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Trade Union and Labour Relations (Consolidation) Act 1992

1992 CHAPTER 52

An Act to consolidate the enactments relating to collective labour relations, that is to say, to trade unions, employers' associations, industrial relations and industrial action. [16th July 1992]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

TRADE UNIONS

CHAPTER I

INTRODUCTORY

Meaning of "trade unio"n

1 Meaning of "trade union".

In this Act a "trade union" means an organisation (whether temporary or permanent)—

(a) which consists wholly or mainly of workers of one or more descriptions and whose principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers' associations; or

(b) which consists wholly or mainly of—

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(i) constituent or affiliated organisations which fulfil the conditions in paragraph (a) (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 whose principal purposes include the regulation of relations between workers and employers or between workers and employers' associations, or the regulation of relations between its constituent or affiliated organisations.

Modifications etc. (not altering text)

C1 Ss. 1, 5 applied (E.W.) (21.5.2001) by S.I. 2001/1185, art. 2, **Sch. para. 126(viii)**

The list of trade unions

2 The list of trade unions.

(1) The Certification Officer shall keep a list of trade unions containing the names of—

(a) the organisations whose names were, immediately before the commencement of this Act, duly entered in the list of trade unions kept by him under section 8 of the [M1]Trade Union and Labour Relations Act 1974, and

(b) the names of the organisations entitled to have their names entered in the list in accordance with this Part.

(2) The Certification Officer shall keep copies of the list of trade unions, as for the time being in force, available for public inspection at all reasonable hours free of charge.

(3) A copy of the list shall be included in his annual report.

(4) The fact that the name of an organisation is included in the list of trade unions is evidence (in Scotland, sufficient evidence) that the organisation is a trade union.

(5) On the application of an organisation whose name is included in the list, the Certification Officer shall issue it with a certificate to that effect.

(6) A document purporting to be such a certificate is evidence (in Scotland, sufficient evidence) that the name of the organisation is entered in the list.

Marginal Citations

M1 1974 c. 52.

3 Application to have name entered in the list.

(1) An organisation of workers, whenever formed, whose name is not entered in the list of trade unions may apply to the Certification Officer to have its name entered in the list.

(2) The application shall be made in such form and manner as the Certification Officer may require and shall be accompanied 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

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(d) the name under which it is or is to be known,

and by the prescribed fee.

(3) If the Certification Officer is satisfied—

(a) that the organisation is a trade union,

(b) that subsection (2) has been complied with, and

(c) that entry of the name in the list is not prohibited by subsection (4),

he shall enter the name of the organisation in the list of trade unions.

(4) The Certification Officer shall not enter the name of an organisation in the list of trade unions if the name is the same as that under which another organisation—

(a) was on 30th September 1971 registered as a trade union under the Trade Union Acts 1871 to 1964,

(b) was at any time registered as a trade union or employers' association under the [M2]Industrial Relations Act 1971, or

(c) is for the time being entered in the list of trade unions or in the list of employers' associations kept under Part II of this Act,

or if the name is one so nearly resembling any such name as to be likely to deceive the public.

Marginal Citations

M2 1971 c. 72.

4 Removal of name from the list.

(1) If it appears to the Certification Officer, on application made to him or otherwise, that an organisation whose name is entered in the list of trade unions is not a trade union, he may remove its name from the list.

(2) He shall not do so without giving the organisation notice of his intention and considering any representations made to him by the organisation within such period (of not less than 28 days beginning with the date of the notice) as may be specified in the notice.

(3) The Certification Officer shall remove the name of an organisation from the list of trade unions if—

(a) he is requested by the organisation to do so, or

(b) he is satisfied that the organisation has ceased to exist.

Certification as independent trade union

5 Meaning of "independent trade union".

In this Act an "independent trade union" means a trade union which—

(a) is not under the domination or control of an employer or 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;

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and references to "independence", in relation to a trade union, shall be construed accordingly.

Modifications etc. (not altering text)

C2 Ss. 1, 5 applied (E.W.) (21.5.2001) by S.I. 2001/1185, art. 2, **Sch. para. 126(viii)**

6 Application for certificate of independence.

(1) A trade union whose name is entered on the list of trade unions may apply to the Certification Officer for a certificate that it is independent.

The application shall be made in such form and manner as the Certification Officer may require and shall be accompanied by the prescribed fee.

(2) The Certification Officer shall maintain a record showing details of all applications made to him under this section and shall keep it available for public inspection (free of charge) at all reasonable hours.

(3) If an application is made by a trade union whose name is not entered on the list of trade unions, the Certification Officer shall refuse a certificate of independence and shall enter that refusal on the record.

(4) In any other case, he shall not come to a decision on the application before the end of the period of one month after it has been entered on the record; and before coming to his decision he shall make such enquiries as he thinks fit and shall take into account any relevant information submitted to him by any person.

(5) He shall then decide whether the applicant trade union is independent and shall enter his decision and the date of his decision on the record.

(6) If he decides that the trade union is independent he shall issue a certificate accordingly; and if he decides that it is not, he shall give reasons for his decision.

7 Withdrawal or cancellation of certificate.

(1) The Certification Officer may withdraw a trade union's certificate of independence if he is of the opinion that the union is no longer independent.

(2) Where he proposes to do so he shall notify the trade union and enter notice of the proposal in the record.

(3) He shall not come to a decision on the proposal before the end of the period of one month after notice of it was entered on the record; and before coming to his decision he shall make such enquiries as he thinks fit and shall take into account any relevant information submitted to him by any person.

(4) He shall then decide whether the trade union is independent and shall enter his decision and the date of his decision on the record.

(5) He shall confirm or withdraw the certificate accordingly; and if he decides to withdraw it, he shall give reasons for his decision.

(6) Where the name of an organisation is removed from the list of trade unions, the Certification Officer shall cancel any certificate of independence in force in respect

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of that organisation by entering on the record the fact that the organisation's name has been removed from that list and that the certificate is accordingly cancelled.

8 Conclusive effect of Certification Officer's decision.

(1) A certificate of independence which is in force is conclusive evidence for all purposes that a trade union is independent; and a refusal, withdrawal or cancellation of a certificate of independence, entered on the record, is conclusive evidence for all purposes that a trade union is not independent.

(2) A document purporting to be a certificate of independence and to be signed by the Certification Officer, or by a person authorised to act on his behalf, shall be taken to be such a certificate unless the contrary is proved.

(3) A document purporting to be a certified copy of an entry on the record and to be signed by the Certification Officer, or by a person authorised to act on his behalf, shall be taken to be a true copy of such an entry unless the contrary is proved.

(4) If in any proceedings before a court, the Employment Appeal Tribunal, the Central Arbitration Committee, ACAS or an **[**[F1]employment tribunal**]** a question arises whether a trade union is independent and there is no certificate of independence in force and no refusal, withdrawal or cancellation of a certificate recorded in relation to that trade union—

(a) that question shall not be decided in those proceedings, and

(b) the proceedings shall instead be stayed or sisted until a certificate of independence has been issued or refused by the Certification Officer.

(5) The body before whom the proceedings are stayed or sisted may refer the question of the independence of the trade union to the Certificate Officer who shall proceed in accordance with section 6 as on an application by that trade union.

Textual Amendments

F1 Words in s. 8(4) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Supplementary

9 Appeal against decision of Certification Officer.

(1) An organisation aggrieved by the refusal of the Certification Officer to enter its name in the list of trade unions, or by a decision of his to remove its name from the list, may appeal to the Employment Appeal Tribunal.

(2) A trade union aggrieved by the refusal of the Certification Officer to issue it with a certificate of independence, or by a decision of his to withdraw its certificate, may appeal to the Employment Appeal Tribunal.

(3) If on appeal the Tribunal is satisfied that the organisation's name should be or remain entered in the list or, as the case may be, that the certificate should be issued or should not be withdrawn, it shall declare that fact and give directions to the Certification Officer accordingly.

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(4) The rights of appeal conferred by this section extend to any question of fact or law arising in the proceedings before, or arising from the decision of, the Certification Officer.

CHAPTER II

STATUS AND PROPERTY OF TRADE UNIONS

General

10 Quasi-corporate status of trade unions.

(1) A trade union is not a body corporate but—
- (a) it is capable of making contracts;
- (b) it is 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; and
- (c) proceedings for an offence alleged to have been committed by it or on its behalf may be brought against it in its own name.

(2) A trade union shall not be treated as if it were a body corporate except to the extent authorised by the provisions of this Part.

(3) A trade union shall not be registered—
- (a) as a company under the [M3]Companies Act 1985, or
- (b) under the [M4]Friendly Societies Act 1974 or the [M5]Industrial and Provident Societies Act 1965;

and any such registration of a trade union (whenever effected) is void.

Marginal Citations
- **M3** 1985 c. 9.
- **M4** 1974 c. 46.
- **M5** 1965 c. 12.

11 Exclusion of common law rules as to restraint of trade.

(1) The purposes of a trade union are not, by reason only that they are in restraint of trade, 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.

(2) No rule of a trade union is unlawful or unenforceable by reason only that it is in restraint of trade.

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Property of trade union

12 Property to be vested in trustees.

(1) All property belonging to a trade union shall be vested in trustees in trust for it.

(2) A judgment, order or award made in proceedings of any description brought against a trade union is enforceable, by way of execution, diligence, punishment for contempt or otherwise, against any property held in trust for it to the same extent and in the same manner as if it were a body corporate.

(3) Subsection (2) has effect subject to section 23 (restriction on enforcement of awards against certain property).

13 Vesting of property in new trustees.

(1) The provisions of this section apply in relation to the appointment or discharge of trustees in whom any property is vested in trust for a trade union whose name is entered in the list of trade unions.

(2) In the following sections as they apply to such trustees references to a deed shall be construed as references to an instrument in writing—

(a) section 39 of the [M6]Trustee Act 1925 and section 38 of the [M7]Trustee Act (Northern Ireland) 1958 (retirement of trustee without a new appointment), and

(b) section 40 of the Trustee Act 1925 and section 39 of the Trustee Act (Northern Ireland) 1958 (vesting of trust property in new or continuing trustees).

(3) Where such a trustee is appointed or discharged by a resolution taken by or on behalf of the union, the written record of the resolution shall be treated for the purposes of those sections as an instrument in writing appointing or discharging the trustee.

(4) In section 40 of the Trustee Act 1925 and section 39 of the Trustee Act (Northern Ireland) 1958 as they apply to such trustees, paragraphs (a) and (c) of subsection (4) (which exclude certain property from the section) shall be omitted.

Marginal Citations

M6 1925 c. 19.

M7 1958 c. 23 (N.I.).

14 Transfer of securities held in trust for trade union.

(1) In this section—

"instrument of appointment" means an instrument in writing appointing a new trustee of a trade union whose name is entered in the list of trade unions, and

"instrument of discharge" means an instrument in writing discharging a trustee of such a trade union;

and for the purposes of this section where a trustee is appointed or discharged by a resolution taken by or on behalf of such a trade union, the written record of the

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resolution shall be treated as an instrument in writing appointing or discharging the trustee.

(2) 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 authorised or required to keep the register a copy of an instrument of appointment or discharge which contains or has attached to it a list identifying the securities of that description held in trust for the union 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 make such entries as may be necessary to give effect to the instrument of appointment or discharge.

   This subsection has effect notwithstanding anything in any enactment or instrument regulating the keeping of the register.

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

(4) The certificate shall be given by the president and general secretary of the union and, in the case of an instrument to which a list of securities is attached, shall appear both on the instrument and on the list.

(5) Nothing done for the purposes of or in pursuance of this section 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.

(6) In relation to a Scottish trust, references in this section to the appointment and discharge of a trustee shall be construed as including references to, respectively, the assumption and resignation of a trustee; and references to an instrument appointing or discharging a trustee shall be construed accordingly.

15 Prohibition on use of funds to indemnify unlawful conduct.

(1) It is unlawful for property of a trade union to be applied in or towards—
   (a) the payment for an individual of a penalty which has been or may be imposed on him for an offence or for contempt of court,
   (b) the securing of any such payment, or
   (c) the provision of anything for indemnifying an individual in respect of such a penalty.

(2) Where any property of a trade union is so applied for the benefit of an individual on whom a penalty has been or may be imposed, then—
   (a) in the case of a payment, an amount equal to the payment is recoverable by the union from him, and
   (b) in any other case, he is liable to account to the union for the value of the property applied.

(3) If a trade union fails to bring or continue proceedings which it is entitled by bring by virtue of subsection (2), a member of the union who claims that the failure is

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unreasonable may apply to the court on that ground for an order authorising him to bring or continue the proceedings on the union's behalf and at the union's expense.

(4) In this section "penalty", in relation to an offence, includes an order to pay compensation and an order for the forfeiture of any property; and references to the imposition of a penalty for an offence shall be construed accordingly.

(5) The Secretary of State may by order designate offences in relation to which the provisions of this section do not apply.

Any such order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) This section does not affect—

(a) any other enactment, any rule of law or any provision of the rules of a trade union which makes it unlawful for the property of a trade union to be applied in a particular way; or

(b) any other remedy available to a trade union, the trustees of its property or any of its members in respect of an unlawful application of the union's property.

(7) In this section "member", in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes a member of any of the constituent or affiliated organisations.

16 Remedy against trustees for unlawful use of union property.

(1) A member of a trade union who claims that the trustees of the union's property—

(a) have so carried out their functions, or are proposing so to carry out their functions, as to cause or permit an unlawful application of the union's property, or

(b) have complied, or are proposing to comply, with an unlawful direction which has been or may be given, or purportedly given, to them under the rules of the union,

may apply to the court for an order under this section.

(2) In a case relating to property which has already been unlawfully applied, or to an unlawful direction that has already been complied with, an application under this section may be made only by a person who was a member of the union at the time when the property was applied or, as the case may be, the direction complied with.

(3) Where the court is satisfied that the claim is well-founded, it shall make such order as it considers appropriate.

The court may in particular—

(a) require the trustees (if necessary, on behalf of the union) to take all such steps as may be specified in the order for protecting or recovering the property of the union;

(b) appoint a receiver of, or in Scotland a judicial factor on, the property of the union;

(c) remove one or more of the trustees.

(4) Where the court makes an order under this section in a case in which—

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(a) property of the union has been applied in contravention of an order of any court, or in compliance with a direction given in contravention of such an order, or

(b) the trustees were proposing to apply property in contravention of such an order or to comply with any such direction,

the court shall by its order remove all the trustees except any trustee who satisfies the court that there is a good reason for allowing him to remain a trustee.

(5) Without prejudice to any other power of the court, the court may on an application for an order under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.

(6) This section does not affect any other remedy available in respect of a breach of trust by the trustees of a trade union's property.

(7) In this section "member", in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes a member of any of the constituent or affiliated organisations.

17 Nominations by members of trade unions.

(1) The Secretary of State may make provision by regulations for enabling members of trade unions who are not under 16 years of age to nominate a person or persons to become entitled, on the death of the person making the nomination, to the whole or part of any money payable on his death out of the funds of the trade union.

(2) The regulations may include provision as to the manner in which nominations may be made and as to the manner in which nominations may be varied or revoked.

(3) The regulations may provide that, subject to such exceptions as may be prescribed, no nomination made by a member of a trade union shall be valid if at the date of the nomination the person nominated is an officer or employee of the trade union or is otherwise connected with the trade union in such manner as may be prescribed by the regulations.

(4) The regulations may include such incidental, transitional or supplementary provisions as the Secretary of State may consider appropriate.

(5) They may, in particular, include provision for securing, to such extent and subject to such conditions as may be prescribed in the regulations, that nominations made under the [M8]Trade Union Act 1871 Amendment Act 1876 have effect as if made under the regulations and may be varied or revoked accordingly.

(6) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Marginal Citations

M8 1876 c. 22.

18 Payments out of union funds on death of member.

(1) The Secretary of State may make provision by regulations for enabling money payable out of the funds of a trade union on the death of a member, to an amount not exceeding

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£5,000, to be paid or distributed on his death without letters of administration, probate of any will or confirmation.

(2) The regulations may include such incidental, transitional and supplementary provisions as the Secretary of State may consider appropriate.

(3) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) The Treasury may by order under section 6(1) of the [M9]Administration of Estates (Small Payments) Act 1965 direct that subsection (1) above shall have effect with the substitution for the reference to £5,000 of a reference to such higher amount as may be specified in the order.

Marginal Citations

M9 1965 c. 32.

19 Application of certain provisions relating to industrial assurance or friendly societies.

[[F2](1) Section 99 of the Friendly Societies Act 1992 (insurance of lives of children under 10) applies to a trade union as to **[**[F3]a friendly society**]]**.

[F4](2) . . . . . .

. . . . . .

(3) Section 52 of the Friendly Societies Act 1974 (charitable subscriptions and contributions to other registered societies) extends to a trade union, or branch of a trade union, as regards contributing to the funds and taking part in the government of a medical society, that is, a society for the purpose of relief in sickness by providing medical attendance and medicine.

A trade union, or branch of a trade union, shall not withdraw from contributing to the funds of such a society except on three months notice to the society and on payment of all contributions accrued or accruing due to the date of the expiry of the notice.

[[F5](4) In this section "industrial assurance company" has the meaning it has in section 99 of the Friendly Societies Act 1992.**]**

Textual Amendments

F2 S. 19(1) substituted (1.1.1994) by S.I. 1993/3084, **reg. 7**
F3 Words in s. 19(1) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 332
F4 S. 19(2) repealed (1.1.1994) by S.I. 1993/3084, **reg.8**
F5 S. 19(4) inserted (1.12.2001) by S.I. 2001/3647, art. 5, **Sch. 3 para. 14(2)**

Liability of trade unions in proceedings in tort

20 Liability of trade union in certain proceedings in tort.

(1) Where proceedings in tort are brought against a trade union—

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(a) on the ground that an act—

(i) induces another person to break a contract or interferes or induces another person to interfere with its performance, or

(ii) consists in threatening that a contract (whether one to which the union is a party or not) will be broken or its performance interfered with, or that the union will induce another person to break a contract or interfere with its performance, or

(b) in respect of an agreement or combination by two or more persons to do or to procure the doing of an act which, if it were done without any such agreement or combination, would be actionable in tort on such a ground,

then, for the purpose of determining in those proceedings whether the union is liable in respect of the act in question, that act shall be taken to have been done by the union if, but only if, it is to be taken to have been authorised or endorsed by the trade union in accordance with the following provisions.

(2) An act shall be taken to have been authorised or endorsed by a trade union if it was done, or was authorised or endorsed—

(a) by any person empowered by the rules to do, authorise or endorse acts of the kind in question, or

(b) by the principal executive committee or the president or general secretary, or

(c) by any other committee of the union or any other official of the union (whether employed by it or not).

(3) For the purposes of paragraph (c) of subsection (2)—

(a) any group of persons constituted in accordance with the rules of the union is a committee of the union; and

(b) an act shall be taken to have been done, authorised or endorsed by an official if it was done, authorised or endorsed by, or by any member of, any group of persons of which he was at the material time a member, the purposes of which included organising or co-ordinating industrial action.

(4) The provisions of paragraphs (b) and (c) of subsection (2) apply notwithstanding anything in the rules of the union, or in any contract or rule of law, but subject to the provisions of section 21 (repudiation by union of certain acts).

(5) Where for the purposes of any proceedings an act is by virtue of this section taken to have been done by a trade union, nothing in this section shall affect the liability of any other person, in those or any other proceedings, in respect of that act.

(6) In proceedings arising out of an act which is by virtue of this section taken to have been done by a trade union, the power of the court to grant an injunction or interdict includes power to require the union to take such steps as the court considers appropriate for ensuring—

(a) that there is no, or no further, inducement of persons to take part or to continue to take part in industrial action, and

(b) that no person engages in any conduct after the granting of the injunction or interdict by virtue of having been induced before it was granted to take part or to continue to take part in industrial action.

The provisions of subsections (2) to (4) above apply in relation to proceedings for failure to comply with any such injunction or interdict as they apply in relation to the original proceedings.

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(7) In this section "rules", in relation to a trade union, means the written rules of the union and any other written provision forming part of the contract between a member and the other members.

21 Repudiation by union of certain acts.

(1) An act shall not be taken to have been authorised or endorsed by a trade union by virtue only of paragraph (c) of section 20(2) if it was repudiated by the executive, president or general secretary as soon as reasonably practicable after coming to the knowledge of any of them.

(2) Where an act is repudiated—
- (a) written notice of the repudiation must be given to the committee or official in question, without delay, and
- (b) the union must do its best to give individual written notice of the fact and date of repudiation, without delay—
  - (i) to every member of the union who the union has reason to believe is taking part, or might otherwise take part, in industrial action as a result of the act, and
  - (ii) to the employer of every such member.

(3) The notice given to members in accordance with paragraph (b)(i) of subsection (2) must contain the following statement— " Your union has repudiated the call (or calls) for industrial action to which this notice relates and will give no support to unofficial industrial action taken in response to it (or them). If you are dismissed while taking unofficial industrial action, you will have no right to complain of unfair dismissal. "

(4) If subsection (2) or (3) is not complied with, the repudiation shall be treated as ineffective.

(5) An act shall not be treated as repudiated if at any time after the union concerned purported to repudiate it the executive, president or general secretary has behaved in a manner which is inconsistent with the purported repudiation.

(6) The executive, president or general secretary shall be treated as so behaving if, on a request made to any of them within **[**[F6]three months**]** of the purported repudiation by a person who—
- (a) is a party to a commercial contract whose performance has been or may be interfered with as a result of the act in question, and
- (b) has not been given written notice by the union of the repudiation,

it is not forthwith confirmed in writing that the act has been repudiated.

(7) In this section "commercial contract" mean means any contract other than—
- (a) a contract of employment, or
- (b) any other contract under which a person agrees personally to do work or perform services for another.

Textual Amendments

F6 Words in s. 21(6) substituted (30.8.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para.17**; S.I. 1993/1908, art. 2(1), **Sch.1**

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22 Limit on damages awarded against trade unions in actions in tort.

(1) This section applies to any proceedings in tort brought against a trade union, except—
- (a) proceedings for personal injury as a result of negligence, nuisance or breach of duty;
- (b) proceedings for breach of duty in connection with the ownership, occupation, possession, control or use of property;
- (c) proceedings brought by virtue of Part I of the [M10]Consumer Protection Act 1987 (product liability).

(2) In any proceedings in tort to which this section applies the amount which may awarded against the union by way of damages shall not exceed the following limit—

Number of members of union	*Maximum award of damages*
Less than 5,000	£10,000
5,000 or more but less than 25,000	£50,000
25,000 or more but less than 100,000	£125,000
100,000 or more	£250,000

(3) The Secretary of State may by order amend subsection (2) so as to vary any of the sums specified; and the order may make such transitional provision as the Secretary of State considers appropriate.

(4) Any such order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In this section—

"breach of duty" means breach of a duty imposed by any rule of law or by or under any enactment;

"personal injury" includes any disease and any impairment of a person's physical or mental condition; and

"property" means any property, whether real or personal (or in Scotland, heritable or moveable).

Marginal Citations
M10 1987 c. 43.

Restriction on enforcement against certain property

23 Restriction on enforcement of awards against certain property.

(1) Where in any proceedings an amount is awarded by way of damages, costs or expenses—
- (a) against a trade union,
- (b) against trustees in whom property is vested in trust for a trade union, in their capacity as such (and otherwise than in respect of a breach of trust on their part), or

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(c) against members or officials of a trade union on behalf of themselves and all of the members of the union,

no part of that amount is recoverable by enforcement against any protected property.

(2) The following is protected property—

(a) property belonging to the trustees otherwise than in their capacity as such;

(b) property belonging to any member of the union otherwise than jointly or in common with the other members;

(c) property belonging to an official of the union who is neither a member nor a trustee;

(d) property comprised in the union's political fund where that fund—

(i) is subject to rules of the union which prevent property which is or has been comprised in the fund from being used for financing strikes or other industrial action, and

(ii) was so subject at the time when the act in respect of which the proceedings are brought was done;

(e) property comprised in a separate fund maintained in accordance with the rules of the union for the purpose only of providing provident benefits.

(3) For this purpose "provident benefits" includes—

(a) any payment expressly authorised by the rules of the union which is made—

(i) to a member during sickness or incapacity from personal injury or while out of work, or

(ii) to an aged member by way of superannuation, or

(iii) to a member who has met with an accident or has lost his tools by fire or theft;

(b) a payment in discharge or aid of funeral expenses on the death of a member or the wife of a member or as provision for the children of a deceased member.

CHAPTER III

TRADE UNION ADMINISTRATION

Register of members' names and addresses

24 Duty to maintain register of members' names and addresses.

(1) A trade union shall compile and maintain a register of the names and addresses of its members, and shall secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.

(2) The register may be kept by means of a computer.

(3) A trade union shall—

(a) allow any member, upon reasonable notice, to ascertain from the register, free of charge and at any reasonable time, whether there is an entry on it relating to him; and

(b) if requested to do so by any member, supply him as soon as reasonably practicable, either free of charge or on payment of a reasonable fee, with a copy of any entry on the register relating to him.

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[F7](4) . . . . . .

(5) For the purposes of this section a member's address means either his home address or another address which he has requested the union in writing to treat as his postal address.

(6) The remedy for failure to comply with the requirements of this section is by way of application under section 25 (to the Certification Officer) or section 26 (to the court).

[F8] . . ..

Textual Amendments

F7 S. 24(4) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F8 Words in s. 24(6) repealed (25.10.1999) by 1999 C. 26, ss. 29, 44, Sch. 6 paras. 1, 2, Sch. 9(7); S.I. 1999/2830, arts. 2(1)(3), **Sch. 2 Pt. I** (with Sch. 3 para. 5)

[[F9]24A Securing confidentiality of register during ballots.

(1) This section applies in relation to a ballot of the members of a trade union on—
- (a) an election under Chapter IV for a position to which that Chapter applies,
- (b) a political resolution under Chapter VI, and
- (c) a resolution to approve an instrument of amalgamation or transfer under Chapter VII.

(2) Where this section applies in relation to a ballot the trade union shall impose the duty of confidentiality in relation to the register of members' names and addresses on the scrutineer appointed by the union for the purposes of the ballot and on any person appointed by the union as the independent person for the purposes of the ballot.

(3) The duty of confidentiality in relation to the register of members' names and addresses is, when imposed on a scrutineer or on an independent person, a duty—
- (a) not to disclose any name or address in the register except in permitted circumstances; and
- (b) to take all reasonable steps to secure that there is no disclosure of any such name or address by any other person except in permitted circumstances;

and any reference in this Act to "the duty of confidentiality" is a reference to the duty prescribed in this subsection.

(4) The circumstances in which disclosure of a member's name and address is permitted are—
- (a) where the member consents;
- (b) where it is requested by the Certification Officer for the purposes of the discharge of any of his functions or it is required for the purposes of the discharge of any of the functions of an inspector appointed by him;
- (c) where it is required for the purposes of the discharge of any of the functions of the scrutineer or independent person, as the case may be, under the terms of his appointment;
- (d) where it is required for the purposes of the investigation of crime or of criminal proceedings.

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(5) Any provision of this Part which incorporates the duty of confidentiality as respects the register into the appointment of a scrutineer or an independent person has the effect of imposing that duty on the scrutineer or independent person as a duty owed by him to the trade union.

(6) The remedy for failure to comply with the requirements of this section is by way of application under section 25 (to the Certification Officer) or section 26 (to the court).

[[F10]. . ..**]**

Textual Amendments

F9 S. 24A inserted (30.8.1993) by 1993 c. 19, **s. 6**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F10 Words in s. 24A repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, 2, **Sch. 9(7)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 5)

25 Remedy for failure: application to Certification Officer.

(1) A member of a trade union who claims that the union has failed to comply with any of the requirements of section 24 **[**[F11]or 24A**]** (duties with respect to register of members' names and addresses) may apply to the Certification Officer for a declaration to that effect.

(2) On an application being made to him, the Certification Officer shall—

(a) make such enquiries as he thinks fit, and

(b) [F12]. . . give the applicant and the trade union an opportunity to be heard,

and may make or refuse the declaration asked for.

(3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.

(4) Where he makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.

(5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

[[F13](5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—

(a) to take such steps to remedy the declared failure, within such period, as may be specified in the order;

(b) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

[F13](5B) Where an enforcement order has been made, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.**]**

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(6) In exercising his functions under this section the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.

(7) Where he requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

[[F14](8) The Certification Officer shall not entertain an application for a declaration as respects an alleged failure to comply with the requirements of section 24A in relation to a ballot to which that section applies unless the application is made before the end of the period of one year beginning with the last day on which votes could be cast in the ballot.**]**

[[F15](9) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.

[F15](10) An enforcement order made by the Certification Officer under this section may be enforced in the same way as an order of the court.

[F15](11) The following paragraphs have effect if a person applies under section 26 in relation to an alleged failure—

(a) that person may not apply under this section in relation to that failure;

(b) on an application by a different person under this section in relation to that failure, the Certification Officer shall have due regard to any declaration, order, observations or reasons made or given by the court regarding that failure and brought to the Certification Officer's notice.**]**

Textual Amendments

F11 Words in s. 25(1) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 40(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F12 Words in s. 25(2)(b) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, **Sch. 6 paras. 1**,4(2), Sch. 9(7); S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with Sch. 3 para. 5)

F13 S. 25(5A)(5B) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 para. 1, **4(3)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

F14 S. 25(8) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 40(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F15 S. 25(9)-(11) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **4(4)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

26 Remedy for failure: application to court.

(1) A member of a trade union who claims that the union has failed to comply with any of the requirements of section 24 **[**[F16]or 24A**]** (duties with respect to register of members' names and addresses) may apply to the court for a declaration to that effect.

[F17](2) . . . . . .

(3) If the court makes a declaration it shall specify in it the provisions with which the trade union has failed to comply.

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(4) Where the court makes a declaration it shall also, unless it considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—

(a) to take such steps to remedy the declared failure, within such period, as may be specified in the order;

(b) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

(5) Where an enforcement order has been made, any person who is a member of the union and was a member at the time it was made, is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(6) Without prejudice to any other power of the court, the court may on an application under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.

[[F18](7) The court shall not entertain an application for a declaration as respects an alleged failure to comply with the requirements of section 24A in relation to a ballot to which that section applies unless the application is made before the end of the period of one year beginning with the last day on which votes could be cast in the ballot.**]**

[[F19](8) The following paragraphs have effect if a person applies under section 25 in relation to an alleged failure—

(a) that person may not apply under this section in relation to that failure;

(b) on an application by a different person under this section in relation to that failure, the court shall have due regard to any declaration, order, observations or reasons made or given by the Certification Officer regarding that failure and brought to the court's notice.**]**

Textual Amendments

F16 Words in s. 26(1) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 41(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F17 S. 26(2) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 para. 1, 5(2), **Sch. 9(7)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 5)

F18 S. 26(7) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 41(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F19 S. 26(8) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **5(3)**; S.I. 1999/2830, **art. 2(1) Sch. 1 Pt. I** (with Sch. 3 para. 4)

Duty to supply copy of rules

27 Duty to supply copy of rules.

A trade union shall at the request of any person supply him with a copy of its rules either free of charge or on payment of a reasonable charge.

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Accounting records

28 Duty to keep accounting records.

(1) A trade union 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.

(2) Proper accounting records shall not be taken to be kept with respect to the matters mentioned in subsection (1)(a) unless there are kept such records as are necessary to give a true and fair view of the state of the affairs of the trade union and to explain its transactions.

29 Duty to keep records available for inspection.

(1) A trade union shall keep available for inspection 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 they relate such of the records of the union, or of any branch or section of the union, as are, or purport to be, records required to be kept by the union under section 28.

This does not apply to records relating to periods before 1st January 1988.

(2) In section 30 (right of member to access to accounting records)—

(a) references to a union's accounting records are to any such records as are mentioned in subsection (1) above, and

(b) references to records available for inspection are to records which the union is required by that subsection to keep available for inspection.

(3) The expiry of the period mentioned in subsection (1) above does not affect the duty of a trade union to comply with a request for access made under section 30 before the end of that period.

30 Right of access to accounting records.

(1) A member of a trade union has a right to request access to any accounting records of the union which are available for inspection and relate to periods including a time when he was a member of the union.

In the case of records relating to a branch or section of the union, it is immaterial whether he was a member of that branch or section.

(2) Where such access is requested the union shall—

(a) make arrangements with the member for him to be allowed to inspect the records requested before the end of the period of twenty-eight days beginning with the day the request was made,

(b) allow him and any accountant accompanying him for the purpose to inspect the records at the time and place arranged, and

(c) secure that at the time of the inspection he is allowed to take, or is supplied with, any copies of, or of extracts from, records inspected by him which he requires.

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(3) The inspection shall be at a reasonable hour and at the place where the records are normally kept, unless the parties to the arrangements agree otherwise.

(4) An "accountant" means a person who is eligible for appointment as a company auditor under section 25 of the [M11]Companies Act 1989.

(5) The union need not allow the member 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 member who makes a request for access to a union's accounting records is informed by the union, before any arrangements are made in pursuance of the request—

(a) of the union's intention to charge for allowing him to inspect the records to which the request relates, for allowing him to take copies of, or extracts from, those records or for supplying any such copies, and

(b) of the principles in accordance with which its charges will be determined,

then, where the union complies with the request, he is liable to pay 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 those principles.

(7) In this section "member", in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes a member of any of the constituent or affiliated organisations.

Marginal Citations

M11 1989 c. 40.

31 Remedy for failure to comply with request for access.

(1) A person who claims that a trade union has failed in any respect to comply with a request made by him under section 30 may apply to the court **[**[F20]or to the Certification Officer**]**.

(2) Where **[**[F21]on an application to it**]** the court is satisfied that the claim is well-founded, it shall make such order as it considers appropriate for ensuring that **[**[F22]the applicant**]**—

(a) is allowed to inspect the records requested,

(b) is allowed to be accompanied by an accountant when making the inspection of those records, and

(c) is allowed to take, or is supplied with, such copies of, or of extracts from, the records as he may require.

[[F23][F23](2A) On an application to him the Certification Officer shall—

(a) make such enquiries as he thinks fit, and

(b) give the applicant and the trade union an opportunity to be heard.

[F23](2B) Where the Certification Officer is satisfied that the claim is well-founded he shall make such order as he considers appropriate for ensuring that the applicant—

(a) is allowed to inspect the records requested,

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(b) is allowed to be accompanied by an accountant when making the inspection of those records, and

(c) is allowed to take, or is supplied with, such copies of, or of extracts from, the records as he may require.

[F23](2C) In exercising his functions under this section the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.**]**

(3) Without prejudice to any other power of the court, the court may on an application **[**[F24]to it**]**under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.

[[F25](4) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

[F25](5) An order made by the Certification Officer under this section may be enforced in the same way as an order of the court.

[F25](6) If a person applies to the court under this section in relation to an alleged failure he may not apply to the Certification Officer under this section in relation to that failure.

[F25](7) If a person applies to the Certification Officer under this section in relation to an alleged failure he may not apply to the court under this section in relation to that failure.**]**

Textual Amendments

F20 Words in s. 31(1) inserted (25.10.1999) by 1999 C. 26, s. 29, Sch. 6 paras. 1, 6(1)(2); S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

F21 Words in s. 31(2) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **6(1)(3)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

F22 Words in 31(2) substituted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 para. 1, **6(1)(4)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

F23 S. 31(2A)-(2C) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **6(1)(5)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

F24 Words in s. 31(3) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **6(5)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

F25 S. 31(4)-(7) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **6(6)**; S.I. 1999/2830, art. 2(1)(2), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

Annual return, accounts and audit

32 Annual return.

(1) A trade union shall send to the Certification Officer as respects each calendar year a return relating to its affairs.

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(2) The annual return shall be in such form and be signed by such persons as the Certification Officer may require and shall be sent to him before 1st June in the calendar year following that to which it relates.

(3) The annual return shall contain—

(a) the following accounts—

(i) revenue accounts indicating the income and expenditure of the trade union for the period to which the return relates,

(ii) a balance sheet as at the end of that period, and

(iii) such other accounts as the Certification Officer may require,

each of which must give a true and fair view of the matters to which it relates,

[[F26](aa) details of the salary paid to and other benefits provided to or in respect of—

(i) each member of the executive,

(ii) the president, and

(iii) the general secretary,

by the trade union during the period to which the return relates,**]**

(b) a copy of the report made by the auditor or auditors of the trade union on those accounts and such other documents relating to those accounts and such further particulars as the Certification Officer may require, [F27]. . .

(c) a copy of the rules of the trade union as in force at the end of the period to which the return relates **[**[F28], and

(d) in the case of a trade union required to maintain a register by section 24, a statement of the number of names on the register as at the end of the period to which the return relates and the number of those names which were not accompanied by an address which is a member's address for the purposes of that section;**]**

and shall have attached to it a note of all the changes in the officers of the union and of any change in the address of the head or main office of the union during the period to which the return relates.

(4) The Certification Officer may, if in any particular case he considers it appropriate to do so—

(a) direct that the period for which a return is to be sent to him shall be a period other than the calendar year last preceding the date on which the return is sent;

(b) direct that the date before which a return is to be sent to him shall be such date (whether before or after 1st June) as may be specified in the direction.

(5) A trade union shall at the request of any person supply him with a copy of its most recent return either free of charge or on payment of a reasonable charge.

(6) The Certification Officer 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.

[[F29](7) For the purposes of this section and section 32A "member of the executive" includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.**]**

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Textual Amendments

F26 S. 32(3)(aa) inserted (1.1.1994) by 1993 c. 19, **s. 8(a)**; S.I. 1993/1908, art. 2(3), **Sch. 3**

F27 Word in s. 32(3) repealed (1.1.1994) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1993/1908, art. 2(3), **Sch. 3**

F28 S. 32(3)(d) and the word preceeding it inserted (1.1.1994) by 1993 c. 19, **s. 8(b)**; S.I. 1993/1908, art. 2(3), **Sch.3**

F29 S. 32(7) inserted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para.42**; S.I. 1993/1908, art. 2(3), **Sch. 3**

[F30 32A Statement to members following annual return.

(1) A trade union shall take all reasonable steps to secure that, not later than the end of the period of eight weeks beginning with the day on which the annual return of the union is sent to the Certification Officer, all the members of the union are provided with the statement required by this section by any of the methods allowed by subsection (2).

(2) Those methods are—

(a) the sending of individual copies of the statement to members; or

(b) any other means (whether by including the statement in a publication of the union or otherwise) which it is the practice of the union to use when information of general interest to all its members needs to be provided to them.

(3) The statement required by this section shall specify—

(a) the total income and expenditure of the trade union for the period to which the return relates,

(b) how much of the income of the union for that period consisted of payments in respect of membership,

(c) the total income and expenditure for that period of any political fund of the union, and

(d) the salary paid to and other benefits provided to or in respect of—

(i) each member of the executive,

(ii) the president, and

(iii) the general secretary,

by the trade union during that period.

(4) The requirement imposed by this section is not satisfied if the statement specifies anything inconsistent with the contents of the return.

(5) The statement—

(a) shall also set out in full the report made by the auditor or auditors of the union on the accounts contained in the return and state the name and address of that auditor or of each of those auditors, and

(b) may include any other matter which the union considers may give a member significant assistance in making an informed judgment about the financial activities of the union in the period to which the return relates.

(6) The statement—

(a) shall also include the following statement—

"A member who is concerned that some irregularity may be occurring, or have occurred, in the conduct of the financial affairs of the union may take steps

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with a view to investigating further, obtaining clarification and, if necessary, securing regularisation of that conduct.

The member may raise any such concern with such one or more of the following as it seems appropriate to raise it with: the officials of the union, the trustees of the property of the union, the auditor or auditors of the union, the Certification Officer (who is an independent officer appointed by the Secretary of State) and the police.

Where a member believes that the financial affairs of the union have been or are being conducted in breach of the law or in breach of rules of the union and contemplates bringing civil proceedings against the union or responsible officials or trustees, he **[**[F31]should**]** consider obtaining independent legal advice."; and

(b) may include such other details of the steps which a member may take for the purpose mentioned in the statement set out above as the trade union considers appropriate.

(7) A trade union shall send to the Certification Officer a copy of the statement which is provided to its members in pursuance of this section as soon as is reasonably practicable after it is so provided.

(8) Where the same form of statement is not provided to all the members of a trade union, the union shall send to the Certification Officer in accordance with subsection (7) a copy of each form of statement provided to any of them.

(9) If at any time during the period of two years beginning with the day referred to in subsection (1) any member of the trade union requests a copy of the statement required by this section, the union shall, as soon as practicable, furnish him with such a copy free of charge.**]**

Textual Amendments

F30 S. 32A inserted (1.1.1994) by 1993 c. 19, **s.9**; S.I. 1993/1908, art. 2(3), **Sch.3**

F31 Word in s. 32A(6)(a) substituted (25.10.1999) by 1999 c. 26, **ss. 28(3)**, 45;S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. 1** (with Sch. 3 para. 4)

33 Duty to appoint auditors.

(1) A trade union shall in respect of each accounting period appoint an auditor or auditors to audit the accounts contained in its annual return.

(2) An "accounting period" means any period in relation to which it is required to send a return to the Certification Officer.

34 Eligibility for appointment as auditor.

(1) A person is not qualified to be the auditor or one of the auditors of a trade union unless he is eligible for appointment as a company auditor under section 25 of the [M12]Companies Act 1989.

(2) Two or more persons who are not so qualified may act as auditors of a trade union in respect of an accounting period if—

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(a) the receipts and payments in respect of the union's last preceding accounting period did not in the aggregate exceed £5,000,

(b) the number of its members at the end of that period did not exceed 500, and

(c) the value of its assets at the end of that period did not in the aggregate exceed £5,000.

(3) Where by virtue of subsection (2) persons who are not qualified as mentioned in subsection (1) act as auditors of a trade union in respect of an accounting period, the Certification Officer may (during that period or after it comes to an end) direct the union to appoint a person who is so qualified to audit its accounts for that period.

(4) The Secretary of State may by regulations—

(a) substitute for any sum or number specified in subsection (2) such sum or number as may be specified in the regulations; and

(b) prescribe what receipts and payments are to be taken into account for the purposes of that subsection.

Any such regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) None of the following shall act as auditor of a trade union—

(a) an officer or employee of the trade union or of any of its branches or sections;

(b) a person who is a partner of, or in the employment of, or who employs, such an officer or employee;

(c) a body corporate.

F32 . . .

Textual Amendments

F32 In s. 34(5), the second sentence repealed (30.8.1993) by 1993 c. 19, ss. 49(1), 51, Sch. 7 para. 18, **Sch.10**; S.I. 1993/1908 art. 2(1), Sch. 1

Marginal Citations

M12 1989 c. 40.

35 Appointment and removal of auditors.

(1) The rules of every trade union shall contain provision for the appointment and removal of auditors.

But the following provisions have effect notwithstanding anything in the rules.

(2) An auditor of a trade union shall not be removed from office except by resolution passed at a general meeting of its members or of delegates of its members.

(3) An auditor duly appointed to audit the accounts of a trade union shall be re-appointed as auditor for the following accounting period, unless—

(a) a resolution has been passed at a general meeting of the trade union appointing somebody instead of him or providing expressly that he shall not be re-appointed, or

(b) he has given notice to the trade union in writing of his unwillingness to be re-appointed, or

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(c) he is ineligible for re-appointment, or

(d) he has ceased to act as auditor by reason of incapacity.

(4) Where notice has been given of an intended resolution to appoint somebody in place of a retiring auditor but the resolution cannot be proceeded with at the meeting because of the death or incapacity of that person, or because he is ineligible for the appointment, the retiring auditor need not automatically be re-appointed.

(5) The references above to a person being ineligible for appointment as auditor of a trade union are to his not being qualified for the appointment in accordance with **[**[F33]subsections (1) to (4)**]** of section 34 or being precluded by **[**[F33]subsection (5)**]** of that section from acting as its auditor.

(6) The Secretary of State may make provision by regulations as to the procedure to be followed when it is intended to move a resolution—

(a) appointing another auditor in place of a retiring auditor, or

(b) providing expressly that a retiring auditor shall not be re-appointed,

and as to the rights of auditors and members of the trade union in relation to such a motion.

Any such regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) Where regulations under subsection (6)—

(a) require copies of any representations made by a retiring auditor to be sent out, or

(b) require any such representations to be read out at a meeting,

the court, on the application of the trade union or of any other person, may dispense with the requirement if satisfied that the rights conferred on the retiring auditor by the regulations are being abused to secure needless publicity for defamatory matter.

(8) On such an application the court may order the costs or expenses of the trade union to be paid, in whole or in part, by the retiring auditor, whether he is a party to the application or not.

Textual Amendments

F33 Words in s. 35(5) substituted (30.8.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para. 19(a)(b)**; S.I. 1993/1908 art. 2(1), Sch.1

36 Auditors' report.

(1) The auditor or auditors of a trade union shall make a report to it on the accounts audited by him or them and contained in its annual return.

(2) The report shall state whether, in the opinion of the auditor or auditors, the accounts give a true and fair view of the matters to which they relate.

(3) It is the duty of the auditor or auditors in preparing their report to carry out such investigations as will enable them to form an opinion as to—

(a) whether the trade union has kept proper accounting records in accordance with the requirements of section 28,

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(b) whether it has maintained a satisfactory system of control over its transactions in accordance with the requirements of that section, and

(c) whether the accounts to which the report relates agree with the accounting records.

(4) If in the opinion of the auditor or auditors the trade union has failed to comply with section 28, or if the accounts do not agree with the accounting records, the auditor or auditors shall state that fact in the report.

37 Rights of auditors.

(1) Every auditor of a trade union—

(a) has a right of access at all times to its accounting records and to all other documents relating to its affairs, and

(b) is entitled to require from its officers, or the officers of any of its branches or sections, such information and explanations as he thinks necessary for the performance of his duties as auditor.

(2) If an auditor fails to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of an audit, he shall state that fact in his report.

(3) Every auditor of a trade union is entitled—

(a) to attend any general meeting of its members, or of delegates of its members, and to receive all notices of and other communications relating to any general meeting which any such member or delegate is entitled to receive, and

(b) to be heard at any meeting which he attends on any part of the business of the meeting which concerns him as auditor.

[F34 Investigation of financial affairs]

Textual Amendments

F34 Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, **s.10**; S.I. 1993/1908, art. 2(1), **Sch.1**

[F35 37A Power of Certification Officer to require production of documents etc.

(1) The Certification Officer may at any time, if he thinks there is good reason to do so, give directions to a trade union, or a branch or section of a trade union, requiring it to produce such relevant documents as may be specified in the directions; and the documents shall be produced at such time and place as may be so specified.

(2) The Certification Officer may at any time, if he thinks there is good reason to do so, authorise a member of his staff or any other person, on producing (if so required) evidence of his authority, to require a trade union, or a branch or section of a trade union, to produce forthwith to the member of staff or other person such relevant documents as the member of staff or other person may specify.

(3) Where the Certification Officer, or a member of his staff or any other person, has power to require the production of documents by virtue of subsection (1) or (2), the Certification Officer, member of staff or other person has the like power to require

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production of those documents from any person who appears to the Certification Officer, member of staff or other person to be in possession of them.

(4) Where such a person claims a lien on documents produced by him, the production is without prejudice to the lien.

(5) The power under this section to require the production of documents includes power—
- (a) if the documents are produced—
  - (i) to take copies of them or extracts from them, and
  - (ii) to require the person by whom they are produced, or any person who is or has been an official or agent of the trade union, to provide an explanation of any of them; and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) In subsections (1) and (2) "relevant documents", in relation to a trade union or a branch or section of a trade union, means accounting documents, and documents of any other description, which may be relevant in considering the financial affairs of the trade union.

(7) A person shall not be excused from providing an explanation or making a statement in compliance with a requirement imposed under subsection (5) on the ground that to do so would tend to expose him to proceedings for an offence; but an explanation so provided or statement so made may only be used in evidence against the person by whom it is made or provided—
- (a) on a prosecution for an offence under section 45(9) (false explanations and statements), or
- (b) on a prosecution for some other offence where in giving evidence the person makes a statement inconsistent with it.**]**

Textual Amendments

F35 Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, **s.10**; S.I. 1993/1908, art. 2(1), **Sch.1**

[F36 37B Investigations by inspectors.

(1) The Certification Officer may appoint one or more members of his staff or other persons as an inspector or inspectors to investigate the financial affairs of a trade union and to report on them in such manner as he may direct.

(2) The Certification Officer may only make such an appointment if it appears to him that there are circumstances suggesting—
- (a) that the financial affairs of the trade union are being or have been conducted for a fraudulent or unlawful purpose,
- (b) that persons concerned with the management of those financial affairs have, in connection with that management, been guilty of fraud, misfeasance or other misconduct,
- (c) that the trade union has failed to comply with any duty imposed on it by this Act in relation to its financial affairs, or
- (d) that a rule of the union relating to its financial affairs has not been complied with.

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(3) Where an inspector is, or inspectors are, appointed under this section it is the duty of all persons who are or have been officials or agents of the trade union—
  (a) to produce to the inspector or inspectors all relevant documents which are in their possession,
  (b) to attend before the inspector or inspectors when required to do so, and
  (c) otherwise to give the inspector or inspectors all assistance in connection with the investigation which they are reasonably able to give.

(4) Where any person (whether or not within subsection (3)) appears to the inspector or inspectors to be in possession of information relating to a matter which he considers, or they consider, to be relevant to the investigation, the inspector or inspectors may require him—
  (a) to produce to the inspector or inspectors any relevant documents relating to that matter,
  (b) to attend before the inspector or inspectors, and
  (c) otherwise to give the inspector or inspectors all assistance in connection with the investigation which he is reasonably able to give;

  and it is the duty of the person to comply with the requirement.

(5) In subsections (3) and (4) "relevant documents", in relation to an investigation of the financial affairs of a trade union, means accounting documents, and documents of any other description, which may be relevant to the investigation.

(6) A person shall not be excused from providing an explanation or making a statement in compliance with subsection (3) or a requirement imposed under subsection (4) on the ground that to do so would tend to expose him to proceedings for an offence; but an explanation so provided or statement so made may only be used in evidence against the person by whom it is provided or made—
  (a) on a prosecution for an offence under section 45(9) (false explanations and statements), or
  (b) on a prosecution for some other offence where in giving evidence the person makes a statement inconsistent with it.**]**

Textual Amendments
F36 Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, **s.10**; S.I. 1993/1908, art. 2(1), **Sch.1**

[[F37]37C Inspectors' reports etc.

(1) An inspector or inspectors appointed under section 37B—
  (a) may, and if so directed by the Certification Officer shall, make interim reports, and
  (b) on the conclusion of their investigation shall make a final report,

  to the Certification Officer.

(2) Any report under subsection (1) shall be written or printed, as the Certification Officer directs.

(3) An inspector or inspectors appointed under section 37B may at any time, and if so directed by the Certification Officer shall, inform the Certification Officer of any matters coming to his or their knowledge as a result of the investigation.

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(4) The Certification Officer may direct an inspector or inspectors appointed under section 37B to take no further steps in the investigation, or to take only such further steps as are specified in the direction, if—
  (a) it appears to the Certification Officer that matters have come to light in the course of the investigation which suggest that a criminal offence has been committed and those matters have been referred to the appropriate prosecuting authority, or
  (b) it appears to the Certification Officer appropriate to do so in any other circumstances.

(5) Where an investigation is the subject of a direction under subsection (4), the inspector or inspectors shall make a final report to the Certification Officer only where the Certification Officer directs him or them to do so at the time of the direction under that subsection or subsequently.

(6) The Certification Officer shall publish a final report made to him under this section.

(7) The Certification Officer shall furnish a copy of such a report free of charge—
  (a) to the trade union which is the subject of the report,
  (b) to any auditor of that trade union or of any branch or section of the union, if he requests a copy before the end of the period of three years beginning with the day on which the report is published, and
  (c) to any member of the trade union if—
    (i) he has complained to the Certification Officer that there are circumstances suggesting any of the states of affairs specified in section 37B(2)(a) to (d),
    (ii) the Certification Officer considers that the report contains findings which are relevant to the complaint, and
    (iii) the member requests a copy before the end of the period of three years beginning with the day on which the report is published.

(8) A copy of any report under this section, certified by the Certification Officer to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report; and a document purporting to be a certificate of the Certification Officer under this subsection shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.**]**

Textual Amendments
F37 Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, **s. 10**; S.I. 1993/1908, art. 2(1), **Sch.1**

[[F38]37D Expenses of investigations.

(1) The expenses of an investigation under section 37B shall be defrayed in the first instance by the Certification Officer.

(2) For the purposes of this section there shall be treated as expenses of an investigation, in particular, such reasonable sums as the Certification Officer may determine in respect of general staff costs and overheads.

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(3) A person who is convicted on a prosecution instituted as a result of the investigation may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the order.**]**

Textual Amendments

F38 Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, **s. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

[F39 37E Sections 37A and 37B: supplementary.

(1) Where—

(a) a report of the auditor or auditors of a trade union, or a branch or section of a trade union, on the accounts audited by him or them and contained in the annual return of the union, or branch or section—

(i) does not state without qualification that the accounts give a true and fair view of the matters to which they relate, or

(ii) includes a statement in compliance with section 36(4), or

(b) a member of a trade union has complained to the Certification Officer that there are circumstances suggesting any of the states of affairs specified in section 37B(2)(a) to (d),

the Certification Officer shall consider whether it is appropriate for him to exercise any of the powers conferred on him by sections 37A and 37B.

(2) If in a case where a member of a trade union has complained as mentioned in subsection (1)(b) the Certification Officer decides not to exercise any of the powers conferred by those sections he shall, as soon as reasonably practicable after making a decision not to do so, notify the member of his decision and, if he thinks fit, of the reasons for it.

(3) Nothing in section 37A or 37B—

(a) requires or authorises anyone to require the disclosure by a person of information which he would in an action in the High Court or the Court of Session be entitled to refuse to disclose on grounds of legal professional privilege except, if he is a lawyer, the name and address of his client, or

(b) requires or authorises anyone to require the production by a person of a document which he would in such an action be entitled to refuse to produce on such grounds.

(4) Nothing in section 37A or 37B requires or authorises anyone to require the disclosure of information or the production of documents in respect of which the person to whom the requirement would relate owes an obligation of confidence by virtue of carrying on the business of banking unless—

(a) the person to whom the obligation is owed is the trade union, or any branch or section of the union, concerned or a trustee of any fund concerned, or

(b) the person to whom the obligation of confidence is owed consents to the disclosure or production.

(5) In sections 37A and 37B and this section—

(a) references to documents include information recorded in any form, and

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(b) in relation to information recorded otherwise than in legible form, references to its production are to the production of a copy of the information in legible form.**]**

Textual Amendments

F39 Ss. 37A-37E inserted (30.8.1993) by 1993 c. 19, **s.10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

Members' superannuation schemes

38 Members' superannuation schemes: separate fund to be maintained.

(1) In the following provisions a "members' superannuation scheme" means any scheme or arrangement made by or on behalf of a trade union (including a scheme or arrangement shown in the rules of the union) in so far as it provides—

(a) for benefits to be paid by way of pension (including any widows' or children's pensions or dependants' pensions) to or in respect of members or former members of the trade union, and

(b) for those benefits to be so paid either out of the funds of the union or under an insurance scheme maintained out of those funds.

(2) A trade union shall not maintain a members' superannuation scheme unless it maintains a separate fund for the payment of benefits in accordance with the scheme.

A "separate fund" means a fund separate from the general funds of the trade union.

39 Examination of proposals for new scheme.

(1) A trade union shall not begin to maintain a members' superannuation scheme unless, before the date on which the scheme begins to be maintained—

(a) the proposals for the scheme have been examined by an appropriately qualified actuary, and

(b) a copy of a report made to the trade union by the actuary on the results of his examination of the proposals, signed by the actuary, has been sent to the Certification Officer.

(2) The actuary's report shall state—

(a) whether in his opinion the premium or contribution rates will be adequate,

(b) whether the accounting or funding arrangements are suitable, and

(c) whether in his opinion the fund for the payment of benefits will be adequate.

(3) A copy of the actuary's report shall, on the application of any of the union's members, be supplied to him free of charge.

40 Periodical re-examination of existing schemes.

(1) Where a trade union maintains a members' superannuation scheme, it shall arrange for the scheme to be examined periodically by an appropriately qualified actuary and for a report to be made to it by the actuary on the result of his examination.

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(2) The examination shall be of the scheme as it has effect at such date as the trade union may determine, not being more than five years after the date by reference to which the last examination or, as the case may be, the examination of the proposals for the scheme was carried out.

(3) The examination shall include a valuation (as at the date by reference to which the examination is carried out) of the assets comprised in the fund maintained for the payment of benefits and of the liabilities falling to be discharged out of it.

(4) The actuary's report shall state—
- (a) whether in his opinion the premium or contribution rates are adequate,
- (b) whether the accounting or funding arrangements are suitable, and
- (c) whether in his opinion the fund for the payment of benefits is adequate.

(5) A copy of the report, signed by the actuary, shall be sent to the Certification Officer.

(6) The trade union shall make such arrangements as will enable the report to be sent to the Certification Officer within a year of the date by reference to which the examination was carried out.

(7) A copy of the actuary's report shall, on the application of any of the union's members, be supplied to him free of charge.

41 Powers of the Certification Officer.

(1) The Certification Officer may, on the application of a trade union—
- (a) exempt a members' superannuation scheme which the union proposes to maintain from the requirements of section 39 (examination of proposals for new scheme), or
- (b) exempt a members' superannuation scheme which the union maintains from the requirements of section 40 (periodical re-examination of scheme),

if he is satisfied that, by reason of the small number of members to which the scheme is applicable or for any other special reasons, it is unnecessary for the scheme to be examined in accordance with those provisions.

(2) An exemption may be revoked if it appears to the Certification Officer that the circumstances by reason of which it was granted have ceased to exist.

(3) Where an exemption is revoked under subsection (1)(b), the date as at which the next periodical examination is to be carried out under section 40 shall be such as the Certification Officer may direct.

(4) The Certification Officer may in any case direct that section 40 (periodical re-examination of schemes) shall apply to a trade union with the substitution for the reference to five years of a reference to such shorter period as may be specified in the direction.

42 Meaning of "appropriately qualified actuary".

In sections 39 and 40 an "appropriately qualified actuary" means a person who is either—
- (a) a Fellow of the Institute of Actuaries, or
- (b) a Fellow of the Faculty of Actuaries,

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or is approved by the Certification Officer on the application of the trade union as a person having actuarial knowledge.

Supplementary

43 Newly-formed trade unions.

(1) The following provisions of this Chapter do not apply to a trade union which has been in existence for less than twelve months—

(a) section 27 (duty to supply copy of rules),

(b) sections 32 to 37 (annual return, **[**[F40]statement for members,**]** accounts and audit), [F41]. . .

[[F42](ba) sections 37A to 37E (investigation of financial affairs), and**]**

(c) sections 38 to 42 (members' superannuation schemes).

(2) Sections 24 to 26 (register of members' names and addresses) do not apply to a trade union until more than one year has elapsed since its formation (by amalgamation or otherwise).

For this purpose the date of formation of a trade union formed otherwise than by amalgamation shall be taken to be the date on which the first members of the executive of the union are first appointed or elected.

Textual Amendments

F40 Words in s. 43(1)(b) inserted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 43(a)**; S.I. 1993/1908, art. 2(3), **Sch. 3**

F41 Word in s. 43(1)(b) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F42 S. 43(1)(ba) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 43(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

44 Discharge of duties in case of union having branches or sections.

(1) The following provisions apply where a trade union consists of or includes branches or sections.

(2) Any duty falling upon the union in relation to a branch or section under the provisions of—

section 28 (duty to keep accounting records),

[[F43]sections 32 and 33 to 37**]** (annual return, accounts and audit), or

sections 38 to 42 (members' superannuation schemes),

shall be treated as discharged to the extent to which a branch or section discharges it instead of the union.

(3) In sections 29 to 31 (right of member to access to accounting records) references to a branch or section do not include a branch or section which is itself a trade union.

(4) Any duty falling upon a branch or section by reason of its being a trade union under—

section 24 (register of members' names and addresses),

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section 28 (duty to keep accounting records),

[[F43]sections 32 and 33 to 37**]** (annual return, accounts and audit), or

section 38 to 42 (members' superannuation schemes),

shall be treated as discharged to the extent to which the union of which it is a branch or section discharges the duty instead of it.

[[F44](5) Where the duty falling on a trade union under section 32 to send to the Certification Officer a return relating to its affairs is treated as discharged by the union by virtue of subsection (2) or (4) of this section, the duties imposed by section 32A in relation to the return shall be treated as duties of the branch or section of the union, or the trade union of which it is a branch or section, by which that duty is in fact discharged.**]**

Textual Amendments

F43 Words in s. 44(2)(4) substituted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 44(a)**; S.I. 1993/1908, art. 2(3), **Sch. 3**

F44 S. 44(5) inserted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 44(b)**; S.I. 1993/1908, art. 2(3), **Sch.3**

45 Offences.

(1) If a trade union refuses or wilfully neglects to perform a duty imposed on it by or under any of the provisions of—

section 27 (duty to supply copy of rules),

sections 28 to 30 (accounting records),

sections 32 to 37 (annual return, **[**[F45]statement for members,**]** accounts and audit), or

sections 38 to 42 (members' superannuation schemes),

it commits an offence.

(2) The offence shall be deemed to have been also committed by—

(a) every officer of the trade union who is bound by the rules of the union to discharge on its behalf the duty breach of which constitutes the offence, or

(b) if there is no such officer, every member of the general committee of management of the union.

(3) In any proceedings brought against an officer or member by virtue of subsection (2) in respect of a breach of duty, it is 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 mentioned in subsection (1), with intent to falsify the document or to enable a trade union to evade any of those provisions, commits an offence.

[[F46](5) If a person contravenes any duty, or requirement imposed, under section 37A (power of Certification officer to require production of documents etc.) or 37B (investigations by inspectors) he commits an offence.

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(6) In any proceedings brought against a person in respect of a contravention of a requirement imposed under section 37A(3) or 37B(4) to produce documents it is a defence for him to prove—
  (a) that the documents were not in his possession, and
  (b) that it was not reasonably practicable for him to comply with the requirement.

(7) If an official or agent of a trade union—
  (a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of, a document relating to the financial affairs of the trade union, or
  (b) makes, or is privy to the making of, a false entry in any such document,

he commits an offence unless he proves that he had no intention to conceal the financial affairs of the trade union or to defeat the law.

(8) If such a person fraudulently—
  (a) parts with, alters or deletes anything in any such document, or
  (b) is privy to the fraudulent parting with, fraudulent alteration of or fraudulent deletion in, any such document,

he commits an offence.

(9) If a person in purported compliance with a duty, or requirement imposed, under section 37A or 37B to provide an explanation or make a statement—
  (a) provides or makes an explanation or statement which he knows to be false in a material particular, or
  (b) recklessly provides or makes an explanation or statement which is false in a material particular,

he commits an offence.**]**

Textual Amendments

F45 Words in s. 45(1) inserted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para.45**; S.I. 1993/1908, art. 2(3), **Sch.3**

F46 S. 45(5)-(9) substituted (30.8.1993) for s. 45(5) by 1993 c. 19, **s. 11(1)**; S.I. 1993/1908, art. 1(2), **Sch. 1**

[F47 45A Penalties and prosecution time limits.

(1) A person guilty of an offence under section 45 is liable on summary conviction—
  (a) in the case of an offence under subsection (1) or (5), to a fine not exceeding level 5 on the standard scale;
  (b) in the case of an offence under subsection (4), (7), (8) or (9), to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(2) Proceedings for an offence under section 45(1) relating to the duty imposed by section 32 (duty to send annual return to Certification Officer) may be commenced at any time before the end of the period of three years beginning with the date when the offence was committed.

(3) Proceedings for any other offence under section 45(1) may be commenced—

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(a) at any time before the end of the period of six months beginning with the date when the offence was committed, or

(b) at any time after the end of that period but before the end of the period of twelve months beginning with the date when evidence sufficient in the opinion of the Certification Officer or, in Scotland, the procurator fiscal, to justify the proceedings came to his knowledge;

but no proceedings may be commenced by virtue of paragraph (b) after the end of the period of three years beginning with the date when the offence was committed.

(4) For the purposes of subsection (3)(b), a certificate signed by or on behalf of the Certification Officer or the procurator fiscal which states the date on which evidence sufficient in his opinion to justify the proceedings came to his knowledge shall be conclusive evidence of that fact.

(5) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(6) For the purposes of this section—

(a) in England and Wales, proceedings are commenced when an information is laid, and

(b) in Scotland, subsection (3) of **[**[F48]section 136 of the Criminal Procedure (Svotland) Act 1995**]** (date of commencement of proceedings) applies as it applies for the purposes of that section.

Textual Amendments

F47 S 45A inserted (30.8.1993) by 1993 c. 19, **s. 11(2)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F48 Words in s. 45A(6) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 85**

[[F49]**45B Duty to secure positions not held by certain offenders.**

(1) A trade union shall secure that a person does not at any time hold a position in the union to which this section applies if—

(a) within the period of five years immediately preceding that time he has been convicted of an offence under subsection (1) or (5) of section 45, or

(b) within the period of ten years immediately preceding that time he has been convicted of an offence under subsection (4), (7), (8) or (9) of that section.

(2) Subject to subsection (4), the positions to which this section applies are—

(a) member of the executive,

(b) any position by virtue of which a person is a member of the executive,

(c) president, and

(d) general secretary.

(3) For the purposes of subsection (2)(a) "member of the executive" includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.

(4) This section does not apply to the position of president or general secretary if the holder of that position—

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(a) is not, in respect of that position, either a voting member of the executive or an employee of the union,

(b) holds that position for a period which under the rules of the union cannot end more than thirteen months after he took it up, and

(c) has not held either position at any time in the period of twelve months ending with the day before he took up that position.

(5) In subsection (4)(a) "a voting member of the executive" means a person entitled in his own right to attend meetings of the executive and to vote on matters on which votes are taken by the executive (whether or not he is entitled to attend all such meetings or to vote on all such matters or in all circumstances).**]**

Textual Amendments

F49 S. 45B inserted (30.8.1993) by 1993 c. 19, **s.12**; S.I. 1993/1908, art. 2(1), **Sch.1**

[F50 45C Remedies and enforcement.

(1) A member of a trade union who claims that the union has failed to comply with the requirement of section 45B may apply to the Certification Officer or to the court for a declaration to that effect.

(2) On an application being made to him, the Certification Officer—

[F51(aa) shall make such enquiries as he thinks fit,**]]**

(a) shall F52. . . give the applicant and the trade union an opportunity to be heard,

(b) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,

(c) may make or refuse the declaration asked for, and

(d) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.

F53(3) . . . . . .

F53(4) . . . . . .

(5) Where the court makes a declaration it shall also, unless it considers that it would be inappropriate, make an order imposing on the trade union a requirement to take within such period as may be specified in the order such steps to remedy the declared failure as may be so specified.

[F54(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that it would be inappropriate, make an order imposing on the trade union a requirement to take within such period as may be specified in the order such steps to remedy the declared failure as may be so specified.

F54(5B) The following paragraphs have effect if a person applies to the Certification Officer under this section in relation to an alleged failure—

(a) that person may not apply to the court under this section in relation to that failure;

(b) on an application by a different person to the court under this section in relation to that failure, the court shall have due regard to any declaration, order,

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observations or reasons made or given by the Certification Officer regarding that failure and brought to the court's notice.

[F54](5C) The following paragraphs have effect if a person applies to the court under this section in relation to an alleged failure—

(a) that person may not apply to the Certification Officer under this section in relation to that failure;

(b) on an application by a different person to the Certification Officer under this section in relation to that failure, the Certification Officer shall have regard to any declaration, order, observations or reasons made or given by the court regarding that failure and brought to the Certification Officer's notice.**]**

(6) Where an order has been made **[**[F55]under subsection (5) or (5A)**]**, any person who is a member of the trade union and was a member at the time the order was made is entitled to enforce the order as if he had made the application on which the order was made.

[[F56][F56](7) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

[F56](8) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.

[F56](9) An order made by the Certification Officer under this section may be enforced in the same way as an order of the court.**]**

Textual Amendments

F50 S. 45C inserted (30.8.1993) by 1993 c. 19, **s. 12**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F51 S. 45C (aa) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **7(1)(2)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

F52 Words in s. 45C(2)(a) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, 7(1)(3), **Sch. 9(7)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para 5)

F53 S. 45C(3)(4) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, 7(1)(4), **Sch. 9(7)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 5)

F54 S. 45C(5A)-(5C) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **7(1)(5)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

F55 Words in s. 45C(6) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **7(1)(6)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

F56 S. 45C(7)-(9) inserted (25.10.1999) by 1999 c. 26, s. 29, **Sch. 6**, paras. 1, 7(1)(7); S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

[[F57]45D Appeals from Certification Officer.

An appeal lies to the Employment Appeal Tribunal on any question of law arising in proceedings before or arising from any decision of the Certification Officer under section 25, 31 or 45C.**]**

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Textual Amendments

F57 S. 45D inserted (25.10.1999) by 1999 c. 26 s. 29, Sch. 6 paras. 1, 8; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 4)

CHAPTER IV

ELECTIONS FOR CERTAIN POSITIONS

Duty to hold elections

46 Duty to hold elections for certain positions.

(1) A trade union shall secure—

(a) that every person who holds a position in the union to which this Chapter applies does so by virtue of having been elected to it at an election satisfying the requirements of this Chapter, and

(b) that no person continues to hold such a position for more than five years without being re-elected at such an election.

(2) The positions to which this Chapter applies (subject as mentioned below) are—

(a) member of the executive,

(b) any position by virtue of which a person is a member of the executive,

(c) president, and

(d) general secretary;

and the requirements referred to above are those set out in sections 47 to 52 below.

(3) In this Chapter "member of the executive" includes any person who, under the rules or practice of the union, may attend and speak at some or all of the meetings of the executive, otherwise than for the purpose of providing the committee with factual information or with technical or professional advice with respect to matters taken into account by the executive in carrying out its functions.

(4) This Chapter does not apply to the position of president or general secretary if the holder of that position—

(a) is not, in respect of that position, either a voting member of the executive or an employee of the union,

(b) holds that position for a period which under the rules of the union cannot end more than 13 months after he took it up, and

(c) has not held either position at any time in the period of twelve months ending with the day before he took up that position.

(5) A "voting member of the executive" means a person entitled in his own right to attend meetings of the executive and to vote on matters on which votes are taken by the executive (whether or not he is entitled to attend all such meetings or to vote on all such matters or in all circumstances).

(6) The provisions of this Chapter apply notwithstanding anything in the rules or practice of the union; and the terms and conditions on which a person is employed by the union

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shall be disregarded in so far as they would prevent the union from complying with the provisions of this Chapter.

Requirements to be satisfied with respect to elections

47 Candidates.

(1) No member of the trade union shall be unreasonably excluded from standing as a candidate.

(2) No candidate shall be required, directly or indirectly, to be a member of a political party.

(3) A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union.

But a rule which provides for such a class to be determined by reference to whom the union chooses to exclude shall be disregarded.

48 Election addresses.

(1) The trade union shall—
- (a) provide every candidate with an opportunity of preparing an election address in his own words and of submitting it to the union to be distributed to the persons accorded entitlement to vote in the election; and
- (b) secure that, so far as reasonably practicable, copies of every election address submitted to it in time are distributed to each of those persons by post along with the voting papers for the election.

(2) The trade union may determine the time by which an election address must be submitted to it for distribution; but the time so determined must not be earlier than the latest time at which a person may become a candidate in the election.

(3) The trade union may provide that election addresses submitted to it for distribution—
- (a) must not exceed such length, not being less than one hundred words, as may be determined by the union, and
- (b) may, as regards photographs and other matter not in words, incorporate only such matter as the union may determine.

(4) The trade union shall secure that no modification of an election address submitted to it is made by any person in any copy of the address to be distributed except—
- (a) at the request or with the consent of the candidate, or
- (b) where the modification is necessarily incidental to the method adopted for producing that copy.

(5) The trade union shall secure that the same method of producing copies is applied in the same way to every election address submitted and, so far as reasonably practicable, that no such facility or information as would enable a candidate to gain any benefit from—
- (a) the method by which copies of the election addresses are produced, or
- (b) the modifications which are necessarily incidental to that method,

is provided to any candidate without being provided equally to all the others.

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(6) The trade union shall, so far as reasonably practicable, secure that the same facilities and restrictions with respect to the preparation, submission, length or modification of an election address, and with respect to the incorporation of photographs or other matter not in words, are provided or applied equally to each of the candidates.

(7) The arrangements made by the trade union for the production of the copies to be so distributed must be such as to secure that none of the candidates is required to bear any of the expense of producing the copies.

(8) No-one other than the candidate himself shall incur any civil or criminal liability in respect of the publication of a candidate's election address or of any copy required to be made for the purposes of this section.

49 Appointment of independent scrutineer.

(1) The trade union shall, before the election is held, appoint a qualified independent person ("the scrutineer") to carry out—
   (a) the functions in relation to the election which are required under this section to be contained in his appointment; and
   (b) such additional functions in relation to the election as may be specified in his appointment.

(2) A person is a qualified independent person in relation to an election if—
   (a) he satisfies such conditions as may be specified for the purposes of this section by order of the Secretary of State or is himself so specified; and
   (b) the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the election otherwise than competently or that his independence in relation to the union, or in relation to the election, might reasonably be called into question.

   An order under paragraph (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) The scrutineer's appointment shall require him—
   (a) to be the person who supervises the production **[**[F58]of the voting papers and (unless he is appointed under section 51A to undertake the distribution of the voting papers) their distribution**]** and to whom the voting papers are returned by those voting;
   [[F59](aa) to—
      (i) inspect the register of names and addresses of the members of the trade union, or
      (ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with subsection (5A)(a),

      whenever it appears to him appropriate to do so and, in particular, when the conditions specified in subsection (3A) are satisfied;**]**
   (b) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see section 52);
   (c) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and
   (d) to retain custody of all voting papers returned for the purposes of the election **[**[F60]and the copy of the register supplied to him in accordance with subsection (5A)(a)**]**—

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(i) until the end of the period of one year beginning with the announcement by the union of the result of the election; and

(ii) if within that period an application is made under section 54 (complaint of failure to comply with election requirements), until the Certification Officer or the court authorises him to dispose of the papers **[**[F61]or copy**]**.

[[F62](3A) The conditions referred to in subsection (3)(aa) are—

(a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union or candidate who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and

(b) that the scrutineer does not consider that the suspicion of the member or candidate is ill-founded.

(3B) In subsection (3A) "the appropriate period" means the period—

(a) beginning with the first day on which a person may become a candidate in the election or, if later, the day on which the scrutineer is appointed, and

(b) ending with the day before the day on which the scrutineer makes his report to the trade union.

(3C) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.**]**

(4) The trade union shall ensure that nothing in the terms of the scrutineer's appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer's independence in relation to the union into question.

(5) The trade union shall, before the scrutineer begins to carry out his functions, either—

(a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or

(b) take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

[[F63](5A) The trade union shall—

(a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and

(b) comply with any request made by the scrutineer to inspect the register.

(5B) Where the register is kept by means of a computer the duty imposed on the trade union by subsection (5A)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.**]**

(6) The trade union shall ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer's independence in relation to the union into question.

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(7) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.

[[F64](8) In this section "the relevant date" means—

(a) where the trade union has rules determining who is entitled to vote in the election by reference to membership on a particular date, that date, and

(b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the election.**]**

Textual Amendments

F58 Words in s. 49(3)(a) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.46**; S.I. 1993/1908, art. 2(1), **Sch.1**

F59 S. 49(3)(aa) inserted (30.8.1993) by 1993 c. 19, **s. 1(1)(a)**; S.I. 1993/1908, art. 2(1), **Sch.1**

F60 Words in s. 49(3)(d) inserted (30.8.1993) by 1993 c. 19, **s. 1(1)(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F61 Words in s. 49(3)(d)(ii) inserted (30.8.1993) by 1993 c. 19, **s. 1(1)(b)**; S.I. 1993/1908, art. 2(1), **Sch.1**

F62 S. 49(3A)-(3C) inserted (30.8.1993) by 1993 c. 19, **s. 1(1)(c)**; S.I. 1993/1908, art. 2(1), **Sch.1**

F63 S. 49(5A)(5B) inserted (30.8.1993) by 1993 c. 19, **s. 1(1)(d)**; S.I. 1993/1908, **art. 11**)(d); S.I. 1993/1908, art. 2(1), **Sch.1**

F64 S. 49(8) inserted (30.8.1993) by 1993 c. 19, **s. 1(1)(e)**; S.I. 1993/1908, art. 2(1), **Sch.1**

50 Entitlement to vote.

(1) Subject to the provisions of this section, entitlement to vote shall be accorded equally to all members of the trade union.

(2) The rules of the union may exclude entitlement to vote in the case of all members belonging to one of the following classes, or to a class falling within one of the following—

(a) members who are not in employment;

(b) members who are in arrears in respect of any subscription or contribution due to the union;

(c) members who are apprentices, trainees or students or new members of the union.

(3) The rules of the union may restrict entitlement to vote to members who fall within—

(a) a class determined by reference to a trade or occupation,

(b) a class determined by reference to a geographical area, or

(c) a class which is by virtue of the rules of the union treated as a separate section within the union,

or to members who fall within a class determined by reference to any combination of the factors mentioned in paragraphs (a), (b) and (c).

The reference in paragraph (c) to a section of a trade union includes a part of the union which is itself a trade union.

(4) Entitlement may not be restricted in accordance with subsection (3) if the effect is that any member of the union is denied entitlement to vote at all elections held for the purposes of this Chapter otherwise than by virtue of belonging to a class excluded in accordance with subsection (2).

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51 Voting.

(1) The method of voting must be by the marking of a voting paper by the person voting.

(2) Each voting paper must—

(a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned,

(b) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the election, and

(c) be marked with its number.

(3) Every person who is entitled to vote at the election must—

(a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and

(b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.

(4) So far as is reasonably practicable, every person who is entitled to vote at the election must—

(a) have sent to him by post, at his home address or another address which he has requested the trade union in writing to treat as his postal address, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates; and

(b) be given a convenient opportunity to vote by post.

(5) The ballot shall be conducted so as to secure that—

(a) so far as is reasonably practicable, those voting do so in secret, and

(b) the votes given at the election are fairly and accurately counted.

For the purposes of paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the election.

(6) The ballot shall be so conducted as to secure that the result of the election is determined solely by counting the number of votes cast directly for each candidate.

(7) Nothing in subsection (6) shall be taken to prevent the system of voting used for the election being the single transferable vote, that is, a vote capable of being given so as to indicate the voter's order of preference for the candidates and of being transferred to the next choice—

(a) when it is not required to give a prior choice the necessary quota of votes, or

(b) when, owing to the deficiency in the number of votes given for a prior choice, that choice is eliminated from the list of candidates.

[51A [F65]Counting of votes etc. by independent person.

(1) The trade union shall ensure that—

(a) the storage and distribution of the voting papers for the purposes of the election, and

(b) the counting of the votes cast in the election,

are undertaken by one or more independent persons appointed by the union.

(2) A person is an independent person in relation to an election if—

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(a) he is the scrutineer, or

(b) he is a person other than the scrutineer and the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the election otherwise than competently or that his independence in relation to the union, or in relation to the election, might reasonably be called into question.

(3) An appointment under this section shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any enactment or the occurrence of any unfairness or malpractice.

(4) The duty of confidentiality as respects the register is incorporated in an appointment under this section.

(5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.

(6) The trade union—

(a) shall ensure that nothing in the terms of an appointment under this section is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,

(b) shall ensure that a person appointed under this section duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call into question the independence of the person appointed in relation to the union, and

(c) shall comply with all reasonable requests made by a person appointed under this section for the purposes of, or in connection with, the carrying out of his functions.**]**

Textual Amendments

F65 S. 51A inserted (30.8.1993) by 1993 c. 19, **s. 2(1)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

52 Scrutineer's report.

(1) The scrutineer's report on the election shall state—

(a) the number of voting papers distributed for the purposes of the election,

(b) the number of voting papers returned to the scrutineer,

(c) the number of valid votes cast in the election for each candidate, [F66]. . .

(d) the number of spoiled or otherwise invalid voting papers returned **[**[F67], and.

(e) the name of the person (or of each of the persons) appointed under section 51A or, if no person was so appointed, that fact.**]**

(2) The report shall also state whether the scrutineer is satisfied—

(a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the election,

(b) that the arrangements made **[**[F68](whether by him or any other person)**]** with respect to the production, storage, distribution, return or other handling of the voting papers used in the election, and the arrangements for the counting of the

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votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and

(c) that he has been able to carry out his functions without such interference as would make it reasonable for any person to call his independence in relation to the union into question;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.

[[F69](2A) The report shall also state—

(a) whether the scrutineer—

(i) has inspected the register of names and addresses of the members of the trade union, or

(ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with section 49(5A)(a),

(b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or candidate or at his own instance,

(c) whether he declined to act on any such request, and

(d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date,

but shall not state the name of any member or candidate who has requested such an inspection or examination.**]**

[[F70](2B) Where one or more persons other than the scrutineer are appointed under section 51A, the statement included in the scrutineer's report in accordance with subsection (2)(b) shall also indicate—

(a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and

(b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.**]**

(3) The trade union shall not publish the result of the election until it has received the scrutineer's report.

(4) The trade union shall within the period of three months after it receives the report either—

(a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or

(b) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

(5) Any such copy or notification shall be accompanied by a statement that the union will, on request, supply any member of the union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification.

(6) The trade union shall so supply any member of the union who makes such a request and pays the fee (if any) notified to him.

