



Trade Union Reform and Employment Rights Act 1993

1993 CHAPTER 19

PART I

TRADE UNIONS ETC.

Industrial action

17 Requirement of postal ballot

In section 230 of the 1992 Act (conduct of ballot), for subsections (2) and (3) (method of voting) there shall be substituted—

“(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.

(2A) Where a merchant seaman to whom this subsection applies is entitled to vote in the ballot he must, so far as is reasonably practicable—

- (a) have a voting paper made available to him while he is on board the ship or is at a place where the ship is; and
- (b) be given an opportunity to vote while he is on board the ship or is at a place where the ship is.

(2B) Subsection (2A) applies to a merchant seaman who the trade union reasonably believes will, throughout the period during which votes may be cast in the ballot, be employed in a ship either at sea or at a place outside Great Britain.

(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.”.

18 Notice of ballot and sample voting paper for employers

- (1) In subsection (1) of section 226 of the 1992 Act (industrial action not protected unless it has support of a ballot), for the words from “is not protected” to the end there shall be substituted the words “—
- (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.”.
- (2) After that section there shall be inserted—

“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) describing (so that he can readily ascertain them) the employees of the employer 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.
- (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.”.

19 Ballot result for employers

After section 231 of the 1992 Act there shall be inserted—

“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.”.

20 Scrutiny of ballots

- (1) After section 226A of the 1992 Act (which is inserted by section 18 above) there shall be inserted—

“226B 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.”.
- (2) In section 229 of that Act (voting paper), after subsection (1) there shall be inserted—

Status: This is the original version (as it was originally enacted).

“(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.”.

(3) After section 231A of that Act (which is inserted by section 19 above) there shall be inserted—

“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,
 - (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.”.

(4) After section 226B of the 1992 Act there shall be inserted—

“226C Exclusion for small ballots

Nothing in section 226B, section 229(1A)(a) or section 231B shall impose a requirement on a trade union unless—

- (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.”.

21 Notice of industrial action for employers

After section 234 of the 1992 Act there shall be inserted—

“Requirement on trade union to give notice of industrial action

234A 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) describes (so that he can readily ascertain them) the employees of the employer who 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

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- (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.
- (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) Where—
 - (a) continuous industrial action which has been authorised or endorsed by a union ceases to be so authorised or endorsed 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 if the references in subsection (3)(b)(i) to the industrial action were to the industrial action taking place after that date.
- (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 subsection (7) whether the trade union is to be taken to have authorised or endorsed the industrial action.”.

22 Industrial action affecting supply of goods or services to an individual

After section 235 of the 1992 Act there shall be inserted—

“Industrial action affecting supply of goods or services to an individual

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
 - (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.

235B Application for assistance for proceedings under section 235A

- (1) An individual who is an actual or prospective party to proceedings to which this section applies may apply to the Commissioner for Protection Against Unlawful Industrial Action (in this section and section 235C referred to as “the Commissioner”) for assistance in relation to the proceedings, and the Commissioner shall, as soon as reasonably practicable after receiving the application, consider it and decide whether and to what extent to grant it.
- (2) This section applies to proceedings or prospective proceedings to the extent that they consist in, or arise out of, an application to the court under section 235A brought with respect to an act of a trade union; but the Secretary of State may by order provide that this section shall also apply to such proceedings brought with respect to an act of a person other than a trade union.

Any order 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 a resolution of each House of Parliament.

