



# Trade Union Reform and Employment Rights Act 1993

## 1993 CHAPTER 19

### PART III

#### OTHER EMPLOYMENT MATTERS

##### *Constitution and jurisdiction of tribunals*

#### **36 Constitution of industrial tribunals.**

(1) Section 128 of the 1978 Act (industrial tribunals) shall be amended as follows.

(2) After subsection (2) there shall be inserted—

“(2A) Subject to the following provisions of this section, proceedings before an industrial tribunal shall be heard by—

- (a) the person who, in accordance with regulations made under subsection (1), is the chairman, and
- (b) two other members, or (with the consent of the parties) one other member, selected as the other members (or member) in accordance with regulations so made.

(2B) Subject to subsection (2F), the proceedings to which subsection (2C) applies shall be heard by the person specified in subsection (2A)(a) alone.

(2C) This subsection applies to—

- (a) proceedings on an application under section 77, 78A or 79 of this Act or under section 161, 165 or 166 of the <sup>M1</sup>Trade Union and Labour Relations (Consolidation) Act 1992,
- (b) proceedings on a complaint under section 124 of this Act or under section 5 of the Wages Act 1986,
- (c) proceedings in respect of which an industrial tribunal has jurisdiction by virtue of an order under section 131,

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- (d) proceedings in which the parties have given their written consent to the proceedings being heard in accordance with subsection (2B) (whether or not they have subsequently withdrawn it),
- (e) proceedings in which the person bringing the proceedings has given written notice withdrawing the case, and
- (f) proceedings in which the person (or, where more than one, each of the persons) against whom the proceedings are brought does not, or has ceased to, contest the case.

(2D) The Secretary of State may by order amend the provisions of subsection (2C).

(2E) No order shall be made under subsection (2D) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

(2F) Proceedings to which subsection (2C) applies shall be heard in accordance with subsection (2A) if a person who, in accordance with regulations made under subsection (1), may be the chairman of an industrial tribunal, having regard to—

- (a) whether there is a likelihood of a dispute arising on the facts which makes it desirable for the proceedings to be heard in accordance with subsection (2A),
- (b) whether there is a likelihood of an issue of law arising which would make it desirable for the proceedings to be heard in accordance with subsection (2B),
- (c) any views of any of the parties as to whether or not the proceedings ought to be heard in accordance with either of those subsections, and
- (d) whether there are other proceedings which might be heard concurrently but which are not proceedings to which subsection (2C) applies,

decides (at any stage of the proceedings) that the proceedings are to be heard in accordance with subsection (2A).”.

(3) After subsection (4) there shall be inserted—

“(5) Regulations made under Schedule 9 may provide that in such circumstances as the regulations may specify any act required or authorised by the regulations to be done by an industrial tribunal may be done by the person specified in subsection (2A)(a) alone.

(6) Where a Minister of the Crown so directs in relation to any proceedings on grounds of national security, the proceedings shall be heard and determined, and any act required or authorised by regulations made under Schedule 9 to be done by an industrial tribunal in relation to the proceedings shall be done, by the President of Industrial Tribunals (England and Wales) appointed in accordance with regulations made under subsection (1), or the President of Industrial Tribunals (Scotland) so appointed, alone.”.

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

C1 S. 36 restricted (15.10.1993) by S.I. 1993/2503, art.3.

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#### Commencement Information

- II** S. 36 wholly in force at 30.11.1993; s. 36 not in force at Royal Assent see s. 52; s. 36(3) in force for certain purposes at 30.8.1993 by S.I. 1993/1908, art. 2(1), Sch. 1; s. 36 in force 30.11.1993 so far as it is not already in force by S.I. 1993/2503, art. 2(2), Sch. 2.

#### Marginal Citations

- M1** 1992 c. 52.