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Textual Amendments

F66 Word in s. 52(1)(c) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F67 S. 52(1)(e) and the word preceeding it inserted (30.8.1993) by 1993 c. 19, **s. 2(2)(a)**; S.I. 1993/1908, art. 2(1), **Sch.1**

F68 Words in s. 52(2)(b) inserted (30.8.1993) by 1993 c. 19, **s. 2(2)(b)**; S.I. 1993/1908, art. 2(1), **Sch.1**

F69 S. 52(2A) inserted (30.8.1993) by 1993 c. 19, **s. 1(2)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F70 S. 52(2B) inserted (30.8.1993) by 1993 c. 19, **s. 2(2)(c)**; S.I. 1993/1908, art. 2(1), **Sch.1**

53 Uncontested elections.

Nothing in this Chapter shall be taken to require a ballot to be held at an uncontested election.

Remedy for failure to comply with requirements

54 Remedy for failure to comply with requirements: general.

(1) The remedy for a failure on the part of a trade union to comply with the requirements of this Chapter is by way of application under section 55 (to the Certification Officer) or section 56 (to the court).

F71 . . ..

(2) An application under those sections may be made—

(a) by a person who is a member of the trade union (provided, where the election has been held, he was also a member at the time when it was held), or

(b) by a person who is or was a candidate at the election;

and the references in those sections to a person having a sufficient interest are to such a person.

(3) No such application may be made after the end of the period of one year beginning with the day on which the union announced the result of the election.

Textual Amendments

F71 Words in s. 54(1) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, **9** Sch.9(7); S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch 2 Pt. I** (with Sch. 3 para. 5)

55 Application to Certification Officer.

(1) A person having a sufficient interest (see section 54(2)) who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the Certification Officer for a declaration to that effect.

(2) On an application being made to him, the Certification Officer shall—

(a) make such enquiries as he thinks fit, and

(b F72 . . . give the applicant and the trade union an opportunity to be heard,

and may make or refuse the declaration asked for.

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(3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.

(4) Where he makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.

(5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

[[F73](5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

(a) to secure the holding of an election in accordance with the order;

(b) to take such other steps to remedy the declared failure as may be specified in the order;

(c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

[F73](5B) Where the Certification Officer makes an order requiring the union to hold a fresh election, he shall (unless he considers that it would be inappropriate to do so in the particular circumstances of the case) require the election to be conducted in accordance with the requirements of this Chapter and such other provisions as may be made by the order.

[F73](5C) Where an enforcement order has been made—

(a) any person who is a member of the union and was a member at the time the order was made, or

(b) any person who is or was a candidate in the election in question,

is entitled to enforce obedience to the order as if he had made the application on which the order was made.**]**

(6) In exercising his functions under this section the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.

(7) Where he requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

[[F74](8) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.

[F74](9) An enforcement order made by the Certification Officer under this section may be enforced in the same way as an order of the court.

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[F74](10) The following paragraphs have effect if a person applies under section 56 in relation to an alleged failure—

(a) that person may not apply under this section in relation to that failure;

(b) on an application by a different person under this section in relation to that failure, the Certification Officer shall have due regard to any declaration, order, observations or reasons made or given by the court regarding that failure and brought to the Certification Officer's notice.**]**

Textual Amendments

F72 Words in s. 55(2)(b) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, 10(1)(2), **Sch. 9(7)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 5)

F73 S. 55(5A)-(5C) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **10(1)(3)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

F74 S. 55(8)-(10) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **10(1)(4)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

56 Application to court.

(1) A person having a sufficient interest (see section 54(2)) who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the court for a declaration to that effect.

[F75](2) . . . . . .

(3) If the court makes the declaration asked for, it shall specify in the declaration the provisions with which the trade union has failed to comply.

(4) Where the court makes a declaration it shall also, unless it considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

(a) to secure the holding of an election in accordance with the order;

(b) to take such other steps to remedy the declared failure as may be specified in the order;

(c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The court shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

(5) Where the court makes an order requiring the union to hold a fresh election, the court shall (unless it considers that it would be inappropriate to do so in the particular circumstances of the case) require the election to be conducted in accordance with the requirements of this Chapter and such other provisions as may be made by the order.

(6) Where an enforcement order has been made—

(a) any person who is a member of the union and was a member at the time the order was made, or

(b) any person who is or was a candidate in the election in question,

is entitled to enforce obedience to the order as if he had made the application on which the order was made.

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(7) Without prejudice to any other power of the court, the court may on an application under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.

[[F76](8) The following paragraphs have effect if a person applies under section 55 in relation to an alleged failure—

(a) that person may not apply under this section in relation to that failure;

(b) on an application by a different person under this section in relation to that failure, the court shall have due regard to any declaration, order, observations or reasons made or given by the Certification Officer regarding that failure and brought to the court's notice.**]**

Textual Amendments

F75 S. 56(2) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, 11(1)(2), **Sch. 9(7)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 5)

F76 S. 56(8) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 para. 1, **11(3)**; S.I. 1999/2830, art. 2(1)(2), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

[[F77]**56A Appeals from Certification Officer.**

An appeal lies to the Employment Appeal Tribunal on any question of law arising in proceedings before or arising from any decision of the Certification Officer under section 55.**]**

Textual Amendments

F77 S. 56A inserted (25.10.1999) 1999 c. 26, s. 29, Sch. 6 paras. 1, **12**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. 1** (with Sch. 3 para. 5)

Supplementary

57 Exemption of newly-formed trade unions, &c.

(1) The provisions of this Chapter do not apply to a trade union until more than one year has elapsed since its formation (by amalgamation or otherwise).

For this purpose the date of formation of a trade union formed otherwise than by amalgamation shall be taken to be the date on which the first members of the executive of the union are first appointed or elected.

(2) Where a trade union is formed by amalgamation, the provisions of this Chapter do not apply in relation to a person who—

(a) by virtue of an election held a position to which this Chapter applies in one of the amalgamating unions immediately before the amalgamation, and

(b) becomes the holder of a position to which this Chapter applies in the amalgamated union in accordance with the instrument of transfer,

until after the end of the period for which he would have been entitled in accordance with this Chapter to continue to hold the first-mentioned position without being re-elected.

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(3) Where a trade union transfers its engagements to another trade union, the provisions of this Chapter do not apply in relation to a person who—

(a) held a position to which this Chapter applies in the transferring union immediately before the transfer, and

(b) becomes the holder of a position to which this Chapter applies in the transferee union in accordance with the instrument of transfer,

until after the end of the period of one year beginning with the date of the transfer or, if he held the first-mentioned position by virtue of an election, any longer period for which he would have been entitled in accordance with this Chapter to continue to hold that position without being re-elected.

58 Exemption of certain persons nearing retirement.

(1) Section 46(1)(b) (requirement of re-election) does not apply to a person holding a position to which this Chapter applies if the following conditions are satisfied.

(2) The conditions are that—

(a) he holds the position by virtue of having been elected at an election in relation to which the requirements of this Chapter were satisfied,

(b) he is a full-time employee of the union by virtue of the position,

(c) he will reach retirement age within five years,

(d) he is entitled under the rules of the union to continue as the holder of the position until retirement age without standing for re-election,

(e) he has been a full-time employee of the union for a period (which need not be continuous) of at least ten years, and

(f) the period between the day on which the election referred to in paragraph (a) took place and the day immediately preceding that on which paragraph (c) is first satisfied does not exceed five years.

(3) For the purposes of this section "retirement age", in relation to any person, means the earlier of—

(a) the age fixed by, or in accordance with, the rules of the union for him to retire from the position in question, or

(b) the age which is for the time being pensionable age **[**[F78](within the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995)**]**.

Textual Amendments

F78 Words in s. 58(3)(b) substituted (19.7.1995) by 1995 c. 26, ss. 126, 180(2), **Sch. 4 Pt. III para. 15**

59 Period for giving effect to election.

Where a person holds a position to which this Chapter applies immediately before an election at which he is not re-elected to that position, nothing in this Chapter shall be taken to require the union to prevent him from continuing to hold that position for such period (not exceeding six months) as may reasonably be required for effect to be given to the result of the election.

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60 Overseas members.

(1) A trade union which has overseas members may choose whether or not to accord any of those members entitlement to vote at an election for a position to which this Chapter applies.

(2) An "overseas member" means a member of the union (other than a merchant seaman or offshore worker) who is outside Great Britain throughout the period during which votes may be cast.

For this purpose—

"merchant seaman" means a person whose employment, or the greater part of it, is carried out on board sea-going ships; and

"offshore worker" means a person in offshore employment, other than one who is in such employment in an area where the law of Northern Ireland applies.

(3) Where the union chooses to accord an overseas member entitlement to vote, section 51 (requirements as to voting) applies in relation to him; but nothing in section 47 (candidates) or section 50 (entitlement to vote) applies in relation to an overseas member or in relation to a vote cast by such a member.

61 Other supplementary provisions.

(1) For the purposes of this Chapter the date on which a contested election is held shall be taken, in the case of an election in which votes may be cast on more than one day, to be the last of those days.

(2) Nothing in this Chapter affects the validity of anything done by a person holding a position to which this Chapter applies.

CHAPTER V

RIGHTS OF TRADE UNION MEMBERS

Right to a ballot before industrial action

62 Right to a ballot before industrial action.

(1) A member of a trade union who claims 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.

[[F79]In this section "the relevant time" means the time when the application is made.**]**

(2) For this purpose industrial action shall be regarded as having the support of a ballot only if—

[[F80](a) the union has held a ballot in respect of the action—

(i) in relation to which the requirements of section 226B so far as applicable before and during the holding of the ballot were satisfied,

(ii) in relation to which the requirements of sections 227 to 231 were satisfied, and

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(iii) in which the majority voting in the ballot answered "Yes" to the question applicable in accordance with section 229(2) to industrial action of the kind which the applicant has been or is likely to be induced to take part in;

(b) such of the requirements of the following sections as have fallen to be satisfied at the relevant time have been satisfied, namely—

(i) section 226B so far as applicable after the holding of the ballot, and

(ii) section 231B; and

(c) the requirements of section 233 (calling of industrial action with support of ballot) are satisfied.

Any reference in this subsection to a requirement of a provision which is disapplied or modified by section 232 has effect subject to that section.**]**

(3) Where on an application under this section the court is satisfied that the claim is well-founded, it shall make such order as it considers appropriate for requiring the union to take steps for ensuring—

(a) that there is no, or no further, inducement of members of the union to take part or to continue to take part in the industrial action to which the application relates, and

(b) that no member engages in conduct after the making of the order by virtue of having been induced before the making of the order to take part or continue to take part in the action.

(4) Without prejudice to any other power of the court, the court may on an application under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.

(5) For the purposes of this section an act shall be taken to be done by a trade union if it is authorised or endorsed by the union; and the provisions of section 20(2) to (4) apply for the purpose of determining whether an act is to be taken to be 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.

(6) In this section—

"inducement" includes an inducement which is or would be ineffective, whether because of the member's unwillingness to be influenced by it or for any other reason; and

"industrial action" means a strike or other industrial action by persons employed under contracts of employment.

(7) Where a person holds any office or employment under the Crown on terms which do not constitute a contract of employment between that person and the Crown, those terms shall nevertheless be deemed to constitute such a contract for the purposes of this section.

(8) References in this section to a contract of employment include any contract under which one person personally does work or performs services for another; and related expressions shall be construed accordingly.

(9) Nothing in this section shall be construed as requiring a trade union to hold separate ballots for the purposes of this section and sections 226 to 234 (requirement of ballot before action by trade union).

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Textual Amendments

F79 Words in s. 62(1) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 47(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F80 S. 62(2)(a)-(c) and proviso substituted (30.8.1993) for 62(2)(a)-(c) by 1993 c. 19, s. 49(2), **Sch. 8 para. 47(b)**; S.I. 1993/1908, art. 2(1), **Sch.1**

Right not to be denied access to the courts

63 Right not to be denied access to the courts.

(1) This section applies where a matter is under the rules of a trade union required or allowed to be submitted for determination or conciliation in accordance with the rules of the union, but a provision of the rules purporting to provide for that to be a person's only remedy has no effect (or would have no effect if there were one).

(2) Notwithstanding anything in the rules of the union or in the practice of any court, if a member or former member of the union begins proceedings in a court with respect to a matter to which this section applies, then if—

(a) he has previously made a valid application to the union for the matter to be submitted for determination or conciliation in accordance with the union's rules, and

(b) the court proceedings are begun 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 the matter to be so submitted, and the fact that any relevant steps remain to be taken under the rules, shall be regarded for all purposes as irrelevant to any question whether the court proceedings should be dismissed, stayed or sisted, or adjourned.

(3) An application shall be deemed to be valid for the purposes of subsection (2)(a) unless the union informed the applicant, before the end of the period of 28 days beginning with the date on which the union received the application, of the respects in which the application contravened the requirements of the rules.

(4) If the court is satisfied that any delay in the taking of relevant steps under the rules is attributable to unreasonable conduct of the person who commenced the proceedings, it may treat the period specified in subsection (2)(b) as extended by such further period as it considers appropriate.

(5) In this section—

(a) references to the rules of a trade union include any arbitration or other agreement entered into in pursuance of a requirement imposed by or under the rules; and

(b) references to the relevant steps under the rules, in relation to any matter, include any steps falling to be taken in accordance with the rules for the purposes of or in connection with the determination or conciliation of the matter, or any appeal, review or reconsideration of any determination or award.

(6) This section does not affect any enactment or rule of law by virtue of which a court would apart from this section disregard any such rules of a trade union or any such fact as is mentioned in subsection (2).

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Right not to be unjustifiably disciplined

64 Right not to be unjustifiably disciplined.

(1) An individual who is or has been a member of a trade union has the right not to be unjustifiably disciplined by the union.

(2) For this purpose an individual is "disciplined" by a trade union if a determination is made, or purportedly made, under the rules of the union or by an official of the union or a number of persons including an official that—

(a) he should be expelled from the union or a branch or section of the union,

(b) he should pay a sum to the union, to a branch or section of the union or to any other person;

(c) sums tendered by him in respect of an obligation to pay subscriptions or other sums to the union, or to a branch or section of the union, should be treated as unpaid or paid for a different purpose,

(d) he should be deprived to any extent of, or of access to, any benefits, services or facilities which would otherwise be provided or made available to him by virtue of his membership of the union, or a branch or section of the union,

(e) another trade union, or a branch or section of it, should be encouraged or advised not to accept him as a member, or

(f) he should be subjected to some other detriment;

and whether an individual is "unjustifiably disciplined" shall be determined in accordance with section 65.

(3) Where a determination made in infringement of an individual's right under this section requires the payment of a sum or the performance of an obligation, no person is entitled in any proceedings to rely on that determination for the purpose of recovering the sum or enforcing the obligation.

(4) Subject to that, the remedies for infringement of the right conferred by this section are as provided by sections 66 and 67, and not otherwise.

(5) The right not to be unjustifiably disciplined is in addition to (and not in substitution for) any right which exists apart from this section; **[**[F81]and, subject to section 66(4), nothing**]** in this section or sections 65 to 67 affects any remedy for infringement of any such right.

Textual Amendments

F81 Words in s. 64(5) substituted (30.11.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.48**; S.I. 1993/1908, art. 2(2), **Sch. 2**

65 Meaning of "unjustifiably disciplined".

(1) An individual is unjustifiably disciplined by a trade union if the actual or supposed conduct which constitutes the reason, or one of the reasons, for disciplining him is—

(a) conduct to which this section applies, or

(b) something which is believed by the union to amount to such conduct;

but subject to subsection (6) (cases of bad faith in relation to assertion of wrongdoing).

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(2) This section applies to conduct which consists in—

(a) failing to participate in or support a strike or other industrial action (whether by members of the union or by others), or indicating opposition to or a lack of support for such action;

(b) failing to contravene, for a purpose connected with such a strike or other industrial action, a requirement imposed on him by or under a contract of employment;

(c) asserting (whether by bringing proceedings or otherwise) that the union, any official or representative of it or a trustee of its property has contravened, or is proposing to contravene, a 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 (whenever passed) or any rule of law;

(d) encouraging or assisting a person—

(i) to perform an obligation imposed on him by a contract of employment, or

(ii) to make or attempt to vindicate any such assertion as is mentioned in paragraph (c); [F82]. . .

(e) contravening a requirement imposed by or in consequence of a determination which infringes the individual's or another individual's right not to be unjustifiably disciplined.

[[F83](f) failing to agree, or withdrawing agreement, to the making from his wages (in accordance with arrangements between his employer and the union) of deductions representing payments to the union in respect of his membership,

(g) resigning or proposing to resign from the union or from another union, becoming or proposing to become a member of another union, refusing to become a member of another union, or being a member of another union,

(h) working with, or proposing to work with, individuals who are not members of the union or who are or are not members of another union,

(i) working for, or proposing to work for, an employer who employs or who has employed individuals who are not members of the union or who are or are not members of another union, or

(j) requiring the union to do an act which the union is, by any provision of this Act, required to do on the requisition of a member.**]**

(3) This section applies to conduct which involves [F84]. . . the Certification Officer being consulted or asked to provide advice or assistance with respect to any matter whatever, or which involves any 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 subsection (2)(c) above.

(4) This section also applies to conduct which consists in proposing to engage in, or doing anything preparatory or incidental to, conduct falling within subsection (2) or (3).

(5) This section does not apply to an act, omission or statement comprised in conduct falling within subsection (2), (3) or (4) above if it is shown that the 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 within subsection (2) or (3) above.

(6) An individual is not unjustifiably disciplined if it is shown—

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(a) that the reason for disciplining him, or one of them, is that he made such an assertion as is mentioned in subsection (2)(c), or encouraged or assisted another person to make or attempt to vindicate such an assertion,

(b) that the assertion was false, and

(c) that he made the assertion, or encouraged or assisted another person to make or attempt to vindicate it, in the belief that it was false or otherwise in bad faith,

and 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 as unjustifiably disciplined.

(7) In this section—

"conduct" includes statements, acts and omissions;

"contract of employment", in relation to an individual, includes any agreement between that individual and a person for whom he works or normally works; [F85]. . . **[**[F86], "employer" includes such a person and related expressions shall be construed accordingly;**]**

"representative", in relation to a union, means a 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.

[[F87]"require" (on the part of an individual) includes request or apply for, and "requisition" shall be construed accordingly**][**[F88]and**]**.

[[F88]"wages" shall be construed in accordance with the definitions of "contract of employment", "employer" and related expressions.**]**

(8) Where a person holds any office or employment under the Crown on terms which do not constitute a contract of employment between him and the Crown, those terms shall nevertheless be deemed to constitute such a contract for the purposes of this section.

Textual Amendments

F82 Word in s. 65(2) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F83 S. 65(2)(f)-(j) inserted (30.8.1993) by 1993 c. 19, **s. 16(1)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F84 Words in s. 65(3) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(6)**; S.I. 1999/2830, **art. 2(3) Sch. 2 Pt. I** (with Sch. 3 para. 4)

F85 Word in s. 65(7) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F86 S. 65(7) definition amended (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 49(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F87 S. 65(7) definition inserted (30.8.1993) by 1993 c. 19, **s. 16(2)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F88 S. 65(7) definition and word preceeding it inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 49(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

66 Complaint of infringement of right.

(1) An individual who claims that he has been unjustifiably disciplined by a trade union may present a complaint against the union to an **[**[F89]employment tribunal**]**.

(2) The tribunal shall not entertain such a complaint unless it is presented—

(a) before the end of the period of three months beginning with the date of the making of the determination claimed to infringe the right, or

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(b) where the tribunal is satisfied—

(i) that it was not reasonably practicable for the complaint to be presented before the end of that period, or

(ii) that any delay in making the complaint is wholly or partly attributable to a reasonable attempt to appeal against the determination or to have it reconsidered or reviewed,

within such further period as the tribunal considers reasonable.

(3) Where the tribunal finds the complaint well-founded, it shall make a declaration to that effect.

[[F90](4) Where a complaint relating to an expulsion which is presented under this section is declared to be well-founded, no complaint in respect of the expulsion shall be presented or proceeded with under section 174 (right not to be excluded or expelled from trade union).**]**

Textual Amendments

F89 Words in s. 66(1) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F90 S. 66(4) substituted (30.11.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 50**; S.I. 1993/1908, art. 2(2), **Sch. 2**

67 Further remedies for infringement of right.

(1) An individual whose complaint under section 66 has been declared to be well-founded may make an application for one or both of the following—

(a) an award of compensation to be paid to him by the union;

(b) an order that the union pay him an amount equal to any sum which he has paid in pursuance of any such determination as is mentioned in section 64(2)(b).

(2) An application under this section shall be made to the Employment Appeal Tribunal if, when it is made—

(a) the determination infringing the applicant's right not to be unjustifiably disciplined has not been revoked, or

(b) the union has failed to take all the steps necessary for securing the reversal of anything done for the purpose of giving effect to the determination;

and in any other case it shall be made to an **[**[F91]employment tribunal**]**.

(3) An application under this section shall not be entertained if made before the end of the period of four weeks beginning with the date of the declaration or after the end of the period of six months beginning with that date.

(4) Where the Employment Appeal Tribunal or **[**[F91]employment tribunal**]** is satisfied that it would be required by virtue of subsection (2) to dismiss the application, it may instead transfer it to the tribunal to which it should have been made; and an application so transferred shall be proceeded with as if it had been made in accordance with that subsection when originally made.

(5) The amount of compensation awarded shall, subject to the following provisions, be such as the Employment Appeal Tribunal or **[**[F91]employment tribunal**]** considers just and equitable in all the circumstances.

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(6) In determining the amount of compensation to be awarded, the same rule shall be applied concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law in England and Wales or Scotland.

(7) Where the Employment Appeal Tribunal or **[**[F91]employment tribunal**]** finds that the infringement complained of was to any extent caused or contributed to by the 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.

(8) The amount of compensation **[**[F92]calculated in accordance with subsections (5) to (7)**]** shall not exceed the aggregate of—

(a) an amount equal to 30 times the limit for the time being imposed by **[**[F93]section 227(1)(a) of the Employment Rights Act 1996**]** (maximum amount of a week's pay for basic award in unfair dismissal cases), and

(b) an amount equal to the limit for the time being imposed by **[**[F94]section 124(1)**]** of that Act (maximum compensatory award in such cases);

and, in the case of an award by the Employment Appeal Tribunal, shall not be less than the amount for the time being specified in section **[**[F95]176(6) of this Act (minimum award by Employment Appeal Tribunal in cases of exclusion or expulsion from union)**]**.

[F96](9) . . . . . .

Textual Amendments

F91 Words in s. 67 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F92 Words in s. 67(8) substituted (30.11.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 51(a)(i)**; S.I. 1993/1908, art. 2(2), **Sch. 2**

F93 Words in s. 67(8)(a) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(2)(a)** (with ss. 191-195, 202)

F94 Words in s. 67(8)(b) substituted (22.8.1996) by 1996 c. 18, ss. 230, 243, **Sch. 1 para. 56(2)(b)** (with ss. 191-195, 202)

F95 Words in s. 67(8) substituted (30.11.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 51(a)(ii)**; S.I. 1993/1908, art. 2(2), **Sch. 2**

F96 S. 67(9) repealed (30.11.1993) by 1993 c. 19, ss. 49(2), 51, Sch. 8 para. 51(b), **Sch. 10**; S.I. 1993/1908, art. 2(2), **Sch. 2**

[**[F97]Right not to suffer deduction of unauthorised or excessive union subscriptions**]

Textual Amendments

F97 Heading substituted (30.8.1993) by 1993 c. 19, s.15, **Sch. 9 para. 2**; S.I. 1993/1908, art. 2(1), **Sch.1**

[[F98]68 Right not to suffer deduction of unauthorised subscriptions

(1) Where arrangements ("subscription deduction arrangements") exist between the employer of a worker and a trade union relating to the making from workers' wages of deductions representing payments to the union in respect of the workers' membership of the union ("subscription deductions"), the employer shall ensure that

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no subscription deduction is made from wages payable to the worker on any day unless—

(a) the worker has authorised in writing the making from his wages of subscription deductions; and

(b) the worker has not withdrawn the authorisation.

(2) A worker withdraws an authorisation given for the purposes of subsection (1), in relation to a subscription deduction which falls to be made from wages payable to him on any day, if a written notice withdrawing the authorisation has been received by the employer in time for it to be reasonably practicable for the employer to secure that no such deduction is made.

(3) A worker's authorisation of the making of subscription deductions from his wages shall not give rise to any obligation on the part of the employer to the worker to maintain or continue to maintain subscription deduction arrangements.

(4) In this section and section 68A, "employer", "wages" and "worker" have the same meanings as in the Employment Rights Act 1996.**]**

Textual Amendments

F98 S. 68 substituted (23.6.1998) by S.I. 1998/1529, **arts. 2(2)**, 3

[F99 68A Complaint of infringement of rights.

(1) A worker may present a complaint to an **[**F100 employment tribunal**]** that his employer has made a deduction from his wages in contravention of section 68—

(a) within the period of three months beginning with the date of the payment of the wages from which the deduction, or (if the complaint relates to more than one deduction) the last of the deductions, was made, or

(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

F101 **[** (2) Where a tribunal finds that a complaint under this section is well founded, it shall make a declaration to that effect and shall order the employer to pay to the worker the whole amount of the deduction, less any such part of the amount as has already been paid to the worker by the employer.**]**

(3) Where the making of a deduction from the wages of a worker both contravenes section 68(1) and involves one or more of the contraventions specified in subsection (4) of this section, the aggregate amount which may be ordered by an **[**F100 employment tribunal**]** or court (whether on the same occasion or on different occasions) to be paid in respect of the contraventions shall not exceed the amount, or (where different amounts may be ordered to be paid in respect of different contraventions) the greatest amount, which may be ordered to be paid in respect of any one of them.

(4) The contraventions referred to in subsection (3) are—

(a) a contravention of the requirement not to make a deduction without having given the particulars required by section 8 (itemised pay statements) or 9(1) (standing statements of fixed deductions) of **[**F102 the Employment Rights Act 1996**]**,

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(b) a contravention of **[**[F103]section 13 of that Act**]** (requirement not to make unauthorised deductions), and

(c) a contravention of section 86(1) or 90(1) of this Act (requirements not to make deductions of political fund contributions in certain circumstances).**]**

Textual Amendments

F99 Ss. 68, 68A substituted (30.8.1993) for s. 68 by 1993 c. 19, s. 15, **Sch. 9 para. 2**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F100 Words in s. 68A(1)(3) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F101 S. 68A(2) substituted (23.6.1998) by S.I. 1998/1529, **arts. 2(2)**, 3

F102 Words in s. 68A(4)(a) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(4)(a)** (with ss. 191-195, 202)

F103 Words in s. 68A(4)(b) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(4)(b)** (with ss. 191-195, 202)

Right to terminate membership of union

69 Right to terminate membership of union.

In every contract of membership of a trade union, whether made before or after the passing of this Act, a term conferring a right on the member, on giving reasonable notice and complying with any reasonable conditions, to terminate his membership of the union shall be implied.

Supplementary

70 Membership of constituent or affiliated organisation.

In this Chapter "member", in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes a member of any of the constituent or affiliated organisations.

[[F104]CHAPTER VA

COLLECTIVE BARGAINING: RECOGNITION**]**

Textual Amendments

F104 S. 70A of Chapter VA Pt. I and Chapter heading inserted (6.6.2000) by 1999 c. 26, **ss. 1(2)**; S.I. 2000/1338, **art. 2(a)**

[[F105]70A Recognition of trade unions.

Schedule A1 shall have effect.**]**

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Textual Amendments

F105 S. 70A of Chapter VA Pt. I and chapter heading inserted (6.6.2000) by 1999 c. 26, **ss. 1(2)**, 44

Modifications etc. (not altering text)

C3 S. 70A applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(a)**

[F106 70B Training.

(1) This section applies where—

(a) a trade union is recognised, in accordance with Schedule A1, as entitled to conduct collective bargaining on behalf of a bargaining unit (within the meaning of Part I of that Schedule), and

(b) a method for the conduct of collective bargaining is specified by the Central Arbitration Committee under paragraph 31(3) of that Schedule (and is not the subject of an agreement under paragraph 31(5)(a) or (b)).

(2) The employer must from time to time invite the trade union to send representatives to a meeting for the purpose of—

(a) consulting about the employer's policy on training for workers within the bargaining unit,

(b) consulting about his plans for training for those workers during the period of six months starting with the day of the meeting, and

(c) reporting about training provided for those workers since the previous meeting.

(3) The date set for a meeting under subsection (2) must not be later than—

(a) in the case of a first meeting, the end of the period of six months starting with the day on which this section first applies in relation to a bargaining unit, and

(b) in the case of each subsequent meeting, the end of the period of six months starting with the day of the previous meeting.

(4) The employer shall, before the period of two weeks ending with the date of a meeting, provide to the trade union any information—

(a) without which the union's representatives would be to a material extent impeded in participating in the meeting, and

(b) which it would be in accordance with good industrial relations practice to disclose for the purposes of the meeting.

(5) Section 182(1) shall apply in relation to the provision of information under subsection (4) as it applies in relation to the disclosure of information under section 181.

(6) The employer shall take account of any written representations about matters raised at a meeting which he receives from the trade union within the period of four weeks starting with the date of the meeting.

(7) Where more than one trade union is recognised as entitled to conduct collective bargaining on behalf of a bargaining unit, a reference in this section to "the trade union" is a reference to each trade union.

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(8) Where at a meeting under this section (Meeting 1) an employer indicates his intention to convene a subsequent meeting (Meeting 2) before the expiry of the period of six months beginning with the date of Meeting 1, for the reference to a period of six months in subsection (2)(b) there shall be substituted a reference to the expected period between Meeting 1 and Meeting 2.

(9) The Secretary of State may by order made by statutory instrument amend any of subsections (2) to (6).

(10) No order shall be made under subsection (9) unless a draft has been laid before, and approved by resolution of, each House of Parliament.**]**

Textual Amendments

F106 Ss. 70B, 70C inserted (6.6.2000) by 1999 c. 26, **s. 5**; S.I. 2000/1338, **art. 2(b)**

Modifications etc. (not altering text)

C4 S. 70B applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(a)**

[[F107]70C Section 70B: complaint to employment tribunal.

(1) A trade union may present a complaint to an employment tribunal that an employer has failed to comply with his obligations under section 70B in relation to a bargaining unit.

(2) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the alleged failure, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an employment tribunal finds a complaint under this section well-founded it—

(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the employer to each person who was, at the time when the failure occurred, a member of the bargaining unit.

(4) The amount of the award shall not, in relation to each person, exceed two weeks' pay.

(5) For the purpose of subsection (4) a week's pay—

(a) shall be calculated in accordance with Chapter II of Part XIV of the [M13]Employment Rights Act 1996 (taking the date of the employer's failure as the calculation date), and

(b) shall be subject to the limit in section 227(1) of that Act.

(6) Proceedings for enforcement of an award of compensation under this section—

(a) may, in relation to each person to whom compensation is payable, be commenced by that person, and

(b) may not be commenced by a trade union.**]**

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Textual Amendments

F107 Ss. 70B, 70C inserted (6.6.2000) by 1999 c. 26, **s. 5**; S.I. 2000/1338, **art. 2(b)**

Modifications etc. (not altering text)

C5 S. 70C applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(a)**

Marginal Citations

M13 1996 c. 18.

CHAPTER VI

APPLICATION OF FUNDS FOR POLITICAL OBJECTS

Restriction on use of funds for certain political objects

71 Restriction on use of funds for political objects.

(1) The funds of a trade union shall not be applied in the furtherance of the political objects to which this Chapter applies unless—

(a) there is in force in accordance with this Chapter a resolution (a "political resolution") approving the furtherance of those objects as an object of the union (see sections 73 to 81), and

(b) there are in force rules of the union as to—

(i) the making of payments in furtherance of those objects out of a separate fund, and

(ii) the exemption of any member of the union objecting to contribute to that fund,

which comply with this Chapter (see sections 82, 84 and 85) and have been approved by the Certification Officer.

(2) This applies whether the funds are so applied directly, or in conjunction with another trade union, association or body, or otherwise indirectly.

72 Political objects to which restriction applies.

(1) The political objects to which this Chapter applies are the expenditure of money—

(a) on any contribution to the funds of, or on the payment of expenses incurred directly or indirectly by, a political party;

(b) on the provision of any service or property for use by or on behalf of any political party;

(c) in connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot by the union in connection with any election to a political office;

(d) on the maintenance of any holder of a political office;

(e) on the holding of any conference or meeting by or on behalf of a political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party;

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(f) on the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate.

(2) Where a person attends a conference or meeting as a delegate or otherwise as a participator in the proceedings, any expenditure incurred in connection with his attendance as such shall, for the purposes of subsection (1)(e), be taken to be expenditure incurred on the holding of the conference or meeting.

(3) In determining for the purposes of subsection (1) whether a trade union has incurred expenditure of a kind mentioned in that subsection, no account shall be taken of the ordinary administrative expenses of the union.

(4) In this section—

"candidate" means a candidate for election to a political office and includes a prospective candidate;

"contribution", in relation to the funds of a political party, includes any fee payable for affiliation to, or membership of, the party and any loan made to the party;

"electors" means electors at an election to a political office;

"film" includes any record, however made, of a sequence of visual images, which is capable of being used as a means of showing that sequence as a moving picture;

"local authority" means a local authority within the meaning of section 270 of the [M14]Local Government Act 1972 or section 235 of the [M15]Local Government (Scotland) Act 1973; and

"political office" means the office of member of Parliament, member of the European Parliament or member of a local authority or any position within a political party.

Marginal Citations

M14 1972. c.70

M15 1973 c.65

[[F108]72A Application of funds in breach of section 71.

(1) A person who is a member of a trade union and who claims that it has applied its funds in breach of section 71 may apply to the Certification Officer for a declaration that it has done so.

(2) On an application under this section the Certification Officer—

(a) shall make such enquiries as he thinks fit,

(b) shall give the applicant and the union an opportunity to be heard,

(c) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,

(d) may make or refuse the declaration asked for,

(e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing, and

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(f) may make written observations on any matter arising from, or connected with, the proceedings.

(3) If he makes a declaration he shall specify in it—
(a) the provisions of section 71 breached, and
(b) the amount of the funds applied in breach.

(4) If he makes a declaration and is satisfied that the union has taken or agreed to take steps with a view to—
(a) remedying the declared breach, or
(b) securing that a breach of the same or any similar kind does not occur in future,
he shall specify those steps in making the declaration.

(5) If he makes a declaration he may make such order for remedying the breach as he thinks just under the circumstances.

(6) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(7) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.

(8) Where an order has been made under this section, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(9) An order made by the Certification Officer under this section may be enforced in the same way as an order of the court.

(10) If a person applies to the Certification Officer under this section in relation to an alleged breach he may not apply to the court in relation to the breach; but nothing in this subsection shall prevent such a person from exercising any right to appeal against or challenge the Certification Officer's decision on the application to him.

(11) If—
(a) a person applies to the court in relation to an alleged breach, and
(b) the breach is one in relation to which he could have made an application to the Certification Officer under this section,
he may not apply to the Certification Officer under this section in relation to the breach.**]**

Textual Amendments

F108 S. 72A inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **13**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

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Political resolution

73 Passing and effect of political resolution.

(1) A political resolution must be passed by a majority of those voting on a ballot of the members of the trade union held in accordance with this Chapter.

(2) A political resolution so passed shall take effect as if it were a rule of the union and may be rescinded in the same manner and subject to the same provisions as such a rule.

(3) If not previously rescinded, a political resolution shall cease to have effect at the end of the period of ten years beginning with the date of the ballot on which it was passed.

(4) Where before the end of that period a ballot is held on a new political resolution, then—

(a) if the new resolution is passed, the old resolution shall be treated as rescinded, and

(b) if it is not passed, the old resolution shall cease to have effect at the end of the period of two weeks beginning with the date of the ballot.

74 Approval of political ballot rules.

(1) A ballot on a political resolution must be held in accordance with rules of the trade union (its "political ballot rules") approved by the Certification Officer.

(2) Fresh approval is required for the purposes of each ballot which it is proposed to hold, notwithstanding that the rules have been approved for the purposes of an earlier ballot.

(3) The Certification Officer shall not approve a union's political ballot rules unless he is satisfied that the requirements set out in—

section 75 (appointment of independent scrutineer),

section 76 (entitlement to vote),

section 77 (voting), [F109]. . .**[**[F110]section 77A (counting of votes etc. by independent person), and**]**

section 78 (scrutineer's report),

would be satisfied in relation to a ballot held by the union in accordance with the rules.

Textual Amendments

F109 Word in s. 74(3) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F110 Words in s. 74(3) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para.1**; S.I. 1993/1908, art. 2(1), **Sch.1**

75 Appointment of independent scrutineer.

(1) The trade union shall, before the ballot is held, appoint a qualified independent person ("the scrutineer") to carry out—

(a) the functions in relation to the ballot which are required under this section to be contained in his appointment; and

(b) such additional functions in relation to the ballot as may be specified in his appointment.

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(2) A person is a qualified independent person in relation to a ballot if—

(a) he satisfies such conditions as may be specified for the purposes of this section by order of the Secretary of State or is himself so specified; and

(b) the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

An order under paragraph (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) The scrutineer's appointment shall require him—

(a) to be the person who supervises the production **[**[F111]of the voting papers and (unless he is appointed under section 77A to undertake the distribution of the voting papers) their distribution**]** and to whom the voting papers are returned by those voting;

[[F112](aa) to—

(i) inspect the register of names and addresses of the members of the trade union, or

(ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with subsection (5A)(a),

whenever it appears to him appropriate to do so and, in particular, when the conditions specified in subsection (3A) are satisfied;**]**

(b) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see section 78);

(c) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and

(d) to retain custody of all voting papers returned for the purposes of the ballot **[**[F113]and the copy of the register supplied to him in accordance with subsection (5A)(a)**]**—

(i) until the end of the period of one year beginning with the announcement by the union of the result of the ballot; and

(ii) if within that period an application is made under section 79 (complaint of failure to comply with ballot rules), until the Certification Officer or the court authorises him to dispose of the papers **[**[F114]or copy**]**.

[[F115](3A) The conditions referred to in subsection (3)(aa) are—

(a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and

(b) that the scrutineer does not consider that the member's suspicion is ill-founded.

(3B) In subsection (3A) "the appropriate period" means the period—

(a) beginning with the day on which the scrutineer is appointed, and

(b) ending with the day before the day on which the scrutineer makes his report to the trade union.

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(3C) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.**]**

(4) The trade union shall ensure that nothing in the terms of the scrutineer's appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer's independence in relation to the union into question.

(5) The trade union shall, before the scrutineer begins to carry out his functions, either—

(a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or

(b) take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

[[F116](5A) The trade union shall—

(a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and

(b) comply with any request made by the scrutineer to inspect the register.

(5B) Where the register is kept by means of a computer the duty imposed on the trade union by subsection (5A)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.**]**

(6) The trade union shall ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer's independence in relation to the union into question.

(7) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.

[[F117](8) In this section "the relevant date" means—

(a) where the trade union has rules determining who is entitled to vote in the ballot by reference to membership on a particular date, that date, and

(b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the ballot.**]**

Textual Amendments

F111 Words in s. 75(3)(a) substituted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F112 S. 75(3)(aa) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(b)**; S.I. 1993/1908, art. 2(1), **Sch.1**

F113 Words in s. 75(3)(d) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(c)(i)**; S.I. 1993/1908, art. 2(1), **Sch.1**

F114 Words in s. 75(3)(d)(ii) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(c)(ii)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F115 S. 75(3A)-(3C) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(d)**; S.I. 1993/1908, art. 2(1), **Sch.1**

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F116 S. 75(5A)(5B) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(e)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F117 S. 75(8) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 2(f)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

76 Entitlement to vote.

Entitlement to vote in the ballot shall be accorded equally to all members of the trade union.

77 Voting.

(1) The method of voting must be by the marking of a voting paper by the person voting.

(2) Each voting paper must—

(a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned, and

(b) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot, and

(c) be marked with its number.

(3) Every person who is entitled to vote in the ballot must—

(a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and

(b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.

(4) So far as is reasonably practicable, every person who is entitled to vote in the ballot must—

(a) have a voting paper sent to him by post at his home address or another address which he has requested the trade union in writing to treat as his postal address, and

(b) be given a convenient opportunity to vote by post.

(5) The ballot shall be conducted so as to secure that—

(a) so far as is reasonably practicable, those voting do so in secret, and

(b) the votes given in the ballot are fairly and accurately counted.

For the purposes of paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the ballot.

[F118 77A Counting of votes etc. by independent person.

(1) The trade union shall ensure that—

(a) the storage and distribution of the voting papers for the purposes of the ballot, and

(b) the counting of the votes cast in the ballot,

are undertaken by one or more independent persons appointed by the union.

(2) A person is an independent person in relation to a ballot if—

(a) he is the scrutineer, or

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(b) he is a person other than the scrutineer and the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

(3) An appointment under this section shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any enactment or the occurrence of any unfairness or malpractice.

(4) The duty of confidentiality as respects the register is incorporated in an appointment under this section.

(5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.

(6) The trade union—

(a) shall ensure that nothing in the terms of an appointment under this section is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,

(b) shall ensure that a person appointed under this section duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call into question the independence of the person appointed in relation to the union, and

(c) shall comply with all reasonable requests made by a person appointed under this section for the purposes of, or in connection with, the carrying out of his functions.**]**

Textual Amendments

F118 S. 77A inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para.3**; S.I. 1993/1908, art. 2(1), **Sch. 1**

78 Scrutineer's report.

(1) The scrutineer's report on the ballot shall state—

(a) the number of voting papers distributed for the purposes of the ballot,

(b) the number of voting papers returned to the scrutineer,

(c) the number of valid votes cast in the ballot for and against the resolution, [F119]. . .

(d) the number of spoiled or otherwise invalid voting papers returned **[**[F120]and.

(e) the name of the person (or of each of the persons) appointed under section 77A or, if no person was so appointed, that fact.**]**

(2) The report shall also state whether the scrutineer is satisfied—

(a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the ballot,

(b) that the arrangements made **[**[F121](whether by him or any other person)**]** with respect to the production, storage, distribution, return or other handling of the voting papers used in the ballot, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable

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for the purpose of minimising the risk that any unfairness or malpractice might occur, and

(c) that he has been able to carry out his functions without such interference as would make it reasonable for any person to call his independence in relation to the union into question;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.

[[F122](2A) The report shall also state—

(a) whether the scrutineer—

(i) has inspected the register of names and addresses of the members of the trade union, or

(ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with section 75(5A)(a),

(b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or at his own instance,

(c) whether he declined to act on any such request, and

(d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date,

but shall not state the name of any member who has requested such an inspection or examination.

(2B) Where one or more persons other than the scrutineer are appointed under section 77A, the statement included in the scrutineer's report in accordance with subsection (2)(b) shall also indicate—

(a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and

(b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.**]**

(3) The trade union shall not publish the result of the ballot until it has received the scrutineer's report.

(4) The trade union shall within the period of three months after it receives the report—

(a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or

(b) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

(5) Any such copy or notification shall be accompanied by a statement that the union will, on request, supply any member of the union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification.

(6) The trade union shall so supply any member of the union who makes such a request and pays the fee (if any) notified to him.

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Textual Amendments

F119 Word in s. 78(1)(c) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F120 S.78(1)(e) and word preceeding it inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 4(a)**; S.I. 1993/1908, art. 2(1), **Sch.1**

F121 Words in s. 78(2)(b) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 4(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F122 S. 78(2A)(2B) inserted (30.8.1993) by 1993 c. 19, s. 3, **Sch. 1 para. 4(c)**; S.I. 1993/1908, art. 2(1), **Sch.1**

79 Remedy for failure to comply with ballot rules: general.

(1) The remedy for—

(a) the taking by a trade union of a ballot on a political resolution otherwise than in accordance with political ballot rules approved by the Certification Officer, or

(b) the failure of a trade union, in relation to a proposed ballot on a political resolution, to comply with the political ballot rules so approved,

is by way of application under section 80 (to the Certification Officer) or 81 (to the court).

F123 . . ..

(2) An application under those sections may be made only by a person who is a member of the trade union and, where the ballot has been held, was a member at the time when it was held.

References in those sections to a person having a sufficient interest are to such a person.

(3) No such application may be made after the end of the period of one year beginning with the day on which the union announced the result of the ballot.

Textual Amendments

F123 Words in s. 79(1) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, 14, **Sch. 9(7)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 5)

80 Application to Certification Officer.

(1) A person having a sufficient interest (see section 79(2)) who claims that a trade union—

(a) has held a ballot on a political resolution otherwise than in accordance with political ballot rules approved by the Certification Officer, or

(b) has failed in relation to a proposed ballot on a political resolution to comply with political ballot rules so approved,

may apply to the Certification Officer for a declaration to that effect.

(2) On an application being made to him, the Certification Officer shall—

(a) make such enquiries as he thinks fit, and

(b **F124** . . . give the applicant and the trade union an opportunity to be heard,

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and may make or refuse the declaration asked for.

(3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.

(4) Where he makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall in making the declaration specify those steps.

(5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

[[F125](5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

(a) to secure the holding of a ballot in accordance with the order;

(b) to take such other steps to remedy the declared failure as may be specified in the order;

(c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union must comply with the requirements of the order.

[F125](5B) Where the Certification Officer makes an order requiring the union to hold a fresh ballot, he shall (unless he considers that it would be inappropriate to do so in the particular circumstances of the case) require the ballot to be conducted in accordance with the union's political ballot rules and such other provisions as may be made by the order.

[F125](5C) Where an enforcement order has been made, any person who is a member of the union and was a member at the time the order was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.**]**

(6) In exercising his functions under this section the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.

(7) Where he requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and shall, unless he considers that it would be inappropriate to do so, proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

[[F126](8) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.

[F126](9) An enforcement order made by the Certification Officer under this section may be enforced in the same way as an order of the court.

[F126](10) The following paragraphs have effect if a person applies under section 81 in relation to a matter—

(a) that person may not apply under this section in relation to that matter;

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(b) on an application by a different person under this section in relation to that matter, the Certification Officer shall have due regard to any declaration, order, observations, or reasons made or given by the court regarding that matter and brought to the Certification Officer's notice.**]**

Textual Amendments

F124 Words in s. 80(2)(b) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, 15(1)(2), **Sch. 9(7)**; S.I. 1999/2380, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 5)

F125 S. 80(5A)-(5C) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **15(1)(3)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

F126 S. 80(8)-(10) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **15(1)(4)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

81 Application to court.

(1) A person having a sufficient interest (see section 79(2)) who claims that a trade union—

(a) has held a ballot on a political resolution otherwise than in accordance with political ballot rules approved by the Certification Officer, or

(b) has failed in relation to a proposed ballot on a political resolution to comply with political ballot rules so approved,

may apply to the court for a declaration to that effect.

F127(2) . . . . . .

(3) If the court makes the declaration asked for, it shall specify in the declaration the provisions with which the trade union has failed to comply.

(4) Where the court makes a declaration it shall also, unless it considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

(a) to secure the holding of a ballot in accordance with the order;

(b) to take such other steps to remedy the declared failure as may be specified in the order;

(c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The court shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union must comply with the requirements of the order.

(5) Where the court makes an order requiring the union to hold a fresh ballot, the court shall (unless it considers that it would be inappropriate to do so in the particular circumstances of the case) require the ballot to be conducted in accordance with the union's political ballot rules and such other provisions as may be made by the order.

(6) Where an enforcement order has been made, any person who is a member of the union and was a member at the time the order was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.

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(7) Without prejudice to any other power of the court, the court may on an application under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.

[[F128](8) The following paragraphs have effect if a person applies under section 80 in relation to a matter—

(a) that person may not apply under this section in relation to that matter;

(b) on an application by a different person under this section in relation to that matter, the court shall have due regard to any declaration, order, observations or reasons made or given by the Certification Officer regarding that matter and brought to the court's notice.**]**

Textual Amendments

F127 S. 81(2) repealed (25.10.1999) by 1999 c. 26, ss. 29, 44, Sch. 6 paras. 1, 16(1)(2), **Sch. 9(7)**; S.I. 1999/2830, art. 2(1)(3), Sch. 1 Pt. I, **Sch. 2 Pt. I** (with Sch. 3 para. 5)

F128 S. 81(8) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 para. 1, **16(1)(3)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

The political fund

82 Rules as to political fund.

(1) The trade union's rules must provide—

(a) that payments in the furtherance of the political objects to which this Chapter applies shall be made out of a separate fund (the "political fund" of the union);

(b) that a member of the union who gives notice in accordance with section 84 that he objects to contributing to the political fund shall be exempt from any obligation to contribute to it;

(c) that a member shall not by reason of being so exempt—

(i) be excluded from any benefits of the union, or

(ii) be placed in any respect either directly or indirectly under a disability or at a disadvantage as compared with other members of the union (except in relation to the control or management of the political fund); and

(d) that contribution to the political fund shall not be made a condition for admission to the union.

(2) A member of a trade union who claims that he is aggrieved by a breach of any rule made in pursuance of this section may complain to the Certification Officer.

[[F129](2A) On a complaint being made to him the Certification Officer shall make such enquiries as he thinks fit.**]**

(3) Where, after giving the member and a representative of the union an opportunity of being heard, the Certification Officer considers that a breach has been committed, he may make such order for remedying the breach as he thinks just under the circumstances.

[[F130](3A) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date

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by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.**]**

(4) Any such order, on being recorded in the county court or, in Scotland, the sheriff court, may be enforced in the same way as an order of that court.

Textual Amendments

F129 S. 82(2A) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **17(1)(2)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

F130 S. 82(3A) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **17(1)(3)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

83 Assets and liabilities of political fund.

(1) There may be added to a union's political fund only—

(a) sums representing contributions made to the fund by members of the union or by any person other than the union itself, and

(b) property which accrues to the fund in the course of administering the assets of the fund.

(2) The rules of the union shall not be taken to require any member to contribute to the political fund at a time when there is no political resolution in force in relation to the union.

(3) No liability of a union's political fund shall be discharged out of any other fund of the union.

This subsection applies notwithstanding any term or condition on which the liability was incurred or that an asset of the other fund has been charged in connection with the liability.

84 Notice of objection to contributing to political fund.

(1) A member of a trade union may give notice in the following form, or in a form to the like effect, that he objects to contribute to the political fund:—

Name of Trade Union

POLITICAL FUND (EXEMPTION NOTICE)

I give notice that I objects to contributing to the Political Fund of the Union, and am in consequence exempt, in manner provided by Chapter VI of Part I of the Trade Union and Labour Relations (Consolidation) Act 1992, from contributing to that fund.

A.B.
Address
day of 19

(2) On the adoption of a political resolution, notice shall be given to members of the union acquainting them—

(a) that each member has a right to be exempted from contributing to the union's political fund, and

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(b) that a form of exemption notice can be obtained by or on behalf of a member either by application at or by post from—

(i) the head office or any branch office of the union, or

(ii) the office of the Certification Officer.

(3) The notice to members shall be given in accordance with rules of the union approved for the purpose by the Certification Officer, who shall have regard in each case to the existing practice and character of the union.

(4) On giving an exemption notice in accordance with this section, a member shall be exempt from contributing to the union's political fund—

(a) where the notice is given within one month of the giving of notice to members under subsection (2) following the passing of a political resolution on a ballot held at a time when no such resolution is in force, as from the date on which the exemption notice is given;

(b) in any other case, as from the 1st January next after the exemption notice is given.

(5) An exemption notice continues to have effect until it is withdrawn.

PROSPECTIVE

[F131 85 Manner of giving effect to section 84

(1) A union that has a political fund must either—

(a) make a separate levy of contributions to that fund from the members who are contributors, or

(b) relieve members who are not contributors from the payment of the appropriate portion of any periodical contribution required from members towards the expenses of the union.

(2) In the latter case, the rules shall provide—

(a) that relief shall be given as far as possible to all members who are not contributors on the occasion of the same periodical payment, and

(b) for enabling each member of the union to know what portion (if any) of any periodical contribution payable by the member is a contribution to the political fund.**]**

Textual Amendments

F131 S. 85 substituted (5.12.2016 for specified purposes) by Trade Union Act 2016 (c. 15), **ss. 11(3)**, 25(1) (with s. 11(5)); S.I. 2016/1170, reg. 2(b)

Duties of employer who deducts union contributions

86 Certificate of exemption or objection to contributing to political fund.

(1) If a member of a trade union which has a political fund certifies in writing to his employer that, or to the effect that—

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(a) he is exempt from the obligation to contribute to the fund, or

(b) he has, in accordance with section 84, notified the union in writing of his objection to contributing to the fund,

the employer shall ensure that no amount representing a contribution to the political fund is deducted by him from emoluments payable to the member.

(2) The employer's duty under subsection (1) applies from the first day, following the giving of the certificate, on which it is reasonably practicable for him to comply with that subsection, until the certificate is withdrawn.

(3) An employer may not refuse to deduct any union dues from emoluments payable to a person who has given a certificate under this section if he continues to deduct union dues from emoluments payable to other members of the union, unless his refusal is not attributable to the giving of the certificate or otherwise connected with the duty imposed by subsection (1).

[F132 87 Complaint in respect of employer's failure.

(1) A person who claims his employer has failed to comply with section 86 in deducting or refusing to deduct any amount from emoluments payable to him may present a complaint to an employment tribunal.

(2) A tribunal shall not consider a complaint under subsection (1) unless it is presented—

(a) within the period of three months beginning with the date of the payment of the emoluments or (if the complaint relates to more than one payment) the last of the payments, or

(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

(3) Where on a complaint under subsection (1) arising out of subsection (3) (refusal to deduct union dues) of section 86 the question arises whether the employer's refusal to deduct an amount was attributable to the giving of the certificate or was otherwise connected with the duty imposed by subsection (1) of that section, it is for the employer to satisfy the tribunal that it was not.

(4) Where a tribunal finds that a complaint under subsection (1) is well-founded—

(a) it shall make a declaration to that effect and, where the complaint arises out of subsection (1) of section 86, order the employer to pay to the complainant the amount deducted in contravention of that subsection less any part of that amount already paid to him by the employer, and

(b) it may, if it considers it appropriate to do so in order to prevent a repetition of the failure, make an order requiring the employer to take, within a specified time, the steps specified in the order in relation to emoluments payable by him to the complainant.

(5) A person who claims his employer has failed to comply with an order made under subsection (4)(b) on a complaint presented by him may present a further complaint to an employment tribunal; but only one complaint may be presented under this subsection in relation to any order.

(6) A tribunal shall not consider a complaint under subsection (5) unless it is presented—

(a) after the end of the period of four weeks beginning with the date of the order, but

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(b) before the end of the period of six months beginning with that date.

(7) Where on a complaint under subsection (5) a tribunal finds that an employer has, without reasonable excuse, failed to comply with an order made under subsection (4)(b), it shall order the employer to pay to the complainant an amount equal to two weeks' pay.

(8) Chapter II of Part XIV of the [M16]Employment Rights Act 1996 (calculation of a week's pay) applies for the purposes of subsection (7) with the substitution for section 225 of the following—

For the purposes of this Chapter in its application to subsection (7) of section 87 of the [M17]Trade Union and Labour Relations (Consolidation) Act 1992, the calculation date is the date of the payment, or (if more than one) the last of the payments, to which the complaint related.**]**

Textual Amendments

F132 S. 87 substituted (1.8.1998) by 1998 c. 8, **s. 6**; S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(2))

Marginal Citations

M16 1996 c. 18.

M17 1992 c. 52.

[F133]88 . . . . . .

Textual Amendments

F133 S. 88 repealed (1.8.1998) by 1998 c. 8, s. 15, **Sch. 2**; S.I. 1998/2658, art. 2(1), **Sch. 1** (with art. 3(3))

Position where political resolution ceases to have effect

89 Administration of political fund where no resolution in force.

(1) The following provisions have effect with respect to the political fund of a trade union where there ceases to be any political resolution in force in relation to the union.

(2) If the resolution ceases to have effect by reason of a ballot being held on which a new political resolution is not passed, the union may continue to make payments out of the fund as if the resolution had continued in force for six months beginning with the date of the ballot.

But no payment shall be made which causes the fund to be in deficit or increases a deficit in it.

(3) There may be added to the fund only—

(a) contributions to the fund paid to the union (or to a person on its behalf) before the resolution ceased to have effect, and

(b) property which accrues to the fund in the course of administering the assets of the fund.

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(4) The union may, notwithstanding any of its rules or any trusts on which the fund is held, transfer the whole or part of the fund to such other fund of the union as it thinks fit.

(5) If a new political resolution is subsequently passed, no property held immediately before the date of the ballot by or on behalf of the union otherwise than in its political fund, and no sums representing such property, may be added to the fund.

90 Discontinuance of contributions to political fund.

(1) Where there ceases to be any political resolution in force in relation to a trade union, the union shall take such steps as are necessary to ensure that the collection of contributions to its political fund is discontinued as soon as is reasonably practicable.

(2) The union may, notwithstanding any of its rules, pay into any of its other funds any such contribution which is received by it after the resolution ceases to have effect.

(3) If the union continues to collect contributions, it shall refund to a member who applies for a refund the contributions made by him collected after the resolution ceased to have effect.

(4) A member of a trade union who claims that the union has failed to comply with subsection (1) may apply to the court for a declaration to that effect.

(5) Where the court is satisfied that the complaint is well-founded, it may, if it considers it appropriate to do so in order to secure that the collection of contributions to the political fund is discontinued, make an order requiring the union to take, within such time as may be specified in the order, such steps as may be so specified.

Such an order may be enforced by a person who is a member of the union and was a member at the time the order was made as if he had made the application.

(6) The remedy for failure to comply with subsection (1) is in accordance with subsections (4) and (5), and not otherwise; but this does not affect any right to recover sums payable to a person under subsection (3).

91 Rules to cease to have effect.

(1) If there ceases to be any political resolution in force in relation to a trade union, the rules of the union made for the purpose of complying with this Chapter also cease to have effect, except so far as they are required to enable the political fund to be administered at a time when there is no such resolution in force.

(2) If the resolution ceases to have effect by reason of a ballot being held on which a new political resolution is not passed, the rules cease to have effect at the end of the period of six months beginning with the date of the ballot.

In any other case the rules cease to have effect when the resolution ceases to have effect.

(3) Nothing in this section affects the operation of section 82(2) (complaint to Certification Officer in respect of breach of rules) in relation to a breach of a rule occurring before the rule in question ceased to have effect.

(4) No member of a trade union who has at any time been exempt from the obligation to contribute to its political fund shall by reason of his having been exempt—

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(a) be excluded from any benefits of the union, or

(b) be placed in any respect either directly or indirectly under a disability or at a disadvantage as compared with other members (except in relation to the control or management of the political fund).

Supplementary

92 Manner of making union rules.

If the Certification Officer is satisfied, and certifies, that rules of a trade union made for any of the purposes of this Chapter and requiring approval by him have been approved—

(a) by a majority of the members of the union voting for the purpose, or

(b) by a majority of delegates of the union at a meeting called for the purpose,

the rules shall have effect as rules of the union notwithstanding that the rules of the union as to the alteration of rules or the making of new rules have not been complied with.

93 Effect of amalgamation.

(1) Where on an amalgamation of two or more trade unions—

(a) there is in force in relation to each of the amalgamating unions a political resolution and such rules as are required by this Chapter, and

(b) the rules of the amalgamated union in force immediately after the amalgamation include such rules as are required by this Chapter,

the amalgamated union shall be treated for the purposes of this Chapter as having passed a political resolution.

(2) That resolution shall be treated as having been passed on the date of the earliest of the ballots on which the resolutions in force immediately before the amalgamation with respect to the amalgamating unions were passed.

(3) Where one of the amalgamating unions is a Northern Ireland union, the references above to the requirements of this Chapter shall be construed as references to the requirements of the corresponding provisions of the law of Northern Ireland.

94 Overseas members of trade union.

(1) Where a political resolution is in force in relation to the union—

(a) rules made by the union for the purpose of complying with section 74 (political ballot rules) in relation to a proposed ballot may provide for overseas members of the union not to be accorded entitlement to vote in the ballot, and

(b) rules made by the union for the purpose of complying with section 84 (notice of right to object to contribute to political fund to be given where resolution passed) may provide for notice not to be given by the union to its overseas members.

(2) Accordingly, where provision is made in accordance with subsection (1)(a), the Certification Officer shall not on that ground withhold his approval of the rules; and where provision is made in accordance with subsection (1)(b), section 84(2) (duty to give notice) shall not be taken to require notice to be given to overseas members.

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(3) An "overseas member" means a member of the trade union (other than a merchant seaman or offshore worker) who is outside Great Britain throughout the period during which votes may be cast.

For this purpose—

"merchant seaman" means a person whose employment, or the greater part of it, is carried out on board sea-going ships; and

"offshore worker" means a person in offshore employment, other than one who is in such employment in an area where the law of Northern Ireland applies.

95 Appeals from Certification Officer.

An appeal lies to the Employment Appeal Tribunal on any question of law arising in proceedings before or arising from any decision of the Certification Officer under this Chapter.

96 Meaning of "date of the ballot".

In this Chapter the "date of the ballot" means, in the case of a ballot in which votes may be cast on more than one day, the last of those days.

CHAPTER VII

AMALGAMATIONS AND SIMILAR MATTERS

Amalgamation or transfer of engagements

97 Amalgamation or transfer of engagements.

(1) Two or more trade unions may amalgamate and become one trade union, with or without a division or dissolution of the funds of any one or more of the amalgamating unions, but shall not do so unless—

(a) the instrument of amalgamation is approved in accordance with section 98, and

(b) the requirements of **[**[F134]section 99 (notice to members) and section 100 (resolution to be passed by required majority on ballot held in accordance with sections 100A to 100E)**]** are complied with in respect of each of the amalgamating unions.

(2) A trade union may transfer its engagements to another trade union which undertakes to fulfil those engagements, but shall not do so unless—

(a) the instrument of transfer is approved in accordance with section 98, and

(b) the requirements of **[**[F134]section 99 (notice to members) and section 100 (resolution to be passed by required majority on ballot held in accordance with sections 100A to 100E)**]** are complied with in respect of the transferor union.

(3) An amalgamation or transfer of engagements does not prejudice any right of any creditor of any trade union party to the amalgamation or transfer.

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Trade Union and Labour Relations (Consolidation) Act 1992 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) The above provisions apply to every amalgamation or transfer of engagements notwithstanding anything in the rules of any of the trade unions concerned.

Textual Amendments

F134 Words in s. 97(1)(b) and (2)(b) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.52**; S.I. 1993/1908, art. 2(1), **Sch. 1**

98 Approval of instrument of amalgamation or transfer.

(1) The instrument of amalgamation or transfer must be approved by the Certification Officer and shall be submitted to him for approval before **[**[F135]a ballot of the members of any amalgamating union, or (as the case may be) of the transferor union, is held on the resolution to approve the instrument.**]**

(2) The instrument must comply with the requirements of any regulations in force under this Chapter and the Certification Officer shall approve it if he is satisfied that it does so.

Textual Amendments

F135 Words in s. 98(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.53**; S.I. 1993/1908, art. 2(1), **Sch. 1**

99 Notice to be given to members.

(1) The trade union shall take all reasonable steps to secure **[**[F136]that every voting paper which is supplied for voting in the ballot on the resolution to approve the instrument of amalgamation or transfer is accompanied by**]** a notice in writing approved for the purpose by the Certification Officer.

(2) The notice shall be in writing and shall either—

(a) set out in full the instrument of amalgamation or transfer to which the resolution relates, or

(b) give an account of it sufficient to enable those receiving the notice to form a reasonable judgment of the main effects of the proposed amalgamation or transfer.

(3) If the notice does not set out the instrument in full it shall state where copies of the instrument may be inspected by those receiving the notice.

[[F137](3A) The notice shall not contain any statement making a recommendation or expressing an opinion about the proposed amalgamation or transfer.**]**

(4) The notice shall also comply with the requirements of any regulations in force under this Chapter.

(5) The notice proposed to be supplied to members of the union under this section shall be submitted to the Certification Officer for approval; and he shall approve it if he is satisfied that it meets the requirements of this section.

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F136 Words in s. 99(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.54**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F137 S. 99(3A) added (30.8.1993) by 1993 c. 19, **s.5**; S.I. 1993/1908, art. 2(1), **Sch. 1**

[F138 100 Requirement of ballot on resolution.

(1) A resolution approving the instrument of amalgamation or transfer must be passed on a ballot of the members of the trade union held in accordance with sections 100A to 100E.

(2) A simple majority of those voting is sufficient to pass such a resolution unless the rules of the trade union expressly require it to be approved by a greater majority or by a specified proportion of the members of the union.**]**

Textual Amendments

F138 Ss. 100-100E substituted (30.8.1993) for s. 100 by 1993 c. 19, **s.4**; S.I. 1993/1908, art. 2(1), **Sch. 1**

[F139 100A Appointment of independent scrutineer.

(1) The trade union shall, before the ballot is held, appoint a qualified independent person ("the scrutineer") to carry out—

(a) the functions in relation to the ballot which are required under this section to be contained in his appointment; and

(b) such additional functions in relation to the ballot as may be specified in his appointment.

(2) A person is a qualified independent person in relation to a ballot if—

(a) he satisfies such conditions as may be specified for the purposes of this section by order of the Secretary of State or is himself so specified; and

(b) the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

An order under paragraph (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) The scrutineer's appointment shall require him—

(a) to be the person who supervises the production of the voting papers and (unless he is appointed under section 100D to undertake the distribution of the voting papers) their distribution and to whom the voting papers are returned by those voting;

(b) to—

(i) inspect the register of names and addresses of the members of the trade union, or

(ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with subsection (9)(a),

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whenever it appears to him appropriate to do so and, in particular, when the conditions specified in subsection (4) are satisfied;

(c) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see section 100E);

(d) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and

(e) to retain custody of all voting papers returned for the purposes of the ballot and the copy of the register supplied to him in accordance with subsection (9)(a)—

(i) until the end of the period of one year beginning with the announcement by the union of the result of the ballot; and

(ii) if within that period a complaint is made under section 103 (complaint as regards passing of resolution), until the Certification Officer or Employment Appeal Tribunal authorises him to dispose of the papers or copy.

(4) The conditions referred to in subsection (3)(b) are—

(a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and

(b) that the scrutineer does not consider that the member's suspicion is ill-founded.

(5) In subsection (4) "the appropriate period" means the period—

(a) beginning with the day on which the scrutineer is appointed, and

(b) ending with the day before the day on which the scrutineer makes his report to the trade union.

(6) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.

(7) The trade union shall ensure that nothing in the terms of the scrutineer's appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer's independence in relation to the union into question.

(8) The trade union shall, before the scrutineer begins to carry out his functions, either—

(a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or

(b) take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

(9) The trade union shall—

(a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and

(b) comply with any request made by the scrutineer to inspect the register.

(10) Where the register is kept by means of a computer the duty imposed on the trade union by subsection (9)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the

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computer to read it at any time during the period when he is required to retain custody of the copy.

(11) The trade union shall ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer's independence in relation to the union into question.

(12) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.

(13) In this section "the relevant date" means—

(a) where the trade union has rules determining who is entitled to vote in the ballot by reference to membership on a particular date, that date, and

(b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the ballot.**]**

Textual Amendments

F139 S. 100-100E substituted (30.8.1993) for s. 100 by 1993 c. 19, **s.4**; S.I. 1993/1908, art. 2(1), **Sch. 1**

[[F140]100B Entitlement to vote.

Entitlement to vote in the ballot shall be accorded equally to all members of the trade union.**]**

Textual Amendments

F140 S. 100-100E substituted (30.8.1993) for s. 100 by 1993 c. 19, **s.4**; S.I. 1993/1908, art. 2(1), **Sch. 1**

[[F141]100C Voting.

(1) The method of voting must be by the marking of a voting paper by the person voting.

(2) Each voting paper must—

(a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned, and

(b) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot, and

(c) be marked with its number.

(3) Every person who is entitled to vote in the ballot must—

(a) be allowed to vote without interference or constraint, and

(b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.

(4) So far as is reasonably practicable, every person who is entitled to vote in the ballot must—

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(a) have a voting paper sent to him by post at his home address or another address which he has requested the trade union in writing to treat as his postal address, and

(b) be given a convenient opportunity to vote by post.

(5) No voting paper which is sent to a person for voting shall have enclosed with it any other document except—

(a) the notice which, under section 99(1), is to accompany the voting paper,

(b) an addressed envelope, and

(c) a document containing instructions for the return of the voting paper,

without any other statement.

(6) The ballot shall be conducted so as to secure that—

(a) so far as is reasonably practicable, those voting do so in secret, and

(b) the votes given in the ballot are fairly and accurately counted.

For the purposes of paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the ballot.**]**

Textual Amendments

F141 S. 100-100E substituted (30.8.1993) for s. 100 by 1993 c. 19, **s. 4**; S.I. 1993/1908, art. 2(1), **Sch.1**

[F142 100D Counting of votes etc. by independent person.

(1) The trade union shall ensure that—

(a) the storage and distribution of the voting papers for the purposes of the ballot, and

(b) the counting of the votes cast in the ballot,

are undertaken by one or more independent persons appointed by the trade union.

(2) A person is an independent person in relation to a ballot if—

(a) he is the scrutineer, or

(b) he is a person other than the scrutineer and the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

(3) An appointment under this section shall require the person appointed to carry out his functions so as to minimise the risk of any contravention of requirements imposed by or under any enactment or the occurrence of any unfairness or malpractice.

(4) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.

(5) Where the person appointed to undertake the counting of votes is not the scrutineer, his appointment shall require him to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.

(6) The trade union—

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(a) shall ensure that nothing in the terms of an appointment under this section is such as to make it reasonable for any person to call into question the independence of the person appointed in relation to the union,

(b) shall ensure that a person appointed under this section duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call into question the independence of the person appointed in relation to the union, and

(c) shall comply with all reasonable requests made by a person appointed under this section for the purposes of, or in connection with, the carrying out of his functions.**]**

Textual Amendments

F142 S. 100-100E substituted (30.8.1993) for s. 100 by 1993 c. 19, **s.4**; S.I. 1993/1908, art. 2(1), **Sch. 1**

[F143 100E Scrutineer's report.

(1) The scrutineer's report on the ballot shall state—

(a) the number of voting papers distributed for the purposes of the ballot,

(b) the number of voting papers returned to the scrutineer,

(c) the number of valid votes cast in the ballot for and against the resolution,

(d) the number of spoiled or otherwise invalid voting papers returned, and

(e) the name of the person (or of each of the persons) appointed under section 100D or, if no person was so appointed, that fact.

(2) The report shall also state whether the scrutineer is satisfied—

(a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the ballot,

(b) that the arrangements made (whether by him or any other person) with respect to the production, storage, distribution, return or other handling of the voting papers used in the ballot, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and

(c) that he has been able to carry out his functions without any such interference as would make it reasonable for any person to call his independence in relation to the union into question;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.

(3) The report shall also state—

(a) whether the scrutineer—

(i) has inspected the register of names and addresses of the members of the trade union, or

(ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with section 100A(9)(a),

(b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or at his own instance,

(c) whether he declined to act on any such request, and

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(d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date,

but shall not state the name of any member who has requested such an inspection or examination.

(4) Where one or more persons other than the scrutineer are appointed under section 100D, the statement included in the scrutineer's report in accordance with subsection (2)(b) shall also indicate—

(a) whether he is satisfied with the performance of the person, or each of the persons, so appointed, and

(b) if he is not satisfied with the performance of the person, or any of them, particulars of his reasons for not being so satisfied.

(5) The trade union shall not publish the result of the ballot until it has received the scrutineer's report.

(6) The trade union shall within the period of three months after it receives the report—

(a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or

(b) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

(7) Any such copy or notification shall be accompanied by a statement that the union will, on request, supply any member of the trade union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification.

(8) The trade union shall so supply any member of the union who makes such a request and pays the fee (if any) notified to him.**]**

Textual Amendments

F143 S. 100-100E substituted (30.8.1993) for s. 100 by 1993 c. 19, **s.4**; S.I. 1993/1908, art. 2(1), **Sch.1**

101 Registration of instrument of amalgamation or transfer.

(1) An instrument of amalgamation or transfer shall not take effect before it has been registered by the Certification Officer under this Chapter.

(2) It shall not be so registered before the end of the period of six weeks beginning with the date on which an application for its registration is sent to the Certification Officer.

[[F144](3) An application for registration of an instrument of amalgamation or transfer shall not be sent to the Certification Officer until section 100E(6) has been complied with in relation to the scrutineer's report on the ballot held on the resolution to approve the instrument.**]**

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F144 S. 101(3) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.55**; S.I. 1993/1908, art. 2(1), **Sch.1**

VALID FROM 06/04/2005

[F145 101A Listing and certification after amalgamation

(1) Subsection (2) applies if when an instrument of amalgamation is registered by the Certification Officer under this Chapter each of the amalgamating unions is entered in the list of trade unions.

(2) The Certification Officer shall—

(a) enter, with effect from the amalgamation date, the name of the amalgamated union in the list of trade unions, and

(b) remove, with effect from that date, the names of the amalgamating unions from that list.

(3) Subsection (4) applies if when an instrument of amalgamation is registered by the Certification Officer under this Chapter each of the amalgamating unions has a certificate of independence which is in force.

(4) The Certification Officer shall issue to the amalgamated trade union, with effect from the amalgamation date, a certificate that the union is independent.

(5) In this section "the amalgamation date" means the date on which the instrument of amalgamation takes effect.

Textual Amendments

F145 Ss. 101A, 101B inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 50(2)**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

VALID FROM 06/04/2005

101B Supply of information by amalgamated union

(1) If an instrument of amalgamation is registered under this Chapter by the Certification Officer and the amalgamated union is entered in the list of trade unions in accordance with section 101A, that union shall send to him, in such manner and form as he may require—

(a) a copy of the rules of the union,

(b) a list of its officers, and

(c) the address of its head or main office.

(2) The information required to be sent under subsection (1) must be accompanied by any fee prescribed for the purpose under section 108.

(3) The information must be sent—

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(a) before the end of the period of six weeks beginning with the date on which the instrument of amalgamation takes effect, or

(b) if the Certification Officer considers that it is not reasonably practicable for the amalgamated union to send it in that period, before the end of such longer period, beginning with that date, as he may specify to the amalgamated union.

(4) If any of subsections (1) to (3) are not complied with by the amalgamated union, the Certification Officer shall remove its name from the list of trade unions.**]**

Textual Amendments

F145 Ss. 101A, 101B inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 50(2)**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

102 Power to alter rules of transferee union for purposes of transfer.

(1) Where a trade union proposes to transfer its engagements to another trade union and an alteration of the rules of the transferee union is necessary to give effect to provisions in the instrument of transfer, the committee of management or other governing body of that union may by memorandum in writing alter the rules of that union so far as is necessary to give effect to those provisions.

This subsection does not apply if the rules of the trade union expressly provide that this section is not to apply to that union.

(2) An alteration of the rules of a trade union under subsection (1) shall not take effect unless or until the instrument of transfer takes effect.

(3) The provisions of subsection (1) have effect, where they apply, notwithstanding anything in the rules of the union.

103 Complaints as regards passing of resolution.

[[F146](1) A member of a trade union who claims that the union—

(a) has failed to comply with any of the requirements of sections 99 to 100E, or

(b) has, in connection with a resolution approving an instrument of amalgamation or transfer, failed to comply with any rule of the union relating to the passing of the resolution,

may complain to the Certification Officer.**]**

(2) Any complaint must be made before the end of the period of six weeks beginning with the date on which an application for registration of the instrument of amalgamation or transfer is sent to the Certification Officer.

Where a complaint is made, the Certification Officer shall not register the instrument before the complaint is finally determined or is withdrawn.

[[F147](2A) On a complaint being made to him the Certification Officer shall make such enquiries as he thinks fit.**]**

(3) If the Certification Officer, after giving the complainant and the trade union an opportunity of being heard, finds the complaint to be justified—

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(a) he shall make a declaration to that effect, and

(b) he may make an order specifying the steps which must be taken before he will entertain any application to register the instrument of amalgamation or transfer;

and where he makes such an order, he shall not entertain any application to register the instrument unless he is satisfied that the steps specified in the order have been taken.

An order under this subsection may be varied by the Certification Officer by a further order.

(4) The Certification Officer shall furnish a statement, orally or in writing, of the reasons for his decision on a complaint under this section.

(5) The validity of a resolution approving an instrument of amalgamation or transfer shall not be questioned in any legal proceedings whatsoever (except proceedings before the Certification Officer under this section or proceedings arising out of such proceedings) on any ground on which a complaint could be, or could have been, made to the Certification Officer under this section.

[[F148](6) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

[F148](7) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.

[F148](8) Where an order has been made under this section, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.

[F148](9) An order made by the Certification Officer under this section may be enforced in the same way as an order of the court.**]**

Textual Amendments

F146 S. 103(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 56**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F147 S. 103(2A) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **18(1)(2)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. 1** (with Sch. 3 para. 5)

F148 S. 103(6)-(9) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **18(3)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

104 Appeal from decision of Certification Officer.

An appeal lies to the Employment Appeal Tribunal, at the instance of the complainant or the trade union, on any question of law arising in any proceedings before, or arising from any decision of, the Certification Officer under section 103.

105 Transfer of property on amalgamation or transfer.

(1) Where an instrument of amalgamation or transfer takes effect, the property held—

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(a) for the benefit of any of the amalgamating unions, or for the benefit of a branch of any of those unions, by the trustees of the union or branch, or

(b) for the benefit of the transferor trade union, or for the benefit of a branch of the transferor trade union, by the trustees of the union or branch,

shall without any conveyance, assignment or assignation vest, on the instrument taking effect, or on the appointment of the appropriate trustees, whichever is the later, in the appropriate trustees.

(2) In the case of property to be held for the benefit of a branch of the amalgamated union, or of the transferee union, "the appropriate trustees" means the trustees of that branch, unless the rules of the amalgamated or transferee union provide that the property to be so held is to be held by the trustees of the union.

(3) In any other case "the appropriate trustees" means the trustees of the amalgamated or transferee union.

(4) This section does not apply—

(a) to property excepted from the operation of this section by the instrument of amalgamation or transfer, or

(b) to stocks and securities in the public funds of the United Kingdom or Northern Ireland.

106 Amalgamation or transfer involving Northern Ireland union.

(1) This Chapter has effect subject to the following modifications in the case of an amalgamation or transfer of engagements to which a trade union and a Northern Ireland union are party.

(2) The requirements of sections **[**[F149]98 to 100E and 101(3) (approval of instrument, notice to members and ballot on resolution)**]** do not apply in relation to the Northern Ireland union; but the Certification Officer shall not register the instrument under section 101 unless he is satisfied that it will be effective under the law of Northern Ireland.

(3) The instrument of amalgamation or transfer submitted to the Certification Officer for his approval under section 98 shall state which of the bodies concerned is a Northern Ireland union and, in the case of an amalgamation, whether the amalgamated body is to be a Northern Ireland union; and the Certification Officer shall withhold his approval if the instrument does not contain that information.

(4) Nothing in section 102 (alteration of rules) or **[**[F150]sections 103 and 104**]** (complaint as to passing of resolution) applies in relation to the Northern Ireland union.

(5) Subject to the exceptions specified above, the provisions of this Chapter as to amalgamations or transfers of engagements apply in relation to the Northern Ireland union.

Textual Amendments

F149 Words in s. 106(2) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 57(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F150 Words in s. 106(4) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 57(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

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Change of name

107 Change of name of trade union.

(1) A trade union may change its name by any method expressly provided for by its rules or, if its rules do not expressly provide for a method of doing so, by adopting in accordance with its rules an alteration of the provision in them which gives the union its name.

(2) If the name of the trade union is entered in the list of trade unions a change of name shall not take effect until approved by the Certification Officer.

(3) The Certification Officer shall not approve a change of name if it appears to him that the proposed new name—
   (a) is the same as one entered in the list as the name of another trade union, or
   (b) is the same as one entered in the list of employers' associations kept under Part II of this Act,

   or is a name so nearly resembling such a name as to be likely to deceive the public.

(4) A change of name by a trade union does not affect any right or obligation of the union or any of its members; and any pending legal proceedings may be continued by or against the union, the trustees of the union or any other officer of the union who can sue or be sued on its behalf notwithstanding its change of name.

Supplementary

108 General power to make regulations.

(1) The Secretary of State may make regulations as respects—
   (a) applications to the Certification Officer under this Chapter,
   (b) the registration under this Chapter of any document or matter,
   (c) the inspection of documents kept by the Certification Officer under this Chapter,
   (d) the charging of fees in respect of such matters, and of such amounts, as may with the approval of the Treasury be prescribed by the regulations,

   and generally for carrying this Chapter into effect.

(2) Provision may in particular be made—
   (a) requiring an application for the registration of an instrument of amalgamation or transfer, or of a change of name, to be accompanied by such statutory declarations or other documents as may be specified in the regulations;
   (b) as to the form or content of any document required by this Chapter, or by the regulations, to be sent or submitted to the Certification Officer and as to the manner in which any such document is to be signed or authenticated;
   (c) authorising the Certification Officer to require notice to be given or published in such manner as he may direct of the fact that an application for registration of an instrument of amalgamation or transfer has been or is to be made to him.

(3) Regulations under this section may make different provision for different circumstances.

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(4) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

[F151 CHAPTER VIIA

BREACH OF RULES]

Textual Amendments

F151 S. 108A-108C of Chapter VIIA Pt. I and chapter heading inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **19**;S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

[F152 108A Right to apply to Certification Officer.

(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).

