

EMPLOYMENT ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Miscellaneous

Section 18: Employment agencies and national minimum wage legislation: information-sharing

98. **Section 18** removes the restrictions in section 15 NMWA 1998 and section 9 EAA 1973 that prevent officers appointed under the NMWA 1998 and officers appointed under the EAA 1973 from sharing information for the purpose of their respective enforcement functions under these Acts. Currently HMRC is appointed to enforce the NMW and the Employment Agency Standards Inspectorate is appointed to enforce employment agency standards.

Section 19: Exclusion or expulsion from trade union for membership of political party

99. Section 174 of TULRCA 1992 provides a right for individuals not to be excluded or expelled from membership of a trade union, unless the exclusion or expulsion is for a reason specified by the section. Section 174(2)(d) makes it unlawful for a trade union to expel or exclude a person on the sole or main ground of “protected conduct” of that person. Sections 174(4A) and 174(4B) define “protected conduct” as membership or former membership of a political party. Section 176 of TULRCA 1992 provides remedies where the employment tribunal finds that a trade union has breached this right.
100. **Section 19** retains the concept of “protected conduct” set out in sections 174 and 176 of TULRCA 1992, but amends these sections in response to the judgment made on 27th February 2007 by the European Court of Human Rights in the case of *Aslef v UK* (Application no.11002/05).
101. In the *Aslef v UK* case, the trade union had a policy to prohibit members of the British National Party from belonging to its union. An Employment Tribunal upheld a complaint under section 174 by a union member who was expelled for being a member of the British National Party. The union then complained to the European Court of Human Rights, which found that, in being prevented from expelling a member on grounds of political party membership, the union’s Convention right of association had been infringed.
102. **Section 19** therefore amends section 174 of TULRCA 1992 to allow a trade union to expel or exclude an individual on the basis of their membership or former membership of a political party. *Subsection (2)* inserts new subsections (4C) – (4H) which set out the circumstances in which a trade union may expel or exclude on this basis.
103. New subsection (4C) further qualifies the definition of “protected conduct” under subsection (4A). This enables trade unions to expel or exclude individuals who belong or who have belonged to a particular political party, if membership of that political party is contrary to the rules or objectives of the trade union.

*These notes refer to the Employment Act 2008 (c.24)
which received Royal Assent on 13 November 2008*

104. New subsections (4D) and (4E) provide that the relevant union “objectives” (but not rules) have to be reasonably ascertainable. If an individual is excluded from a union because he is or was a member of a political party, it must be reasonably practicable for the relevant objective to be ascertained by a person working in the same trade, industry or profession as the excluded individual at the time of their conduct. If an individual is expelled from a union on such grounds, it must be reasonably practicable for the relevant objective to be ascertained by a member of the union at the time of their conduct.
105. New subsection (4F) provides that expulsion or exclusion from a trade union remains unlawful if any of the three conditions in subsection (4G) are met. These conditions are:
 - The decision to exclude or expel does not comply with the union’s rules;
 - The decision is taken unfairly; and
 - Loss of union membership would cause the individual to lose his livelihood or suffer other exceptional hardship.
106. Subsection (4H) sets out the circumstances in which a decision is taken unfairly for the purposes of subsection (4G)(b). This has the effect that an individual must be given notice of the proposal to expel or exclude him (including reasons) and a fair opportunity to make representations, which the union must consider fairly.
107. *Subsection (3)* of section 19 amends section 176 of TULRCA 1992 to achieve consistency between the sections 174 and 176 of the 1992 Act, in line with the changes made to section 174 by new subsections (4D) and (4E). This is achieved by changing the corresponding test of what is ascertainable which is used in section 176.