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# Trade Union and Labour Relations (Consolidation) Act 1992

## 1992 CHAPTER 52

### PART III

#### RIGHTS IN RELATION TO UNION MEMBERSHIP AND ACTIVITIES

*[<sup>F1</sup>Right to membership of trade union]*

#### Textual Amendments

**F1** 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

#### **[<sup>F2</sup>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.
- (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

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- (d) the exclusion or expulsion is entirely attributable to [<sup>F3</sup>conduct of his (other than excluded conduct) and the conduct to which it is wholly or mainly attributable is not protected 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.
- [<sup>F4</sup>(4) For the purposes of subsection (2)(d) “excluded conduct”, in relation to an individual, means—
- (a) conduct which consists in his being or ceasing to be, or having been or ceased to be, a member of another trade union,
  - (b) conduct which consists in his being or ceasing to be, or having been or ceased to be, employed by a particular employer or at a particular place, or
  - (c) conduct to which section 65 (conduct for which an individual may not be disciplined by a 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.
- (4A) For the purposes of subsection (2)(d) “protected conduct” is conduct which consists in the individual’s being or ceasing to be, or having been or ceased to be, a member of a political party.
- (4B) Conduct which consists of activities undertaken by an individual as a member of a political party is not conduct falling within subsection (4A).]
- [ Conduct which consists in an individual's being or having been a member of a political
- <sup>F5</sup>(4C) party is not conduct falling within subsection (4A) if membership of that political party is contrary to—
- (a) a rule of the trade union, or
  - (b) an objective of the trade union.
- (4D) For the purposes of subsection (4C)(b) in the case of conduct consisting in an individual's being a member of a political party, an objective is to be disregarded—
- (a) in relation to an exclusion, if it is not reasonably practicable for the objective to be ascertained by a person working in the same trade, industry or profession as the individual;
  - (b) in relation to an expulsion, if it is not reasonably practicable for the objective to be ascertained by a member of the union.
- (4E) For the purposes of subsection (4C)(b) in the case of conduct consisting in an individual's having been a member of a political party, an objective is to be disregarded—
- (a) in relation to an exclusion, if at the time of the conduct it was not reasonably practicable for the objective to be ascertained by a person working in the same trade, industry or profession as the individual;
  - (b) in relation to an expulsion, if at the time of the conduct it was not reasonably practicable for the objective to be ascertained by a member of the union.

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- (4F) Where the exclusion or expulsion of an individual from a trade union is wholly or mainly attributable to conduct which consists of an individual's being or having been a member of a political party but which by virtue of subsection (4C) is not conduct falling within subsection (4A), the exclusion or expulsion is not permitted by virtue of subsection (2)(d) if any one or more of the conditions in subsection (4G) apply.
- (4G) Those conditions are—
- (a) the decision to exclude or expel is taken otherwise than in accordance with the union's rules;
  - (b) the decision to exclude or expel is taken unfairly;
  - (c) the individual would lose his livelihood or suffer other exceptional hardship by reason of not being, or ceasing to be, a member of the union.
- (4H) For the purposes of subsection (4G)(b) a decision to exclude or expel an individual is taken unfairly if (and only if)—
- (a) before the decision is taken the individual is not given—
    - (i) notice of the proposal to exclude or expel him and the reasons for that proposal, and
    - (ii) a fair opportunity to make representations in respect of that proposal, or
  - (b) representations made by the individual in respect of that proposal are not considered fairly.]
- (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 [<sup>F6</sup>employment tribunal].]

#### Textual Amendments

- F2** 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
- F3** Words in s. 174(2)(d) substituted (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 33(2), 59(2)-(4); S.I. 2004/3342, art. 4(a) (with arts 6-12)
- F4** S. 174(4)-(4B) substituted for s. 174(4) (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 33(3), 59(2)-(4); S.I. 2004/3342, art. 4(a) (with arts. 6-12)
- F5** S. 174(4C)-(4H) inserted (6.4.2009) by Employment Act 2008 (c. 24), ss. 19(2), 22(f); S.I. 2009/603, art. 2 (with art. 3, Sch. paras. 5-7)
- F6** 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

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

- C1** S. 174 extended (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 33(7), 59(2)-(4); S.I. 2004/3342, art. 4(a) (with arts. 6-12)

#### [<sup>F7</sup>175 Time limit for proceedings.

[ An [<sup>F9</sup>employment tribunal] shall not entertain a complaint under section 174 unless [<sup>F8</sup>(1)] 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.]

[<sup>F10</sup>(2) Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (1)(a).]

#### Textual Amendments

- F7** 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
- F8** S. 175 renumbered as s. 175(1) (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 2 para. 10(2); S.I. 2014/253, art. 3(g)
- F9** 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
- F10** S. 175(2) inserted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 2 para. 10(3); S.I. 2014/253, art. 3(g)

#### [<sup>F11</sup>176 Remedies.

- (1) Where the [<sup>F12</sup>employment tribunal] finds a complaint under section 174 is well-founded, it shall make a declaration to that effect.