(2) The matters are—
- (a) the appointment or election of a person to, or the removal of a person from, any office;
- (b) disciplinary proceedings by the union (including expulsion);
- (c) the balloting of members on any issue other than industrial action;
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;
- (e) such other matters as may be specified in an order made by the Secretary of State.

(3) The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.

(4) A person may not apply under subsection (1) in relation to a claim if he is entitled to apply under section 80 in relation to the claim.

(5) No application may be made regarding—
- (a) the dismissal of an employee of the union;
- (b) disciplinary proceedings against an employee of the union.

(6) An application must be made—
- (a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or
- (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).

(7) Those days are—
- (a) the day on which the procedure is concluded, and
- (b) the last day of the period of one year beginning with the day on which the procedure is invoked.

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(8) The reference in subsection (1) to the rules of a union includes references to the rules of any branch or section of the union.

(9) In subsection (2)(c) "industrial action" means a strike or other industrial action by persons employed under contracts of employment.

(10) For the purposes of subsection (2)(d) a committee is an executive committee if—
- (a) it is a committee of the union concerned and has power to make executive decisions on behalf of the union or on behalf of a constituent body,
- (b) it is a committee of a major constituent body and has power to make executive decisions on behalf of that body, or
- (c) it is a sub-committee of a committee falling within paragraph (a) or (b).

(11) For the purposes of subsection (2)(d) a decision-making meeting is—
- (a) a meeting of members of the union concerned (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union, is final as regards the union or which, under the rules of the union or a constituent body, is final as regards that body, or
- (b) a meeting of members of a major constituent body (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union or the body, is final as regards that body.

(12) For the purposes of subsections (10) and (11), in relation to the trade union concerned—
- (a) a constituent body is any body which forms part of the union, including a branch, group, section or region;
- (b) a major constituent body is such a body which has more than 1,000 members.

(13) Any order under subsection (2)(e) shall be made by statutory instrument; and no such order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.

(14) If a person applies to the Certification Officer under this section in relation to an alleged breach or threatened breach he may not apply to the court in relation to the breach or threatened breach; but nothing in this subsection shall prevent such a person from exercising any right to appeal against or challenge the Certification Officer's decision on the application to him.

(15) If—
- (a) a person applies to the court in relation to an alleged breach or threatened breach, and
- (b) the breach or threatened breach is one in relation to which he could have made an application to the Certification Officer under this section,

he may not apply to the Certification Officer under this section in relation to the breach or threatened breach.**]**

Textual Amendments

F152 S. 108A-C of Chapter VIIA Pt. I and chapter heading inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **19**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

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[F153 108B Declarations and orders.

(1) The Certification Officer may refuse to accept an application under section 108A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.

(2) If he accepts an application under section 108A the Certification Officer—
- (a) shall make such enquiries as he thinks fit,
- (b) shall give the applicant and the union an opportunity to be heard,
- (c) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,
- (d) may make or refuse the declaration asked for, and
- (e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.

(3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—
- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
- (b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

(4) The Certification Officer shall in an order imposing any such requirement as is mentioned in subsection (3)(a) specify the period within which the union is to comply with the requirement.

(5) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(6) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.

(7) Where an enforcement order has been made, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(8) An enforcement order made by the Certification Officer under this section may be enforced in the same way as an order of the court.

(9) An order under section 108A(2)(e) may provide that, in relation to an application under section 108A with regard to a prescribed matter, the preceding provisions of this section shall apply with such omissions or modifications as may be specified in the order; and a prescribed matter is such matter specified under section 108A(2)(e) as is prescribed under this subsection.]

Textual Amendments

F153 S. 108A-C of Chapter VIIA Pt. I and chapter heading inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **19**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

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[F154 108C Appeals from Certification Officer.

An appeal lies to the Employment Appeal Tribunal on any question of law arising in proceedings before or arising from any decision of the Certification Officer under this Chapter.]

Textual Amendments

F154 S. 108A-C of Chapter VIIA Pt. I inserted (25.10.1999) by 1999 c. 26 s. 29, Sch. 6 para. 1, 19; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

F155 CHAPTER VIII

. . .

Textual Amendments

F155 Pt I Chapter VIII (ss.109-114) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(6)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with Sch. 3 para. 4)

CHAPTER IX

MISCELLANEOUS AND GENERAL PROVISIONS

Further provisions with respect to ballots

F162 115 . . . . . .

Textual Amendments

F162 S. 115 shall cease to have effect (1.4.1996) by virtue of 1993 c. 19, ss. 7(1)(4), 51, **Sch. 10**

F163 116 . . . . . .

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F163 S. 116 shall cease to have effect (1.4.1996) by virtue of 1993 c. 19, ss. 7(1)(4), 51, **Sch. 10**

VALID FROM 06/04/2005

[F164 Union modernisation

Textual Amendments

F164 S. 116A and preceding cross-heading inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 55(1)**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

116A Provision of money for union modernisation

(1) The Secretary of State may provide money to a trade union to enable or assist it to do any or all of the following—

(a) improve the carrying out of any of its existing functions;

(b) prepare to carry out any new function;

(c) increase the range of services it offers to persons who are or may become members of it;

(d) prepare for an amalgamation or the transfer of any or all of its engagements;

(e) ballot its members (whether as a result of a requirement imposed by this Act or otherwise).

(2) No money shall be provided to a trade union under this section unless at the time when the money is provided the union has a certificate of independence.

(3) Money may be provided in such a way as the Secretary of State thinks fit (whether as grants or otherwise) and on such terms as he thinks fit (whether as to repayment or otherwise).

(4) If money is provided to a trade union under this section, the terms on which it is so provided shall be deemed to include a prohibition ("a political fund prohibition") on any of it being added to the political fund of the union.

(5) If a political fund prohibition is contravened, the Secretary of State—

(a) is entitled to recover from the trade union as a debt due to him an amount equal to the amount of money added to the union's political fund in contravention of the prohibition (whether or not that money continues to form part of the political fund); and

(b) must take such steps as are reasonably practicable to recover that amount.

(6) An amount recoverable under subsection (5) is a liability of the trade union's political fund.

(7) Subsection (5) does not prevent money provided to a trade union under this section from being provided on terms containing further sanctions for a contravention of the political fund prohibition.**]**

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Exceptions and adaptations for certain bodies

117 Special register bodies.

(1) In this section a "special register body" means an organisation whose name appeared in the special register maintained under section 84 of the [M18]Industrial Relations Act 1971 immediately before 16 September 1974, and which is a company registered under the [M19]Companies Act 1985 or is incorporated by charter or letters patent.

(2) The provisions of this Part apply to special register bodies as to other trade unions, subject to the following exceptions and adaptations.

(3) In Chapter II (status and property of trade unions)—

(a) in section 10 (quasi-corporate status of trade unions)—

(i) subsections (1) and (2) (prohibition on trade union being incorporated) do not apply, and

(ii) subsection (3) (prohibition on registration under certain Acts) does not apply so far as it relates to registration as a company under the [M20]Companies Act 1985;

(b) section 11 (exclusion of common law rules as to restraint of trade) applies to the purposes or rules of a special register body only so far as they relate to the regulation of relations between employers or employers' associations and workers;

(c) sections 12 to 14 (vesting of property in trustees; transfer of securities) do not apply; and

(d) in section 20 (liability of trade union in certain proceedings in tort) in subsection (7) the reference to the contract between a member and the other members shall be construed as a reference to the contract between a member and the body.

(4) Sections 33 to 35 (appointment and removal of auditors) do not apply to a special register body which is registered as a company under the Companies Act 1985; and sections 36 and 37 (rights and duties of auditors) apply to the auditors appointed by such a body under Chapter V of Part XI of that Act.

(5) **[**[F165]Sections 45B and 45C (disqualification) and Chapter IV (elections) apply only**]** to—

(a) the position of voting member of the executive, and

(b) any position by virtue of which a person is a voting member of the executive.

In this subsection "voting member of the executive" has the meaning given by section 46(5).

Textual Amendments

F165 Words in s. 117(5) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.61**; S.I. 1993/1908, art. 2(1), **Sch. 1**

Marginal Citations

M18 1971 c. 72.
M19 1985 c. 6.
M20 1985 c. 6.

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
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118 Federated trade unions.

(1) In this section a "federated trade union" means a trade union which consists wholly or mainly of constituent or affiliated organisations, or representatives or such organisations, as described in paragraph (b) of the definition of "trade union" in section 1.

(2) The provisions of this Part apply to federated trade unions subject to the following exceptions and adaptations.

(3) For the purposes of section 22 (limit on amount of damages) as it applies to a federated trade union, the members of such of its constituent or affiliated organisations as have their head or main office in Great Britain shall be treated as members of the union.

(4) The following provisions of Chapter III (trade union administration) do not apply to a federated trade union which consists wholly or mainly of representatives of constituent or affiliated organisations—

(a) section 27 (duty to supply copy of rules),

(b) section 28 (duty to keep accounting records),

(c) sections 32 to 37 (annual return, **[**[F166]statement for members,**]** accounts and audit), [F167]. . .

[[F168](ca) sections 37A to 37E (investigation of financial affairs), and**]**

(d) sections 38 to 42 (members' superannuation schemes).

(5) Sections 29 to 31 (right of member to access to accounting records) do not apply to a federated trade union which has no members other than constituent or affiliated organisations or representatives of such organisations.

(6) Sections 24 to 26 (register of members' names and addresses) and Chapter IV (elections for certain trade union positions) do not apply to a federated trade union—

(a) if it has no individual members other than representatives of constituent or affiliated organisations, or

(b) if its individual members (other than such representatives) are all merchant seamen and a majority of them are ordinarily resident outside the United Kingdom.

For this purpose "merchant seaman" means a person whose employment, or the greater part of it, is carried out on board sea-going ships.

(7) The provisions of Chapter VI (application of funds for political objects) apply to a trade union which is in whole or part an association or combination of other unions as if the individual members of the component unions were members of that union and not of the component unions.

But nothing in that Chapter prevents a component union from collecting contributions on behalf of the association or combination from such of its members as are not exempt from the obligation to contribute to the political fund of the association or combination.

Textual Amendments

F166 Words in s. 118(4)(c) inserted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 62(a)**; S.I. 1993/1908, art. 2(3), **Sch.3**

F167 Word in s. 118(4)(c) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

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F168 S. 118(4)(ca) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 62(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

Interpretation

119 Expressions relating to trade unions.

In this Act, in relation to a trade union—

[[F169]"agent" means a banker or solicitor of, or any person employed as an auditor by, the union or any branch or section of the union;**]**

"branch or section", except where the context otherwise requires, includes a branch or section which is itself a trade union;

"executive" means the principal committee of the union exercising executive functions, by whatever name it is called;

[[F169]"financial affairs" means affairs of the union relating to any fund which is applicable for the purposes of the union (including any fund of a branch or section of the union which is so applicable);**]**

"general secretary" means the official of the union who holds the office of general secretary or, where there is no such office, holds an office which is equivalent, or (except in section 14(4)) the nearest equivalent, to that of general secretary;

"officer" includes—

(a) any member of the governing body of the union, and

(b) any trustee of any fund applicable for the purposes of the union;

"official" means—

(a) an officer of the union or of a branch or section of the union, or

(b) 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,

and includes a 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;

"president" means the official of the union who holds the office of president or, where there is no such office, who holds an office which is equivalent, or (except in section 14(4) or Chapter IV) the nearest equivalent, to that of president; and

"rules", except where the context otherwise requires, includes the rules of any branch or section of the union.

Textual Amendments

F169 Definitions inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.63**; S.I. 1993/1908, art. 2(1), **Sch. 1**

120 Northern Ireland unions.

In this Part a "Northern Ireland union" means a trade union whose principal office is situated in Northern Ireland.

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121 Meaning of "the court".

In this Part "the court" (except where the reference is expressed to be to the county court or sheriff court) means the High Court or the Court of Session.

PART II

EMPLOYERS' ASSOCIATIONS

Introductory

122 Meaning of "employers' association".

(1) In this Act an "employers' association" means an organisation (whether temporary or permanent)—

(a) which consists wholly or mainly of employers or individual owners of undertakings of one or more descriptions and whose principal purposes include the regulation of relations between employers of that description or those descriptions and workers or trade unions; or

(b) which consists wholly or mainly of—

(i) constituent or affiliated organisations which fulfil the conditions in paragraph (a) (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 whose principal purposes include the regulation of relations between employers and workers or between employers and trade unions, or the regulation of relations between its constituent or affiliated organisations.

(2) References in this Act to employers' associations include combinations of employers and employers' associations.

The list of employers' associations

123 The list of employers' associations.

(1) The Certification Officer shall keep a list of employers' associations containing the names of—

(a) the organisations whose names were, immediately before the commencement of this Act, duly entered in the list of employers' associations kept by him under section 8 of the [M21]Trade Union and Labour Relations Act 1974, and

(b) the names of the organisations entitled to have their names entered in the list in accordance with this Part.

(2) The Certification Officer shall keep copies of the list of employers' associations, as for the time being in force, available for public inspection at all reasonable hours free of charge.

(3) A copy of the list shall be included in his annual report.

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(4) The fact that the name of an organisation is included in the list of employers' associations is evidence (in Scotland, sufficient evidence) that the organisation is an employers' association.

(5) On the application of an organisation whose name is included in the list, the Certification Officer shall issue it with a certificate to that effect.

(6) A document purporting to be such a certificate is evidence (in Scotland, sufficient evidence) that the name of the organisation is entered in the list.

Marginal Citations
M21 1974 c. 52.

124 Application to have name entered in the list.

(1) An organisation of employers, whenever formed, whose name is not entered in the list of employers' associations may apply to the Certification Officer to have its name entered in the list.

(2) The application shall be made in such form and manner as the Certification Officer may require and shall be accompanied 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,

   and by the prescribed fee.

(3) If the Certification Officer is satisfied—
   (a) that the organisation is an employers' association,
   (b) that subsection (2) has been complied with, and
   (c) that entry of the name in the list is not prohibited by subsection (4),

   he shall enter the name of the organisation in the list of employers' associations.

(4) The Certification Officer shall not enter the name of an organisation in the list of employers' associations if the name is the same as that under which another organisation—
   (a) was on 30th September 1971 registered as a trade union under the Trade Union Acts 1871 to 1964,
   (b) was at any time registered as an employers' association or trade union under the [M22]Industrial Relations Act 1971, or
   (c) is for the time being entered in the list of employers' associations or in the list of trade unions kept under Chapter I of Part I of this Act,

   or if the name is one so nearly resembling any such name as to be likely to deceive the public.

Marginal Citations
M22 1971 c. 72.

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125 Removal of name from the list.

(1) If it appears to the Certification Officer, on application made to him or otherwise, that an organisation whose name is entered in the list of employers' associations is not an employers' association, he may remove its name from the list.

(2) He shall not do so without giving the organisation notice of his intention and considering any representations made to him by the organisation within such period (of not less than 28 days beginning with the date of the notice) as may be specified in the notice.

(3) The Certification Officer shall remove the name of an organisation from the list of employers' associations if—
  (a) he is requested by the organisation to do so, or
  (b) he is satisfied that the organisation has ceased to exist.

126 Appeal against decision of Certification Officer.

(1) An organisation aggrieved by the refusal of the Certification Officer to enter its name in the list of employers' associations, or by a decision of his to remove its name from the list, may appeal to the Employment Appeal Tribunal.

(2) If on appeal the Tribunal is satisfied that the organisation's name should be or remain entered in the list, it shall declare that fact and give directions to the Certification Officer accordingly.

(3) The right of appeal conferred by this section extend to any question of fact or law arising in the proceedings before, or arising from the decision of, the Certification Officer.

Status and property of employers' associations

127 Corporate or quasi-corporate 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 is capable of making contracts;
  (b) it is 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; and
  (c) proceedings for an offence alleged to have been committed by it or on its behalf may be brought against it in its own name.

(3) Nothing in section 716 of the [M23]Companies Act 1985 (associations of over 20 members to 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.

Marginal Citations
M23 1985 c. 6.

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128 Exclusion of common law rules as to restraint of trade.

(1) The purposes of an unincorporated employers' association and, 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 are not, by reason only that they are in restraint of trade, 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.

(2) No rule of an unincorporated employers' association or, so far as it relates to the regulation of relations between employers and workers or trade unions, of an employers' association which is a body corporate, is unlawful or unenforceable by reason only that it is in restraint of trade.

129 Property of unincorporated employers' associations, &c.

(1) The following provisions of Chapter II of Part I of this Act apply to an unincorporated employers' association as in relation to a trade union—

(a) section 12(1) and (2) (property to be vested in trustees),

(b) section 13 (vesting of property in new trustees), and

(c) section 14 (transfer of securities held in trust for trade union).

(2) In sections 13 and 14 as they apply by virtue of subsection (1) the reference to entry in the list of trade unions shall be construed as a reference to entry in the list of employers' associations.

(3) Section 19 (application of certain provisions relating to [F170]. . . friendly societies) applies to any employers' association as in relation to a trade union.

Textual Amendments

F170 Words in s. 129(3) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 333

130 Restriction on enforcement of awards against certain property.

(1) Where in any proceedings an amount is awarded by way of damages, costs or expenses—

(a) against an employers' association,

(b) against trustees in whom property is vested in trust for an employers' association, in their capacity as such (and otherwise than in respect of a breach of trust on their part), or

(c) against members or officials of an employers' association on behalf of themselves and all of the members of the association,

no part of that amount is recoverable by enforcement against any protected property.

(2) The following is protected property—

(a) property belonging to the trustees otherwise than in their capacity as such;

(b) property belonging to any member of the association otherwise than jointly or in common with the other members;

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(c) property belonging to an official of the association who is neither a member nor a trustee.

Administration of employers' associations

131 Administrative provisions applying to employers' associations.

(1) The following provisions of Chapter III of Part I of this Act apply to an employers' association as in relation to a trade union—

section 27 (duty to supply copy of rules),

section 28 (duty to keep accounting records),

[[F171]section 32(1), (2), (3)(a), (b) and (c) and (4) to (6) and sections 33 to 37**]** (annual return, accounts and audit),

[F172]sections 37A to 37E (investigation of financial affairs),

sections 38 to 42 (members' superannuation schemes),

section 43(1) (exemption for newly-formed organisations),

section 44(1),(2) and (4) (discharge of duties in case of organisation having branches or sections), and

[[F173]sections 45 and 45A**]** (offences).

(2) Sections 33 to 35 (appointment and removal of auditors) do not apply to an employers' association which is registered as a company under the [M24]Companies Act 1985; and sections 36 and 37 (rights and duties of auditors) apply to the auditors appointed by such an association under Chapter V of Part XI of that Act.

Textual Amendments

F171 Words in s. 131(1) substituted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 64(a)**; S.I. 1993/1908, art. 2(3), **Sch.3**

F172 Words in s. 131(1) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 64(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F173 Words in s. 131(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 64(c)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

Marginal Citations

M24 1985 c. 6.

Application of funds for political objects

132 Application of funds for political objects.

[[F174](1) Subject to subsections (2) to (5), the**]**provisions of Chapter VI of Part I of this Act (application of funds for political objects) apply to an unincorporated employers' association as in relation to a trade union.

[[F175](2) Subsection (1) does not apply to these provisions—

(a) section 72A;

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(b) in section 80, subsections (5A) to (5C) and (8) to (10);

(c) in section 81, subsection (8).

(3) In its application to an unincorporated employers' association, section 79 shall have effect as if at the end of subsection (1) there were inserted—

"The making of an application to the Certification Officer does not prevent the applicant, or any other person, from making an application to the court in respect of the same matter."

(4) In its application to an unincorporated employers' association, section 80(2)(b) shall have effect as if the words "where he considers it appropriate," were inserted at the beginning.

(5) In its application to an unincorporated employers' association, section 81 shall have effect as if after subsection (1) there were inserted—

"(2) If an application in respect of the same matter has been made to the Certification Officer, the court shall have due regard to any declaration, reasons or observations of his which are brought to its notice."**]**

Textual Amendments

F174 Words in s. 132 substituted and s. 132 renumbered as 132(1) (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **20(1)(2)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

F175 S. 132(2)-(5) inserted (25.10.1999) by 1999 c. 26, S. 29, Sch. 6 paras. 1, **20(3)**; S.I. 1999/2830, art. 2(1), **Sch. 1 para. I** (with Sch. 3 para. 5)

Amalgamations and similar matters

[[F176]133 Amalgamations and transfers of engagements.

(1) Subject to subsection (2), the provisions of Chapter VII of Part I of this Act (amalgamations and similar matters) apply to unincorporated employers' associations as in relation to trade unions.

(2) In its application to such associations that Chapter shall have effect—

(a) as if in section 99(1) for the words from "that every" to "accompanied by" there were substituted the words "that, not less than seven days before the ballot on the resolution to approve the instrument of amalgamation or transfer is held, every member is supplied with",

(b) as if the requirements imposed by sections 100A to 100E consisted only of those specified in sections 100B and 100C(1) and (3)(a) together with the requirement that every member must, so far as is reasonably possible, be given a fair opportunity of voting, and

(c) with the omission of sections 101(3) **[**[F177], 103(2A) and (6) to (9)**]]** and 107.

Textual Amendments

F176 S. 133 substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 65**; S.I. 1993/1908, art. 2(1), **Sch. 1**

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F177 Words in s. 133(2)(c) inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **21**; S.I. 1999/2830, art. 2(1), **Sch. 1 para. I** (with Sch. 3 para. 5)

134 Change of name of employers' association.

(1) An unincorporated employers' association may change its name by any method expressly provided for by its rules or, if its rules do not expressly provide for a method of doing so, by adopting in accordance with its rules an alteration of the provision in them which gives the association its name.

(2) If the name of an employers' association, whether incorporated or unincorporated, is entered in the list of employers' associations a change of name shall not take effect until approved by the Certification Officer.

(3) The Certification Officer shall not approve a change of name if it appears to him that the proposed new name—

(a) is the same as one entered in the list as the name of another employers' association, or

(b) is the same as one entered in the list of trade unions kept under Part I of this Act,

or is a name so nearly resembling such a name as to be likely to deceive the public.

(4) A change of name by an unincorporated employers' association does not affect any right or obligation of the association or any of its members; and any pending legal proceedings may be continued by or against the association, the trustees of the association or any other officer of the association who can sue or be sued on its behalf notwithstanding its change of name.

(5) The power conferred by section 108 (power to make regulations for carrying provisions into effect) applies in relation to this section as in relation to a provision of Chapter VII of Part I.

General

135 Federated employers' associations.

(1) In this section a "federated employers' association" means a employers' association which consists wholly or mainly of constituent or affiliated organisations, or representatives or such organisations, as described in paragraph (b) of the definition of "employers' association" in section 122.

(2) The provisions of Part I applied by this Part to employers' associations apply to federated employers' associations subject to the following exceptions and adaptations.

(3) The following provisions of Chapter III of Part I (administration) do not apply to a federated employers' association which consists wholly or mainly of representatives of constituent or affiliated organisations—

(a) section 27 (duty to supply copy of rules),

(b) section 28 (duty to keep accounting records),

(c) **[**[F178]section 32(1), (2), (3)(a), (b) and (c) and (4) to (6) and sections 33 to 37**]** (annual return, accounts and audit), [F179]. . .

[[F180](ca) sections 37A to 37E (investigation of financial affairs), and**]**

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(d) sections 38 to 42 (members' superannuation schemes).

(4) The provisions of Chapter VI of Part I (application of funds for political objects) apply to a employers' association which is in whole or part an association or combination of other associations as if the individual members of the component associations were members of that association and not of the component associations.

But nothing in that Chapter prevents a component association from collecting contributions on behalf of the association or combination from such of its members as are not exempt from the obligation to contribute to the political fund of the association or combination.

Textual Amendments

F178 Words in s. 135(3)(c) substituted (1.1.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 66(a)**; S.I. 1993/1908, art. 2(3), **Sch.3**

F179 Word in s. 135(3)(c) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F180 S. 135(3)(ca) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 66(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

136 Meaning of "officer" of employers' association.

In this Act "officer", in relation to an employers' association, includes—

(a) any member of the governing body of the association, and

(b) any trustee of any fund applicable for the purposes of the association.

PART III

RIGHTS IN RELATION TO UNION MEMBERSHIP AND ACTIVITIES

Access to employment

137 Refusal of employment on grounds related to union membership.

(1) It is unlawful to refuse a person employment—

(a) because he is, or is not, a member of a trade union, or

(b) because he is unwilling to accept a requirement—

(i) to take steps to become or cease to be, or to remain or not to become, a member of a trade union, or

(ii) to make payments or suffer deductions in the event of his not being a member of a trade union.

(2) A person who is thus unlawfully refused employment has a right of complaint to an **[**[F181]employment tribunal**]**.

(3) Where an advertisement is published which indicates, or might reasonably be understood as indicating—

(a) that employment to which the advertisement relates is open only to a person who is, or is not, a member of a trade union, or

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(b) that any such requirement as is mentioned in subsection (1)(b) will be imposed in relation to employment to which the advertisement relates,

a person who does not satisfy that condition or, as the case may be, is unwilling to accept that requirement, and who seeks and is refused employment to which the advertisement relates, shall be conclusively presumed to have been refused employment for that reason.

(4) Where there is an arrangement or practice under which employment is offered only to persons put forward or approved by a trade union, and the trade union puts forward or approves only persons who are members of the union, a person who is not a member of the union and who is refused employment in pursuance of the arrangement or practice shall be taken to have been refused employment because he is not a member of the trade union.

(5) A person shall be taken to be refused employment if he seeks employment of any description with a person and that person—

(a) refuses or deliberately omits to entertain and process his application or enquiry, or

(b) causes him to withdraw or cease to pursue his application or enquiry, or

(c) refuses or deliberately omits to offer him employment of that description, or

(d) makes him an offer of such employment the terms of which are such as no reasonable employer who wished to fill the post would offer and which is not accepted, or

(e) makes him an offer of such employment but withdraws it or causes him not to accept it.

(6) Where a person is offered employment on terms which include a requirement that he is, or is not, a member of a trade union, or any such requirement as is mentioned in subsection (1)(b), and he does not accept the offer because he does not satisfy or, as the case may be, is unwilling to accept that requirement, he shall be treated as having been refused employment for that reason.

(7) Where a person may not be considered for appointment or election to an office in a trade union unless he is a member of the union, or of a particular branch or section of the union or of one of a number of particular branches or sections of the union, nothing in this section applies to anything done for the purpose of securing compliance with that condition although as holder of the office he would be employed by the union.

For this purpose an "office" means any position—

(a) by virtue of which the holder is an official of the union, or

(b) to which Chapter IV of Part I applies (duty to hold elections).

(8) The provisions of this section apply in relation to an employment agency acting, or purporting to act, on behalf of an employer as in relation to an employer.

Textual Amendments

F181 Words in s. 137(2) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

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138 Refusal of service of employment agency on grounds related to union membership.

(1) It is unlawful for an employment agency to refuse a person any of its services—

(a) because he is, or is not, a member of a trade union, or

(b) because he is unwilling to accept a requirement to take steps to become or cease to be, or to remain or not to become, a member of a trade union.

(2) A person who is thus unlawfully refused any service of an employment agency has a right of complaint to an **[**[F182]employment tribunal**]**.

(3) Where an advertisement is published which indicates, or might reasonably be understood as indicating—

(a) that any service of an employment agency is available only to a person who is, or is not, a member of a trade union, or

(b) that any such requirement as is mentioned in subsection (1)(b) will be imposed in relation to a service to which the advertisement relates,

a person who does not satisfy that condition or, as the case may be, is unwilling to accept that requirement, and who seeks to avail himself of and is refused that service, shall be conclusively presumed to have been refused it for that reason.

(4) A person shall be taken to be refused a service if he seeks to avail himself of it and the agency—

(a) refuses or deliberately omits to make the service available to him, or

(b) causes him not to avail himself of the service or to cease to avail himself of it, or

(c) does not provide the same service, on the same terms, as is provided to others.

(5) Where a person is offered a service on terms which include a requirement that he is, or is not, a member of a trade union, or any such requirement as is mentioned in subsection (1)(b), and he does not accept the offer because he does not satisfy or, as the case may be, is unwilling to accept that requirement, he shall be treated as having been refused the service for that reason.

Textual Amendments

F182 Words in s. 138(2) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

139 Time limit for proceedings.

(1) An **[**[F183]employment tribunal**]** shall not consider a complaint under section 137 or 138 unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the date of the conduct to which the complaint relates, or

(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as the tribunal considers reasonable.

(2) The date of the conduct to which a complaint under section 137 relates shall be taken to be—

(a) in the case of an actual refusal, the date of the refusal;

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(b) in the case of a deliberate omission—

(i) to entertain and process the complainant's application or enquiry, or

(ii) to offer employment,

the end of the period within which it was reasonable to expect the employer to act;

(c) in the case of conduct causing the complainant to withdraw or cease to pursue his application or enquiry, the date of that conduct;

(d) in a case where an offer was made but withdrawn, the date when it was withdrawn;

(e) in any other case where an offer was made but not accepted, the date on which it was made.

(3) The date of the conduct to which a complaint under section 138 relates shall be taken to be—

(a) in the case of an actual refusal, the date of the refusal;

(b) in the case of a deliberate omission to make a service available, the end of the period within which it was reasonable to expect the employment agency to act;

(c) in the case of conduct causing the complainant not to avail himself of a service or to cease to avail himself of it, the date of that conduct;

(d) in the case of failure to provide the same service, on the same terms, as is provided to others, the date or last date on which the service in fact provided was provided.

Textual Amendments

F183 Words in s. 139(1) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

140 Remedies.

(1) Where the **[**[F184]employment tribunal**]** finds that a complaint under section 137 or 138 is well-founded, it shall make a declaration to that effect and may make such of the following as it considers just and equitable—

(a) an order requiring the respondent to pay compensation to the complainant of such amount as the tribunal may determine;

(b) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any conduct to which the complaint relates.

(2) Compensation shall be assessed on the same basis as damages for breach of statutory duty and may include compensation for injury to feelings.

(3) If the respondent fails without reasonable justification to comply with a recommendation to take action, the tribunal may increase its award of compensation or, if it has not made such an award, make one.

(4) The total amount of compensation shall not exceed the limit for the time being imposed by **[**[F185]section 124(1) of the Employment Rights Act 1996**]** (limit on compensation for unfair dismissal).

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Textual Amendments

F184 Words in s. 140(1) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F185 Words in s. 140(4) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(6)** (with ss. 191-195, 202)

141 Complaint against employer and employment agency.

(1) Where a person has a right of complaint against a prospective employer and against an employment agency arising out of the same facts, he may present a complaint against either of them or against them jointly.

(2) If a complaint is brought against one only, he or the complainant may request the tribunal to join or sist the other as a party to the proceedings.

The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made its decision as to whether the complaint is well-founded.

(3) Where a complaint is brought against an employer and an employment agency jointly, or where it is brought against one and the other is joined or sisted as a party to the proceedings, and the tribunal—

(a) finds that the complaint is well-founded as against the employer and the agency, and

(b) makes an award of compensation,

it may order that the compensation shall be paid by the one or the other, or partly by one and partly by the other, as the tribunal may consider just and equitable in the circumstances.

142 Awards against third parties.

(1) If in proceedings on a complaint under section 137 or 138 either the complainant or the respondent claims that the respondent was induced to act in the manner complained of by pressure which a trade union or other person exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, the complainant or the respondent may request the **[**[F186]employment tribunal**]** to direct that the person who he claims exercised the pressure be joined or sisted as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made its decision as to whether the complaint is well-founded.

(3) Where a person has been so joined or sisted as a party to the proceedings and the tribunal—

(a) finds that the complaint is well-founded,

(b) makes an award of compensation, and

(c) also finds that the claim in subsection (1) above is well-founded,

it may order that the compensation shall be paid by the person joined instead of by the respondent, or partly by that person and partly by the respondent, as the tribunal may consider just and equitable in the circumstances.

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(4) Where by virtue of section 141 (complaint against employer and employment agency) there is more than one respondent, the above provisions apply to either or both of them.

Textual Amendments

F186 Words in s. 142(1) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

143 Interpretation and other supplementary provisions.

(1) In sections 137 to 143—

"advertisement" includes every form of advertisement or notice, whether to the public or not, and references to publishing an advertisement shall be construed accordingly;

"employment" means employment under a contract of employment, and related expressions shall be construed accordingly; and

"employment agency" means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers, but subject to subsection (2) below.

(2) For the purposes of sections 137 to 143 as they apply to employment agencies—

(a) services other than those mentioned in the definition of "employment agency" above shall be disregarded, and

(b) a trade union shall not be regarded as an employment agency by reason of services provided by it only for, or in relation to, its members.

(3) References in sections 137 to 143 to being or not being a member of a trade union are to being or not being a member of any trade union, of a particular trade union or of one of a number of particular trade unions.

Any such reference includes a reference to being or not being a member of a particular branch or section of a trade union or of one of a number of particular branches or sections of a trade union.

(4) The remedy of a person for conduct which is unlawful by virtue of section 137 or 138 is by way of a complaint to an **[**[F187]employment tribunal**]** in accordance with this Part, and not otherwise.

No other legal liability arises by reason that conduct is unlawful by virtue of either of those sections.

Textual Amendments

F187 Words in s. 143(4) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

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Contracts for supply of goods or services

144 Union membership requirement in contract for goods or services void.

A term or condition of a contract for the supply of goods or services is void in so far as it purports to require that the whole, or some part, of the work done for the purposes of the contract is done only by persons who are, or are not, members of trade unions or of a particular trade union.

145 Refusal to deal on union membership grounds prohibited.

(1) A person shall not refuse to deal with a supplier or prospective supplier of goods or services on union membership grounds.“Refuse to deal” and “union membership grounds” shall be construed as follows.

(2) A person refuses to deal with a person if, where he maintains (in whatever form) a list of approved suppliers of goods or services, or of persons from whom tenders for the supply of goods or services may be invited, he fails to include the name of that person in that list.

He does so on union membership grounds if the ground, or one of the grounds, for failing to include his name is that if that person were to enter into a contract with him for the supply of goods or services, work to be done for the purposes of the contract would, or would be likely to, be done by persons who were, or who were not, members of trade unions or of a particular trade union.

(3) A person refuses to deal with a person if, in relation to a proposed contract for the supply of goods or services—

(a) he excludes that person from the group of persons from whom tenders for the supply of the goods or services are invited, or

(b) he fails to permit that person to submit such a tender, or

(c) he otherwise determines not to enter into a contract with that person for the supply of the goods or services.

He does so on union membership grounds if the ground, or one of the grounds, on which he does so is that if the proposed contract were entered into with that person, work to be done for the purposes of the contract would, or would be likely to, be done by persons who were, or who were not, members of trade unions or of a particular trade union.

(4) A person refuses to deal with a person if he terminates a contract with him for the supply of goods or services.

He does so on union membership grounds if the ground, or one of the grounds, on which he does so is that work done, or to be done, for the purposes of the contract has been, or is likely to be, done by persons who are or are not members of trade unions or of a particular trade union.

(5) The obligation to comply with this section is a duty owed to the person with whom there is a refusal to deal and to any other person who may be adversely affected by its contravention; and a breach of the duty is actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty.

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VALID FROM 01/10/2004

[F188 *Inducements*

Textual Amendments

F188 Ss. 145A-145F and preceding cross-heading inserted (1.10.2004) by Employment Relations Act 2004 (c. 24), **ss. 29**, 59(2)-(4); S.I. 2004/2566, **art. 3(a)** (with arts. 4-8)

145A Inducements relating to union membership or activities

(1) A worker has the right not to have an offer made to him by his employer for the sole or main purpose of inducing the worker—

(a) not to be or seek to become a member of an independent trade union,

(b) not to take part, at an appropriate time, in the activities of an independent trade union,

(c) not to make use, at an appropriate time, of trade union services, or

(d) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions.

(2) In subsection (1) "an appropriate time" means—

(a) a time outside the worker's working hours, or

(b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union or (as the case may be) make use of trade union services.

(3) In subsection (2) "working hours", in relation to a worker, means any time when, in accordance with his contract of employment (or other contract personally to do work or perform services), he is required to be at work.

(4) In subsections (1) and (2)—

(a) "trade union services" means services made available to the worker by an independent trade union by virtue of his membership of the union, and

(b) references to a worker's "making use" of trade union services include his consenting to the raising of a matter on his behalf by an independent trade union of which he is a member.

(5) A worker or former worker may present a complaint to an employment tribunal on the ground that his employer has made him an offer in contravention of this section.

145B Inducements relating to collective bargaining

(1) A worker who is a member of an independent trade union which is recognised, or seeking to be recognised, by his employer has the right not to have an offer made to him by his employer if—

(a) acceptance of the offer, together with other workers' acceptance of offers which the employer also makes to them, would have the prohibited result, and

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(b) the employer's sole or main purpose in making the offers is to achieve that result.

(2) The prohibited result is that the workers' terms of employment, or any of those terms, will not (or will no longer) be determined by collective agreement negotiated by or on behalf of the union.

(3) It is immaterial for the purposes of subsection (1) whether the offers are made to the workers simultaneously.

(4) Having terms of employment determined by collective agreement shall not be regarded for the purposes of section 145A (or section 146 or 152) as making use of a trade union service.

(5) A worker or former worker may present a complaint to an employment tribunal on the ground that his employer has made him an offer in contravention of this section.

145C Time limit for proceedings

An employment tribunal shall not consider a complaint under section 145A or 145B unless it is presented—

(a) before the end of the period of three months beginning with the date when the offer was made or, where the offer is part of a series of similar offers to the complainant, the date when the last of them was made, or

(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.

145D Consideration of complaint

(1) On a complaint under section 145A it shall be for the employer to show what was his sole or main purpose in making the offer.

(2) On a complaint under section 145B it shall be for the employer to show what was his sole or main purpose in making the offers.

(3) On a complaint under section 145A or 145B, in determining any question whether the employer made the offer (or offers) or the purpose for which he did so, no account shall be taken of any pressure which was exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.

(4) In determining whether an employer's sole or main purpose in making offers was the purpose mentioned in section 145B(1), the matters taken into account must include any evidence—

(a) that when the offers were made the employer had recently changed or sought to change, or did not wish to use, arrangements agreed with the union for collective bargaining,

(b) that when the offers were made the employer did not wish to enter into arrangements proposed by the union for collective bargaining, or

(c) that the offers were made only to particular workers, and were made with the sole or main purpose of rewarding those particular workers for their high level of performance or of retaining them because of their special value to the employer.

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145E Remedies

(1) Subsections (2) and (3) apply where the employment tribunal finds that a complaint under section 145A or 145B is well-founded.

(2) The tribunal—
- (a) shall make a declaration to that effect, and
- (b) shall make an award to be paid by the employer to the complainant in respect of the offer complained of.

(3) The amount of the award shall be £2,500 (subject to any adjustment of the award that may fall to be made under Part 3 of the Employment Act 2002).

(4) Where an offer made in contravention of section 145A or 145B is accepted—
- (a) if the acceptance results in the worker's agreeing to vary his terms of employment, the employer cannot enforce the agreement to vary, or recover any sum paid or other asset transferred by him under the agreement to vary;
- (b) if as a result of the acceptance the worker's terms of employment are varied, nothing in section 145A or 145B makes the variation unenforceable by either party.

(5) Nothing in this section or sections 145A and 145B prejudices any right conferred by section 146 or 149.

(6) In ascertaining any amount of compensation under section 149, no reduction shall be made on the ground—
- (a) that the complainant caused or contributed to his loss, or to the act or failure complained of, by accepting or not accepting an offer made in contravention of section 145A or 145B, or
- (b) that the complainant has received or is entitled to an award under this section.

145F Interpretation and other supplementary provisions

(1) References in sections 145A to 145E to being or becoming a member of a trade union include references—
- (a) to being or becoming a member of a particular branch or section of that union, and
- (b) to being or becoming a member of one of a number of particular branches or sections of that union.

(2) References in those sections—
- (a) to taking part in the activities of a trade union, and
- (b) to services made available by a trade union by virtue of membership of the union,

shall be construed in accordance with subsection (1).

(3) In sections 145A to 145E—

"worker" means an individual who works, or normally works, as mentioned in paragraphs (a) to (c) of section 296(1), and

"employer" means—
- (a) in relation to a worker, the person for whom he works;
- (b) in relation to a former worker, the person for whom he worked.

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(4) The remedy of a person for infringement of the right conferred on him by section 145A or 145B is by way of a complaint to an employment tribunal in accordance with this Part, and not otherwise.**]**

Action short of dismissal

146 Action short of dismissal on grounds related to union membership or activities.

(1) An employee has the right not to **[**[F189]be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place**]** for the purpose of—

(a) preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so,

(b) preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so, or

(c) compelling him to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions.

(2) In subsection (1)(b) "an appropriate time" means—

(a) a time outside the employee's working hours, or

(b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union;

and for this purpose "working hours", in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

(3) An employee also has the right not to **[**[F190]be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place**]** for the purpose of enforcing a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his not being a member of any trade union or of a particular trade union or of one of a number of particular trade unions, he must make one or more payments.

(4) For the purposes of subsection (3) any deduction made by an employer from the remuneration payable to an employee in respect of his employment shall, if it is attributable to his not being a member of any trade union or of a particular trade union or of one of a number of particular trade unions, be treated as **[**[F191]a detriment to which he has been subjected as an individual by an act of his employer taking place**]** for the purpose of enforcing a requirement of a kind mentioned in that subsection.

(5) An employee may present a complaint to an industrial tribunal on the ground that **[**[F192]he has been subjected to a detriment**]**by his employer in contravention of this section.

[[F193](6) For the purposes of this section detriment is detriment short of dismissal.**]**

Textual Amendments

F189 Words in s. 146(1) substituted (25.20.1999) by 1999 c. 26, s.1, Sch. 2 paras. 1, **2(1)(2)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 1)

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F190 Words in s. 146(3) substituted (25.10.1999) by 1999 c. 26, s. 2, Sch. 2 paras. 1, **2(1)(3)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 1)

F191 Words in s. 146(4) substituted (25.10.1999) by 1999 c. 26, s. 2, Sch. 2 paras. 1, **2(1)(4)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 1)

F192 Words in s. 146(5) substituted (25.10.1999) by 1999 c. 26, s. 2, Sch. 2 paras. 1, **2(1)(5)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 1)

F193 S. 146(6) inserted (25.10.1999) by 1999 c. 26, s. 2, Sch. 2 paras. 1, **2(6)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch.3 para. 1)

Modifications etc. (not altering text)

C6 S. 146 modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.**
S. 146 modified (1.9.1999) by 1999/2256, art. 3, Sch.

C7 S. 146 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

147 Time limit for proceedings.

[[F194](1)**]**An **[**[F195]employment tribunal**]** shall not consider a complaint under section 146 unless it is presented—

(a) before the end of the period of three months beginning with the date of the **[**[F196]act or failure to which the complaint relates or, where that act or failure is part of a series of similar acts or failures (or both) the last of them**]** , or

(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.

[[F197](2) For the purposes of subsection (1)—

(a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period;

(b) a failure to act shall be treated as done when it was decided on.

[F197](3) For the purposes of subsection (2), in the absence of evidence establishing the contrary an employer shall be taken to decide on a failure to act—

(a) when he does an act inconsistent with doing the failed act, or

(b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.**]**

Textual Amendments

F194 S. 147: "(1)" inserted (25.10.1999) by 1999 c. 26, s. 2, Sch. 2 paras. 1, **3(1)(2)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 1)

F195 Words in s. 147(1) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F196 Words in s. 147(1)(a) substituted (25.10.1999) by 1999 c. 26, s. 2, Sch. 2 paras. 1, **3(3)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 1)

F197 S. 147(2)(3) inserted (25.10.1999) by 1999 c. 26, s. 2, Sch. 2 paras. 1, **3(4)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 1)

Modifications etc. (not altering text)

C8 S. 147 modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.**

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S. 147 modified (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**

C9 S. 147 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

C10 S. 147 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), art. 3, **Sch.**

148 Consideration of complaint.

(1) On a complaint under section 146 it shall be for the employer to show the purpose for which **[**[F198]he acted or failed to act**]**

(2) In determining any question whether **[**[F199]the employer acted or failed to act, or the purpose for which he did so**]**, no account shall be taken of any pressure which was exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.

[[F200F201](3) In determining what was the purpose for which **[**[F202]the employer acted or failed to act**]]** in a case where—

(a) there is evidence that the employer's purpose was to further a change in his relationship with all or any class of his employees, and

(b) there is also evidence that his purpose was one falling within section 146,

the tribunal shall regard the purpose mentioned in paragraph (a) (and not the purpose mentioned in paragraph (b)) as the purpose for which the employer **[**[F203]acted or failed to act, unless it considers that no reasonable employer would act or fail to act in the way concerned**]** having regard to the purpose mentioned in paragraph (a).

[[F200](4) Where the tribunal determines that—

(a) the complainant has been subjected to a detriment by an act or deliberate failure to act by his employer, and

(b) the act or failure took place in consequence of a previous act or deliberate failure to act by the employer,

paragraph (a) of subsection (3) is satisfied if the purpose mentioned in that paragraph was the purpose of the previous act or failure.**]**

(5) In subsection (3) "class", in relation to an employer and his employees, means those employed at a particular place of work, those employees of a particular grade, category or description or those of a particular grade, category or description employed at a particular place of work.

Textual Amendments

F198 Words in s. 148(1) substituted (25.10.1999) by 1999 c. 26, s. 2, Sch. 2 paras. 1, **4(1)(2)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 1)

F199 Words in s. 148(2) substituted (25.10.1999) by 1999 c. 26, s. 2, **Sch. 2 para. 4(3)**; S.I. 1999/2830, art. 2(1)(2), **Sch. 1 Pt. I** (with Sch. 3 para. 1)

F200 S. 148(4) substituted (25.10.1999) by 1999 c. 26, s. 2, **Sch. 2 para. 4(5)**; S.I. 1999/2830, art. 2(1)(2), **Sch. 1 Pt. I** (with Sch. 3 para. 1)

F201 S. 148(3)-(5) inserted (30.8.1993) by 1993 c. 19, **s. 13**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F202 Words in s. 3 substituted (25.10.1999) by 1999 c. 26, s. 2, **Sch. 2 para. 4(4)(a)**; S.I. 1999/2830, art. 2(1)(2), **Sch. 1 Pt. I** (with Sch. 1 para. 3)

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F203 Words in s. 3 substituted (25.10.1999) by 1999 c. 26, s. 2, **Sch. 2 para. 4(4)(b)**; S.I. 1999/2830, art. 2(1)(2), **Sch. 1 Pt. I** (with Sch. 1 para. 3)

149 Remedies.

(1) Where the **[**[F204]employment tribunal**]** finds that a complaint under section 146 is well-founded, it shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the complainant in respect of the **[**[F205]act or failure**]** complained of.

(2) The amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to the infringement complained of and to any loss sustained by the complainant which is attributable to the **[**[F205]act or failure**]** which infringed his right.

(3) The loss shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the **[**[F205]act or failure**]**complained of, and

(b) loss of any benefit which he might reasonably be expected to have had but for that **[**[F205]act or failure**]**.

(4) In ascertaining the loss, the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or Scotland.

(5) In determining the amount of compensation to be awarded no account shall be taken of any pressure which was exercised on the employer by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.

(6) Where the tribunal finds that the **[**[F205]act or failure**]** complained of was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

Textual Amendments

F204 Words in s. 149(1) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F205 Words in s. 149(1)-(3)(6) substituted (25.10.1999) by 1999 c. 26, s. 2, Sch. 2 paras. 1, **5**; S.I. 1999/2830, art. 2(1)(2), **Sch. 1 Pt. I** (with Sch. 3 para. 1)

150 Awards against third parties.

(1) If in proceedings on a complaint under section 146—

(a) the complaint is made on the ground that **[**[F206]the complainant has been subjected to detriment by an act or failure by his employer taking place**]** for the purpose of compelling him to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions, and

(b) either the complainant or the employer claims in proceedings before the tribunal that the employer was induced to **[**[F207]act or fail to act in the way**]**complained of by pressure which a trade union or other person exercised

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on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so,

the complainant or the employer may request the tribunal to direct that the person who he claims exercised the pressure be joined or sisted as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made a declaration that the complaint is well-founded.

(3) Where a person has been so joined or sisted as a party to proceedings and the tribunal—
(a) makes an award of compensation, and
(b) finds that the claim mentioned in subsection (1)(b) is well-founded,

it may order that the compensation shall be paid by the person joined instead of by the employer, or partly by that person and partly by the employer, as the tribunal may consider just and equitable in the circumstances.

Textual Amendments

F206 Words in s. 150(1)(a) substituted (25.10.1999) by 1999 c. 26, s. 2, Sch. 2 paras. 1, **6(a)**; S.I. 1999/2830, art 2(1), **Sch. 2 Pt. I** (with Sch. 3 para. 1)

F207 Words in s. 150(1)(b) substituted (25.10.1999) by 1999 c. 26, s. 2, Sch. 2 paras. 1, **6(b)**; S.I. 1999/2830, art. 2(1), **Sch. 2 Pt. I**. (with Sch. 3 para. 1)

151 Interpretation and other supplementary provisions.

(1) References in sections 146 to 150 to being, becoming or ceasing to remain a member of a trade union include references to being, becoming or ceasing to remain a member of a particular branch or section of that union and to being, becoming or ceasing to remain a member of one of a number of particular branches or sections of that union; and references to taking part in the activities of a trade union shall be similarly construed.

(2) The remedy of an employee for infringement of the right conferred on him by section 146 is by way of a complaint to an **[**[F208]employment tribunal**]** in accordance with this Part, and not otherwise.

Textual Amendments

F208 Words in s. 151(2) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Dismissal

152 Dismissal on grounds related to union membership or activities.

(1) For purposes of **[**[F209]Part X of the Employment Rights Act 1996**]** (unfair dismissal) the dismissal of an employee shall be regarded as unfair if the reason for it (or, if more than one, the principal reason) was that the employee—
(a) was, or proposed to become, a member of an independent trade union, or
(b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time, or

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(c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused, or proposed to refuse, to become or remain a member.

(2) In subsection (1)(b) "an appropriate time" means—

(a) a time outside the employee's working hours, or

(b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union;

and for this purpose "working hours", in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

(3) Where the reason, or one of the reasons, for the dismissal was—

(a) the employee's refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his not being a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, he must make one or more payments, or

(b) his objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his contract of employment or in writing) under which, in the event mentioned in paragraph (a), his employer is entitled to deduct one or more sums from the remuneration payable to him in respect of his employment,

the reason shall be treated as falling within subsection (1)(c).

(4) References in this section to being, becoming or ceasing to remain a member of a trade union include references to being, becoming or ceasing to remain a member of a particular branch or section of that union or of one of a number of particular branches or sections of that trade union; and references to taking part in the activities of a trade union shall be similarly construed.

Textual Amendments

F209 Words in s. 152(1) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch.1 para. 56(7)(a)** (with ss. 191-195, 202)

Modifications etc. (not altering text)

C11 S. 152 modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.**
S. 152 modified (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**

C12 Ss. 152-154 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

C13 Ss. 152-154 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), art. 3, **Sch**

153 Selection for redundancy on grounds related to union membership or activities.

Where the reason or principal reason for the dismissal of an employee was that he was redundant, but it is shown—

(a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and

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(b) that the reason (or, if more than one, the principal reason) why he was selected for dismissal was one of those specified in section 152(1),

the dismissal shall be regarded as unfair for the purposes of **[**[F210]Part X of the Employment Rights Act 1996**]** (unfair dismissal).

Textual Amendments

F210 Words in s. 153 substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(7)(b)** (with ss. 191-195, 202)

Modifications etc. (not altering text)

C14 S. 153 modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.**
S. 153 modified (25.10.1999) by S.I. 1999/2830, art. 3, **Sch**

C15 S. 153 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/2964), art. 3, **Sch.**

C16 S. 153 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), art. 3, **Sch.**

154 Exclusion of requirement as to qualifying period, &c.

[[F211](1)] **[**[F212]Sections 108 and 109 of the Employment Rights Act 1996 (qualifying period and upper age limit for unfair dismissal protection) do**]** not apply to the dismissal of an employee if it is shown that the reason or principal reason for the dismissal **[**[F213]or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason.**]**

[[F211](2) For the purposes of this section—

"inadmissible", in relation to a reason, means that it is one of those specified in section 152(1); and

"a redundancy case" means a case where the reason or principal reason for the dismissal was that the employee was redundant but the equal application of the circumstances to non-dismissed employees required by section 153(a) is also shown.**]**

Textual Amendments

F211 S. 154 renumbered as s. 154(1) and s. 154(2) inserted (30.8.1993) by virtue of 1993 c. 19, s. 49(1), **Sch. 7 para. 1(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F212 Words in s. 154 substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(8)** (with ss. 191-195, 202)

F213 Words in s. 154 substituted (30.8.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para. 1(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C17 S. 154 modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.**
S. 154 modified (25.10.1999) by S.I. 1999/2256, art. 3, **Sch.**

C18 S. 154 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

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155 Matters to be disregarded in assessing contributory fault.

(1) Where an **[**[F214]employment tribunal**]** makes an award of compensation for unfair dismissal in a case where the dismissal is unfair by virtue of section 152 or 153, the tribunal shall disregard, in considering whether it would be just and equitable to reduce, or further reduce, the amount of any part of the award, any such conduct or action of the complainant as is specified below.

(2) Conduct or action of the complainant shall be disregarded in so far as it constitutes a breach or proposed breach of a requirement—

(a) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions,

(b) to cease to be, or refrain from becoming, a member of any trade union or of a particular trade union or of one of a number of particular trade unions, or

(c) not to take part in the activities of any trade union or of a particular trade union or of one of a number of particular trade unions.

For the purposes of this subsection a requirement means a requirement imposed on the complainant by or under an arrangement or contract of employment or other agreement.

(3) Conduct or action of the complainant shall be disregarded in so far as it constitutes a refusal, or proposed refusal, to comply with a requirement of a kind mentioned in section 152(3)(a) (payments in lieu of membership) or an objection, or proposed, objection, (however expressed) to the operation of a provision of a kind mentioned in section 152(3)(b) (deductions in lieu of membership).

Textual Amendments

F214 Words in s. 155(1) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C19 S. 155 excluded (E.W.) (21.5.2001) by S.I. 2001/1185, art. 2, Sch. paras. 131, **139**

156 Minimum basic award.

(1) Where a dismissal is unfair by virtue of section 152(1) or 153, the amount of the basic award of compensation, before any reduction is made under **[**[F215]section 122 of the Employment Rights Act 1996**]**, shall be not less than **[**[F216]£3,400**]**.

(2) But where the dismissal is unfair by virtue of section 153, **[**[F217]subsection (2)**]** of that section (reduction for contributory fault) applies in relation to so much of the basic award as is payable because of subsection (1) above.

Textual Amendments

F215 Words in s. 156(1) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(9)(a)** (with ss. 191-195, 202)

F216 Sum in s. 156(1) substituted (1.2.2002 with effect as mentioned in art. 4 of the amending S.I.) by S.I. 2002/10, art. 3, **Sch.** (with art. 4)

F217 Words in s. 156(2) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(9)(b)** (with ss. 191-195, 202)

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Modifications etc. (not altering text)

C20 S. 156: power to amend conferred (17.12.1999) by 1999 c. 26, **s. 34(1)(f)**; S.I. 1999/3374, art. 2, **Sch.** (with art. 3)

[F218]157 .

. . . . . .

Textual Amendments

F218 S. 157 repealed (25.10.1999) by 1999 c. 26, ss. 33(1)(b), 44, **Sch. 9(10)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with Sch. 3 para. 8)

[F219]158 .

. . . . . .

Textual Amendments

F219 S. 158 repealed (25.10.1999) by 1999 c. 26, ss. 33(1)(b), 44, **Sch. 9(10)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with Sch. 3 para. 8)

159 Power to increase sums by order.

(1) [F220]. . .

(a) . . . . . .

[F221](b) . . . . . .

(2) . . . . . .

(3) . . . . . .

Textual Amendments

F220 Words in s. 159 and s. 159(a), s. 159(2)(3) repealed (17.12.1999 subject to s. 36(3) of the amending Act) by 1999 c. 26, s. 36(1)(3), **Sch. 9(10)**; S.I. 19993374, art. 2(3), Sch.

F221 S. 159(1)(b) repealed (25.10.1999 subject to s. 36(3) of the amending Act) by 1999 c. 26, s. 36(1)(3), **Sch. 9(10)**; S.I. 1999/2830, **art. 2(3)(a)**

160 Awards against third parties.

(1) If in proceedings before an **[**[F222]employment tribunal**]** on a complaint of unfair dismissal either the employer or the complainant claims—

(a) that the employer was induced to dismiss the complainant by pressure which a trade union or other person exercised on the employer by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, and

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(b) that the pressure was exercised because the complainant was not a member of any trade union or of a particular trade union or of one of a number of particular trade unions,

the employer or the complainant may request the tribunal to direct that the person who he claims exercised the pressure be joined or sisted as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused after that time; and no such request may be made after the tribunal has made an award of compensation for unfair dismissal or an order for reinstatement or re-engagement.

(3) Where a person has been so joined or sisted as a party to the proceedings and the tribunal—

(a) makes an award of compensation for unfair dismissal, and

(b) finds that the claim mentioned in subsection (1) is well-founded,

the tribunal may order that the compensation shall be paid by that person instead of the employer, or partly by that person and partly by the employer, as the tribunal may consider just and equitable.

Textual Amendments

F222 Words in s. 160(1) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

161 Application for interim relief.

(1) An employee who presents a complaint of unfair dismissal alleging that the dismissal is unfair by virtue of section 152 may apply to the tribunal for interim relief.

(2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

(3) In a case where the employee relies on section 152(1)(a) or (b) the tribunal shall not entertain an application for interim relief unless before the end of that period there is also so presented a certificate in writing signed by an authorised official of the independent trade union of which the employee was or proposed to become a member stating—

(a) that on the date of the dismissal the employee was or proposed to become a member of the union, and

(b) that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.

(4) An “authorised official” means an official of the trade union authorised by it to act for the purposes of this section.

(5) A document purporting to be an authorisation of an official by a trade union to act for the purposes of this section and to be signed on behalf of the union shall be taken to be such an authorisation unless the contrary is proved; and a document purporting to be a certificate signed by such an official shall be taken to be signed by him unless the contrary is proved.

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(6) For the purposes of subsection (3) the date of dismissal shall be taken to be—

(a) where the employee's contract of employment was terminated by notice (whether given by his employer or by him), the date on which the employer's notice was given, and

(b) in any other case, the effective date of termination.

162 Application to be promptly determined.

(1) An **[**[F223]employment tribunal**]** shall determine an application for interim relief as soon as practicable after receiving the application and, where appropriate, the requisite certificate.

(2) The tribunal shall give to the employer, not later than seven days before the hearing, a copy of the application and of any certificate, together with notice of the date, time and place of the hearing.

(3) If a request under section 160 (awards against third parties) is made three days or more before the date of the hearing, the tribunal shall also give to the person to whom the request relates, as soon as reasonably practicable, a copy of the application and of any certificate, together with notice of the date, time and place of the hearing.

(4) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

Textual Amendments

F223 Words in s. 162(1) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

163 Procedure on hearing of application and making of order.

(1) If on hearing an application for interim relief it appears to the tribunal that it is likely that on determining the complaint to which the application relates that it will find that, by virtue of section 152, the complainant has been unfairly dismissed, the following provisions apply.

(2) The tribunal shall announce its findings and explain to both parties (if present) what powers the tribunal may exercise on the application and in what circumstances it will exercise them, and shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—

(a) to reinstate the employee, that is to say, to treat him in all respects as if he had not been dismissed, or

(b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.

(3) For this purpose "terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed" means as regards seniority, pension rights and other similar rights that the period prior to the dismissal shall be regarded as continuous with his employment following the dismissal.

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(4) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.

(5) If the employer states that he is willing to re-engage the employee in another job, and specifies the terms and conditions on which he is willing to do so, the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions; and—

(a) if the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect, and

(b) if he is not, then, if the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, and otherwise the tribunal shall make no order.

(6) If on the hearing of an application for interim relief the employer fails to attend before the tribunal, or states that he is unwilling either to reinstate the employee or re-engage him as mentioned in subsection (2), the tribunal shall make an order for the continuation of the employee's contract of employment.

164 Order for continuation of contract of employment.

(1) An order under section 163 for the continuation of a contract of employment is an order that the contract of employment continue in force—

(a) for the purposes of pay or **[**[F224]any other benefit**]** derived from the employment, seniority, pension rights and other similar matters, and

(b) for the purpose of determining for any purpose the period for which the employee has been continuously employed,

from the date of its termination (whether before or after the making of the order) until the determination or settlement of the complaint.

(2) Where the tribunal makes such an order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period, or part of any such period, falling between the date of dismissal and the determination or settlement of the complaint.

(3) Subject as follows, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period, or part, and shall be paid—

(a) in the case of payment for any such period falling wholly or partly after the making of the order, on the normal pay day for that period, and

(b) in the case of a payment for any past period, within such time as may be specified in the order.

(4) If an amount is payable in respect only of part of a normal pay period, the amount shall be calculated by reference to the whole period and reduced proportionately.

(5) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of a normal pay period or part of any such period shall go towards discharging the employer's liability in respect of that period under subsection (2); and conversely any payment under that subsection in respect of a period shall go towards discharging any liability of the employer under, or in respect of the breach of, the contract of employment in respect of that period.

(6) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay

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period, the tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.

(7) For the purposes of this section the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

Textual Amendments

F224 Words in s. 164(1)(a) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.69**; S.I. 1993/1908, art. 2(1), **Sch.1**

165 Application for variation or revocation of order.

(1) At any time between the making of an order under section 163 and the determination or settlement of the complaint, the employer or the employee may apply to an **[**[F225]employment tribunal**]** for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order.

(2) Sections 161 to 163 apply in relation to such an application as in relation to an original application for interim relief, except that—

(a) no certificate need be presented to the tribunal under section 161(3), and

(b) in the case of an application by the employer, section 162(2) (service of copy of application and notice of hearing) has effect with the substitution of a reference to the employee for the reference to the employer.

Textual Amendments

F225 Words in s. 165(1) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

166 Consequences of failure to comply with order.

(1) If on the application of an employee an **[**[F226]employment tribunal**]** is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under section 163(4) or **[**[F227](5)**]**, the tribunal shall—

(a) make an order for the continuation of the employee's contract of employment, and

(b) order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard—

(i) to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order, and

(ii) to any loss suffered by the employee in consequence of the non-compliance.

(2) Section 164 applies to an order under subsection (1)(a) as in relation to an order under section 163.

(3) If on the application of an employee an **[**[F226]employment tribunal**]** is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment, the following provisions apply.

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(4) If the non-compliance consists of a failure to pay an amount by way of pay specified in the order, the tribunal shall determine the amount owed by the employer on the date of the determination.

If on that date the tribunal also determines the employee's complaint that he has been unfairly dismissed, it shall specify that amount separately from any other sum awarded to the employee.

(5) In any other case, the tribunal shall order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.

Textual Amendments

F226 Words in s. 166(1) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F227 Words in s. 166(1) substituted (30.8.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para. 22**; S.I. 1993/1908, art. 2(1), **Sch. 1**

167 Interpretation and other supplementary provisions.

(1) **[**[F228]Part X of the Employment Rights Act 1996**]** (unfair dismissal) has effect subject to the provisions of sections 152 to 166 above.

(2) Those sections shall be construed as one with that Part; and in those sections—

"complaint of unfair dismissal" means a complaint under **[**[F229]section 111 of the Employment Rights Act 1996**]**;

"award of compensation for unfair dismissal" means an award of compensation for unfair dismissal under **[**[F230]section 112(4) or 117(3)(a)**]** of that Act; and

"order for reinstatement or re-engagement" means an order for reinstatement or re-engagement under **[**[F231]section 113**]** of that Act.

(3) Nothing in those sections shall be construed as conferring a right to complain of unfair dismissal from employment of a description to which that Part does not otherwise apply.

Textual Amendments

F228 Words in s. 167(1) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(12)(a)** (with ss. 191-195, 202)

F229 Words in s. 167(2) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(12)(b)(i)** (with ss. 191-195, 202)

F230 Words in s. 167(2) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(12)(b)(ii)** (with ss. 191-195, 202)

F231 Words in s. 167(2) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(12)(b)(iii)** (with ss. 191-195, 202)

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Time off for trade union duties and activities

168 Time off for carrying out trade union duties.

(1) An employer shall permit an employee of his who is an official of an independent trade union recognised by the employer to take time off during his working hours for the purpose of carrying out any duties of his, as such an official, concerned with—

(a) negotiations with the employer related to or connected with matters falling within section 178(2) (collective bargaining) in relation to which the trade union is recognised by the employer, or

(b) the performance on behalf of employees of the employer of functions related to or connected with matters falling within that provision which the employer has agreed may be so performed by the trade union**[**[F232], or

(c) receipt of information from the employer and consultation by the employer under section 188 (redundancies) or under the Transfer of Undertakings (Protection of Employment) Regulations 1981.**]**

(2) He shall also permit such an employee to take time off during his working hours for the purpose of undergoing training in aspects of industrial relations—

(a) relevant to the carrying out of such duties as are mentioned in subsection (1), and

(b) approved by the Trades Union Congress or by the independent trade union of which he is an official.

(3) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by ACAS.

(4) An employee may present a complaint to an **[**[F233]employment tribunal**]** that his employer has failed to permit him to take time off as required by this section.

Textual Amendments

F232 S. 168(1)(c) and preceding word inserted (28.7.1999) by The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1999 (S.I. 1999/1925), **reg. 14**

F233 Words in s. 168(4) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C21 S. 168(3)(4) applied (4.9.2000) by 1999 c. 26, **s. 10(7)** (with s. 15); S.I. 2000/242, **art. 2(1)** (with transitional provisions in arts. 3, 4)

VALID FROM 27/04/2003

[[F234]168A Time off for union learning representatives

(1) An employer shall permit an employee of his who is—

(a) a member of an independent trade union recognised by the employer, and

(b) a learning representative of the trade union,

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to take time off during his working hours for any of the following purposes.

(2) The purposes are—

(a) carrying on any of the following activities in relation to qualifying members of the trade union—

(i) analysing learning or training needs,

(ii) providing information and advice about learning or training matters,

(iii) arranging learning or training, and

(iv) promoting the value of learning or training,

(b) consulting the employer about carrying on any such activities in relation to such members of the trade union,

(c) preparing for any of the things mentioned in paragraphs (a) and (b).

(3) Subsection (1) only applies if—

(a) the trade union has given the employer notice in writing that the employee is a learning representative of the trade union, and

(b) the training condition is met in relation to him.

(4) The training condition is met if—

(a) the employee has undergone sufficient training to enable him to carry on the activities mentioned in subsection (2), and the trade union has given the employer notice in writing of that fact,

(b) the trade union has in the last six months given the employer notice in writing that the employee will be undergoing such training, or

(c) within six months of the trade union giving the employer notice in writing that the employee will be undergoing such training, the employee has done so, and the trade union has given the employer notice of that fact.

(5) Only one notice under subsection (4)(b) may be given in respect of any one employee.

(6) References in subsection (4) to sufficient training to carry out the activities mentioned in subsection (2) are to training that is sufficient for those purposes having regard to any relevant provision of a Code of Practice issued by ACAS or the Secretary of State.

(7) If an employer is required to permit an employee to take time off under subsection (1), he shall also permit the employee to take time off during his working hours for the following purposes—

(a) undergoing training which is relevant to his functions as a learning representative, and

(b) where the trade union has in the last six months given the employer notice under subsection (4)(b) in relation to the employee, undergoing such training as is mentioned in subsection (4)(a).

(8) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provision of a Code of Practice issued by ACAS or the Secretary of State.

(9) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
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(10) In subsection (2)(a), the reference to qualifying members of the trade union is to members of the trade union—

(a) who are employees of the employer of a description in respect of which the union is recognised by the employer, and

(b) in relation to whom it is the function of the union learning representative to act as such.

(11) For the purposes of this section, a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules.**]**

Textual Amendments

F234 S. 168A inserted (27.4.2003) by Employment Act 2002 (c. 22), **ss. 43(2)**, 55(2); S.I. 2003/1190, **art. 2(1)** (with art. 3)

169 Payment for time off under section 168.

(1) An employer who permits an employee to take time off under section 168 shall pay him for the time taken off pursuant to the permission.

(2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he shall be paid as if he had worked at that work for the whole of that time.

(3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he shall be paid an amount calculated by reference to the average hourly earnings for that work.

The average hourly earnings shall be those of the employee concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

(4) A right to be paid an amount under this section does not affect any right of an employee in relation to remuneration under his contract of employment, but—

(a) any contractual remuneration paid to an employee in respect of a period of time off to which this section applies shall go towards discharging any liability of the employer under this section in respect of that period, and

(b) any payment under this section in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

(5) An employee may present a complaint to an **[**[F235]employment tribunal**]** that his employer has failed to pay him in accordance with this section.

Textual Amendments

F235 Words in s. 169(5) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

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Modifications etc. (not altering text)

C22 S. 169 applied (4.9.2000) by 1999 c. 26, **s. 10(7)** (with s. 15); S.I. 2000/2424, **art. 2** (with transitional provisions in arts. 3, 4)

170 Time off for trade union activities.

(1) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of taking part in—

(a) any activities of the union, and

(b) any activities in relation to which the employee is acting as a representative of the union.

(2) The right conferred by subsection (1) does not extent to activities which themselves consist of industrial action, whether or not in contemplation or furtherance of a trade dispute.

(3) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by ACAS.

(4) An employee may present a complaint to an **[**[F236]employment tribunal**]** that his employer has failed to permit him to take time off as required by this section.

Textual Amendments

F236 Words in s. 170(4) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

171 Time limit for proceedings.

An **[**[F237]employment tribunal**]** shall not consider a complaint under section 168, 169 or 170 unless it is presented to the tribunal—

(a) within three months of the date when the failure occurred, or

(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

Textual Amendments

F237 Words in s. 171 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C23 S. 171 applied (4.9.2000) by 1999 c. 26, **s. 10(7)**, (with s. 15); S.I. 2000/2242, **art. 2** (with transitional provisions in arts. 3, 4)

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172 Remedies.

(1) Where the tribunal finds a complaint under section 168 or 170 is well-founded, it shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee.

(2) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to permit time off to be taken by the employee and to any loss sustained by the employee which is attributable to the matters complained of.

(3) Where on a complaint under section 169 the tribunal finds that the employer has failed to pay the employee in accordance with that section, it shall order him to pay the amount which it finds to be due.

Modifications etc. (not altering text)

C24 S. 172 applied (4.9.2000) by 1999 c. 26 s. 10(7) (with s. 15); S.I. 2000/2242, **art. 2** (with transitional provisions in arts. 3, 4)

173 Intepretation and other supplementary provisions.

(1) For the purposes of sections 168 and 170 the working hours of an employee shall be taken to be any time when in accordance with his contract of employment he is required to be at work.

(2) The remedy of an employee for infringement of the rights conferred on him by section 168, 169 or 170 is by way of complaint to an **[**[F238]employment tribunal**]** in accordance with this Part, and not otherwise.

Textual Amendments

F238 Words in s. 173(2) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C25 S. 173 applied (4.9.2000) by 1999 c. 26, **s. 10(7)**,(with s. 15); S.I. 2000/2242, **art. 2** (with transitional provisions in arts. 3, 4)

[[F239]Right to membership of trade union]

Textual Amendments

F239 Ss. 174-177 and cross heading substituted (30.11.1993) by 1993 c. 19, **s.14**; S.I. 1993/1908, art. 2(2), **Sch.2**

[[F240]174 Right not to be excluded or expelled from union.

(1) An individual shall not be excluded or expelled from a trade union unless the exclusion or expulsion is permitted by this section.

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(2) The exclusion or expulsion of an individual from a trade union is permitted by this section if (and only if)—

(a) he does not satisfy, or no longer satisfies, an enforceable membership requirement contained in the rules of the union,

(b) he does not qualify, or no longer qualifies, for membership of the union by reason of the union operating only in a particular part or particular parts of Great Britain,

(c) in the case of a union whose purpose is the regulation of relations between its members and one particular employer or a number of particular employers who are associated, he is not, or is no longer, employed by that employer or one of those employers, or

(d) the exclusion or expulsion is entirely attributable to his conduct.

(3) A requirement in relation to membership of a union is "enforceable" for the purposes of subsection (2)(a) if it restricts membership solely by reference to one or more of the following criteria—

(a) employment in a specified trade, industry or profession,

(b) occupational description (including grade, level or category of appointment), and

(c) possession of specified trade, industrial or professional qualifications or work experience.

(4) For the purposes of subsection (2)(d) "conduct", in relation to an individual, does not include—

(a) his being or ceasing to be, or having been or ceased to be—

(i) a member of another trade union,

(ii) employed by a particular employer or at a particular place, or

(iii) a member of a political party, or

(b) conduct to which section 65 (conduct for which an individual may not be disciplined by a trade union) applies or would apply if the references in that section to the trade union which is relevant for the purposes of that section were references to any trade union.

(5) An individual who claims that he has been excluded or expelled from a trade union in contravention of this section may present a complaint to an **[**[F241]employment tribunal**].]**

Textual Amendments

F240 Ss. 174-177 and cross heading substituted (30.11.1993) by 1993 c. 19, **s. 14**; S.I. 1993/1908, art. 2(2), **Sch. 2**

F241 Words in s. 174(5) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

[[F242]**175 Time limit for proceedings.**

An **[**[F243]employment tribunal**]** shall not entertain a complaint under section 174 unless it is presented—

(a) before the end of the period of six months beginning with the date of the exclusion or expulsion, or

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(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as the tribunal considers reasonable.**]**

Textual Amendments

F242 Ss. 174-177 and cross heading substituted (30.11.1993) by 1993 c. 19, **s. 14**; S.I. 1993/1908, art. 2(2), **Sch. 2**

F243 Words in s. 175 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

[F244176 Remedies.

(1) Where the **[**F245employment tribunal**]]** finds a complaint under section 174 is well-founded, it shall make a declaration to that effect.

(2) An individual whose complaint has been declared to be well-founded may make an application for an award of compensation to be paid to him by the union.

The application shall be made to an **[**F245employment tribunal**]** if when it is made the applicant has been admitted or re-admitted to the union, and otherwise to the Employment Appeal Tribunal.

(3) The application shall not be entertained if made—

(a) before the end of the period of four weeks beginning with the date of the declaration, or

(b) after the end of the period of six months beginning with that date.

(4) The amount of compensation awarded shall, subject to the following provisions, be such as the **[**F245employment tribunal**]** or the Employment Appeal Tribunal considers just and equitable in all the circumstances.

(5) Where the **[**F245employment tribunal**]** or Employment Appeal Tribunal finds that the exclusion or expulsion complained of was to any extent caused or contributed to by the 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.

(6) The amount of compensation calculated in accordance with subsections (4) and (5) shall not exceed the aggregate of—

(a) an amount equal to thirty times the limit for the time being imposed by **[**F246section 227(1)(a) of the Employment Rights Act 1996**]** (maximum amount of a week's pay for basic award in unfair dismissal cases), and

(b) an amount equal to the limit for the time being imposed by **[**F247section 124(1)**]** of that Act (maximum compensatory award in such cases);

and, in the case of an award by the Employment Appeal Tribunal, shall not be less than **[**F248£5,600**]**.

F249(7) . . . . . .

F250(8) . . . . . .

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Textual Amendments

F244 Ss. 174-177 and cross heading substituted (30.11.1993) by 1993 c. 19, **s. 14**; S.I. 1993/1908, art. 2(2), **Sch. 2**

F245 Words in s. 176 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F246 Words in s. 176(6)(a) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(13)(a)** (with ss. 191-195, 202)

F247 Words in s. 176(6)(b) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(13)(b)** (with ss. 191-195, 202)

F248 Sum in s. 176(6) substituted (1.2.2002 with effect as mentioned in art. 4 of the amending S.I.) by S.I. 2002/10, art. 3, **Sch.** (with art. 4)

F249 S. 176(7) repealed (17.12.1999 subject to s. 36(3) of the amending Act) by 1999 c. 26, ss. 36(1)(3), 44, **Sch. 9(10)**; S.I. 1999/3374, art. 2(b), **Sch.** (with art. 3)

F250 S. 176(8) repealed (17.12.1999 subject to s. 36(3) of the amending Act) by 1999 c. 26, ss. 36(1)(3), 44, **Sch. 9(10)**; S.I. 1999/3374, art. 2(b), **Sch.** (with art. 3)

Modifications etc. (not altering text)

C26 S. 176: power to amend conferred (17.12.1999) by 1999 c. 26, **s. 34(1)(g)**; S.I. 1999/3374, art. 2(a), **Sch.** (with art. 3)

[F251 177 Interpretation and other supplementary provisions.

(1) For the purposes of section 174—

(a) "trade union" does not include an organisation falling within paragraph (b) of section 1,

(b) "conduct" includes statements, acts and omissions, and

(c) "employment" includes any relationship whereby an individual personally does work or performs services for another person (related expressions being construed accordingly).

(2) For the purposes of sections 174 to 176—

(a) if an individual's application for membership of a trade union is neither granted nor rejected before the end of the period within which it might reasonably have been expected to be granted if it was to be granted, he shall be treated as having been excluded from the union on the last day of that period, and

(b) an individual who under the rules of a trade union ceases to be a member of the union on the happening of an event specified in the rules shall be treated as having been expelled from the union.

(3) The remedy of an individual for infringement of the rights conferred by section 174 is by way of a complaint to an **[**F252employment tribunal**]]** in accordance with that section, sections 175 and 176 and this section, and not otherwise.

(4) Where a complaint relating to an expulsion which is presented under section 174 is declared to be well-founded, no complaint in respect of the expulsion shall be presented or proceeded with under section 66 (complaint of infringement of right not to be unjustifiably disciplined).

(5) The rights conferred by section 174 are in addition to, and not in substitution for, any right which exists apart from that section; and, subject to subsection (4), nothing in

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that section, section 175 or 176 or this section affects any remedy for infringement of any such right.

Textual Amendments

F251 Ss. 174-177 and cross heading substituted (30.11.1993) by 1993 c. 19, **s. 14**; S.I. 1993/1908, art. 2(2), **Sch. 2**

F252 Words in s. 177(3) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

PART IV

INDUSTRIAL RELATIONS

CHAPTER I

COLLECTIVE BARGAINING

Introductory

178 Collective agreements and collective bargaining.

(1) In this Act "collective agreement" means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers' associations and relating to one or more of the matters specified below; and "collective bargaining" means negotiations relating to or connected with one or more of those matters.

(2) The matters referred to above are—

(a) terms and conditions of employment, or the physical conditions in which any workers are required to work;

(b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;

(c) allocation of work or the duties of employment between workers or groups of workers;

(d) matters of discipline;

(e) a worker's membership or non-membership of a trade union;

(f) facilities for officials of trade unions; and

(g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.

(3) In this Act "recognition", in relation to a trade union, means the recognition of the union by an employer, or two or more associated employers, to any extent, for the purpose of collective bargaining; and "recognised" and other related expressions shall be construed accordingly.

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Enforceability of collective agreements

179 Whether agreement intended to be a legally enforceable contract.

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

(2) A collective agreement which does satisfy those conditions shall be conclusively presumed to have been intended by the parties to be a legally enforceable contract.

(3) If a collective 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.

(4) A part of a collective agreement which by virtue of subsection (3)(b) is not a legally enforceable contract may be referred to for the purpose of interpreting a party of the agreement which is such a contract.

180 Effect of provisions restricting right to take industrial action.

(1) Any terms of a collective agreement 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 a worker and the person for whom he works unless the following conditions are met.

(2) The conditions are that the collective agreement—
  (a) is in writing,
  (b) contains a provision expressly stating that those terms shall or may be incorporated in such a contract,
  (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 that the contract with the worker expressly or impliedly incorporates those terms in the contract.

(3) The above provisions have effect notwithstanding anything in section 179 and notwithstanding any provision to the contrary in any agreement (including a collective agreement or a contract with any worker).

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Disclosure of information for purposes of collective bargaining

181 General duty of employers to disclose information.

(1) An employer who recognises an independent trade union shall, for the purposes of all stages of collective bargaining about matters, and in relation to descriptions of workers, in respect of which the union is recognised by him, disclose to representatives of the union, on request, the information required by this section.

In this section and sections 182 to 185 "representative", in relation to a trade union, means an official or other person authorised by the union to carry on such collective bargaining.

(2) The information to be disclosed is all information relating to the employer's undertaking which is in his possession, or that of an associated employer, and is information—

(a) without which the trade union representatives would be to a material extent impeded in carrying on collective bargaining with him, and

(b) which it would be in accordance with good industrial relations practice that he should disclose to them for the purposes of collective bargaining.

(3) A request by trade union representatives for information under this section shall, if the employer so requests, be in writing or be confirmed in writing.

(4) In determining what would be in accordance with good industrial relations practice, regard shall be had to the relevant provisions of any Code of Practice issued by ACAS, but not so as to exclude any other evidence of what that practice is.

(5) Information which an employer is required by virtue of this section to disclose to trade union representatives shall, if they so request, be disclosed or confirmed in writing.

Modifications etc. (not altering text)

C27 S. 181 modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.**
S. 181 modified (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**

C28 Ss. 181-185 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

C29 Ss. 181-185 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), art. 3, **Sch.**

182 Restrictions on general duty.

(1) An employer is not required by section 181 to disclose information—

(a) the disclosure of which would be against the interests of national security, or

(b) which he could not disclose without contravening a prohibition imposed by or under an enactment, or

(c) which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person, or

(d) which relates specifically to an individual (unless that individual has consented to its being disclosed), or

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(e) the disclosure of which would cause substantial injury to his undertaking for reasons other than its effect on collective bargaining, or

(f) obtained by him for the purpose of bringing, prosecuting or defending any legal proceedings.

