which its charges will be determined,that person shall be liable to pay to the union on demand such amount, not exceeding the reasonable administrative expenses incurred by the union in complying with the request, as is determined in accordance with the principles of which that person was so informed.
- (7) Any person who claims that a trade union has failed in any respect to comply with a request made by that person under subsection (2) above may apply to the court for an order under this section; and where, on such an application, the court is satisfied that a trade union has failed to comply with any such request, the court shall make such order as it considers appropriate for ensuring that that person—
  - (a) is allowed to inspect the records which are the subject matter of the request;
  - (b) is allowed to be accompanied by an accountant when making an inspection of those records; and
  - (c) is allowed to take, or is supplied with, such copies of, or of extracts from, those records as he may require.
- (8) Section 12 of the 1974 Act (offences in relation to a trade union's accounts etc.) shall apply in relation to the duties to keep accounting records available for inspection which are imposed on trade unions by subsections (1) and (2) above as it applies in relation to the duties imposed on trade unions by sections 10 and 11 of that Act.
- (9) In this section—

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- (a) references to accounting records, in relation to a trade union, are references to such of the documentary and non-documentary accounting records of that union, or of any branch or section of that union, as are, or purport to be, records which are required to be kept by the union under section 10 of the 1974 Act and which relate to any period beginning after 31st December 1987;
  - (b) references to a trade union do not include references to a trade union falling within paragraph (b) of section 28(1) of the 1974 Act which consists wholly of constituent or affiliated organisations, of representatives of such organisations or of such organisations together with representatives of constituent or affiliated organisations; and
  - (c) references to an accountant, in relation to the inspection of any accounting records, are references to any person who, at the time of the inspection, is qualified under paragraph 6 of Schedule 2 to the 1974 Act to be the auditor of a trade union.
- (10) Nothing in this section shall be construed as preventing a duty to comply with a request made in relation to the accounting records of a branch or section of a trade union from arising where the request is made by a person who, although he was a member of the union at the time of his request and at a time during the period to which the records relate, was not a member of that branch or section at one or both of those times.

## 7 **Right to require employer to stop deductions of union subscriptions.**

- (1) Where any person (“the employee”) has certified to his employer—
- (a) that there has been or will be, as from a particular date, such a termination of his membership of any trade union as is within the knowledge of the union; or
  - (b) that any notice which he has given to a trade union for the purpose of terminating his membership of that union has expired or will expire on a particular date,
- the employer shall ensure that no amount representing a payment to the union in respect of the employee’s membership after that date of that union is deducted from emoluments payable by the employer to the employee.
- (2) Subsection (1) above does not apply in relation to emoluments paid—
- (a) before the first day following the giving of the certificate on which it is reasonably practicable for the employer to give effect, in compliance with that subsection, to a variation of the net amount of emoluments payable to the employee; or
  - (b) after the employee notifies his employer that the certificate is withdrawn.
- (3) Notwithstanding anything in any contract between the employee and the employer, or in any agreement or consent signified by the employee, a deduction made in contravention of this section shall in all cases be treated for the purposes of Part I of the <sup>M2</sup>Wages Act 1986 as a deduction in contravention of section 1(1) of that Act.

### Marginal Citations

M2 1986 c. 48.

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