



# Employment Relations Act 2004

## 2004 CHAPTER 24

### PART 3

#### RIGHTS OF TRADE UNION MEMBERS, WORKERS AND EMPLOYEES

##### *Inducements and detriments in respect of membership etc. of independent trade union*

#### **29 Inducements relating to union membership or activities**

After section 145 of the 1992 Act insert—

##### *“Inducements*

#### **145A Inducements relating to union membership or activities**

- (1) A worker has the right not to have an offer made to him by his employer for the sole or main purpose of inducing the worker—
  - (a) not to be or seek to become a member of an independent trade union,
  - (b) not to take part, at an appropriate time, in the activities of an independent trade union,
  - (c) not to make use, at an appropriate time, of trade union services, or
  - (d) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions.
- (2) In subsection (1) “an appropriate time” means—
  - (a) a time outside the worker’s working hours, or
  - (b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union or (as the case may be) make use of trade union services.

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*Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 2004, Part 3. (See end of Document for details)*

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- (3) In subsection (2) “working hours”, in relation to a worker, means any time when, in accordance with his contract of employment (or other contract personally to do work or perform services), he is required to be at work.
- (4) In subsections (1) and (2)—
  - (a) “trade union services” means services made available to the worker by an independent trade union by virtue of his membership of the union, and
  - (b) references to a worker’s “making use” of trade union services include his consenting to the raising of a matter on his behalf by an independent trade union of which he is a member.
- (5) A worker or former worker may present a complaint to an employment tribunal on the ground that his employer has made him an offer in contravention of this section.

#### **145B Inducements relating to collective bargaining**

- (1) A worker who is a member of an independent trade union which is recognised, or seeking to be recognised, by his employer has the right not to have an offer made to him by his employer if—
  - (a) acceptance of the offer, together with other workers' acceptance of offers which the employer also makes to them, would have the prohibited result, and
  - (b) the employer’s sole or main purpose in making the offers is to achieve that result.
- (2) The prohibited result is that the workers' terms of employment, or any of those terms, will not (or will no longer) be determined by collective agreement negotiated by or on behalf of the union.
- (3) It is immaterial for the purposes of subsection (1) whether the offers are made to the workers simultaneously.
- (4) Having terms of employment determined by collective agreement shall not be regarded for the purposes of section 145A (or section 146 or 152) as making use of a trade union service.
- (5) A worker or former worker may present a complaint to an employment tribunal on the ground that his employer has made him an offer in contravention of this section.

#### **145C Time limit for proceedings**

An employment tribunal shall not consider a complaint under section 145A or 145B unless it is presented—

- (a) before the end of the period of three months beginning with the date when the offer was made or, where the offer is part of a series of similar offers to the complainant, the date when the last of them was made, or
- (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 it considers reasonable.

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### **145D Consideration of complaint**

- (1) On a complaint under section 145A it shall be for the employer to show what was his sole or main purpose in making the offer.
- (2) On a complaint under section 145B it shall be for the employer to show what was his sole or main purpose in making the offers.
- (3) On a complaint under section 145A or 145B, in determining any question whether the employer made the offer (or offers) or the purpose for which he did so, no account shall be taken of any pressure which was exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.
- (4) In determining whether an employer's sole or main purpose in making offers was the purpose mentioned in section 145B(1), the matters taken into account must include any evidence—
  - (a) that when the offers were made the employer had recently changed or sought to change, or did not wish to use, arrangements agreed with the union for collective bargaining,
  - (b) that when the offers were made the employer did not wish to enter into arrangements proposed by the union for collective bargaining, or
  - (c) that the offers were made only to particular workers, and were made with the sole or main purpose of rewarding those particular workers for their high level of performance or of retaining them because of their special value to the employer.