In formulating the provisions of any Code of Practice relating to the disclosure of information, ACAS shall have regard to the provisions of this subsection.

(2) In the performance of his duty under section 181 an employer is not required—

(a) to produce, or allow inspection of, any document (other than a document prepared for the purpose of conveying or confirming the information) or to make a copy of or extracts from any document, or

(b) to compile or assemble any information where the compilation or assembly would involve an amount of work or expenditure out of reasonable proportion to the value of the information in the conduct of collective bargaining.

Modifications etc. (not altering text)

C30 S. 182 modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.**
S. 182 modified (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**

C31 Ss. 181-185 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

C32 Ss. 181-185 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), art. 3, **Sch.**

183 Complaint of failure to disclose information.

(1) A trade union may present a complaint to the Central Arbitration Committee that an employer has failed—

(a) to disclose to representatives of the union information which he was required to disclose to them by section 181, or

(b) to confirm such information in writing in accordance with that section.

The complaint must be in writing and in such form as the Committee may require.

(2) If on receipt of a complaint the Committee is of the opinion that it is reasonably likely to be settled by conciliation, it shall refer the complaint to ACAS and shall notify the trade union and employer accordingly, whereupon ACAS shall seek to promote a settlement of the matter.

If a complaint so referred is not settled or withdrawn and ACAS is of the opinion that further attempts at conciliation are unlikely to result in a settlement, it shall inform the Committee of its opinion.

(3) If the complaint is not referred to ACAS or, if it is so referred, on ACAS informing the Committee of its opinion that further attempts at conciliation are unlikely to result in a settlement, the Committee shall proceed to hear and determine the complaint and shall make a declaration stating whether it finds the complaint well-founded, wholly or in part, and stating the reasons for its findings.

(4) On the hearing of a complaint any person who the Committee considers has a proper interest in the complaint is entitled to be heard by the Committee, but a failure to accord a hearing to a person other than the trade union and employer directly concerned does not affect the validity of any decision of the Committee in those proceedings.

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(5) If the Committee finds the complaint wholly or partly well-founded, the declaration shall specify—

(a) the information in respect of which the Committee finds that the complaint is well founded,

(b) the date (or, if more than one, the earliest date) on which the employer refused or failed to disclose or, as the case may be, to confirm in writing, any of the information in question, and

(c) a period (not being less than one week from the date of the declaration) within which the employer ought to disclose that information, or, as the case may be, to confirm it in writing.

(6) On a hearing of a complaint under this section a certificate signed by or on behalf of a Minister of the Crown and certifying that a particular request for information could not be complied with except by disclosing information the disclosure of which would have been against the interests of national security shall be conclusive evidence of that fact.

A document which purports to be such a certificate shall be taken to be such a certificate unless the contrary is proved.

Modifications etc. (not altering text)

C33 S. 183 modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.**
S. 183 modified (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**

C34 Ss. 181-185 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

C35 Ss. 181-185 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), art. 3, **Sch.**

184 Further complaint of failure to comply with declaration.

(1) After the expiration of the period specified in a declaration under section 183(5)(c) the trade union may present a further complaint to the Central Arbitration Committee that the employer has failed to disclose or, as the case may be, to confirm in writing to representatives of the union information specified in the declaration.

The complaint must be in writing and in such form as the Committee may require.

(2) On receipt of a further complaint the Committee shall proceed to hear and determine the complaint and shall make a declaration stating whether they find the complaint well-founded, wholly or in part, and stating the reasons for their finding.

(3) On the hearing of a further complaint any person who the Committee consider has a proper interest in that complaint shall be entitled to be heard by the Committee, but a failure to accord a hearing to a person other than the trade union and employer directly concerned shall not affect the validity of any decision of the Committee in those proceedings.

(4) If the Committee find the further complaint wholly or partly well-founded the declaration shall specify the information in respect of which the Committee find that that complaint is well-founded.

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Modifications etc. (not altering text)

C36 S. 184 modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.**
S. 184 modified (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**

C37 Ss. 181-185 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

C38 Ss. 181-185 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), art. 3, **Sch.**

185 Determination of claim and award.

(1) On or after presenting a further complaint under section 184 the trade union may present to the Central Arbitration Committee a claim, in writing, in respect of one or more descriptions of employees (but not workers who are not employees) specified in the claim that their contracts should include the terms and conditions specified in the claim.

(2) The right to present a claim expires if the employer discloses or, as the case may be, confirms in writing, to representatives of the trade union the information specified in the declaration under section 183(5) or 184(4); and a claim presented shall be treated as withdrawn if the employer does so before the Committee make an award on the claim.

(3) If the Committee find, or have found, the further complaint wholly or partly well-founded, they may, after hearing the parties, make an award that in respect of any description of employees specified in the claim the employer shall, from a specified date, observe either—

(a) the terms and conditions specified in the claim; or

(b) other terms and conditions which the Committee consider appropriate.

The date specified may be earlier than that on which the award is made but not earlier than the date specified in accordance with section 183(5)(b) in the declaration made by the Committee on the original complaint.

(4) An award shall be made only in respect of a description of employees, and shall comprise only terms and conditions relating to matters in respect of which the trade union making the claim is recognised by the employer.

(5) Terms and conditions which by an award under this section an employer is required to observe in respect of an employee have effect as part of the employee's contract of employment as from the date specified in the award, except in so far as they are superseded or varied—

(a) by a subsequent award under this section,

(b) by a collective agreement between the employer and the union for the time being representing that employee, or

(c) by express or implied agreement between the employee and the employer so far as that agreement effects an improvement in terms and conditions having effect by virtue of the award.

(6) Where—

(a) by virtue of any enactment, other than one contained in this section, providing for minimum remuneration or terms and conditions, a contract of employment is to have effect as modified by an award, order or other instrument under that enactment, and

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(b) by virtue of an award under this section any terms and conditions are to have effect as part of that contract,

that contract shall have effect in accordance with that award, order or other instrument or in accordance with the award under this section, whichever is the more favourable, in respect of any terms and conditions of that contract, to the employee.

(7) No award may be made under this section in respect of terms and conditions of employment which are fixed by virtue of any enactment.

Modifications etc. (not altering text)

C39 S. 185 modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.**
S. 185 modified (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**

C40 Ss. 181-185 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**

C41 Ss. 181-185 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), art. 3, **Sch.**

Prohibition of union recognition requirements

186 Recognition requirement in contract for goods or services void.

A term or condition of a contract for the supply of goods or services is void in so far as it purports to require a party to the contract—

(a) to recognise one or more trade unions (whether or not named in the contract) for the purpose of negotiating on behalf of workers, or any class of worker, employed by him, or

(b) to negotiate or consult with, or with an official of, one or more trade unions (whether or not so named).

187 Refusal to deal on grounds of union exclusion prohibited.

(1) A person shall not refuse to deal with a supplier or prospective supplier of goods or services if the ground or one of the grounds for his action is that the person against whom it is taken does not, or is not likely to—

(a) recognise one or more trade unions for the purpose of negotiating on behalf of workers, or any class of worker, employed by him, or

(b) negotiate or consult with, or with an official of, one or more trade unions.

(2) A person refuses to deal with a person if—

(a) where he maintains (in whatever form) a list of approved suppliers of goods or services, or of persons from whom tenders for the supply of goods or services may be invited, he fails to include the name of that person in that list; or

(b) in relation to a proposed contract for the supply of goods or services—

(i) he excludes that person from the group of persons from whom tenders for the supply of the goods or services are invited, or

(ii) he fails to permit that person to submit such a tender; or

[[F253](iii)**]** he otherwise determines not to enter into acontract with that person for the supply of the goods or services. **[**[F254]or

(c) he terminates a contract with that person for the supply of goods or services.**]**

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(3) The obligation to comply with this section is a duty owed to the person with whom there is a refusal to deal and to any other person who may be adversely affected by its contravention; and a breach of the duty is actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).

Textual Amendments

F253 S. 187(2): by 1993 c. 19, s. 49(1), **Sch. 7 para.23** it is provided (30.8.1993) that para. (c) shall become sub para. (iii) of para. (b); S.I. 1993/1908, art. 2(1), **Sch. 1**

F254 S. 187(2)(c) and word preceeding it inserted (30.8.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para.23**; S.I. 1993/1908, art. 2(1), **Sch. 1**

CHAPTER II

PROCEDURE FOR HANDLING REDUNDANCIES

Modifications etc. (not altering text)

C42 Pt. IV Ch. II (ss. 188-198) modified (3.4.1995) by 1994 c. 19, **s. 44(1)(b)** (with ss. 54(5)(7), 55(5), Sch. 17 para. 22(1), 23(2)); S.I. 1995/852, art. 7, **Sch. 26**

Duty of employer to consult [F255]. . . representatives

Textual Amendments

F255 Words in heading omitted (26.10.1995) by S.I. 1995/2587, **reg. 3(10)**

188 Duty of employer to consult [F256]. . . representatives.

[[F257](1) Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be **[**[F258]affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals.**]**

(1A) The consultation shall begin in good time and in any event—

(a) where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least 90 days, and

(b) otherwise, at least 30 days,

before the first of the dismissals takes effect.

[F259]**[** For the purposes of this section the appropriate representatives of any affected (1B) employees are–

(a) if the employees are of a description in respect of which an independent trade union is recognised by their employer, representatives of the trade union, or

(b) in any other case, whichever of the following employee representatives the employer chooses:–

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(i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this section, who (having regard to the purposes for and the method by which they were appointed or elected) have authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf;

(ii) employee representatives elected by the affected employees, for the purposes of this section, in an election satisfying the requirements of section 188A(1).**]**

(2) The consultation shall include consultation about ways of—

(a) avoiding the dismissals,

(b) reducing the numbers of employees to be dismissed, and

(c) mitigating the consequences of the dismissals,

and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives.**]**

(3) In determining how many employees an employer is proposing to dismiss as redundant no account shall be taken of employees in respect of whose proposed dismissals consultation has already begun.

(4) For the purposes of the consultation the employer shall disclose in writing to the **[**[F260]appropriate**]** representatives—

(a) the reasons for his proposals,

(b) the numbers and descriptions of employees whom it is proposed to dismiss as redundant,

(c) the total number of employees of any such description employed by the employer at the establishment in question,

(d) the proposed method of selecting the employees who may be dismissed, [F261]. . .

(e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect. **[**[F262]and

(f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by or by virtue of any enactment) to employees who may be dismissed.**]**

(5) That information shall be **[**[F263]given to each of the appropriate representatives by being delivered to them**]**, or sent by post to an address notified by them to the employer, or **[**[F264](in the case of representatives of a trade union)**]** sent by post to the union at the address of its head or main office.

[[F265](5A) The employer shall allow the appropriate representatives access to **[**[F266]the affected employees**]** and shall afford to those representatives such accommodation and other facilities as may be appropriate.**]**

[F267](6) . . . . . .

(7) If in any case there are special circumstances which render it not reasonably practicable for the employer to comply with a requirement of subsection **[**[F268](1A), (2) or (4)**]**, the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances. **[**[F269]Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to

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the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement.**]**

[[F270](7A) Where—

[[F271](a) the employer has invited any of the affected employees to elect employee representatives, and**]**

(b) the invitation was issued long enough before the time when the consultation is required by subsection (1A)(a) or (b) to begin to allow them to elect representatives by that time,

the employer shall be treated as complying with the requirements of this section in relation to those employees if he complies with those requirements as soon as is reasonably practicable after the election of the representatives.**]**

[[F272](7B) If, after the employer has invited affected employees to elect representatives, the affected employees fail to do so within a reasonable time, he shall give to each affected employee the information set out in subsection (4).**]**

(8) This section does not confer any rights on a trade union **[**[F273], a representative**]** or an employee except as provided by sections 189 to 192 below.

Textual Amendments

F256 Words in sidenote to s. 188 omitted (26.10.1995) by virtue of S.I. 1995/2587, **reg. 3(10)**
F257 S. 188(1)(1A)(1B)(2) substituted for s. 188(1)(2) (26.10.1995) by S.I. 1995/2587, **reg. 3(2)**
F258 Words in s. 188(1) substituted (28.7.1999 subject to reg. 2(2) of commencing S.I.) by 1999/1925, regs. 2(2), 3(1)(2)
F259 S. 188(1B) substituted (28.7.1999 subject to reg. 2(2) of commencing S.I.) by 1999/1925, regs. 3(1)(3)
F260 Word in s. 188(4) substituted (26.10.1995) by S.I. 1995/2587, **reg. 3(3)**
F261 Word in s. 188(4)(c) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**
F262 S. 188(4)(f) and word preceeding it inserted (30.8.1993) by 1993 c. 19, **s. 34(2)(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
F263 Words in s. 188(5) substituted (26.10.1995) by S.I. 1995/2587, **reg. 3(4)(a)**
F264 Words in s. 188(5) inserted (26.10.1995) by S.I. 1995/2587, **reg. 3(4)(b)**
F265 S. 188(5A) inserted (26.10.1995) by S.I. 1995/2587, **reg. 3(5)**
F266 Words in s. 188(5A) substituted (28.7.1999 subject to reg. 2(2) of commencing S.I.) by 1999/1925, regs. 2(2), 3(1)(4)
F267 S. 188(6) omitted (26.10.1995) by virtue of S.I. 1995/2587, **reg. 3(6)**
F268 Words in s. 188(7) substituted (26.10.1995) by S.I. 1995/2587, **reg. 3(7)**
F269 Words in s. 188(7) inserted (30.8.1993) by 1993 c. 19, **s. 34(2)(c)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
F270 S. 188(7A) inserted (26.10.1995) by S.I. 1995/2587, **reg. 3(8)**
F271 S. 188(7A)(a) substituted (28.7.1999 subject to reg. 2(2) of commencing S.I.) by S.I. 1999/1925, **regs. 2(2)**, 3(1)(5)
F272 S. 188(7B) inserted (28.7.1999 subject to reg. 2(2) of commencing S.I.) by S.I. 1999/1925, **regs. 2(2)**, 3(1)(6)
F273 Words in s. 188(8) inserted (26.10.1995) by S.I. 1995/2587, **reg. 3(9)**

[[F274]**188A**

(1) The requirements for the election of employee representatives under section 188(1B)(b)(ii) are that–

(a) the employer shall make such arrangements as are reasonably practical to ensure that the election is fair;

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(b) the employer shall determine the number of representatives to be elected so that there are sufficient representatives to represent the interests of all the affected employees having regard to the number and classes of those employees;

(c) the employer shall determine whether the affected employees should be represented either by representatives of all the affected employees or by representatives of particular classes of those employees;

(d) before the election the employer shall determine the term of office as employee representatives so that it is of sufficient length to enable information to be given and consultations under section 188 to be completed;

(e) the candidates for election as employee representatives are affected employees on the date of the election;

(f) no affected employee is unreasonably excluded from standing for election;

(g) all affected employees on the date of the election are entitled to vote for employee representatives;

(h) the employees entitled to vote may vote for as many candidates as there are representatives to be elected to represent them or, if there are to be representatives for particular classes of employees, may vote for as many candidates as there are representatives to be elected to represent their particular class of employee;

(i) the election is conducted so as to secure that–

(i) so far as is reasonably practicable, those voting do so in secret, and

(ii) the votes given at the election are accurately counted.

(2) Where, after an election of employee representatives satisfying the requirements of subsection (1) has been held, one of those elected ceases to act as an employee representative and any of those employees are no longer represented, they shall elect another representative by an election satisfying the requirements of subsection (1)(a), (e), (f) and (i).**]**

Textual Amendments

F274 S. 188A inserted (28.7.1999 subject to reg 2(2) of the commencing S.I) by S.I. 1999/1925, **regs. 2(2)**, 4

189 Complaint [F275]. . . and protective award.

[[F276](1) Where an employer has failed to comply with a requirement of section 188 or section 188A, a complaint may be presented to an employment tribunal on that ground–

(a) in the case of a failure relating to the election of employee representatives, by any of the affected employees or by any of the employees who have been dismissed as redundant;

(b) in the case of any other failure relating to employee representatives, by any of the employee representatives to whom the failure related,

(c) in the case of failure relating to representatives of a trade union, by the trade union, and

(d) in any other case, by any of the affected employees or by any of the employees who have been dismissed as redundant.**]**

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[[F277](1A) If on a complaint under subsection (1) a question arises as to whether or not any employee representative was an appropriate representative for the purposes of section 188, it shall be for the employer to show that the employee representative had the authority to represent the affected employees.

[F277](1B) On a complaint under subsection (1)(a) it shall be for the employer to show that the requirements in section 188A have been satisfied.**]**

(2) If the tribunal finds the complaint well-founded it shall make a declaration to that effect and may also make a protective award.

(3) A protective award is an award in respect of one or more descriptions of employees—

(a) who have been dismissed as redundant, or whom it is proposed to dismiss as redundant, and

(b) in respect of whose dismissal or proposed dismissal the employer has failed to comply with a requirement of section 188,

ordering the employer to pay remuneration for the protected period.

(4) The protected period—

(a) begins with the date on which the first of the dismissals to which the complaint relates takes effect, or the date of the award, whichever is the earlier, and

(b) is of such length as the tribunal determines to be just and equitable in all the circumstances having regard to the seriousness of the employer's default in complying with any requirement of section 188;

but shall not exceed 90 days [F278]. . . .

(5) An industrial tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

(a) before the **[**[F279]date on which the last of the dismissals to which the complaint relates**]** takes effect, or

(b) **[**[F280]during**]** the period of three months beginning with **[**[F281]that date**]**, or

(c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented **[**[F282]during the**]** period of three months, within such further period as it considers reasonable.

(6) If on a complaint under this section a question arises—

(a) whether there were special circumstances which rendered it not reasonably practicable for the employer to comply with any requirement of section 188, or

(b) whether he took all such steps towards compliance with that requirement as were reasonably practicable in those circumstances,

it is for the employer to show that there were and that he did.

Textual Amendments

F275 Words in sidenote to s. 189 omitted (26.10.1995) by virtue of S.I. 1995/2587, **reg. 4(5)**

F276 S. 189(1) substituted (28.7.1999 subject to reg. 2(2) of the commencing S.I.) by S.I. 1999/1925, **regs. 2(2)**, 5(1)(2)

F277 S. 189(1A)(1B) inserted (28.7.1999 subject to reg. 2(2) of the commencing S.I.) by S.I. 1999/1925, **regs. 2(2)**, 5(1)(3)

F278 Words in s. 189(4) omitted (28.7.1999 subject to reg. 2(2) of commencing S.I.) by virute of S.I. 1999/1925, **regs. 2(2)**, 5(1)(4)

F279 Words in s. 189(5)(a) substituted (26.10.1995) by S.I. 1995/2587, **reg. 4(4)(a)**

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F280 Word in s. 189(5)(b) substituted (26.10.1995) by S.I. 1995/2587, **reg. 4(4)(b)(i)**
F281 Words in s. 189(5)(b) substituted (26.10.1995) by S.I. 1995/2587, **reg. 4(4)(b)(ii)**
F282 Words in s. 189(5)(c) substituted (26.10.1995) by S.I. 1995/2587, **reg. 4(4)(c)**

190 Entitlement under protective award.

(1) Where an **[**[F283]employment tribunal**]** has made a protective award, every employee of a description to which the award relates is entitled, subject to the following provisions and to section 191, to be paid remuneration by his employer for the protected period.

(2) The rate of remuneration payable is a week's pay for each week of the period; and remuneration in respect of a period less than one week shall be calculated by reducing proportionately the amount of a week's pay.

[F284](3) . . . . . .

(4) An employee is not entitled to remuneration under a protective award in respect of a period during which he is employed by the employer unless he would be entitled to be paid by the employer in respect of that period—

(a) by virtue of his contract of employment, or

(b) by virtue of **[**[F285]sections 87 to 91 of the Employment Rights Act 1996**]** (rights of employee in period of notice),

if that period fell within the period of notice required to be given by **[**[F286]section 86(1)**]** of that Act.

(5) **[**[F287]Chapter II of Part XIV of the Employment Rights Act 1996**]** applies with respect to the calculation of a week's pay for the purposes of this section.

The calculation date for the purposes of **[**[F288]that Chapter**]** is the date on which the protective award was made or, in the case of an employee who was dismissed before the date on which the protective award was made, the date which by virtue of **[**[F289]section 226(5)**]** is the calculation date for the purpose of computing the amount of a redundancy payment in relation to that dismissal (whether or not the employee concerned is entitled to any such payment).

(6) If an employee of a description to which a protective award relates dies during the protected period, the award has effect in his case as if the protected period ended on his death.

Textual Amendments

F283 Words in s. 190(1) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
F284 S. 190(3) repealed (30.8.1993) by 1993 c. 19, ss. 34(3), 51, **Sch. 10**
F285 Words in s. 190(4) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(14)(a)(i)** (with ss. 191-195, 202)
F286 Words in s. 190(4) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(14)(a)(ii)** (with ss. 191-195, 202)
F287 Words in s. 190(5) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(b)(i)** (with ss. 191-195, 202)
F288 Words in s. 190(5) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(b)(ii)** (with ss. 191-195, 202)

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F289 Words in s. 190(5) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(b)(iii)** (with ss. 191-195, 202)

191 Termination of employment during protected period.

(1) Where the employee is employed by the employer during the protected period and—

(a) he is fairly dismissed by his employer **[**[F290]otherwise than as redundant**]**, or

(b) he unreasonably terminates the contract of employment,

then, subject to the following provisions, he is not entitled to remuneration under the protective award in respect of any period during which but for that dismissal or termination he would have been employed.

(2) If an employer makes an employee an offer (whether in writing or not and whether before or after the ending of his employment under the previous contract) to renew his contract of employment, or to re-engage him under a new contract, so that the renewal or re-engagement would take effect before or during the protected period, and either—

(a) the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would not differ from the corresponding provisions of the previous contract, or

(b) the offer constitutes an offer of suitable employment in relation to the employee,

the following subsections have effect.

(3) If the employee unreasonably refuses the offer, he is not entitled to remuneration under the protective award in respect of a period during which but for that refusal he would have been employed.

(4) If the employee's contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of such an offer as is referred to in subsection (2)(b), there shall be a trial period in relation to the contract as renewed, or the new contract (whether or not there has been a previous trial period under this section).

(5) The trial period begins with the ending of his employment under the previous contract and ends with the expiration of the period of four weeks beginning with the date on which the he starts work under the contract as renewed, or the new contract, or such longer period as may be agreed in accordance with subsection (6) for the purpose of retraining the employee for employment under that contract.

(6) Any such agreement—

(a) shall be made between the employer and the employee or his representative before the employee starts work under the contract as renewed or, as the case may be, the new contract,

(b) shall be in writing,

(c) shall specify the date of the end of the trial period, and

(d) shall specify the terms and conditions of employment which will apply in the employee's case after the end of that period.

(7) If during the trial period—

(a) the employee, for whatever reason, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated, or

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(b) the employer, for a reason connected with or arising out of the change to the renewed, or new, employment, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated,

the employee remains entitled under the protective award unless, in a case falling within paragraph (a), he acted unreasonably in terminating or giving notice to terminate the contract.

Textual Amendments

F290 Words in s. 191(1)(a) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.70**; S.I. 1993/1908, art. 2(1), **Sch. 1**

192 Complaint by employee to [F291employment tribunal].

(1) An employee may present a complaint to an **[**F291employment tribunal**]** on the ground that he is an employee of a description to which a protective award relates and that his employer has failed, wholly or in part, to pay him remuneration under the award.

(2) An **[**F291employment tribunal**]** shall not entertain a complaint under this section unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the day (or, if the complaint relates to more than one day, the last of the days) in respect of which the complaint is made of failure to pay remuneration, or

(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months, within such further period as it may consider reasonable.

(3) Where the tribunal finds a complaint under this section well-founded it shall order the employer to pay the complainant the amount of remuneration which it finds is due to him.

(4) The remedy of an employee for infringement of his right to remuneration under a protective award is by way of complaint under this section, and not otherwise.

Textual Amendments

F291 Words in s. 192 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Duty of employer to notify Secretary of State

193 Duty of employer to notify Secretary of State of certain redundancies.

(1) An employer proposing to dismiss as redundant 100 or more employees at one establishment within a period of 90 days or less shall notify the Secretary of State, in writing, of his proposal at least 90 days before the first of those dismissals takes effect.

(2) An employer proposing to dismiss as redundant **[**F292**20]** or more employees at one establishment within **[**F293such a period**]** shall notify the Secretary of State, in writing, of his proposal at least 30 days before the first of those dismissals takes effect.

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(3) In determining how many employees an employer is proposing to dismiss as redundant within the period mentioned in subsection (1) or (2), no account shall be taken of employees in respect of whose proposed dismissal notice has already been given to the Secretary of State.

(4) A notice under this section shall—

(a) be given to the Secretary of State by delivery to him or by sending it by post to him, at such address as the Secretary of State may direct in relation to the establishment where the employees proposed to be dismissed are employed,

[[F294](b) where there are representatives to be consulted under section 188, identify them and state the date when consultation with them under that section began,**]**

(c) be in such form and contain such particulars, in addition to those required by paragraph (b), as the Secretary of State may direct.

(5) After receiving a notice under this section from an employer the Secretary of State may by written notice require the employer to give him such further information as may be specified in the notice.

(6) **[**[F295]Where there are representatives to be consulted under section 188 the employer shall give to each of them a copy of any notice given under subsection (1) or (2).**]**

The copy shall be delivered to them or sent by post to an address notified by them to the employer, or **[**[F296](in the case of representatives of a trade union)**]** sent by post to the union at the address of its head or main office.

(7) If in any case there are special circumstances rendering it not reasonably practicable for the employer to comply with any of the requirements of subsections (1) to (6), he shall take all such steps towards compliance with that requirement as are reasonably practicable in the circumstances **[**[F297]Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with any of those requirements.**]**.

Textual Amendments

F292 Word in s. 193(2) substituted (26.10.1995) by S.I. 1995/2587, **reg. 5(2)(a)**
F293 Words in s. 193(2) substituted (26.10.1995) by S.I. 1995/2587, **reg. 5(2)(b)**
F294 S. 193(4)(b) substituted (26.10.1995) by S.I. 1995/2587, **reg. 5(3)**
F295 Words in s. 193(6) substituted (26.10.1995) by S.I. 1995/2587, **reg. 5(4)(a)**
F296 Words in s. 193(6) substituted (26.10.1995) by S.I. 1995/2587, **reg. 5(4)(b)**
F297 Words in s. 193(7) inserted (30.8.1993) by 1993 c. 19, **s. 34(4)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

194 Offence of failure to notify.

(1) An employer who fails to give notice to the Secretary of State in accordance with section 193 commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Proceedings in England or Wales for such an offence shall be instituted only by or with the consent of the Secretary of State or by an officer authorised for that purpose by special or general directions of the Secretary of State.

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An officer so authorised may, although not of counsel or a solicitor, prosecute or conduct proceedings for such an offence before a magistrates' court.

(3) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Supplementary provisions

[F298 195 Construction of references to dismissal as redundant etc.

(1) In this Chapter references to dismissal as redundant are references to dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related.

(2) For the purposes of any proceedings under this Chapter, where an employee is or is proposed to be dismissed it shall be presumed, unless the contrary is proved, that he is or is proposed to be dismissed as redundant.**]**

Textual Amendments

F298 S. 195 substituted (30.8.1993) by 1993 c. 19, **s. 34(5)**; S.I. 1993/1908, art. 2(1), **Sch.1**

[F299 196 Construction of references to representatives.

(1) For the purposes of this Chapter persons are employee representatives if—

(a) they have been elected by employees for the specific purpose of being consulted by their employer about dismissals proposed by him, or

(b) having been elected **[**F300 or appointed**]** by employees (whether before or after dismissals have been proposed by their employer) otherwise than for that specific purpose, it is appropriate (having regard to the purposes for which they were elected) for the employer to consult them about dismissals proposed by him,

and (in either case) they are employed by the employer at the time when they are elected **[**F301 or appointed**]**.

(2) References in this Chapter to representatives of a trade union, in relation to an employer, are to officials or other persons authorised by the trade union to carry on collective bargaining with the employer.**]**

[F302 (3) References in this Chapter to affected employees are to employees who may be affected by the proposed dismissals or who may be affected by measures taken in connection with such dismissals.**]**

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Textual Amendments

F299 S. 196 substituted (26.10.1995) by S.I. 1995/2587, **reg. 6**

F300 Words in s. 196(1) inserted (28.7.1999 subject to reg. 2(2) of commencing S.I.) by S.I. 1999/1925, **regs. 2(2)**, 6(1)(2)

F301 Words in s. 196(1) added (28.7.1999 subject to art. 2(2) of the commencing S.I.) by S.I. 1999/1925, **regs. 2(2)**, 6(1)(3)

F302 S. 196(3) inserted (28.7.1999 subject to reg. 2(2) of commencing S.I.) by S.I. 1999/1925, **regs. 2(2)**, 6(1)(4)

197 Power to vary provisions.

(1) The Secretary of State may by order made by statutory instrument vary—

(a) the provisions of sections 188(2) and 193(1) (requirements as to consultation and notification), and

(b) the periods referred to at the end of section 189(4) (maximum protected period);

but no such order shall be made which has the effect of reducing to less than 30 days the periods referred to in sections 188(2) and 193(1) as the periods which must elapse before the first of the dismissals takes effect.

(2) No such order shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

198 Power to adapt provisions in case of collective agreement.

(1) This section applies where there is in force a collective agreement which establishes—

(a) arrangements for providing alternative employment for employees to whom the agreement relates if they are dismissed as redundant by an employer to whom it relates, or

(b) arrangements for **[**[F303]handling the dismissal of employees as redundant**]**.

(2) On the application of all the parties to the agreement the Secretary of State may, if he is satisfied having regard to the provisions of the agreement that the arrangements are on the whole at least as favourable to those employees as the foregoing provisions of this Chapter, by order made by statutory instrument adapt, modify or exclude any of those provisions both in their application to all or any of those employees and in their application to any other employees of any such employer.

(3) The Secretary of State shall not make such an order unless the agreement—

(a) provides for procedures to be followed (whether by arbitration or otherwise) in cases where an employee to whom the agreement relates claims that any employer or other person to whom it relates has not complied with the provisions of the agreement, and

(b) provides that those procedures include a right to arbitration or adjudication by an independent referee or body in cases where (by reason of an equality of votes or otherwise) a decision cannot otherwise be reached,

or indicates that any such employee may present a complaint to an **[**[F304]employment tribunal**]** that any such employer or other person has not complied with those provisions.

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(4) An order under this section may confer on an industrial tribunal to whom a complaint is presented as mentioned in subsection (3) such powers and duties as the Secretary of State considers appropriate.

(5) An order under this section may be varied or revoked by a subsequent order thereunder either in pursuance of an application made by all or any of the parties to the agreement in question or without any such application.

Textual Amendments

F303 Words in s. 198(1)(b) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 71**

F304 Words in s. 198(3) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

CHAPTER III

CODES OF PRACTICE

Codes of Practice issued by ACAS

199 Issue of Codes of Practice by ACAS.

(1) ACAS may issue Codes of Practice containing such practical guidance as it thinks fit for the purpose of promoting the improvement of industrial relations.

(2) In particular, ACAS shall in one or more Codes of Practice provide practical guidance on the following matters—

(a) the time off to be permitted by an employer to a trade union official in accordance with section 168 (time off for carrying out trade union duties);

(b) the time off to be permitted by an employer to a trade union member in accordance with section 170 (time off for trade union activities); and

(c) the information to be disclosed by employers to trade union representatives in accordance with sections 181 and 182 (disclosure of information for purposes of collective bargaining).

(3) The guidance mentioned in subsection (2)(a) shall include guidance on the circumstances in which a trade union official is to be permitted to take time off under section 168 in respect of duties connected with industrial action; and the guidance mentioned in subsection (2)(b) shall include guidance on the question whether, and the circumstances in which, a trade union member is to be permitted to take time off under section 170 for trade union activities connected with industrial action.

(4) ACAS may from time to time revise the whole or any part of a Code of Practice issued by it and issue that revised Code.

200 Procedure for issue of Code by ACAS.

(1) Where ACAS proposes to issue a Code of Practice, or a revised Code, it shall prepare and publish a draft of the Code, shall consider any representations made to it about the draft and may modify the draft accordingly.

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(2) If ACAS determines to proceed with the draft, it shall transmit the draft to the Secretary of State who—
  (a) if he approves of it, shall lay it before both Houses of Parliament, and
  (b) if he does not approve of it, shall publish details of his reasons for withholding approval.

(3) A Code containing practical guidance on any of the matters referred to in section 199(2) shall not be issued unless the draft has been approved by a resolution of each House of Parliament; and if it is so approved, ACAS shall issue the Code in the form of the draft.

(4) In any other case the following procedure applies—
  (a) if, within the period of 40 days beginning with the day on which the draft is laid before Parliament, (or, if copies are laid before the two Houses on different days, with the later of the two days) either House so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before Parliament of a new draft;
  (b) if no such resolution is passed, ACAS shall issue the Code in the form of the draft.

  In reckoning the period of 40 days no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(5) A Code issued in accordance with this section shall come into effect on such day as the Secretary of State may appoint by order made by statutory instrument.

  The order may contain such transitional provisions or savings as appear to him to be necessary or expedient.

201 Consequential revision of Code issued by ACAS.

(1) A Code of Practice issued by ACAS may be revised by it in accordance with this section for the purpose of bringing it into conformity with subsequent statutory provisions by the making of consequential amendments and the omission of obsolete passages.

  "Subsequent statutory provisions" means provisions made by or under an Act of Parliament and coming into force after the Code was issued (whether before or after the commencement of this Act).

(2) Where ACAS proposes to revise a Code under this section, it shall transmit a draft of the revised Code to the Secretary of State who—
  (a) if he approves of it, shall lay the draft before each House of Parliament, and
  (b) if he does not approve of it, shall publish details of his reasons for withholding approval.

(3) If, within the period of 40 days beginning with the day on which the draft is laid before Parliament, (or, if copies are laid before the two Houses on different days, with the later of the two days) either House so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before Parliament of a new draft.

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In reckoning the period of 40 days no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(4) If no such resolution is passed ACAS shall issue the Code in the form of the draft and it shall come into effect on such day as the Secretary of State may appoint by order made by statutory instrument.

The order may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient.

202 Revocation of Code issued by ACAS.

(1) A Code of Practice issued by ACAS may, at the request of ACAS, be revoked by the Secretary of State by order made by statutory instrument.

The order may contain such transitional provisions and savings as appear to him to be appropriate.

(2) If ACAS requests the Secretary of State to revoke a Code and he decides not to do so, he shall publish details of his reasons for his decision.

(3) An order shall not be made under this section unless a draft of it has been laid before and approved by resolution of each House of Parliament.

Codes of Practice issued by the Secretary of State

203 Issue of Codes of Practice by the Secretary of State.

(1) The Secretary of State may issue Codes of Practice containing such practical guidance as he thinks fit for the purpose—

(a) of promoting the improvement of industrial relations, or

(b) of promoting what appear to him to be to be desirable practices in relation to the conduct by trade unions of ballots and elections.

(2) The Secretary of State may from time to time revise the whole or any part of a Code of Practice issued by him and issue that revised Code.

204 Procedure for issue of Code by Secretary of State.

(1) When the Secretary of State proposes to issue a Code of Practice, or a revised Code, he shall after consultation with ACAS prepare and publish a draft of the Code, shall consider any representations made to him about the draft and may modify the draft accordingly.

(2) If he determines to proceed with the draft, he shall lay it before both Houses of Parliament and, if it is approved by resolution of each House, shall issue the Code in the form of the draft.

(3) A Code issued under this section shall come into effect on such day as the Secretary of State may by order appoint.

The order may contain such transitional provisions or savings as appear to him to be necessary or expedient.

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(4) An order under subsection (3) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

205 Consequential revision of Code issued by Secretary of State.

(1) A Code of Practice issued by the Secretary of State may be revised by him in accordance with this section for the purpose of bringing it into conformity with subsequent statutory provisions by the making of consequential amendments and the omission of obsolete passages.

"Subsequent statutory provisions" means provisions made by or under an Act of Parliament and coming into force after the Code was issued (whether before or after the commencement of this Act).

(2) Where the Secretary of State proposes to revise a Code under this section, he shall lay a draft of the revised Code before each House of Parliament.

(3) If within the period of 40 days beginning with the day on which the draft is laid before Parliament, or, if copies are laid before the two Houses on different days, with the later of the two days, either House so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before Parliament of a new draft.

In reckoning the period of 40 days no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(4) If no such resolution is passed the Secretary of State shall issue the Code in the form of the draft and it shall come into effect on such day as he may appoint by order made by statutory instrument.

The order may contain such transitional provisions and savings as appear to him to be appropriate.

206 Revocation of Code issued by Secretary of State.

(1) A Code of Practice issued by the Secretary of State may be revoked by him by order made by statutory instrument.

The order may contain such transitional provisions and savings as appear to him to be appropriate.

(2) An order shall not be made under this section unless a draft of it has been laid before and approved by resolution of each House of Parliament.

Supplementary provisions

207 Effect of failure to comply with Code.

(1) A failure on the part of any person to observe any provision of a Code of Practice issued under this Chapter shall not of itself render him liable to any proceedings.

(2) In any proceedings before an **[**[F305]employment tribunal**]** or the Central Arbitration Committee any Code of Practice issued under this Chapter by ACAS shall be admissible in evidence, and any provision of the Code which appears to the tribunal

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or Committee to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

(3) In any proceedings before a court or **[**[F305]employment tribunal**]** or the Central Arbitration Committee any Code of Practice issued under this Chapter by the Secretary of State shall be admissible in evidence, and any provision of the Code which appears to the court, tribunal or Committee to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

Textual Amendments

F305 Words in s. 207(2)(3) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

VALID FROM 06/04/2009

[[F306]**207A Effect of failure to comply with Code: adjustment of awards**

(1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.

(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—
   (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
   (b) the employer has failed to comply with that Code in relation to that matter, and
   (c) that failure was unreasonable,

   the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

(3) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—
   (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
   (b) the employee has failed to comply with that Code in relation to that matter, and
   (c) that failure was unreasonable,

   the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 25%.

(4) In subsections (2) and (3), "relevant Code of Practice" means a Code of Practice issued under this Chapter which relates exclusively or primarily to procedure for the resolution of disputes.

(5) Where an award falls to be adjusted under this section and under section 38 of the Employment Act 2002, the adjustment under this section shall be made before the adjustment under that section.

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(6) The Secretary of State may by order amend Schedule A2 for the purpose of—
  (a) adding a jurisdiction to the list in that Schedule, or
  (b) removing a jurisdiction from that list.

(7) The power of the Secretary of State to make an order under subsection (6) includes power to make such incidental, supplementary, consequential or transitional provision as the Secretary of State thinks fit.

(8) An order under subsection (6) shall be made by statutory instrument.

(9) No order shall be made under subsection (6) unless a draft of the statutory instrument containing it has been laid before Parliament and approved by a resolution of each House.**]**

Textual Amendments

F306 S. 207A inserted (6.4.2009) by Employment Act 2008 (c. 24), ss. 3(2), 22(1)(a); S.I. 2008/3232, **art. 2** (with art. 3, Sch. paras. 1-5)

208 Provisions of earlier Code superseded by later.

(1) If ACAS is of the opinion that the provisions of a Code of Practice to be issued by it under this Chapter will supersede the whole or part of a Code previously issued under this Chapter, by it or by the Secretary of State, it shall in the new Code state that on the day on which the new Code comes into effect the old Code or a specified part of it shall cease to have effect.

(2) If the Secretary of State is of the opinion that the provisions of a Code of Practice to be issued by him under this Chapter will supersede the whole or part of a Code previously issued under this Chapter by him or by ACAS, he shall in the new Code state that on the day on which the new Code comes into effect the old Code or a specified part of it shall cease to have effect.

(3) The above provisions do not affect any transitional provisions or savings made by the order bringing the new Code into effect.

CHAPTER IV

GENERAL

Functions of ACAS

209 General duty to promote improvement of industrial relations.

It is the general duty of ACAS to promote the improvement of industrial relations **F307** . . . **F308** . . .

Textual Amendments

F307 Words in s. 209 repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

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F308 Words in s.209 repealed (25.10.1999) by 1999 c. 26, ss. 26, 44, **Sch. 9(5)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I**

210 Conciliation.

(1) Where a trade dispute exists or is apprehended ACAS may, at the request of one or more parties to the dispute or otherwise, offer the parties to the dispute its assistance with a view to bringing about a settlement.

(2) The assistance may be by way of conciliation or by other means, and may include the appointment of a person other than an officer or servant of ACAS to offer assistance to the parties to the dispute with a view to bringing about a settlement.

(3) In exercising its functions under this section ACAS shall have regard to the desirability of encouraging the parties to a dispute to use any appropriate agreed procedures for negotiation or the settlement of disputes.

Modifications etc. (not altering text)

C43 S. 210 applied (6.4.2005) by The Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426), **reg. 38(2)** (with reg. 3)

C44 S. 210 applied (18.8.2006) by The European Cooperative Society (Involvement of Employees) Regulations 2006 (S.I. 2006/2059), **reg. 39(2)**

VALID FROM 06/04/2005

[F309 210A Information required by ACAS for purposes of settling recognition disputes

(1) This section applies where ACAS is exercising its functions under section 210 with a view to bringing about a settlement of a recognition dispute.

(2) The parties to the recognition dispute may jointly request ACAS or a person nominated by ACAS to do either or both of the following—
  (a) hold a ballot of the workers involved in the dispute;
  (b) ascertain the union membership of the workers involved in the dispute.

(3) In the following provisions of this section references to ACAS include references to a person nominated by ACAS; and anything done by such a person under this section shall be regarded as done in the exercise of the functions of ACAS mentioned in subsection (1).

(4) At any time after ACAS has received a request under subsection (2), it may require any party to the recognition dispute—
  (a) to supply ACAS with specified information concerning the workers involved in the dispute, and
  (b) to do so within such period as it may specify.

(5) ACAS may impose a requirement under subsection (4) only if it considers that it is necessary to do so—
  (a) for the exercise of the functions mentioned in subsection (1); and
  (b) in order to enable or assist it to comply with the request.

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(6) The recipient of a requirement under this section must, within the specified period, supply ACAS with such of the specified information as is in the recipient's possession.

(7) A request under subsection (2) may be withdrawn by any party to the recognition dispute at any time and, if it is withdrawn, ACAS shall take no further steps to hold the ballot or to ascertain the union membership of the workers involved in the dispute.

(8) If a party to a recognition dispute fails to comply with subsection (6), ACAS shall take no further steps to hold the ballot or to ascertain the union membership of the workers involved in the dispute.

(9) Nothing in this section requires ACAS to comply with a request under subsection (2).

(10) In this section—

"party", in relation to a recognition dispute, means each of the employers, employers' associations and trade unions involved in the dispute;

"a recognition dispute" means a trade dispute between employers and workers which is connected wholly or partly with the recognition by employers or employers' associations of the right of a trade union to represent workers in negotiations, consultations or other procedures relating to any of the matters mentioned in paragraphs (a) to (f) of section 218(1);

"specified" means specified in a requirement under this section; and

"workers" has the meaning given in section 218(5).**]**

Textual Amendments

F309 S. 210A inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 21**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

211 Conciliation officers.

(1) ACAS shall designate some of its officers to perform the functions of conciliation officers under any enactment (whenever passed) relating to matters which are or could be the subject of proceedings before an **[**[F310]employment tribunal**]**.

(2) References in any such enactment to a conciliation officer are to an officer designated under this section.

Textual Amendments

F310 Words in s. 211(1) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

212 Arbitration.

(1) Where a trade dispute exists or is apprehended ACAS may, at the request of one or more of the parties to the dispute and with the consent of all the parties to the dispute, refer all or any of the matters to which the dispute relates for settlement to the arbitration of—

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(a) one or more persons appointed by ACAS for that purpose (not being officers or employees of ACAS), or
(b) the Central Arbitration Committee.

(2) In exercising its functions under this section ACAS shall consider the likelihood of the dispute being settled by conciliation.

(3) Where there exist appropriate agreed procedures for negotiation or the settlement of disputes, ACAS shall not refer a matter for settlement to arbitration under this section unless—
(a) those procedures have been used and have failed to result in a settlement, or
(b) there is, in ACAS's opinion, a special reason which justifies arbitration under this section as an alternative to those procedures.

(4) Where a matter is referred to arbitration under subsection (1)(a)—
(a) if more than one arbitrator or arbiter is appointed, ACAS shall appoint one of them to act as chairman; and
(b) the award may be published if ACAS so decides and all the parties consent.

(5) **[**[F311]Part I of the Arbitration Act 1996**]** (general provisions as to arbitration) does not apply to an arbitration under this section.

Textual Amendments
F311 Words in s. 212(5) substituted (31.1.1997) by virtue of 1996 c. 23, s. 107(1), **Sch. 3 para. 56** (with s. 81(2); S.I. 1996/3146, art. 3, **Sch. 2**)

[[F312]**212A Arbitration scheme for unfair dismissal cases etc.**

(1) ACAS may prepare a scheme providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before an employment tribunal arising out of a contravention or alleged contravention of—
(a) Part X of the [M25]Employment Rights Act 1996 (unfair dismissal), or
(b) any enactment specified in an order made by the Secretary of State.

(2) When ACAS has prepared such a scheme it shall submit a draft of the scheme to the Secretary of State who, if he approves it, shall make an order—
(a) setting out the scheme, and
(b) making provision for it to come into effect.

(3) ACAS may from time to time prepare a revised version of such a scheme and, when it has done so, shall submit a draft of the revised scheme to the Secretary of State who, if he approves it, shall make an order—
(a) setting out the revised scheme, and
(b) making provision for it to come into effect.

(4) ACAS may take any steps appropriate for promoting awareness of a scheme prepared under this section.

(5) Where the parties to any dispute within subsection (1) agree in writing to submit the dispute to arbitration in accordance with a scheme having effect by virtue of an order

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under this section, ACAS shall refer the dispute to the arbitration of a person appointed by ACAS for the purpose (not being an officer or employee of ACAS).

(6) Nothing in the [M26]Arbitration Act 1996 shall apply to an arbitration conducted in accordance with a scheme having effect by virtue of an order under this section except to the extent that the order provides for any provision of Part I of that Act so to apply; and the order may provide for any such provision so to apply subject to modifications.

(7) A scheme set out in an order under this section may, in relation to an arbitration conducted in accordance with the law of Scotland, make provision—

(a) that a reference on a preliminary point may be made, or

(b) conferring a right of appeal which shall lie,

to the relevant court on such grounds and in respect of such matters as may be specified in the scheme; and in this subsection "relevant court" means such court, being the Court of Session or the Employment Appeal Tribunal, as may be specified in the scheme, and a different court may be specified as regards different grounds or matters.

(8) Where a scheme set out in an order under this section includes provision for the making of re-employment orders in arbitrations conducted in accordance with the scheme, the order setting out the scheme may require employment tribunals to enforce such orders—

(a) in accordance with section 117 of the [M27]Employment Rights Act 1996 (enforcement by award of compensation), or

(b) in accordance with that section as modified by the order.

For this purpose "re-employment orders" means orders requiring that persons found to have been unfairly dismissed be reinstated, re-engaged or otherwise re-employed.

(9) An order under this section setting out a scheme may provide that, in the case of disputes within subsection (1)(a), such part of an award made in accordance with the scheme as is specified by the order shall be treated as a basic award of compensation for unfair dismissal for the purposes of section 184(1)(d) of the [M28]Employment Rights Act 1996 (which specifies such an award as a debt which the Secretary of State must satisfy if the employer has become insolvent).

(10) An order under this section shall be made by statutory instrument.

(11) No order shall be made under subsection (1)(b) unless a draft of the statutory instrument containing it has been laid before Parliament and approved by a resolution of each House.

(12) A statutory instrument containing an order under this section (other than one of which a draft has been approved by resolution of each House of Parliament) shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments

F312 S. 212A inserted (1.8.1998) by 1998 c. 8, **s. 7**; S.I. 1998/1658, art. 2(1), **Sch. 1**

Marginal Citations

M25 1996 c. 18.

M26 1996 c. 23.

M27 1996 c. 18.

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M28 1996 c. 18.

[F313 212B Dismissal procedures agreements.

ACAS may, in accordance with any dismissal procedures agreement (within the meaning of the M29 Employment Rights Act 1996), refer any matter to the arbitration of a person appointed by ACAS for the purpose (not being an officer or employee of ACAS).]

Textual Amendments
F313 S. 212B inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 7**; S.I. 1998/1658, art. 2(1), **Sch. 1**

Marginal Citations
M29 1996 c. 18.

[F314 213 Advice.

(1) ACAS may, on request or otherwise, give employers, employers' associations, workers and trade unions such advice as it thinks appropriate on matters concerned with or affecting or likely to affect industrial relations.

(2) ACAS may also publish general advice on matters concerned with or affecting or likely to affect industrial relations.]

Textual Amendments
F314 S. 213 substituted (30.8.1993) by 1993 c. 19, **s. 43(2)**; S.I. 1993/1908, art. 2(1), **Sch.1**

214 Inquiry.

(1) ACAS may, if it thinks fit, inquire into any question relating to industrial relations generally or to industrial relations in any particular industry or in any particular undertaking or part of an undertaking.

(2) The findings of an inquiry under this section, together with any advice given by ACAS in connection with those findings, may be published by ACAS if—
   (a) it appears to ACAS that publication is desirable for the improvement of industrial relations, either generally or in relation to the specific question inquired into, and
   (b) after sending a draft of the findings to all parties appearing to to be concerned and taking account of their views, it thinks fit.

Courts of inquiry

215 Inquiry and report by court of inquiry.

(1) Where a trade dispute exists or is apprehended, the Secretary of State may inquire into the causes and circumstances of the dispute, and, if he thinks fit, appoint a court of

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inquiry and refer to it any matters appearing to him to be connected with or relevant to the dispute.

(2) The court shall inquire into the matters referred to it and report on them to the Secretary of State; and it may make interim reports if it thinks fit.

(3) Any report of the court, and any minority report, shall be laid before both Houses of Parliament as soon as possible.

(4) The Secretary of State may, before or after the report has been laid before Parliament, publish or cause to be published from time to time, in such manner as he thinks fit, any information obtained or conclusions arrived at by the court as the result or in the course of its inquiry.

(5) No report or publication made or authorised by the court or the Secretary of State shall include any information obtained by the court of inquiry in the course of its inquiry—
   (a) as to any trade union, or
   (b) as to any individual business (whether carried on by a person, firm, or company),

   which is not available otherwise than through evidence given at the inquiry, except with the consent of the secretary of the trade union or of the person, firm, or company in question.

   Nor shall any individual member of the court or any person concerned in the inquiry disclose such information without such consent.

(6) The Secretary of State shall from time to time present to Parliament a report of his proceedings under this section.

216 Constitution and proceedings of court of inquiry.

(1) A court of inquiry shall consist of—
   (a) a chairman and such other persons as the Secretary of State thinks fit to appoint, or
   (b) one person appointed by the Secretary of State,

   as the Secretary of State thinks fit.

(2) A court may act notwithstanding any vacancy in its number.

(3) A court may conduct its inquiry in public or in private, at its discretion.

(4) The Secretary of State may make rules regulating the procedure of a court of inquiry, including rules as to summoning of witnesses, quorum, and the appointment of committees and enabling the court to call for such documents as the court may determine to be relevant to the subject-matter of the inquiry.

(5) A court of inquiry may, if and to such extent as may be authorised by rules under this section, by order require any person who appears to the court to have knowledge of the subject-matter of the inquiry—
   (a) to supply (in writing or otherwise) such particulars in relation thereto as the court may require, and
   (b) where necessary, to attend before the court and give evidence on oath;

   and the court may administer or authorise any person to administer an oath for that purpose.

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(6) Provision shall be made by rules under this section with respect to the cases in which persons may appear by counsel or solicitor in proceedings before a court of inquiry, and except as provided by those rules no person shall be entitled to appear in any such proceedings by counsel or solicitor.

Supplementary provisions

217 Exclusion of power of arbiter to state case to Court of Session.

Section 3 of the [M30]Administration of Justice (Scotland) Act 1972 (power of arbiter to state case for opinion of Court of Session) does not apply to—

(a) any form of arbitration relating to a trade dispute, or
(b) any other arbitration arising from a collective agreement.

Marginal Citations
M30 1972 c. 59.

218 Meaning of "trade dispute" in Part IV.

(1) In this Part "trade dispute" means a dispute between employers and workers, or between workers and workers, which is connected with one or more of the following matters—
(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 Part as a dispute between an 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 purpose of this Part even though it relates to matters occurring outside Great Britain.

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(4) A dispute to which a trade union or employer's association is a party shall be treated for the purposes of this Part as a dispute to which workers or, as the case may be, employers are parties.

(5) In this section—

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

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

PART V

INDUSTRIAL ACTION

Protection of acts in contemplation or furtherance of trade dispute

219 Protection from certain tort liabilities.

(1) An act done by a person in contemplation or furtherance of a trade dispute is not actionable in tort on the ground only—

(a) that it induces another person to break a contract or interferes or induces another person to interfere with its performance, or

(b) that it consists in his threatening that a contract (whether one to which he is a party or not) will be broken or its performance interfered with, or that he will induce another person to break a contract or interfere with its performance.

(2) An agreement or combination by two or more persons to do or procure the doing of an act in contemplation or furtherance of a trade dispute is not actionable in tort if the act is one which if done without any such agreement or combination would not be actionable in tort.

(3) Nothing in subsections (1) and (2) prevents an act done in the course of picketing from being actionable in tort unless it is done in the course of attendance declared lawful by section 220 (peaceful picketing)

(4) Subsections (1) and (2) have effect subject to sections 222 to 225 (action excluded from protection) and **[**[F315]to sections 226 (requirement of ballot before action by trade union) and 234A (requirement of notice to employer of industrial action); and in those sections "not protected" means excluded from the protection afforded by this section or, where the expression is used with reference to a particular person, excluded from that protection as respects that person.**]**

Textual Amendments

F315 Words in s. 219(4) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.72**; S.I. 1993/1908, art. 2(1), **Sch.1**

Modifications etc. (not altering text)

C45 S. 219 excluded (E.W.) (2.3.1998) by S.I. 1998/218, **art. 5**
S. 219 excluded (1.9.1999) by S.I. 1999/2256, **art. 5**

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C46 S. 219 excluded (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), **reg. 5(2)**

220 Peaceful picketing.

(1) It is lawful for a person in contemplation or furtherance of a trade dispute to attend—

(a) at or near his own place of work, or

(b) if he is an official of a trade union, at or near the place of work of a member of the union whom he is accompanying and whom he represents,

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

(2) If a person works or normally works—

(a) otherwise than at any one place, or

(b) at a place the location of which is such that attendance there for a purpose mentioned in subsection (1) is impracticable,

his place of work for the purposes of that subsection shall be any premises of his employer from which he works or from which his work is administered.

(3) In the case of a worker not in employment where—

(a) his last employment was terminated in connection with a trade dispute, or

(b) the termination of his employment was one of the circumstances giving rise to a trade dispute,

in relation to that dispute his former place of work shall be treated for the purposes of subsection (1) as being his place of work.

(4) A person who is an official of a trade union by virtue only of having been elected or appointed to be a representative of some of the members of the union shall be regarded for the purposes of subsection (1) as representing only those members; but otherwise an official of a union shall be regarded for those purposes as representing all its members.

221 Restrictions on grant of injunctions and interdicts.

(1) Where—

(a) an application for an injunction or interdict is made to a court in the absence of the party against whom it is sought or any representative of his, and

(b) he 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 him.

(2) Where—

(a) an application for an interlocutory injunction is made to a court pending the trial of an action, and

(b) the party against whom it is sought claims that he acted in contemplation or furtherance of a trade dispute,

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the court shall, in exercising its discretion whether or not to grant the injunction, have regard to the likelihood of that party's succeeding at the trial of the action in establishing any matter which would afford a defence to the action under section 219 (protection from certain tort liabilities) or section 220 (peaceful picketing).

This subsection does not extend to Scotland.

Action excluded from protection

222 Action to enforce trade union membership.

(1) An act is not protected if the reason, or one of the reasons, for which it is done is the fact or belief that a particular employer—
  (a) is employing, has employed or might employ a person who is not a member of a trade union, or
  (b) is failing, has failed or might fail to discriminate against such a person.

(2) For the purposes of subsection (1)(b) an employer discriminates against a person if, but only if, he ensures that his conduct in relation to—
  (a) persons, or persons of any description, employed by him, or who apply to be, or are, considered by him for employment, or
  (b) the provision of employment for such persons,

  is different, in some or all cases, according to whether or not they are members of a trade union, and is more favourable to those who are.

(3) An act is not protected if it constitutes, or is one of a number of acts which together constitute, an inducement or attempted inducement of a person—
  (a) to incorporate in a contract to which that person is a party, or a proposed contract to which he intends to be a party, a term or condition which is or would be void by virtue of section 144 (union membership requirement in contract for goods or services), or
  (b) to contravene section 145 (refusal to deal with person on grounds relating to union membership).

(4) References in this section to an employer employing a person are to a person acting in the capacity of the person for whom a worker works or normally works.

(5) References in this section to not being a member of a trade union are to not being a member of any trade union, of a particular trade union or of one of a number of particular trade unions.

  Any such reference includes a reference to not being a member of a particular branch or section of a trade union or of one of a number of particular branches or sections of a trade union.

Modifications etc. (not altering text)
C47 S. 222 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(b)**

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223 Action taken because of dismissal for taking unofficial action.

An act is not protected if the reason, or one of the reasons, for doing it is the fact or belief that an employer has dismissed one or more employees in circumstances such that by virtue of section 237 (dismissal in connection with unofficial action) they have no right to complain of unfair dismissal.

Modifications etc. (not altering text)
C48 S. 223 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(b)**

224 Secondary action.

(1) An act is not protected if one of the facts relied on for the purpose of establishing liability is that there has been secondary action which is not lawful picketing.

(2) There is secondary action in relation to a trade dispute when, and only when, a person—
   (a) induces another to break a contract of employment or interferes or induces another to interfere with its performance, or
   (b) threatens that a contract of employment under which he or another is employed will be broken or its performance interfered with, or that he will induce another to break a contract of employment or to interfere with its performance,

   and the employer under the contract of employment is not the employer party to the dispute.

(3) Lawful picketing means acts done in the course of such attendance as is declared lawful by section 220 (peaceful picketing)—
   (a) by a worker employed (or, in the case of a worker not in employment, last employed) by the employer party to the dispute, or
   (b) by a trade union official whose attendance is lawful by virtue of subsection (1)(b) of that section.

(4) For the purposes of this section an employer shall not be treated as party to a dispute between another employer and workers of that employer; and where more than one employer is in dispute with his workers, the dispute between each employer and his workers shall be treated as a separate dispute.

   In this subsection "worker" has the same meaning as in section 244 (meaning of "trade dispute").

(5) An act in contemplation or furtherance of a trade dispute which is primary action in relation to that dispute may not be relied on as secondary action in relation to another trade dispute.

   Primary action means such action as is mentioned in paragraph (a) or (b) of subsection (2) where the employer under the contract of employment is the employer party to the dispute.

(6) In this section "contract of employment" includes any contract under which one person personally does work or performs services for another, and related expressions shall be construed accordingly.

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Modifications etc. (not altering text)
C49 S. 224 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(b)**

225 Pressure to impose union recognition requirement.

(1) An act is not protected if it constitutes, or is one of a number of acts which together constitute, an inducement or attempted inducement of a person—

(a) to incorporate in a contract to which that person is a party, or a proposed contract to which he intends to be a party, a term or condition which is or would be void by virtue of section 186 (recognition requirement in contract for goods or services), or

(b) to contravene section 187 (refusal to deal with person on grounds of union exclusion).

(2) An act is not protected if—

(a) it interferes with the supply (whether or not under a contract) of goods or services, or can reasonably be expected to have that effect, and

(b) one of the facts relied upon for the purpose of establishing liability is that a person has—

(i) induced another to break a contract of employment or interfered or induced another to interfere with its performance, or

(ii) threatened that a contract of employment under which he or another is employed will be broken or its performance interfered with, or that he will induce another to break a contract of employment or to interfere with its performance, and

(c) the reason, or one of the reasons, for doing the act is the fact or belief that the supplier (not being the employer under the contract of employment mentioned in paragraph (b)) does not, or might not—

(i) recognise one or more trade unions for the purpose of negotiating on behalf of workers, or any class of worker, employed by him, or

(ii) negotiate or consult with, or with an official of, one or more trade unions.

Requirement of ballot before action by trade union

226 Requirement of ballot before action by trade union.

(1) An act done by a trade union to induce a person to take part, or continue to take part, in industrial action **[**[F316]

(a) is not protected unless the industrial action has the support of a ballot, and

(b) where section 226A falls to be complied with in relation to the person's employer, is not protected as respects the employer unless the trade union has complied with section 226A in relation to him.**]**

[[F317]In this section "the relevant time", in relation to an act by a trade union to induce a person to take part, or continue to take part, in industrial action, means the time at which proceedings are commenced in respect of the act.**]**

(2) Industrial action shall be regarded as having the support of a ballot only if—

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[[F318F319](a) the union has held a ballot in respect of the action—

(i) in relation to which the requirements of section 226B so far as applicable before and during the holding of the ballot were satisfied,

(ii) in relation to which the requirements of sections 227 to **[**[F320]231**]]** were satisfied, and

(iii) in which the majority voting in the ballot answered "Yes" to the question applicable in accordance with section 229(2) to industrial action of the kind to which the act of inducement relates;

(b) such of the requirements of the following sections as have fallen to be satisfied at the relevant time have been satisfied, namely—

(i) section 226B so far as applicable after the holding of the ballot, and

(ii) section 231B; **[**[F321]. . .**]**

[[F318](bb) section 232A does not prevent the industrial action from being regarded as having the support of the ballot; and**]**

(c) the requirements of section 233 (calling of industrial action with support of ballot) are satisfied.

Any reference in this subsection to a requirement of a provision which is disapplied or modified by section 232 has effect subject to that section.

(3) Where separate workplace ballots are held by virtue of **[**[F322]section 228(1)—

(a) industrial action shall be regarded as having the support of a ballot if the conditions specified in subsection (2) are satisfied, and

(b) the trade union shall be taken to have complied with the requirements relating to a ballot imposed by section 226A if those requirements are complied with,

in relation**]** to the ballot for the place of work of the person induced to take part, or continue to take part, in the industrial action.

[[F323](3A) If the requirements of section 231A fall to be satisfied in relation to an employer, as respects that employer industrial action shall not be regarded as having the support of a ballot unless those requirements are satisfied in relation to that employer.**]**

(4) For the purposes of this section an inducement, in relation to a person, includes an inducement which is or would be ineffective, whether because of his unwillingness to be influenced by it or for any other reason.

Textual Amendments

F316 S. 226(1)(a)(b) substituted (30.8.1993) for words by 1993 c. 19, **s. 18(1)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F317 Words in s. 226(1) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 73(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F318 S. 226(2)(bb) inserted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, **2(1)(2)**; S.I. 2000/2242, **art. 2(2)** (with transtitional provisions in s. 4)

F319 S. 226(2)(a)-(c) and proviso substituted (30.8.1993) for s. 226(2)(a)-(c) by 1993 c. 19, s. 49(2), **Sch. 8 para. 73(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F320 Words in s. 226(2)(a)(ii) substituted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, **2(1)(2)**; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)

F321 Words in s. 226(2)(b) omitted (18.9.2000 and repealed*prosp.*) by virtue of 1999 c. 26, **ss. 4**, 44. 45(1), Sch. 3 paras. 1, 2(1)(2), Sch. 9(1); S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)

F322 Words in s. 226(3) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 73(c)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

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F323 S. 226(3A) inserted (18.9.2000) by 1999 c. 26, ss. 4, Sch. 3 paras. 1, **2(1)(3)** (with transitional provisions in art. 4)

Modifications etc. (not altering text)

C50 S. 226 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

[F324 226A Notice of ballot and sample voting paper for employers.

(1) The trade union must take such steps as are reasonably necessary to ensure that—

(a) not later than the seventh day before the opening day of the ballot, the notice specified in subsection (2), and

(b) not later than the third day before the opening day of the ballot, the sample voting paper specified in subsection (3),

is received by every person who it is reasonable for the union to believe (at the latest time when steps could be taken to comply with paragraph (a)) will be the employer of persons who will be entitled to vote in the ballot.

(2) The notice referred to in paragraph (a) of subsection (1) is a notice in writing—

(a) stating that the union intends to hold the ballot,

(b) specifying the date which the union reasonably believes will be the opening day of the ballot, and

(c) **[**F325 containing such information in the union's possession as would help the employer to make plans and bring information to the attention of those of his employees**]]** who it is reasonable for the union to believe (at the time when the steps to comply with that paragraph are taken) will be entitled to vote in the ballot.

(3) The sample voting paper referred to in paragraph (b) of subsection (1) is—

(a) a sample of the form of voting paper which is to be sent to the employees who it is reasonable for the trade union to believe (at the time when the steps to comply with paragraph (a) of that subsection are taken) will be entitled to vote in the ballot, or

(b) where they are not all to be sent the same form of voting paper, a sample of each form of voting paper which is to be sent to any of them.

[F326 (3A) These rules apply for the purposes of paragraph (c) of subsection (2)—

(a) if the union possesses information as to the number, category or work-place of the employees concerned, a notice must contain that information (at least);

(b) if a notice does not name any employees, that fact shall not be a ground for holding that it does not comply with paragraph (c) of subsection (2).

(3B) In subsection (3) references to employees are to employees of the employer concerned.**]**

(4) In this section references to the opening day of the ballot are references to the first day when a voting paper is sent to any person entitled to vote in the ballot.

(5) This section, in its application to a ballot in which merchant seamen to whom section 230(2A) applies are entitled to vote, shall have effect with the substitution in subsection (3), for references to the voting paper which is to be sent to the employees, of references to the voting paper which is to be sent or otherwise provided to them.

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Textual Amendments

F324 S. 226A inserted (30.8.1993) by 1993 c. 19, **s. 18(2)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F325 Words in s. 226A(2)(c) substituted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, **3(1)(2)**; S.I. 2000/2242, **art. 2(2)**

F326 S. 226A(3A)(3B) inserted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, **3(1)(3)**; S.I. 2000/2242, **art. 2(2)**

Modifications etc. (not altering text)

C51 S. 226A applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

[226B [F327]Appointment of scrutineer.

(1) The trade union shall, before the ballot in respect of the industrial action is held, appoint a qualified person ("the scrutineer") whose terms of appointment shall require him to carry out in relation to the ballot the functions of—

(a) taking such steps as appear to him to be appropriate for the purpose of enabling him to make a report to the trade union (see section 231B); and

(b) making the report as soon as reasonably practicable after the date of the ballot and, in any event, not later than the end of the period of four weeks beginning with that date.

(2) A person is a qualified person in relation to a ballot if—

(a) he satisfies such conditions as may be specified for the purposes of this section by order of the Secretary of State or is himself so specified; and

(b) the trade union has no grounds for believing either that he will carry out the functions conferred on him under subsection (1) otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

An order under paragraph (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) The trade union shall ensure that the scrutineer duly carries out the functions conferred on him under subsection (1) and that there is no interference with the carrying out of those functions from the union or any of its members, officials or employees.

(4) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of those functions.**]**

Textual Amendments

F327 S. 226B inserted (30.8.1993) by 1993 c. 19, **s. 20(1)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C52 S. 226B applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

[[F328]226CExclusion for small ballots.

Nothing in section 226B, section 229(1A)(a) or section 231B shall impose a requirement on a trade union unless—

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(a) the number of members entitled to vote in the ballot, or
(b) where separate workplace ballots are held in accordance with section 228(1), the aggregate of the number of members entitled to vote in each of them,

exceeds 50.**]**

Textual Amendments
F328 S. 226C inserted (30.8.1993) by 1993 c. 19, **s. 20(4)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)
C53 S. 226C applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

227 Entitlement to vote in ballot.

(1) Entitlement to vote in the ballot must be accorded equally to all the members of the trade union who it is reasonable at the time of the ballot for the union to believe will be induced to take part or, as the case may be, to continue to take part in the industrial action in question, and to no others.

[[F329](2) The requirement in subsection (1) shall be taken not to have been satisfied if any person who was a member of the trade union at the time when the ballot was held and was denied entitlement to vote in the ballot is induced by the union to take part or, as the case may be, to continue to take part in the industrial action**]**.

Textual Amendments
F329 S. 227(2) omitted (18.9.2000 and repealed *prosp.*) by virtue of 1999 c. 26, ss. 4, 44, 45, Sch. 3 paras. 1, 4, **Sch. 9(1)**; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)

Modifications etc. (not altering text)
C54 S. 227 applied by S.I. 2000/1828, **art. 2(5)(b)**

[[F330]228 Separate workplace ballots.

(1) Subject to subsection (2), this section applies if the members entitled to vote in a ballot by virtue of section 227 do not all have the same workplace.

(2) This section does not apply if the union reasonably believes that all those members have the same workplace.

(3) Subject to section 228A, a separate ballot shall be held for each workplace; and entitlement to vote in each ballot shall be accorded equally to, and restricted to, members of the union who—
(a) are entitled to vote by virtue of section 227, and
(b) have that workplace.

(4) In this section and section 228A "workplace" in relation to a person who is employed means—
(a) if the person works at or from a single set of premises, those premises, and
(b) in any other case, the premises with which the person's employment has the closest connection.**]**

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Textual Amendments

F330 Ss. 228, 228A substituted for s. 228 (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, **5**; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)

Modifications etc. (not altering text)

C55 S. 228 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)**

[F331 228A Separate workplaces: single and aggregate ballots.

(1) Where section 228(3) would require separate ballots to be held for each workplace, a ballot may be held in place of some or all of the separate ballots if one of subsections (2) to (4) is satisfied in relation to it.

(2) This subsection is satisfied in relation to a ballot if the workplace of each member entitled to vote in the ballot is the workplace of at least one member of the union who is affected by the dispute.

(3) This subsection is satisfied in relation to a ballot if entitlement to vote is accorded to, and limited to, all the members of the union who—

(a) according to the union's reasonable belief have an occupation of a particular kind or have any of a number of particular kinds of occupation, and

(b) are employed by a particular employer, or by any of a number of particular employers, with whom the union is in dispute.

(4) This subsection is satisfied in relation to a ballot if entitlement to vote is accorded to, and limited to, all the members of the union who are employed by a particular employer, or by any of a number of particular employers, with whom the union is in dispute.

(5) For the purposes of subsection (2) the following are members of the union affected by a dispute—

(a) if the dispute relates (wholly or partly) to a decision which the union reasonably believes the employer has made or will make concerning a matter specified in subsection (1)(a), (b) or (c) of section 244 (meaning of "trade dispute"), members whom the decision directly affects,

(b) if the dispute relates (wholly or partly) to a matter specified in subsection (1)(d) of that section, members whom the matter directly affects,

(c) if the dispute relates (wholly or partly) to a matter specified in subsection (1)(e) of that section, persons whose membership or non-membership is in dispute,

(d) if the dispute relates (wholly or partly) to a matter specified in subsection (1)(f) of that section, officials of the union who have used or would use the facilities concerned in the dispute.**]**

Textual Amendments

F331 Ss. 228, 228A substituted for 228 (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, **5**; S.I. 2000/2242, **art. 2** (with transitional provisions in art. 4)

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Modifications etc. (not altering text)
C56 s. 228A applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(C)**

229 Voting paper.

(1) The method of voting in a ballot must be by the marking of a voting paper by the person voting.

[[F332](1A) Each voting paper must—

(a) state the name of the independent scrutineer,

(b) clearly specify the address to which, and the date by which, it is to be returned,

(c) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot, and

(d) be marked with its number.

This subsection, in its application to a ballot in which merchant seamen to whom section 230(2A) applies are entitled to vote, shall have effect with the substitution, for the reference to the address to which the voting paper is to be returned, of a reference to the ship to which the seamen belong.**]**

(2) The voting paper must contain at least one of the following questions—

(a) 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;

(b) 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 industrial action short of a strike.

[[F333](2A) For the purposes of subsection (2) an overtime ban and a call-out ban constitute industrial action short of a strike.**]**

(3) The voting paper must specify who, in the event of a vote in favour of industrial action, is authorised for the purposes of section 233 to call upon members to take part or continue to take part in the industrial action.

The person or description of persons so specified need not be authorised under the rules of the union but must be within section **[**[F334]20(2)**]** (persons for whose acts the union is taken to be responsible).

(4) The following statement must (without being qualified or commented upon by anything else on the voting paper) appear on every voting paper—

"If you take part in a strike or other industrial action, you may be in breach of your contract of employment."

[[F335]However, if you are dismissed for taking part in strike or other industrial action which is called officially and is otherwise lawful, the dismissal will be unfair if it takes place fewer than eight weeks after you started taking part in the action, and depending on the circumstances may be unfair if it takes place later.**]**

Textual Amendments
F332 S. 229(1A) inserted (30.8.1993) by 1993 c. 19, **s. 20(2)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

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F333 S. 229(2A) inserted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, **6(1)(2)**; S.I. 2000/2242, **art. 2(2)** (with transtitional provisions in art. 4)

F334 Words in s. 229(3) substituted (30.8.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para. 25**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F335 Words in s. 229(4) inserted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, **6(1)(3)**; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)

Modifications etc. (not altering text)

C57 S. 229 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(a)**

230 Conduct of ballot.

(1) Every person who is entitled to vote in the ballot must—

(a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and

(b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.

[[F336][F337](2) Except as regards persons falling within subsection (2A), so far as is reasonably practicable, every person who is entitled to vote in the ballot must—

(a) have a voting paper sent to him by post at his home address or any other address which he has requested the trade union in writing to treat as his postal address; and

(b) be given a convenient opportunity to vote by post.

[Subsection (2B) applies to a merchant seaman if the trade union reasonably believes [F336](2A) that—

(a) he will be employed in a ship either at sea or at a place outside Great Britain at some time in the period during which votes may be cast, and

(b) it will be convenient for him to receive a voting paper and to vote while on the ship or while at a place where the ship is rather than in accordance with subsection (2).

[F336](2B) Where this subsection applies to a merchant seaman he shall, if it is reasonably practicable—

(a) have a voting paper made available to him while on the ship or while at a place where the ship is, and

(b) be given an opportunity to vote while on the ship or while at a place where the ship is.**]]**

(2C) In subsections (2A) and (2B) "merchant seaman" means a person whose employment, or the greater part of it, is carried out on board sea-going ships.

(4) A ballot shall be conducted so as to secure that—

(a) so far as is reasonably practicable, those voting do so in secret, and

(b) the votes given in the ballot are fairly and accurately counted.

For the purposes of paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the ballot.

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Textual Amendments

F336 S. 230(2A)(2B) substituted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, **7**; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)

F337 S. 230(2)(2A)-(2C) substituted (30.8.1993) for s. 230(2)(3) by 1993 c. 19, **s. 17**; S.I. 1993/1908, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C58 S. 230 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

231 Information as to result of ballot.

As soon as is reasonably practicable after the holding of the ballot, the trade union shall take such steps as are reasonably necessary to ensure that all persons entitled to vote in the ballot are informed of the number of—

(a) votes cast in the ballot,

(b) individuals answering "Yes" to the question, or as the case may be, to each question,

(c) individuals answering "No" to the question, or, as the case may be, to each question, and

(d) spoiled voting papers.

Modifications etc. (not altering text)

C59 S. 231 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

[F338 231A Employers to be informed of ballot result.

(1) As soon as reasonably practicable after the holding of the ballot, the trade union shall take such steps as are reasonably necessary to ensure that every relevant employer is informed of the matters mentioned in section 231.

(2) In subsection (1) "relevant employer" means a person who it is reasonable for the trade union to believe (at the time when the steps are taken) was at the time of the ballot the employer of any persons entitled to vote.**]**

Textual Amendments

F338 S. 231A inserted (30.8.1993) by 1993 c. 19, **s.19**; S.I. 1993/1908, art. 2(1), **Sch.1**

Modifications etc. (not altering text)

C60 S. 231A applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

[F339 231B Scrutineer's report.

(1) The scrutineer's report on the ballot shall state whether the scrutineer is satisfied—

(a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the ballot,

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(b) that the arrangements made with respect to the production, storage, distribution, return or other handling of the voting papers used in the ballot, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and

(c) that he has been able to carry out the functions conferred on him under section 226B(1) without any interference from the trade union or any of its members, officials or employees;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reason for not being satisfied as to that matter.

(2) If at any time within six months from the date of the ballot—

(a) any person entitled to vote in the ballot, or

(b) the employer of any such person,

requests a copy of the scrutineer's report, the trade union must, as soon as practicable, provide him with one either free of charge or on payment of such reasonable fee as may be specified by the trade union.**]**

Textual Amendments

F339 S. 231B inserted (30.8.1993) by 1993 c. 19, **s. 20(3)**; S.I. 1993/1908, art. 2(1), **Sch.1**

Modifications etc. (not altering text)

C61 S. 231B applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

232 Balloting of overseas members.

(1) A trade union which has overseas members may choose whether or not to accord any of those members entitlement to vote in a ballot; and nothing in section **[**[F340]226B to 230 and 231B**]** applies in relation to an overseas member or a vote cast by such a member.

[[F341](2) Where overseas members have voted in the ballot—

(a) the references in sections 231 and 231A to persons entitled to vote in the ballot do not include overseas members, and

(b) those sections shall be read as requiring the information mentioned in section 231 to distinguish between overseas members and other members.**]**

(3) An "overseas member" of a trade union means a member (other than a merchant seaman or offshore worker) who is outside Great Britain throughout the period during which votes may be cast.

For this purpose—

"merchant seaman" means a person whose employment, or the greater part of it, is carried out on board sea-going ships; and

"offshore worker" means a person in offshore employment, other than one who is in such employment in an area where the law of Northern Ireland applies.

(4) A member who throughout the period during which votes may be cast is in Northern Ireland shall not be treated as an overseas member—

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(a) where the ballot is one to which section 228(1) or (2) applies (workplace ballots) and his place of work is in Great Britain, or

(b) where the ballot is one to which section 228(3) applies (general ballots) and relates to industrial action involving members both in Great Britain and in Northern Ireland.

(5) In relation to offshore employment the references in subsection (4) to Northern Ireland include any area where the law of Northern Ireland applies and the references to Great Britain include any area where the law of England and Wales or Scotland applies.

Textual Amendments

F340 Words in s. 232(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 74(a)**; S.I. 1993/1908, art. 2(1), **Sch.1**

F341 S. 232(2) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 74(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C62 S. 232 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

[F342 232A Inducement of member denied entitlement to vote.

Industrial action shall not be regarded as having the support of a ballot if the following conditions apply in the case of any person—

(a) he was a member of the trade union at the time when the ballot was held,

(b) it was reasonable at that time for the trade union to believe he would be induced to take part or, as the case may be, to continue to take part in the industrial action,

(c) he was not accorded entitlement to vote in the ballot, and

(d) he was induced by the trade union to take part or, as the case may be, to continue to take part in the industrial action.**]**

Textual Amendments

F342 S. 232A inserted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, **8**; S.I. 2000/2242, **art. 2(2)** (with transtitional provisions in art. 4)

[F343 232B Small accidental failures to be disregarded.

(1) If—

(a) in relation to a ballot there is a failure (or there are failures) to comply with a provision mentioned in subsection (2) or with more than one of those provisions, and

(b) the failure is accidental and on a scale which is unlikely to affect the result of the ballot or, as the case may be, the failures are accidental and taken together are on a scale which is unlikely to affect the result of the ballot,

the failure (or failures) shall be disregarded.

(2) The provisions are section 227(1), section 230(2) and section 230(2A).**]**

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Textual Amendments

F343 S. 232B inserted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, **9**; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)

233 Calling of industrial action with support of ballot.

(1) Industrial action shall not be regarded as having the support of a ballot unless it is called by a specified person and the conditions specified below are satisfied.

(2) A "specified person" means a person specified or of a description specified in the voting paper for the ballot in accordance with section 229(3).

(3) The conditions are that—

(a) there must have been no call by the trade union to take part or continue to take part in industrial action to which the ballot relates, or any authorisation or endorsement by the union of any such industrial action, before the date of the ballot;

(b) there must be a call for industrial action by a specified person, and industrial action to which it relates must take place, before the ballot ceases to be effective in accordance with section 234.

(4) For the purposes of this section a call shall be taken to have been made by a trade union if it was authorised or endorsed by the union; and the provisions of section 20(2) to (4) apply for the purpose of determining whether a call, or industrial action, is to be taken to have been so authorised or endorsed.

Modifications etc. (not altering text)

C63 s. 233 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

234 Period after which ballot ceases to be effective.

[[F344](1) Subject to the following provisions, a ballot ceases to be effective for the purposes of section 233(3)(b) in relation to industrial action by members of a trade union at the end of the period, beginning with the date of the ballot—

(a) of four weeks, or

(b) of such longer duration not exceeding eight weeks as is agreed between the union and the members' employer.**]**

(2) Where for the whole or part of that period the calling or organising of industrial action is prohibited—

(a) by virtue of a court order which subsequently lapses or is discharged, recalled or set aside, or

(b) by virtue of an undertaking given to a court by any person from which he is subsequently released or by which he ceases to be bound,

the trade union may apply to the court for an order that the period during which the prohibition had effect shall not count towards the period referred to in subsection (1).