VALID FROM 30/11/1993

### 37 Constitution of Employment Appeal Tribunal.

In Schedule 11 to the 1978 Act (Employment Appeal Tribunal), for paragraph 16 (Appeal Tribunal to consist of judge and two or four other members or, if parties consent, judge and one other member) there shall be substituted—

- “16 (1) Subject to sub-paragraphs (2) to (4), proceedings before the Appeal Tribunal shall be heard by a judge and either two or four appointed members, so that in either case there is an equal number of persons whose knowledge or experience of industrial relations is as representatives of employers and whose knowledge or experience of industrial relations is as representatives of workers.
- (2) With the consent of the parties proceedings before the Appeal Tribunal may be heard by a judge and one appointed member or by a judge and three appointed members.
- (3) Proceedings on an appeal on a question arising from any decision of, or arising in any proceedings before, an industrial tribunal consisting of the person specified in section 128(2A)(a) alone shall be heard by a judge alone unless a judge directs that the proceedings shall be heard in accordance with sub-paragraphs (1) and (2).
- (4) Where a Minister of the Crown so directs in relation to any proceedings on grounds of national security, the proceedings shall be heard by the President of the Appeal Tribunal alone.”.

### 38 Extension of power to confer on industrial tribunals jurisdiction in respect of contracts of employment etc.

In section 131 of the 1978 Act (power to confer on industrial tribunals jurisdiction in respect of claims for damages for breach of contract of employment and similar claims)—

- (a) for subsection (1) (appropriate Minister to have power to make order in respect of claims satisfying certain conditions) there shall be substituted—

“(1) The appropriate Minister may by order provide that proceedings in respect of—

- (a) any claim to which this section applies, or

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- (b) any such claim of a description specified in the order, may, subject to such exceptions (if any) as may be specified in the order, be brought before an industrial tribunal.”,
- (b) for subsection (3) there shall be substituted—
  - “(3) This section does not apply to a claim for damages, or for a sum due, in respect of personal injuries.”,
- (c) after subsection (4) (tribunal to order payment of amount which it finds due) there shall be inserted—
  - “(4A) An order under this section may provide that an industrial tribunal shall not in proceedings in respect of a claim, or a number of claims relating to the same contract, order the payment of an amount exceeding such sum as may be specified in the order as the maximum amount which a tribunal may order to be paid in relation to a claim or in relation to a contract.”,
- (d) after subsection (5) there shall be inserted—
  - “(5A) An order under this section may make different provision in relation to proceedings in respect of different descriptions of claims.”, and
- (e) in subsection (7), in the definition of appropriate Minister, for the words Secretary of State there shall be substituted the words “ Lord Advocate ”.

### **39 Agreements not to take proceedings before industrial tribunal.**

- (1) In section 140 of the 1978 Act (restrictions on contracting out)—
  - (a) in subsection (2) (exceptions), after the paragraph (fa) inserted by paragraph 21 of Schedule 8 to this Act, there shall be inserted—
    - “(fb) to any agreement to refrain from instituting or continuing any proceedings specified in section 133(1) (except (c)) or 134(1) before an industrial tribunal if the conditions regulating compromise agreements under this Act are satisfied in relation to the agreement.”;
  - (b) after subsection (2), there shall be inserted—
    - “(3) 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 complaint;
      - (c) the employee must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his rights before an industrial tribunal;
      - (d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the employee 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.
- (4) In subsection (3)—

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independent, in relation to legal advice to the employee, means that it is given by a lawyer who is not acting in the matter for the employer or an associated employer; and  
qualified lawyer means—

- (a) as respects proceedings in England and Wales—
  - (i) a barrister, whether in practice as such or employed to give legal advice, or
  - (ii) a solicitor of the Supreme Court who holds a practising certificate;
- (b) as respects proceedings in Scotland—
  - (i) an advocate, whether in practice as such or employed to give legal advice, or
  - (ii) a solicitor who holds a practising certificate.”.

- (2) Schedule 6 to this Act shall have effect for making corresponding amendments in the <sup>M2</sup>Sex Discrimination Act 1975, the <sup>M3</sup>Race Relations Act 1976, the <sup>M4</sup>Wages Act 1986 and the <sup>M5</sup>Trade Union and Labour Relations (Consolidation) Act 1992.