- (3) The matters to which the Commissioner may have regard in determining whether, and to what extent, to grant an application under this section include—
 - (a) whether it is unreasonable, having regard to the complexity of the case, to expect the applicant to deal with it unaided, and
 - (b) whether, in the Commissioner’s opinion, the case involves a matter of substantial public interest or concern.
- (4) If the Commissioner decides not to provide assistance, he shall, as soon as reasonably practicable after making the decision, notify the applicant of his decision and, if he thinks fit, of the reasons for it.
- (5) If the Commissioner decides to provide assistance, he shall, as soon as reasonably practicable after making the decision—
 - (a) notify the applicant, stating the extent of the assistance to be provided, and
 - (b) give him a choice, subject to any restrictions specified in the notification, as to the financial arrangements to be made in connection with the provision of the assistance.
- (6) The assistance provided may include the making of arrangements for, or for the Commissioner to bear the costs of—
 - (a) the giving of advice or assistance by a solicitor or counsel, and
 - (b) the representation of the applicant, or the provision to him of such assistance as is usually given by a solicitor or counsel—
 - (i) in steps preliminary or incidental to the proceedings, or
 - (ii) in arriving at or giving effect to a compromise to avoid or bring an end to the proceedings.

235C Provisions supplementary to section 235B

- (1) Where assistance is provided under section 235B with respect to the conduct of proceedings—

Status: This is the original version (as it was originally enacted).

- (a) it shall include an agreement by the Commissioner to indemnify the applicant (subject only to any exceptions specified in the notification) in respect of any liability to pay costs or expenses arising by virtue of any judgment or order of the court in the proceedings,
 - (b) it may include an agreement by the Commissioner to indemnify the applicant in respect of any liability to pay costs or expenses arising by virtue of any compromise or settlement arrived at in respect of the matter in connection with which the assistance is provided in order to avoid or bring proceedings to an end, and
 - (c) it may include an agreement by the Commissioner to indemnify the applicant in respect of any liability to pay damages pursuant to an undertaking given on the grant of interlocutory relief (in Scotland, an interim order) to the applicant.
- (2) Where the Commissioner provides assistance in relation to any proceedings, he shall do so on such terms, or make such other arrangements, as will secure that a person against whom the proceedings have been or are commenced is informed that assistance has been or is being provided by the Commissioner in relation to them.
- (3) In England and Wales, the recovery of expenses incurred by the Commissioner in providing an applicant with assistance (as taxed or assessed in such manner as may be prescribed by rules of court) shall constitute a first charge for the benefit of the Commissioner—
 - (a) on any costs which, by virtue of any judgment or order of the court, are payable to the applicant by any other person in respect of the matter in connection with which the assistance is provided, and
 - (b) on any sum payable to the applicant under a compromise or settlement arrived at in connection with that matter to avoid or bring proceedings to an end.
- (4) In Scotland, the recovery of such expenses (as taxed or assessed in such manner as may be prescribed by rules of court) shall be paid to the Commissioner, in priority to other debts—
 - (a) out of any expenses which, by virtue of any judgment or order of the court, are payable to the applicant by any other person in respect of the matter in connection with which the assistance is provided, and
 - (b) out of any sum payable to the applicant under a compromise or settlement arrived at in connection with that matter to avoid or bring proceedings to an end.
- (5) Where a person is receiving assistance in relation to proceedings, there shall, if he so wishes, be added after his name in the title of the proceedings the words “(assisted by the Commissioner for Protection Against Unlawful Industrial Action)”.
- (6) The addition of those words shall not be construed as making the Commissioner a party to the proceedings or as liable to be treated as a party for any purpose; and the omission of those words shall be treated as an irregularity only and shall not nullify the proceedings, any step taken in the proceedings or any document, judgment or order therein.
- (7) Where the Commissioner grants an application to a person who for the purposes of the application—

Status: This is the original version (as it was originally enacted).

- (a) has made a statement which he knew to be false in a material particular,
or
- (b) has recklessly made a statement which was false in a material particular,

he is entitled to recover from that person any sum paid by him to that person, or to any other person, by way of assistance; but nothing in this subsection affects the power of the Commissioner to enter into any agreement he thinks fit as to the terms on which assistance is provided.

- (8) Nothing in section 235B or this section affects the law and practice regulating the description of persons who may appear in, conduct, defend and address the court in any proceedings.
- (9) In section 235B and this section “applicant”, in relation to assistance, means the individual on whose application the assistance is provided.”.