[ If a tribunal makes a declaration under subsection (1) and it appears to the tribunal  
<sup>F13</sup>(1A) that the exclusion or expulsion was mainly attributable to conduct falling within section 174(4A) it shall make a declaration to that effect.

- (1B) If a tribunal makes a declaration under subsection (1A) and it appears to the tribunal that the other conduct to which the exclusion or expulsion was attributable consisted wholly or mainly of conduct of the complainant which was contrary to—

- (a) a rule of the union, or  
 (b) an objective of the union,

it shall make a declaration to that effect.

- (1C) For the purposes of subsection (1B), it is immaterial whether the complainant was a member of the union at the time of the conduct contrary to the rule or objective.

- (1D) A declaration by virtue of subsection (1B)(b) shall not be made unless the union shows that, at the time of the conduct of the complainant which was contrary to the objective in question, it was reasonably practicable for that objective to be ascertained—

- (a) if the complainant was not at that time a member of the union, by [<sup>F14</sup>a person working in the same trade, industry or profession as the complainant], and  
 (b) if he was at that time a member of the union, by a member of the union.]

- (2) An individual whose complaint has been declared to be well-founded may make an application [<sup>F15</sup>to an employment tribunal] for an award of compensation to be paid to him by the union.

<sup>F16</sup> ...

- (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 [<sup>F17</sup>under subsection (1)], or

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- (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 [<sup>F12</sup>employment tribunal]<sup>F18</sup>. . . considers just and equitable in all the circumstances.
- (5) Where the [<sup>F12</sup>employment tribunal]<sup>F19</sup>. . . 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 [<sup>F20</sup>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 [<sup>F21</sup>section 124(1)] of that Act (maximum compensatory award in such cases).

<sup>F22</sup> . . . . .

[ If on the date on which the application was made the applicant had not been admitted <sup>F23</sup>(6A) or re-admitted to the union, the award shall not be less than [<sup>F24</sup>£10,022].

(6B) Subsection (6A) does not apply in a case where the tribunal which made the declaration under subsection (1) also made declarations under subsections (1A) and (1B).]

<sup>F25</sup>(7) . . . . .

<sup>F26</sup>(8) . . . . .]

#### Textual Amendments

- F11** 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**
- F12** 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**
- F13** S. 176(1A)-(1D) inserted (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 33(4), 59(2)-(4); S.I. 2004/3342, art. 4(a) (with arts. 6-12)
- F14** Words in s. 176(1D)(a) substituted (6.4.2009) by Employment Act 2008 (c. 24), ss. 19(3), 22(f); S.I. 2009/603, art. 2 (with art. 3, Sch.)
- F15** Words in s. 176(2) inserted (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 34(8)(a), 59(2)-(4); S.I. 2004/3342, art. 4(a) (with arts. 6-12)
- F16** Words in s. 176(2) repealed (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 34(8)(b), 57(2), 59(2)-(4), **Sch. 2**; S.I. 2004/3342, art. 4(a)(e) (with arts. 6-12)
- F17** Words in s. 176(3)(a) inserted (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 33(5), 59(2)-(4); S.I. 2004/3342, art. 4(a) (with arts. 6-12)
- F18** Words in s. 176(4) repealed (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 34(8)(b), 57(2), 59(2)-(4), **Sch. 2**; S.I. 2004/3342, art. 4(a)(e) (with arts. 6-12)
- F19** Words in s. 176(5) repealed (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 34(8)(b), 57(2), 59(2)-(4), **Sch. 2**; S.I. 2004/3342, art. 4(a)(e) (with arts. 6-12)
- F20** 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)
- F21** 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)

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- F22** Words in s. 176(6) repealed (31.12.2004) by [Employment Relations Act 2004 \(c. 24\)](#), ss. 34(11), 57(2), 59(2)-(4), [Sch. 2](#); S.I. 2004/3342, [art. 4\(a\)\(c\)](#) (with arts. 6-12)
- F23** S. 176(6A)(6B) inserted (31.12.2004) by [Employment Relations Act 2004 \(c. 24\)](#), ss. 33(6), 59(2)-(4); S.I. 2004/3342, [art. 4\(a\)](#) (with arts. 6-12)
- F24** Sum in s. 176(6A) substituted (6.4.2020) by [The Employment Rights \(Increase of Limits\) Order 2020 \(S.I. 2020/205\)](#), [art. 1\(1\)](#), [Sch.](#) (with [art. 4](#))
- F25** 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](#))
- F26** 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)**

- C2** 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](#))
- C3** S. 176 extended (31.12.2004) by [Employment Relations Act 2004 \(c. 24\)](#), ss. 33(7), 59(2)-(4); S.I. 2004/3342, [art. 4\(a\)](#) (with arts. 6-12)

**[<sup>F27</sup>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 [<sup>F28</sup>employment 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 that section, section 175 or 176 or this section affects any remedy for infringement of any such right.

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#### **Textual Amendments**

- F27** 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**
- F28** 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**

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