



Employment Act 1980

CHAPTER 42

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ELIZABETH II



Employment Act 1980

1980 CHAPTER 42

An Act to provide for payments out of public funds towards trade unions' expenditure in respect of ballots, for the use of employers' premises in connection with ballots, and for the issue by the Secretary of State of Codes of Practice for the improvement of industrial relations; to make provision in respect of exclusion or expulsion from trade unions and otherwise to amend the law relating to workers, employers, trade unions and employers' associations; to repeal section 1A of the Trade Union and Labour Relations Act 1974; and for connected purposes. [1st August 1980]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Trade union ballots and Codes of Practice

1.—(1) The Secretary of State may by regulations make a Payments in scheme (below called "the scheme") providing for payments by respect of the Certification Officer towards expenditure incurred by inde- secret ballots. pendent trade unions in respect of such ballots to which this section applies as may be prescribed by the scheme.

(2) This section applies to a ballot if the purpose of the question to be voted upon (or if there is more than one such question, the purpose of any of them) falls within the purposes mentioned in subsection (3) below.

(3) The purposes referred to in subsection (2) above are—

- (a) obtaining a decision or ascertaining the views of members of a trade union as to the calling or ending of a strike or other industrial action ;
- (b) carrying out an election provided for by the rules of a trade union ;
- (c) electing a worker who is a member of a trade union to be a representative of other members also employed by his employer ;
- (d) amending the rules of a trade union ;
- (e) obtaining a decision in accordance with the Trade Union (Amalgamations, etc.) Act 1964 on a resolution to approve an instrument of amalgamation or transfer ;

and such other purposes as the Secretary of State may by order specify.

(4) The scheme may include provision for payments to be made towards expenditure incurred by an independent trade union in respect of arrangements to hold a ballot which is not proceeded with but which, if it had been held, would have been a ballot to which this section applies.

(5) The circumstances in which and the conditions subject to which payments may be made under the scheme, and the amounts of the payments, shall be such as may be prescribed by or determined in accordance with the scheme ; and the scheme shall include provision for restricting the cases in which payments are made to cases in which the ballot is so conducted as to secure, so far as reasonably practicable, that those voting may do so in secret.

(6) The Secretary of State shall out of money provided by Parliament pay to the Certification Officer such sums as he may require for making payments under the scheme.

(7) Any power to make regulations or orders under this section shall be exercisable by statutory instrument ; and—

- (a) a statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament ;
- (b) no order shall be made under this section unless a draft of it has been laid before and approved by resolution of each House of Parliament.

(8) Expressions used in this section and in the 1974 Act have the same meanings in this section as in that Act.

Secret ballots
on employer's
premises.

2.—(1) Subject to subsection (3) below, where an independent trade union proposes that a relevant ballot be held and requests an employer to permit premises of his to be used for the

purpose of giving workers employed by him who are members of the union a convenient opportunity of voting, the employer shall, so far as reasonably practicable, comply with the request.

(2) A ballot is a relevant ballot for the purposes of this section if—

- (a) as respects the purpose of the question (or one of the questions) to be voted upon, the ballot satisfies the requirements of a scheme under section 1 of this Act, and
- (b) the proposals for the conduct of the ballot are such as to secure, so far as reasonably practicable, that those voting may do so in secret.

(3) Subsection (1) above shall not apply where, at the time the request is made,—

- (a) the union is not recognised by the employer to any extent for the purpose of collective bargaining, or
- (b) the number of workers employed by the employer, added to the number employed by any associated employer, does not exceed twenty.

(4) A trade union may present a complaint to an industrial tribunal that it has made a request in accordance with subsection (1) above and that it was reasonably practicable for the employer to comply with it, but that he has failed to do so.

(5) An industrial tribunal shall not entertain a complaint under this section unless it is presented to the tribunal before the end of the period of three months beginning with the date of the failure, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of three months.

(6) Where a tribunal finds that a complaint under this section is well-founded, the tribunal shall make a declaration to that effect, and may make an award of compensation to be paid by the employer to the union which shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to comply with the request and to any expenses incurred by the union in consequence of the failure.

(7) An appeal shall lie to the Employment Appeal Tribunal on a question of law arising from any decision of, or arising in proceedings before, an industrial tribunal under this section.

(8) The remedy of a trade union for a failure to comply with a request made in accordance with subsection (1) above shall be by way of a complaint under this section and not otherwise.

(9) Expressions used in this section and in the 1974 Act have the same meanings in this section as in that Act.

Issue by
Secretary of
State of Codes
of Practice.

3.—(1) The Secretary of State may issue Codes of Practice containing such practical guidance as he thinks fit for the purpose of promoting the improvement of industrial relations.

