



# Employment Protection Act 1975

## 1975 CHAPTER 71

### PART I

#### MACHINERY FOR PROMOTING THE IMPROVEMENT OF INDUSTRIAL RELATIONS

##### *Advisory, Conciliation and Arbitration Service, etc.*

#### **1 Advisory, Conciliation and Arbitration Service**

- (1) There shall be a body to be known as the Advisory, Conciliation and Arbitration Service, in this Act referred to as " the Service ".
- (2) The Service shall be charged with the general duty of promoting the improvement of industrial relations, and in particular of encouraging the extension of collective bargaining and the development and, where necessary, reform of collective bargaining machinery.
- (3) The provisions (so far as applicable) of Parts I and III of Schedule 1 to this Act shall have effect with respect to the Service.

#### **2 Conciliation**

- (1) Where a trade dispute exists or is apprehended the Service 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 offered by the Service 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 the Service to offer assistance to the parties to the dispute with a view to bringing about a settlement.
- (3) In exercising its functions under subsection (1) above, the Service 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.

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- (4) The Service shall designate officers of the Service to perform the functions of conciliation officers under any enactment (including any provision of this Act or any Act passed after this Act) in respect of matters which are or could be the subject of proceedings before an industrial tribunal, and accordingly any reference in any such enactment to a conciliation officer is a reference to an officer designated under this subsection.

### **3 Arbitration**

- (1) Where a trade dispute exists or is apprehended the Service may, at the request of one or more 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—
- (a) one or more persons appointed by the Service for that purpose (not being an officer or servant of the Service); or
  - (b) the Central Arbitration Committee constituted under section 10 below.
- (2) In exercising its functions under subsection (1) above, the Service shall consider the likelihood of the dispute being settled by conciliation and, where there exist appropriate agreed procedures for negotiation or the settlement of disputes, shall not refer a matter for settlement to arbitration under that subsection unless those procedures have been used and have failed to result in a settlement or unless, in the opinion of the Service, there is a special reason which justifies arbitration under that subsection as an alternative to those procedures.
- (3) Where in any case more than one arbitrator is appointed under subsection (1)(a) above the Service shall appoint one of the arbitrators to act as chairman.
- (4) An award by an arbitrator appointed under subsection (1)(a) above may be published if the Service so decides and all the parties consent.
- (5) Part I of the Arbitration Act 1950 shall not apply to an arbitration under this section.
- (6) In the application of this section to Scotland, references to an arbitrator shall be construed as references to an arbiter.

### **4 Advice**

- (1) The Service shall, if it thinks fit, on request or otherwise, provide, without charge, to employers, employers' associations, workers and trade unions such advice as it thinks appropriate on any matter concerned with industrial relations or employment policies, including the following—
- (a) the organisation of workers or employers for the purpose of collective bargaining;
  - (b) the recognition of trade unions by employers ;
  - (c) machinery for the negotiation of terms and conditions of employment, and for joint consultation ;
  - (d) procedures for avoiding and settling disputes and workers' grievances ;
  - (e) questions relating to communication between employers and workers;
  - (f) facilities for officials of trade unions ;
  - (g) procedures relating to the termination of employment;
  - (h) disciplinary matters;
  - (i) manpower planning, labour turnover and absenteeism ;

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- (j) recruitment, retention, promotion and vocational training of workers;
  - (k) payment systems, including job evaluation and equal pay.
- (2) The Service may publish general advice on any matter concerned with industrial relations or employment policies, including any of the matters referred to in paragraphs (a) to (k) of subsection (1) above.

## **5 Inquiry**

- (1) The Service 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 any inquiry under this section, together with any advice given by the Service in connection with those findings, may be published by the Service if—
- (a) it appears to the Service 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, and taking into account the views of, all the parties appearing to the Service to be concerned, the Service thinks fit.