### **145E Remedies**

- (1) Subsections (2) and (3) apply where the employment tribunal finds that a complaint under section 145A or 145B is well-founded.
- (2) The tribunal—
  - (a) shall make a declaration to that effect, and
  - (b) shall make an award to be paid by the employer to the complainant in respect of the offer complained of.
- (3) The amount of the award shall be £2,500 (subject to any adjustment of the award that may fall to be made under Part 3 of the Employment Act 2002).
- (4) Where an offer made in contravention of section 145A or 145B is accepted—
  - (a) if the acceptance results in the worker's agreeing to vary his terms of employment, the employer cannot enforce the agreement to vary, or recover any sum paid or other asset transferred by him under the agreement to vary;
  - (b) if as a result of the acceptance the worker's terms of employment are varied, nothing in section 145A or 145B makes the variation unenforceable by either party.
- (5) Nothing in this section or sections 145A and 145B prejudices any right conferred by section 146 or 149.

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- (6) In ascertaining any amount of compensation under section 149, no reduction shall be made on the ground—
- (a) that the complainant caused or contributed to his loss, or to the act or failure complained of, by accepting or not accepting an offer made in contravention of section 145A or 145B, or
  - (b) that the complainant has received or is entitled to an award under this section.

### **145F Interpretation and other supplementary provisions**

- (1) References in sections 145A to 145E to being or becoming a member of a trade union include references—
- (a) to being or becoming a member of a particular branch or section of that union, and
  - (b) to being or becoming a member of one of a number of particular branches or sections of that union.
- (2) References in those sections—
- (a) to taking part in the activities of a trade union, and
  - (b) to services made available by a trade union by virtue of membership of the union,
- shall be construed in accordance with subsection (1).
- (3) In sections 145A to 145E—
- “worker” means an individual who works, or normally works, as mentioned in paragraphs (a) to (c) of section 296(1), and
- “employer” means—
- (a) in relation to a worker, the person for whom he works;
  - (b) in relation to a former worker, the person for whom he worked.
- (4) The remedy of a person for infringement of the right conferred on him by section 145A or 145B is by way of a complaint to an employment tribunal in accordance with this Part, and not otherwise.”

#### **Commencement Information**

**II** [S. 29](#) in force at 1.10.2004 by [S.I. 2004/2566](#), [art. 3\(a\)](#) (with [art. 5](#))

### **30 Extension of protection against detriment for union membership etc.**

- (1) Section 146 of the 1992 Act (action short of dismissal on grounds related to union membership or activities) is amended in accordance with subsections (2) to (6).
- (2) For “An employee” in each of subsections (1) and (3), and “an employee” in each of subsections (2) and (4), substitute “ A worker ” and “ a worker ” respectively.
- (3) In subsection (2)—
  - (a) for “employee's” substitute “ worker's ”; and
  - (b) after “contract of employment” insert “ (or other contract personally to do work or perform services) ”.

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- (4) In subsection (3), for “his contract of employment” substitute “ a contract of employment ”.
- (5) In subsection (5), for “An employee” substitute “ A worker or former worker ”.
- (6) For subsection (6) substitute—
  - “(5A) This section does not apply where—
    - (a) the worker is an employee; and
    - (b) the detriment in question amounts to dismissal.”
- (7) In the sidenote to section 146 of the 1992 Act, and in the cross-heading immediately preceding it, for “Action short of dismissal” substitute “ Detriment ”.
- (8) In section 151 of the 1992 Act (interpretation of sections 146 to 150 and supplementary provision), after subsection (1A) (which is inserted by section 31) insert—
  - “(1B) In sections 146 to 150—
    - “worker” means an individual who works, or normally works, as mentioned in paragraphs (a) to (c) of section 296(1), and
    - “employer” means—
      - (a) in relation to a worker, the person for whom he works;
      - (b) in relation to a former worker, the person for whom he worked.”
- (9) In subsection (2) of that section, for “an employee” substitute “ a person ”.
- (10) In the sidenote to section 152 of the 1992 Act, and in the cross-heading immediately preceding it, after “Dismissal” insert “ of employee ”.