(3) The application must be made forthwith upon the prohibition ceasing to have effect—

(a) to the court by virtue of whose decision it ceases to have effect, or

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(b) where an order lapses or an undertaking ceases to bind without any such decision, to the court by which the order was made or to which the undertaking was given;

and no application may be made after the end of the period of eight weeks beginning with the date of the ballot.

(4) The court shall not make an order if it appears to the court—

(a) that the result of the ballot no longer represents the views of the union members concerned, or

(b) that an event is likely to occur as a result of which those members would vote against industrial action if another ballot were to be held.

(5) No appeal lies from the decision of the court to make or refuse an order under this section.

(6) The period between the making of an application under this section and its determination does not count towards the period referred to in subsection (1).

But a ballot shall not by virtue of this subsection (together with any order of the court) be regarded as effective for the purposes of section 233(3)(b) after the end of the period of twelve weeks beginning with the date of the ballot.

Textual Amendments

F344 S. 234(1) substituted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, **10**; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)

Modifications etc. (not altering text)

C64 S. 234 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

[F345 Requirement on trade union to give notice of industrial action]

Textual Amendments

F345 S. 234A and cross heading inserted (30.8.1993) by 1993 c. 19, **s.21**; S.I. 1993/1908, art. 2(1), **Sch.1**

[234A F346 Notice to employers of industrial action.

(1) An act done by a trade union to induce a person to take part, or continue to take part, in industrial action is not protected as respects his employer unless the union has taken or takes such steps as are reasonably necessary to ensure that the employer receives within the appropriate period a relevant notice covering the act.

(2) Subsection (1) imposes a requirement in the case of an employer only if it is reasonable for the union to believe, at the latest time when steps could be taken to ensure that he receives such a notice, that he is the employer of persons who will be or have been induced to take part, or continue to take part, in the industrial action.

(3) For the purposes of this section a relevant notice is a notice in writing which—

(a) **[**F347 contains such information in the union's possession as would help the employer to make plans and bring information to the attention of those of his

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employees whom**]**the union intends to induce or has induced to take part, or continue to take part, in the industrial action ("the affected employees"),

(b) states whether industrial action is intended to be continuous or discontinuous and specifies—

(i) where it is to be continuous, the intended date for any of the affected employees to begin to take part in the action,

(ii) where it is to be discontinuous, the intended dates for any of the affected employees to take part in the action, and

(c) states that it is given for the purposes of this section.

(4) For the purposes of subsection (1) the appropriate period is the period—

(a) beginning with the day when the union satisfies the requirement of section 231A in relation to the ballot in respect of the industrial action, and

(b) ending with the seventh day before the day, or before the first of the days, specified in the relevant notice.

(5) For the purposes of subsection (1) a relevant notice covers an act done by the union if the person induced is one of the affected employees and—

(a) where he is induced to take part or continue to take part in industrial action which the union intends to be continuous, if—

(i) the notice states that the union intends the industrial action to be continuous, and

(ii) there is no participation by him in the industrial action before the date specified in the notice in consequence of any inducement by the union not covered by a relevant notice; and

(b) where he is induced to take part or continue to take part in industrial action which the union intends to be discontinuous, if there is no participation by him in the industrial action on a day not so specified in consequence of any inducement by the union not covered by a relevant notice.

[[F348](5A) These rules apply for the purposes of paragraph (a) of subsection (3)—

(a) if the union possesses information as to the number, category or work-place of the employees concerned, a notice must contain that information (at least);

(b) if a notice does not name any employees, that fact shall not be a ground for holding that it does not comply with paragraph (a) of subsection (3).**]**

(6) For the purposes of this section—

(a) a union intends industrial action to be discontinuous if it intends it to take place only on some days on which there is an opportunity to take the action, and

(b) a union intends industrial action to be continuous if it intends it to be not so restricted.

(7) **[**[F349]Subject to subsections (7A) and (7B),**]**Where—

(a) continuous industrial action which has been authorised or endorsed by a union ceases to be so authorised or endorsed **[**[F350]otherwise than to enable the union to comply with a court order or an undertaking given to a court**]**, and

(b) the industrial action has at a later date again been authorised or endorsed by the union (whether as continuous or discontinuous action),

no relevant notice covering acts done to induce persons to take part in the earlier action shall operate to cover acts done to induce persons to take part in the action authorised or endorsed at the later date and this section shall apply in relation to an act to induce a person to take part, or continue to take part, in the industrial action after that date as

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if the references in subsection (3)(b)(i) to the industrial action were to the industrial action taking place after that date.

[[F351](7A) Subsection (7) shall not apply where industrial action ceases to be authorised or endorsed in order to enable the union to comply with a court order or an undertaking given to a court.

[F351](7B) Subsection (7) shall not apply where—

(a) a union agrees with an employer, before industrial action ceases to be authorised or endorsed, that it will cease to be authorised or endorsed with effect from a date specified in the agreement (“the suspension date") and that it may again be authorised or endorsed with effect from a date not earlier than a date specified in the agreement (“the resumption date"),

(b) the action ceases to be authorised or endorsed with effect from the suspension date, and

(c) the action is again authorised or endorsed with effect from a date which is not earlier than the resumption date or such later date as may be agreed between the union and the employer.**]**

(8) The requirement imposed on a trade union by subsection (1) shall be treated as having been complied with if the steps were taken by other relevant persons or committees whose acts were authorised or endorsed by the union and references to the belief or intention of the union in subsection (2) or, as the case may be, subsections (3), (5) and (6) shall be construed as references to the belief or the intention of the person or committee taking the steps.

(9) The provisions of section 20(2) to (4) apply for the purpose of determining for the purposes of subsection (1) who are relevant persons or committees and whether the trade union is to be taken to have authorised or endorsed the steps the person or committee took and for the purposes of **[**[F352]subsections (7) to (7B)**]** whether the trade union is to be taken to have authorised or endorsed the industrial action.

Textual Amendments

F346 S. 234A and cross heading inserted (30.8.1993) by 1993 c. 19, **s. 21**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F347 Words in S. 234A(3a) substituted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, **11(1)(2)**; S.I. 2000/2242, **art. 2** (with transitional provisions in art. 4)

F348 S. 234A(5A) inserted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, **11(1)(3)**; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)

F349 Words in s. 234A(7) inserted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, **11(1)(4)(a)**; S.I. 2000/2242, **art. 2(2)**(with transitional provisions in art. 4)

F350 Words in s. 234A(7)(a) ceased to have effect (18.9.2000) and repealed (*prosp.*) by virtue of 1999 c. 26, ss. 4, 44, 45, Sch. 3 paras. 1, 11(1)(4)(b), **Sch. 9(1)**

F351 S.234A(7A)(7B) inserted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, **11(1)(5)**; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)

F352 Words in s. 234A(9) substituted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, **11(1)(6)**; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)

Modifications etc. (not altering text)

C65 S. 234A applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

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235 Construction of references to contract of employment.

In sections 226 to **[**[F353]234A**]** (requirement of ballot before action by trade union) references to a contract of employment include any contract under which one person personally does work or performs services for another; **[**[F353]and "employer" and other related expressions**]** shall be construed accordingly.

Textual Amendments

F353 Words in s. 235 substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.75**; S.I. 1993/1908, art. 2(1), **Sch.1**

Modifications etc. (not altering text)

C66 S. 235 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

[**[F354]*Industrial action affecting supply of goods or services to an individual]***

Textual Amendments

F354 Ss. 235A- 235C and cross heading inserted (30.8.1993) by 1993 c. 19, **s.22**; S.I. 1993/1908, art. 2(1), **Sch.1**

[[F355]235A Industrial action affecting supply of goods or services to an individual.

(1) Where an individual claims that—

(a) any trade union or other person has done, or is likely to do, an unlawful act to induce any person to take part, or to continue to take part, in industrial action, and

(b) an effect, or a likely effect, of the industrial action is or will be to—

(i) prevent or delay the supply of goods or services, or

(ii) reduce the quality of goods or services supplied,

to the individual making the claim,

he may apply to the High Court or the Court of Session for an order under this section.

(2) For the purposes of this section an act to induce any person to take part, or to continue to take part, in industrial action is unlawful—

(a) if it is actionable in tort by any one or more persons, or

(b) (where it is or would be the act of a trade union) if it could form the basis of an application by a member under section 62.

(3) In determining whether an individual may make an application under this section it is immaterial whether or not the individual is entitled to be supplied with the goods or services in question.

(4) Where on an application under this section the court is satisfied that the claim is well-founded, it shall make such order as it considers appropriate for requiring the person by whom the act of inducement has been, or is likely to be, done to take steps for ensuring—

(a) that no, or no further, act is done by him to induce any persons to take part or to continue to take part in the industrial action, and

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(b) that no person engages in conduct after the making of the order by virtue of having been induced by him before the making of the order to take part or continue to take part in the industrial action.

(5) Without prejudice to any other power of the court, the court may on an application under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.

(6) For the purposes of this section an act of inducement shall be taken to be done by a trade union if it is authorised or endorsed by the union; and the provisions of section 20(2) to (4) apply for the purposes of determining whether such an act is to be taken to be 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.**]**

Textual Amendments

F355 Ss. 235A- 235C and cross heading inserted (30.8.1993) by 1993 c. 19, **s.22**; S.I. 1993/1908, art. 2(1), **Sch. 1**

[F356]235B . . . . . .

Textual Amendments

F356 S. 235B repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(6)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with Sch. 3 para. 4)

[F357]235C . . . . . .

Textual Amendments

F357 S. 235C repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(6)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with Sch. 3 para. 4)

No compulsion to work

236 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.

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Loss of unfair dismissal protection

237 Dismissal of those taking part in unofficial industrial action.

(1) An employee has no right to complain of unfair dismissal if at the time of dismissal he was taking part in an unofficial strike or other unofficial industrial action.

[[F358](1A) Subsection (1) does not apply to the dismissal of the employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal was one of those specified in **[**[F359]or under—.

(a) section 99, 100, 101A(d), 103 or 103A of the Employment Rights Act 1996 (dismissal in family, health and safety, working time, employee representative and protected disclosure cases),

(b) section 104 of that Act in its application in relation to time off under section 57A of that Act (dependants);**]][**[F360]; and a reference to a specified reason for dismissal includes a reference to specified circumstances of dismissal**]**

(2) A strike or other industrial action is unofficial in relation to an employee unless—

(a) he is a member of a trade union and the action is authorised or endorsed by that union, or

(b) he is not a member of a trade union but there are among those taking part in the industrial action members of a trade union by which the action has been authorised or endorsed.

Provided that, a strike or other industrial action shall not be regarded as unofficial if none of those taking part in it are members of a trade union.

(3) The provisions of section 20(2) apply for the purpose of determining whether industrial action is to be taken to have been authorised or endorsed by a trade union.

(4) The question whether industrial action is to be so taken in any case shall be determined by reference to the facts as at the time of dismissal.

Provided that, where an act is repudiated as mentioned in section 21, industrial action shall not thereby be treated as unofficial before the end of the next working day after the day on which the repudiation takes place.

(5) In this section the "time of dismissal" means—

(a) where the employee's contract of employment is terminated by notice, when the notice is given,

(b) where the employee's contract of employment is terminated without notice, when the termination takes effect, and

(c) where the employee is employed under a contract for a fixed term which expires without being renewed under the same contract, when that term expires;

and a "working day" means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under the [M31]Banking and Financial Dealings Act 1971.

(6) For the purposes of this section membership of a trade union for purposes unconnected with the employment in question shall be disregarded; but an employee who was a member of a trade union when he began to take part in industrial action shall continue to be treated as a member for the purpose of determining whether that action is

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unofficial in relation to him or another notwithstanding that he may in fact have ceased to be a member.

Textual Amendments

F358 S. 237(1A) inserted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 76**; S.I. 1994/1365, art. 2, **Sch.** (with art. 3(1))

F359 Words in s. 237(1A) and s. 237(1A)(a)(b) substituted for words in s. 237(1A) (15.12.1999) by 1999 c. 26, s. 9, Sch. 4 Pt. III paras. 1, **2(a)**; S.I. 1999/2830; art. 2(2), Sch. 1 Pt. II (with Sch. 3 paras. 10, 11)

F360 Words in s. 237(1A) inserted (15.12.1999) by 1999 c. 26, **s. 1**, 2(b); S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with paras. 10, 11)

Marginal Citations

M31 1971 c. 80.

238 Dismissals in connection with other industrial action.

(1) This section applies in relation to an employee who has a right to complain of unfair dismissal (the "complainant") and who claims to have been unfairly dismissed, where at the date of the dismissal—

(a) the employer was conducting or instituting a lock-out, or

(b) the complainant was taking part in a strike or other industrial action.

(2) In such a case an **[**[F361]employment tribunal**]** shall not determine whether the dismissal was fair or unfair unless it is shown—

(a) that one or more relevant employees of the same employer have not been dismissed, or

(b) that a relevant employee has before the expiry of the period of three months beginning with the date of his dismissal been offered re-engagement and that the complainant has not been offered re-engagement.

[[F362F363](2A) Subsection (2) does not apply to the dismissal of the employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal was one of those specified in **[**[F364]or under—.

(a) section 99, 100, 101A(d) or 103 of the Employment Rights Act 1996 (dismissal in family, health and safety, working time and employee representative cases),

(b) section 104 of that Act in its application in relation to time off under section 57A of that Act (dependants);**]][**[F365]; and a reference to a specified reason for dismissal includes a reference to specified circumstances of dismissal**]**

[[F362](2B) Subsection (2) does not apply in relation to an employee who is regarded as unfairly dismissed by virtue of section 238A below.**]**

(3) For this purpose "relevant employees" means—

(a) in relation to a lock-out, employees who were directly interested in the dispute in contemplation or furtherance of which the lock-out occurred, and

(b) in relation to a strike or other industrial action, those employees at the establishment of the employer at or from which the complainant works who at the date of his dismissal were taking part in the action.

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Nothing in section 237 (dismissal of those taking part in unofficial industrial action) affects the question who are relevant employees for the purposes of this section.

(4) An offer of re-engagement means an offer (made either by the original employer or by a successor of that employer or an associated employer) to re-engage an employee, either in the job which he held immediately before the date of dismissal or in a different job which would be reasonably suitable in his case.

(5) In this section "date of dismissal" means—
- (a) where the employee's contract of employment was terminated by notice, the date on which the employer's notice was given, and
- (b) in any other case, the effective date of termination.

Textual Amendments

F361 Words in s. 238(2) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F362 S. 238(2B) inserted (24.4.2000) by 1999 c. 26, s. 16, **Sch. 5 para. 2**; S.I. 2000/875, **art. 3**

F363 S. 238(2A) inserted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 77**; S.I. 1994/1365, art. 2, **Sch.** (with art. 3(1))

F364 Words in S. 238(2A) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt III para. 3**; S.I. 1999/2830, art. 2(1)(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10, 11)

F365 Words in s. 238(2A) inserted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 3**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

[F366 238A Participation in official industrial action.

(1) For the purposes of this section an employee takes protected industrial action if he commits an act which, or a series of acts each of which, he is induced to commit by an act which by virtue of section 219 is not actionable in tort.

(2) An employee who is dismissed shall be regarded for the purposes of Part X of the Employment Rights Act 1996 (unfair dismissal) as unfairly dismissed if—
- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee took protected industrial action, and
- (b) subsection (3), (4) or (5) applies to the dismissal.

(3) This subsection applies to a dismissal if it takes place within the period of eight weeks beginning with the day on which the employee started to take protected industrial action.

(4) This subsection applies to a dismissal if—
- (a) it takes place after the end of that period, and
- (b) the employee had stopped taking protected industrial action before the end of that period.

(5) This subsection applies to a dismissal if—
- (a) it takes place after the end of that period,
- (b) the employee had not stopped taking protected industrial action before the end of that period, and

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(c) the employer had not taken such procedural steps as would have been reasonable for the purposes of resolving the dispute to which the protected industrial action relates.

(6) In determining whether an employer has taken those steps regard shall be had, in particular, to—

(a) whether the employer or a union had complied with procedures established by any applicable collective or other agreement;

(b) whether the employer or a union offered or agreed to commence or resume negotiations after the start of the protected industrial action;

(c) whether the employer or a union unreasonably refused, after the start of the protected industrial action, a request that conciliation services be used;

(d) whether the employer or a union unreasonably refused, after the start of the protected industrial action, a request that mediation services be used in relation to procedures to be adopted for the purposes of resolving the dispute.

(7) In determining whether an employer has taken those steps no regard shall be had to the merits of the dispute.

(8) For the purposes of this section no account shall be taken of the repudiation of any act by a trade union as mentioned in section 21 in relation to anything which occurs before the end of the next working day (within the meaning of section 237) after the day on which the repudiation takes place.**]**

Textual Amendments

F366 S. 238A inserted (24.4.2000) by 1999 c. 26, s. 16, **Sch. 5 para. 3**; S.I. 2000/875, **art. 3**

VALID FROM 06/04/2005

[F367 238B Conciliation and mediation: supplementary provisions

(1) The matters referred to in subsection (6)(e) of section 238A are those specified in subsections (2) to (5); and references in this section to "the service provider" are to any person who provided a service mentioned in subsection (6)(c) or (d) of that section.

(2) The first matter is: whether, at meetings arranged by the service provider, the employer or, as the case may be, a union was represented by an appropriate person.

(3) The second matter is: whether the employer or a union, so far as requested to do so, co-operated in the making of arrangements for meetings to be held with the service provider.

(4) The third matter is: whether the employer or a union fulfilled any commitment given by it during the provision of the service to take particular action.

(5) The fourth matter is: whether, at meetings arranged by the service provider between the parties making use of the service, the representatives of the employer or a union answered any reasonable question put to them concerning the matter subject to conciliation or mediation.

(6) For the purposes of subsection (2) an "appropriate person" is—

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(a) in relation to the employer—

(i) a person with the authority to settle the matter subject to conciliation or mediation on behalf of the employer, or

(ii) a person authorised by a person of that type to make recommendations to him with regard to the settlement of that matter, and

(b) in relation to a union, a person who is responsible for handling on the union's behalf the matter subject to conciliation or mediation.

(7) For the purposes of subsection (4) regard may be had to any timetable which was agreed for the taking of the action in question or, if no timetable was agreed, to how long it was before the action was taken.

(8) In any proceedings in which regard must be had to the matters referred to in section 238A(6)(e)—

(a) notes taken by or on behalf of the service provider shall not be admissible in evidence;

(b) the service provider must refuse to give evidence as to anything communicated to him in connection with the performance of his functions as a conciliator or mediator if, in his opinion, to give the evidence would involve his making a damaging disclosure; and

(c) the service provider may refuse to give evidence as to whether, for the purposes of subsection (5), a particular question was or was not a reasonable one.

(9) For the purposes of subsection (8)(b) a "damaging disclosure" is —

(a) a disclosure of information which is commercially sensitive, or

(b) a disclosure of information that has not previously been disclosed which relates to a position taken by a party using the conciliation or mediation service on the settlement of the matter subject to conciliation or mediation,

to which the person who communicated the information to the service provider has not consented.**]**

Textual Amendments

F367 S. 238B inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 28(2)**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

239 Supplementary provisions relating to unfair dismissal.

(1) **[**[F368]Sections 237 to 238A**]**(loss of unfair dismissal protection in connection with industrial action) shall be construed as one with **[**[F369]Part X of the Employment Rights Act 1996**]** (unfair dismissal) **[**[F370]; but sections 108 and 109 of that Act (qualifying period and age limit) shall not apply in relation to section 238A of this Act.**]**.

(2) In relation to a complaint to which section 238 **[**[F371]or 238A**]** applies, **[**[F372]section 111(2)**]** of that Act (time limit for complaint) does not apply, but an **[**[F373]employment tribunal**]** shall not consider the complaint unless it is presented to the tribunal—

(a) before the end of the period of six months beginning with the date of the complainant's dismissal (as defined by section 238(5)), or

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(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as the tribunal considers reasonable.

(3) Where it is shown that the condition referred to in section 238(2)(b) is fulfilled (discriminatory re-engagement), the references in—

(a) **[**[F374]sections 98 to 106 of the Employment Rights Act 1996**]**, and

(b) sections 152 and 153 of this Act,

to the reason or principal reason for which the complainant was dismissed shall be read as references to the reason or principal reason he has not been offered re-engagement.

[[F375](4) In relation to a complaint under section 111 of the 1996 Act (unfair dismissal: complaint to employment tribunal) that a dismissal was unfair by virtue of section 238A of this Act—

(a) no order shall be made under section 113 of the 1996 Act (reinstatement or re-engagement) until after the conclusion of protected industrial action by any employee in relation to the relevant dispute,

(b) regulations under section 7 of the Employment Tribunals Act 1996 may make provision about the adjournment and renewal of applications (including provision requiring adjournment in specified circumstances), and

(c) regulations under section 9 of that Act may require a pre-hearing review to be carried out in specified circumstances.**]**

Textual Amendments

F368 Words in s. 239(1) substituted (24.4.2000) by 1999 c. 26, s. 16, **Sch. 5 para. 4(1)(2)**; S.I. 2000/875, **art. 3**

F369 Words in s. 239(1) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(16)(a)** (with ss. 191-195, 202)

F370 Words in s. 239(1) added (24.4.2000) by 1999 c. 26, s. 16, **Sch. 5 para. 4(1)(3)**; S.I. 2000/875, **art. 3**

F371 Words in s. 239(2) inserted (24.4.2000) by 1999 c. 26, s. 16, **Sch. 5 para. 4(1)(4)**; S.I. 2000/875, **art. 3**

F372 Words in s. 239(2) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(16)(b)** (with ss. 191-195, 202)

F373 Words in s. 239(2) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F374 Words in s. 239(3) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(16)(c)** (with ss. 191-195, 202)

F375 S. 239(4) added (24.4.2000) by 1999 c. 26, s. 16, **Sch. 5 para. 4(1)(5)**; S.I. 2000/875, **art. 3**

Criminal offences

240 Breach of contract involving injury to persons or property.

(1) A person commits an offence who wilfully and maliciously breaks a contract of service or hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be—

(a) to endanger human life or cause serious bodily injury, or

(b) to expose valuable property, whether real or personal, to destruction or serious injury.

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(2) Subsection (1) applies equally whether the offence is committed from malice conceived against the person endangered or injured or, as the case may be, the owner of the property destroyed or injured, or otherwise.

(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 2 on the standard scale or both.

(4) This section does not apply to seamen.

241 Intimidation or annoyance by violence or otherwise.

(1) A person commits an offence who, with a view to compelling another person to abstain from doing or to do any act which that person has a legal right to do or abstain from doing, wrongfully and without legal authority—
   (a) uses violence to or intimidates that person or his wife or children, or injures his property,
   (b) persistently follows that person about from place to place,
   (c) hides any tools, clothes or other property owned or used by that person, or deprives him of or hinders him in the use thereof,
   (d) watches or besets the house or other place where that person resides, works, carries on business or happens to be, or the approach to any such house or place, or
   (e) follows that person with two or more other persons in a disorderly manner in or through any street or road.

(2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.

(3) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section.

242 Restriction of offence of conspiracy: England and Wales.

(1) Where in pursuance of any such agreement as is mentioned in section 1(1) of the [M32]Criminal Law Act 1977 (which provides for the offence of conspiracy) the acts in question in relation to an offence are to be done in contemplation or furtherance of a trade dispute, the offence shall be disregarded for the purposes of that subsection if it is a summary offence which is not punishable with imprisonment.

(2) This section extends to England and Wales only.

Marginal Citations
M32 1977 c. 45.

243 Restriction of offence of conspiracy: Scotland.

(1) An agreement or combination by two or more persons to do or procure to be done an act in contemplation or furtherance of a trade dispute is not indictable as a conspiracy if that act committed by one person would not be punishable as a crime.

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(2) A crime for this purpose means an offence punishable on indictment, or an offence punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

(3) Where a person is convicted of any such agreement or combination as is mentioned above to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months or such longer time as may be prescribed by the statute for the punishment of the act when committed by one person.

(4) Nothing in this section—
- (a) exempts from punishment a person guilty of a conspiracy for which a punishment is awarded by an Act of Parliament, or
- (b) affects the law relating to riot, unlawful assembly, breach of the peace, or sedition or any offence against the State or the Sovereign.

(5) This section extends to Scotland only.

Supplementary

244 Meaning of "trade dispute" in Part V.

(1) In this Part a "trade dispute" means a dispute between workers and their employer which relates wholly or mainly to one or more of the following—
- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
- (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
- (c) allocation of work or the duties of employment between workers or groups of workers;
- (d) matters of discipline;
- (e) a worker's membership or non-membership of a trade union;
- (f) facilities for officials of trade unions; and
- (g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.

(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 as a dispute between those workers and their employer if the dispute relates to matters which—
- (a) have been referred for consideration by a joint body on which, by virtue of provision made by or under any enactment, he is represented, or
- (b) cannot be settled without him exercising a power conferred on him by or under an enactment.

(3) There is a trade dispute even though it relates to matters occurring outside the United Kingdom, so long as the person or persons whose actions in the United Kingdom are said to be in contemplation or furtherance of a trade dispute relating to matters

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occurring outside the United Kingdom are likely to be affected in respect of one or more of the matters specified in subsection (1) by the outcome of the dispute.

(4) 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 be treated as being done or made in contemplation of a trade dispute with that other, notwithstanding that because that other submits to the act or threat or accedes to the demand no dispute arises.

(5) In this section—

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

"worker", in relation to a dispute with an employer, means—

(a) a worker employed by that employer; or

(b) a person who has ceased to be so employed if his employment was terminated in connection with the dispute or if the termination of his employment was one of the circumstances giving rise to the dispute.

245 Crown employees and contracts.

Where a person holds any office or employment under the Crown on terms which do not constitute a contract of employment between that person and the Crown, those terms shall nevertheless be deemed to constitute such a contract for the purposes of—

(a) the law relating to liability in tort of a person who commits an act which—

(i) induces another person to break a contract, interferes with the performance of a contract or induces another person to interfere with its performance, or

(ii) consists in a threat that a contract will be broken or its performance interfered with, or that any person will be induced to break a contract or interfere with its performance, and

(b) the provisions of this or any other Act which refer (whether in relation to contracts generally or only in relation to contracts of employment) to such an act.

246 Minor definitions.

In this Part—

"date of the ballot" means, in the case of a ballot in which votes may be cast on more than one day, the last of those days;

[F376] . . .

"strike" means **[**[F377](except for the purposes of section 229(2))**]** any concerted stoppage of work;

"working hours", in relation to a person, means any time when under his contract of employment, or other contract personally to do work or perform services, he is required to be at work.

Textual Amendments

F376 Words in s. 246 repealed (30.8.1993) by 1993 c. 19, ss. 49(1), 51, Sch. 7 para. 26, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F377 Words in definition of

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"strike"
in s. 246 inserted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 para. 1, **6(4)**; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)

Modifications etc. (not altering text)
C67 S. 246 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

PART VI

ADMINISTRATIVE PROVISIONS

ACAS

247 ACAS.

(1) There shall continue to be a body called the Advisory, Conciliation and Arbitration Service (referred to in this Act as ACAS).

(2) ACAS is a body corporate of which the corporators are the members of its Council.

(3) Its functions, and those of its officers and servants, shall be performed on behalf of the Crown, but not so as to make it subject to directions of any kind from any Minister of the Crown as to the manner in which it is to exercise its functions under any enactment.

(4) For the purposes of civil proceedings arising out of those functions the [M33]Crown Proceedings Act 1947 applies to ACAS as if it were a government department and the [M34]Crown Suits (Scotland) Act 1857 applies to it as if it were a public department.

(5) Nothing in section 9 of the [M35]Statistics of Trade Act 1947 (restriction on disclosure of information obtained under that Act) shall prevent or penalise the disclosure to ACAS, for the purposes of the exercise of any of its functions, of information obtained under that Act by a government department.

(6) ACAS shall maintain offices in such of the major centres of employment in Great Britain as it thinks fit for the purposes of discharging its functions under any enactment.

Marginal Citations
M33 1947 c. 44.
M34 1857 c. 44.
M35 1947 c. 39.

248 The Council of ACAS.

(1) ACAS shall be directed by a Council which, subject to the following provisions, shall consist of a chairman and nine ordinary members appointed by the Secretary of State.

(2) Before appointing those ordinary members of the Council, the Secretary of State shall—

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(a) as to three of them, consult such organisations representing employers as he considers appropriate, and

(b) as to three of them, consult such organisations representing workers as he considers appropriate.

(3) The Secretary of State may, if he thinks fit, appoint a further two ordinary members of the Council (who shall be appointed so as to take office at the same time); and before making those appointments he shall—

(a) as to one of them, consult such organisations representing employers as he considers appropriate, and

(b) as to one of them, consult such organisations representing workers as he considers appropriate.

(4) The Secretary of State may appoint up to three deputy chairman who may be appointed from the ordinary members, or in addition to those members.

(5) The Council shall determine its own procedure, including the quorum necessary for its meetings.

(6) If the Secretary of State has not appointed a deputy chairman, the Council may choose a member to act as chairman in the absence or incapacity of the chairman.

(7) The validity of proceedings of the Council is not affected by any vacancy among the members of the Council or by any defect in the appointment of any of them.

249 Terms of appointment of members of Council.

(1) The members of the Council shall hold and vacate office in accordance with their terms of appointment, subject to the following provisions.

(2) [F378]. . .

Appointment as **[**[F379]chairman, or as**]** deputy chairman, or as an ordinary member of the Council, may be a full-time or part-time appointment; and the Secretary of State may, with the consent of the member concerned, vary the terms of his appointment as to whether his appointment is full-time or part-time.

(3) A person shall not be appointed to the Council for a term exceeding five years, but previous membership does not affect eligibility for re-appointment.

(4) A member may at any time resign his membership, and the chairman or a deputy chairman may at any time resign his office as such, by notice in writing to the Secretary of State.

A deputy chairman appointed in addition to the ordinary members of the Council shall on resigning his office as deputy chairman cease to be a member of the Council.

(5) If the Secretary of State is satisfied that a member—

(a) has been absent from meetings of the Council for a period longer than six consecutive months without the permission of the Council, or

(b) has become bankrupt or made an arrangement with his creditors (or, in Scotland, has had his estate sequestrated or has made a trust deed for his creditors or has made and had accepted a composition contract), or

(c) is incapacitated by physical or mental illness, or

(d) is otherwise unable or unfit to discharge the functions of a member,

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the Secretary of State may declare his office as a member to be vacant and shall notify the declaration in such manner as he thinks fit, whereupon the office shall become vacant.

If the chairman or a deputy chairman ceases to be a member of the Council, he shall also cease to be chairman or, as the case may be, a deputy chairman.

Textual Amendments

F378 Words in s. 249(2) repealed (30.8.1993) by 1993 c. 19, ss. 43(3), 51, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F379 Words in s. 249(2) inserted (30.8.1993) by 1993 c. 19, **s. 43(3)**; S.I. 1993/1908, art. 2(1), **Sch.1**

250 Remuneration, &c. of members of Council.

(1) ACAS shall pay to the members of its Council such remuneration and travelling and other allowances as may be determined by the Secretary of State.

(2) The Secretary of State may pay, or make provision for payment, to or in respect of a member of the Council such pension, allowance or gratuity on death or retirement as he may determine.

(3) Where a person ceases to be the holder of the Council otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, he may make him a payment of such amount he may determine.

(4) The approval of the Treasury is required for any determination by the Secretary of State under this section.

Modifications etc. (not altering text)

C68 S. 250: transfer of functions (1.4.1995) by virtue of S.I. 1995/269, art. 3, **Sch. para. 21**

251 Secretary, officers and staff of ACAS.

(1) ACAS may, with the approval of the Secretary of State, appoint a secretary.

The consent of the Secretary of State is required as to his terms and conditions of service.

(2) ACAS may appoint such other officers and staff as it may determine.

The consent of the Secretary of State is required as to their numbers, manner of appointment and terms and conditions of service.

(3) The Secretary of State shall not give his consent under subsection (1) or (2) without the approval of the Treasury.

(4) ACAS shall pay to the Treasury, at such times in each accounting year as may be determined by the Treasury, sums of such amounts as may be so determined as being equivalent to the increase in that year of such liabilities of his as are attributable to the provision of pensions, allowances or gratuities to or in respect of persons who are or have been in the service of ACAS in so far as that increase results from the

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service of those persons during that accounting year and to the expense to be incurred in administering those pensions, allowances or gratuities.

(5) The fixing of the common seal of ACAS shall be authenticated by the signature of the secretary of ACAS or some other person authorised by ACAS to act for that purpose.

A document purporting to be duly executed under the seal of ACAS shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.

[[F380]251A Fees for exercise of functions by ACAS.

(1) ACAS may, in any case in which it thinks it appropriate to do so, but subject to any directions under subsection (2) below, charge a fee for exercising a function in relation to any person.

(2) The Secretary of State may direct ACAS to charge fees, in accordance with the direction, for exercising any function specified in the direction, but the Secretary of State shall not give a direction under this subsection without consulting ACAS.

(3) A direction under subsection (2) above may require ACAS to charge fees in respect of the exercise of a function only in specified descriptions of case.

(4) A direction under subsection (2) above shall specify whether fees are to be charged in respect of the exercise of any specified function—
   (a) at the full economic cost level, or
   (b) at a level less than the full economic cost but not less than a specified proportion or percentage of the full economic cost.

(5) Where a direction requires fees to be charged at the full economic cost level ACAS shall fix the fee for the case at an amount estimated to be sufficient to cover the administrative costs of ACAS of exercising the function including an appropriate sum in respect of general staff costs and overheads.

(6) Where a direction requires fees to be charged at a level less than the full economic cost ACAS shall fix the fee for the case at such amount, not being less than the proportion or percentage of the full economic cost specified under subsection (4)(b) above, as it thinks appropriate (computing that cost in the same way as under subsection (5) above).

(7) No liability to pay a fee charged under this section shall arise on the part of any person unless ACAS has notified that person that a fee may or will be charged.

(8) For the purposes of this section—
   (a) a function is exercised in relation to a person who avails himself of the benefit of its exercise, whether or not he requested its exercise and whether the function is such as to be exercisable in relation to particular persons only or in relation to persons generally; and
   (b) where a function is exercised in relation to two or more persons the fee chargeable for its exercise shall be apportioned among them as ACAS thinks appropriate.**]**

Textual Amendments

F380 S. 251A inserted (30.8.1993) by 1993 c. 19, **s.44**; S.I. 1993/1908, art. 2(1), **Sch.1**

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252 General financial provisions.

(1) The Secretary of State shall pay to ACAS such sums as are approved by the Treasury and as he considers appropriate for the purpose of enabling ACAS to perform its functions.

(2) ACAS may pay to—

(a) persons appointed under section 210(2) (conciliation) who are not officers or servants of ACAS, and

(b) arbitrators or arbiters appointed by ACAS under any enactment,

such fees and travelling and other allowances as may be determined by the Secretary of State with the approval of the Treasury.

253 Annual report and accounts.

(1) ACAS shall as soon as practicable after the end of each **[**[F381]financial year**]** make a report to the Secretary of State on its activities during that year.

The Secretary of State shall lay a copy of the report before each House of Parliament and arrange for it to be published.

(2) ACAS shall keep proper accounts and proper records in relation to the accounts and shall prepare in respect of each financial year a statement of accounts, in such form as the Secretary of State may, with the approval of the Treasury, direct.

(3) ACAS shall not later than 30th November following the end of the financial year to which the statement relates, send copies of the statement to the Secretary of State and to the Comptroller and Auditor General.

(4) The Comptroller and Auditor General shall examine, certify and report on each such statement and shall lay a copy of the statement and of his report before each House of Parliament.

Textual Amendments

F381 Words in s. 253(1) substituted (25.10.1999) by 1999 c. 26, **s. 27(1)**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 3)

The Certification Officer

254 The Certification Officer.

(1) There shall continue to be an officer called the Certification Officer.

(2) The Certification Officer shall be appointed by the Secretary of State after consultation with ACAS.

(3) The Certification Officer may appoint one or more assistant certification officers and shall appoint an assistant certification officer for Scotland.

(4) The Certification Officer may delegate to an assistant certification officer such functions as he thinks appropriate, and in particular may delegate to the assistant certification officer for Scotland such functions as he thinks appropriate in relation to organisations whose principal office is in Scotland.

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References to the Certification Officer in enactments relating to his functions shall be construed accordingly.

(5) ACAS shall provide for the Certification Officer the requisite staff (from among the officers and servants of ACAS) and the requisite accommodation, equipment and other facilities.

[[F382](5A) Subject to subsection (6), ACAS shall pay to the Certification Officer such sums as he may require for the performance of any of his functions.**]**

(6) The Secretary of State shall pay to the Certification Officer such sums as he may require for making payments under the scheme under section 115 (payments towards expenditure in connection with secret ballots).

Textual Amendments

F382 S. 254(5A) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.78**; S.I. 1993/1908, art. 2(1), **Sch. 1**

255 Remuneration, &c. of Certification Officer and assistants.

(1) ACAS shall pay to the Certification Officer and any assistant certification officer such remuneration and travelling and other allowances as may be determined by the Secretary of State.

(2) The Secretary of State may pay, or make provision for payment, to or in respect of the Certification Officer and any assistant certification officer such pension, allowance or gratuity on death or retirement as he may determine.

(3) Where a person ceases to be the Certification Officer or an assistant certification officer otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, he may make him a payment of such amount he may determine.

(4) The approval of the Treasury is required for any determination by the Secretary of State under this section.

256 Procedure before the Certification Officer.

(1) Except in relation to matters as to which express provision is made by or under an enactment, the Certification Officer may regulate the procedure to be followed—

(a) on any application or complaint made to him, or

(b) where his approval is sought with respect to any matter.

[[F383](2) He shall in particular make provision about the disclosure, and restriction of the disclosure, of the identity of an individual who has made or is proposing to make any such application or complaint.

(2A) Provision under subsection (2) shall be such that if the application or complaint relates to a trade union—

(a) the individual's identity is disclosed to the union unless the Certification Officer thinks the circumstances are such that it should not be so disclosed;

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(b) the individual's identity is disclosed to such other persons (if any) as the Certification Officer thinks fit.]

(3) The Secretary of State may, with the consent of the Treasury, make a scheme providing for the payment by the Certification Officer to persons of such sums as may be specified in or determined under the scheme in respect of expenses incurred by them for the purposes of, or in connection with, their attendance at hearings held by him in the course of carrying out his functions.

[F384](4) . . . . . .

Textual Amendments

F383 S. 256(2)(2A) substituted for s. 256(2) (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **22**

F384 S. 256(4) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

VALID FROM 06/04/2005

[[F385]256ZA Striking out

(1) At any stage of proceedings on an application or complaint made to the Certification Officer, he may—

(a) order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,

(b) order anything in the application or complaint, or in any response, to be amended or struck out on those grounds, or

(c) order the application or complaint, or any response, to be struck out on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or complainant or (as the case may be) respondent has been scandalous, vexatious, or unreasonable.

(2) The Certification Officer may order an application or complaint made to him to be struck out for excessive delay in proceeding with it.

(3) An order under this section may be made on the Certification Officer's own initiative and may also be made—

(a) if the order sought is to strike out an application or complaint, or to amend or strike out anything in an application or complaint, on an application by the respondent, or

(b) if the order sought is to strike out any response, or to amend or strike out anything in any response, on an application by the person who made the application or complaint mentioned in subsection (1).

(4) Before making an order under this section, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.

(5) Subsection (4) shall not be taken to require the Certification Officer to send a notice under that subsection if the party against whom it is proposed that the order under this section should be made has been given an opportunity to show cause orally why the order should not be made.

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(6) Nothing in this section prevents the Certification Officer from making further provision under section 256(1) about the striking out of proceedings on any application or complaint made to him.

(7) An appeal lies to the Employment Appeal Tribunal on any question of law arising from a decision of the Certification Officer under this section.

(8) In this section—

"response" means any response made by a trade union or other body in the exercise of a right to be heard, or to make representations, in response to the application or complaint;

"respondent" means any trade union, or other body, that has such a right.**]**

Textual Amendments

F385 S. 256ZA inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 48**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

[[F386]256A Vexatious litigants.

(1) The Certification Officer may refuse to entertain any application or complaint made to him under a provision of Chapters III to VIIA of Part I by a vexatious litigant.

(2) The Certification Officer must give reasons for such a refusal.

(3) Subsection (1) does not apply to a complaint under section 37E(1)(b) or to an application under section 41.

(4) For the purposes of subsection (1) a vexatious litigant is a person who is the subject of—

(a) an order which is made under section 33(1) of the [M36]Employment Tribunals Act 1996 and which remains in force,

(b) a civil proceedings order or an all proceedings order which is made under section 42(1) of the [M37]Supreme Court Act 1981 and which remains in force,

(c) an order which is made under section 1 of the [M38]Vexatious Actions (Scotland) Act 1898, or

(d) an order which is made under section 32 of the [M39]Judicature (Northern Ireland) Act 1978.**]**

Textual Amendments

F386 Ss. 256A, 256B inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **23**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

Marginal Citations

M36 1996 c. 17.
M37 1981 c. 54.
M38 1898 c. 35.
M39 1978 c. 23.

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Trade Union and Labour Relations (Consolidation) Act 1992 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F387 256B Vexatious litigants: applications disregarded.

(1) For the purposes of a relevant enactment an application to the Certification Officer shall be disregarded if—
  (a) it was made under a provision mentioned in the relevant enactment, and
  (b) it was refused by the Certification Officer under section 256A(1).

(2) The relevant enactments are sections 26(8), 31(7), 45C(5B), 56(8), 72A(10), 81(8) and 108A(13).]

Textual Amendments

F387 Ss. 256A, 256B inserted (25.10.1999) by 1999 c. 26, s. 29, Sch. 6 paras. 1, **23**; S.I. 1999/2830, art. 2(1), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

257 Custody of documents submitted under earlier legislation.

(1) The Certification Officer shall continue to have custody of the annual returns, accounts, copies of rules and other documents submitted for the purposes of—
  (a) the Trade Union Acts 1871 to 1964,
  (b) the M40 Industrial Relations Act 1971, or
  (c) the M41 Trade Union and Labour Relations Act 1974,

  of which he took custody under section 9 of the M42 Employment Protection Act 1975.

(2) He shall keep available for public inspection (either free of charge or on payment of a reasonable charge) at all reasonable hours such of those documents as were available for public inspection in pursuance of any of those Acts.

Marginal Citations

M40 1971 c. 72.
M41 1974 c. 52.
M42 1975 c. 71.

258 Annual report and accounts.

(1) The Certification Officer shall, as soon as practicable after the end of each [F388 financial year], make a report of his activities during that year to ACAS and to the Secretary of State.

  The Secretary of State shall lay a copy of the report before each House of Parliament and arrange for it to be published.

(2) The accounts prepared by ACAS in respect of any financial year shall show separately any sums disbursed to or on behalf of the Certification Officer in consequence of the provisions of this Part.

Textual Amendments

F388 Words in s. 258(1) substituted (25.10.1999) by 1999 c. 26, s. 29, **Sch. 6**, paras. 1, 24; S.I. 1999/2830, art. 2(1)(2), **Sch. 1 Pt. I** (with Sch. 3 para. 5)

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Central Arbitration Committee

259 The Central Arbitration Committee.

(1) There shall continue to be a body called the Central Arbitration Committee.

(2) The functions of the Committee shall be performed on behalf of the Crown, but not so as to make it subject to directions of any kind from any Minister of the Crown as to the manner in which it is to exercise its functions.

(3) ACAS shall provide for the Committee the requisite staff (from among the officers and servants of ACAS) and the requisite accommodation, equipment and other facilities.

260 The members of the Committee.

[[F389](1) The Central Arbitration Committee shall consist of members appointed by the Secretary of State.

[F389](2) The Secretary of State shall appoint a member as chairman, and may appoint a member as deputy chairman or members as deputy chairmen.

[F389](3) The Secretary of State may appoint as members only persons experienced in industrial relations, and they shall include some persons whose experience is as representatives of employers and some whose experience is as representatives of workers.

[F389](3A) Before making an appointment under subsection (1) or (2) the Secretary of State shall consult ACAS and may consult other persons.**]**

(4) At any time when the chairman of the Committee is absent or otherwise incapable of acting, or there is a vacancy in the office of chairman, and the Committee has a deputy chairman or deputy chairmen—

(a) the deputy chairman, if there is only one, or

(b) if there is more than one, such of the deputy chairmen as they may agree or in default of agreement as the Secretary of State may direct,

may perform any of the functions of chairman of the Committee.

(5) At any time when every person who is chairman or deputy chairman is absent or otherwise incapable of acting, or there is no such person, such member of the Committee as the Secretary of State may direct may perform any of the functions of the chairman of the Committee.

(6) The validity of any proceedings of the Committee shall not be affected by any vacancy among the members of the Committee or by any defect in the appointment of a member of the Committee.

Textual Amendments

F389 S. 260(1)-(3A) substituted for s. 260(1)-(3) (22.2.2000) by 1999 c. 26, **s. 24**; S.I. 2000/420, **art. 2** (with art. 3)

261 Terms of appointment of members of Committee.

(1) The members of the Central Arbitration Committee shall hold and vacate office in accordance with their terms of appointment, subject to the following provisions.

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(2) A person shall not be appointed to the Committee for a term exceeding five years, but previous membership does not affect eligibility for re-appointment.

(3) The Secretary of State may, with the consent of the member concerned, vary the terms of his appointment as to whether he is a full-time or part-time member.

(4) A member may at any time resign his membership, and the chairman or a deputy chairman may at any time resign his office as such, by notice in writing to the Secretary of State.

(5) If the Secretary of State is satisfied that a member—

(a) has become bankrupt or made an arrangement with his creditors (or, in Scotland, has had his estate sequestrated or has made a trust deed for his creditors or has made and had accepted a composition contract), or

(b) is incapacitated by physical or mental illness, or

(c) is otherwise unable or unfit to discharge the functions of a member,

the Secretary of State may declare his office as a member to be vacant and shall notify the declaration in such manner as he thinks fit, whereupon the office shall become vacant.

(6) If the chairman or a deputy chairman ceases to be a member of the Committee, he shall also cease to be chairman or, as the case may be, a deputy chairman.

262 Remuneration, &c. of members of Committee.

(1) ACAS shall pay to the members of the Central Arbitration Committee such remuneration and travelling and other allowances as may be determined by the Secretary of State.

(2) The Secretary of State may pay, or make provision for payment, to or in respect of a member of the Committee such pension, allowance or gratuity on death or retirement as he may determine.

(3) Where a person ceases to be the holder of the Committee otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, he may make him a payment of such amount he may determine.

(4) The approval of the Treasury is required for any determination by the Secretary of State under this section.

263 Proceedings of the Committee.

(1) For the purpose of discharging its functions in any particular case the Central Arbitration Committee shall consist of the chairman and such other members as the chairman may direct:

Provided that, it may sit in two or more divisions constituted of such members as the chairman may direct, and in a division in which the chairman does not sit the functions of the chairman shall be performed by a deputy chairman.

(2) The Committee may, at the discretion of the chairman, where it appears expedient to do so, call in the aid of one or more assessors, and may settle the matter wholly or partly with their assistance.

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(3) The Committee may at the discretion of the chairman sit in private where it appears expedient to do so.

(4) If in any case the Committee cannot reach a unanimous decision on its award, the chairman shall decide the matter acting with the full powers of an umpire or, in Scotland, an oversman.

(5) Subject to the above provisions, the Committee shall determine its own procedure.

(6) **[**[F390]Part I of the Arbitration Act 1996**]** (general provisions as to arbitration) and section 3 of the [M43]Administration of Justice (Scotland) Act 1972 (power of arbiter to state case to Court of Session) do not apply to proceedings before the Committee.

[[F391](7) In relation to the discharge of the Committee's functions under Schedule A1—

(a) section 263A and subsection (6) above shall apply, and

(b) subsections (1) to (5) above shall not apply.**]**

Textual Amendments

F390 Words in s. 263(6) substituted (31.1.1997) by 1996 c. 23, s. 107(1), **Sch. 3 para. 56** (with s. 81(2)); S.I. 1996/3146, **art. 3**

F391 S. 263(7) inserted (6.6.2000) by 1999 c. 26, **s. 25(1)(2)**; S.I. 2000/1338, **art. 2**

Marginal Citations

M43 1972 c. 59.

[[F392]**263A Proceedings of the Committee under Schedule A1.**

(1) For the purpose of discharging its functions under Schedule A1 in any particular case, the Central Arbitration Committee shall consist of a panel established under this section.

(2) The chairman of the Committee shall establish a panel or panels, and a panel shall consist of these three persons appointed by him—

(a) the chairman or a deputy chairman of the Committee, who shall be chairman of the panel;

(b) a member of the Committee whose experience is as a representative of employers;

(c) a member of the Committee whose experience is as a representative of workers.

(3) The chairman of the Committee shall decide which panel is to deal with a particular case.

(4) A panel may at the discretion of its chairman sit in private where it appears expedient to do so.

(5) If—

(a) a panel cannot reach a unanimous decision on a question arising before it, and

(b) a majority of the panel have the same opinion,

the question shall be decided according to that opinion.

(6) If—

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(a) a panel cannot reach a unanimous decision on a question arising before it, and
(b) a majority of the panel do not have the same opinion,

the chairman of the panel shall decide the question acting with the full powers of an umpire or, in Scotland, an oversman.

(7) Subject to the above provisions, a panel shall determine its own procedure.**]**

Textual Amendments
F392 S. 263A inserted (6.6.2000) by 1999 c. 26, **ss. 25(1)(3)**; S.I. 2000/1338, **art. 2(d)**

264 Awards of the Committee.

(1) The Central Arbitration Committee may correct in any award **[**[F393],or in any decision or declaration of the Committee under Schedule A1,**]** any clerical mistake or error arising from an accidental slip or omission.

(2) If a question arises as to the interpretation of an award of the Committee **[**[F394]or of a decision or declaration of the Committee under Schedule A1,**]**, any party may apply to the Committee for a decision; and the Committee shall decide the question after hearing the parties or, if the parties consent, without a hearing, and shall notify the parties.

(3) Decisions of the Committee in the exercise of any of its functions shall be published.

Textual Amendments
F393 Words in s. 264(1) inserted (6.6.2000) by 1999 c. 26, **s. 25(1)(4)(a)**; S.I. 2000/1338, **art. 2(d)**
F394 Words in s. 264(2) inserted (6.6.2000) by 1999 c. 26, **s. 25(1)(4)(b)**; S.I. 2000/1338, **art. 2(d)**

265 Annual report and accounts.

(1) ACAS shall, as soon as practicable after the end of each **[**[F395]financialyear**]**, make a report to the Secretary of State on the activities of the Central Arbitration Committee during that year.

For that purpose the Committee shall, as soon as practicable after the end of each calendar year, transmit to ACAS an account of its activities during that year.

(2) The accounts prepared by ACAS in respect of any financial year shall show separately any sums disbursed to or on behalf of the Committee in consequence of the provisions of this Part.

Textual Amendments
F395 Words in s. 265(1) substituted (25.10.1999) by 1999 c. 26, **s. 27(2)**; S.I. 1999/2830, **art. 2(1) Sch. 1 Pt. I** (with Sch. 3 para. 3)

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F396 . . .

Textual Amendments

F396 S. 266 and the cross heading immediately preceding it repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(6)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with Sch. 3 para. 4)

F397266 . . . . . .

Textual Amendments

F397 S. 266 and cross heading immdiately preceding it repealed (25.10.2001) by 1999 c. 26, s. 44, **Sch. 9(6)**; S.I. 1999/2830, art. 2(1), **Sch. 2 Pt. I**

F398267 .

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Textual Amendments

F398 S. 267 repealed (25.10.1999) by 1999 C. 26, s. 44, Sch. 9(6); S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with Sch. 3 para. 4)

F399268 .

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Textual Amendments

F399 S. 268 repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(6)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with Sch. 3 para. 4)

F400269 .

. . . . . .

Textual Amendments

F400 S. 269 repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(6)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with Sch. 3 para. 4)

F401270 .

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Textual Amendments

F401 S. 270 repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(6)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with Sch. 3 para. 4)

[F402]271 .

. . . . . .

Textual Amendments

F402 S. 271 repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(6)**; S.I. 1999/2830, art. 2(3), **Sch. 2**, Pt. I (with Sch. 3 para. 4)

Supplementary

272 Meaning of financial year.

In this Part financial year means the twelve months ending with 31st March.

PART VII

MISCELLANEOUS AND GENERAL

Crown employment, etc.

273 Crown employment.

(1) The provisions of this Act have effect (except as mentioned below) in relation to Crown employment and persons in Crown employment as in relation to other employment and other workers or employees.

(2) The following provisions are excepted from subsection (1)—

[[F403]section 87(4)(b) (power of tribunal**]** to make order in respect of employer's failure to comply with duties as to union contributions);

sections 184 and 185 (remedy for failure to comply with declaration as to disclosure of information);

Chapter II of Part IV (procedure for handling redundancies).

(3) In this section Crown employment means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by an enactment.

(4) For the purposes of the provisions of this Act as they apply in relation to Crown employment or persons in Crown employment—

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(a) employee and contract of employment mean a person in Crown employment and the terms of employment of such a person (but subject to subsection (5) below);

(b) dismissal means the termination of Crown employment;

F404(c) . . . . . .

(d) the reference in 182(1)(e) (disclosure of information for collective bargaining: restrictions on general duty) to the employer's undertaking shall be construed as a reference to the national interest; and

(e) any other reference to an undertaking shall be construed, in relation to a Minister of the Crown, as a reference to his functions or (as the context may require) to the department of which he is in charge, and in relation to a government department, officer or body shall be construed as a reference to the functions of the department, officer or body or (as the context may require) to the department, officer or body.

(5) Sections 137 to 143 (rights in relation to trade union membership: access to employment) apply in relation to Crown employment otherwise than under a contract only where the terms of employment correspond to those of a contract of employment.

(6) This section has effect subject to section 274 (armed forces) and section 275 (exemption on grounds of national security).

Textual Amendments

F403 Words in s. 273(2) substituted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 8**; S.I. 1998/1658, art. 2(1), **Sch.**

F404 S. 273(4)(c) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

274 Armed forces.

(1) Section 273 (application of Act to Crown employment) does not apply to service as a member of the naval, military or air forces of the Crown.

(2) But that section applies to employment by an association established for the purposes of **[**F405Part XI of the Reserve Forces Act 1996**]** (territorial, auxiliary and reserve forces associations) as it applies to employment for the purposes of a government department.

Textual Amendments

F405 Words in s. 274 substituted (1.4.1997) by 1996 c. 14, s. 131(1), **Sch. 10 para. 24** (with s. 72(5)); S.I. 1997/305, **art. 2(1)**

275 Exemption on grounds of national security.

(1) Section 273 (application of Act to Crown employment) does not apply to employment in respect of which there is in force a certificate issued by or on behalf of a Minister of the Crown certifying that employment of a description specified in the certificate, or the employment of a particular person so specified, is (or, at a time specified in the certificate, was) required to be excepted from that section for the purpose of safeguarding national security.

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(2) A document purporting to be such a certificate shall, unless the contrary is proved, be deemed to be such a certificate.

276 Further provision as to Crown application.

(1) Section 138 (refusal of service of employment agency on grounds related to union membership), and the other provisions of Part III applying in relation to that section, bind the Crown so far as they relate to the activities of an employment agency in relation to employment to which those provisions apply.

This does not affect the operation of those provisions in relation to Crown employment by virtue of section 273.

(2) Sections 144 and 145 (prohibition of union membership requirements) and sections 186 and 187 (prohibition of union recognition requirements) bind the Crown.

House of Lords and House of Commons staff

277 House of Lords staff.

(1) **[**[F406]The provisions of this Act (except those specified below)**]** apply in relation to employment as a relevant member of the House of Lords staff as in relation to other employment.

[[F407](1A) The following provisions are excepted from subsection (1)—

sections 184 and 185 (remedy for failure to comply with declaration as to disclosure of information),

Chapter II of Part IV (procedure for handling redundancies).**]**

(2) Nothing in any rule of law or the law or practice of Parliament prevents a person from bringing **[**[F408]a civil employment claim before the court or from bringing**]** before an **[**[F409]employment tribunal**]** proceedings of any description [F410]. . . which could be brought before such a tribunal in relation to other employment.

[[F411](2A) For the purposes of the application of the other provisions of this Act as they apply by virtue of this section—

(a) the reference in section 182(1)(e) (disclosure of information for collective bargaining: restrictions) to a person's undertaking shall be construed as a reference to the national interest or, if the case so requires, the interests of the House of Lords; and

(b) any other reference to an undertaking shall be construed as a reference to the House of Lords.**]**

[[F412](3) In this section—

relevant member of the House of Lords staff means any person who is employed under a contract of employment with the Corporate Officer of the House of Lords;

civil employment claim means a claim arising out of or relating to a contract of employment or any other contract connected with employment, or a claim in tort arising in connection with a person's employment; and

the court means the High Court or a county court.**]**

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Textual Amendments

F406 Words in s. 277(1) substituted (30.11.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para. 12(a)**; S.I. 1993/2503, art. 2(2), **Sch. 2**

F407 S. 277(1A) inserted (30.11.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para. 12(b)**; S.I. 1993/2503, art. 2(2), **Sch. 2**

F408 Words in s. 277(2) inserted (30.11.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para. 12(c)**; S.I. 1993/2503, art. 2(2), **Sch. 2**

F409 Words in s. 277(2) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F410 Words in s. 277(2) repealed (30.11.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/2503, art. 2(2), **Sch. 2**

F411 S. 277(2A) inserted (30.11.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para. 12(d)**; S.I. 1993/2503, art. 2(2), **Sch. 2**

F412 S. 277(3) substituted (30.11.1993) for s. 277(3)-(6) by 1993 c. 19, s. 49(1), **Sch. 7 para. 12(e)**; S.I. 1993/2503, art. 2(2), **Sch. 2**

278 House of Commons staff.

(1) The provisions of this Act (except those specified below) apply in relation to employment as a relevant member of the House of Commons staff as in relation to other employment.

(2) The following provisions are excepted from subsection (1)—

sections 184 and 185 (remedy for failure to comply with declaration as to disclosure of information),

Chapter II of Part IV (procedure for handling redundancies).

[[F413](2A) Nothing in any rule of law or the law or practice of Parliament prevents a relevant member of the House of Commons staff from bringing a civil employment claim before the court or from bringing before an **[**[F414]employment tribunal**]]** proceedings of any description which could be brought before such a tribunal by any person who is not such a member.

(3) In this section relevant member of the House of Commons staff has the same meaning as in section 139 of the [M44]Employment Protection (Consolidation) Act 1978.

[[F415]civil employment claim means a claim arising out of or relating to a contract of employment or any other contract connected with employment, or a claim in tort arising in connection with a person's employment; and

the court means the High Court or the county court.**]**

(4) For the purposes of the other provisions of this Act as they apply by virtue of this section—

(a) employee and contract of employment include a relevant member of the House of Commons staff and the terms of employment of any such member (but subject to subsection (5) below);

(b) dismissal includes the termination of any such member's employment;

(c) the reference in **[**[F416]section**]** 182(1)(e) (disclosure of information for collective bargaining: restrictions on general duty) to the employer's undertaking shall be construed as a reference to the national interest or, if the case so requires, the interests of the House of Commons; and

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(d) any other reference to an undertaking shall be construed as a reference to the House of Commons.

(5) Sections 137 to 143 (access to employment) apply by virtue of this section in relation to employment otherwise than under a contract only where the terms of employment correspond to those of a contract of employment.

(6) **[**[F417]Subsections (6) to (12) of section 195 of the Employment Rights Act 1996**]** (person to be treated as employer of House of Commons staff) apply, with any necessary modifications, for the purposes of this section.

Textual Amendments

F413 S. 278(2A) inserted (30.11.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 85(a)**; S.I. 1993/2503, art. 2(2), **Sch. 2**

F414 Words in s. 278(2A) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F415 Words in s. 278(3) inserted (30.11.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 85(b)**; S.I. 1993/2503, art. 2(2), **Sch. 2**

F416 Words in s. 278(4)(c) inserted (30.8.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para. 27**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F417 Words in s. 278(6) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(17)** (with ss. 191-195, 202)

Marginal Citations

M44 1978 c. 44.

Health service practitioners

279 Health service practitioners.

In this Act worker includes an individual regarded in his capacity as one who works or normally works or seeks to work as a person **[**[F418]performing personal medical services or personal dental services or**]** providing general medical services, general dental services, general ophthalmic services or pharmaceutical services in accordance with arrangements made—

(a) by a **[**[F419]Health Authority**]** under section **[**[F420]28C,**]** 29, 35, 38 or 41 of the [M45]National Heath Service Act 1977, or

(b) by a Health Board under section **[**[F421]17C,**]** 19, 25, 26, or 27 of the [M46]National Health Service (Scotland) Act 1978;

and employer, in relation to such an individual, regarded in that capacity, means that authority or board.

Textual Amendments

F418 Words in s. 279 inserted (1.4.1998 subject to art. 3 of S.I. 1998/631) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 67(a)**; S.I. 1998/631, **art. 2(1)**

F419 Words in s. 279(a) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. III para. 122** (with Sch. 2 para. 6)

F420 Words in s. 279 inserted (1.4.1998 subject to art. 3 of S.I. 1998/631) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 67(b)**; S.I. 1998/631, **art. 2(1)**

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F421 Words in s. 279 inserted (1.4.1998 subject to art. 3 of S.I. 1998/631) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 67(c)**; S.I. 1998/631, **art. 2(1)**

Marginal Citations

M45 1977 c. 49.

M46 1978 c. 29.

Police service

280 Police service.

(1) In this Act employee or worker does not include a person in police service; and the provisions of sections 137 and 138 (rights in relation to trade union membership: access to employment) do not apply in relation to police service.

(2) Police service means service as a member of any constabulary maintained by virtue of an enactment, or in any other capacity by virtue of which a person has the powers or privileges of a constable.

Modifications etc. (not altering text)

C69 S. 280 modified (1.10.2002 for specified purposes and otherwise 1.4.2004) by 2002 c. 30, s. 13, Sch. 3 Pt. 3 para. 19(5)(a) (with s. 14(1)); S.I. 2002/2306, art. 4(e); S.I. 2004/913, **art. 2(d)**

Excluded classes of employment

[F422]281 . . . . . .

Textual Amendments

F422 S. 281 repealed (6.2.1995) by S.I. 1995/31, regs. 5, 6, **Sch.**

282 Short-term employment.

(1) The provisions of Chapter II of Part IV (procedure for handling redundancies) do not apply to employment—

(a) under a contract for a fixed term of three months or less, or

(b) under a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months,

where the employee has not been continuously employed for a period of more than three months.

[[F423](2) Chapter I of Part XIV of the Employment Rights Act 1996 (computation of period of continuous employment), and any provision modifying or supplementing that Chapter for the purposes of that Act, apply for the purposes of this section.**]**

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Textual Amendments

F423 S. 282(2) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(18)** (with ss. 191-195, 202)

[F424]283 . . . . . .

Textual Amendments

F424 S. 283 repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

284 Share fishermen.

The following provisions of this Act do not apply to employment as master or as member of the crew of a fishing vessel where the employee is remunerated only by a share in the profits or gross earnings of the vessel—

In Part III (rights in relation to trade union membership and activities)—

sections 137 to 143 (access to employment),

sections 146 to 151 (action short of dismissal), and

sections 168 to 173 (time off for trade union duties and activities;

In Part IV, Chapter II (procedure for handling redundancies).

285 Employment outside Great Britain.

(1) The following provisions of this Act do not apply to employment where under his contract of employment an employee works, or in the case of a prospective employee would ordinarily work, outside Great Britain—

In Part III (rights in relation to trade union membership and activities)—

sections 137 to 143 (access to employment),

sections 146 to 151 (action short of dismissal), and

sections 168 to 173 (time off for trade union duties and activities;

In Part IV, **[**[F425]sections 193 and 194 (duty to notify Secretary of State of certain redundancies)**]**.

(2) For the purposes of subsection (1) employment on board a ship registered in the United Kingdom shall be treated as employment where under his contract a person ordinarily works in Great Britain unless—

(a) the ship is registered at a port outside Great Britain, or

(b) the employment is wholly outside Great Britain, or

(c) the employee or, as the case may be, the person seeking employment or seeking to avail himself of a service of an employment agency, is not ordinarily resident in Great Britain.

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Textual Amendments

F425 Words in s. 285(1) substituted (25.10.1999) by 1999 c. 26, **s. 32(1)**; S.I. 1999/2830, **art. 2(1) Sch. 1 Pt. I** (with Sch. 3 para. 7)

286 Power to make further provision as to excluded classes of employment.

(1) This section applies in relation to the following provisions—

In Part III (rights in relation to trade union membership and activities), sections 146 to 151 (action short of dismissal),

In Part IV, Chapter II (procedure for handling redundancies), and

In Part V (industrial action), section 237 (dismissal of those taking part in unofficial industrial action).

(2) The Secretary of State may by order made by statutory instrument provide that any of those provisions—

(a) shall not apply to persons or to employment of such classes as may be prescribed by the order, or

(b) shall apply to persons or employments of such classes as may be prescribed by the order subject to such exceptions and modifications as may be so prescribed,

and may vary or revoke any of the provisions of sections 281 to 285 above (excluded classes of employment) so far as they relate to any such provision.

(3) Any such order shall be made by statutory instrument and may contains such incidental, supplementary or transitional provisions as appear to the Secretary of State to be necessary or expedient.

(4) No such order shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

Offshore employment

287 Offshore employment.

(1) In this Act offshore employment means employment for the purposes of activities—

(a) in the territorial waters of the United Kingdom, or

(b) connected with the exploration of the sea-bed or subsoil, or the exploitation of their natural resources, in the United Kingdom sector of the continental shelf, or

(c) connected with the exploration or exploitation, in a foreign sector of the continental shelf, of a cross-boundary petroleum field.

(2) Her Majesty may by Order in Council provide that—

(a) the provisions of this Act, and

(b) any Northern Ireland legislation making provision for purposes corresponding to any of the purposes of this Act,

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apply, to such extent and for such purposes as may be specified in the Order and with or without modification, to or in relation to a person in offshore employment or, in relation to sections 137 to 143 (access to employment), a person seeking such employment.

(3) An Order in Council under this section—

(a) may make different provision for different cases;

(b) may provide that the enactments to which this section applies, as applied, apply—

(i) to individuals whether or not they are British subjects, and

(ii) to bodies corporate whether or not they are incorporated under the law of a part of the United Kingdom,

and apply notwithstanding that the application may affect the activities of such an individual or body outside the United Kingdom;

(c) may make provision for conferring jurisdiction on any court or class of court specified in the Order, or on **[**[F426]employment tribunals**]**, in respect of offences, causes of action or other matters arising in connection with offshore employment;

(d) may provide that the enactments to which this section applies apply in relation to a person in offshore employment in a part of the areas referred to in subsection (1)(a) and (b);

(e) may exclude from the operation of section 3 of the [M47]Territorial Waters Jurisdiction Act 1878 (consents required for prosecutions) proceedings for offences under the enactments to which this section applies in connection with offshore employment;

(f) may provide that such proceedings shall not be brought without such consent as may be required by the Order;

(g) may modify or exclude any of sections 281 to 285 (excluded classes of employment) or any corresponding provision of Northern Ireland legislation.

[[F427](3A) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

(4) Any jurisdiction conferred on a court or tribunal under this section is without prejudice to jurisdiction exercisable apart from this section, by that or any other court or tribunal.

(5) In this section—

cross-boundary petroleum field means a petroleum field that extends across the boundary between the United Kingdom sector of the continental shelf and a foreign sector;

foreign sector of the continental shelf means an area outside the territorial waters of any state, within which rights with respect to the sea-bed and subsoil and their natural resources are exercisable by a state other than the United Kingdom;

petroleum field means a geological structure identified as an oil or gas field by the Order in Council concerned; and

United Kingdom sector of the continental shelf means the areas designated under section 1(7) of the [M48]Continental Shelf Act 1964.

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Textual Amendments

F426 Words in s. 287(3)(c) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(b)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F427 S. 287(3) inserted (25.10.1999) by 1999 c. 26, **s. 32(2)**; S.I. 1999/2830, **art. 2(1)(2) Sch. 1 Pt. I** (with Sch. 3 para. 7)

Marginal Citations

M47 1878 c. 73.

M48 1964 c. 29.

Contracting out, &c.

288 Restriction on contracting out.

(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

(a) to exclude or limit the operation of any provision of this Act, or

(b) to preclude a person from bringing—

(i) proceedings before an **[**[F428]employment tribunal**]** or the Central Arbitration Committee under any provision of this Act, or

(ii) an application to the Employment Appeal Tribunal under section 67 (remedy for infringement of right not to be unjustifiably disciplined) or section 176 (compensation for [F429]. . . exclusion or expulsion).

(2) Subsection (1) does not apply to an agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under— **[**[F430]section 18 of the **[**[F428]Employment Tribunals Act 1996**]** (conciliation)**]**

[[F431](2A) Subsection (1) does not apply to an agreement to refrain from instituting or continuing any proceedings, other than excepted proceedings, specified in **[**[F432]subsection (1)(b) of that section**]]** before an **[**[F428]employment tribunal**]** if the conditions regulating compromise agreements under this Act are satisfied in relation to the agreement.

(2B) The conditions regulating compromise agreements under this Act are that—

(a) the agreement must be in writing;

(b) the agreement must relate to the particular **[**[F433]proceedings**]**;

(c) the complainant must have received **[**[F434]advice from a relevant independent adviser**]** as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his rights before an **[**[F428]employment tribunal**]**;

(d) there must be in force, when the adviser gives the advice, a **[**[F435]contract of insurance, or an indemnity provided for members of a profession or professional body,**]** covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;

(e) the agreement must identify the adviser; and

(f) the agreement must state that the conditions regulating compromise agreements under this Act are satisfied.

(2C) The proceedings excepted from subsection (2A) are proceedings on a complaint of non-compliance with section 188.

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(3) Subsection (1) does not apply—

(a) to such an agreement as is referred to in section 185(5)(b) or (c) to the extent that it varies or supersedes an award under that section;

(b) to any provision in a collective agreement excluding rights under Chapter II of Part IV (procedure for handling redundancies), if an order under section 198 is in force in respect of it.

[[F436](4) A person is a relevant independent adviser for the purposes of subsection (2B)(c)—

(a) if he is a qualified lawyer,

(b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,

(c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or

(d) if he is a person of a description specified in an order made by the Secretary of State.

(4A) But a person is not a relevant independent adviser for the purposes of subsection (2B)(c) in relation to the complainant—

(a) if he is, is employed by or is acting in the matter for the other party or a person who is connected with the other party,

(b) in the case of a person within subsection (4)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,

(c) in the case of a person within subsection (4)(c), if the complainant makes a payment for the advice received from him, or

(d) in the case of a person of a description specified in an order under subsection (4)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(4B) In subsection (4)(a) qualified lawyer means—

(a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the [M49]Courts and Legal Services Act 1990), and

(b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(4C) An order under subsection (4)(d) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) For the purposes of subsection (4A) any two persons are to be treated as connected—

(a) if one is a company of which the other (directly or indirectly) has control, or

(b) if both are companies of which a third person (directly or indirectly) has control.**]**

[[F437](6) An agreement under which the parties agree to submit a dispute to arbitration—

(a) shall be regarded for the purposes of subsections (2) and (2A) as being an agreement to refrain from instituting or continuing proceedings if—

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(i) the dispute is covered by a scheme having effect by virtue of an order under section 212A, and

(ii) the agreement is to submit it to arbitration in accordance with the scheme, but

(b) shall be regarded for those purposes as neither being nor including such an agreement in any other case.**]**

Textual Amendments

F428 Words in s. 288 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)(c)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F429 Words in s. 288(1)(b) repealed (30.11.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(2), **Sch. 2**

F430 Words in s. 288 substituted for paras. (a) and (b) (22.8.1996) by 1996 c. 17 ss. 43, 46, Sch. 1 para. 8(a) (with s. 38)

F431 S. 288(2A)-(2C) inserted (30.8.1993) by 1993 c. 19, s. 39(2), **Sch. 6 para. 4(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F432 Words in s. 288(2A) substituted (22.8.1996) by 1996 c. 18, ss. 43, 46, **Sch. 1 para. 8(b)** (with s. 38)

F433 Word in s. 288(2B)(b) substituted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 9(2)**; S.I. 1998/1658, art. 2(1), **Sch. 1**

F434 Words in s. 288(2B)(c) substituted (1.8.1998) by 1998 c. 8, **s. 9(1)(2)(c)**; S.I. 1998/1658, art. 2(1), **Sch. 1**

F435 Words in s. 288(2B)(d) substituted (1.8.1998) by 1998 c. 8, **s. 10(1)(2)(c)**; S.I. 1998/1658, art. 2(1), **Sch. 1**

F436 S. 288(4)(4A)(4B)(4C)(5) substituted for s. 288(4)(5) (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 9(3)**; S.I. 1998/1658, art. 2(1), **Sch.**

F437 S. 288(6) inserted (1.8.1998) by 1998 c. 8, **s. 8(3)**; S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(4))

Marginal Citations

M49 1990 c. 41.

289 Employment governed by foreign law.

For the purposes of this Act it is immaterial whether the law which (apart from this Act) governs any person's employment is the law of the United Kingdom, or of a part of the United Kingdom, or not.

[F438 Employment tribunal] proceedings

Textual Amendments

F438 Words in cross-heading substituted (1.8.1998) by 1998 c. 8, **s. 1(2)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F439 290 . . . . . .

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F439 S. 290 repealed (22.8.1996) by 1996 c. 17, ss. 45, 46, **Sch. 3 Pt. I** (with s. 38)

291 [F440](1) . . . . . .

[F441](2) . . . . . .

[F441](3) . . . . . .

Textual Amendments

F440 S. 291(1) repealed (30.8.1993) by 1993 c. 19, ss. 49(2), 51, Sch. 8 para. 87(a), **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F441 S. 291(2)(3) repealed (22.8.1996) by 1996 c. 17, ss. 45, 46, **Sch. 3 Pt. I** (with s. 38)

Other supplementary provisions

292 Death of employee or employer.

(1) This section has effect in relation to the following provisions so far as they confer rights on employees or make provision in connection therewith—

(a) sections 146 to 151 (action short of dismissal taken on grounds related to union membership or activities);

(b) sections 168 to 173 (time off for trade union duties and activities);

(c) sections 188 to 198 (procedure for handling redundancies).

(2) Where the employee or employer dies, tribunal proceedings may be instituted or continued by a personal representative of the deceased employee or, as the case may be, defended by a personal representative of the deceased employer.

(3) If there is no personal representative of a deceased employee, tribunal proceedings or proceedings to enforce a tribunal award may be instituted or continued on behalf of his estate by such other person as the **[**[F442]employment tribunal**]** may appoint, being either—

(a) a person authorised by the employee to act in connection with the proceedings before his death, or

(b) the widower, widow, child, father, mother, brother or sister of the employee.

In such a case any award made by the **[**[F442]employment tribunal**]** shall be in such terms and shall be enforceable in such manner as may be prescribed.

(4) Any right arising under any of the provisions mentioned in subsection (1) which by virtue of this section accrues after the death of the employee in question shall devolve as if it had accrued before his death.

(5) Any liability arising under any of those provisions which by virtue of this section accrues after the death of the employer in question shall be treated for all purposes as if it had accrued immediately before his death.

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Textual Amendments

F442 Words in s. 292(3) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

293 Regulations.

(1) The Secretary of State may by regulations prescribe anything authorised or required to be prescribed for the purposes of this Act.

(2) The regulations may contain such incidental, supplementary or transitional provisions as appear to the Secretary of State to be necessary or expedient.

(3) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

294 Reciprocal arrangements with Northern Ireland.

(1) If provision is made by Northern Ireland legislation for purposes corresponding to the purposes of any provision of this Act re-enacting a provision of the [M50]Employment Protection Act 1975 or the [M51]Employment Protection (Consolidation) Act 1978, the Secretary of State may, with the consent of the Treasury, make reciprocal arrangements with the appropriate Northern Ireland authority for co-ordinating the relevant provisions of this Act with the corresponding Northern Ireland provisions so as to secure that they operate, to such extent as may be provided by the arrangements, as a single system.

(2) The Secretary of State may make regulations for giving effect to any such arrangements.

(3) The regulations may make different provision for different cases and may contain such supplementary, incidental and transitional provisions as appear to the Secretary of State to be necessary or expedient.

(4) The regulations may provide that the relevant provisions of this Act shall have effect in relation to persons affected by the arrangements subject to such modifications and adaptations as may be specified in the regulations, including provisions—

(a) for securing that acts, omission and events having any effect for the purposes of the Northern Ireland legislation have a corresponding effect for the purposes of the relevant provisions of this Act (but not so as to confer a right to double payment in respect of the same act, omission or event, and

(b) for determining, in cases where rights accrue both under the relevant provisions of this Act and under the Northern Ireland legislation, which of this rights is available to the person concerned.

(5) In this section the appropriate Northern Ireland authority means such authority as is specified in that behalf in the Northern Ireland legislation.

(6) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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Marginal Citations

M50 1975 c. 71.

M51 1978 c. 44.

Interpretation

295 Meaning of employee and related expressions.

(1) In this Act—

contract of employment means a contract of service or of apprenticeship,

employee means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment, and

employer, in relation to an employee, means the person by whom the employee is (or, where the employment has ceased, was) employed.

(2) Subsection (1) has effect subject to section 235 and other provisions conferring a wider meaning on contract of employment or related expressions.

296 Meaning of worker and related expressions.

(1) In this Act worker means an individual who works, or normally works or seeks to work—

(a) under a contract of employment, or

(b) under any other contract 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) in so far as such employment does not fall within paragraph (a) or (b) above.

(2) In this Act employer, in relation to a worker, means a person for whom one or more workers work, or have worked or normally work or seek to work.

[[F443](3) This section has effect subject to section 68(11).**]**

Textual Amendments

F443 S. 296(3) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.88**; S.I. 1993/1908, art. 2(1), **Sch. 1**

297 Associated employers.

For the purposes of this Act any two employers shall be treated as associated if—

(a) one is a company of which the other (directly or indirectly) has control, or

(b) both are companies of which a third person (directly or indirectly) has control;

and associated employer shall be construed accordingly.

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298 Minor definitions: general.

In this Act, unless the context otherwise requires—

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

contravention includes a failure to comply, and cognate expressions shall be construed accordingly;

dismiss, dismissal and effective date of termination, in relation to an employee, shall be construed in accordance with **[**[F444]Part X of the Employment Rights Act 1996**]**;

[F445] . . .

tort, as respects Scotland, means delict, and cognate expressions shall be construed accordingly.

Textual Amendments

F444 Words in s. 298 substituted (22.8.1996) by 1996 c. 17, ss. 240, 243, **Sch. 1 para. 56(19)** (with ss. 191-195, 202)

F445 S. 298: Definition of post repealed (26.3.2001) by S.I. 2001/1149, art. 3(2), **Sch. 2**

299 Index of defined expressions.

In this Act the expressions listed below are defined by or otherwise fall to be construed in accordance with the provisions indicated—

ACAS	section 247(1)
act and action	section 298
advertisement (in sections 137 to 143)	section 143(1)
[[F446]affected employees (in Part IV, Chapter II)**]**	**[**[F446]section 196(3)**]**
[[F447]agent (of trade union)**]**	**[**[F447]section 119**]**
appropriately qualified actuary (in sections 38 to 41)	section 42
associated employer	section 297
branch or section (of trade union)	section 119
collective agreement and collective bargaining	section 178(1)
F448	F448
. . .	. . .
contract of employment	
—generally	section 295(1)
—in sections 226 to 234	section 235
—in relation to Crown employment	section 273(4)(a)

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—in relation to House of Lords or House of Commons staff	sections 277(4) and 278(4)(a)
contravention	section 298
the court (in Part I)	section 121
date of the ballot (in Part V)	section 246
dismiss and dismissal	
—generally	section 298
—in relation to Crown employment	section 273(4)(c)
—in relation to House of Commons staff	section 278(4)(b)
[[F447]the duty of confidentiality**]**	**[**[F447]section 24A(3)**]**
effective date of termination	section 298
employee	
—generally	section 295(1)
—in relation to Crown employment	section 273(4)(a)
—in relation to House of Commons staff	section 278(4)(a)
—excludes police service	section 280
[[F449]employee representatives (in Part IV, Chapter II)**]**	**[**[F449]section 196(1).**]**
employer	
—in relation to an employee	section 295(1)
—in relation to a worker	section 296(2)
—in relation to health service practitioners	section 279
employment and employment agency (in sections 137 to 143)	section 143(1)
executive (of trade union)	section 119
[[F447]financial affairs (of trade union)**]**	**[**[F447]section 119**]**
financial year (in Part VI)	section 272
general secretary	section 119
independent trade union (and related expressions)	section 5
list	
—of trade unions	section 2
—of employers' associations	section 123
Northern Ireland union (in Part I)	section 120
not protected (in sections 222 to 226)	section 219(4)
officer	

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—of trade union	section 119
—of employers' association	section 136
official (of trade union)	section 119
offshore employment	section 287
place of work (in Part V)	section 246
political fund	section 82(1)(a)
political resolution	section 82(1)(a)
F450	**F450**
. . .	. . .
prescribed	section 293(1)
president	section 119
recognised, recognition and related expressions	section 178(3)
F448	
. . .	
F448	**F448**
. . .	. . .
F448	**F448**
. . .	. . .
[[F451]representatives of a trade union (in Part IV, Chapter II)**]**	**[**[F451]section 196(2)**]**
rules (of trade union)	section 119
strike (in Part V)	section 246
tort (as respects Scotland)	section 298
trade dispute	
—in Part IV	section 218
—in Part V	section 244
trade union	section 1
undertaking (of employer)	
—in relation to Crown employment	section 273(4)(e) and (f)
—in relation to House of Commons staff	section 278(4)(c) and (d)
worker	
—generally	section 296(1)
—includes health service practitioners	section 279
—excludes police service	section 280
working hours (in Part V)	section 246

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Textual Amendments

F446 Entry in s. 299 relating to affecting employees inserted (28.7.1999) by S.I. 1999/1925, **reg. 7**

F447 Entries in s. 299 inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 89**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F448 Entries in s. 299 repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F449 Entry in s. 299 inserted (26.10.1995) by S.I. 1995/2587, **reg. 7(2)**

F450 Entry in s. 299 relating to post repealed (26.3.2001) by S.I. 2001/1149, art. 3(2), **Sch. 2**

F451 Entry in s. 299 substituted (26.10.1995) by S.I. 1995/2587, **reg. 7(3)**

Final provisions

300 Repeals, consequential amendments, transitional provisions and savings.

(1) The enactments specified in Schedule 1 are repealed to the extent specified.