#### Marginal Citations

- M2** 1975 c. 65.
- M3** 1976 c. 74.
- M4** 1986 c. 48.
- M5** 1992 c. 52.

#### 40 Restriction of publicity in cases involving sexual misconduct: industrial tribunals.

- (1) Schedule 9 to the 1978 Act (regulations for industrial tribunals) shall be amended by the insertion in paragraph 1 of the following.

- (2) After sub-paragraph (5) there shall be inserted—

“(5A) The regulations may include provision—

- (a) for cases involving allegations of the commission of sexual offences, for securing that the registration or other making available of documents or decisions shall be so effected as to prevent the identification of any person affected by or making the allegation;
- (b) for cases involving allegations of sexual misconduct, enabling an industrial tribunal, on the application of any party to proceedings before it or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the tribunal.

In this sub-paragraph—

identifying matter, in relation to a person, means any matter likely to lead members of the public to identify him as a person affected by, or as the person making, the allegation;

restricted reporting order means an order prohibiting the publication in Great Britain of identifying matter in a written

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publication available to the public or its inclusion in a relevant programme for reception in Great Britain;

sexual misconduct means the commission of a sexual offence, sexual harassment or other adverse conduct (of whatever nature) related to sex, and conduct is related to sex whether the relationship with sex lies in the character of the conduct or in its having reference to the sex or sexual orientation of the person at whom the conduct is directed;

sexual offence means any offence to which section 141A(2) of the <sup>M6</sup>Criminal Procedure (Scotland) Act 1975, section 4 of the <sup>M7</sup>Sexual Offences (Amendment) Act 1976 or the <sup>M8</sup>Sexual Offences (Amendment) Act 1992 applies (offences under the <sup>M9</sup>Sexual Offences Act 1956, the <sup>M10</sup>Sexual Offences (Scotland) Act 1976 and certain other enactments);

and written publication and relevant programme have the same meaning as in that Act of 1992.”

(3) In sub-paragraph (6), after the word send there shall be inserted the words “ (subject to any regulations under sub-paragraph (5A)(a)) ”.

(4) After sub-paragraph (7) there shall be inserted—

“(8) If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order the following persons shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale—

- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) in the case of publication in any other form, the person publishing the matter; and
- (c) in the case of matter included in a relevant programme—
  - (i) any body corporate engaged in providing the service in which the programme is included; and
  - (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

Expressions used in this sub-paragraph and in sub-paragraph (5A) have the same meaning in this sub-paragraph as in that sub-paragraph.

(9) Where a person is charged with an offence under sub-paragraph (8) it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or (as the case may be) included, the matter in question.

(10) Where an offence under sub-paragraph (8) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) a director, manager, secretary or other similar officer of the body corporate, or
- (b) a person purporting to act in any such capacity,

he as well as the body corporate shall be guilty of the offence and liable to be proceeded against and punished accordingly.

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- (11) In relation to a body corporate whose affairs are managed by its members director, in sub-paragraph (10), means a member of the body corporate.”

#### Marginal Citations

- M6** 1975 c. 21.  
**M7** 1976 c. 82.  
**M8** 1992 c. 34.  
**M9** 1956 c. 69.  
**M10** 1976 c. 67.

#### 41 Restriction of publicity in cases involving sexual misconduct: Employment Appeal Tribunal.

- (1) Schedule 11 to the 1978 Act (Employment Appeal Tribunal) shall be amended by the insertion after paragraph 18 (rules) of the following—

“18A

- (1) Without prejudice to the generality of paragraph 17 the rules may, as respects proceedings to which this paragraph applies, include provision—
- (a) for cases involving allegations of the commission of sexual offences, for securing that the registration or other making available of documents or decisions shall be so effected as to prevent the identification of any person affected by or making the allegation; and
  - (b) for cases involving allegations of sexual misconduct, enabling the Appeal Tribunal, on the application of any party to the proceedings before it or of its own motion, to make a restricted reporting order having effect (if not revoked earlier) until the promulgation of the decision of the Appeal Tribunal.
- (2) This paragraph applies to—
- (a) proceedings on an appeal against a decision of an industrial tribunal to make, or not to make, a restricted reporting order; and
  - (b) proceedings on an appeal against any interlocutory decision of an industrial tribunal in proceedings in which the industrial tribunal has made a restricted reporting order which it has not revoked.
- (3) If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order the following persons shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale—
- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
  - (b) in the case of publication in any other form, the person publishing the matter; and
  - (c) in the case of matter included in a relevant programme—
    - (i) any body corporate engaged in providing the service in which the programme is included; and
    - (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