(2) The Secretary of State shall after consultation with the Advisory, Conciliation and Arbitration Service (whether carried out before or after the passing of this Act) prepare and publish a draft of any Code of Practice that he proposes to issue under this section.

(3) The Secretary of State shall consider any representations made to him about a draft prepared under subsection (2) above and may modify the draft accordingly.

(4) If the Secretary of State determines to proceed with the draft he shall lay it before both Houses of Parliament and, if it is approved by resolution of each House, shall issue the Code in the form of the draft.

(5) A Code of Practice issued under this section shall come into operation on such day as the Secretary of State may by order appoint; and an order under this subsection—

(a) may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient;

(b) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) The Secretary of State may from time to time revise the whole or any part of a Code of Practice issued under this section and issue that revised Code, and subsections (2) to (5) above shall apply to such a revised Code as they apply to the first issue of a Code.

(7) If the Secretary of State is of the opinion that the provisions of a Code of Practice to be issued under this section will supersede the whole or part of a Code previously issued by him under this section or by the Advisory, Conciliation and Arbitration Service under section 6 of the 1975 Act or having effect by virtue of paragraph 4 of Schedule 17 to that Act, he shall in the new Code state that on the day on which the new Code comes into operation in pursuance of an order under subsection (5) above the old Code or a specified part of it shall cease to have effect (subject to any transitional provisions or savings made by the order).

(8) A failure on the part of any person to observe any provision of a Code of Practice issued under this section shall not

of itself render him liable to any proceedings; but in any proceedings before a court or industrial tribunal or the Central Arbitration Committee—

- (a) any such Code shall be admissible in evidence, and
- (b) any provision of the Code which appears to the court, tribunal or Committee to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

Exclusion from trade union membership

4.—(1) This section applies to employment by an employer Unreasonable
exclusion or
expulsion
from trade
union. with respect to which it is the practice, in accordance with a union membership agreement, for the employee to belong to a specified trade union or one of a number of specified trade unions.

(2) Every person who is, or is seeking to be, in employment to which this section applies shall have the right—

- (a) not to have an application for membership of a specified trade union unreasonably refused;
- (b) not to be unreasonably expelled from a specified trade union.

(3) The rights conferred by subsection (2) above are in addition to and not in substitution for any right which exists apart from that subsection; and, without prejudice to any remedy for infringement of any such other right, the remedies for infringement of a right conferred by that subsection shall be those provided by the following provisions of this section and section 5 below.

(4) A complaint may be presented to an industrial tribunal against a trade union by a person that an application by him for membership of the union has been unreasonably refused, or that he has been unreasonably expelled from the union, in contravention of subsection (2) above.

(5) On a complaint under this section, the question whether a trade union has acted reasonably or unreasonably shall be determined in accordance with equity and the substantial merits of the case, and in particular a union shall not be regarded as having acted reasonably only because it has acted in accordance with the requirements of its rules or unreasonably only because it has acted in contravention of them.

(6) A tribunal shall not entertain a complaint under this section unless it is presented to the tribunal before the end of the period of six months beginning with the date of the refusal or expulsion, as the case may be, or within such further period as the tribunal considers reasonable in a case where it

is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of six months.

(7) Where a tribunal finds that a complaint under this section is well-founded, the tribunal shall make a declaration to that effect.

(8) An appeal shall lie to the Employment Appeal Tribunal on any question of law or fact arising from any decision of, or arising in any proceedings before, an industrial tribunal under this section.

(9) For the purposes of this section and section 5 below—

(a) if an application for membership of a trade union has been 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, the application shall be treated as having been refused on the last day of that period, and

(b) if under the rules of a trade union any person ceases to be a member of the union on the happening of an event specified in the rules, he shall be treated as having been expelled from the union.

(10) Any expression used in any provision of this section or section 5 below and in the 1974 Act has the same meaning in that provision as it has in that Act, except that any reference in such a provision to a trade union includes a reference to a branch or section of a trade union.

(11) Any provision in an agreement shall be void in so far as it purports to exclude or limit the operation of, or to preclude any person from presenting a complaint or making an application under, this section or section 5 below; but this subsection shall not apply to an agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action in accordance with section 133(2) or (3) of the 1978 Act.

Compensation. 5.—(1) A person who has made a complaint against a trade union under section 4 above which has been declared to be well-founded may make an application in accordance with subsection (2) below for an award of compensation to be paid to him by the union.

(2) If at the time when the application under this section is made the applicant has been admitted or re-admitted to membership of the union against which he made the complaint, the application shall be to an industrial tribunal; and if at that time he has not been so admitted or re-admitted, the application shall be to the Employment Appeal Tribunal.

(3) An industrial tribunal or the Employment Appeal Tribunal shall not entertain an application for compensation under this section if it is made before the end of the period of four weeks beginning with the date of the declaration under section 4 above or after the end of the period of six months beginning with that date.