## **6 Codes of Practice**

- (1) The Service may issue Codes of Practice containing such practical guidance as the Service thinks fit for the purpose of promoting the improvement of industrial relations.
- (2) Without prejudice to the generality of subsection (1) above, the Service shall, in one or more Codes of Practice, provide practical guidance on the following matters in relation to the application of the following provisions of this Act, that is to say—
- (a) the disclosure of information, in accordance with sections 17 and 18 below, by employers to trade union representatives for the purpose of collective bargaining;
  - (b) the time off to be permitted by an employer—
    - (i) to a trade union official in accordance with section 57 below; and
    - (ii) to a trade union member in accordance with section 58 below.
- (3) When the Service proposes to issue a Code of Practice, it shall prepare and publish a draft of that Code, shall consider any representations made to it about the draft and may modify the draft accordingly.
- (4) If the Service determines to proceed with the draft, it shall transmit the draft to the Secretary of State who shall—
- (a) if he approves of it, lay it before both Houses of Parliament; and
  - (b) if he does not approve of it, publish details of his reasons for withholding approval.
- (5) In the case of a draft Code of Practice containing practical guidance on the matters referred to in paragraph (a) or (b) of subsection (2) above, if the draft is approved by resolution of each House of Parliament the Service shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Secretary of State may by order appoint.

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- (6) In the case of a draft Code of Practice not containing such practical guidance, if, within the period of forty days beginning with the day on which a copy of the draft is laid before each House of Parliament, or, if such copies are laid 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.
- (7) In reckoning the period of forty days referred to in subsection (6) above, 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.
- (8) If no such resolution is passed as is referred to in subsection (6) above, the Service shall issue the Code in the form of the draft and the Code shall come into effect on such day as the Secretary of State may by order appoint.
- (9) Without prejudice to section 123(3) below, an order under subsection (5) or subsection (8) above may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the Code of Practice thereby brought into operation.
- (10) The Service may from time to time revise the whole or any part of a Code of Practice issued under this section and issue that revised Code, and subsections (3) to (9) above shall apply (with appropriate modifications) to such a revised Code as they apply to the first issue of a Code.
- (11) A failure on the part of any person to observe any provision of a Code of Practice shall not of itself render him liable to any proceedings ; but in any proceedings before an industrial tribunal or the Central Arbitration Committee any Code of Practice issued under this section shall be admissible in evidence, and if any provision of such a Code appears to the tribunal or Committee to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

## **7 Certification Officer**

- (1) The Secretary of State shall, after consultation with the Service, appoint an officer to be known as the Certification Officer.
- (2) The functions under the following Acts which before the commencement of this section were performed by the Chief Registrar of Friendly Societies or any assistant registrar shall become functions of the Certification Officer, that is to say.—
  - (a) the Trade Union Act 1913;
  - (b) the Trade Union (Amalgamations, etc.) Act 1964;
  - (c) the 1974 Act.
- (3) The provisions (so far as applicable) of Parts I and III of Schedule 1 to this Act shall have effect with respect to the Certification Officer.
- (4) The Certification Officer may appoint one or more assistant certification officers and shall appoint an assistant certification officer for Scotland.
- (5) 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.

- (6) References in any enactment (except in subsections (4) and (5) above, this subsection, Part I and paragraph 28 of Schedule 1 to this Act and the House of Commons Disqualification Act 1975) to the Certification Officer shall be construed as including, in relation to such functions as have been delegated in accordance with subsection (5) above, references to an assistant certification officer.