#### **Commencement Information**

**12** S. 30 in force at 1.10.2004 by S.I. 2004/2566, art. 3(a) (with art. 6)

### **31 Detriment for use of union services or refusal of inducement**

- (1) Section 146 of the 1992 Act (action short of dismissal on grounds related to union membership or activities) is also amended in accordance with subsections (2) to (4).
- (2) In subsection (1), omit “or” at the end of paragraph (b) and after that paragraph insert—
  - “(ba) preventing or deterring him from making use of trade union services at an appropriate time, or penalising him for doing so, or”.
- (3) In subsection (2)—
  - (a) for “(1)(b)” substitute “ (1) ”; and
  - (b) in paragraph (b), after “the activities of a trade union” insert “ or (as the case may be) make use of trade union services ”.
- (4) After subsection (2) insert—
  - “(2A) In this section—

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- (a) “trade union services” means services made available to the worker by an independent trade union by virtue of his membership of the union, and
  - (b) references to a worker’s “making use” of trade union services include his consenting to the raising of a matter on his behalf by an independent trade union of which he is a member.
- (2B) If an independent trade union of which a worker is a member raises a matter on his behalf (with or without his consent), penalising the worker for that is to be treated as penalising him as mentioned in subsection (1)(ba).
- (2C) A worker also has the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place because of the worker’s failure to accept an offer made in contravention of section 145A or 145B.
- (2D) For the purposes of subsection (2C), not conferring a benefit that, if the offer had been accepted by the worker, would have been conferred on him under the resulting agreement shall be taken to be subjecting him to a detriment as an individual (and to be a deliberate failure to act).”
- (5) In section 148 of the 1992 Act (consideration of complaint under section 146), omit subsections (3) to (5).
- (6) In section 151 of the 1992 Act, in subsection (1) (references in sections 146 to 150 to being etc. a member of a union to include being etc. a member of a branch or section) omit “; and references to taking part in the activities of a trade union shall be similarly construed”.
- (7) After that subsection insert—
- “(1A) References in those sections—
- (a) to taking part in the activities of a trade union, and
  - (b) to services made available by a trade union by virtue of membership of the union,
- shall be construed in accordance with subsection (1).”
- (8) Omit section 17 of the Employment Relations Act 1999 (c. 26) (which is superseded by this section and section 32).

**Commencement Information**

**I3** S. 31 in force at 1.10.2004 by S.I. 2004/2566, art. 3(a) (with art. 6)

**32 Dismissal for use of union services or refusal of inducement**

- (1) Section 152 of the 1992 Act (dismissal on grounds related to union membership or activities) is amended as follows.
- (2) In subsection (1), omit “or” at the end of each of paragraphs (a) and (b) and after paragraph (b) insert—
- “(ba) had made use, or proposed to make use, of trade union services at an appropriate time,

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- (bb) had failed to accept an offer made in contravention of section 145A or 145B, or”.
- (3) In subsection (2)—
- (a) for “(1)(b)” substitute “ (1) ”; and
  - (b) in paragraph (b), after “the activities of a trade union” insert “ or (as the case may be) make use of trade union services ”.
- (4) After subsection (2) insert—
- “(2A) In this section—
- (a) “trade union services” means services made available to the employee by an independent trade union by virtue of his membership of the union, and
  - (b) references to an employee’s “making use” of trade union services include his consenting to the raising of a matter on his behalf by an independent trade union of which he is a member.
- (2B) Where the reason or one of the reasons for the dismissal was that an independent trade union (with or without the employee’s consent) raised a matter on behalf of the employee as one of its members, the reason shall be treated as falling within subsection (1)(ba).”
- (5) In subsection (4) (references to being etc. a member of a union to include being etc. a member of a branch or section) omit “; and references to taking part in the activities of a trade union shall be similarly construed”.
- (6) After that subsection add—
- “(5) References in this section—
- (a) to taking part in the activities of a trade union, and
  - (b) to services made available by a trade union by virtue of membership of the union,
- shall be construed in accordance with subsection (4).”