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- (4) Where a person is charged with an offence under sub-paragraph (3) it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or (as the case may be) included, the matter in question.
- (5) Where an offence under sub-paragraph (3) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) a person purporting to act in any such capacity,
- he as well as the body corporate shall be guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) In relation to a body corporate whose affairs are managed by its members director, in sub-paragraph (5), means a member of the body corporate.
- (7) In this paragraph—
- identifying matter, in relation to a person, means any matter likely to lead members of the public to identify him as a person affected by, or as the person making, the allegation;
- restricted reporting order means an order prohibiting the publication in Great Britain of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Great Britain;
- sexual misconduct means the commission of a sexual offence, sexual harassment or other adverse conduct (of whatever nature) related to sex, and conduct is related to sex whether the relationship with sex lies in the character of the conduct or in its having reference to the sex or sexual orientation of the person at whom the conduct is directed;
- sexual offence means any offence to which section 141A(2) of the <sup>M11</sup>Criminal Procedure (Scotland) Act 1975, section 4 of the <sup>M12</sup>Sexual Offences (Amendment) Act 1976 or the <sup>M13</sup>Sexual Offences (Amendment) Act 1992 applies (offences under the <sup>M14</sup>Sexual Offences Act 1956, the <sup>M15</sup>Sexual Offences (Scotland) Act 1976 and certain other enactments);
- and written publication and relevant programme have the same meaning as in that Act of 1992.”.

#### **Marginal Citations**

**M11** 1975 c. 21

**M12** 1976 c. 82.

**M13** 1992 c. 34.

**M14** 1956 c. 69.

**M15** 1976 c. 67.



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## 42 Restriction of vexatious proceedings.

After section 136 of the 1978 Act there shall be inserted—

### “136A Restriction of vexatious proceedings.

- (1) If, on an application made by the Attorney General or the Lord Advocate under this section, the Appeal Tribunal is satisfied that any person has habitually and persistently and without any reasonable ground—
  - (a) instituted vexatious proceedings, whether in an industrial tribunal or before the Appeal Tribunal, and whether against the same person or against different persons; or
  - (b) made vexatious applications in any proceedings, whether in an industrial tribunal or before the Appeal Tribunal,the Appeal Tribunal may, after hearing that person or giving him an opportunity of being heard, make a restriction of proceedings order.
- (2) A restriction of proceedings order is an order that—
  - (a) no proceedings shall without the leave of the Appeal Tribunal be instituted in any industrial tribunal or before the Appeal Tribunal by the person against whom the order is made;
  - (b) any proceedings instituted by him in any industrial tribunal or before the Appeal Tribunal before the making of the order shall not be continued by him without the leave of the Appeal Tribunal; and
  - (c) no application (other than one for leave under this section) shall be made by him in any proceedings in any industrial tribunal or in the Appeal Tribunal without the leave of the Appeal Tribunal.
- (3) A restriction of proceedings order may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.
- (4) Leave for the institution or continuance of, or for the making of an application in, any proceedings in an industrial tribunal or before the Appeal Tribunal by a person who is the subject of a restricted proceedings order shall not be given unless the Appeal Tribunal is satisfied that the proceedings or application are not an abuse of the process of the tribunal in question and that there are reasonable grounds for the proceedings or application.
- (5) No appeal shall lie from a decision of the Appeal Tribunal refusing leave for the institution or continuance of, or for the making of an application in, proceedings by a person who is the subject of a restriction of proceedings order.
- (6) A copy of a restriction of proceedings order shall be published in the London Gazette and in the Edinburgh Gazette.”

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