(2) The enactments specified in Schedule 2 are amended in accordance with that Schedule, the amendments being consequential on the provisions of this Act.

(3) Schedule 3 contains transitional provisions and savings.

301 Extent.

(1) This Act extends to England and Wales and **[**[F452](apart from section 212A(6)) to**]** Scotland.

(2) The following provisions of this Act extend to Northern Ireland—

(a) sections 13 and 14 (provisions as to property held in trust for trade union), and section 129 (application of provisions to employers' associations) so far as it applies those sections;

(b) Chapter VI of Part I (application of funds for political objects), except sections 86 to 88 (duties of employer who deducts union contributions), for the purposes of the application of that Chapter to trade unions or unincorporated employers' associations having their head or main office outside Northern Ireland;

(c) section 287 (offshore employment);

(d) section 294 (reciprocal arrangements with Northern Ireland);

(e) Schedule 1 (repeals) so far as it relates to enactments which extend to Northern Ireland, other than the [M52]Conspiracy and Protection of Property Act 1875;

(f) Schedules 2 and 3 (consequential amendments, transitional provisions and savings), so far as they relate to enactments which extend to Northern Ireland;

but this Act does not otherwise extend there.

(3) Subsection (2)(b) does not affect the operation of **[**[F453]Article 71(2) to (4) of the Trade Union and Labour Relations (Northern Ireland) Order 1995**]** (application of Northern Ireland law to contributions by members in Northern Ireland); and the closing words of that subsection do not affect the operation in relation to persons or property in Northern Ireland of any provision of Chapter VII of Part I (amalgamations and similar matters) which is capable of so applying as part of the law of England and Wales or Scotland.

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Textual Amendments

F452 Words in s. 301(1) inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 10**; S.I. 1998/1658, art. 2(1), **Sch. 1**

F453 Words in s. 301(3) substituted (1.10.1995) by S.I. 1995/1980 (N.I. 12), art. 150(2), **Sch. 2**; S.R. 1995/354, **art. 2(1)**

Marginal Citations

M52 1875 c. 86.

302 Commencement.

This Act comes into force at the end of the period of three months beginning with the day on which it is passed.

303 Short title.

This Act may be cited as the Trade Union and Labour Relations (Consolidation) Act 1992.

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SCHEDULES

[F454]SCHEDULE A1

COLLECTIVE BARGAINING: RECOGNITION

Textual Amendments

F454 Sch. A1 (paras. 1-173) inserted (6.6.2000) by 1999 c. 26, s. 1(3), **Sch. 1**; S.I. 2000/1338, **art. 2(d)**

Modifications etc. (not altering text)

C70 Sch. A1 (paras. 1-173) applied (14.8.2000) by S.I. 2000/1282, **art. 2(5)(a)**

C71 Sch. A1 modified (temp. from 6.4.2005) by The Employment Relations Act 2004 (Commencement No.3 and Transitional Provisions) Order 2005 (S.I. 2005/872), arts. 4, **21**, Sch. (with arts. 6-21)

PART I

RECOGNITION

Introduction

1 A trade union (or trade unions) seeking recognition to be entitled to conduct collective bargaining on behalf of a group or groups of workers may make a request in accordance with this Part of this Schedule.

2 (1) This paragraph applies for the purposes of this Part of this Schedule.

(2) References to the bargaining unit are to the group of workers concerned (or the groups taken together).

(3) References to the proposed bargaining unit are to the bargaining unit proposed in the request for recognition.

(4) References to the employer are to the employer of the workers constituting the bargaining unit concerned.

(5) References to the parties are to the union (or unions) and the employer.

3 (1) This paragraph applies for the purposes of this Part of this Schedule.

(2) The meaning of collective bargaining given by section 178(1) shall not apply.

(3) References to collective bargaining are to negotiations relating to pay, hours and holidays; but this has effect subject to sub-paragraph (4).

(4) If the parties agree matters as the subject of collective bargaining, references to collective bargaining are to negotiations relating to the agreed matters; and this is the case whether the agreement is made before or after the time when the CAC issues a

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declaration, or the parties agree, that the union is (or unions are) entitled to conduct collective bargaining on behalf of a bargaining unit.

(5) Sub-paragraph (4) does not apply in construing paragraph 31(3).

(6) Sub-paragraphs (2) to (5) do not apply in construing paragraph 35 or 44.

Request for recognition

4 (1) The union or unions seeking recognition must make a request for recognition to the employer.

(2) Paragraphs 5 to 9 apply to the request.

5 The request is not valid unless it is received by the employer.

6 The request is not valid unless the union (or each of the unions) has a certificate under section 6 that it is independent.

7 (1) The request is not valid unless the employer, taken with any associated employer or employers, employs—

(a) at least 21 workers on the day the employer receives the request, or

(b) an average of at least 21 workers in the 13 weeks ending with that day.

(2) To find the average under sub-paragraph (1)(b)—

(a) take the number of workers employed in each of the 13 weeks (including workers not employed for the whole of the week);

(b) aggregate the 13 numbers;

(c) divide the aggregate by 13.

(3) For the purposes of sub-paragraph (1)(a) any worker employed by an associated company incorporated outside Great Britain must be ignored unless the day the request was made fell within a period during which he ordinarily worked in Great Britain.

(4) For the purposes of sub-paragraph (1)(b) any worker employed by an associated company incorporated outside Great Britain must be ignored in relation to a week unless the whole or any part of that week fell within a period during which he ordinarily worked in Great Britain.

(5) For the purposes of sub-paragraphs (3) and (4) a worker who is employed on board a ship registered in the register maintained under section 8 of the Merchant Shipping Act 1995 shall be treated as ordinarily working in Great Britain unless—

(a) the ship's entry in the register specifies a port outside Great Britain as the port to which the vessel is to be treated as belonging,

(b) the employment is wholly outside Great Britain, or

(c) the worker is not ordinarily resident in Great Britain.

(6) The Secretary of State may by order—

(a) provide that sub-paragraphs (1) to (5) are not to apply, or are not to apply in specified circumstances, or

(b) vary the number of workers for the time being specified in sub-paragraph (1);

and different provision may be made for different circumstances.

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(7) An order under sub-paragraph (6)—
(a) shall be made by statutory instrument, and
(b) may include supplementary, incidental, saving or transitional provisions.

(8) No such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House of Parliament.

8 The request is not valid unless it—
(a) is in writing,
(b) identifies the union or unions and the bargaining unit, and
(c) states that it is made under this Schedule.

9 The Secretary of State may by order made by statutory instrument prescribe the form of requests and the procedure for making them; and if he does so the request is not valid unless it complies with the order.

Parties agree

10 (1) If before the end of the first period the parties agree a bargaining unit and that the union is (or unions are) to be recognised as entitled to conduct collective bargaining on behalf of the unit, no further steps are to be taken under this Part of this Schedule.

(2) If before the end of the first period the employer informs the union (or unions) that the employer does not accept the request but is willing to negotiate, sub-paragraph (3) applies.

(3) The parties may conduct negotiations with a view to agreeing a bargaining unit and that the union is (or unions are) to be recognised as entitled to conduct collective bargaining on behalf of the unit.

(4) If such an agreement is made before the end of the second period no further steps are to be taken under this Part of this Schedule.

(5) The employer and the union (or unions) may request ACAS to assist in conducting the negotiations.

(6) The first period is the period of 10 working days starting with the day after that on which the employer receives the request for recognition.

(7) The second period is—
(a) the period of 20 working days starting with the day after that on which the first period ends, or
(b) such longer period (so starting) as the parties may from time to time agree.

Employer rejects request

11 (1) This paragraph applies if—
(a) before the end of the first period the employer fails to respond to the request, or
(b) before the end of the first period the employer informs the union (or unions) that the employer does not accept the request (without indicating a willingness to negotiate).

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(2) The union (or unions) may apply to the CAC to decide both these questions—
- (a) whether the proposed bargaining unit is appropriate or some other bargaining unit is appropriate;
- (b) whether the union has (or unions have) the support of a majority of the workers constituting the appropriate bargaining unit.

Negotiations fail

12 (1) Sub-paragraph (2) applies if—
- (a) the employer informs the union (or unions) under paragraph 10(2), and
- (b) no agreement is made before the end of the second period.

(2) The union (or unions) may apply to the CAC to decide both these questions—
- (a) whether the proposed bargaining unit is appropriate or some other bargaining unit is appropriate;
- (b) whether the union has (or unions have) the support of a majority of the workers constituting the appropriate bargaining unit.

(3) Sub-paragraph (4) applies if—
- (a) the employer informs the union (or unions) under paragraph 10(2), and
- (b) before the end of the second period the parties agree a bargaining unit but not that the union is (or unions are) to be recognised as entitled to conduct collective bargaining on behalf of the unit.

(4) The union (or unions) may apply to the CAC to decide the question whether the union has (or unions have) the support of a majority of the workers constituting the bargaining unit.

(5) But no application may be made under this paragraph if within the period of 10 working days starting with the day after that on which the employer informs the union (or unions) under paragraph 10(2) the employer proposes that ACAS be requested to assist in conducting the negotiations and—
- (a) the union rejects (or unions reject) the proposal, or
- (b) the union fails (or unions fail) to accept the proposal within the period of 10 working days starting with the day after that on which the employer makes the proposal.

Acceptance of applications

13 The CAC must give notice to the parties of receipt of an application under paragraph 11 or 12.

14 (1) This paragraph applies if—
- (a) two or more relevant applications are made,
- (b) at least one worker falling within one of the relevant bargaining units also falls within the other relevant bargaining unit (or units), and
- (c) the CAC has not accepted any of the applications.

(2) A relevant application is an application under paragraph 11 or 12.

(3) In relation to a relevant application, the relevant bargaining unit is—

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(a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
(b) the agreed bargaining unit, where the application is under paragraph 12(4).

(4) Within the acceptance period the CAC must decide, with regard to each relevant application, whether the 10 per cent test is satisfied.

(5) The 10 per cent test is satisfied if members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit.

(6) The acceptance period is—
(a) the period of 10 working days starting with the day after that on which the CAC receives the last relevant application, or
(b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

(7) If the CAC decides that—
(a) the 10 per cent test is satisfied with regard to more than one of the relevant applications, or
(b) the 10 per cent test is satisfied with regard to none of the relevant applications,

the CAC must not accept any of the relevant applications.

(8) If the CAC decides that the 10 per cent test is satisfied with regard to one only of the relevant applications the CAC—
(a) must proceed under paragraph 15 with regard to that application, and
(b) must not accept any of the other relevant applications.

(9) The CAC must give notice of its decision to the parties.

(10) If by virtue of this paragraph the CAC does not accept an application, no further steps are to be taken under this Part of this Schedule in relation to that application.

15 (1) This paragraph applies to these applications—
(a) any application with regard to which no decision has to be made under paragraph 14;
(b) any application with regard to which the CAC must proceed under this paragraph by virtue of paragraph 14.

(2) Within the acceptance period the CAC must decide whether—
(a) the request for recognition to which the application relates is valid within the terms of paragraphs 5 to 9, and
(b) the application is made in accordance with paragraph 11 or 12 and admissible within the terms of paragraphs 33 to 42.

(3) In deciding those questions the CAC must consider any evidence which it has been given by the employer or the union (or unions).

(4) If the CAC decides that the request is not valid or the application is not made in accordance with paragraph 11 or 12 or is not admissible—
(a) the CAC must give notice of its decision to the parties,
(b) the CAC must not accept the application, and
(c) no further steps are to be taken under this Part of this Schedule.

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(5) If the CAC decides that the request is valid and the application is made in accordance with paragraph 11 or 12 and is admissible it must—
  (a) accept the application, and
  (b) give notice of the acceptance to the parties.

(6) The acceptance period is—
  (a) the period of 10 working days starting with the day after that on which the CAC receives the application, or
  (b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

16 (1) If an application under paragraph 11 or 12 is accepted by the CAC, the union (or unions) may not withdraw the application—
  (a) after the CAC issues a declaration under paragraph 22(2), or
  (b) after the union (or the last of the unions) receives notice under paragraph 22(3) or 23(2).

(2) If an application is withdrawn by the union (or unions)—
  (a) the CAC must give notice of the withdrawal to the employer, and
  (b) no further steps are to be taken under this Part of this Schedule.

Notice to cease consideration of application

17 (1) This paragraph applies if the CAC has received an application under paragraph 11 or 12 and—
  (a) it has not decided whether the application is admissible, or
  (b) it has decided that the application is admissible.

(2) No further steps are to be taken under this Part of this Schedule if, before the final event occurs, the parties give notice to the CAC that they want no further steps to be taken.

(3) The final event occurs when the first of the following occurs—
  (a) the CAC issues a declaration under paragraph 22(2) in consequence of the application;
  (b) the last day of the notification period ends;

and the notification period is that defined by paragraph 24(5) and arising from the application.

Appropriate bargaining unit

18 (1) If the CAC accepts an application under paragraph 11(2) or 12(2) it must try to help the parties to reach within the appropriate period an agreement as to what the appropriate bargaining unit is.

(2) The appropriate period is—

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(a) the period of 20 working days starting with the day after that on which the CAC gives notice of acceptance of the application, or
(b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

VALID FROM 06/04/2005

[F455 18A (1) This paragraph applies if the CAC accepts an application under paragraph 11(2) or 12(2).

(2) Within 5 working days starting with the day after that on which the CAC gives the employer notice of acceptance of the application, the employer must supply the following information to the union (or unions) and the CAC—
(a) a list of the categories of worker in the proposed bargaining unit,
(b) a list of the workplaces at which the workers in the proposed bargaining unit work, and
(c) the number of workers the employer reasonably believes to be in each category at each workplace.

(3) The lists and numbers supplied under this paragraph must be as accurate as is reasonably practicable in the light of the information in the possession of the employer at the time when he complies with sub-paragraph (2).

(4) The lists and numbers supplied to the union (or unions) and to the CAC must be the same.

(5) For the purposes of this paragraph, the workplace at which a worker works is—
(a) if the person works at or from a single set of premises, those premises, and
(b) in any other case, the premises with which the worker's employment has the closest connection.]

Textual Amendments

F455 Sch. A1 para. 18A inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 3**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

19 (1) This paragraph applies if—
(a) the CAC accepts an application under paragraph 11(2) or 12(2), and
(b) the parties have not agreed an appropriate bargaining unit at the end of the appropriate period.

(2) The CAC must decide the appropriate bargaining unit within—
(a) the period of 10 working days starting with the day after that on which the appropriate period ends, or
(b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

(3) In deciding the appropriate bargaining unit the CAC must take these matters into account—
(a) the need for the unit to be compatible with effective management;

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Changes to legislation: *Trade Union and Labour Relations (Consolidation) Act 1992 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the matters listed in sub-paragraph (4), so far as they do not conflict with that need.

(4) The matters are—

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

(b) existing national and local bargaining arrangements;

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

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

(e) the location of workers.

(5) The CAC must give notice of its decision to the parties.

VALID FROM 06/04/2005

[F456 19A (1) This paragraph applies if—

(a) the CAC accepts an application under paragraph 11(2) or 12(2),

(b) during the appropriate period (defined by paragraph 18), the CAC is requested by the union (or unions) to make a decision under this paragraph, and

(c) the CAC is, either at the time the request is made or at a later time during the appropriate period, of the opinion that the employer has failed to comply with the duty imposed by paragraph 18A.

(2) Within the decision period, the CAC must decide whether the proposed bargaining unit is appropriate.

(3) If the CAC decides that the proposed bargaining unit is not appropriate, it must also decide within the decision period a bargaining unit which is appropriate.

(4) The decision period is—

(a) the period of 10 working days starting with the day after the day on which the request is made, or

(b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

Textual Amendments

F456 Sch. A1 paras. 19-19B substituted (6.4.2005) for Sch. A1 para. 19 by Employment Relations Act 2004 (c. 24), **ss. 4**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

VALID FROM 06/04/2005

19B (1) This paragraph applies if the CAC has to decide whether a bargaining unit is appropriate for the purposes of paragraph 19(2) or (3) or 19A(2) or (3).

(2) The CAC must take these matters into account—

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

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

(3) The matters are—

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

(b) existing national and local bargaining arrangements;

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

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

(e) the location of workers.

(4) In taking an employer's views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the CAC must take into account any view the employer has about any other bargaining unit that he considers would be appropriate.

(5) The CAC must give notice of its decision to the parties.**]**

Textual Amendments

F456 Sch. A1 paras. 19-19B substituted (6.4.2005) for Sch. A1 para. 19 by Employment Relations Act 2004 (c. 24), **ss. 4**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

VALID FROM 06/04/2005

[F457 Union communications with workers after acceptance of application

Textual Amendments

F457 Sch. A1 paras. 19C-19F and preceding cross-heading inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 5(1)**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

19C (1) This paragraph applies if the CAC accepts an application under paragraph 11(2) or 12(2) or (4).

(2) The union (or unions) may apply to the CAC for the appointment of a suitable independent person to handle communications during the initial period between the union (or unions) and the relevant workers.

(3) In the case of an application under paragraph 11(2) or 12(2), the relevant workers are—

(a) in relation to any time before an appropriate bargaining unit is agreed by the parties or decided by the CAC, those falling within the proposed bargaining unit, and

(b) in relation to any time after an appropriate bargaining unit is so agreed or decided, those falling within the bargaining unit agreed or decided upon.

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(4) In the case of an application under paragraph 12(4), the relevant workers are those falling within the bargaining unit agreed by the parties.

(5) The initial period is the period starting with the day on which the CAC informs the parties under sub-paragraph (7)(b) and ending with the first day on which any of the following occurs—
- (a) the application under paragraph 11 or 12 is withdrawn;
- (b) the CAC gives notice to the union (or unions) of a decision under paragraph 20 that the application is invalid;
- (c) the CAC notifies the union (or unions) of a declaration issued under paragraph 19F(5) or 22(2);
- (d) the CAC informs the union (or unions) under paragraph 25(9) of the name of the person appointed to conduct a ballot.

(6) A person is a suitable independent person if—
- (a) he satisfies such conditions as may be specified for the purposes of paragraph 25(7)(a) by an order under that provision, or is himself specified for those purposes by such an order, and
- (b) there are no grounds for believing either that he will carry out any functions arising from his appointment otherwise than competently or that his independence in relation to those functions might reasonably be called into question.

(7) On an application under sub-paragraph (2) the CAC must as soon as reasonably practicable—
- (a) make such an appointment as is mentioned in that sub-paragraph, and
- (b) inform the parties of the name of the person appointed and the date of his appointment.

(8) The person appointed by the CAC is referred to in paragraphs 19D and 19E as "the appointed person".

19D (1) An employer who is informed by the CAC under paragraph 19C(7)(b) must comply with the following duties (so far as it is reasonable to expect him to do so).

(2) The duties are—
- (a) to give to the CAC, within the period of 10 working days starting with the day after that on which the employer is informed under paragraph 19C(7)(b), the names and home addresses of the relevant workers;
- (b) if the relevant workers change as a result of an appropriate bargaining unit being agreed by the parties or decided by the CAC, to give to the CAC, within the period of 10 working days starting with the day after that on which the bargaining unit is agreed or the CAC's decision is notified to the employer, the names and home addresses of those who are now the relevant workers;
- (c) to give to the CAC, as soon as reasonably practicable, the name and home address of any worker who joins the bargaining unit after the employer has complied with paragraph (a) or (b);
- (d) to inform the CAC, as soon as reasonably practicable, of any worker whose name has been given to the CAC under paragraph (a), (b) or (c) and who ceases to be a relevant worker (otherwise than by reason of a change mentioned in paragraph (b)).

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(3) Nothing in sub-paragraph (2) requires the employer to give information to the CAC after the end of the initial period.

(4) As soon as reasonably practicable after the CAC receives any information under sub-paragraph (2), it must pass it on to the appointed person.

19E (1) During the initial period, the appointed person must if asked to do so by the union (or unions) send to any worker—

(a) whose name and home address have been passed on to him under paragraph 19D(4), and

(b) who is (so far as the appointed person is aware) still a relevant worker,

any information supplied by the union (or unions) to the appointed person.

(2) The costs of the appointed person shall be borne—

(a) if the application under paragraph 19C was made by one union, by the union, and

(b) if that application was made by more than one union, by the unions in such proportions as they jointly indicate to the appointed person or, in the absence of such an indication, in equal shares.

(3) The appointed person may send to the union (or each of the unions) a demand stating his costs and the amount of those costs to be borne by the recipient.

(4) In such a case the recipient must pay the amount stated to the person sending the demand and must do so within the period of 15 working days starting with the day after that on which the demand is received.

(5) In England and Wales, if the amount stated is not paid in accordance with sub-paragraph (4) it shall, if a county court so orders, be recoverable by execution issued from that court or otherwise as if it were payable under an order of that court.

(6) Where an amount is recoverable under sub-paragraph (5) execution may be carried out, to the same extent and in the same manner as if the union were a body corporate, against any property held in trust for the union other than protected property as defined in section 23(2).

(7) References to the costs of the appointed person are to—

(a) the costs wholly, exclusively and necessarily incurred by the appointed person in connection with handling during the initial period communications between the union (or unions) and the relevant workers,

(b) such reasonable amount as the appointed person charges for his services, and

(c) such other costs as the union (or unions) agree.

19F (1) If the CAC is satisfied that the employer has failed to fulfil a duty mentioned in paragraph 19D(2), and the initial period has not yet ended, the CAC may order the employer—

(a) to take such steps to remedy the failure as the CAC considers reasonable and specifies in the order, and

(b) to do so within such period as the CAC considers reasonable and specifies in the order;

and in this paragraph a “remedial order” means an order under this sub-paragraph.

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(2) If the CAC is satisfied that the employer has failed to comply with a remedial order and the initial period has not yet ended, the CAC must as soon as reasonably practicable notify the employer and the union (or unions) that it is satisfied that the employer has failed to comply.

(3) A remedial order and a notice under sub-paragraph (2) must draw the recipient's attention to the effect of sub-paragraphs (4) and (5).

(4) Sub-paragraph (5) applies if—
- (a) the CAC is satisfied that the employer has failed to comply with a remedial order,
- (b) the parties have agreed an appropriate bargaining unit or the CAC has decided an appropriate bargaining unit,
- (c) in the case of an application under paragraph 11(2) or 12(2), the CAC, if required to do so, has decided under paragraph 20 that the application is not invalid, and
- (d) the initial period has not yet ended.

(5) The CAC may issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit.**]**

Union recognition

20 (1) This paragraph applies if—
- (a) the CAC accepts an application under paragraph 11(2) or 12(2),
- (b) the parties have agreed an appropriate bargaining unit at the end of the appropriate period, or the CAC has decided an appropriate bargaining unit, and
- (c) that bargaining unit differs from the proposed bargaining unit.

(2) Within the decision period the CAC must decide whether the application is invalid within the terms of paragraphs 43 to 50.

(3) In deciding whether the application is invalid, the CAC must consider any evidence which it has been given by the employer or the union (or unions).

(4) If the CAC decides that the application is invalid—
- (a) the CAC must give notice of its decision to the parties,
- (b) the CAC must not proceed with the application, and
- (c) no further steps are to be taken under this Part of this Schedule.

(5) If the CAC decides that the application is not invalid it must—
- (a) proceed with the application, and
- (b) give notice to the parties that it is so proceeding.

(6) The decision period is—
- (a) the period of 10 working days starting with the day after that on which the parties agree an appropriate bargaining unit or the CAC decides an appropriate bargaining unit, or
- (b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
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21 (1) This paragraph applies if—
- (a) the CAC accepts an application under paragraph 11(2) or 12(2),
- (b) the parties have agreed an appropriate bargaining unit at the end of the appropriate period, or the CAC has decided an appropriate bargaining unit, and
- (c) that bargaining unit is the same as the proposed bargaining unit.

(2) This paragraph also applies if the CAC accepts an application under paragraph 12(4).

(3) The CAC must proceed with the application.

22 (1) This paragraph applies if—
- (a) the CAC proceeds with an application in accordance with paragraph 20 or 21, and
- (b) the CAC is satisfied that a majority of the workers constituting the bargaining unit are members of the union (or unions).

(2) The CAC must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit.

(3) But if any of the three qualifying conditions is fulfilled, instead of issuing a declaration under sub-paragraph (2) the CAC must give notice to the parties that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.

(4) These are the three qualifying conditions—
- (a) the CAC is satisfied that a ballot should be held in the interests of good industrial relations;
- (b) a significant number of the union members within the bargaining unit inform the CAC that they do not want the union (or unions) to conduct collective bargaining on their behalf;
- (c) membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf.

(5) For the purposes of sub-paragraph (4)(c) membership evidence is—
- (a) evidence about the circumstances in which union members became members;
- (b) evidence about the length of time for which union members have been members, in a case where the CAC is satisfied that such evidence should be taken into account.

23 (1) This paragraph applies if—
- (a) the CAC proceeds with an application in accordance with paragraph 20 or 21, and
- (b) the CAC is not satisfied that a majority of the workers constituting the bargaining unit are members of the union (or unions).

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(2) The CAC must give notice to the parties that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.

24 (1) This paragraph applies if the CAC gives notice under paragraph 22(3) or 23(2).

(2) Within the notification period—
- (a) the union (or unions), or
- (b) the union (or unions) and the employer,

may notify the CAC that the party making the notification does not (or the parties making the notification do not) want the CAC to arrange for the holding of the ballot.

(3) If the CAC is so notified—
- (a) it must not arrange for the holding of the ballot,
- (b) it must inform the parties that it will not arrange for the holding of the ballot, and why, and
- (c) no further steps are to be taken under this Part of this Schedule.

(4) If the CAC is not so notified it must arrange for the holding of the ballot.

(5) The notification period is the period of 10 working days starting—
- (a) for the purposes of sub-paragraph (2)(a), with the day on which the union (or last of the unions) receives the CAC's notice under paragraph 22(3) or 23(2), or
- (b) for the purposes of sub-paragraph (2)(b), with that day or (if later) the day on which the employer receives the CAC's notice under paragraph 22(3) or 23(2).

25 (1) This paragraph applies if the CAC arranges under paragraph 24 for the holding of a ballot.

(2) The ballot must be conducted by a qualified independent person appointed by the CAC.

(3) The ballot must be conducted within—
- (a) the period of 20 working days starting with the day after that on which the qualified independent person is appointed, or
- (b) such longer period (so starting) as the CAC may decide.

(4) The ballot must be conducted—
- (a) at a workplace or workplaces decided by the CAC,
- (b) by post, or
- (c) by a combination of the methods described in sub-paragraphs (a) and (b),

depending on the CAC's preference.

(5) In deciding how the ballot is to be conducted the CAC must take into account—
- (a) the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace or workplaces;
- (b) costs and practicality;
- (c) such other matters as the CAC considers appropriate.

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(6) The CAC may not decide that the ballot is to be conducted as mentioned in sub-paragraph (4)(c) unless there are special factors making such a decision appropriate; and special factors include—
  (a) factors arising from the location of workers or the nature of their employment;
  (b) factors put to the CAC by the employer or the union (or unions).

(7) A person is a qualified independent person if—
  (a) he satisfies such conditions as may be specified for the purposes of this paragraph by order of the Secretary of State or is himself so specified, and
  (b) there are no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the ballot might reasonably be called into question.

(8) An order under sub-paragraph (7)(a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(9) As soon as is reasonably practicable after the CAC is required under paragraph 24 to arrange for the holding of a ballot it must inform the parties—
  (a) that it is so required;
  (b) of the name of the person appointed to conduct the ballot and the date of his appointment;
  (c) of the period within which the ballot must be conducted;
  (d) whether the ballot is to be conducted by post or at a workplace or workplaces;
  (e) of the workplace or workplaces concerned (if the ballot is to be conducted at a workplace or workplaces).

26 (1) An employer who is informed by the CAC under paragraph 25(9) must comply with the following three duties.

(2) The first duty is to co-operate generally, in connection with the ballot, with the union (or unions) and the person appointed to conduct the ballot; and the second and third duties are not to prejudice the generality of this.

(3) The second duty is to give to the union (or unions) such access to the workers constituting the bargaining unit as is reasonable to enable the union (or unions) to inform the workers of the object of the ballot and to seek their support and their opinions on the issues involved.

(4) The third duty is to do the following (so far as it is reasonable to expect the employer to do so)—
  (a) to give to the CAC, within the period of 10 working days starting with the day after that on which the employer is informed under paragraph 25(9), the names and home addresses of the workers constituting the bargaining unit;
  (b) to give to the CAC, as soon as is reasonably practicable, the name and home address of any worker who joins the unit after the employer has complied with paragraph (a);
  (c) to inform the CAC, as soon as is reasonably practicable, of any worker whose name has been given to the CAC under paragraph (a) or (b) but who ceases to be within the unit.

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(5) As soon as is reasonably practicable after the CAC receives any information under sub-paragraph (4) it must pass it on to the person appointed to conduct the ballot.

(6) If asked to do so by the union (or unions) the person appointed to conduct the ballot must send to any worker—
  (a) whose name and home address have been given under sub-paragraph (5), and
  (b) who is still within the unit (so far as the person so appointed is aware),

any information supplied by the union (or unions) to the person so appointed.

(7) The duty under sub-paragraph (6) does not apply unless the union bears (or unions bear) the cost of sending the information.

(8) Each of the following powers shall be taken to include power to issue Codes of Practice about reasonable access for the purposes of sub-paragraph (3)—
  (a) the power of ACAS under section 199(1);
  (b) the power of the Secretary of State under section 203(1)(a).

27 (1) If the CAC is satisfied that the employer has failed to fulfil any of the three duties imposed by paragraph 26, and the ballot has not been held, the CAC may order the employer—
  (a) to take such steps to remedy the failure as the CAC considers reasonable and specifies in the order, and
  (b) to do so within such period as the CAC considers reasonable and specifies in the order.

(2) If the CAC is satisfied that the employer has failed to comply with an order under sub-paragraph (1), and the ballot has not been held, the CAC may issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit.

(3) If the CAC issues a declaration under sub-paragraph (2) it shall take steps to cancel the holding of the ballot; and if the ballot is held it shall have no effect.

VALID FROM 01/10/2005

[F458 27A (1) Each of the parties informed by the CAC under paragraph 25(9) must refrain from using any unfair practice.

(2) A party uses an unfair practice if, with a view to influencing the result of the ballot, the party—
  (a) offers to pay money or give money's worth to a worker entitled to vote in the ballot in return for the worker's agreement to vote in a particular way or to abstain from voting,
  (b) makes an outcome-specific offer to a worker entitled to vote in the ballot,
  (c) coerces or attempts to coerce a worker entitled to vote in the ballot to disclose—
    (i) whether he intends to vote or to abstain from voting in the ballot, or
    (ii) how he intends to vote, or how he has voted, in the ballot,
  (d) dismisses or threatens to dismiss a worker,
  (e) takes or threatens to take disciplinary action against a worker,

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(f) subjects or threatens to subject a worker to any other detriment, or

(g) uses or attempts to use undue influence on a worker entitled to vote in the ballot.

(3) For the purposes of sub-paragraph (2)(b) an "outcome-specific offer" is an offer to pay money or give money's worth which—

(a) is conditional on the issuing by the CAC of a declaration that—

(i) the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit, or

(ii) the union is (or unions are) not entitled to be so recognised, and

(b) is not conditional on anything which is done or occurs as a result of the declaration in question.

(4) The duty imposed by this paragraph does not confer any rights on a worker; but that does not affect any other right which a worker may have.

(5) Each of the following powers shall be taken to include power to issue Codes of Practice about unfair practices for the purposes of this paragraph—

(a) the power of ACAS under section 199(1);

(b) the power of the Secretary of State under section 203(1)(a).

Textual Amendments

F458 Sch. A1 para. 27A-27F inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), **ss. 10(1)**, 59(2)-(4); S.I. 2005/2419, **art. 3(a)** (with arts. 5-7)

VALID FROM 01/10/2005

27B (1) A party may complain to the CAC that another party has failed to comply with paragraph 27A.

(2) A complaint under sub-paragraph (1) must be made on or before the first working day after—

(a) the date of the ballot, or

(b) if votes may be cast in the ballot on more than one day, the last of those days.

(3) Within the decision period the CAC must decide whether the complaint is well-founded.

(4) A complaint is well-founded if—

(a) the CAC finds that the party complained against used an unfair practice, and

(b) the CAC is satisfied that the use of that practice changed or was likely to change, in the case of a worker entitled to vote in the ballot—

(i) his intention to vote or to abstain from voting,

(ii) his intention to vote in a particular way, or

(iii) how he voted.

(5) The decision period is—

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(a) the period of 10 working days starting with the day after that on which the complaint under sub-paragraph (1) was received by the CAC, or

(b) such longer period (so starting) as the CAC may specify to the parties by a notice containing reasons for the extension.

(6) If, at the beginning of the decision period, the ballot has not begun, the CAC may by notice to the parties and the qualified independent person postpone the date on which it is to begin until a date which falls after the end of the decision period.

Textual Amendments

F458 Sch. A1 para. 27A-27F inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), **ss. 10(1)**, 59(2)-(4); S.I. 2005/2419, **art. 3(a)** (with arts. 5-7)

VALID FROM 01/10/2005

27C (1) This paragraph applies if the CAC decides that a complaint under paragraph 27B is well-founded.

(2) The CAC must, as soon as is reasonably practicable, issue a declaration to that effect.

(3) The CAC may do either or both of the following—

(a) order the party concerned to take any action specified in the order within such period as may be so specified, or

(b) give notice to the employer and to the union (or unions) that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.

(4) The CAC may give an order or a notice under sub-paragraph (3) either at the same time as it issues the declaration under sub-paragraph (2) or at any other time before it acts under paragraph 29.

(5) The action specified in an order under sub-paragraph (3)(a) shall be such as the CAC considers reasonable in order to mitigate the effect of the failure of the party concerned to comply with the duty imposed by paragraph 27A.

(6) The CAC may give more than one order under sub-paragraph (3)(a).

Textual Amendments

F458 Sch. A1 para. 27A-27F inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), **ss. 10(1)**, 59(2)-(4); S.I. 2005/2419, **art. 3(a)** (with arts. 5-7)

VALID FROM 01/10/2005

27D (1) This paragraph applies if the CAC issues a declaration under paragraph 27C(2) and the declaration states that the unfair practice used consisted of or included—

(a) the use of violence, or

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(b) the dismissal of a union official.

(2) This paragraph also applies if the CAC has made an order under paragraph 27C(3)(a) and—

(a) it is satisfied that the party subject to the order has failed to comply with it, or

(b) it makes another declaration under paragraph 27C(2) in relation to a complaint against that party.

(3) If the party concerned is the employer, the CAC may issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit.

(4) If the party concerned is a union, the CAC may issue a declaration that the union is (or unions are) not entitled to be so recognised.

(5) The powers conferred by this paragraph are in addition to those conferred by paragraph 27C(3).

Textual Amendments

F458 Sch. A1 para. 27A-27F inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), **ss. 10(1)**, 59(2)-(4); S.I. 2005/2419, **art. 3(a)** (with arts. 5-7)

VALID FROM 01/10/2005

27E (1) This paragraph applies if the CAC issues a declaration that a complaint under paragraph 27B is well-founded and—

(a) gives a notice under paragraph 27C(3)(b), or

(b) issues a declaration under paragraph 27D.

(2) If the ballot in connection with which the complaint was made has not been held, the CAC shall take steps to cancel it.

(3) If that ballot is held, it shall have no effect.

Textual Amendments

F458 Sch. A1 para. 27A-27F inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), **ss. 10(1)**, 59(2)-(4); S.I. 2005/2419, **art. 3(a)** (with arts. 5-7)

VALID FROM 01/10/2005

27F (1) This paragraph applies if the CAC gives a notice under paragraph 27C(3)(b).

(2) Paragraphs 24 to 29 apply in relation to that notice as they apply in relation to a notice given under paragraph 22(3) or 23(2) but with the modifications specified in sub-paragraphs (3) to (6).

(3) In each of sub-paragraphs (5)(a) and (6)(a) of paragraph 24 for “10 working days” substitute 5 working days.

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(4) An employer's duty under paragraph (a) of paragraph 26(4) is limited to—

(a) giving the CAC the names and home addresses of any workers in the bargaining unit which have not previously been given to it in accordance with that duty;

(b) giving the CAC the names and home addresses of those workers who have joined the bargaining unit since he last gave the CAC information in accordance with that duty;

(c) informing the CAC of any change to the name or home address of a worker whose name and home address have previously been given to the CAC in accordance with that duty; and

(d) informing the CAC of any worker whose name had previously been given to it in accordance with that duty who has ceased to be within the bargaining unit.

(5) Any order given under paragraph 27(1) or 27C(3)(a) for the purposes of the cancelled or ineffectual ballot shall have effect (to the extent that the CAC specifies in a notice to the parties) as if it were made for the purposes of the ballot to which the notice under paragraph 27C(3)(b) relates.

(6) The gross costs of the ballot shall be borne by such of the parties and in such proportions as the CAC may determine and, accordingly, sub-paragraphs (2) and (3) of paragraph 28 shall be omitted and the reference in sub-paragraph (4) of that paragraph to the employer and the union (or each of the unions) shall be construed as a reference to the party or parties which bear the costs in accordance with the CAC's determination.**]**

Textual Amendments

F458 Sch. A1 para. 27A-27F inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), **ss. 10(1)**, 59(2)-(4); S.I. 2005/2419, **art. 3(a)** (with arts. 5-7)

28 (1) This paragraph applies if the holding of a ballot has been arranged under paragraph 24 whether or not it has been cancelled.

(2) The gross costs of the ballot shall be borne—

(a) as to half, by the employer, and

(b) as to half, by the union (or unions).

(3) If there is more than one union they shall bear their half of the gross costs—

(a) in such proportions as they jointly indicate to the person appointed to conduct the ballot, or

(b) in the absence of such an indication, in equal shares.

(4) The person appointed to conduct the ballot may send to the employer and the union (or each of the unions) a demand stating—

(a) the gross costs of the ballot, and

(b) the amount of the gross costs to be borne by the recipient.

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(5) In such a case the recipient must pay the amount stated to the person sending the demand, and must do so within the period of 15 working days starting with the day after that on which the demand is received.

(6) In England and Wales, if the amount stated is not paid in accordance with sub-paragraph (5) it shall, if a county court so orders, be recoverable by execution issued from that court or otherwise as if it were payable under an order of that court.

(7) References to the costs of the ballot are to—
- (a) the costs wholly, exclusively and necessarily incurred in connection with the ballot by the person appointed to conduct it,
- (b) such reasonable amount as the person appointed to conduct the ballot charges for his services, and
- (c) such other costs as the employer and the union (or unions) agree.

29 (1) As soon as is reasonably practicable after the CAC is informed of the result of a ballot by the person conducting it, the CAC must act under this paragraph.

(2) The CAC must inform the employer and the union (or unions) of the result of the ballot.

(3) If the result is that the union is (or unions are) supported by—
- (a) a majority of the workers voting, and
- (b) at least 40 per cent of the workers constituting the bargaining unit,

the CAC must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit.

(4) If the result is otherwise the CAC must issue a declaration that the union is (or unions are) not entitled to be so recognised.

(5) The Secretary of State may by order amend sub-paragraph (3) so as to specify a different degree of support; and different provision may be made for different circumstances.

(6) An order under sub-paragraph (5) shall be made by statutory instrument.

(7) No such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House of Parliament.

30 (1) This paragraph applies if the CAC issues a declaration under this Part of this Schedule that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit.

(2) The parties may in the negotiation period conduct negotiations with a view to agreeing a method by which they will conduct collective bargaining.

(3) If no agreement is made in the negotiation period the employer or the union (or unions) may apply to the CAC for assistance.

(4) The negotiation period is—
- (a) the period of 30 working days starting with the start day, or
- (b) such longer period (so starting) as the parties may from time to time agree.

(5) The start day is the day after that on which the parties are notified of the declaration.

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31 (1) This paragraph applies if an application for assistance is made to the CAC under paragraph 30.

(2) The CAC must try to help the parties to reach in the agreement period an agreement on a method by which they will conduct collective bargaining.

(3) If at the end of the agreement period the parties have not made such an agreement the CAC must specify to the parties the method by which they are to conduct collective bargaining.

(4) Any method specified under sub-paragraph (3) is to have effect as if it were contained in a legally enforceable contract made by the parties.

(5) But if the parties agree in writing—

(a) that sub-paragraph (4) shall not apply, or shall not apply to particular parts of the method specified by the CAC, or

(b) to vary or replace the method specified by the CAC,

the written agreement shall have effect as a legally enforceable contract made by the parties.

(6) Specific performance shall be the only remedy available for breach of anything which is a legally enforceable contract by virtue of this paragraph.

(7) If at any time before a specification is made under sub-paragraph (3) the parties jointly apply to the CAC requesting it to stop taking steps under this paragraph, the CAC must comply with the request.

(8) The agreement period is—

(a) the period of 20 working days starting with the day after that on which the CAC receives the application under paragraph 30, or

(b) such longer period (so starting) as the CAC may decide with the consent of the parties.

Method not carried out

32 (1) This paragraph applies if—

(a) the CAC issues a declaration under this Part of this Schedule that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit,

(b) the parties agree a method by which they will conduct collective bargaining, and

(c) one or more of the parties fails to carry out the agreement.

(2) The parties may apply to the CAC for assistance.

(3) Paragraph 31 applies as if paragraph 30 (in each place) read paragraph 30 or paragraph 32.

General provisions about admissibility

33 An application under paragraph 11 or 12 is not admissible unless—

(a) it is made in such form as the CAC specifies, and

(b) it is supported by such documents as the CAC specifies.

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34 An application under paragraph 11 or 12 is not admissible unless the union gives (or unions give) to the employer—

(a) notice of the application, and

(b) a copy of the application and any documents supporting it.

35 (1) An application under paragraph 11 or 12 is not admissible if the CAC is satisfied that there is already in force a collective agreement under which a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of any workers falling within the relevant bargaining unit.

(2) But sub-paragraph (1) does not apply to an application under paragraph 11 or 12 if—

(a) the union (or unions) recognised under the collective agreement and the union (or unions) making the application under paragraph 11 or 12 are the same, and

(b) the matters in respect of which the union is (or unions are) entitled to conduct collective bargaining do not include pay, hours or holidays.

(3) A declaration of recognition which is the subject of a declaration under paragraph 83(2) must for the purposes of sub-paragraph (1) be treated as ceasing to have effect to the extent specified in paragraph 83(2) on the making of the declaration under paragraph 83(2).

(4) In applying sub-paragraph (1) an agreement for recognition (the agreement in question) must be ignored if—

(a) the union does not have (or none of the unions has) a certificate under section 6 that it is independent,

(b) at some time there was an agreement (the old agreement) between the employer and the union under which the union (whether alone or with other unions) was recognised as entitled to conduct collective bargaining on behalf of a group of workers which was the same or substantially the same as the group covered by the agreement in question, and

(c) the old agreement ceased to have effect in the period of three years ending with the date of the agreement in question.

(5) It is for the CAC to decide whether one group of workers is the same or substantially the same as another, but in deciding the CAC may take account of the views of any person it believes has an interest in the matter.

(6) The relevant bargaining unit is—

(a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);

(b) the agreed bargaining unit, where the application is under paragraph 12(4).

36 (1) An application under paragraph 11 or 12 is not admissible unless the CAC decides that—

(a) members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit, and

(b) a majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union (or unions) as entitled to conduct collective bargaining on behalf of the bargaining unit.

(2) The relevant bargaining unit is—

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(a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
(b) the agreed bargaining unit, where the application is under paragraph 12(4).

(3) The CAC must give reasons for the decision.

37 (1) This paragraph applies to an application made by more than one union under paragraph 11 or 12.

(2) The application is not admissible unless—
(a) the unions show that they will co-operate with each other in a manner likely to secure and maintain stable and effective collective bargaining arrangements, and
(b) the unions show that, if the employer wishes, they will enter into arrangements under which collective bargaining is conducted by the unions acting together on behalf of the workers constituting the relevant bargaining unit.

(3) The relevant bargaining unit is—
(a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
(b) the agreed bargaining unit, where the application is under paragraph 11(4).

38 (1) This paragraph applies if—
(a) the CAC accepts a relevant application relating to a bargaining unit or proceeds under paragraph 20 with an application relating to a bargaining unit,
(b) the application has not been withdrawn,
(c) no notice has been given under paragraph 17(2),
(d) the CAC has not issued a declaration under paragraph 22(2), 27(2), 29(3) or 29(4) in relation to that bargaining unit, and
(e) no notification has been made under paragraph 24(2).

(2) Another relevant application is not admissible if—
(a) at least one worker falling within the relevant bargaining unit also falls within the bargaining unit referred to in sub-paragraph (1), and
(b) the application is made by a union (or unions) other than the union (or unions) which made the application referred to in sub-paragraph (1).

(3) A relevant application is an application under paragraph 11 or 12.

(4) The relevant bargaining unit is—
(a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
(b) the agreed bargaining unit, where the application is under paragraph 12(4).

39 (1) This paragraph applies if the CAC accepts a relevant application relating to a bargaining unit or proceeds under paragraph 20 with an application relating to a bargaining unit.

(2) Another relevant application is not admissible if—

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(a) the application is made within the period of 3 years starting with the day after that on which the CAC gave notice of acceptance of the application mentioned in sub-paragraph (1),
(b) the relevant bargaining unit is the same or substantially the same as the bargaining unit mentioned in sub-paragraph (1), and
(c) the application is made by the union (or unions) which made the application mentioned in sub-paragraph (1).

(3) A relevant application is an application under paragraph 11 or 12.

(4) The relevant bargaining unit is—
(a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
(b) the agreed bargaining unit, where the application is under paragraph 12(4).

(5) This paragraph does not apply if paragraph 40 or 41 applies.

40 (1) This paragraph applies if the CAC issues a declaration under paragraph 29(4) that a union is (or unions are) not entitled to be recognised as entitled to conduct collective bargaining on behalf of a bargaining unit; and this is so whether the ballot concerned is held under this Part or Part III of this Schedule.

(2) An application under paragraph 11 or 12 is not admissible if—
(a) the application is made within the period of 3 years starting with the day after that on which the declaration was issued,
(b) the relevant bargaining unit is the same or substantially the same as the bargaining unit mentioned in sub-paragraph (1), and
(c) the application is made by the union (or unions) which made the application leading to the declaration.

(3) The relevant bargaining unit is—
(a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
(b) the agreed bargaining unit, where the application is under paragraph 12(4).

41 (1) This paragraph applies if the CAC issues a declaration under paragraph 121(3) that bargaining arrangements are to cease to have effect; and this is so whether the ballot concerned is held under Part IV or Part V of this Schedule.

(2) An application under paragraph 11 or 12 is not admissible if—
(a) the application is made within the period of 3 years starting with the day after that on which the declaration was issued,
(b) the relevant bargaining unit is the same or substantially the same as the bargaining unit to which the bargaining arrangements mentioned in sub-paragraph (1) relate, and
(c) the application is made by the union which was a party (or unions which were parties) to the proceedings leading to the declaration.

(3) The relevant bargaining unit is—
(a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);

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(b) the agreed bargaining unit, where the application is under paragraph 12(4).

42 (1) This paragraph applies for the purposes of paragraphs 39 to 41.

(2) It is for the CAC to decide whether one bargaining unit is the same or substantially the same as another, but in deciding the CAC may take account of the views of any person it believes has an interest in the matter.

43 (1) Paragraphs 44 to 50 apply if the CAC has to decide under paragraph 20 whether an application is valid.

(2) In those paragraphs—
(a) references to the application in question are to that application, and
(b) references to the relevant bargaining unit are to the bargaining unit agreed by the parties or decided by the CAC.

44 (1) The application in question is invalid if the CAC is satisfied that there is already in force a collective agreement under which a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of any workers falling within the relevant bargaining unit.

(2) But sub-paragraph (1) does not apply to the application in question if—
(a) the union (or unions) recognised under the collective agreement and the union (or unions) making the application in question are the same, and
(b) the matters in respect of which the union is (or unions are) entitled to conduct collective bargaining do not include pay, hours or holidays.

(3) A declaration of recognition which is the subject of a declaration under paragraph 83(2) must for the purposes of sub-paragraph (1) be treated as ceasing to have effect to the extent specified in paragraph 83(2) on the making of the declaration under paragraph 83(2).

(4) In applying sub-paragraph (1) an agreement for recognition (the agreement in question) must be ignored if—
(a) the union does not have (or none of the unions has) a certificate under section 6 that it is independent,
(b) at some time there was an agreement (the old agreement) between the employer and the union under which the union (whether alone or with other unions) was recognised as entitled to conduct collective bargaining on behalf of a group of workers which was the same or substantially the same as the group covered by the agreement in question, and
(c) the old agreement ceased to have effect in the period of three years ending with the date of the agreement in question.

(5) It is for the CAC to decide whether one group of workers is the same or substantially the same an another, but in deciding the CAC may take account of the views of any person it believes has an interest in the matter.

45 The application in question is invalid unless the CAC decides that—
(a) members of the union (or unions) constitute at least 10 per cent of the workers constituting the relevant bargaining unit, and
(b) a majority of the workers constituting the relevant bargaining unit would be likely to favour recognition of the union (or unions) as entitled to conduct collective bargaining on behalf of the bargaining unit.

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46 (1) This paragraph applies if—

(a) the CAC accepts an application under paragraph 11 or 12 relating to a bargaining unit or proceeds under paragraph 20 with an application relating to a bargaining unit,

(b) the application has not been withdrawn,

(c) no notice has been given under paragraph 17(2),

(d) the CAC has not issued a declaration under paragraph 22(2), 27(2), 29(3) or 29(4) in relation to that bargaining unit, and

(e) no notification has been made under paragraph 24(2).

(2) The application in question is invalid if—

(a) at least one worker falling within the relevant bargaining unit also falls within the bargaining unit referred to in sub-paragraph (1), and

(b) the application in question is made by a union (or unions) other than the union (or unions) which made the application referred to in sub-paragraph (1).

47 (1) This paragraph applies if the CAC accepts an application under paragraph 11 or 12 relating to a bargaining unit or proceeds under paragraph 20 with an application relating to a bargaining unit.

(2) The application in question is invalid if—

(a) the application is made within the period of 3 years starting with the day after that on which the CAC gave notice of acceptance of the application mentioned in sub-paragraph (1),

(b) the relevant bargaining unit is the same or substantially the same as the bargaining unit mentioned in sub-paragraph (1), and

(c) the application is made by the union (or unions) which made the application mentioned in sub-paragraph (1).

(3) This paragraph does not apply if paragraph 48 or 49 applies.

48 (1) This paragraph applies if the CAC issues a declaration under paragraph 29(4) that a union is (or unions are) not entitled to be recognised as entitled to conduct collective bargaining on behalf of a bargaining unit; and this is so whether the ballot concerned is held under this Part or Part III of this Schedule.

(2) The application in question is invalid if—

(a) the application is made within the period of 3 years starting with the date of the declaration,

(b) the relevant bargaining unit is the same or substantially the same as the bargaining unit mentioned in sub-paragraph (1), and

(c) the application is made by the union (or unions) which made the application leading to the declaration.

49 (1) This paragraph applies if the CAC issues a declaration under paragraph 121(3) that bargaining arrangements are to cease to have effect; and this is so whether the ballot concerned is held under Part IV or Part V of this Schedule.

(2) The application in question is invalid if—

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(a) the application is made within the period of 3 years starting with the day after that on which the declaration was issued,

(b) the relevant bargaining unit is the same or substantially the same as the bargaining unit to which the bargaining arrangements mentioned in sub-paragraph (1) relate, and

(c) the application is made by the union which was a party (or unions which were parties) to the proceedings leading to the declaration.

50 (1) This paragraph applies for the purposes of paragraphs 47 to 49.

(2) It is for the CAC to decide whether one bargaining unit is the same or substantially the same as another, but in deciding the CAC may take account of the views of any person it believes has an interest in the matter.

Competing applications

51 (1) For the purposes of this paragraph—

(a) the original application is the application referred to in paragraph 38(1) or 46(1), and

(b) the competing application is the other application referred to in paragraph 38(2) or the application in question referred to in paragraph 46(2);

but an application cannot be an original application unless it was made under paragraph 11(2) or 12(2).

(2) This paragraph applies if—

(a) the CAC decides that the competing application is not admissible by reason of paragraph 38 or is invalid by reason of paragraph 46,

(b) at the time the decision is made the parties to the original application have not agreed the appropriate bargaining unit under paragraph 18, and the CAC has not decided the appropriate bargaining unit under paragraph 19, in relation to the application, and

(c) the 10 per cent test (within the meaning given by paragraph 14) is satisfied with regard to the competing application.

(3) In such a case—

(a) the CAC must cancel the original application,

(b) the CAC must give notice to the parties to the application that it has been cancelled,

(c) no further steps are to be taken under this Part of this Schedule in relation to the application, and

(d) the application shall be treated as if it had never been admissible.

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PART II

VOLUNTARY RECOGNITION

Agreements for recognition

52 (1) This paragraph applies for the purposes of this Part of this Schedule.

(2) An agreement is an agreement for recognition if the following conditions are fulfilled in relation to it—

(a) the agreement is made in the permitted period between a union (or unions) and an employer in consequence of a request made under paragraph 4 and valid within the terms of paragraphs 5 to 9;

(b) under the agreement the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a group or groups of workers employed by the employer;

(c) if sub-paragraph (5) applies to the agreement, it is satisfied.

(3) The permitted period is the period which begins with the day on which the employer receives the request and ends when the first of the following occurs—

(a) the union withdraws (or unions withdraw) the request;

(b) the union withdraws (or unions withdraw) any application under paragraph 11 or 12 made in consequence of the request;

(c) the CAC gives notice of a decision under paragraph 14(7) which precludes it from accepting such an application under paragraph 11 or 12;

(d) the CAC gives notice under paragraph 15(4)(a) or 20(4)(a) in relation to such an application under paragraph 11 or 12;

(e) the parties give notice to the CAC under paragraph 17(2) in relation to such an application under paragraph 11 or 12;

(f) the CAC issues a declaration under paragraph 22(2) in consequence of such an application under paragraph 11 or 12;

(g) the CAC is notified under paragraph 24(2) in relation to such an application under paragraph 11 or 12;

(h) the last day of the notification period ends (the notification period being that defined by paragraph 24(5) and arising from such an application under paragraph 11 or 12);

(i) the CAC is required under paragraph 51(3) to cancel such an application under paragraph 11 or 12.

(4) Sub-paragraph (5) applies to an agreement if—

(a) at the time it is made the CAC has received an application under paragraph 11 or 12 in consequence of the request mentioned in sub-paragraph (2), and

(b) the CAC has not decided whether the application is admissible or it has decided that it is admissible.

(5) This sub-paragraph is satisfied if, in relation to the application under paragraph 11 or 12, the parties give notice to the CAC under paragraph 17 before the final event (as defined in paragraph 17) occurs.

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Other interpretation

53 (1) This paragraph applies for the purposes of this Part of this Schedule.

(2) In relation to an agreement for recognition, references to the bargaining unit are to the group of workers (or the groups taken together) to which the agreement for recognition relates.

(3) In relation to an agreement for recognition, references to the parties are to the union (or unions) and the employer who are parties to the agreement.

54 (1) This paragraph applies for the purposes of this Part of this Schedule.

(2) The meaning of collective bargaining given by section 178(1) shall not apply.

(3) Except in paragraph 63(2), in relation to an agreement for recognition references to collective bargaining are to negotiations relating to the matters in respect of which the union is (or unions are) recognised as entitled to conduct negotiations under the agreement for recognition.

(4) In paragraph 63(2) the reference to collective bargaining is to negotiations relating to pay, hours and holidays.

Determination of type of agreement

55 (1) This paragraph applies if one or more of the parties to an agreement applies to the CAC for a decision whether or not the agreement is an agreement for recognition.

(2) The CAC must give notice of receipt of an application under sub-paragraph (1) to any parties to the agreement who are not parties to the application.

(3) The CAC must within the decision period decide whether the agreement is an agreement for recognition.

(4) If the CAC decides that the agreement is an agreement for recognition it must issue a declaration to that effect.

(5) If the CAC decides that the agreement is not an agreement for recognition it must issue a declaration to that effect.

(6) The decision period is—

(a) the period of 10 working days starting with the day after that on which the CAC receives the application under sub-paragraph (1), or

(b) such longer period (so starting) as the CAC may specify to the parties to the agreement by notice containing reasons for the extension.

Termination of agreement for recognition

56 (1) The employer may not terminate an agreement for recognition before the relevant period ends.

(2) After that period ends the employer may terminate the agreement, with or without the consent of the union (or unions).

(3) The union (or unions) may terminate an agreement for recognition at any time, with or without the consent of the employer.

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(4) Sub-paragraphs (1) to (3) have effect subject to the terms of the agreement or any other agreement of the parties.

(5) The relevant period is the period of three years starting with the day after the date of the agreement.

57 (1) If an agreement for recognition is terminated, as from the termination the agreement and any provisions relating to the collective bargaining method shall cease to have effect.

(2) For this purpose provisions relating to the collective bargaining method are—
- (a) any agreement between the parties as to the method by which collective bargaining is to be conducted with regard to the bargaining unit, or
- (b) anything effective as, or as if contained in, a legally enforceable contract and relating to the method by which collective bargaining is to be conducted with regard to the bargaining unit.

Application to CAC to specify method

58 (1) This paragraph applies if the parties make an agreement for recognition.

(2) The parties may in the negotiation period conduct negotiations with a view to agreeing a method by which they will conduct collective bargaining.

(3) If no agreement is made in the negotiation period the employer or the union (or unions) may apply to the CAC for assistance.

(4) The negotiation period is—
- (a) the period of 30 working days starting with the start day, or
- (b) such longer period (so starting) as the parties may from time to time agree.

(5) The start day is the day after that on which the agreement is made.

59 (1) This paragraph applies if—
- (a) the parties to an agreement for recognition agree a method by which they will conduct collective bargaining, and
- (b) one or more of the parties fails to carry out the agreement as to a method.

(2) The employer or the union (or unions) may apply to the CAC for assistance.

60 (1) This paragraph applies if an application for assistance is made to the CAC under paragraph 58 or 59.

(2) The application is not admissible unless the conditions in sub-paragraphs (3) and (4) are satisfied.

(3) The condition is that the employer, taken with any associated employer or employers, must—
- (a) employ at least 21 workers on the day the application is made, or
- (b) employ an average of at least 21 workers in the 13 weeks ending with that day.

(4) The condition is that the union (or every union) has a certificate under section 6 that it is independent.

(5) To find the average under sub-paragraph (3)(b)—

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(a) take the number of workers employed in each of the 13 weeks (including workers not employed for the whole of the week);
(b) aggregate the 13 numbers;
(c) divide the aggregate by 13.

(6) For the purposes of sub-paragraph (3)(a) any worker employed by an associated company incorporated outside Great Britain must be ignored unless the day the application was made fell within a period during which he ordinarily worked in Great Britain.

(7) For the purposes of sub-paragraph (3)(b) any worker employed by an associated company incorporated outside Great Britain must be ignored in relation to a week unless the whole or any part of that week fell within a period during which he ordinarily worked in Great Britain.

(8) For the purposes of sub-paragraphs (6) and (7) a worker who is employed on board a ship registered in the register maintained under section 8 of the Merchant Shipping Act 1995 shall be treated as ordinarily working in Great Britain unless—
(a) the ship's entry in the register specifies a port outside Great Britain as the port to which the vessel is to be treated as belonging,
(b) the employment is wholly outside Great Britain, or
(c) the worker is not ordinarily resident in Great Britain.

(9) An order made under paragraph 7(6) may also—
(a) provide that sub-paragraphs (2), (3) and (5) to (8) of this paragraph are not to apply, or are not to apply in specified circumstances, or
(b) vary the number of workers for the time being specified in sub-paragraph (3).

61 (1) An application to the CAC is not admissible unless—
(a) it is made in such form as the CAC specifies, and
(b) it is supported by such documents as the CAC specifies.

(2) An application which is made by a union (or unions) to the CAC is not admissible unless the union gives (or unions give) to the employer—
(a) notice of the application, and
(b) a copy of the application and any documents supporting it.

(3) An application which is made by an employer to the CAC is not admissible unless the employer gives to the union (or each of the unions)—
(a) notice of the application, and
(b) a copy of the application and any documents supporting it.

CAC's response to application

62 (1) The CAC must give notice to the parties of receipt of an application under paragraph 58 or 59.

(2) Within the acceptance period the CAC must decide whether the application is admissible within the terms of paragraphs 60 and 61.

(3) In deciding whether an application is admissible the CAC must consider any evidence which it has been given by the employer or the union (or unions).

(4) If the CAC decides that the application is not admissible—

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(a) the CAC must give notice of its decision to the parties,
(b) the CAC must not accept the application, and
(c) no further steps are to be taken under this Part of this Schedule.

(5) If the CAC decides that the application is admissible it must—
(a) accept the application, and
(b) give notice of the acceptance to the parties.

(6) The acceptance period is—
(a) the period of 10 working days starting with the day after that on which the CAC receives the application, or
(b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

63 (1) If the CAC accepts an application it must try to help the parties to reach in the agreement period an agreement on a method by which they will conduct collective bargaining.

(2) If at the end of the agreement period the parties have not made such an agreement the CAC must specify to the parties the method by which they are to conduct collective bargaining.

(3) Any method specified under sub-paragraph (2) is to have effect as if it were contained in a legally enforceable contract made by the parties.

(4) But if the parties agree in writing—
(a) that sub-paragraph (3) shall not apply, or shall not apply to particular parts of the method specified by the CAC, or
(b) to vary or replace the method specified by the CAC,

the written agreement shall have effect as a legally enforceable contract made by the parties.

(5) Specific performance shall be the only remedy available for breach of anything which is a legally enforceable contract by virtue of this paragraph.

(6) If the CAC accepts an application, the applicant may not withdraw it after the end of the agreement period.

(7) If at any time before a specification is made under sub-paragraph (2) the parties jointly apply to the CAC requesting it to stop taking steps under this paragraph, the CAC must comply with the request.

(8) The agreement period is—
(a) the period of 20 working days starting with the day after that on which the CAC gives notice of acceptance of the application, or
(b) such longer period (so starting) as the parties may from time to time agree.

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PART III

CHANGES AFFECTING BARGAINING UNIT

Introduction

64 (1) This Part of this Schedule applies if—

(a) the CAC has issued a declaration that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit, and

(b) provisions relating to the collective bargaining method apply in relation to the unit.

(2) In such a case, in this Part of this Schedule—

(a) references to the original unit are to the bargaining unit on whose behalf the union is (or unions are) recognised as entitled to conduct collective bargaining, and

(b) references to the bargaining arrangements are to the declaration and to the provisions relating to the collective bargaining method which apply in relation to the original unit.

(3) For this purpose provisions relating to the collective bargaining method are—

(a) the parties' agreement as to the method by which collective bargaining is to be conducted with regard to the original unit,

(b) anything effective as, or as if contained in, a legally enforceable contract and relating to the method by which collective bargaining is to be conducted with regard to the original unit, or

(c) any provision of this Part of this Schedule that a method of collective bargaining is to have effect with regard to the original unit.

65 References in this Part of this Schedule to the parties are to the employer and the union (or unions) concerned.

Either party believes unit no longer appropriate

66 (1) This paragraph applies if the employer believes or the union believes (or unions believe) that the original unit is no longer an appropriate bargaining unit.

(2) The employer or union (or unions) may apply to the CAC to make a decision as to what is an appropriate bargaining unit.

67 (1) An application under paragraph 66 is not admissible unless the CAC decides that it is likely that the original unit is no longer appropriate by reason of any of the matters specified in sub-paragraph (2).

(2) The matters are—

(a) a change in the organisation or structure of the business carried on by the employer;

(b) a change in the activities pursued by the employer in the course of the business carried on by him;

(c) a substantial change in the number of workers employed in the original unit.

68 (1) The CAC must give notice to the parties of receipt of an application under paragraph 66.

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(2) Within the acceptance period the CAC must decide whether the application is admissible within the terms of paragraphs 67 and 92.

(3) In deciding whether the application is admissible the CAC must consider any evidence which it has been given by the employer or the union (or unions).

(4) If the CAC decides that the application is not admissible —
- (a) the CAC must give notice of its decision to the parties,
- (b) the CAC must not accept the application, and
- (c) no further steps are to be taken under this Part of this Schedule.

(5) If the CAC decides that the application is admissible it must—
- (a) accept the application, and
- (b) give notice of the acceptance to the parties.

(6) The acceptance period is—
- (a) the period of 10 working days starting with the day after that on which the CAC receives the application, or
- (b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

69 (1) This paragraph applies if—
- (a) the CAC gives notice of acceptance of the application, and
- (b) before the end of the first period the parties agree a bargaining unit or units (the new unit or units) differing from the original unit and inform the CAC of their agreement.

(2) If in the CAC's opinion the new unit (or any of the new units) contains at least one worker falling within an outside bargaining unit no further steps are to be taken under this Part of this Schedule.

(3) If sub-paragraph (2) does not apply—
- (a) the CAC must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the new unit or units;
- (b) so far as it affects workers in the new unit (or units) who fall within the original unit, the declaration shall have effect in place of any declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the original unit;
- (c) the method of collective bargaining relating to the original unit shall have effect in relation to the new unit or units, with any modifications which the CAC considers necessary to take account of the change of bargaining unit and specifies in the declaration.

(4) The first period is—
- (a) the period of 10 working days starting with the day after that on which the CAC gives notice of acceptance of the application, or
- (b) such longer period (so starting) as the parties may from time to time agree and notify to the CAC.

(5) An outside bargaining unit is a bargaining unit which fulfils these conditions—
- (a) it is not the original unit;
- (b) a union is (or unions are) recognised as entitled to conduct collective bargaining on its behalf;

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(c) the union (or at least one of the unions) is not a party referred to in paragraph 64.

70 (1) This paragraph applies if—

(a) the CAC gives notice of acceptance of the application, and

(b) the parties do not inform the CAC before the end of the first period that they have agreed a bargaining unit or units differing from the original unit.

(2) During the second period—

(a) the CAC must decide whether or not the original unit continues to be an appropriate bargaining unit;

(b) if the CAC decides that the original unit does not so continue, it must decide what other bargaining unit is or units are appropriate;

(c) the CAC must give notice to the parties of its decision or decisions under paragraphs (a) and (b).

(3) In deciding whether or not the original unit continues to be an appropriate bargaining unit the CAC must take into account only these matters—

(a) any change in the organisation or structure of the business carried on by the employer;

(b) any change in the activities pursued by the employer in the course of the business carried on by him;

(c) any substantial change in the number of workers employed in the original unit.

(4) In deciding what other bargaining unit is or units are appropriate the CAC must take these matters into account—

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

(b) the matters listed in sub-paragraph (5), so far as they do not conflict with that need.

(5) The matters are—

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

(b) existing national and local bargaining arrangements;

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

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

(e) the location of workers.

(6) If the CAC decides that two or more bargaining units are appropriate its decision must be such that no worker falls within more than one of them.

(7) The second period is—

(a) the period of 10 working days starting with the day after that on which the first period ends, or

(b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

71 If the CAC gives notice under paragraph 70 of a decision that the original unit continues to be an appropriate bargaining unit no further steps are to be taken under this Part of this Schedule.

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72 Paragraph 82 applies if the CAC gives notice under paragraph 70 of—

(a) a decision that the original unit is no longer an appropriate bargaining unit, and

(b) a decision as to the bargaining unit which is (or units which are) appropriate.

73 (1) This paragraph applies if—

(a) the parties agree under paragraph 69 a bargaining unit or units differing from the original unit,

(b) paragraph 69(2) does not apply, and

(c) at least one worker falling within the original unit does not fall within the new unit (or any of the new units).

(2) In such a case—

(a) the CAC must issue a declaration that the bargaining arrangements, so far as relating to the worker or workers mentioned in sub-paragraph (1)(c), are to cease to have effect on a date specified by the CAC in the declaration, and

(b) the bargaining arrangements shall cease to have effect accordingly.

Employer believes unit has ceased to exist

74 (1) If the employer—

(a) believes that the original unit has ceased to exist, and

(b) wishes the bargaining arrangements to cease to have effect,

he must give the union (or each of the unions) a notice complying with sub-paragraph (2) and must give a copy of the notice to the CAC.

(2) A notice complies with this sub-paragraph if it—

(a) identifies the unit and the bargaining arrangements,

(b) states the date on which the notice is given,

(c) states that the unit has ceased to exist, and

(d) states that the bargaining arrangements are to cease to have effect on a date which is specified in the notice and which falls after the end of the period of 35 working days starting with the day after that on which the notice is given.

(3) Within the validation period the CAC must decide whether the notice complies with sub-paragraph (2).

(4) If the CAC decides that the notice does not comply with sub-paragraph (2)—

(a) the CAC must give the parties notice of its decision, and

(b) the employer's notice shall be treated as not having been given.

(5) If the CAC decides that the notice complies with sub-paragraph (2) it must give the parties notice of the decision.

(6) The bargaining arrangements shall cease to have effect on the date specified under sub-paragraph (2)(d) if—

(a) the CAC gives notice under sub-paragraph (5), and

(b) the union does not (or unions do not) apply to the CAC under paragraph 75.

(7) The validation period is—

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(a) the period of 10 working days starting with the day after that on which the CAC receives the copy of the notice, or

(b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

75 (1) Paragraph 76 applies if—

(a) the CAC gives notice under paragraph 74(5), and

(b) within the period of 10 working days starting with the day after that on which the notice is given the union makes (or unions make) an application to the CAC for a decision on the questions specified in sub-paragraph (2).

(2) The questions are—

(a) whether the original unit has ceased to exist;

(b) whether the original unit is no longer appropriate by reason of any of the matters specified in sub-paragraph (3).

(3) The matters are—

(a) a change in the organisation or structure of the business carried on by the employer;

(b) a change in the activities pursued by the employer in the course of the business carried on by him;

(c) a substantial change in the number of workers employed in the original unit.

76 (1) The CAC must give notice to the parties of receipt of an application under paragraph 75.

(2) Within the acceptance period the CAC must decide whether the application is admissible within the terms of paragraph 92.

(3) In deciding whether the application is admissible the CAC must consider any evidence which it has been given by the employer or the union (or unions).

(4) If the CAC decides that the application is not admissible—

(a) the CAC must give notice of its decision to the parties,

(b) the CAC must not accept the application, and

(c) no further steps are to be taken under this Part of this Schedule.

(5) If the CAC decides that the application is admissible it must—

(a) accept the application, and

(b) give notice of the acceptance to the parties.

(6) The acceptance period is—

(a) the period of 10 working days starting with the day after that on which the CAC receives the application, or

(b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

77 (1) If the CAC accepts an application it—

(a) must give the employer and the union (or unions) an opportunity to put their views on the questions in relation to which the application was made;

(b) must decide the questions before the end of the decision period.

(2) If the CAC decides that the original unit has ceased to exist—

(a) the CAC must give the parties notice of its decision, and

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(b) the bargaining arrangements shall cease to have effect on the termination date.

(3) If the CAC decides that the original unit has not ceased to exist, and that it is not the case that the original unit is no longer appropriate by reason of any of the matters specified in paragraph 75(3)—
(a) the CAC must give the parties notice of its decision, and
(b) the employer's notice shall be treated as not having been given.

(4) If the CAC decides that the original unit has not ceased to exist, and that the original unit is no longer appropriate by reason of any of the matters specified in paragraph 75(3), the CAC must give the parties notice of its decision.

(5) The decision period is—
(a) the period of 10 working days starting with the day after that on which the CAC gives notice of acceptance of the application, or
(b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

(6) The termination date is the later of—
(a) the date specified under paragraph 74(2)(d), and
(b) the day after the last day of the decision period.

78 (1) This paragraph applies if—
(a) the CAC gives notice under paragraph 77(4), and
(b) before the end of the first period the parties agree a bargaining unit or units (the new unit or units) differing from the original unit and inform the CAC of their agreement.

(2) If in the CAC's opinion the new unit (or any of the new units) contains at least one worker falling within an outside bargaining unit no further steps are to be taken under this Part of this Schedule.

(3) If sub-paragraph (2) does not apply—
(a) the CAC must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the new unit or units;
(b) so far as it affects workers in the new unit (or units) who fall within the original unit, the declaration shall have effect in place of any declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the original unit;
(c) the method of collective bargaining relating to the original unit shall have effect in relation to the new unit or units, with any modifications which the CAC considers necessary to take account of the change of bargaining unit and specifies in the declaration.

(4) The first period is—
(a) the period of 10 working days starting with the day after that on which the CAC gives notice under paragraph 77(4), or
(b) such longer period (so starting) as the parties may from time to time agree and notify to the CAC.

(5) An outside bargaining unit is a bargaining unit which fulfils these conditions—
(a) it is not the original unit;

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(b) a union is (or unions are) recognised as entitled to conduct collective bargaining on its behalf;

(c) the union (or at least one of the unions) is not a party referred to in paragraph 64.

79 (1) This paragraph applies if—

(a) the CAC gives notice under paragraph 77(4), and

(b) the parties do not inform the CAC before the end of the first period that they have agreed a bargaining unit or units differing from the original unit.

(2) During the second period the CAC—

(a) must decide what other bargaining unit is or units are appropriate;

(b) must give notice of its decision to the parties.

(3) In deciding what other bargaining unit is or units are appropriate, the CAC must take these matters into account—

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

(b) the matters listed in sub-paragraph (4), so far as they do not conflict with that need.

(4) The matters are—

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

(b) existing national and local bargaining arrangements;

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

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

(e) the location of workers.

(5) If the CAC decides that two or more bargaining units are appropriate its decision must be such that no worker falls within more than one of them.

(6) The second period is—

(a) the period of 10 working days starting with the day after that on which the first period ends, or

(b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

80 Paragraph 82 applies if the CAC gives notice under paragraph 79 of a decision as to the bargaining unit which is (or units which are) appropriate.

81 (1) This paragraph applies if—

(a) the parties agree under paragraph 78 a bargaining unit or units differing from the original unit,

(b) paragraph 78(2) does not apply, and

(c) at least one worker falling within the original unit does not fall within the new unit (or any of the new units).

(2) In such a case —

(a) the CAC must issue a declaration that the bargaining arrangements, so far as relating to the worker or workers mentioned in sub-paragraph (1)(c), are to cease to have effect on a date specified by the CAC in the declaration, and

(b) the bargaining arrangements shall cease to have effect accordingly.

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Position where CAC decides new unit

82 (1) This paragraph applies if the CAC gives notice under paragraph 70 of—
(a) a decision that the original unit is no longer an appropriate bargaining unit, and
(b) a decision as to the bargaining unit which is (or units which are) appropriate.

(2) This paragraph also applies if the CAC gives notice under paragraph 79 of a decision as to the bargaining unit which is (or units which are) appropriate.

(3) The CAC—
(a) must proceed as stated in paragraphs 83 to 89 with regard to the appropriate unit (if there is one only), or
(b) must proceed as stated in paragraphs 83 to 89 with regard to each appropriate unit separately (if there are two or more).

(4) References in those paragraphs to the new unit are to the appropriate unit under consideration.

83 (1) This paragraph applies if in the CAC's opinion the new unit contains at least one worker falling within a statutory outside bargaining unit.

(2) In such a case—
(a) the CAC must issue a declaration that the relevant bargaining arrangements, so far as relating to workers falling within the new unit, are to cease to have effect on a date specified by the CAC in the declaration, and
(b) the relevant bargaining arrangements shall cease to have effect accordingly.

(3) The relevant bargaining arrangements are—
(a) the bargaining arrangements relating to the original unit, and
(b) the bargaining arrangements relating to each statutory outside bargaining unit containing workers who fall within the new unit.

(4) The bargaining arrangements relating to the original unit are the bargaining arrangements as defined in paragraph 64.

(5) The bargaining arrangements relating to an outside unit are—
(a) the declaration recognising a union (or unions) as entitled to conduct collective bargaining on behalf of the workers constituting the outside unit, and
(b) the provisions relating to the collective bargaining method.

(6) For this purpose the provisions relating to the collective bargaining method are—
(a) any agreement by the employer and the union (or unions) as to the method by which collective bargaining is to be conducted with regard to the outside unit,
(b) anything effective as, or as if contained in, a legally enforceable contract and relating to the method by which collective bargaining is to be conducted with regard to the outside unit, or
(c) any provision of this Part of this Schedule that a method of collective bargaining is to have effect with regard to the outside unit.

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(7) A statutory outside bargaining unit is a bargaining unit which fulfils these conditions—
  (a) it is not the original unit;
  (b) a union is (or unions are) recognised as entitled to conduct collective bargaining on its behalf by virtue of a declaration of the CAC;
  (c) the union (or at least one of the unions) is not a party referred to in paragraph 64.

(8) The date specified under sub-paragraph (1)(a) must be—
  (a) the date on which the relevant period expires, or
  (b) if the CAC believes that to maintain the relevant bargaining arrangements would be impracticable or contrary to the interests of good industrial relations, the date after the date on which the declaration is issued;

and the relevant period is the period of 65 working days starting with the day after that on which the declaration is issued.

84 (1) This paragraph applies if in the CAC's opinion the new unit contains—
  (a) at least one worker falling within a voluntary outside bargaining unit, but
  (b) no worker falling within a statutory outside bargaining unit.

(2) In such a case—
  (a) the CAC must issue a declaration that the original bargaining arrangements, so far as relating to workers falling within the new unit, are to cease to have effect on a date specified by the CAC in the declaration, and
  (b) the original bargaining arrangements shall cease to have effect accordingly.

(3) The original bargaining arrangements are the bargaining arrangements as defined in paragraph 64.

(4) A voluntary outside bargaining unit is a bargaining unit which fulfils these conditions—
  (a) it is not the original unit;
  (b) a union is (or unions are) recognised as entitled to conduct collective bargaining on its behalf by virtue of an agreement with the employer;
  (c) the union (or at least one of the unions) is not a party referred to in paragraph 64.

(5) The date specified under sub-paragraph (2)(a) must be—
  (a) the date on which the relevant period expires, or
  (b) if the CAC believes that to maintain the original bargaining arrangements would be impracticable or contrary to the interests of good industrial relations, the date after the date on which the declaration is issued;

and the relevant period is the period of 65 working days starting with the day after that on which the declaration is issued.

85 (1) If the CAC's opinion is not that mentioned in paragraph 83(1) or 84(1) it must—
  (a) decide whether the difference between the original unit and the new unit is such that the support of the union (or unions) within the new unit needs to be assessed, and
  (b) inform the parties of its decision.

(2) If the CAC's decision is that such support does not need to be assessed—

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(a) the CAC must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the new unit;

(b) so far as it affects workers in the new unit who fall within the original unit, the declaration shall have effect in place of any declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the original unit;

(c) the method of collective bargaining relating to the original unit shall have effect in relation to the new unit, with any modifications which the CAC considers necessary to take account of the change of bargaining unit and specifies in the declaration.

86 (1) This paragraph applies if the CAC decides under paragraph 85(1) that the support of the union (or unions) within the new unit needs to be assessed.

(2) The CAC must decide these questions—

(a) whether members of the union (or unions) constitute at least 10 per cent of the workers constituting the new unit;

(b) whether a majority of the workers constituting the new unit would be likely to favour recognition of the union (or unions) as entitled to conduct collective bargaining on behalf of the new unit.

(3) If the CAC decides one or both of the questions in the negative—

(a) the CAC must issue a declaration that the bargaining arrangements, so far as relating to workers falling within the new unit, are to cease to have effect on a date specified by the CAC in the declaration, and

(b) the bargaining arrangements shall cease to have effect accordingly.

87 (1) This paragraph applies if—

(a) the CAC decides both the questions in paragraph 86(2) in the affirmative, and

(b) the CAC is satisfied that a majority of the workers constituting the new unit are members of the union (or unions).

(2) The CAC must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the workers constituting the new unit.

(3) But if any of the three qualifying conditions is fulfilled, instead of issuing a declaration under sub-paragraph (2) the CAC must give notice to the parties that it intends to arrange for the holding of a secret ballot in which the workers constituting the new unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.

(4) These are the three qualifying conditions—

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

(b) a significant number of the union members within the new unit inform the CAC that they do not want the union (or unions) to conduct collective bargaining on their behalf;

(c) membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within

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the new unit want the union (or unions) to conduct collective bargaining on their behalf.