#### **Commencement Information**

**I4** S. 32 in force at 1.10.2004 by S.I. 2004/2566, art. 3(a) (with art. 7)

### *Exclusion and expulsion from trade unions*

## **33 Exclusion or expulsion from trade union attributable to conduct**

- (1) Section 174 of the 1992 Act (right not to be excluded or expelled from trade union) is amended as follows.
- (2) In subsection (2)(d) for “his conduct” substitute “ conduct of his (other than excluded conduct) and the conduct to which it is wholly or mainly attributable is not protected conduct ”.
- (3) For subsection (4) substitute—

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- “(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).”
- (4) In section 176 of that Act (remedies for infringement of right not to be excluded or expelled), after subsection (1) insert—
- “(1A) If a tribunal makes a declaration under subsection (1) and it appears to the tribunal 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 a member of the general public, and
  - (b) if he was at that time a member of the union, by a member of the union.”

(5) In subsection (3)(a) of that section, after “declaration” insert “ under subsection (1) ”.

(6) After subsection (6) of that section insert—

“(6A) If on the date on which the application was made the applicant had not been admitted or re-admitted to the union, the award shall not be less than £5,900.



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(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).”

(7) In sections 174 and 176 of the 1992 Act references to the conduct of an individual include references to conduct which took place before the coming into force of this section.

#### Commencement Information

**I5** S. 33 in force at 31.12.2004 by S.I. 2004/3342, art. 4(a) (with arts. 7, 10)

### 34 Applications no longer to be made to Employment Appeal Tribunal

(1) Section 67 of the 1992 Act (compensation for infringement of right not to be unjustifiably disciplined) is amended in accordance with subsections (2) to (6).

(2) In subsection (1) after “application” insert “ to an employment tribunal ”.

(3) Omit subsections (2) and (4).

(4) In subsections (5) and (7) omit “Employment Appeal Tribunal or”.

(5) In subsection (8) omit the words after paragraph (b).

(6) After that subsection insert—

“(8A) If on the date on which the application was made—

(a) the determination infringing the applicant’s right not to be unjustifiably disciplined has not been revoked, or

(b) the union has failed to take all the steps necessary for securing the reversal of anything done for the purpose of giving effect to the determination,

the amount of compensation shall be not less than the amount for the time being specified in section 176(6A).”

(7) Section 176 of the 1992 Act (remedies for exclusion or expulsion from trade union) is also amended in accordance with subsections (8) to (11).

(8) In subsection (2)—

(a) after “an application” insert “ to an employment tribunal ”; and

(b) omit the second sentence.

(9) In subsection (4) omit “or the Employment Appeal Tribunal”.

(10) In subsection (5) omit “or Employment Appeal Tribunal”.

(11) In subsection (6) omit the words after paragraph (b).

#### Commencement Information

**I6** S. 34 in force at 31.12.2004 by S.I. 2004/3342, art. 4(a) (with arts. 8, 9, 10)

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### *Other rights of workers and employees*

## **35 Disapplication of qualifying period and upper age limit for unfair dismissal**

For section 154 of the 1992 Act substitute—

### **“154 Disapplication of qualifying period and upper age limit for unfair dismissal**

Sections 108(1) and 109(1) of the Employment Rights Act 1996 (qualifying period and upper age limit for unfair dismissal protection) do not apply to a dismissal which by virtue of section 152 or 153 is regarded as unfair for the purposes of Part 10 of that Act.”

#### **Commencement Information**

**17** [S. 35](#) in force at 6.4.2005 by [S.I. 2005/872](#), [art. 4](#), [Sch.](#) (with [art. 12](#))

## **36 National security: powers of employment tribunals**

For subsection (6) of section 10 of the Employment Tribunals Act 1996 (c. 17) (procedure regulations in relation to cases involving issues of national security) substitute—

“(6) Employment tribunal procedure regulations may enable a tribunal, if it considers it expedient in the interests of national security, to do in relation to particular proceedings before it anything of a kind which, by virtue of subsection (5), employment tribunal procedure regulations may enable a Minister of the Crown to direct a tribunal to do in relation to particular Crown employment proceedings.”