## **8 Certification as independent trade union**

- (1) A trade union whose name is entered on the list of trade unions maintained under section 8 of the 1974 Act may apply to the Certification Officer for a certificate that it is independent.
- (2) An application under subsection (1) above shall be made in such form and manner as the Certification Officer may require and shall be accompanied by a fee of £21 or such other fee as may be prescribed by regulations made by the Secretary of State.
- (3) The Certification Officer shall maintain a record showing details of all applications made under subsection (1) above and shall keep it available for public inspection (free of charge) at all reasonable hours.
- (4) If an application is made, or by virtue of subsection (12) below is treated as being made, by a trade union whose name is not entered on the list of trade unions maintained under section 8 of the 1974 Act, the Certification Officer shall refuse a certificate of independence and shall enter that refusal on the record maintained in accordance with subsection (3) above.
- (5) In the case of an application not falling within subsection (4) above, the Certification Officer shall—
- (a) determine whether the applicant trade union is independent ;
  - (b) enter his decision and the date of his decision on the record maintained in accordance with subsection (3) above; and
  - (c) if he determines that the trade union is independent, issue a certificate accordingly, or, if he determines that it is not, give reasons for his decision.
- (6) The Certification Officer shall not make any determination under subsection (5) above whether a trade union is independent until one month after the application has been entered on the record in accordance with subsection (3) above, and before making such a determination he shall make such inquiries as he thinks fit and shall take into account any relevant information submitted to him by any person.
- (7) The Certification Officer may at any time withdraw a certificate, in accordance with subsection (8) below, if he is of the opinion that the trade union in question is no longer independent.
- (8) Where the Certification Officer proposes to withdraw a certificate under subsection (7) above—
- (a) he shall notify the trade union concerned of the proposal;
  - (b) subsections (3), (5) and (6) above shall apply (with appropriate modifications) to such a proposal as they apply to an application under subsection (1) above ; and
  - (c) the Certification Officer shall confirm or withdraw the certificate accordingly.
- (9) A trade union aggrieved by the refusal of the Certification Officer to issue it with a certificate or by a decision of his to withdraw its certificate may appeal, in accordance

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with section 88(3) below, to the Employment Appeal Tribunal; and on any such appeal the Tribunal, if satisfied that the certificate should be issued or as the case may be should not be withdrawn, shall declare that fact and give directions to the Certification Officer accordingly.

- (10) Where the name of an organisation is removed from the list of trade unions maintained under section 8 of the 1974 Act, the Certification Officer shall cancel any certificate of independence in force in respect of that organisation by entering on the record the fact that the organisation's name has been removed from the said list and that the certificate is accordingly cancelled.
- (11) A certificate of independence which is in force, or, as the case may be, a refusal, withdrawal or cancellation of a certificate entered on the record, shall for all purposes be conclusive evidence that the trade union in question is, or, as the case may be, is not, independent; and a document purporting to be such a certificate or a certified copy of such an entry on the record, and to be signed by the Certification Officer or by any person authorised to act on his behalf, shall be taken to be such a certificate or a true copy of such an entry unless the contrary is proved.
- (12) If in any proceedings before any court, the Employment Appeal Tribunal, the Central Arbitration Committee, the Service, or an industrial tribunal a question arises as to 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) the question shall not be decided in those proceedings, and those proceedings shall be stayed or, in Scotland, sisted until a certificate has been issued or refused by the Certification Officer; and
  - (b) the body before whom the proceedings are stayed, or sisted, may refer the question as to the independence of the trade union to the Certification Officer who shall proceed in accordance with subsections (3) to (6) above as if the reference were an application by that trade union.

## **9 Custody of documents**

- (1) The Certification Officer shall take custody of all annual returns, accounts, copies of rules and other documents submitted, for the purposes of the Trade Union Acts 1871 to 1964 or the Industrial Relations Act 1971 or the 1974 Act to the Chief Registrar of Friendly Societies or any assistant registrar, or to the Registrar of Trade Unions and Employers' Associations or any assistant registrar, and which are, on the commencement of this section, in the custody of the Chief Registrar of Friendly Societies or any assistant registrar.
- (2) The Certification Officer shall keep available for public inspection (either free of charge or on payment of a reasonable charge) at all reasonable hours such of the documents referred to in subsection (1) above as are, or were, available for public inspection in pursuance of any of the Acts referred to in that subsection.

## **10 Central Arbitration Committee**

- (1) There shall be a body to be known as the Central Arbitration Committee, in this Act referred to as the " Committee ".

- (2) Any reference in any enactment, statutory instrument or other document to the Industrial Arbitration Board (whether by that or any other name) shall be construed as a reference to the Committee.
- (3) The provisions of Part II and (so far as applicable) Parts I and III of Schedule 1 to this Act shall have effect with respect to the Committee.