(5) For the purposes of sub-paragraph (4)(c) membership evidence is—

(a) evidence about the circumstances in which union members became members;

(b) evidence about the length of time for which union members have been members, in a case where the CAC is satisfied that such evidence should be taken into account.

(6) If the CAC issues a declaration under sub-paragraph (2)—

(a) so far as it affects workers in the new unit who fall within the original unit, the declaration shall have effect in place of any declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the original unit;

(b) the method of collective bargaining relating to the original unit shall have effect in relation to the new unit, with any modifications which the CAC considers necessary to take account of the change of bargaining unit and specifies in the declaration.

88 (1) This paragraph applies if—

(a) the CAC decides both the questions in paragraph 86(2) in the affirmative, and

(b) the CAC is not satisfied that a majority of the workers constituting the new unit are members of the union (or unions).

(2) The CAC must give notice to the parties that it intends to arrange for the holding of a secret ballot in which the workers constituting the new unit are asked whether they want the union (or unions) to conduct collective bargaining on their behalf.

89 (1) If the CAC gives notice under paragraph 87(3) or 88(2) the union (or unions) may within the notification period notify the CAC that the union does not (or unions do not) want the CAC to arrange for the holding of the ballot; and the notification period is the period of 10 working days starting with the day after that on which the union (or last of the unions) receives the CAC's notice.

(2) If the CAC is so notified—

(a) it must not arrange for the holding of the ballot,

(b) it must inform the parties that it will not arrange for the holding of the ballot, and why,

(c) it must issue a declaration that the bargaining arrangements, so far as relating to workers falling within the new unit, are to cease to have effect on a date specified by it in the declaration, and

(d) the bargaining arrangements shall cease to have effect accordingly.

(3) If the CAC is not so notified it must arrange for the holding of the ballot.

(4) Paragraph 25 applies if the CAC arranges under this paragraph for the holding of a ballot (as well as if the CAC arranges under paragraph 24 for the holding of a ballot).

(5) Paragraphs 26 to 29 apply accordingly, but as if references to the bargaining unit were references to the new unit.

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(6) If as a result of the ballot the CAC issues a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the new unit—
  (a) so far as it affects workers in the new unit who fall within the original unit, the declaration shall have effect in place of any declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the original unit;
  (b) the method of collective bargaining relating to the original unit shall have effect in relation to the new unit, with any modifications which the CAC considers necessary to take account of the change of bargaining unit and specifies in the declaration.

(7) If as a result of the ballot the CAC issues a declaration that the union is (or unions are) not entitled to be recognised as entitled to conduct collective bargaining on behalf of the new unit—
  (a) the CAC must state in the declaration the date on which the bargaining arrangements, so far as relating to workers falling within the new unit, are to cease to have effect, and
  (b) the bargaining arrangements shall cease to have effect accordingly.

(8) Paragraphs (a) and (b) of sub-paragraph (6) also apply if the CAC issues a declaration under paragraph 27(2).

Residual workers

90 (1) This paragraph applies if—
  (a) the CAC decides an appropriate bargaining unit or units under paragraph 70 or 79, and
  (b) at least one worker falling within the original unit does not fall within the new unit (or any of the new units).

(2) In such a case —
  (a) the CAC must issue a declaration that the bargaining arrangements, so far as relating to the worker or workers mentioned in sub-paragraph (1)(b), are to cease to have effect on a date specified by the CAC in the declaration, and
  (b) the bargaining arrangements shall cease to have effect accordingly.

91 (1) This paragraph applies if—
  (a) the CAC has proceeded as stated in paragraphs 83 to 89 with regard to the new unit (if there is one only) or with regard to each new unit (if there are two or more), and
  (b) in so doing the CAC has issued one or more declarations under paragraph 83.

(2) The CAC must—
  (a) consider each declaration issued under paragraph 83, and
  (b) in relation to each declaration, identify each statutory outside bargaining unit which contains at least one worker who also falls within the new unit to which the declaration relates;

and in this paragraph each statutory outside bargaining unit so identified is referred to as a parent unit.

(3) The CAC must then—
  (a) consider each parent unit, and

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(b) in relation to each parent unit, identify any workers who fall within the parent unit but who do not fall within the new unit (or any of the new units);

and in this paragraph the workers so identified in relation to a parent unit are referred to as a residual unit.

(4) In relation to each residual unit, the CAC must issue a declaration that the outside union is (or outside unions are) recognised as entitled to conduct collective bargaining on its behalf.

(5) But no such declaration shall be issued in relation to a residual unit if the CAC has received an application under paragraph 66 or 75 in relation to its parent unit.

(6) In this paragraph references to the outside union (or to outside unions) in relation to a residual unit are to the union which is (or unions which are) recognised as entitled to conduct collective bargaining on behalf of its parent unit.

(7) If the CAC issues a declaration under sub-paragraph (4)—

(a) the declaration shall have effect in place of the existing declaration that the outside union is (or outside unions are) recognised as entitled to conduct collective bargaining on behalf of the parent unit, so far as the existing declaration relates to the residual unit;

(b) if there is a method of collective bargaining relating to the parent unit, it shall have effect in relation to the residual unit with any modifications which the CAC considers necessary to take account of the change of bargaining unit and specifies in the declaration.

Applications under this Part

92 (1) An application to the CAC under this Part of this Schedule is not admissible unless—

(a) it is made in such form as the CAC specifies, and

(b) it is supported by such documents as the CAC specifies.

(2) An application which is made by a union (or unions) to the CAC under this Part of this Schedule is not admissible unless the union gives (or unions give) to the employer—

(a) notice of the application, and

(b) a copy of the application and any documents supporting it.

(3) An application which is made by an employer to the CAC under this Part of this Schedule is not admissible unless the employer gives to the union (or each of the unions)—

(a) notice of the application, and

(b) a copy of the application and any documents supporting it.

Withdrawal of application

93 (1) If an application under paragraph 66 or 75 is accepted by the CAC, the applicant (or applicants) may not withdraw the application—

(a) after the CAC issues a declaration under paragraph 69(3) or 78(3),

(b) after the CAC decides under paragraph 77(2) or 77(3),

(c) after the CAC issues a declaration under paragraph 83(1), 85(2), 86(3) or 87(2) in relation to the new unit (where there is only one) or a declaration

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under any of those paragraphs in relation to any of the new units (where there is more than one),

(d) after the union has (or unions have) notified the CAC under paragraph 89(1) in relation to the new unit (where there is only one) or any of the new units (where there is more than one), or

(e) after the end of the notification period referred to in paragraph 89(1) and relating to the new unit (where there is only one) or any of the new units (where there is more than one).

(2) If an application is withdrawn by the applicant (or applicants)—

(a) the CAC must give notice of the withdrawal to the other party (or parties), and

(b) no further steps are to be taken under this Part of this Schedule.

Meaning of collective bargaining

94 (1) This paragraph applies for the purposes of this Part of this Schedule.

(2) Except in relation to paragraphs 69(5), 78(5) and 83(6), the meaning of collective bargaining given by section 178(1) shall not apply.

(3) In relation to a new unit references to collective bargaining are to negotiations relating to the matters which were the subject of collective bargaining in relation to the corresponding original unit; and the corresponding original unit is the unit which was the subject of an application under paragraph 66 or 75 in consequence of which the new unit was agreed by the parties or decided by the CAC.

(4) But if the parties agree matters as the subject of collective bargaining in relation to the new unit, references to collective bargaining in relation to that unit are to negotiations relating to the agreed matters; and this is the case whether the agreement is made before or after the time when the CAC issues a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the new unit.

(5) In relation to a residual unit in relation to which a declaration is issued under paragraph 91, references to collective bargaining are to negotiations relating to the matters which were the subject of collective bargaining in relation to the corresponding parent unit.

(6) In construing paragraphs 69(3)(c), 78(3)(c), 85(2)(c), 87(6)(b) and 89(6)(b)—

(a) sub-paragraphs (3) and (4) do not apply, and

(b) references to collective bargaining are to negotiations relating to pay, hours and holidays.

Method of collective bargaining

95 (1) This paragraph applies for the purposes of this Part of this Schedule.

(2) Where a method of collective bargaining has effect in relation to a new unit, that method shall have effect as if it were contained in a legally enforceable contract made by the parties.

(3) But if the parties agree in writing—

(a) that sub-paragraph (2) shall not apply, or shall not apply to particular parts of the method, or

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(b) to vary or replace the method,

the written agreement shall have effect as a legally enforceable contract made by the parties.

(4) Specific performance shall be the only remedy available for breach of anything which is a legally enforceable contract by virtue of this paragraph.

PART IV

DERECOGNITION: GENERAL

Introduction

96 (1) This Part of this Schedule applies if the CAC has issued a declaration that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit.

(2) In such a case references in this Part of this Schedule to the bargaining arrangements are to the declaration and to the provisions relating to the collective bargaining method.

(3) For this purpose the provisions relating to the collective bargaining method are—

(a) the parties' agreement as to the method by which collective bargaining is to be conducted,

(b) anything effective as, or as if contained in, a legally enforceable contract and relating to the method by which collective bargaining is to be conducted, or

(c) any provision of Part III of this Schedule that a method of collective bargaining is to have effect.

97 For the purposes of this Part of this Schedule the relevant date is the date of the expiry of the period of 3 years starting with the date of the CAC's declaration.

98 References in this Part of this Schedule to the parties are to the employer and the union (or unions) concerned.

Employer employs fewer than 21 workers

99 (1) This paragraph applies if—

(a) the employer believes that he, taken with any associated employer or employers, employed an average of fewer than 21 workers in any period of 13 weeks, and

(b) that period ends on or after the relevant date.

(2) If the employer wishes the bargaining arrangements to cease to have effect, he must give the union (or each of the unions) a notice complying with sub-paragraph (3) and must give a copy of the notice to the CAC.

(3) A notice complies with this sub-paragraph if it—

(a) identifies the bargaining arrangements,

(b) specifies the period of 13 weeks in question,

(c) states the date on which the notice is given,

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(d) is given within the period of 5 working days starting with the day after the last day of the specified period of 13 weeks,

(e) states that the employer, taken with any associated employer or employers, employed an average of fewer than 21 workers in the specified period of 13 weeks, and

(f) states that the bargaining arrangements are to cease to have effect on a date which is specified in the notice and which falls after the end of the period of 35 working days starting with the day after that on which the notice is given.

(4) To find the average number of workers employed by the employer, taken with any associated employer or employers, in the specified period of 13 weeks—

(a) take the number of workers employed in each of the 13 weeks (including workers not employed for the whole of the week);

(b) aggregate the 13 numbers;

(c) divide the aggregate by 13.

(5) For the purposes of sub-paragraph (1)(a) any worker employed by an associated company incorporated outside Great Britain must be ignored in relation to a week unless the whole or any part of that week fell within a period during which he ordinarily worked in Great Britain.

(6) For the purposes of sub-paragraph (5) a worker who is employed on board a ship registered in the register maintained under section 8 of the Merchant Shipping Act 1995 shall be treated as ordinarily working in Great Britain unless—

(a) the ship's entry in the register specifies a port outside Great Britain as the port to which the vessel is to be treated as belonging,

(b) the employment is wholly outside Great Britain, or

(c) the worker is not ordinarily resident in Great Britain.

(7) An order made under paragraph 7(6) may also—

(a) provide that sub-paragraphs (1) to (6) of this paragraph and paragraphs 100 to 103 are not to apply, or are not to apply in specified circumstances, or

(b) vary the number of workers for the time being specified in sub-paragraphs (1)(a) and (3)(e).

VALID FROM 06/04/2005

[F459 99A (1) A notice given for the purposes of paragraph 99(2) ("the notice in question") is invalidated by this paragraph if—

(a) a relevant application was made, or an earlier notice under paragraph 99(2) was given, within the period of 3 years prior to the date when the notice in question was given,

(b) the relevant application, or that earlier notice, and the notice in question relate to the same bargaining unit, and

(c) the CAC accepted the relevant application or (as the case may be) decided under paragraph 100 that the earlier notice under paragraph 99(2) complied with paragraph 99(3).

(2) A relevant application is an application made to the CAC—

(a) by the employer under paragraph 106, 107 or 128, or

(b) by a worker (or workers) under paragraph 112.]

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Textual Amendments

F459 Sch. A1 para. 99A inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 12(4)**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

100 (1) Within the validation period the CAC must decide whether the notice complies with paragraph 99(3).

(2) If the CAC decides that the notice does not comply with paragraph 99(3)—
- (a) the CAC must give the parties notice of its decision, and
- (b) the employer's notice shall be treated as not having been given.

(3) If the CAC decides that the notice complies with paragraph 99(3) it must give the parties notice of the decision.

(4) The bargaining arrangements shall cease to have effect on the date specified under paragraph 99(3)(f) if—
- (a) the CAC gives notice under sub-paragraph (3), and
- (b) the union does not (or unions do not) apply to the CAC under paragraph 101.

(5) The validation period is—
- (a) the period of 10 working days starting with the day after that on which the CAC receives the copy of the notice, or
- (b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

101 (1) This paragraph applies if—
- (a) the CAC gives notice under paragraph 100(3), and
- (b) within the period of 10 working days starting with the day after that on which the notice is given, the union makes (or unions make) an application to the CAC for a decision whether the period of 13 weeks specified under paragraph 99(3)(b) ends on or after the relevant date and whether the statement made under paragraph 99(3)(e) is correct.

(2) An application is not admissible unless—
- (a) it is made in such form as the CAC specifies, and
- (b) it is supported by such documents as the CAC specifies.

(3) An application is not admissible unless the union gives (or unions give) to the employer—
- (a) notice of the application, and
- (b) a copy of the application and any documents supporting it.

(4) An application is not admissible if—
- (a) a relevant application was made within the period of 3 years prior to the date of the application,
- (b) the relevant application and the application relate to the same bargaining unit, and
- (c) the CAC accepted the relevant application.

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(5) A relevant application is an application made to the CAC—
- (a) by the union (or the unions) under this paragraph,
- (b) by the employer under paragraph 106, 107 or 128, or
- (c) by a worker (or workers) under paragraph 112.

102 (1) The CAC must give notice to the parties of receipt of an application under paragraph 101.

(2) Within the acceptance period the CAC must decide whether the application is admissible within the terms of paragraph 101.

(3) In deciding whether an application is admissible the CAC must consider any evidence which it has been given by the employer or the union (or unions).

(4) If the CAC decides that the application is not admissible—
- (a) the CAC must give notice of its decision to the parties,
- (b) the CAC must not accept the application,
- (c) no further steps are to be taken under this Part of this Schedule, and
- (d) the bargaining arrangements shall cease to have effect on the date specified under paragraph 99(3)(f).

(5) If the CAC decides that the application is admissible it must—
- (a) accept the application, and
- (b) give notice of the acceptance to the parties.

(6) The acceptance period is—
- (a) the period of 10 working days starting with the day after that on which the CAC receives the application, or
- (b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

103 (1) If the CAC accepts an application it—
- (a) must give the employer and the union (or unions) an opportunity to put their views on the questions whether the period of 13 weeks specified under paragraph 99(3)(b) ends on or after the relevant date and whether the statement made under paragraph 99(3)(e) is correct;
- (b) must decide the questions within the decision period and must give reasons for the decision.

(2) If the CAC decides that the period of 13 weeks specified under paragraph 99(3)(b) ends on or after the relevant date and that the statement made under paragraph 99(3)(e) is correct the bargaining arrangements shall cease to have effect on the termination date.

(3) If the CAC decides that the period of 13 weeks specified under paragraph 99(3)(b) does not end on or after the relevant date or that the statement made under paragraph 99(3)(e) is not correct, the notice under paragraph 99 shall be treated as not having been given.

(4) The decision period is—
- (a) the period of 10 working days starting with the day after that on which the CAC gives notice of acceptance of the application, or

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(b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

(5) The termination date is the later of—
(a) the date specified under paragraph 99(3)(f), and
(b) the day after the last day of the decision period.

Employer's request to end arrangements

104 (1) This paragraph and paragraphs 105 to 111 apply if after the relevant date the employer requests the union (or each of the unions) to agree to end the bargaining arrangements.

(2) The request is not valid unless it—
(a) is in writing,
(b) is received by the union (or each of the unions),
(c) identifies the bargaining arrangements, and
(d) states that it is made under this Schedule.

105 (1) If before the end of the first period the parties agree to end the bargaining arrangements no further steps are to be taken under this Part of this Schedule.

(2) Sub-paragraph (3) applies if before the end of the first period—
(a) the union informs the employer that the union does not accept the request but is willing to negotiate, or
(b) the unions inform the employer that the unions do not accept the request but are willing to negotiate.

(3) The parties may conduct negotiations with a view to agreeing to end the bargaining arrangements.

(4) If such an agreement is made before the end of the second period no further steps are to be taken under this Part of this Schedule.

(5) The employer and the union (or unions) may request ACAS to assist in conducting the negotiations.

(6) The first period is the period of 10 working days starting with the day after—
(a) the day on which the union receives the request, or
(b) the last day on which any of the unions receives the request.

(7) The second period is—
(a) the period of 20 working days starting with the day after that on which the first period ends, or
(b) such longer period (so starting) as the parties may from time to time agree.

106 (1) This paragraph applies if—
(a) before the end of the first period the union fails (or unions fail) to respond to the request, or
(b) before the end of the first period the union informs the employer that it does not (or unions inform the employer that they do not) accept the request (without indicating a willingness to negotiate).

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(2) The employer may apply to the CAC for the holding of a secret ballot to decide whether the bargaining arrangements should be ended.

107 (1) This paragraph applies if —

(a) the union informs (or unions inform) the employer under paragraph 105(2), and

(b) no agreement is made before the end of the second period.

(2) The employer may apply to the CAC for the holding of a secret ballot to decide whether the bargaining arrangements should be ended.

(3) But no application may be made if within the period of 10 working days starting with the day after that on which the union informs (or unions inform) the employer under paragraph 105(2) the union proposes (or unions propose) that ACAS be requested to assist in conducting the negotiations and—

(a) the employer rejects the proposal, or

(b) the employer fails to accept the proposal within the period of 10 working days starting with the day after that on which the union makes (or unions make) the proposal.

108 (1) An application under paragraph 106 or 107 is not admissible unless—

(a) it is made in such form as the CAC specifies, and

(b) it is supported by such documents as the CAC specifies.

(2) An application under paragraph 106 or 107 is not admissible unless the employer gives to the union (or each of the unions)—

(a) notice of the application, and

(b) a copy of the application and any documents supporting it.

109 (1) An application under paragraph 106 or 107 is not admissible if—

(a) a relevant application was made within the period of 3 years prior to the date of the application under paragraph 106 or 107,

(b) the relevant application and the application under paragraph 106 or 107 relate to the same bargaining unit, and

(c) the CAC accepted the relevant application.

(2) A relevant application is an application made to the CAC—

(a) by the union (or the unions) under paragraph 101,

(b) by the employer under paragraph 106, 107 or 128, or

(c) by a worker (or workers) under paragraph 112.

110 (1) An application under paragraph 106 or 107 is not admissible unless the CAC decides that—

(a) at least 10 per cent of the workers constituting the bargaining unit favour an end of the bargaining arrangements, and

(b) a majority of the workers constituting the bargaining unit would be likely to favour an end of the bargaining arrangements.

(2) The CAC must give reasons for the decision.

111 (1) The CAC must give notice to the parties of receipt of an application under paragraph 106 or 107.

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Trade Union and Labour Relations (Consolidation) Act 1992 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Within the acceptance period the CAC must decide whether—
- (a) the request is valid within the terms of paragraph 104, and
- (b) the application is made in accordance with paragraph 106 or 107 and admissible within the terms of paragraphs 108 to 110.

(3) In deciding those questions the CAC must consider any evidence which it has been given by the employer or the union (or unions).

(4) If the CAC decides that the request is not valid or the application is not made in accordance with paragraph 106 or 107 or is not admissible—
- (a) the CAC must give notice of its decision to the parties,
- (b) the CAC must not accept the application, and
- (c) no further steps are to be taken under this Part of this Schedule.

(5) If the CAC decides that the request is valid and the application is made in accordance with paragraph 106 or 107 and is admissible it must—
- (a) accept the application, and
- (b) give notice of the acceptance to the parties.

(6) The acceptance period is—
- (a) the period of 10 working days starting with the day after that on which the CAC receives the application, or
- (b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

Workers' application to end arrangements

112 (1) A worker or workers falling within the bargaining unit may after the relevant date apply to the CAC to have the bargaining arrangements ended.

(2) An application is not admissible unless—
- (a) it is made in such form as the CAC specifies, and
- (b) it is supported by such documents as the CAC specifies.

(3) An application is not admissible unless the worker gives (or workers give) to the employer and to the union (or each of the unions)—
- (a) notice of the application, and
- (b) a copy of the application and any documents supporting it.

113 (1) An application under paragraph 112 is not admissible if—
- (a) a relevant application was made within the period of 3 years prior to the date of the application under paragraph 112,
- (b) the relevant application and the application under paragraph 112 relate to the same bargaining unit, and
- (c) the CAC accepted the relevant application.

(2) A relevant application is an application made to the CAC—
- (a) by the union (or the unions) under paragraph 101,
- (b) by the employer under paragraph 106, 107 or 128, or
- (c) by a worker (or workers) under paragraph 112.

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114 (1) An application under paragraph 112 is not admissible unless the CAC decides that—
(a) at least 10 per cent of the workers constituting the bargaining unit favour an end of the bargaining arrangements, and
(b) a majority of the workers constituting the bargaining unit would be likely to favour an end of the bargaining arrangements.

(2) The CAC must give reasons for the decision.

115 (1) The CAC must give notice to the worker (or workers), the employer and the union (or unions) of receipt of an application under paragraph 112.

(2) Within the acceptance period the CAC must decide whether the application is admissible within the terms of paragraphs 112 to 114.

(3) In deciding whether the application is admissible the CAC must consider any evidence which it has been given by the employer, the union (or unions) or any of the workers falling within the bargaining unit.

(4) If the CAC decides that the application is not admissible—
(a) the CAC must give notice of its decision to the worker (or workers), the employer and the union (or unions),
(b) the CAC must not accept the application, and
(c) no further steps are to be taken under this Part of this Schedule.

(5) If the CAC decides that the application is admissible it must—
(a) accept the application, and
(b) give notice of the acceptance to the worker (or workers), the employer and the union (or unions).

(6) The acceptance period is—
(a) the period of 10 working days starting with the day after that on which the CAC receives the application, or
(b) such longer period (so starting) as the CAC may specify to the worker (or workers), the employer and the union (or unions) by notice containing reasons for the extension.

116 (1) If the CAC accepts the application, in the negotiation period the CAC must help the employer, the union (or unions) and the worker (or workers) with a view to—
(a) the employer and the union (or unions) agreeing to end the bargaining arrangements, or
(b) the worker (or workers) withdrawing the application.

(2) The negotiation period is—
(a) the period of 20 working days starting with the day after that on which the CAC gives notice of acceptance of the application, or
(b) such longer period (so starting) as the CAC may decide with the consent of the worker (or workers), the employer and the union (or unions).

Ballot on derecognition

117 (1) This paragraph applies if the CAC accepts an application under paragraph 106 or 107.

(2) This paragraph also applies if—

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(a) the CAC accepts an application under paragraph 112, and
(b) in the period mentioned in paragraph 116(1) there is no agreement or withdrawal as there described.

(3) The CAC must arrange for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether the bargaining arrangements should be ended.

(4) The ballot must be conducted by a qualified independent person appointed by the CAC.

(5) The ballot must be conducted within—
(a) the period of 20 working days starting with the day after that on which the qualified independent person is appointed, or
(b) such longer period (so starting) as the CAC may decide.

(6) The ballot must be conducted—
(a) at a workplace or workplaces decided by the CAC,
(b) by post, or
(c) by a combination of the methods described in sub-paragraphs (a) and (b),
depending on the CAC's preference.

(7) In deciding how the ballot is to be conducted the CAC must take into account—
(a) the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace or workplaces;
(b) costs and practicality;
(c) such other matters as the CAC considers appropriate.

(8) The CAC may not decide that the ballot is to be conducted as mentioned in sub-paragraph (6)(c) unless there are special factors making such a decision appropriate; and special factors include—
(a) factors arising from the location of workers or the nature of their employment;
(b) factors put to the CAC by the employer or the union (or unions).

(9) A person is a qualified independent person if—
(a) he satisfies such conditions as may be specified for the purposes of this paragraph by order of the Secretary of State or is himself so specified, and
(b) there are no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the ballot might reasonably be called into question.

(10) An order under sub-paragraph (9)(a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(11) As soon as is reasonably practicable after the CAC is required under sub-paragraph (3) to arrange for the holding of a ballot it must inform the employer and the union (or unions)—
(a) that it is so required;
(b) of the name of the person appointed to conduct the ballot and the date of his appointment;
(c) of the period within which the ballot must be conducted;

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(d) whether the ballot is to be conducted by post or at a workplace or workplaces;

(e) of the workplace or workplaces concerned (if the ballot is to be conducted at a workplace or workplaces).

118 (1) An employer who is informed by the CAC under paragraph 117(11) must comply with the following three duties.

(2) The first duty is to co-operate generally, in connection with the ballot, with the union (or unions) and the person appointed to conduct the ballot; and the second and third duties are not to prejudice the generality of this.

(3) The second duty is to give to the union (or unions) such access to the workers constituting the bargaining unit as is reasonable to enable the union (or unions) to inform the workers of the object of the ballot and to seek their support and their opinions on the issues involved.

(4) The third duty is to do the following (so far as it is reasonable to expect the employer to do so)—

(a) to give to the CAC, within the period of 10 working days starting with the day after that on which the employer is informed under paragraph 117(11), the names and home addresses of the workers constituting the bargaining unit;

(b) to give to the CAC, as soon as is reasonably practicable, the name and home address of any worker who joins the unit after the employer has complied with paragraph (a);

(c) to inform the CAC, as soon as is reasonably practicable, of any worker whose name has been given to the CAC under paragraph (a) or (b) but who ceases to be within the unit.

(5) As soon as is reasonably practicable after the CAC receives any information under sub-paragraph (4) it must pass it on to the person appointed to conduct the ballot.

(6) If asked to do so by the union (or unions) the person appointed to conduct the ballot must send to any worker—

(a) whose name and home address have been given under sub-paragraph (5), and

(b) who is still within the unit (so far as the person so appointed is aware),

any information supplied by the union (or unions) to the person so appointed.

(7) The duty under sub-paragraph (6) does not apply unless the union bears (or unions bear) the cost of sending the information.

(8) Each of the following powers shall be taken to include power to issue Codes of Practice about reasonable access for the purposes of sub-paragraph (3)—

(a) the power of ACAS under section 199(1);

(b) the power of the Secretary of State under section 203(1)(a).

119 (1) If the CAC is satisfied that the employer has failed to fulfil any of the three duties imposed by paragraph 118, and the ballot has not been held, the CAC may order the employer—

(a) to take such steps to remedy the failure as the CAC considers reasonable and specifies in the order, and

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(b) to do so within such period as the CAC considers reasonable and specifies in the order.

(2) If—

(a) the ballot has been arranged in consequence of an application under paragraph 106 or 107,

(b) the CAC is satisfied that the employer has failed to comply with an order under sub-paragraph (1), and

(c) the ballot has not been held,

the CAC may refuse the application.

(3) If—

(a) the ballot has been arranged in consequence of an application under paragraph 112, and

(b) the ballot has not been held,

an order under sub-paragraph (1), on being recorded in the county court, may be enforced in the same way as an order of that court.

(4) If the CAC refuses an application under sub-paragraph (2) it shall take steps to cancel the holding of the ballot; and if the ballot is held it shall have no effect.

VALID FROM 01/10/2005

[F460 119A (1) Each of the parties informed by the CAC under paragraph 117(11) must refrain from using any unfair practice.

(2) A party uses an unfair practice if, with a view to influencing the result of the ballot, the party—

(a) offers to pay money or give money's worth to a worker entitled to vote in the ballot in return for the worker's agreement to vote in a particular way or to abstain from voting,

(b) makes an outcome-specific offer to a worker entitled to vote in the ballot,

(c) coerces or attempts to coerce a worker entitled to vote in the ballot to disclose—

(i) whether he intends to vote or to abstain from voting in the ballot, or

(ii) how he intends to vote, or how he has voted, in the ballot,

(d) dismisses or threatens to dismiss a worker,

(e) takes or threatens to take disciplinary action against a worker,

(f) subjects or threatens to subject a worker to any other detriment, or

(g) uses or attempts to use undue influence on a worker entitled to vote in the ballot.

(3) For the purposes of sub-paragraph (2)(b) an "outcome-specific offer" is an offer to pay money or give money's worth which—

(a) is conditional on—

(i) the issuing by the CAC of a declaration that the bargaining arrangements are to cease to have effect, or

(ii) the refusal by the CAC of an application under paragraph 106, 107 or 112, and

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(b) is not conditional on anything which is done or occurs as a result of that declaration or, as the case may be, of that refusal.

(4) The duty imposed by this paragraph does not confer any rights on a worker; but that does not affect any other right which a worker may have.

(5) Each of the following powers shall be taken to include power to issue Codes of Practice about unfair practices for the purposes of this paragraph—
(a) the power of ACAS under section 199(1);
(b) the power of the Secretary of State under section 203(1)(a).

Textual Amendments

F460 Sch. A1 paras. 119A-119I inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), **ss. 13(1)**, 59(2)-(4); S.I. 2005/2419, **art. 3** (with arts. 5-7)

VALID FROM 01/10/2005

119B (1) A party may complain to the CAC that another party has failed to comply with paragraph 119A.

(2) A complaint under sub-paragraph (1) must be made on or before the first working day after—
(a) the date of the ballot, or
(b) if votes may be cast in the ballot on more than one day, the last of those days.

(3) Within the decision period the CAC must decide whether the complaint is well-founded.

(4) A complaint is well-founded if—
(a) the CAC finds that the party complained against used an unfair practice, and
(b) the CAC is satisfied that the use of that practice changed or was likely to change, in the case of a worker entitled to vote in the ballot—
(i) his intention to vote or to abstain from voting,
(ii) his intention to vote in a particular way, or
(iii) how he voted.

(5) The decision period is—
(a) the period of 10 working days starting with the day after that on which the complaint under sub-paragraph (1) was received by the CAC, or
(b) such longer period (so starting) as the CAC may specify to the parties by a notice containing reasons for the extension.

(6) If, at the beginning of the decision period, the ballot has not begun, the CAC may by notice to the parties and the qualified independent person postpone the date on which it is to begin until a date which falls after the end of the decision period.

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Textual Amendments

F460 Sch. A1 paras. 119A-119I inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), **ss. 13(1)**, 59(2)-(4); S.I. 2005/2419, **art. 3** (with arts. 5-7)

VALID FROM 01/10/2005

119C (1) This paragraph applies if the CAC decides that a complaint under paragraph 119B is well-founded.

(2) The CAC must, as soon as is reasonably practicable, issue a declaration to that effect.

(3) The CAC may do either or both of the following—

(a) order the party concerned to take any action specified in the order within such period as may be so specified, or

(b) make arrangements for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether the bargaining arrangements should be ended.

(4) The CAC may give an order or make arrangements under sub-paragraph (3) either at the same time as it issues the declaration under sub-paragraph (2) or at any other time before it acts under paragraph 121.

(5) The action specified in an order under sub-paragraph (3)(a) shall be such as the CAC considers reasonable in order to mitigate the effect of the failure of the party complained against to comply with the duty imposed by paragraph 119A.

(6) The CAC may give more than one order under sub-paragraph (3)(a).

Textual Amendments

F460 Sch. A1 paras. 119A-119I inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), **ss. 13(1)**, 59(2)-(4); S.I. 2005/2419, **art. 3** (with arts. 5-7)

VALID FROM 01/10/2005

119D (1) This paragraph applies if the CAC issues a declaration under paragraph 119C(2) and the declaration states that the unfair practice used consisted of or included—

(a) the use of violence, or

(b) the dismissal of a union official.

(2) This paragraph also applies if the CAC has made an order under paragraph 119C(3)(a) and—

(a) it is satisfied that the party subject to the order has failed to comply with it, or

(b) it makes another declaration under paragraph 119C(2) in relation to a complaint against that party.

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(3) If the party concerned is the employer, the CAC may refuse the employer's application under paragraph 106 or 107.

(4) If the party concerned is a union, the CAC may issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the CAC in the declaration.

(5) If a declaration is issued under sub-paragraph (4) the bargaining arrangements shall cease to have effect accordingly.

(6) The powers conferred by this paragraph are in addition to those conferred by paragraph 119C(3).

Textual Amendments

F460 Sch. A1 paras. 119A-119I inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), **ss. 13(1)**, 59(2)-(4); S.I. 2005/2419, **art. 3** (with arts. 5-7)

VALID FROM 01/10/2005

119E (1) This paragraph applies if the CAC issues a declaration that a complaint under paragraph 119B is well-founded and—

(a) makes arrangements under paragraph 119C(3)(b),

(b) refuses under paragraph 119D(3) or 119H(6) an application under paragraph 106, 107 or 112, or

(c) issues a declaration under paragraph 119D(4) or 119H(5).

(2) If the ballot in connection with which the complaint was made has not been held, the CAC shall take steps to cancel it.

(3) If that ballot is held, it shall have no effect.

Textual Amendments

F460 Sch. A1 paras. 119A-119I inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), **ss. 13(1)**, 59(2)-(4); S.I. 2005/2419, **art. 3** (with arts. 5-7)

VALID FROM 01/10/2005

119F (1) This paragraph applies if the CAC makes arrangements under paragraph 119C(3)(b).

(2) Paragraphs 117(4) to (11) and 118 to 121 apply in relation to those arrangements as they apply in relation to arrangements made under paragraph 117(3) but with the modifications specified in sub-paragraphs (3) to (5).

(3) An employer's duty under paragraph (a) of paragraph 118(4) is limited to—

(a) giving the CAC the names and home addresses of any workers in the bargaining unit which have not previously been given to it in accordance with that duty;

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(b) giving the CAC the names and home addresses of those workers who have joined the bargaining unit since he last gave the CAC information in accordance with that duty;

(c) informing the CAC of any change to the name or home address of a worker whose name and home address have previously been given to the CAC in accordance with that duty; and

(d) informing the CAC of any worker whose name had previously been given to it in accordance with that duty who has ceased to be within the bargaining unit.

(4) Any order given under paragraph 119(1) or 119C(3)(a) for the purposes of the cancelled or ineffectual ballot shall have effect (to the extent that the CAC specifies in a notice to the parties) as if it were made for the purposes of the ballot for which arrangements are made under paragraph 119C(3)(b).

(5) The gross costs of the ballot shall be borne by such of the parties and in such proportions as the CAC may determine and, accordingly, sub-paragraphs (2) and (3) of paragraph 120 shall be omitted and the reference in sub-paragraph (4) of that paragraph to the employer and the union (or each of the unions) shall be construed as a reference to the party or parties which bear the costs in accordance with the CAC's determination.

Textual Amendments

F460 Sch. A1 paras. 119A-119I inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), **ss. 13(1)**, 59(2)-(4); S.I. 2005/2419, **art. 3** (with arts. 5-7)

VALID FROM 01/10/2005

119G (1) Paragraphs 119A to 119C, 119E and 119F apply in relation to an application under paragraph 112 as they apply in relation to an application under paragraph 106 or 107 but with the modifications specified in this paragraph.

(2) References in those paragraphs (and, accordingly, in paragraph 119H(3)) to a party shall be read as including references to the applicant worker or workers; but this is subject to sub-paragraph (3).

(3) The reference in paragraph 119A(1) to a party informed under paragraph 117(11) shall be read as including a reference to the applicant worker or workers.

Textual Amendments

F460 Sch. A1 paras. 119A-119I inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), **ss. 13(1)**, 59(2)-(4); S.I. 2005/2419, **art. 3** (with arts. 5-7)

VALID FROM 01/10/2005

119H (1) This paragraph applies in relation to an application under paragraph 112 in the cases specified in sub-paragraphs (2) and (3).

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(2) The first case is where the CAC issues a declaration under paragraph 119C(2) and the declaration states that the unfair practice used consisted of or included—
  (a) the use of violence, or
  (b) the dismissal of a union official.

(3) The second case is where the CAC has made an order under paragraph 119C(3)(a) and—
  (a) it is satisfied that the party subject to the order has failed to comply with it, or
  (b) it makes another declaration under paragraph 119C(2) in relation to a complaint against that party.

(4) If the party concerned is the employer, the CAC may order him to refrain from further campaigning in relation to the ballot.

(5) If the party concerned is a union, the CAC may issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the CAC in the declaration.

(6) If the party concerned is the applicant worker (or any of the applicant workers), the CAC may refuse the application under paragraph 112.

(7) If a declaration is issued under sub-paragraph (5) the bargaining arrangements shall cease to have effect accordingly.

(8) The powers conferred by this paragraph are in addition to those conferred by paragraph 119C(3).

Textual Amendments

F460 Sch. A1 paras. 119A-119I inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), **ss. 13(1)**, 59(2)-(4); S.I. 2005/2419, **art. 3** (with arts. 5-7)

VALID FROM 01/10/2005

119I (1) This paragraph applies if—
  (a) a ballot has been arranged in consequence of an application under paragraph 112,
  (b) the CAC has given the employer an order under paragraph 119(1), 119C(3) or 119H(4), and
  (c) the ballot for the purposes of which the order was made (or any other ballot for the purposes of which it has effect) has not been held.

(2) The applicant worker (or each of the applicant workers) and the union (or each of the unions) is entitled to enforce obedience to the order.

(3) The order may be enforced—
  (a) in England and Wales, in the same way as an order of the county court;
  (b) in Scotland, in the same way as an order of the sheriff.**]**

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Textual Amendments

F460 Sch. A1 paras. 119A-119I inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), **ss. 13(1)**, 59(2)-(4); S.I. 2005/2419, **art. 3** (with arts. 5-7)

120 (1) This paragraph applies if the holding of a ballot has been arranged under paragraph 117(3), whether or not it has been cancelled.

(2) The gross costs of the ballot shall be borne—
- (a) as to half, by the employer, and
- (b) as to half, by the union (or unions).

(3) If there is more than one union they shall bear their half of the gross costs—
- (a) in such proportions as they jointly indicate to the person appointed to conduct the ballot, or
- (b) in the absence of such an indication, in equal shares.

(4) The person appointed to conduct the ballot may send to the employer and the union (or each of the unions) a demand stating—
- (a) the gross costs of the ballot, and
- (b) the amount of the gross costs to be borne by the recipient.

(5) In such a case the recipient must pay the amount stated to the person sending the demand, and must do so within the period of 15 working days starting with the day after that on which the demand is received.

(6) In England and Wales, if the amount stated is not paid in accordance with sub-paragraph (5) it shall, if a county court so orders, be recoverable by execution issued from that court or otherwise as if it were payable under an order of that court.

(7) References to the costs of the ballot are to—
- (a) the costs wholly, exclusively and necessarily incurred in connection with the ballot by the person appointed to conduct it,
- (b) such reasonable amount as the person appointed to conduct the ballot charges for his services, and
- (c) such other costs as the employer and the union (or unions) agree.

121 (1) As soon as is reasonably practicable after the CAC is informed of the result of a ballot by the person conducting it, the CAC must act under this paragraph.

(2) The CAC must inform the employer and the union (or unions) of the result of the ballot.

(3) If the result is that the proposition that the bargaining arrangements should be ended is supported by—
- (a) a majority of the workers voting, and
- (b) at least 40 per cent of the workers constituting the bargaining unit,

the CAC must issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the CAC in the declaration.

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(4) If the result is otherwise the CAC must refuse the application under paragraph 106, 107 or 112.

(5) If a declaration is issued under sub-paragraph (3) the bargaining arrangements shall cease to have effect accordingly.

(6) The Secretary of State may by order amend sub-paragraph (3) so as to specify a different degree of support; and different provision may be made for different circumstances.

(7) An order under sub-paragraph (6) shall be made by statutory instrument.

(8) No such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House of Parliament.

PART V

DERECOGNITION WHERE RECOGNITION AUTOMATIC

Introduction

122 (1) This Part of this Schedule applies if—

(a) the CAC has issued a declaration under paragraph 22(2) that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit, and

(b) the parties have agreed under paragraph 30 or 31 a method by which they will conduct collective bargaining.

(2) In such a case references in this Part of this Schedule to the bargaining arrangements are to—

(a) the declaration, and

(b) the parties' agreement.

123 (1) This Part of this Schedule also applies if—

(a) the CAC has issued a declaration under paragraph 22(2) that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit, and

(b) the CAC has specified to the parties under paragraph 31(3) the method by which they are to conduct collective bargaining.

(2) In such a case references in this Part of this Schedule to the bargaining arrangements are to—

(a) the declaration, and

(b) anything effective as, or as if contained in, a legally enforceable contract by virtue of paragraph 31.

124 (1) This Part of this Schedule also applies if the CAC has issued a declaration under paragraph 87(2) that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit.

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(2) In such a case references in this Part of this Schedule to the bargaining arrangements are to —
  (a) the declaration, and
  (b) paragraph 87(6)(b).

125 For the purposes of this Part of this Schedule the relevant date is the date of the expiry of the period of 3 years starting with the date of the CAC's declaration.

126 References in this Part of this Schedule to the parties are to the employer and the union (or unions) concerned.

Employer's request to end arrangements

127 (1) The employer may after the relevant date request the union (or each of the unions) to agree to end the bargaining arrangements.

(2) The request is not valid unless it—
  (a) is in writing,
  (b) is received by the union (or each of the unions),
  (c) identifies the bargaining arrangements,
  (d) states that it is made under this Schedule, and
  (e) states that fewer than half of the workers constituting the bargaining unit are members of the union (or unions).

128 (1) If before the end of the negotiation period the parties agree to end the bargaining arrangements no further steps are to be taken under this Part of this Schedule.

(2) If no such agreement is made before the end of the negotiation period, the employer may apply to the CAC for the holding of a secret ballot to decide whether the bargaining arrangements should be ended.

(3) The negotiation period is the period of 10 working days starting with the day after—
  (a) the day on which the union receives the request, or
  (b) the last day on which any of the unions receives the request;

or such longer period (so starting) as the parties may from time to time agree.

129 (1) An application under paragraph 128 is not admissible unless—
  (a) it is made in such form as the CAC specifies, and
  (b) it is supported by such documents as the CAC specifies.

(2) An application under paragraph 128 is not admissible unless the employer gives to the union (or each of the unions)—
  (a) notice of the application, and
  (b) a copy of the application and any documents supporting it.

130 (1) An application under paragraph 128 is not admissible if—
  (a) a relevant application was made within the period of 3 years prior to the date of the application under paragraph 128,
  (b) the relevant application and the application under paragraph 128 relate to the same bargaining unit, and
  (c) the CAC accepted the relevant application.

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(2) A relevant application is an application made to the CAC—
- (a) by the union (or the unions) under paragraph 101,
- (b) by the employer under paragraph 106, 107 or 128, or
- (c) by a worker (or workers) under paragraph 112.

131 (1) An application under paragraph 128 is not admissible unless the CAC is satisfied that fewer than half of the workers constituting the bargaining unit are members of the union (or unions).

(2) The CAC must give reasons for the decision.

132 (1) The CAC must give notice to the parties of receipt of an application under paragraph 128.

(2) Within the acceptance period the CAC must decide whether—
- (a) the request is valid within the terms of paragraph 127, and
- (b) the application is admissible within the terms of paragraphs 129 to 131.

(3) In deciding those questions the CAC must consider any evidence which it has been given by the parties.

(4) If the CAC decides that the request is not valid or the application is not admissible—
- (a) the CAC must give notice of its decision to the parties,
- (b) the CAC must not accept the application, and
- (c) no further steps are to be taken under this Part of this Schedule.

(5) If the CAC decides that the request is valid and the application is admissible it must—
- (a) accept the application, and
- (b) give notice of the acceptance to the parties.

(6) The acceptance period is—
- (a) the period of 10 working days starting with the day after that on which the CAC receives the application, or
- (b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.

Ballot on derecognition

133 (1) Paragraph 117 applies if the CAC accepts an application under paragraph 128 (as well as in the cases mentioned in paragraph 117(1) and (2)).

(2) Paragraphs 118 to 121 apply accordingly, but as if—
- (a) the reference in paragraph 119(2)(a) to paragraph 106 or 107 were to paragraph 106, 107 or 128;
- (b) the reference in paragraph 121(4) to paragraph 106, 107 or 112 were to paragraph 106, 107, 112 or 128.

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PART VI

DERECOGNITION WHERE UNION NOT INDEPENDENT

Introduction

134 (1) This Part of this Schedule applies if—

(a) an employer and a union (or unions) have agreed that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a group or groups of workers, and

(b) the union does not have (or none of the unions has) a certificate under section 6 that it is independent.

(2) In such a case references in this Part of this Schedule to the bargaining arrangements are to—

(a) the parties' agreement mentioned in sub-paragraph (1)(a), and

(b) any agreement between the parties as to the method by which they will conduct collective bargaining.

135 In this Part of this Schedule—

(a) references to the parties are to the employer and the union (or unions);

(b) references to the bargaining unit are to the group of workers referred to in paragraph 134(1)(a) (or the groups taken together).

136 The meaning of collective bargaining given by section 178(1) shall not apply in relation to this Part of this Schedule.

Workers' application to end arrangements

137 (1) A worker or workers falling within the bargaining unit may apply to the CAC to have the bargaining arrangements ended.

(2) An application is not admissible unless—

(a) it is made in such form as the CAC specifies, and

(b) it is supported by such documents as the CAC specifies.

(3) An application is not admissible unless the worker gives (or workers give) to the employer and to the union (or each of the unions)—

(a) notice of the application, and

(b) a copy of the application and any documents supporting it.

138 An application under paragraph 137 is not admissible if the CAC is satisfied that any of the unions has a certificate under section 6 that it is independent.

139 (1) An application under paragraph 137 is not admissible unless the CAC decides that—

(a) at least 10 per cent of the workers constituting the bargaining unit favour an end of the bargaining arrangements, and

(b) a majority of the workers constituting the bargaining unit would be likely to favour an end of the bargaining arrangements.

(2) The CAC must give reasons for the decision.

140 An application under paragraph 137 is not admissible if the CAC is satisfied that—

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(a) the union (or any of the unions) has made an application to the Certification Officer under section 6 for a certificate that it is independent, and
(b) the Certification Officer has not come to a decision on the application (or each of the applications).

141 (1) The CAC must give notice to the worker (or workers), the employer and the union (or unions) of receipt of an application under paragraph 137.

(2) Within the acceptance period the CAC must decide whether the application is admissible within the terms of paragraphs 137 to 140.

(3) In deciding whether the application is admissible the CAC must consider any evidence which it has been given by the employer, the union (or unions) or any of the workers falling within the bargaining unit.

(4) If the CAC decides that the application is not admissible—
(a) the CAC must give notice of its decision to the worker (or workers), the employer and the union (or unions),
(b) the CAC must not accept the application, and
(c) no further steps are to be taken under this Part of this Schedule.

(5) If the CAC decides that the application is admissible it must—
(a) accept the application, and
(b) give notice of the acceptance to the worker (or workers), the employer and the union (or unions).

(6) The acceptance period is—
(a) the period of 10 working days starting with the day after that on which the CAC receives the application, or
(b) such longer period (so starting) as the CAC may specify to the worker (or workers), the employer and the union (or unions) by notice containing reasons for the extension.

142 (1) If the CAC accepts the application, in the negotiation period the CAC must help the employer, the union (or unions) and the worker (or workers) with a view to—
(a) the employer and the union (or unions) agreeing to end the bargaining arrangements, or
(b) the worker (or workers) withdrawing the application.

(2) The negotiation period is—
(a) the period of 20 working days starting with the day after that on which the CAC gives notice of acceptance of the application, or
(b) such longer period (so starting) as the CAC may decide with the consent of the worker (or workers), the employer and the union (or unions).

143 (1) This paragraph applies if—
(a) the CAC accepts an application under paragraph 137,
(b) during the period mentioned in paragraph 142(1) or 145(3) the CAC is satisfied that the union (or each of the unions) has made an application to the Certification Officer under section 6 for a certificate that it is independent, that the application (or each of the applications) to the Certification Officer was made before the application under paragraph 137 and that the Certification Officer has not come to a decision on the application (or each of the applications), and

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(c) at the time the CAC is so satisfied there has been no agreement or withdrawal as described in paragraph 142(1) or 145(3).

(2) In such a case paragraph 142(1) or 145(3) shall cease to apply from the time when the CAC is satisfied as mentioned in sub-paragraph (1)(b).

144 (1) This paragraph applies if the CAC is subsequently satisfied that—

(a) the Certification Officer has come to a decision on the application (or each of the applications) mentioned in paragraph 143(1)(b), and

(b) his decision is that the union (or any of the unions) which made an application under section 6 is independent.

(2) In such a case—

(a) the CAC must give the worker (or workers), the employer and the union (or unions) notice that it is so satisfied, and

(b) the application under paragraph 137 shall be treated as not having been made.

145 (1) This paragraph applies if the CAC is subsequently satisfied that—

(a) the Certification Officer has come to a decision on the application (or each of the applications) mentioned in paragraph 143(1)(b), and

(b) his decision is that the union (or each of the unions) which made an application under section 6 is not independent.

(2) The CAC must give the worker (or workers), the employer and the union (or unions) notice that it is so satisfied.

(3) In the new negotiation period the CAC must help the employer, the union (or unions) and the worker (or workers) with a view to—

(a) the employer and the union (or unions) agreeing to end the bargaining arrangements, or

(b) the worker (or workers) withdrawing the application.

(4) The new negotiation period is—

(a) the period of 20 working days starting with the day after that on which the CAC gives notice under sub-paragraph (2), or

(b) such longer period (so starting) as the CAC may decide with the consent of the worker (or workers), the employer and the union (or unions).

146 (1) This paragraph applies if—

(a) the CAC accepts an application under paragraph 137,

(b) paragraph 143 does not apply, and

(c) during the relevant period the CAC is satisfied that a certificate of independence has been issued to the union (or any of the unions) under section 6.

(2) In such a case the relevant period is the period starting with the first day of the negotiation period (as defined in paragraph 142(2)) and ending with the first of the following to occur—

(a) any agreement by the employer and the union (or unions) to end the bargaining arrangements;

(b) any withdrawal of the application by the worker (or workers);

(c) the CAC being informed of the result of a relevant ballot by the person conducting it;

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and a relevant ballot is a ballot held by virtue of this Part of this Schedule.

(3) This paragraph also applies if—
- (a) the CAC gives notice under paragraph 145(2), and
- (b) during the relevant period the CAC is satisfied that a certificate of independence has been issued to the union (or any of the unions) under section 6.

(4) In such a case, the relevant period is the period starting with the first day of the new negotiation period (as defined in paragraph 145(4)) and ending with the first of the following to occur—
- (a) any agreement by the employer and the union (or unions) to end the bargaining arrangements;
- (b) any withdrawal of the application by the worker (or workers);
- (c) the CAC being informed of the result of a relevant ballot by the person conducting it;

and a relevant ballot is a ballot held by virtue of this Part of this Schedule.

(5) If this paragraph applies—
- (a) the CAC must give the worker (or workers), the employer and the union (or unions) notice that it is satisfied as mentioned in sub-paragraph (1)(c) or (3)(b), and
- (b) the application under paragraph 137 shall be treated as not having been made.

Ballot on derecognition

147 (1) Paragraph 117 applies if—
- (a) the CAC accepts an application under paragraph 137, and
- (b) in the period mentioned in paragraph 142(1) or 145(3) there is no agreement or withdrawal as there described,

(as well as in the cases mentioned in paragraph 117(1) and (2)).

(2) Paragraphs 118 to 121 apply accordingly, but as if—
- (a) the reference in paragraph 119(3)(a) to paragraph 112 were to paragraph 112 or 137;
- (b) the reference in paragraph 121(4) to paragraph 106, 107 or 112 were to paragraph 106, 107, 112 or 137.
- (c) the reference in paragraph 119(4) to the CAC refusing an application under paragraph 119(2) included a reference to it being required to give notice under paragraph 146(5).

Derecognition: other cases

148 (1) This paragraph applies if as a result of a declaration by the CAC another union is (or other unions are) recognised as entitled to conduct collective bargaining on behalf of a group of workers at least one of whom falls within the bargaining unit.

(2) The CAC must issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the CAC in the declaration.

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(3) If a declaration is issued under sub-paragraph (2) the bargaining arrangements shall cease to have effect accordingly.

(4) It is for the CAC to decide whether sub-paragraph (1) is fulfilled, but in deciding the CAC may take account of the views of any person it believes has an interest in the matter.

PART VII

LOSS OF INDEPENDENCE

Introduction

149 (1) This Part of this Schedule applies if the CAC has issued a declaration that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit.

(2) In such a case references in this Part of this Schedule to the bargaining arrangements are to the declaration and to the provisions relating to the collective bargaining method.

(3) For this purpose the provisions relating to the collective bargaining method are—

(a) the parties' agreement as to the method by which collective bargaining is to be conducted,

(b) anything effective as, or as if contained in, a legally enforceable contract and relating to the method by which collective bargaining is to be conducted, or

(c) any provision of Part III of this Schedule that a method of collective bargaining is to have effect.

150 (1) This Part of this Schedule also applies if—

(a) the parties have agreed that a union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit,

(b) the CAC has specified to the parties under paragraph 63(2) the method by which they are to conduct collective bargaining, and

(c) the parties have not agreed in writing to replace the method or that paragraph 63(3) shall not apply.

(2) In such a case references in this Part of this Schedule to the bargaining arrangements are to—

(a) the parties' agreement mentioned in sub-paragraph (1)(a), and

(b) anything effective as, or as if contained in, a legally enforceable contract by virtue of paragraph 63.

151 References in this Part of this Schedule to the parties are to the employer and the union (or unions) concerned.

Loss of certificate

152 (1) This paragraph applies if—

(a) only one union is a party, and

(b) under section 7 the Certification Officer withdraws the union's certificate of independence.

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(2) This paragraph also applies if—
- (a) more than one union is a party, and
- (b) under section 7 the Certification Officer withdraws the certificate of independence of each union (whether different certificates are withdrawn on the same or on different days).

(3) Sub-paragraph (4) shall apply on the day after—
- (a) the day on which the Certification Officer informs the union (or unions) of the withdrawal (or withdrawals), or
- (b) if there is more than one union, and he informs them on different days, the last of those days.

(4) The bargaining arrangements shall cease to have effect; and the parties shall be taken to agree that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit concerned.

Certificate re-issued

153 (1) This paragraph applies if—
- (a) only one union is a party,
- (b) paragraph 152 applies, and
- (c) as a result of an appeal under section 9 against the decision to withdraw the certificate, the Certification Officer issues a certificate that the union is independent.

(2) This paragraph also applies if—
- (a) more than one union is a party,
- (b) paragraph 152 applies, and
- (c) as a result of an appeal under section 9 against a decision to withdraw a certificate, the Certification Officer issues a certificate that any of the unions concerned is independent.

(3) Sub-paragraph (4) shall apply, beginning with the day after—
- (a) the day on which the Certification Officer issues the certificate, or
- (b) if there is more than one union, the day on which he issues the first or only certificate.

(4) The bargaining arrangements shall have effect again; and paragraph 152 shall cease to apply.

Miscellaneous

154 Parts III to VI of this Schedule shall not apply in the case of the parties at any time when, by virtue of this Part of this Schedule, the bargaining arrangements do not have effect.

155 If—
- (a) by virtue of paragraph 153 the bargaining arrangements have effect again beginning with a particular day, and
- (b) in consequence section 70B applies in relation to the bargaining unit concerned,

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for the purposes of section 70B(3) that day shall be taken to be the day on which section 70B first applies in relation to the unit.

PART VIII

DETRIMENT

Detriment

156 (1) A worker has a right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer if the act or failure takes place on any of the grounds set out in sub-paragraph (2).

(2) The grounds are that—

(a) the worker acted with a view to obtaining or preventing recognition of a union (or unions) by the employer under this Schedule;

(b) the worker indicated that he supported or did not support recognition of a union (or unions) by the employer under this Schedule;

(c) the worker acted with a view to securing or preventing the ending under this Schedule of bargaining arrangements;

(d) the worker indicated that he supported or did not support the ending under this Schedule of bargaining arrangements;

(e) the worker influenced or sought to influence the way in which votes were to be cast by other workers in a ballot arranged under this Schedule;

(f) the worker influenced or sought to influence other workers to vote or to abstain from voting in such a ballot;

(g) the worker voted in such a ballot;

(h) the worker proposed to do, failed to do, or proposed to decline to do, any of the things referred to in paragraphs (a) to (g).

(3) A ground does not fall within sub-paragraph (2) if it constitutes an unreasonable act or omission by the worker.

(4) This paragraph does not apply if the worker is an employee and the detriment amounts to dismissal within the meaning of the Employment Rights Act 1996.

(5) A worker may present a complaint to an employment tribunal on the ground that he has been subjected to a detriment in contravention of this paragraph.

(6) Apart from the remedy by way of complaint as mentioned in sub-paragraph (5), a worker has no remedy for infringement of the right conferred on him by this paragraph.

Modifications etc. (not altering text)

C72 Sch. A1 para. 156 modified (6.6.2000) by S.I. 2000/1338, **art. 3(1)(a)**

157 (1) An employment tribunal shall not consider a complaint under paragraph 156 unless it is presented—

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(a) before the end of the period of 3 months starting with the date of the act or failure to which the complaint relates or, if that act or failure is part of a series of similar acts or failures (or both), the last of them, or

(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.

(2) For the purposes of sub-paragraph (1)—

(a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period;

(b) a failure to act shall be treated as done when it was decided on.

(3) For the purposes of sub-paragraph (2), in the absence of evidence establishing the contrary an employer must be taken to decide on a failure to act—

(a) when he does an act inconsistent with doing the failed act, or

(b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

Modifications etc. (not altering text)

C73 Sch. A1 para. 157 modified (6.6.2000) by S.I. 2000/1338, **art. 3(1)(a)**

158 On a complaint under paragraph 156 it shall be for the employer to show the ground on which he acted or failed to act.

Modifications etc. (not altering text)

C74 Sch A1 para. 158 modified (6.6.2000) by S.I. 2000/1338, **art. 3(1)(a)**

159 (1) If the employment tribunal finds that a complaint under paragraph 156 is well-founded it shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure complained of.

(2) The amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to the infringement complained of and to any loss sustained by the complainant which is attributable to the act or failure which infringed his right.

(3) The loss shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the act or failure complained of, and

(b) loss of any benefit which he might reasonably be expected to have had but for that act or failure.

(4) In ascertaining the loss, the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or Scotland.

(5) If the tribunal finds that the act or failure complained of was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the

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compensation by such proportion as it considers just and equitable having regard to that finding.

Modifications etc. (not altering text)
C75 Sch. A1 para. 159 modified (6.6.2000) by S.I. 2000/1338, **art. 3(1)(a)**

160 (1) If the employment tribunal finds that a complaint under paragraph 156 is well-founded and—
(a) the detriment of which the worker has complained is the termination of his worker's contract, but
(b) that contract was not a contract of employment,
any compensation awarded under paragraph 159 must not exceed the limit specified in sub-paragraph (2).

(2) The limit is the total of—
(a) the sum which would be the basic award for unfair dismissal, calculated in accordance with section 119 of the Employment Rights Act 1996, if the worker had been an employee and the contract terminated had been a contract of employment, and
(b) the sum for the time being specified in section 124(1) of that Act which is the limit for a compensatory award to a person calculated in accordance with section 123 of that Act.

Modifications etc. (not altering text)
C76 Sch. A1 para. 160 modified (6.6.2000) by S.I. 2000/1338, **art. 3(1)(a)**

Dismissal

161 (1) For the purposes of Part X of the Employment Rights Act 1996 (unfair dismissal) the dismissal of an employee shall be regarded as unfair if the dismissal was made—
(a) for a reason set out in sub-paragraph (2), or
(b) for reasons the main one of which is one of those set out in sub-paragraph (2).

(2) The reasons are that—
(a) the employee acted with a view to obtaining or preventing recognition of a union (or unions) by the employer under this Schedule;
(b) the employee indicated that he supported or did not support recognition of a union (or unions) by the employer under this Schedule;
(c) the employee acted with a view to securing or preventing the ending under this Schedule of bargaining arrangements;
(d) the employee indicated that he supported or did not support the ending under this Schedule of bargaining arrangements ;
(e) the employee influenced or sought to influence the way in which votes were to be cast by other workers in a ballot arranged under this Schedule;
(f) the employee influenced or sought to influence other workers to vote or to abstain from voting in such a ballot;
(g) the employee voted in such a ballot;

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Trade Union and Labour Relations (Consolidation) Act 1992 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(h) the employee proposed to do, failed to do, or proposed to decline to do, any of the things referred to in paragraphs (a) to (g).

(3) A reason does not fall within sub-paragraph (2) if it constitutes an unreasonable act or omission by the employee.

Modifications etc. (not altering text)
C77 Sch. A1 para. 161 modified (6.6.2000) S.I. 2000/1338, **art. 3(1)(b)**
Sch. A1 paras. 161-165 applied (with modifications) (14.8.2000) by S.I. 2000/1828, **art. 2(6)**

Selection for redundancy

162 For the purposes of Part X of the Employment Rights Act 1996 (unfair dismissal) the dismissal of an employee shall be regarded as unfair if the reason or principal reason for the dismissal was that he was redundant but it is shown—

(a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and

(b) that the reason (or, if more than one, the principal reason) why he was selected for dismissal was one falling within paragraph 161(2).

Modifications etc. (not altering text)
C78 Sch. A1 para. 162 modified (6.6.2000) by S.I. 2000/1338, **art. 3(1)(b)**
Sch. A1 paras. 161-165 applied (with modifications) (14.8.2000) by S.I. 2000/1828, **art. 2(6)**

Employees with fixed-term contracts

163 Section 197(1) of the Employment Rights Act 1996 (fixed-term contracts) does not prevent Part X of that Act from applying to a dismissal which is regarded as unfair by virtue of paragraph 161 or 162.

Modifications etc. (not altering text)
C79 Sch. A1 paras. 161-165 applied (with modifications) (14.8.2000) by S.I. 2000/1828, **art. 2(6)**

Exclusion of requirement as to qualifying period

[F461]164 Sections 108 and 109 of the Employment Rights Act 1996 (qualifying period and upper age limit for unfair dismissal protection) do not apply to a dismissal which by virtue of paragraph 161 or 162 is regarded as unfair for the purposes of Part X of that Act.

Textual Amendments
F461 Sch. A1 para. 161-165 applied (with modifications) (14.12.2000) by S.I. 2000/1828, **art. 2(6)**

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Trade Union and Labour Relations (Consolidation) Act 1992 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Meaning of worker's contract

165 References in this Part of this Schedule to a worker's contract are to the contract mentioned in paragraph (a) or (b) of section 296(1) or the arrangements for the employment mentioned in paragraph (c) of section 296(1).

Modifications etc. (not altering text)
C80 Sch. A1 para. 161-165 applied (with modifications) (14.8.2000) by S.I. 2000/1828, **art. 2(6)**

PART IX

GENERAL

VALID FROM 06/04/2005

[F462 Rights of appeal against demands for costs

Textual Amendments
F462 Sch. A1 para. 165A and preceding cross-heading inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 14**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

165A (1) This paragraph applies where a demand has been made under paragraph 19E(3), 28(4) or 120(4).

(2) The recipient of the demand may appeal against the demand within 4 weeks starting with the day after receipt of the demand.

(3) An appeal under this paragraph lies to an employment tribunal.

(4) On an appeal under this paragraph against a demand under paragraph 19E(3), the tribunal shall dismiss the appeal unless it is shown that—
(a) the amount specified in the demand as the costs of the appointed person is too great, or
(b) the amount specified in the demand as the amount of those costs to be borne by the recipient is too great.

(5) On an appeal under this paragraph against a demand under paragraph 28(4) or paragraph 120(4), the tribunal shall dismiss the appeal unless it is shown that—
(a) the amount specified in the demand as the gross costs of the ballot is too great, or
(b) the amount specified in the demand as the amount of the gross costs to be borne by the recipient is too great.

(6) If an appeal is allowed, the tribunal shall rectify the demand and the demand shall have effect as if it had originally been made as so rectified.

(7) If a person has appealed under this paragraph against a demand and the appeal has not been withdrawn or finally determined, the demand—

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(a) is not enforceable until the appeal has been withdrawn or finally determined, but

(b) as from the withdrawal or final determination of the appeal shall be enforceable as if paragraph (a) had not had effect.**]**

Power to amend

166 (1) If the CAC represents to the Secretary of State that paragraph 22 or 87 has an unsatisfactory effect and should be amended, he may by order amend it with a view to rectifying that effect.

(2) He may amend it in such way as he thinks fit, and not necessarily in a way proposed by the CAC (if it proposes one).

(3) An order under this paragraph shall be made by statutory instrument.

(4) No such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House of Parliament.

VALID FROM 06/04/2005

[[F463] 166A (1) This paragraph applies in relation to any provision of paragraph 19D(2), 26(4) or 118(4) which requires the employer to give to the CAC a worker's home address.

(2) The Secretary of State may by order provide that the employer must give to the CAC (in addition to the worker's home address) an address of a specified kind for the worker.

(3) In this paragraph "address" includes any address or number to which information may be sent by any means.

(4) An order under this paragraph may—

(a) amend this Schedule;

(b) include supplementary or incidental provision (including, in particular, provision amending paragraph 19E(1)(a), 26(6)(a) or 118(6)(a));

(c) make different provision for different cases or circumstances.

(5) An order under this paragraph shall be made by statutory instrument.

(6) No such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House of Parliament.**]**

Textual Amendments

F463 Sch. A1 para. 166A inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 16**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Trade Union and Labour Relations (Consolidation) Act 1992 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 06/04/2005

[F464 166B (1) The Secretary of State may by order provide that, during any period beginning and ending with the occurrence of specified events, employers and unions to which the order applies are prohibited from using such practices as are specified as unfair practices in relation to an application under this Schedule of a specified description.

(2) An order under this paragraph may make provision about the consequences of a contravention of any prohibition imposed by the order (including provision modifying the effect of any provision of this Schedule in the event of such a contravention).

(3) An order under this paragraph may confer functions on the CAC.

(4) An order under this paragraph may contain provision extending for the purposes of the order either or both of the following powers to issue Codes of Practice—

(a) the power of ACAS under section 199(1);

(b) the power of the Secretary of State under section 203(1)(a).

(5) An order under this paragraph may—

(a) include supplementary or incidental provisions (including provision amending this Schedule), and

(b) make different provision for different cases or circumstances.

(6) An order under this paragraph shall be made by statutory instrument.

(7) No such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

(8) In this paragraph "specified" means specified in an order under this paragraph.]

Textual Amendments

F464 Sch. A1 para. 166B inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 17**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

Guidance

167 (1) The Secretary of State may issue guidance to the CAC on the way in which it is to exercise its functions under paragraph 22 or 87.

(2) The CAC must take into account any such guidance in exercising those functions.

(3) However, no guidance is to apply with regard to an application made to the CAC before the guidance in question was issued.

(4) The Secretary of State must—

(a) lay before each House of Parliament any guidance issued under this paragraph, and

(b) arrange for any such guidance to be published by such means as appear to him to be most appropriate for drawing it to the attention of persons likely to be affected by it.

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Changes to legislation: *Trade Union and Labour Relations (Consolidation) Act 1992 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Method of conducting collective bargaining

168 (1) After consulting ACAS the Secretary of State may by order specify for the purposes of paragraphs 31(3) and 63(2) a method by which collective bargaining might be conducted.

(2) If such an order is made the CAC—

(a) must take it into account under paragraphs 31(3) and 63(2), but

(b) may depart from the method specified by the order to such extent as the CAC thinks it is appropriate to do so in the circumstances.

(3) An order under this paragraph shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Directions about certain applications

169 (1) The Secretary of State may make to the CAC directions as described in sub-paragraph (2) in relation to any case where—

(a) two or more applications are made to the CAC,

(b) each application is a relevant application,

(c) each application relates to the same bargaining unit, and

(d) the CAC has not accepted any of the applications.

(2) The directions are directions as to the order in which the CAC must consider the admissibility of the applications.

(3) The directions may include—

(a) provision to deal with a case where a relevant application is made while the CAC is still considering the admissibility of another one relating to the same bargaining unit;

(b) other incidental provisions.

(4) A relevant application is an application under paragraph 101, 106, 107, 112 or 128.

VALID FROM 31/12/2004

[F465 Effect of union amalgamations and transfers of engagements

Textual Amendments

F465 Sch. A1 paras. 169A-169C and preceding cross-headings inserted (31.12.2004) by Employment Relations Act 2004 (c. 24), **ss. 18**, 59(2)-(4); S.I. 2004/3342, **art. 4** (with arts. 6-12)

169A (1) The Secretary of State may by order make provision for any case where—

(a) an application has been made, a declaration has been issued, or any other thing has been done under or for the purposes of this Schedule by, to or in relation to a union, or

(b) anything has been done in consequence of anything so done,

and the union amalgamates or transfers all or any of its engagements.

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Trade Union and Labour Relations (Consolidation) Act 1992 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) An order under this paragraph may, in particular, make provision for cases where an amalgamated union, or union to which engagements are transferred, does not have a certificate of independence.

VALID FROM 31/12/2004

Effect of change of identity of employer

169B (1) The Secretary of State may by order make provision for any case where—

(a) an application has been made, a declaration has been issued, or any other thing has been done under or for the purposes of this Schedule in relation to a group of workers, or

(b) anything has been done in consequence of anything so done,

and the person who was the employer of the workers constituting that group at the time the thing was done is no longer the employer of all of the workers constituting that group (whether as a result of a transfer of the whole or part of an undertaking or business or otherwise).

(2) In this paragraph "group" includes two or more groups taken together.

VALID FROM 31/12/2004

Orders under paragraphs 169A and 169B: supplementary

169C (1) An order under paragraph 169A or 169B may—

(a) amend this Schedule;

(b) include supplementary, incidental, saving or transitional provisions;

(c) make different provision for different cases or circumstances.

(2) An order under paragraph 169A or 169B shall be made by statutory instrument.

(3) No such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House of Parliament.**]**

Directions about certain applications

169 (1) The Secretary of State may make to the CAC directions as described in sub-paragraph (2) in relation to any case where—

(a) two or more applications are made to the CAC,

(b) each application is a relevant application,

(c) each application relates to the same bargaining unit, and

(d) the CAC has not accepted any of the applications.

(2) The directions are directions as to the order in which the CAC must consider the admissibility of the applications.

(3) The directions may include—

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Trade Union and Labour Relations (Consolidation) Act 1992 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) provision to deal with a case where a relevant application is made while the CAC is still considering the admissibility of another one relating to the same bargaining unit;

(b) other incidental provisions.

(4) A relevant application is an application under paragraph 101, 106, 107, 112 or 128.

Notice of declarations

170 (1) If the CAC issues a declaration under this Schedule it must notify the parties of the declaration and its contents.

(2) The reference here to the parties is to—

(a) the union (or unions) concerned and the employer concerned, and

(b) if the declaration is issued in consequence of an application by a worker or workers, the worker or workers making it.

VALID FROM 06/04/2005

[F466 Supply of information to CAC

Textual Amendments

F466 Sch. A1 para. 170A and preceding cross-heading inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 19**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

170A (1) The CAC may, if it considers it necessary to do so to enable or assist it to exercise any of its functions under this Schedule, exercise any or all of the powers conferred in sub-paragraphs (2) to (4).

(2) The CAC may require an employer to supply the CAC case manager, within such period as the CAC may specify, with specified information concerning either or both of the following—

(a) the workers in a specified bargaining unit who work for the employer;

(b) the likelihood of a majority of those workers being in favour of the conduct by a specified union (or specified unions) of collective bargaining on their behalf.

(3) The CAC may require a union to supply the CAC case manager, within such period as the CAC may specify, with specified information concerning either or both of the following—

(a) the workers in a specified bargaining unit who are members of the union;

(b) the likelihood of a majority of the workers in a specified bargaining unit being in favour of the conduct by the union (or by it and other specified unions) of collective bargaining on their behalf.

(4) The CAC may require an applicant worker to supply the CAC case manager, within such period as the CAC may specify, with specified information concerning the likelihood of a majority of the workers in his bargaining unit being in favour of having bargaining arrangements ended.

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(5) The recipient of a requirement under this paragraph must, within the specified period, supply the CAC case manager with such of the specified information as is in the recipient's possession.

(6) From the information supplied to him under this paragraph, the CAC case manager must prepare a report and submit it to the CAC.

(7) If an employer, a union or a worker fails to comply with sub-paragraph (5), the report under sub-paragraph (6) must mention that failure; and the CAC may draw an inference against the party concerned.

(8) The CAC must give a copy of the report under sub-paragraph (6) to the employer, to the union (or unions) and, in the case of an application under paragraph 112 or 137, to the applicant worker (or applicant workers).

(9) In this paragraph—

"applicant worker" means a worker who—

(a) falls within a bargaining unit ("his bargaining unit") and

(b) has made an application under paragraph 112 or 137 to have bargaining arrangements ended;

"the CAC case manager" means the member of the staff provided to the CAC by ACAS who is named in the requirement (but the CAC may, by notice given to the recipient of a requirement under this paragraph, change the member of that staff who is to be the CAC case manager for the purposes of that requirement);

"collective bargaining" is to be construed in accordance with paragraph 3; and

"specified" means specified in a requirement under this paragraph.**]**

CAC's general duty

171 In exercising functions under this Schedule in any particular case the CAC must have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace, so far as having regard to that object is consistent with applying other provisions of this Schedule in the case concerned.

VALID FROM 06/04/2005

[F467 "Pay" and other matters subject to collective bargaining

Textual Amendments

F467 Sch. A1 para. 171A and preceding cross-heading inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 20**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

171A (1) In this Schedule "pay" does not include terms relating to a person's membership of or rights under, or his employer's contributions to—

(a) an occupational pension scheme (as defined by section 1 of the Pension Schemes Act 1993), or

(b) a personal pension scheme (as so defined).

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
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(2) The Secretary of State may by order amend sub-paragraph (1).

(3) The Secretary of State may by order—

(a) amend paragraph 3(3), 54(4) or 94(6)(b) by adding specified matters relating to pensions to the matters there specified to which negotiations may relate;

(b) amend paragraph 35(2)(b) or 44(2)(b) by adding specified matters relating to pensions to the core topics there specified.

(4) An order under this paragraph may—

(a) include supplementary, incidental, saving or transitional provisions including provision amending this Schedule, and

(b) make different provision for different cases.

(5) An order under this paragraph may make provision deeming—

(a) the matters to which any pre-commencement declaration of recognition relates, and

(b) the matters to which any pre-commencement method of collective bargaining relates,

to include matters to which a post-commencement declaration of recognition or method of collective bargaining could relate.

(6) In sub-paragraph (5)—

"pre-commencement declaration of recognition" means a declaration of recognition issued by the CAC before the coming into force of the order,

"pre-commencement method of collective bargaining" means a method of collective bargaining specified by the CAC before the coming into force of the order,

and references to a post-commencement declaration of recognition or method of collective bargaining shall be construed accordingly.

(7) An order under this paragraph shall be made by statutory instrument; and no such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House of Parliament.**]**

General interpretation

172 (1) References in this Schedule to the CAC are to the Central Arbitration Committee.

(2) For the purposes of this Schedule in its application to a part of Great Britain a working day is a day other than—

(a) a Saturday or a Sunday,

(b) Christmas day or Good Friday, or

(c) a day which is a bank holiday under the [M53]Banking and Financial Dealings Act 1971 in that part of Great Britain.

Marginal Citations

M53 1971 c. 80.

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 06/04/2009

[F468SCHEDULE A2

Section 207A

TRIBUNAL JURISDICTIONS TO WHICH SECTION 207A APPLIES

Textual Amendments

F468 Sch. A2 inserted (6.4.2009) by Employment Act 2008 (c. 24), **ss. 3(3)**, 22(1)(a); S.I. 2008/3232, **art. 2** (with art. 3, Sch.)

. . . . . .

SCHEDULE 1

Section 300(1).

REPEALS

Extent Information

E1 See s.301(2)(e)

Chapter	Short title	Extent of repeal
38 & 39 Vict. c. 86.	Conspiracy and Protection of Property Act 1875.	Sections 3, 5, 7, 15 and 16.
59 & 60 Vict. c. 25.	Friendly Societies Act 1896.	Section 22(2) and (3).
2 & 3 Geo.5 c. 30.	Trade Union Act 1913.	The whole Act.
9 & 10 Geo.5 c. 69.	Industrial Courts Act 1919.	The whole Act.
9 & 10 Geo.6 c. 52.	Trade Disputes and Trade Unions Act 1946.	The whole Act.
11 & 12 Geo.6 c. 39.	Industrial Assurance and Friendly Societies Act 1948.	In section 6—(a) in subsection (1), the words "or a trade union or employers' association"; (b) in subsection (2), the words from "and by virtue of section 2" to "trade unions".Section 16(4).Section 23(1)(d).
1964 c. 24.	Trade Union (Amalgamations, &c.) Act 1964.	The whole Act.
1970 c. 36.	Merchant Shipping Act 1970.	Section 42(1).In Schedule 3, paragraph 1.

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1972 c. 59.	Administration of Justice (Scotland) Act 1972.	Section 3(3).
1974 c. 46.	Friendly Societies Act 1974.	In Schedule 9, paragraphs 1 and 12.
1974 c. 52.	Trade Union and Labour Relations Act 1974.	The whole Act.
1975 c. 71.	Employment Protection Act 1975.	Sections 1 to 10. Sections 17 to 21. Sections 99 to 108. Section 110. Sections 117 to 119. Sections 121 to 123. Section 124(1)(b). In section 125(1), the words from the beginning to "this Act and".Sections 126 to 128. In section 129—(a) in subsection (5), the words from the beginning to "section 123(3) above,";
1975 c. 71.—*(cont.)*	Employment Protection Act 1975.—*(cont.)*	(b) in subsection (6), the words “Sections 127 and 128 above and".Schedule 1. Schedule 12.In Schedule 16—(a) Part III;(b) in Part IV, paragraphs 2, 3, 7, 10, 13 and 16.In Schedule 17, paragraphs 1 to 6
1976 c. 7.	Trade Union and Labour Relations (Amendment) Act 1976.	The whole Act.
1976 c. 74.	Race Relations Act 1976.	Schedule 3.
1977 c. 45.	Criminal Law Act 1977.	Section 1(3).Section 5(11).In section 63(2), the references to sections 5 and 7 of the Conspiracy and Protection of Property Act 1875.
1977 c. 49.	National Health Service Act 1977.	In Schedule 15, paragraph 62.
1978 c. 29.	National Health Service (Scotland) Act 1978.	In Schedule 16, paragraph 39.
1978 c. 36.	House of Commons (Administration) Act 1978.	In Schedule 2—(a) in paragraph 1, the words "and section 122 of the Employment Protection Act 1975";(b) paragraph 5.
1978 c. 44.	Employment Protection (Consolidation) Act 1978.	Sections 23 to 28. Section 30(3). Section 58. In section 59, the words from

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		"either" to "or" at the end of paragraph (a).Sections 62 and 62A. In section 64—(a) in subsection (1), the words "Subject to subsection (3),"; (b) subsection (3). In section 64A(2), the words from "or if it is shown" to the end.Section 67(3). Section 72A.Section 73(4A) and (4B). Section 75A. Sections 76A to 79. In section 132(1)(b), the words from "or in pursuance of an award" to the end.In section 133(1)—
1978 c. 44.—*(cont.)*	Employment Protection (Consolidation) Act 1978. —*(cont.)*	(a) in paragraph (a), the words “23, 27, 28,";(b) in paragraph (b), the words from "of section 99 or " to "1975 or";(c) paragraphs (d), (f) and (g).In section 136—(a) in subsection (1), paragraphs (c) and (g);(b) subsections (2) and (3);(c) in subsection (5), the words from "or under section 2" to the end.In section 146(4), the words "27, 28".In section 149(2), the words "58, 58A", "73(4B)," and "75A(7)".In Schedule 2 —(a) In paragraph 2(2), the words "or 58";(b) In paragraphs 2(4) and 6(3), the words "58(3) to (12),58A,".In Schedule 16, paragraphs 2, 5, 18 and 23.
1978 c. 46.	Employment (Continental Shelf) Act 1978.	Section 1(1).
1980 c. 9.	Reserve Forces Act 1980.	In Schedule 9, paragraph 15.
1980 c. 42.	Employment Act 1980.	Sections 1 to 5.Sections 15 and 16.Section 19.In section 20(1), the defintions of "the 1974 Act" and "the 1975 Act".In Schedule 1— (a) paragraphs 2 to 7; (b) in paragraph 17, the words from "and after paragraph (c)" to the end;(c) paragraphs 19, 21(b) and 24.
1980 c. 53.	Health Services Act 1980.	In Schedule 1, paragraph 25.