#### **Commencement Information**

**18** [S. 36](#) in force at 31.12.2004 by [S.I. 2004/3342](#), [art. 4\(a\)](#)

## **37 Role of companion at disciplinary or grievance hearing**

(1) For subsection (2) of section 10 of the Employment Relations Act 1999 (c. 26) duty of employers to permit workers to be accompanied at disciplinary and grievance hearings) substitute—

“(2A) Where this section applies, the employer must permit the worker to be accompanied at the hearing by one companion who—

- (a) is chosen by the worker; and
- (b) is within subsection (3).

(2B) The employer must permit the worker’s companion to—

- (a) address the hearing in order to do any or all of the following—
  - (i) put the worker’s case;
  - (ii) sum up that case;

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- (iii) respond on the worker’s behalf to any view expressed at the hearing;
  - (b) confer with the worker during the hearing.
- (2C) Subsection (2B) does not require the employer to permit the worker’s companion to—
- (a) answer questions on behalf of the worker;
  - (b) address the hearing if the worker indicates at it that he does not wish his companion to do so; or
  - (c) use the powers conferred by that subsection in a way that prevents the employer from explaining his case or prevents any other person at the hearing from making his contribution to it.”
- (2) In section 11(1) of that Act (complaint to employment tribunal), for “10(2)” substitute “ 10(2A), (2B) ”.
- (3) In section 12 of that Act (right not to be subjected to a detriment or dismissal)—
- (a) in subsections (1)(a) and (3)(a) for “10(2)” substitute “ 10(2A), (2B) ”; and
  - (b) after subsection (6) add—
- “(7) References in this section to a worker having accompanied or sought to accompany another worker include references to his having exercised or sought to exercise any of the powers conferred by section 10(2A) or (2B).”

**Commencement Information**

**I9** S. 37 in force at 1.10.2004 by S.I. 2004/2566, art. 3(a) (with art. 8)

**38 Extension of jurisdiction of Employment Appeal Tribunal**

In section 21(1) of the Employment Tribunals Act 1996 (c. 17) (proceedings from which appeal lies to Employment Appeal Tribunal), for paragraphs (ff) and (g) substitute—

- “(g) this Act,
- (ga) the National Minimum Wage Act 1998,
- (gb) the Employment Relations Act 1999.”.

**Commencement Information**

**I10** S. 38 in force at 1.10.2004 by S.I. 2004/2566, art. 3(a)

**39 Ways in which provision conferring rights on individuals may be made**

- (1) Section 23 of the Employment Relations Act 1999 (c. 26) (power to confer on individuals of a specified description rights conferred by certain enactments) is amended as follows.
- (2) In subsection (5) (ways in which that power may be exercised) omit the words from “, whether” to the end.

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(3) After that subsection insert—

“(5A) The ways in which an order under this section may make provision include, in particular—

- (a) amending any enactment;
- (b) excluding or applying (whether with or without amendment) any enactment.

(5B) In subsection (5A) “enactment” includes an enactment comprised in subordinate legislation made under an Act.”

#### **Commencement Information**

**III** S. 39 in force at 31.12.2004 by [S.I. 2004/3342](#), [art. 4\(a\)](#)

## **40 Protection of employees in respect of jury service**

(1) In Part 5 of the Employment Rights Act 1996 (c. 18) (protection from suffering detriment in employment), before section 44 (but after the cross-heading immediately preceding that section) insert—

### **“43M Jury service**

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer on the ground that the employee—

- (a) has been summoned under the Juries Act 1974, the Coroners Act 1988, the Court of Session Act 1988 or the Criminal Procedure (Scotland) Act 1995 to attend for service as a juror, or
- (b) has been absent from work because he attended at any place in pursuance of being so summoned.

(2) This section does not apply where the detriment in question amounts to dismissal within the meaning of Part 10.

(3) For the purposes of this section, an employee is not to be regarded as having been subjected to a detriment by a failure to pay remuneration in respect of a relevant period unless under his contract of employment he is entitled to be paid that remuneration.

(4) In subsection (3) “a relevant period” means any period during which the employee is absent from work because of his attendance at any place in pursuance of being summoned as mentioned in subsection (1)(a).”

(2) In section 48(1) of that Act (application to employment tribunal), after “section” insert “43M, ”.

(3) After section 98A of that Act insert—

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### **“98B Jury service**

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—
  - (a) has been summoned under the Juries Act 1974, the Coroners Act 1988, the Court of Session Act 1988 or the Criminal Procedure (Scotland) Act 1995 to attend for service as a juror, or
  - (b) has been absent from work because he attended at any place in pursuance of being so summoned.
- (2) Subsection (1) does not apply in relation to an employee who is dismissed if the employer shows—
  - (a) that the circumstances were such that the employee’s absence in pursuance of being so summoned was likely to cause substantial injury to the employer’s undertaking,
  - (b) that the employer brought those circumstances to the attention of the employee,
  - (c) that the employee refused or failed to apply to the appropriate officer for excusal from or a deferral of the obligation to attend in pursuance of being so summoned, and
  - (d) that the refusal or failure was not reasonable.
- (3) In paragraph (c) of subsection (2) “the appropriate officer” means—
  - (a) in the case of a person who has been summoned under the Juries Act 1974, the officer designated for the purposes of section 8, 9 or, as the case may be, 9A of that Act;
  - (b) in the case of a person who has been summoned under the Coroners Act 1988, a person who is the appropriate officer for the purposes of any rules made under subsection (1) of section 32 of that Act by virtue of subsection (2) of that section;
  - (c) in the case of a person who has been summoned under the Court of Session Act 1988, either—
    - (i) the clerk of court issuing the citation to attend for jury service; or
    - (ii) the clerk of the court before which the person is cited to attend for jury service;
  - (d) in the case of a person who has been summoned under the Criminal Procedure (Scotland) Act 1995, either—
    - (i) the clerk of court issuing the citation to attend for jury service; or
    - (ii) the clerk of the court before which the person has been cited to attend for jury service;

and references in that paragraph to a refusal or failure to apply include references to a refusal or failure to give a notice under section 1(2)(b) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980.”
- (4) In section 105 of that Act (redundancy), for subsection (1)(c) substitute—
  - “(c) it is shown that any of subsections (2A) to (7F) applies.”

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*Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 2004, Part 3. (See end of Document for details)*

- (5) In that section, before subsection (3) insert—
- “(2A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 98B (unless the case is one to which subsection (2) of that section applies).”
- (6) In section 108(3) of that Act (exceptions to one year qualifying period of continuous employment for claims of unfair dismissal), before paragraph (b) insert—
- “(aa) subsection (1) of section 98B (read with subsection (2) of that section) applies.”
- (7) In section 109(2) of that Act (exceptions to upper age limit for claims of unfair dismissal), before paragraph (b) insert—
- “(aa) subsection (1) of section 98B (read with subsection (2) of that section) applies.”
- (8) In section 237(1A)(a) of the 1992 Act (cases where employee may complain of unfair dismissal despite participation in unofficial industrial action)—
- (a) after “section” insert “ 98B, ”; and
- (b) after “(dismissal in” insert “ jury service, ”.
- (9) In section 238(2A)(a) of the 1992 Act (cases where employment tribunal to determine whether dismissal of an employee is unfair despite limitation in subsection (2) of that section)—
- (a) after “section” insert “ 98B, ”; and
- (b) after “(dismissal in” insert “ jury service, ”.