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1982 c. 9.	Agricultural Training Board Act 1982.	Section 11(3).
1982 c. 10.	Industrial Training Act 1982.	In Schedule 3, paragraph 6.
1982 c. 23.	Oil and Gas (Enterprise) Act 1982.	In Schedule 3, paragraph 25.
1982 c. 46.	Employment Act 1982.	Sections 2 to 19. Section 22(4) and (5). Schedule 1. In Schedule 2, paragraph 6(1).
1982 c. 46.	Employment Act 1982. —*(cont.)*	In Schedule 3, paragraphs 10 to 13, 17 to 20, 24, 27(2)(a) and (3)(a).
1984 c. 49.	Trade Union Act 1984.	The whole Act.
1985 c. 9.	Companies Consolidation (Consequential Provisions) Act 1985.	In Schedule 2, the entry relating to the Trade Union and Labour Relations Act 1974.
1986 c. 48.	Wages Act 1986.	In section 1(6), the words from “and where a certificate" to the end. Section 5(3A).
1986 c. 64.	Public Order Act 1986.	In Schedule 2, paragraph 1.
1987 c. 43.	Consumer Protection Act 1987.	In Schedule 4, paragraph 8.
1988 c. 19.	Employment Act 1988.	Sections 1 to 23. Section 30. In section 32— (a) in subsection (1), all the definitions except those of "the 1973 Act" and "modifications"; (b) subsection (2). In section 34— (a) subsections (2) and (3); (b) in subsection (6), paragraphs (a) and (b) and the words following paragraph (c). Schedule 1. In Schedule 3, paragraphs 1 to 6.
1989 c. 38.	Employment Act 1989.	Section 14. In Schedule 6, paragraph 19. In Schedule 9, paragraph 2.
1989 c. 40.	Companies Act 1989.	Section 124.
1990 c. 38.	Employment Act 1990.	Sections 1 to 12. In section 18(1), the paragraphs

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		relating to sections 11 and 12. Schedule 1. In Schedule 2, paragraphs 1(2), 2 and 3.
S.I. 1992/807 (N.I. 5)	Industrial Relations (Northern Ireland) Order 1992.	Article 67(2).

SCHEDULE 2

Section 300(2).

CONSEQUENTIAL AMENDMENTS

Extent Information
E2 See s.301(2)(f)

Parliamentary Commissioner Act 1967 (c.13)

F469 1 . . . . . .

Textual Amendments
F469 Sch. 2 para. 1 repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(6)**; S.I. 1999/2830, art. 2(3), **Sch. 2**, Pt. I (with Sch. 3 para. 4)

Transport Act 1968 (c.73)

F470 2 . . . . . .

Textual Amendments
F470 Sch. 2 para. 2 repealed (1.1.1996) by 1995 c. 23, s. 60(2), **Sch. 8 Pt. I** (with ss. 54, 55); S.I. 1995/2181, **art. 2**

Equal Pay Act 1970 (c.41)

3 (1) The Equal Pay Act 1970 is amended as follows.

(2) In section 1 (requirement of equal treatment for men and women), after subsection (10) insert—

"(10A) This section applies in relation to service as a relevant member of the House of Commons staff as in relation to service for the purposes of a Minister of the Crown or government department, and accordingly applies as if references to a contract of employment included references to the terms of service of such a member.

In this subsection "relevant member of the House of Commons staff" has the same meaning as in section 139 of the Employment Protection

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(Consolidation) Act 1978; and subsections (4) to (9) of that section (person to be treated as employer of House of Commons staff) apply, with any necessary modifications, for the purposes of this section.".

(3) Sections 5 and 7 (reference of questions as to agricultural wages orders or service pay) shall continue to have effect with the amendments originally made by paragraph 13(2) and (3) of Part IV of Schedule 16 to the [M54]Employment Protection Act 1975, substituting the words " Central Arbitration Committee " and " Committee " for references to the former Industrial Arbitration Board.

Marginal Citations

M54 1975 c. 71.

House of Commons Disqualification Act 1975 (c.24)

4 (1) The House of Commons Disqualification Act 1975 is amended as follows.

(2) Part II of Schedule 1 (bodies of which all members are disqualified under that Act) shall continue to have effect with the following entries (originally inserted by paragraph 16(2) of Part IV of Schedule16 to the Employment Protection Act 1975)—

"The Central Arbitration Committee."

"The Council of the Advisory, Conciliation and Arbitration Service."

"The Employment Appeal Tribunal.".

(3) In Part III of Schedule 1 (other disqualifying offices), for the entry inserted by paragraph 16(3) of Part IV of Schedule 16 to the Employment Protection Act 1975 substitute—

"Certification Officer or any assistant certification officer.".

[F471](4) . . . . . .

Textual Amendments

F471 Sch. 2 para. 4(4) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(6)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with Sch. 3 para. 4)

Social Security Pensions Act 1975 (c.60)

[F472]5 . . . . . .

Textual Amendments

F472 Sch. 2 para. 5 repealed (7.2.1994) by 1993 c. 48, s. 188, **Sch. 5 Pt.I** (with s. 43(3)); S.I. 1994/86, **art. 2**

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Sex Discrimination Act 1975 (c.65)

6 In Part VIII of the Sex Discrimination Act 1975 (supplementary provisions), after section 85 (application to Crown) insert—

"**85A Application to House of Commons staff.**

(1) Parts II and IV apply to an act done by an employer of a relevant member of the House of Commons staff, and to service as such a member, as they apply to an act done by and to service for the purposes of a Minister of the Crown or government department, and accordingly apply as if references to a contract of employment included references to the terms of service of such a member.

(2) In this section "relevant member of the House of Commons staff" has the same meaning as in section 139 of the Employment Protection (Consolidation) Act 1978; and subsections (4) to (9) of that section (person to be treated as employer of House of Commons staff) apply, with any necessary modifications, for the purposes of Parts II and IV as they apply by virtue of this section.".

Race Relations Discrimination Act 1976 (c.74)

7 In Part X of the Race Relations Act 1976 (supplementary provisions), after section 75 (application to Crown) insert—

"**75A Application to House of Commons staff.**

(1) Parts II and IV apply to an act done by an employer of a relevant member of the House of Commons staff, and to service as such a member, as they apply to an act done by and to service for the purposes of a Minister of the Crown or government department, and accordingly apply as if references to a contract of employment included references to the terms of service of such a member.

(2) In this section "relevant member of the House of Commons staff" has the same meaning as in section 139 of the Employment Protection (Consolidation) Act 1978; and subsections (4) to (9) of that section (person to be treated as employer of House of Commons staff) apply, with any necessary modifications, for the purposes of Parts II and IV as they apply by virtue of this section.".

Aircraft and Shipbuilding Industries Act 1977 (c.3)

8 (1) The Aircraft and Shipbuilding Industries Act 1977 is amended as follows.

(2) In section 6 (machinery for settling terms and conditions of employment), in subsection (2)(b) (resolution of trade disputes) for "within the meaning of the Employment Protection Act 1975" substitute " within the meaning of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 ".

(3) In section 56(1) (interpretation), in the definition of "relevant trade union"—

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(a) for "as defined in section 30(1) of the Trade Union and Labour Relations Act 1974" substitute " within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 ", and

(b) for "as defined by section 126(1) of the Employment Protection Act 1975" substitute " within the meaning of that Act ".

Patents Act 1977 (c.37)

9 In section 40 of the Patents Act 1977 (compensation for employees for certain inventions), in subsection (6) in the definition of "relevant collective agreement" for "the Trade Union and Labour Relations Act 1974" substitute " the Trade Union and Labour Relations (Consolidation) Act 1992 ".

House of Commons (Administration) Act 1978 (c.36)

10 In Schedule 1 to the House of Commons (Administration) Act 1978 (the House of Commons Commission), in paragraph 5 (delegation of functions) for sub-paragraph (6) substitute—

"(6) In sub-paragraph (5) "trade union", and "recognised" in relation to a trade union, have the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992.".

Employment Protection (Consolidation) Act 1978 (c.44)

F473 11 . . . . . .

Textual Amendments
F473 Sch. 2 para. 11 repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

F474 12 . . . . . .

Textual Amendments
F474 Sch. 2 para. 12 repealed (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

F475 13 . . . . . .

Textual Amendments
F475 Sch. 2 para. 13 repealed (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

F476 14 . . . . . .

Textual Amendments
F476 Sch. 2 para. 14 repealed (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

F477 15 . . . . . .

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Textual Amendments

F477 Sch. 2 para. 15 repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch.1**

[F478]16 . . . . . .

Textual Amendments

F478 Sch. 2 para. 16 repealed (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

[F479]17 . . . . . .

Textual Amendments

F479 Sch. 2 para. 17 repealed (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

[F480]18 . . . . . .

Textual Amendments

F480 Sch. 2 para. 18 repealed (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

[F481]19 . . . . . .

Textual Amendments

F481 Sch. 2 para. 19 repealed (22.8.1996) by 1996 c. 17, ss. 45, 46, **Sch. 3 Pt. I** (with s. 38)

[F482]20 . . . . . .

Textual Amendments

F482 Sch. 2 para. 20 repealed (22.8.1996) by 1996 c. 17, ss. 45, 46, **Sch. 3 Pt. I** (with s. 38)

[F483]21 . . . . . .

Textual Amendments

F483 Sch. 2 para. 21 repealed (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

[F484]22 . . . . . .

Textual Amendments

F484 Sch. 2 para. 22 repealed (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

[F485]23 . . . . . .

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Textual Amendments

F485 Sch. 2 para. 23 repealed (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

24 [F486](1) . . . . . .

[F486](2) . . . . . .

[F487](3) . . . . . .

Textual Amendments

F486 Sch. 2 para. 24(1)(2) repealed (22.8.1996) by 1996 c. 17, ss. 45, 46, **Sch. 3 Pt. I** (with s. 38)

F487 Sch. 2 para. 24(3) repealed (30.11.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/2503, art. 2(2), **Sch. 2**

[F488]25 . . . . . .

Textual Amendments

F488 Sch. 2 para. 25 repealed (22.8.1996) by 1996 c. 17, ss. 45, 46, **Sch. 3 Pt. I** (with s. 38)

Crown Agents Act 1979 (c.43)

[F489]26 . . . . . .

Textual Amendments

F489 Sch. 2 para. 26 repealed (21.3.1997) by 1995 c. 24, s. 13(2), **Sch. 2 Pt. I**; S.I. 1997/1139, **art. 2**

Agricultural Training Board Act 1982 (c.9)

27 In section 12 of the Agricultural Training Board Act 1982 (short title, extent and commencement), before subsection (2) (extent) insert—

"(1A) Section 287(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (power to extend provisions to offshore employment) applies to the provisions of this Act as to the provisions of that Act.";

and in subsection (2) after "This Act" insert " , except subsection (1A) above, ".

Industrial Training Act 1982 (c.10)

28 In section 21 of the Industrial Training Act 1982 (short title, extent and commencement), before subsection (2) (extent) insert—

"(1A) Section 287(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (power to extend provisions to offshore employment) applies to the provisions of this Act as to the provisions of that Act.";

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and in subsection (2) for "Paragraph 4 of Schedule 3 to this Act extends" substitute " Subsection (1A) above and paragraph 4 of Schedule 3 extend ".

Oil and Gas (Enterprise) Act 1982 (c.23)

F490 29 . . . . . .

Textual Amendments

F490 Sch. 2 para. 29 repealed (15.2.1999) by 1998 c. 17, s. 51, **Sch. 5 Pt. I** (with Sch. 3 para. 5(1)); S.I. 1999/161, **art. 2(1)**

Employment Act 1982 (c.46)

F491 30 . . . . . .

Textual Amendments

F491 Sch. 2 para. 30 repealed (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

Insurance Companies Act 1982 (c.50)

31 In section 2(2) of the Insurance Companies Act 1982 (exceptions from requirement of authorisation under that Act), and in section 15(3) of that Act (exceptions from regulatory provisions), for "assigned to them by section 28 of the Trade Union and Labour Relations Act 1974" substitute " respectively assigned by section 1 and section 122(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ".

Value Added Tax Act 1983 (c.55)

F492 32 . . . . . .

Textual Amendments

F492 Sch. 2 para. 32 repealed (1.9.1994) by 1994 c. 23, ss. 100(2), 101(1), **Sch. 15**

Insolvency Act 1986 (c.45)

F493 33 . . . . . .

Textual Amendments

F493 Sch. 2 para. 33 repealed (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

Wages Act 1986 (c.48)

34 F494 (1) . . . . . .

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[F494](2) . . . . . .

[F495](3) . . . . . .

Textual Amendments

F494 Sch. 2 para. 34(1)(2) repealed (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

F495 Sch. 2 para. 34(3) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

Building Societies Act 1986 (c.53)

35 In section 7(4)(c)(iii) of the Building Societies Act 1986 (shares held and deposits made by or on behalf of trade union) for "Trade Union and Labour Relations Act 1974" substitute " Trade Union and Labour Relations (Consolidation) Act 1992 ".

Sex Discrimination Act 1986 (c.59)

36 In section 6 of the Sex Discrimination Act 1986 (application of provisions to collective agreements), in subsection (6) (meaning of "collective agreement") for the words from "section 29(1)" to "trade dispute)" substitute " section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 ".

Income and Corporation Taxes Act 1988 (c.1)

37 In section 467 of the Income and Corporation Taxes Act 1988 (exemption for trade unions and employers' associations), in subsection (4)—

(a) in paragraph (a), for "section 8 of the Trade Union and Labour Relations Act 1974" substitute " section 2 of the Trade Union and Labour Relations (Consolidation) Act 1992 ", and

(b) in paragraph (b) for "section 8 of the Trade Union and Labour Relations Act 1974" substitute " section 123 of the Trade Union and Labour Relations (Consolidation) Act 1992 ".

Local Government Act 1988 (c.9)

38 In section 17 of the Local Government Act 1988 (local and other public authority contracts: exclusion of non-commercial considerations), in subsection (8)—

(a) in the definition of "industrial dispute", for "the Trade Union and Labour Relations Act 1974" substitute " Part V of the Trade Union and Labour Relations (Consolidation) Act 1992 ", and

(b) in the closing words, for "Trade Union and Labour Relations Act 1974" substitute " Trade Union and Labour Relations (Consolidation) Act 1992 ".

Local Government and Housing Act 1989 (c.42)

39 (1) In section 12 of the Local Government and Housing Act 1989 (conflict of interest in staff negotiations), subsection (2) (definitions) is amended as follows.

(2) For the definition of "member" substitute—

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""member", in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes a member of any of its constituent or affiliated trade unions;".

(3) In the definition of "official" and "trade union" for "the Trade Union and Labour Relations Act 1974" substitute " the Trade Union and Labour Relations (Consolidation) Act 1992 ".

Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992 No. 807 (N.I. 5))

40 (1) The Industrial Relations (Northern Ireland) Order 1992 is amended as follows.

(2) In Article 5 (lists of trade unions and employers' associations)—

(a) in paragraph (5)(a) for "either list maintained under section 8 of the Trade Union and Labour Relations Act 1974" substitute " the list of trade unions or the list of employers' associations kept under the Trade Union and Labour Relations (Consolidation) Act 1992 ";

(b) in paragraph (11) for "or employers' associations maintained under section 8 of the Trade Union and Labour Relations Act 1974" substitute " or the list of employers' associations kept under the Trade Union and Labour Relations (Consolidation) Act 1992 " and for "subsection (10) of that section" substitute " section 2(5) or 123(5) of that Act ".

(3) In Article 6 (certification as independent trade union), in paragraphs (12) and (13) for "section 8 of the Employment Protection Act 1975" substitute " section 6 of the Trade Union and Labour Relations (Consolidation) Act 1992 ".

(4) In Article 12 (returns by trade unions and employers' associations outside Northern Ireland), in paragraph (1) for "section 11 of the Trade Union and Labour Relations Act 1974" substitute " section 32 of the Trade Union and Labour Relations (Consolidation) Act 1992 " and for "subsection (2)" substitute " subsection (1) ".

[F496](5) . . . . . .

[F496](6) . . . . . .

[F496](7) . . . . . .

[F496](8) . . . . . .

[F496](9) . . . . . .

Textual Amendments

F496 Sch. 2 para. 40(5)-(9) repealed (1.10.1995) by S.I. 1995/1980 (N.I. 12), art. 150(4), **Sch. 4**; S.R. 1995/354, **art. 2(1)**

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SCHEDULE 3

Section 300(3).

TRANSITIONAL PROVISIONS AND SAVINGS

Extent Information
E3 See s.301(2)(f)

Continuity of the law

1 (1) The repeal and re-enactment of provisions in this Act does not affect the continuity of the law.

(2) Anything done (including subordinate legislation made), or having effect as done, under a provision reproduced in this Act has effect as if done under the corresponding provision of this Act.

(3) References (express or implied) in this Act or any other enactment, instrument or document to a provision of this Act shall, so far as the context permits, be construed as including, in relation to times, circumstances and purposes before the commencement of this Act, a reference to corresponding earlier provisions.

(4) A reference (express or implied) in any enactment, instrument or other document to a provision reproduced in this Act shall be construed, so far as is required for continuing its effect, and subject to any express amendment made by this Act, as being, or as the case may required including, a reference to the corresponding provision of this Act.

General saving for old transitional provisions and savings

2 (1) The repeal by this Act of a transitional provision or saving relating to the coming into force of a provision reproduced in this Act does not affect the operation of the transitional provision or saving, in so far as it is not specifically reproduced in this Act but remains capable of having effect in relation to the corresponding provision of this Act.

(2) The repeal by this Act of an enactment previously repealed subject to savings does not affect the continued operation of those savings.

(3) The repeal by this Act of a saving on the previous repeal of an enactment does not affect the operation of the saving in so far as it is not specifically reproduced in this Act but remains capable of having effect.

Effect of repeal of 1946 Act

3 The repeal by this Act of the [M55]Trade Disputes and Trade Unions Act 1946 shall not be construed as reviving in any respect the effect of the [M56]Trade Disputes and Trade Unions Act 1927.

Marginal Citations
M55 1946 c. 52.

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
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M56 1927 c. 22.

Pre-1974 references to registered trade unions or employers' associations

4 (1) Any reference in an enactment passed, or instrument made under an enactment, before 16th September 1974—

(a) to a trade union or employers' association registered under—

(i) the Trade Union Acts 1871 to 1964, or

(ii) the [M57]Industrial Relations Act 1971, or

(b) to an organisation of workers or an organisation of employers within the meaning of the Industrial Relations Act 1971,

shall be construed as a reference to a trade union or employers' association within the meaning of this Act.

(2) Subsection (1) does not apply to any enactment relating to income tax or corporation tax.

Marginal Citations
M57 1971 c. 72.

Enforceability of collective agreements

5 Section 179 of this Act (enforceability of collective agreements) does not apply to a collective agreement made on or after 1st December 1971 and before 16th September 1974.

Trade unions and employers' associations ceasing to be incorporated by virtue of 1974 Act

6 (1) The repeal by this Act of section 19 of the [M58]Trade Union and Labour Relations Act 1974 (transitional provisions for trade unions and employers' associations ceasing to be incorporated) does not affect—

(a) the title to property which by virtue of that section vested on 16th September 1974 in "the appropriate trustees" as defined by that section, or

(b) any liability, obligation or right affecting such property which by virtue of that section became a liability, obligation or right of those trustees.

(2) A certificate given by the persons who on that date were the president and general secretary of a trade union or employers' association, or occupied positions equivalent to that of president and general secretary, that the persons named in the certificate are the appropriate trustees of the union or association for the purposes of section 19(2) of the Trade Union and Labour Relations Act 1974 is conclusive evidence that those persons were the appropriate trustees for those purposes.

(3) A document which purports to be such a certificate shall be taken to be such a certificate unless the contrary is proved.

Marginal Citations
M58 1974 c. 52.

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
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References to former Industrial Arbitration Board

7 Any reference to the former Industrial Arbitration Board in relation to which section 10(2) of the [M59]Employment Protection Act 1975 applied immediately before the commencement of this Act shall continue to be construed as a reference to the Central Arbitration Committee.

Marginal Citations

M59 1975 c. 71.

Effect of political resolution passed before 1984 amendments

8 A resolution under section 3 of the [M60]Trade Union Act 1913, or rule made for the purposes of that section, in relation to which section 17(2) of the [M61]Trade Union Act 1984 applied immediately before the commencement of this Act shall continue to have effect as if for any reference to the political objects to which section 3 of the 1913 Act formerly applied there were substituted a reference to the objects to which that section applied as amended by the 1984 Act.

Marginal Citations

M60 1913 c. 30.
M61 1984 c. 49.

Persons elected to trade union office before 1988 amendments

9 (1) In relation to a person who was, within the period of five years ending with 25th July 1989, elected to a position to which the requirements of section 1 of the Trade Union Act 1984 were extended by virtue of section 12(1) of the Employment Act 1988—

(a) the references in section 46(1)(a) and 58(2)(a) to satisfying the requirements of Chapter IV of Part I shall be disregarded, and

(b) the period of five years mentioned in section 46(1)(b) shall be calculated from the date of that election.

(2) Sub-paragraph (1) does not apply if the only persons entitled to vote in the election were themselves persons holding positions to which Chapter IV of Part I would have applied had that Chapter been in force at the time.

10 In relation to a person who was elected to a position to which Chapter IV of Part I applies before 26th July 1989, the reference in section 58(2)(a) (exemption of persons nearing retirement) to satisfying the requirements of that Chapter—

(a) shall not be construed as requiring compliance with any provision corresponding to a provision of section 13 or 15 of the [M62]Employment Act 1988 (additional requirements as to elections) which was not then in force, and

(b) in relation to an election before the commencement of section 14(2) of that Act (postal ballots) shall be construed as requiring compliance with section 3 of the Trade Union Act 1984 (non-postal ballots).

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Marginal Citations
M62 1988 c. 19.

Qualification to act as auditor of trade union or employers' association

11 (1) Nothing in section 34 (eligibility for appointment as auditor) affects the validity of any appointment as auditor of a trade union or employers' association made before 1st October 1991 (when section 389 of the [M63]Companies Act 1985 was repealed and replaced by the provisions of Part II of the [M64]Companies Act 1989).

(2) A person who is not qualified as mentioned in section 34(1) may act as auditor of a trade union in respect of an accounting period if—

(a) the union was registered under the Trade Union Acts 1871 to 1964 on 30th September 1971,

(b) he acted as its auditor in respect of the last period in relation to which it was required to make an annual return under section 16 of the [M65]Trade Union Act 1871,

(c) he has acted as its auditor in respect of every accounting period since that period, and

(d) he retains an authorisation formerly granted by the Board of Trade or the Secretary of State under section 16(1)(b) of the [M66]Companies Act 1948 (adequate knowledge and experience, or pre-1947 practice).

Marginal Citations
M63 1985 c. 6.
M64 1989 c. 40.
M65 1871 c. 31.
M66 1948 c. 38.

Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5))

[F497]12 . . . . . .

Textual Amendments
F497 Sch. 3 para. 12 repealed (1.10.1995) by S.I. 1995/1980 (N.I. 12), art. 150(4), **Sch. 4**; S.R. 1995/354, **art. 2(1)**

Use of existing forms, &c.

13 Any document made, served or issued on or after the commencement of this Act which contains a reference to an enactment repealed by this Act shall be construed, except so far as a contrary intention appears, as referring or, as the context may require, including a reference to the corresponding provision of this Act.

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Saving for power to vary or revoke

14 The power of the Secretary of State by further order to vary or revoke the [M67]Funds for Trade Union Ballots Order 1982 extends to so much of section 115(2)(a) as reproduces the effect of Article 2 of that order.

Marginal Citations

M67 S.I. 1982/953.

TABLE OF DERIVATIONS

THE FOLLOWING ABBREVIATIONS ARE USED IN THIS TABLE:—

1875	Conspiracy and Protection of Property Act 1875 (c. 86).
1913	Trade Union Act 1913 (2 & 3 Geo.5 c. 30).
1919	Industrial Courts Act 1919 (c. 69).
1964	Trade Union (Amalgamations, &c.) Act 1964 (c. 24).
1971	Industrial Relations Act 1971 (c. 72).
1974	Trade Union and Labour Relations Act 1974 (c. 52).
1975	Employment Protection Act 1975 (c. 71).
1976	Trade Union and Labour Relations (Amendment) Act 1976 (c. 7).
1978	Employment Protection (Consolidation) Act 1978 (c. 44).
1980	Employment Act 1980 (c. 42).
1982	Employment Act 1982 (c. 46).
1984	Trade Union Act 1984 (c. 49).
1988	Employment Act 1988 (c. 19).
1989	Employment Act 1989 (c. 38).
1990	Employment Act 1990 (c. 38).

Provision	***Derivation***
Part I, Chapter I.	
1	1913 s.2(1); 1964 s.9(1) “trade union"; 1974 s.28(1), Sch.3 paras.2(2), 10(8); 1975 s.126(1) “trade union"; 1978 s.153(1); 1980

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	s.3(9); 1982 s.18(2); 1984 ss.9(1), 10(5); 1988 ss.18(2), 32(1); 1990 ss.7(5), 8(7).
2(1)	1974 s.8(1), (2); 1975 Sch.16 Pt.III, para.1.
(2), (3)	1974 s.8(9); 1975 Sch.16 Pt.III, paras.1 and 4.
(4), (5), (6)	1974 s.8(10); 1975 Sch.16 Pt.III, paras.1 and 5.
3(1)	1974 s.8(3); 1975 Sch.16 Pt.III para.1.
(2)	1974 s.8(4); 1975 Sch.16 Pt.III para.1.
(3)	1974 s.8(3); 1975 Sch.16 Pt.III para.1.
(4)	1974 s.8(5); 1975 Sch.16 Pt.III para.1.
4(1), (2)	1974 s.8(6); 1975 Sch.16 Pt.III, para.1.
(3)	1974 s.8(6A); 1975 Sch.16 Pt.III, paras.1 and 2.
5	1974 s.30(1) “independent trade union"; 1975 s.126(1) “independent trade union", “independence" and “independent"; 1978 s.153(1) “independent trade union".
6(1)	1975 s.8(1), (2).
(2), (3)	1975 s.8(3), (4).
(4)	1975 s.8(6).
(5)	1975 s.8(5)(a),(b).
(6)	1975 s.8(5)(c).
7(1)	1975 s.8(7).
(2)	1975 s.8(3), (8).
(3)	1975 s.8(6), (8).
(4)	1975 s.8(5)(a),(b), (8).
(5)	1975 s.8(5)(c), (8).
(6)	1975 s.8(10).
8(1) to (3)	1975 s.8(11).
(4), (5)	1975 s.8(12).
9(1)	1974 s.8(7); 1975 Sch.16 Pt.III, para.3; 1978 s.136(3), Sch.16 para.18.
(2)	1975 s.8(9).
(3)	1974 s.8(7); 1975 s.8(9), Sch.16 Pt.III para.3.
(4)	1974 s.8(7); 1975 s.8(9), Sch.16 Pt.III para.3; 1978 s.136(3), Sch.16 paras.18 and 23(3).

Part I, Chapter II.

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10(1), (2)	1974 s.2(1)(a), (c), (d).
(3)	1974 s.2(2), (3); Interpretation Act 1978 (c.30) s.17(2)(a); Companies Consolidation (Consequential Provisions) Act 1985 (c.9) Sch.2.
11(1), (2)	1974 s.2(5).
12(1)	1974 s.2(1)(b).
(2)	1974 s.2(1)(e).
(3)	drafting.
13(1)	1974 s.4(1), (2), (3).
(2)	1974 s.4(1).
(3)	1974 s.4(3).
(4)	1974 s.4(1).
14(1) to (6)	1974 s.4(3) to (8)
15(1) to (4)	1988 s.8(1) to (4).
(5)	1988 s.8(4), (5).
(6)	1988 s.8(6).
(7)	1988 s.32(1) “member".
16(1) to (4)	1988 s.9(1) to (4).
(5)	1988 s.23(1), (2).
(6)	1988 s.9(5).
(7)	1988 s.32(1) “member".
17(1)	1974 Sch.1 para.31(1)(a).
(2), (3)	1974 Sch.1 para.31(2).
(4), (5)	1974 Sch.1 para.31(3).
(6)	1974 s.26(2), (3).
18(1)	1974 Sch.1 para.31(1)(b); Administration of Estates (Small Payments) (Increase of Limits) Order 1984 (S.I. 1984/539).
(2)	1974 Sch.1 para.31(3).
(3)	1974 s.26(2), (3).
(4)	1974 Sch.1 para.31(4); 1975 Sch.16, Pt.III, para.32.
19(1)	Industrial Assurance and Friendly Societies Act 1948 (c.39) ss.6(1), (2), 23(1)(d); 1974 Sch.3 para.5(2), (4).
(2)	Industrial Assurance and Friendly Societies Act 1948 (c.39) s.16(4); Friendly Societies

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	Act 1974 (c.46) Sch.9 para.12; 1974 Sch.3 para.5(3).
(3)	Friendly Societies Act 1896 (c.25) s.22(2), (3); Friendly Societies Act 1974 (c.46) Sch.9 para.1; 1974 s.9(1).
20(1)	1974 s.13(1); 1982 s.15(2); 1990 s.6(2).
(2) to (4)	1982 s.15(3) to (3B); 1990 s.6(3).
(5)	1982 s.15(8).
(6)	1982 s.15(9); 1990 s.6(8).
(7)	1982 s.15(7) “rules".
21(1)	1982 s.15(4); 1990 s.6(4).
(2)	1982 s.15(5); 1990 s.6(5).
(3)	1982 s.15(5A); 1990 s.6(5).
(4)	1982 s.15(5B); 1990 s.6(5).
(5)	1982 s.15(6).
(6)	1982 s.15(6A); 1990 s.6(6).
(7)	1982 s.15(7) “commercial contract"; 1990 s.6(7).
22(1)	1982 s.16(1), (2); Consumer Protection Act 1987 (c.43) Sch.4 para.8.
(2)	1982 s.16(1), (3).
(3)	1985 s.16(4), (5)(b).
(4)	1982 s.16(5)(a).
(5)	1982 s.16(2)(b), (6).
23(1)	1982 s.17(1).
(2)	1982 s.17(2), (3) “political fund", “provident benefits fund".
(3)	1982 s.17(3) “provident benefits".
Part I, Chapter III.	
24(1), (2)	1984 s.4(1), (2).
(3), (4)	1984 s.4(2A); 1988 Sch.3 para. 5(3).
(5)	1984 s.9(1) “proper address".
(6)	1984 ss.5(10), 6(3).
25(1)	1984 s.5(1).
(2)	1984 s.5(3); s.6(5).
(3)	1984 s.5(4).
(4), (5)	1984 s.6(1), (2).

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(6), (7)	1984 s.6(7), (8).
26(1)	1984 s.5(1).
(2)	1984 s.6(4).
(3)	1984 s.5(4).
(4)	1984 s.5(5), (6), (7), (9).
(5)	1984 s.5(11), (12).
(6)	1988 s.23(1), (2).
27	1974 s.11(4).
28(1)	1974 s.10(1), (2).
(2)	1974 s.10(3).
29(1)	1988 s.6(1), (9)(a).
(2)	1988 s.6(9)(a); drafting.
(3)	1988 s.6(2).
30(1)	1988 s.6(2), (10).
(2), (3)	1988 s.6(3), (4).
(4)	1974 Sch.2 para.6; Companies Consolidation (Consequential Provisions) Act 1985 (c.9), Sch.2; 1988 s.6(9)(c).
(5), (6)	1988 s.6(5), (6).
(7)	1988 s.32(1) “member".
31(1), (2)	1988 s.6(7).
(3)	1988 s.23(1), (2).
32(1)	1974 s.11(1), (2); 1975 Sch.16 Pt.III para.1.
(2)	1974 Sch.2 Pt.I para.1(1), (2).
(3)	1974 Sch.2 Pt.I paras. 2, 3 and 4.
(4)	1974 Sch.2 Pt.I para.5.
(5), (6)	1974 s.11(4), (5).
33(1)	1974 s.11(3).
(2)	1974 Sch.2 Pt.I para.22.
34(1)	1974 Sch.2 Pt.I paras.6, 7; Interpretation Act 1978 (c.30) s.17(2)(a); Companies Consolidation (Consequential Provisions) Act 1985 (c.9) Sch.2.
(2), (3)	1974 Sch.2 Pt.I para.9(1), (2).
(4)	1974 s.26(2), (3); 1974 Sch.2 Pt.I para.9(3).
(5)	1974 Sch.2 Pt.I para.10(1), (2).
35(1)	1974 Sch.2 Pt.I para.11, 12, 13(1).

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(2)	1974 Sch.2 Pt.I para.12.
(3) to (5)	1974 Sch.2 Pt.I para.13(1) to (3).
(6)	1974 s.26(2), (3); 1974 Sch.2 Pt.I para.14.
(7), (8)	1974 Sch.2 Pt.I para.15(1), (2).
36(1)	1974 Sch.2 Pt.I para.18.
(2)	1974 Sch.2 Pt.I para.19.
(3), (4)	1974 Sch.2 Pt.I para.20.
37(1)	1974 Sch.2 Pt.I para.16.
(2)	1974 Sch.2 Pt.I para.21.
(3)	1974 Sch.2 Pt.I para.17.
38(1)	1974 Sch.2 Pt.II para.36(a).
(2)	1974 Sc.2 Pt.II paras.34, 35, 36(c).
39(1)	1974 Sch.2 Pt.II, para.27; 1975 Sch.16 Pt.III, para.1.
(2)	1974 Sch.2 Pt.II, paras.25, 27.
(3)	1974 Sch.2 Pt.II, para.28.
40(1), (2)	1974 Sch.2 Pt.II, para.32(1), (2).
(3)	1974 Sch.2 Pt.II, paras.24, 33.
(4)	1974 Sch.2 Pt.II, paras 25, 33.
(5), (6)	1974 Sch.2 Pt.II, paras.26, 33; 1975 Sch.16 Pt.III, para.1.
(7)	1974 Sch.2 Pt.II, paras.28, 33.
41(1)	1974 Sch.2 Pt.II, paras.30, 33A; 1975 Sch.16 Pt.III, para.1; 1980 Sch.1 para.3.
(2)	1974 Sch.2 Pt.II, paras.31, 33B; 1975 Sch.16 Pt.III, para.1; 1980 Sch.1 para.3.
(3)	1974 Sch.2 Pt.II, para.33B; 1980 Sch.1 para.3.
(4)	1974 Sch.2 Pt.II, para.32(3); 1975 Sch.16 Pt.III, para.1.
42	1974 Sch.2 Pt.II, para.36(b); 1975 Sch.16 Pt.III, para.1.
43(1)	1974 s.11(1).
(2)	1984 s.7(4) to (7).
44(1)	drafting.
(2)	1974 ss.10(4), 11(8).
(3)	1974 s.10(4), 11(8); 1984 s.4(3).

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45(1) to (4)	1974 s.12(1) to (4); 1988 s.6(8).
(5)	1974 s.12(5); Criminal Justice Act 1982 (c.48) ss.38, 46; 1988 s.6(8).
Part I, Chapter IV.	
46(1), (2)	1984 s.1(1), (2), (6B); 1988 s.12(1), Sch.3 Pt.I para.5(1).
(3)	1984 s.1(6A); 1988 s.12(1).
(4)	1984 s.1(6C); 1988 s.12(1).
(5)	1984 s.1(7).
(6)	1984 s.1(1), (4).
47(1), (2)	1984 s.2(9), (10).
(3)	1984 s.2(11), (12).
48(1)	1988 s.13(2)(a), (b).
(2)	1988 s.13(2)(b), (4).
(3)	1988 s.13(3).
(4) to (6)	1988 s.13(2)(d) to (f).
(7)	1988 s.13(2)(c).
(8)	1988 s.13(5).
49(1)	1988 s.15(2)(a).
(2), (3)	1988 s.15(3), (4).
(4)	1988 s.15(2)(b).
(5)	1988 s.15(2)(bb); 1990 s.5(5).
(6), (7)	1988 s.15(2)(c), (d).
50(1), (2)	1984 s.2(1), (2).
(3)	1984 ss.2(3), (4)(a), 9(1) “section".
(4)	1984 s.2(4)(b).
51(1)	1984 s.2(5).
(2)	1984 s.2(5)(a), (b), (c); 1988 Sch.3 Pt.I para.5(2)(a); 1990 s.5(4).
(3), (4)	1984 s.2(6), (7).
(5)	1984 s.2(8)(a), (c).
(6)	1984 s.2(8).
(7)	1984 s.9(1) “single transferable vote".
52(1)	1988 s.15(5)(a) to (d).
(2)	1988 s.15(5)(e), (f), (6).
(3)	1988 s.15(7).

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(4)	1988 s.15(7)(a).
(5)	1988 s.15(7)(b), (c).
53	1984 s.2(14).
54(1)	1984 ss.5(1), (10), 6(3); 1988 Sch.3 Pt.I para.5(4)(a).
(2)	1984 s.5(1)(a), (b), (12A); 1988 Sch.3 Pt.I para.5(4)(c).
(3)	1984 s.5(2).
55(1)	1984 s.5(1).
(2)	1984 ss.5(3), 6(5).
(3)	1984 s.5(4).
(4), (5)	1984 s.6(1), (2).
(6), (7)	1984 s.6(7), (8).
56(1)	1984 s.5(1); 1988 Sch.3 Pt.I para.5(4)(a).
(2)	1984 s.6(4).
(3)	1984 s.5(4).
(4)	1984 s.5(5) to (7), (9).
(5)	1984 s.5(8); 1988 Sch.3 Pt.1 para.5(4)(b).
(6)	1984 s.5(11) to (12A); 1988 Sch.3 Pt.I para.5(4)(c).
(7)	1988 s.23(1), (2).
57(1)	1984 s.7(4) to (7).
(2)	1988 s.12(2).
(3)	1984 s.7(8); 1988 s.12(2).
58(1)	1984 s.8(1).
(2)	1984 s.8(2); 1988 Sch.3 Pt.I para.5(5)(b)
(3)	Interpretation Act 1978 (c.30) s.17(2)(a); 1984 s.8(3).
59	1984 s.1(3).
60(1)	1984 s.2(13).
(2)	1984 s.9(1) “overseas member".
(3)	1984 s.2(13); 1988 Sch.3 Pt.I para.5(2)(b).
61(1)	1984 s.9(2).
(2)	1984 s.1(6).
Part I, Chapter V.	
62(1)	1988 s.1(1); 1990 Sch.2 para.3(2).

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(2)	1988 s.1(5); 1990 Sch.2 para.3(5).
(3)	1988 s.1(2); 1990 Sch.2 para.3(3).
(4)	1988 s.23(1), (2).
(5)	1988 s.1(3); 1990 Sch.2 para.3(4).
(6)	1988 s.1(6), (7) “industrial action"; 1990 s.5(1).
(7)	1988 s.30(1).
(8)	1990 s.5(1).
(9)	1988 s.1(8).
63(1)	1988 s.2(4).
(2)	1988 s.2(1).
(3)	1988 s.2(3).
(4)	1988 s.2(2).
(5), (6)	1988 s.2(5), (6).
64(1)	1988 s.3(1).
(2)	1988 s.3(5).
(3)	1988 s.3(8).
(4), (5)	1988 s.3(7).
65(1)	1988 s.3(2), (3).
(2)	1988 s.3(3)(a) to (d), (f), (6) “enactment".
(3)	1988 s.3(3)(e).
(4)	1988 s.3(3)(g).
(5)	1988 s.3(3), closing words.
(6)	1988 s.3(4).
(7)	1988 s.3(3)(b),(d), (6) “representative".
(8)	1988 s.30(1)
66(1)	1988 s.4(1).
(2)	1988 s.4(2), (3).
(3)	1988 s.4(4).
(4)	1988 s.4(6).
67(1) to (9)	1988 s.5(1) to (9).
68(1)	1988 s.7(1).
(2), (3)	1988 s.7(2)(a), (b).
(4)	1988 s.7(3).
69	1974 s.7; 1976 s.3(1).

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70	1988 s.32(1) “member".
Part I, Chapter VI.	
71(1), (2)	1913 s.3(1); 1971 Sch.8; 1974 Sch.3 para.2(3); 1975 Sch.16 Pt.IV para.2(2).
72(1) to (3)	1913 s.3(3) to (3B); 1984 s.17(1).
(4)	1913 s.3(3C); Films Act 1960 (c.57) s.38(4) “film"; 1984 s.17(1).
73(1)	1913 s.3(1); 1971 Sch.8; 1974 Sch.3 para.2(3).
(2)	1913 s.3(4); 1971 Sch.8; 1974 Sch.3 para.2(3).
(3)	1984 s.12(2)(a).
(4)	1984 s.12(2)(b), (4).
74(1)	1913 s.4(1); 1971 Sch.8; 1974 Sch.3 para.2(3); 1975 Sch.16 Pt.IV para.2(2).
(2)	1984 s.13(3).
(3)	1913 s.4(1); 1971 Sch.8; 1974 Sch.3 para.2(3); 1975 Sch.16 Pt.IV para.2(2); 1984 s.13(1); 1988 s.15(1)(a).
75(1)	1988 s.15(2)(a).
(2), (3)	1988 s.15(3), (4).
(4)	1988 s.15(2)(b).
(5)	1988 s.15(2)(bb); 1990 s.5(5).
(6), (7)	1988 s.15(2)(c), (d).
76	1913 s.4(1A); 1984 s.13(2).
77(1), (2)	1913 s.4(1B); 1984 s.13(2); 1988 Sch.3 para.1(1)(b); 1990 s.5(4).
(3)	1913 s.4(1C); 1984 s.13(2).
(4)	1913 s.4(1D); 1984 s.13(2); 1988 s.14(1).
(5)	1913 s.4(1E); 1984 s.13(2).
78(1), (2)	1988 s.15(5), (6).
(3) to (6)	1988 s.15(7).
79(1)	1984 ss.5(10), 6(3); 1988 s.16(4), Sch.3 para.5(4)(a).
(2), (3)	1988 s.16(2), (3).
80(1)	1988 s.16(1).
(2)	1984 ss.5(3), 6(5); 1988 s.16(4).
(3)	1984 s.5(4); 1988 s.16(4).

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(4), (5)	1984 s.6(1), (2); 1988 s.16(4).
(6), (7)	1984 s.6(7), (8); 1988 s.16(4).
81(1)	1988 s.16(1).
(2)	1984 s.6(3), (4); 1988 s.16(4).
(3)	1984 s.5(4); 1988 s.16(4).
(4)	1984 s.5(5) to (7), (9); 1988 s.16(4).
(5)	1984 s.5(8); 1988 s.16(4)(b), Sch.3 para.5(4)(b).
(6)	1984 ss.5(11), 12; 1988 s.16(4).
(7)	1988 s.23(1), (2).
82(1)	1913 s.3(1); 1971 Sch.8; 1974 Sch.3 para.2(3).
(2) to (4)	1913 s.3(2); 1971 Sch.8; 1974 Sch.3 para.2(3); 1975 Sch.16 Pt.IV para.2(2).
83(1)	1984 s.14(1), (2)(a).
(2)	1984 s.14(2)(b).
(3)	1984 s.14(3), (4).
84(1) to (3)	1913 s.5(1), Sch.; 1971 Sch.8; 1974 Sch.3 para.2(3); 1975 Sch.16 Pt.IV para.2(2).
(4), (5)	1913 s.5(2); 1971 Sch.8; 1974 Sch.3 para 2(3); 1984 ss.13(9), (10) “new resolution".
85(1), (2)	1913 s.6; 1971 Sch.8; 1974 Sch.3 para 2(3).
86(1) to (3)	1984 s.18(1) to (3).
87(1), (2)	1984 s.18(4), (6).
(3)	1984 s.18(5).
(4)	1984 s.18(3).
88(1)	drafting.
(2)	Wages Act 1986 (c.48) s.1(6); 1988 Sch.3 para.6(1).
(3), (4)	Wages Act 1986 (c.48) s.5(3A); 1988 Sch.3 para.6(3)
89(1)	1984 s.15(10).
(2)	1984 s.15(1), (2).
(3)	1984 ss.14(2)(a), 15(5).
(4)	1984 s.14(2)(c).
(5)	1984 s.15(9).
90(1), (2)	1984 s.15(3)(a), (b).

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(3)	1984 s.15(4).
(4)	1984 s.16(1).
(5)	1984 s.16(2) to (4).
(6)	1984 s.16(5).
91(1), (2)	1984 s.15(6), (7)(a), (10).
(3)	1984 s.15(7)(b).
(4)	1984 s.15(8).
92	1913 s.4(2); 1971 Sch.8; 1974 Sch.3 para 2(3); 1975 Sch.16 Pt.IV para.2(2).
93(1)	1964 s.5(4); 1971 Sch.8; 1974 Sch.3 para.10(2).
(2)	1984 s.12(5).
(3)	drafting.
94(1), (2)	1984 s.13(7), (8).
(3)	1984 ss.9(1) “overseas member", 13(10) “overseas member".
95	1913 s.5A; 1975 Sch.16 Pt.IV para. 2(3); 1978 s.136(2)(a), Sch.16 para.2.
96	1984 s.19(2) “date of the ballot".
Part I, Chapter VII.	
97(1), (2)	1964 s.1(1)(a), (b); 1971 Sch.8; 1974 Sch.3 para.10(2).
(3)	1964 s.1(6); 1971 Sch.8; 1974 Sch.3 para.10(2).
(4)	1964 s.2(1); 1971 Sch.8; 1974 Sch.3 para.10(2).
98(1)	1964 s.1(1)(a), (b), (4)(a); 1971 Sch.8; 1974 Sch.3 para.10(2); 1975 Sch.16, Pt.IV, para.10(2).
(2)	1964 s.1(3), (4)(a); 1971 Sch.8; 1974 Sch.3 para.10(2); 1975 Sch.16, Pt.IV, para.10(2).
99(1)	1964 s.1(2)(d); 1971 Sch.8; 1974 Sch.3 para.10(2); 1975 Sch.16, Pt.IV, para.10(2).
(2), (3)	1964 s.1(3)(a), (b).
(4)	1964 s.1(3).
(5)	1964 s.1(4)(b); 1971 Sch.8; 1974 Sch.3 para.10(2); 1975 Sch.16, Pt.IV, para.10(2).
100(1)	1964 s.1(1), (2); 1971 Sch.8; 1974 Sch.3 para.10(2); 1975 Sch.16 Pt.IV para.10(2).

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(2)	1964 s.2(2); 1971 Sch.8; 1974 Sch.3 para.10(2).
(3), (4)	1964 s.2(3); 1971 Sch.8; 1974 Sch.3 para.10(2).
101(1), (2)	1964 s.1(5); 1975 Sch.16, Pt.IV, para.10(2).
102(1) to (3)	1964 s.3; 1971 Sch.8; 1974 Sch.3 para.10(2).
103(1)	1964 s.4(1); 1971 Sch.8; 1974 Sch.3 para.10(2); 1975 Sch.16, Pt.IV, para.10(2).
(2)	1964 s.4(2), (10); 1975 Sch.16, Pt.IV, para.10(2).
(3)	1964 s.4(3), (5); 1971 Sch.8; 1974 Sch.3 para.10(2); 1975 Sch.16, Pt.IV, para.10(2).
(4)	1964 s.4(4); 1975 Sch.16, Pt.IV, para.10(2).
(5)	1964 s.4(7); 1975 Sch.16, Pt.IV, para.10(2).
104	1964 s.4(8); 1975 Sch.16 Pt.IV para.10(3); 1978 Sch.16 para.5; 1978 s.136(2)(b).
105(1)	1964 s.5(1); 1971 Sch.8; 1974 Sch.3 para.10(2).
(2), (3)	1964 s.5(3)(a), (b); 1971 Sch.8; 1974 Sch.3 para.10(2).
(4)	1964 s.5(2).
106(1)	1964 s.10(2); 1971 Sch.8; 1974 Sch.3 para.10(2).
(2)	1964 Sch.2 para.2(1); 1971 Sch.8; 1974 Sch.3 para.10(2); 1975 Sch.16 Pt.IV para.10(2).
(3)	1964 Sch.2 para.4; 1971 Sch.8; 1974 Sch.3 para.10(2); 1975 Sch.16 Pt.IV para.10(2).
(4)	1964 Sch.2 paras.2(2), 3.
(5)	1964 Sch.2 para.1; 1971 Sch.8; 1974 Sch.3 para.10(2).
107(1)	1964 s.6(1).
(2), (3)	1964 s.6(2); 1974 Sch.3 para.10(5); 1975 Sch.16 Pt.IV para.10(2).
(4)	1964 s.6(3).
108(1)	1964 s.7(1); Secretary of State for Employment and Productivity Order 1968 (S.I. 1968/729); 1975 Sch.16 Pt.IV para.10(2).
(2)	1964 s.7(2); 1975 Sch.16 Pt.IV para.10(2).
(3), (4)	1964 s.7(3), (4).

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Part I, Chapter VIII.

109(1)	1988 s.20(7)(a) to (d).
(2)	1990 s.10(1) to (3), (4)(b).
(3)	1988 s.20(7(e), (8).
110(1)	1988 s.20(1).
(2), (3)	1988 s.20(4), (5).
(4)	1990 s.10(5).
(5)	1988 s.20(2)(b).
111(1)	1988 s.20(2)(a)
(2)	1988 s.20(3).
(3)	1988 s.21(3).
(4)	1988 s.21(2).
(5), (6)	1988 s.21(4), (5).
112(1), (2)	1990 s.11(1), (2).
113(1), (2)	1988 s.21(1)
114(1)	1988 s.20(3)
(2)	1988 s.20(6)
(3)	1988 s.21(6)

Part I, Chapter IX.

115(1)	1980 s.1(1).
(2)	1980 s.1(2) to (3A); Funds for Trade Union Ballots Order 1982 (S.I. 1982/953) art.2; 1984 s.20(2), (3).
(3)	1980 s.1(4).
(4)	1980 s.1(5); 1984 s.20(4).
(5)	1980 s.1(7).
116(1)	1980 s.2(1), (3)(a).
(2)	1980 s.2(2); 1984 s.20(5).
(3)	1980 s.2(1), (3)(b); 1988 Sch.3 para.3(1)(a).
(4) to (6)	1980 s.2(4) to (6).
(7)	1980 s.2(8).
117(1)	1974 s.30(1) “special register body"; Companies Consolidation (Consequential Provisions) Act 1985 (c.9) Sch.2.
(2)	drafting.
(3)	1974 ss.2(1), (2), (5), 4; 1982 s.15(7) “rules".

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(4)	1974 s.11(9); 1989 (c.40) s.124.
(5)	1984 s.1(1), (2), (6A), (6B), (7); 1988 s.12(1).
118(1), (2)	drafting.
(3)	1982 s.16(7).
(4)	1974 ss.10(1), 11(1).
(5)	1988 s.6(9)(b).
(6)	1984 s.7(1) to (3).
(7)	1913 s.3(5).
119	
“branch or section"	1984 s.9(1) “section"; 1988 s.32(1) “branch or section".
“executive"	1984 ss.1(5), 9(1), 19(1) “principal executive committee"; 1988 s.12(6) “principal executive committee".
“general secretary"	1984 s.1(6B)(b); 1988 s.12(1).
“officer"	1974 s.30(1) “officer"; 1975 Sch.16 Pt.III para.7(5).
“official"	1974 s.30(1) “official"; 1975 s.126(1) “official"; 1978 s.153(1); 1988 s.32(1).
“president"	1984 s.1(6B)(a); 1988 s.12(1).
“rules"	1988 s.32(1) “rules".
120	1964 s.10(5), (6); Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I.5)).
121	drafting.
Part II	
122	1913 s.2(1A); 1964 s.9(1) “employers’ association"; 1974 s.28(1), Sch.3 paras.2(2), 10(8).
123(1)	1974 s.8(1), (2); 1975 Sch.16 Pt.III, para.1.
(2), (3)	1974 s.8(9); 1975 Sch.16 Pt.III, paras.1 and 4.
(4), (5), (6)	1974 s.8(10); 1975 Sch.16 Pt.III, paras.1 and 5.
124(1)	1974 s.8(3); 1975 Sch.16 Pt.III para.1.
(2)	1974 s.8(4); 1975 Sch.16 Pt.III para.1.
(3)	1974 s.8(3); 1975 Sch.16 Pt.III para.1.
(4)	1974 s.8(5); 1975 Sch.16 Pt.III para.1.

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125(1), (2)	1974 s.8(6); 1975 Sch.16 Pt.III, para.1.
(3)	1974 s.8(6A); 1975 Sch.16 Pt.III, paras.1 and 2.
126(1), (2)	1974 s.8(7); 1975 Sch.16 Pt.III, para.3.
(3)	1974 s.8(7); 1975 Sch.16 Pt.III para.3; 1978 s.136(3), Sch.16 para.23(3).
127(1)	1974 s.3(1).
(2)	1974 s.3(2)(a),(c),(d).
(3)	1974 s.3(4).
128(1), (2)	1974 s.3(5).
129(1)	1974 ss.3(2)(b), 4(1) to (8).
(2)	drafting
(3)	Friendly Societies Act 1896 (c.25) s.22(2), (3); Industrial Assurance and Friendly Societies Act 1948 (c.39) ss.6(1), (2), 16(4), 21(1)(d); Friendly Societies Act 1974 (c.46) Sch.9 paras.1, 12; 1974 s.9(1), Sch.3 para.5.
130(1)	1982 s.17(1).
(2)	1982 s.17(2)(a),(b),(c).
131(1)	1974 ss.10(1) to (4), 11(1) to (8), 12(1) to (5), Sch.2; Criminal Justice Act 1982 (c.48) ss.38, 46.
(2)	1974 s.11(9); 1989 (c.40) s.124.
132	1913 s.6A; 1974 Sch.3 para.2(5); 1984 s.19(4); 1988 ss.15(8), 16(5).
133	1964 s.1(1A); 1974 Sch.3 para.10(3).
134(1)	1964 ss.1(1A), 6(1); 1974 Sch.3 para.10(3).
(2), (3)	1964 s.6(2); 1974 Sch.3 para.10(5); 1975 Sch.16 Pt.IV para.10(2).
(4)	1964 ss.1(1A), 6(3); 1974 Sch.3 para.10(3).
(5)	1964 s.7(1) to (4); Secretary of State for Employment and Productivity Order 1968 (S.I. 1968/729); 1975 Sch.16 Pt.IV para.10(2).
135(1), (2)	drafting.
(3)	1974 ss.10(1), 11(1).
(4)	1913 s.3(5).
136	1974 s.30(1) “officer"; 1975 Sch.16 Pt.III para.7(5).

Part III

Status: *Point in time view as at 01/02/2002. This version of this Act contains provisions that are not valid for this point in time.*
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137(1) to (6)	1990 s.1(1) to (6).
(7)	1990 s.3(2).
(8)	1990 s.1(7).
138(1) to (5)	1990 s.2(1) to (5).
139(1) to (3)	1990 Sch.1 para.3(1) to (3).
140(1) to (4)	1990 Sch.1 para.5(1) to (4).
141(1) to (3)	1990 Sch.1 para.6(1) to (3).
142(1) to (4)	1990 Sch.1 para.7(1) to (4).
143(1)	1990 s.3(1).
(2), (3)	1990 s.3(3), (4).
(4)	1990 Sch.1 para.2(1), (2).
144	1982 s.12(1).
145(1)	1982 s.12(2), (7); drafting.
(2)	1982 s.12(2)(a), (4).
(3)	1982 s.12(2)(c), (3), (6).
(4)	1982 s.12(2)(b), (5).
(5)	1982 s.12(7).
146(1)	1978 s.23(1); 1982 s.10(4).
(2)	1978 s.23(2).
(3), (4)	1978 s.23(1A), (1B); 1982 s.10(3).
(5)	1978 s.24(1).
147	1978 s.24(2).
148(1), (2)	1978 s.25(1), (2).
149(1)	1978 s.24(3).
(2) to (4)	1978 s.26(1) to (3).
(5)	1978 ss.25(2), 26(4).
(6)	1978 s.26(5).
150(1)	1978 s.26A(1); 1982 s.11.
(2)	1978 ss.24(3), 26A(2); 1982 s.11.
(3)	1978 s.26A(3); 1982 s.11.
151(1)	1978 s.23(7); 1988 Sch.3 para.2(1).
(2)	1978 s.129.
152(1), (2)	1978 s.58(1), (2); 1982 s.3.
(3), (4)	1978 s.58(13), (14); 1988 Sch.3 para.2(2)(a).
153	1978 s.59; 1982 Sch.3 para.17.

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154	1978 ss.64(3), 64A(2); 1980 s.8; 1982 Sch.3 paras.19, 20.
155(1)	1978 s.72A(1), (2); 1982 s.6.
(2)	1978 s.72A(2)(a), (3); 1982 s.6.
(3)	1978 s.72A(2)(b), (c); 1982 s.6.
156(1)	1978 s.73(4A); 1982 s.4(1); Unfair Dismissal (Increase of Limits of Basic and Special Awards) Order 1992 (S.I. 1992/313).
(2)	1978 s.73(7C); 1982 s.4(2).
157(1)	1978 s.72(c) and closing words; 1982 s.5(2).
(2)	1978 s.71(2)(b); 1982 s.5(1).
158(1) to (6)	1978 s.75A(1) to (6); 1982 s.5(3); Unfair Dismissal (Increase of Limits of Basic and Special Awards) Order 1992 (S.I. 1992/313).
159(1)	1978 ss.73(4B), 75A(7), 154(1); 1982 ss.4(1), 5(3).
(2)	1978 s.154(3).
(3)	1978 ss.73(4B), 75A(7); 1982 ss.4(1), 5(3).
160(1) to (3)	1978 s.76A(1) to (3); 1982 s.7.
161(1)	1978 s.77(1); 1982 s.8(1).
(2), (3)	1978 s.77(2); 1982 Sch.3 para.24(1).
(4) to (6)	1978 s.77(10), (11).
162(1)	1978 s.77(3); 1982 Sch.3 para.24(2).
(2), (3)	1978 s.77(3), (3A); 1982 s.8(2).
(4)	1978 s.77(4).
163(1), (2)	1978 s.77(5); 1982 Sch.3 para.24(3).
(3) to (6)	1978 s.77(6) to (9).
164(1)	1978 s.78(1).
(2), (3)	1978 s.78(2)
(4) to (7)	1978 s.78(3) to (6)
165(1), (2)	1978 s.79(1).
166(1), (2)	1978 s.79(2)
(3) to (5)	1978 s.79(3)
167(1) to (3)	drafting.
168(1)	1978 s.27(1)(a); 1989 s.14(a).
(2)	1978 s.27(1)(b); 1989 s.14(b).
(3)	1978 s.27(2).

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(4)	1978 s.27(7).
169(1)	1978 s.27(3).
(2)	1978 s.27(3)(a).
(3)	1978 s.27(3)(b), (4).
(4)	1978 s.27(5), (6).
(5)	1978 s.27(7).
170(1)	1978 s.28(1), (2).
(2) to (4)	1978 s.28(2) to (4).
171	1978 s.30(1).
172(1), (2)	1978 s.30(2).
(3)	1978 s.30(3).
173(1)	1978 s.32(1); 1989 Sch.6 para.19.
(2)	1978 s.129.
174(1)	1980 s.4(1), (2).
(2), (3)	1974 s.30(1) “union membership agreement", (5A); 1976 s.3(3), (4); 1980 s.4(10).
(4)	1980 s.4(9).
(5), (6)	1980 s.4(4), (5).
175	1980 s.4(6).
176(1)	1980 s.4(7).
(2)	1980 s.5(1), (2).
(3)	1980 s.5(3).
(4)	1980 s.5(4)(a), (7).
(5)	1980 s.5(4)(b), (8).
(6), (7)	1980 s.5(5), (6).
(8)	1980 s.5(8A); 1988 Sch.3 para.3(2).
177(1)	1980 s.4(10).
(2), (3)	1980 s.4(3).
Part IV.	
178(1), (2)	1974 ss.29(1), 30(1) “collective agreement"; 1975 s.126(1) “collective agreement", “collective bargaining"; 1978 s.153(1).
(3)	1975 s.126(1) “recognition"; 1978 s.32(2); 1980 Sch.1 para.6; 1989 Sch.6 para.19..
179(1), (2)	1974 s.18(1), (2).
(3), (4)	1974 s.18(3).

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180(1), (2)	1974 s.18(4).
(3)	1974 s.18(5).
181(1), (2)	1975 s.17(1), (2)(a).
(3) to (5)	1975 s.17(3) to (5).
182(1), (2)	1975 s.18(1), (2).
183(1)	1975 s.19(1).
(2)	1975 s.19(2), (3).
(3) to (6)	1975 s.19(4) to (7).
184(1) to (4)	1975 s.20(1) to (4).
185(1), (2)	1975 s.21(1), (2).
(3)	1975 s.21(3), (4).
(4)	1975 s.21(5)(a).
(5) to (7)	1975 s.21(6) to (8).
186	1982 s.13(1).
187(1)	1982 s.13(1) to (3).
(2)	1982 ss.12(2), 13(2).
(3)	1982 s.13(4).
188(1)	1975 s.99(1).
(2)	1975 s.99(3); Employment Protection (Handling of Redundancies) Variation Order 1979 (S.I. 1979/958).
(3) to (8)	1975 s.99(4) to (9).
189(1)	1975 s.101(1), (7).
(2) to (5)	1975 s.101(3) to (6).
(6)	1975 s.101(2).
190(1) to (3)	1975 s.102(1) to (3).
(4)	1975 s.102(4); 1978 Sch.16 para.23(4).
(5)	1975 s.106(3); 1978 Sch.16 para.23(6).
(6)	1975 Sch.12 para.7.
191(1) to (7)	1975 s.102(5) to (11).
192(1) to (3)	1975 s.103(1) to (3).
(4)	1975 s.108(1).
193(1), (2)	1975 s.100(1); Employment Protection (Handling of Redundancies) Variation Order 1979 (S.I. 1979/958).
(3), (4)	1975 s.100(2), (3).

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(5)	1975 s.100(5).
(6)	1975 s.100(1), (4).
(7)	1975 s.100(6).
194(1)	1975 s.105(1); Criminal Justice Act 1982 (c.48) s.38.
(2)	1975 s.105(2), (3).
(3), (4)	1975 s.117(1), (2)
195(1)	1975 s.126(6).
(2)	1975 s.126(1) “business", (7).
(3)	1975 s.106(2).
196	1975 s.99(2).
197(1), (2)	1975 s.106(4), (5).
198(1), (2)	1975 s.107(1).
(3) to (5)	1975 s.107(2) to (4).
199(1)	1975 s.6(1).
(2), (3)	1975 s.6(2); 1978 Sch.16 para.23(2).
(4)	1975 s.6(10).
200(1)	1975 s.6(3), (10).
(2), (3)	1975 s.6(4), (5).
(4)	1975 s.6(6) to (8).
(5)	1975 s.6(5), (8), (9).
201(1)	1990 s.12(1), (2)(b).
(2), (3)	1990 s.12(4), (5).
(4)	1990 s.12(6), (9).
202(1)	1990 s.12(7), (9).
(2)	1990 s.12(8).
(3)	1990 s.12(7)(b).
203(1)	1980 s.3(1); 1988 s.18(1).
(2)	1980 s.3(6).
204(1)	1980 s.3(2), (3).
(2)	1980 s.3(4).
(3), (4)	1980 s.3(5).
205(1)	1990 s.12(1), (2)(a).
(2)	1990 s.12(3).
(3)	1990 s.12(5).

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(4)	1990 s.12(6), (9).
206(1), (2)	1990 s.12(7), (9).
207(1)	1975 s.6(11); 1980 s.3(8).
(2)	1975 s.6(11).
(3)	1980 s.3(8).
208(1)	1975 s.6(10A); 1980 Sch.1 para.4.
(2)	1980 s.3(7).
(3)	1975 s.6(10A); 1980 s.3(7), Sch.1 para.4.
209	1975 s.1(2).
210(1) to (3)	1975 s.2(1) to (3).
211	1975 s.2(4).
212(1)	1975 s.3(1).
(2), (3)	1975 s.3(2).
(4)	1975 s.3(3), (4), (6).
(5)	1975 s.3(5).
213(1), (2)	1975 s.4(1).
(3)	1975 s.4(2).
214(1), (2)	1975 s.5(1), (2).
215(1)	1919 s.4(1).
(2)	1919 ss.4(1), 5(1).
(3), (4)	1919 s.5(2), (3).
(5)	1919 s.5(3), proviso.
(6)	1919 s.13.
216(1), (2)	1919 s.4(2), (3).
(3)	1919 s.4(1).
(4), (5)	1919 s.4(4), (5).
(6)	1919 s.9.
217	Administration of Justice (Scotland) Act 1972 (c.59) s.3(3); 1975 s.10(2); 1982 Sch.3 para.11(a), (b).
218(1) to (5)	1919 s.8 “trade dispute"; 1975 ss.126(1) “trade dispute", 126A(1) to (4), (6); 1982 Sch.3 paras.10, 13(2), (3).
Part V	
219(1)	1974 s.13(1); 1976 s.3(2).
(2)	1974 s.13(4).

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(3)	1980 s.16(2).
(4)	drafting.
220(1), (2)	1974 s.15(1), (2); 1980 s.16(1).
(3)	1974 s.15(3); 1980 s.16(1); 1982 Sch.3 para.12.
(4)	1974 s.15(4); 1980 s.16(1).
221(1), (2)	1974 s.17(1), (2); 1975 Sch.16 Pt.III para.6.
222(1), (2)	1988 s.10(1), (2).
(3)	1982 s.14(1).
(4)	1988 s.10(3)(a).
(5)	1988 s.10(1), (2), (3)(b).
223	1990 s.9(2), (3).
224(1) to (6)	1990 s.4(1) to (6).
225(1)	1982 s.14(1).
(2)	1982 s.14(2), (3).
226(1)	1984 s.10(1); 1990 Sch.2 para.2(2).
(2)	1984 s.10(3), (4), (4A); 1988 Sch.3 para.5(7); 1990 Sch.2 para.2(3), (5), (6).
(3)	1984 s.10(3A); 1988 s.17(2); 1990 Sch.2 para.2(4).
(4)	1984 s.11(11); 1988 s.1(6), Sch.3 para.5(8)(f).
227(1)	1984 s.11(1); 1988 Sch.3 para.5(8)(a).
(2)	1984 s.11(2); 1988 Sch.3 para.5(8)(b).
228(1)	1984 s.11(1A); 1988 s.17(1).
(2)	1984 s.11(1B)(a); 1988 s.17(1).
(3)	1984 s.11(1B)(b), (c); 1988 s.17(1).
229(1)	1984 s.11(3).
(2)	1984 s.11(4); 1988 Sch.3 para.5(8)(d).
(3)	1984 s.11(4A); 1990 s.7(1).
(4)	1984 s.11(3); 1988 Sch.3 para.5(8)(c).
230(1)	1984 s.11(5).
(2)	1984 s.11(6)(a).
(3)	1984 s.11(6)(b).
(4)	1984 s.11(7).
231	1984 s.11(8).

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232(1), (2)	1984 s.11(9), (10).
(3)	1984 ss.9(1), 11(11) “overseas member".
(4), (5)	1990 s.5(2), (3).
233(1)	1990 s.7(2).
(2)	1990 s.7(5) “specified person".
(3), (4)	1990 s.7(3), (4).
234(1) to (6)	1990 s.8(1) to (6).
235	1990 s.5(1).
236	1974 s.16.
237(1) to (6)	1978 s.62A(1) to (6); 1990 s.9(1).
238(1)	1978 s.62(1), (5); 1982 s.9(4); 1990 Sch.2 para.1(2).
(2)	1978 s.62(2); 1982 s.9(2).
(3)	1978 s.62(4)(b), (5); 1982 s.9(3), Sch.3 para.18; 1990 Sch.2 para.1(2).
(4)	1978 s.62(4)(c).
(5)	1978 s.62(4)(a).
239(1)	drafting.
(2)	1978 s.67(3); 1982 s.9(5).
(3)	1978 s.62(3); 1982 s.9(4).
240(1)	1875 s.5; Merchant Shipping Act 1970 (c.36) s.42(1).
(2)	Malicious Damage Act 1861 (c.97) s.58; 1875 s.15.
(3)	1875 s.5; Criminal Procedure (Scotland) Act 1975 (c.21) s.289C(4), (5), (8); Criminal Law Act 1977 (c.45) s.31(5), (6), (9), Sch.11 para.5.; Criminal Justice Act 1982 (c.48) ss.37, 46.
(4)	1875 s.16; Merchant Shipping Act 1970 (c.36) Sch.3 para.1.
241(1)	1875 s.7(1).
(2)	1875 s.7(1); Public Order Act 1986 (c.64) Sch.2 para.1(1).
(3)	1875 s.7(1); Public Order Act 1986 (c.64) Sch.2 para.1(2).
242(1)	Criminal Law Act 1977 (c.45) s.1(3).
(2)	Criminal Law Act 1977 (c.45) s.65(10).
243(1) to (4)	1875 s.3; 1974 Sch.3 para.1.

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(5)	drafting.
244(1)	1974 s.29(1); 1982 s.18(2).
(2)	1974 s.29(2); 1982 s.18(3).
(3)	1974 s.29(3); 1982 s.18(4).
(4)	1974 s.29(5).
(5)	1974 s.29(6); 1982 s.18(6).
245	1988 s.30(1).
246	
“date of the ballot"	1984 s.10(5) “date of the ballot".
“place of work"	1984 s.10(5) “place of work"; 1988 s.17(3).
“strike"	1984 s.11(11) “strike".
“working hours"	1984 s.11(11) “working hours"; 1990 s.5(1).
Part VI	
247(1)	1975 s.1(1).
(2)	1975 Sch.1 para.1.
(3), (4)	1975 Sch.1 para.11(1), (2).
(5)	1975 Sch.1 para.12.
(6)	1975 Sch.1 para.9.
248(1)	1975 Sch.1 paras.1, 2(1).
(2)	1975 Sch.1 para.2(2).
(3)	1975 Sch.1 para.2(4).
(4)	1975 Sch.1 para.2(3).
(5), (6)	1975 Sch.1 para.4(1), (2).
(7)	1975 Sch.1 para.5.
249(1)	1975 Sch.1 para.3(1).
(2)	1975 Sch.1 paras.2(1),(3) and 3(3),(4).
(3)	1975 Sch.1 para.3(2).
(4)	1975 Sch.1 para.3(5),(6).
(5)	1975 Sch.1 para.3(7) to (9); Bankruptcy (Scotland) Act 1985 (c.66) s.75(10).
250(1)	1975 Sch.1 para.28(a).
(2)	1975 Sch.1 para.30.
(3)	1975 Sch.1 para.31.
(4)	1975 Sch.1 paras.28, 30, 31; Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).

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251(1)	1975 Sch.1 para.6.
(2)	1975 Sch.1 para.7.
(3)	1975 Sch.1 paras.6, 7; Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).
(4)	1975 Sch.1 para.32; Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).
(5)	1975 Sch.1 para.10(1),(2).
252(1)	1975 Sch.1 para.33.
(2)	1975 Sch.1 para.29; Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).
253(1)	1975 Sch.1 para.13(1), (3).
(2)	1975 Sch.1 paras.34, 35(1).
(3), (4)	1975 Sch.1 para.35(2).
254(1), (2)	1975 s.7(1).
(3)	1975 s.7(4).
(4)	1964 s.8; 1974 Sch.3 para.10(7); 1975 s.7(5), (6).
(5)	1975 Sch.1 para.8.
(6)	1980 s.1(6).
255(1)	1975 Sch.1 para.28(c).
(2)	1975 Sch.1 para.30.
(3)	1975 Sch.1 para.31.
(4)	1975 Sch.1 paras.28, 30, 31; Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).
256(1), (2)	1988 s.22(1).
(3)	1988 s.22(2).
(4)	1975 Sch.1 para.32A; 1988 s.22(3).
257(1), (2)	1975 s.9(1), (2).
258(1)	1975 Sch.1 para.13(2), (3).
(2)	1975 Sch.1 para.35(1).
259(1)	1975 s.10(1).
(2)	1975 Sch.1 para.27.
(3)	1975 Sch.1 para.8.
260(1) to (3)	1975 Sch.1 para.14(1) to (3).

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(4), (5)	1975 Sch.1 para.16(1), (2).
(6)	1975 Sch.1 para.21.
261(1) to (4)	1975 Sch.1 para.15(1) to (4).
(5)	1975 Sch.1 para.15(5), (6); Bankruptcy (Scotland) Act 1985 (c.66) s.75(10).
(6)	1975 Sch.1 para.15(7).
262(1)	1975 Sch.1 para.28(b).
(2)	1975 Sch.1 para.30.
(3)	1975 Sch.1 para.31.
(4)	1975 Sch.1 paras.28, 30, 31; Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).
263(1)	1975 Sch.1 para.17(1), (2).
(2)	1975 Sch.1 para.17(3).
(3)	1975 Sch.1 para.18.
(4)	1975 Sch.1 para.19.
(5)	1975 Sch.1 para.20.
(6)	Administration of Justice (Scotland) Act 1972 (c.59) s.3(3); 1975 s.10(2), Sch.1 para.26.
264(1)	1975 Sch.1 para.22.
(2)	1975 Sch.1 para.23(1), (2).
(3)	1975 Sch.1 para.24.
265(1)	1975 Sch.1 paras.13(1), 25.
(2)	1975 Sch.1 para.35(1).
266(1), (2)	1988 s.19(1).
(3)	1988 Sch.1 para.11.
(4)	1988 Sch.1 para.4(1), (2).
(5)	1988 s.19(3).
267(1)	1988 Sch.1 para.1(3).
(2), (3)	1988 Sch.1 para.1(1), (2).
268 (1) to (5)	1988 Sch.1 para.2(1) to (5).
269(1)	1988 Sch.1 para.3(1), (2).
(2), (3)	1988 Sch.1 para.5(1), (2).
(4)	1988 Sch.1 para.6.
270(1)	1988 Sch.1 para.7(1).
(2)	1988 Sch.1 para.8(1).

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(3)	1988 Sch.1 paras.7(2), 8(2).
271(1)	1988 Sch.1 para.10(1), (2).
(2)	1988 Sch.1 para.9(1)(a), (b).
(3)	1988 Sch.1 para.9(1)(c).
(4)	1988 Sch.1 para.9(2).
272	1975 Sch.1 para.35(3); 1988 Sch.1 para.14.
Part VII	
273(1)	1919 s.10(1); 1974 Sch.1 para.33(1); 1975 s.121(1), Sch.16 Pt.IV para.3; 1978 s.138(1); 1988 s.30(3); 1990 Sch.1 para.11(1).
(2)	1975 s.121(1); 1980 Sch.1 para.5; 1984 s.18(7).
(3)	1919 s.10(2); 1974 Sch.1 para.33(2); 1975 s.121(2), Sch.16 Pt.III para.33, Pt.IV para.3; 1978 s.138(2); 1988 s.30(3); 1990 Sch.1 para.11(2).
(4)	1974 Sch.1 para.33(3); 1975 s.121(7), Sch.16 Pt.III para.33; 1978 s.138(4), Sch.16 para.23(11).
(5)	1990 Sch.1 para.13.
(6)	drafting.
274(1)	1919 s.10(3); 1974 Sch.1 para.33(2); 1975 s.121(3), Sch.16 Pt.IV para.3; Armed Forces Act 1981 (c.55) Sch.3 para.1(1).
(2)	1919 s.10(3); 1974 Sch.1 para.33(4)(b); 1975 s.121(3), Sch.16 Pt.IV para.3; Interpretation Act 1978 (c.30) s.17(2)(a); Reserve Forces Act 1980 (c.9) Sch.9 para.15; 1990 Sch.1 para.11(3).
275(1), (2)	1919 s.10(4); 1974 Sch.1 para.33(5); 1975 s.121(4), Sch.16 Pt.IV para.3; 1978 s.138(4); 1990 Sch.1 para.11(4).
276(1)	1990 Sch.1 para.18.
(2)	1988 s.30(2).
277(1), (2)	1990 Sch.1 para.12(1), (2).
(3)	1990 Sch.1 para.12(4).
(4)	1990 Sch.1 para.13.
(5), (6)	1990 Sch.1 para.12(5), (6)
278(1), (2)	1975 ss.121(1), 122(1); 1978 ss.138(1), 139(1); 1990 Sch.1 para.12(1).

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(3)	1975 s.122(4); 1978 s.139(3); 1990 Sch.1 para.12(3).
(4)	1975 s.122(1); 1978 s.138(1); 1990 Sch.1 para.12(3).
(5)	1990 Sch.1 para.13.
(6)	1975 s.122(5) to (8); House of Commons (Administration) Act 1978 (c.36) Sch.2 para.5; 1978 s.139(4) to (9); 1990 Sch.1 para.12(3).
279	1974 s.30(2); 1975 s.126(1) “worker"; National Health Service Act 1977 (c.49) Sch.15 para.62; National Health Service (Scotland) Act 1978 (c.29) Sch.16 para.39; Health Services Act 1980 (c.53) Sch.1 para.25; Family Practitioner Committees (Consequential Modifications) Order 1985 (S.I. 1985/39) art.7(3,), (9), (11), (13); National Health Service and Community Care Act 1990 (c.19) s.2(1)(b).
280(1)	1974 s.30(1) “employee", “worker"; 1975 s.126(1) “employee", “worker"; 1978 s.146(2); 1990 Sch.1 para.14.
(2)	1974 s.30(1) “police service"; 1978 s.146(3); 1990 Sch.1 para.14.
281(1) to (4)	1978 s.146(4) to (7).
(5)	1978 ss.146(8), 151, Sch.13; 1982 Sch.2 para.8(5).
(6)	1978 s.152, Sch.14 Pt.I.
282(1), (2)	1975 s.119(7); 1982 Sch.2 para.6(1).
283(1)	1975 s.119(12)
(2)	1975 s.119(14).
284	1975 s.119(4); 1978 s.144(2); 1990 Sch.1 para.16(3).
285(1)	1975 s.119(5); 1978 s.141(2); 1990 Sch.1 para.15.
(2)	1975 s.119(6); 1978 s.141(5); 1990 Sch.1 para.16(1), (2).
286(1), (2)	1975 s.119(15); 1978 s.149(1), (2).
(3)	1975 s.123(3); 1978 s.154(3).
(4)	1975 s.119(16); 1978 s.149(4).
287(1)	1975 s.127(2); 1978 s.137(2); Employment (Continental Shelf) Act 1978 (c.46) s.1(1); drafting.

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(2)	1975 s.127(1)(e) to (fg); 1978 s.137(1); 1980 Sch.1 para.7; 1982 Sch.3 para.13(4); 1990 Sch.1 para.17.
(3)	1975 s.127(3); 1978 s.137(3).
(4)	1975 s.127(4); 1978 s.137(4).
(5)	1978 s.137(5); Employment (Continental Shelf) Act 1978 (c.46) s.2; drafting.
288(1)	1974 Sch.1 para.32(1); 1975 s.118(1); 1978 s.140(1); 1980 s.4(11); 1988 s.4(7); 1990 Sch.1 para.10(1).
(2)	1978 s.140(2)(d), (e), (g); 1980 s.4(11); 1990 Sch.1 para.10(2).
(3)	1975 s.118(2)(a), (d).
289	1974 s.30(6); 1975 s.126(8); 1978 s.153(5).
290	1978 s.133(1); 1980 Sch.1 para.17; 1988 Sch.3 para.2(3); 1990 Sch.1 para.4.
291(1)	1980 s.4(8).
(2)	1978 s.136(1)(c), (e), (g); 1980 ss.2(7), 5(9); 1988 ss.4(5), 5(10); 1990 Sch.1 para.8.
(3)	Tribunals and Inquiries Act 1971 (c.62) s.13(1A); 1978 s.136(5), Sch.16 para.11; 1980 Sch.1 para.19; 1988 Sch.3 para.2(4).
292(1)	1975 Sch.12 para.1; 1978 Sch.12 para.1..
(2)	1975 Sch.12 para.2; 1978 Sch.12 para.2.
(3)	1975 Sch.12 para.3(1), (2); 1978 Sch.12 para.3(1), (2).
(4)	1975 Sch.12 para.5; 1978 Sch.12 para.5.
(5)	1975 Sch.12 para.6; 1978 Sch.12 para.6.
293(1)	drafting.
(2)	1975 s.123(3); 1978 s.154(3).
(3)	1975 s.123(2); 1978 s.154(2).
294(1)	1975 s.128(1); 1978 s.157(1).
(2)	1975 s.128(3); 1978 s.157(3).
(3)	1975 s.123(3); 1978 s.154(3).
(4)	1975 s.128(3); 1978 s.157(3).
(5)	1975 s.128(4); 1978 s.157(4).
(6)	1975 s.123(1), (2); 1978 s.154(1), (2).
295(1)	
“contract of employment"	1974 s.30(1); 1978 s.153(1); 1988 s.32(1).

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“employee"	1974 s.30(1); 1975 s.126(1); 1978 s.153(1).
“employer"	1974 s.30(1) “employer" para.(a); 1975 s.126(1); 1978 s.153(1); 1988 s.32(1).
(2)	drafting.
296(1)	1919 s.8 “worker"; 1974 s.30(1) “worker"; 1975 s.126(1); 1982 Sch.3 para.10; 1988 s.32(1).
(2)	1974 s.30(1) “employer" para.(b); 1975 s.126(1); 1988 s.32(1).
297	1974 s.30(5); 1975 s.126(1) “associated employer".
298	
“act" and “action"	1974 s.30(1) “act" and “action"; 1978 s.153(1).
“contravention"	1988 s.32(1) “contravention".
“dismiss", &c.	1975 s.126(1); 1978 s.153(1) “effective date of termination", Sch.16 para.23(13).
“post"	1913 s.4(1F); 1980 s.2(9); 1984 ss.9(1), 11(11) “post", 13(2); 1988 s.13(6).
“tort"	1974 s.30(1) “tort"; 1980 s.16(3); 1982 s.19(2).
299	drafting.
300(1) to (3)	drafting.
301(1)	drafting
(2)(a)	1974 s.31(5).
(b)	1984 s.22(6); 1988 s.34(6); Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I.5)) art.67(2).
(c), (d)	1975 s.129(6); 1978 s.160(3); 1982 s.22(5).
(e), (f)	drafting.
(3)	drafting; 1964 s.10(3).
302	drafting.
303	drafting.

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