#### **Commencement Information**

**I12** S. 40 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch. (with art. 13)

## **41 Flexible working**

- (1) In section 237(1A)(a) of the 1992 Act (cases where employee may complain of unfair dismissal despite participation in unofficial industrial action)—
- (a) for “or 103A” substitute “ , 103A or 104C ”; and
- (b) for “and protected disclosure” substitute “ , protected disclosure and flexible working ”.
- (2) In section 238(2A)(a) of that Act (cases where employment tribunal to determine whether dismissal of an employee is unfair despite limitation in subsection (2) of that section)—
- (a) for “or 103” substitute “ , 103 or 104C ”; and
- (b) for “and employee representative” substitute “ , employee representative and flexible working ”.
- (3) In section 48(1) of the Employment Rights Act 1996 (c. 18) (complaints to employment tribunals), for “47D” substitute “ 47E ”.
- (4) After subsection (7B) of section 105 of that Act (redundancy) insert—

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 2004, Part 3. (See end of Document for details)*

- “(7BA) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in section 104C.”
- (5) In section 108(3) of that Act (exceptions to one year qualifying period of continuous employment for claims for unfair dismissal), after paragraph (gh) insert—  
“(gi) section 104C applies.”
- (6) In section 109(2) of that Act (exceptions to upper age limit for claims for unfair dismissal), after paragraph (gh) insert—  
“(gi) section 104C applies.”
- (7) In sections 194(2) and 195(2) of that Act (provisions of the Act which have effect in relation to employment as a member of the staff of the House of Lords or the House of Commons), in paragraph (c) for “and 47D” substitute “, 47D and 47E ”.
- (8) In section 199(2) of that Act (provisions of the Act not applicable to share fishermen) for “47D” substitute “ 47E ”.

#### **Commencement Information**

**I13** S. 41 in force at 6.4.2005 by S.I. 2005/872, art. 4, Sch. (with art. 13)

## **42 Information and consultation: Great Britain**

- (1) The Secretary of State may make regulations for the purpose of conferring on employees of an employer to whom the regulations apply, or on representatives of those employees, rights—
- to be informed by the employer about prescribed matters;
  - to be consulted by the employer about prescribed matters.
- (2) Regulations made under subsection (1) must make provision as to the employers to whom the regulations apply which may include provision—
- applying the regulations by reference to factors including the number of employees in the United Kingdom in the employer’s undertaking;
  - as to the method by which the number of employees in an employer’s undertaking is to be calculated; and
  - applying the regulations to different descriptions of employer with effect from different dates.
- (3) Regulations made under subsection (1) may make provision—
- as to the circumstances in which the rights mentioned in subsection (1) arise and the extent of those rights;
  - for and about the initiation and conduct of negotiations between employers to whom the regulations apply and their employees for the purposes of reaching an agreement satisfying prescribed conditions about the provision of information to the employees, and consultation of them (whether that provision or consultation is to be direct or through representatives);
  - about the representatives the employees may have for the purposes of the regulations and the method by which those representatives are to be selected;

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 2004, Part 3. (See end of Document for details)*

- (d) as to the resolution of disputes and the enforcement of obligations imposed by the regulations or by an agreement of the kind mentioned in paragraph (b).
- (4) Regulations made under subsection (1) may—
  - (a) confer jurisdiction (including exclusive jurisdiction) on employment tribunals and on the Employment Appeal Tribunal;
  - (b) confer functions on the Central Arbitration Committee;
  - (c) require or authorise the holding of ballots;
  - (d) amend, apply with or without modifications, or make provision similar to any provision of the Employment Rights Act 1996 (c. 18) (including, in particular, Parts 5, 10 and 13), the Employment Tribunals Act 1996 (c. 17) or the 1992 Act;
  - (e) include supplemental, incidental, consequential and transitional provision, including provision amending any enactment;
  - (f) make different provision for different cases or circumstances.
- (5) Regulations made under subsection (1) may make any provision which appears to the Secretary of State to be necessary or expedient—
  - (a) for the purpose of implementing Directive [2002/14/EC](#) of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the [<sup>F1</sup>European Union];
  - (b) for the purpose of dealing with any matter arising out of or related to the United Kingdom’s obligations under that Directive.
- (6) Nothing in subsections (2) to (5) prejudices the generality of this section.
- (7) Regulations under this section shall be made by statutory instrument.
- (8) No such regulations may be made unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House of Parliament.
- (9) In this section “prescribed” means prescribed by regulations under this section.

#### **Textual Amendments**

**F1** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 4 (with art. 3(2)(3)4(2)6(4)6(5))

### **43 Information and consultation: Northern Ireland**

- (1) The Department for Employment and Learning may make regulations for the purpose of conferring on employees of an employer to whom the regulations apply, or on representatives of those employees, rights—
  - (a) to be informed by the employer about prescribed matters;
  - (b) to be consulted by the employer about prescribed matters.
- (2) Regulations made under subsection (1) must make provision as to the employers to whom the regulations apply which may include provision—
  - (a) applying the regulations by reference to factors including the number of employees in the United Kingdom in the employer’s undertaking;



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*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 2004, Part 3. (See end of Document for details)*

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- (b) as to the method by which the number of employees in an employer's undertaking is to be calculated; and
  - (c) applying the regulations to different descriptions of employer with effect from different dates.
- (3) Regulations made under subsection (1) may make provision—
- (a) as to the circumstances in which the rights mentioned in subsection (1) arise and the extent of those rights;
  - (b) for and about the initiation and conduct of negotiations between employers to whom the regulations apply and their employees for the purposes of reaching an agreement satisfying prescribed conditions about the provision of information to the employees, and consultation of them (whether that provision or consultation is to be direct or through representatives);
  - (c) about the representatives the employees may have for the purposes of the regulations and the method by which those representatives are to be selected;
  - (d) as to the resolution of disputes and the enforcement of obligations imposed by the regulations or by an agreement of the kind mentioned in paragraph (b).
- (4) Regulations made under subsection (1) may—
- (a) confer jurisdiction (including exclusive jurisdiction) on industrial tribunals and on the High Court;
  - (b) confer functions on the Industrial Court;
  - (c) require or authorise the holding of ballots;
  - (d) amend, apply with or without modifications, or make provision similar to any provision of—
    - (i) the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5));
    - (ii) the Trade Union and Labour Relations (Northern Ireland) Order 1995 (S.I. 1995/1980 (N.I. 12));
    - (iii) the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16))(including, in particular, Parts 6, 11 and 15); or
    - (iv) the Industrial Tribunals (Northern Ireland) Order 1996 (S.I. 1996/1921 (N.I. 18));
  - (e) include supplemental, incidental, consequential and transitional provision, including provision amending any enactment;
  - (f) make different provision for different cases or circumstances.
- (5) Regulations made under subsection (1) may make any provision which appears to the Department for Employment and Learning to be necessary or expedient—
- (a) for the purpose of implementing Directive [2002/14/EC](#) of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the [<sup>F1</sup>European Union];
  - (b) for the purpose of dealing with any matter arising out of or related to the United Kingdom's obligations under that Directive.
- (6) Nothing in subsections (2) to (5) prejudices the generality of this section.
- (7) Power to make regulations under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

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*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 2004, Part 3. (See end of Document for details)*

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(8) No regulations under this section may be made unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly.

(9) In this section—

“enactment” includes—

- (a) a provision of an Act;
- (b) a provision of, or of any instrument made under, Northern Ireland legislation; and
- (c) a provision of subordinate legislation;

“the Industrial Court” means the Industrial Court constituted under Article 91 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5));

“industrial tribunals” has the meaning given by section 42(5) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)); and

“prescribed” means prescribed by regulations under this section.

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**Textual Amendments**

**F1** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011](#) (S.I. 2011/1043), arts. 2, 3, 4 (with art. 3(2)(3)4(2)6(4)6(5))

**Status:**

Point in time view as at 22/04/2011.

**Changes to legislation:**

There are currently no known outstanding effects for the Employment Relations Act 2004, Part 3.