(4) Subject to the following provisions of this section, the amount of compensation awarded on an application under this section—

- (a) in the case of an application to an industrial tribunal, shall be such as the tribunal considers appropriate for the purpose of compensating the applicant for the loss sustained by him in consequence of the refusal or expulsion which was the subject of his complaint, and
- (b) in the case of an application to the Employment Appeal Tribunal, shall be such as the Appeal Tribunal considers just and equitable in all the circumstances.

(5) In determining the amount of compensation to be awarded under this section, the industrial tribunal or the Employment Appeal Tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or of Scotland, as the case may be.

(6) Where the industrial tribunal or the Employment Appeal Tribunal finds that the refusal or expulsion which was the subject of the applicant's complaint was to any extent caused or contributed to by any 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.

(7) The amount of compensation awarded on an application to an industrial tribunal under this section shall not exceed the aggregate of—

- (a) an amount equal to thirty times the limit for the time being imposed by paragraph 8(1)(b) of Schedule 14 to the 1978 Act (maximum amount of a week's pay for purpose of calculating basic award in unfair dismissal cases), and
- (b) an amount equal to the limit for the time being imposed by section 75 of that Act (maximum compensatory award in such cases).

(8) The amount of compensation awarded on an application to the Employment Appeal Tribunal under this section shall not exceed the aggregate of—

- (a) the amount referred to in paragraph (a) of subsection (7) above, and
- (b) the amount referred to in paragraph (b) of that subsection, and

(c) an amount equal to fifty-two times the limit for the time being imposed by paragraph 8(1)(a) of Schedule 14 to the 1978 Act (maximum amount of a week's pay for purpose of calculating additional award of compensation in unfair dismissal cases).

(9) An appeal shall lie to the Employment Appeal Tribunal on a question of law arising from any decision of, or arising in proceedings before, an industrial tribunal under this section.

Unfair dismissal

Determination of fairness of dismissal.

6. In section 57(3) of the 1978 Act (determination of question of fairness to depend on whether employer can satisfy tribunal that he acted reasonably) for the words from "the employer can" to the end there shall be substituted the words "in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and that question shall be determined in accordance with equity and the substantial merits of the case".

Dismissal relating to trade union membership.

7.—(1) In subsection (3) of section 58 of the 1978 Act (dismissal of employee for non-membership of a union to be fair where there is a union membership agreement unless he objects to membership on grounds of religious belief) for the words from "unless" to the end there shall be substituted the words "but subject to subsections (3A) to (3C)".

(2) After subsection (3) of that section there shall be inserted—

"(3A) The dismissal of an employee in the circumstances set out in subsection (3) shall be regarded as unfair if he genuinely objects on grounds of conscience or other deeply-held personal conviction to being a member of any trade union whatsoever or of a particular trade union.

(3B) The dismissal of an employee by an employer in the circumstances set out in subsection (3) shall be regarded as unfair if the employee—

(a) has been among those employees of the employer who belong to the class to which the union membership agreement relates since before the agreement had the effect of requiring them to be or become members of a trade union, and

(b) has not at any time while the agreement had that effect been a member of a trade union in accordance with the agreement.

(3C) Where a union membership agreement takes effect after the commencement of section 7 of the Employment Act 1980 in relation to the employees of any class of an employer, and an employee of that class is dismissed by the

employer in the circumstances set out in subsection (3), the dismissal shall be regarded as unfair if—

- (a) the agreement has not been approved in relation to those employees in accordance with section 58A, or
- (b) it has been so approved through a ballot in which the dismissed employee was entitled to vote, but he has not at any time since the day on which the ballot was held been a member of a trade union in accordance with the agreement.

(3D) Where the employer of any employees changes in such circumstances that the employees' period of continuous employment is not broken, this section and section 58A shall have effect as if any reference to the employees of any class of the later employer included a reference to the employees of that class of the former employer.

(3E) In determining for the purposes of subsection (3B) and of section 58A(2) whether a person belongs to a class of employees, any restriction of the class by reference to membership (or objection to membership) of a trade union shall be disregarded."

(3) After that section there shall be inserted—

" Ballots as to union membership agreements.

58A.—(1) A union membership agreement shall be taken for the purposes of section 58(3C) to have been approved in relation to the employees of any class of an employer if a ballot has been held on the question whether the agreement should apply in relation to them and not less than 80 per cent. of those entitled to vote in the ballot voted in favour of the agreement's application.

(2) The persons entitled to vote in a ballot under this section in relation to the application of a union membership agreement to the employees of any class of an employer shall be all those employees who belong to that class, and are in the employment of the employer, on the day on which the ballot is held.

(3) A ballot under this section shall be so conducted as to secure that, so far as reasonably practicable, all those entitled to vote have an opportunity of voting, and of doing so in secret."

8.—(1) After section 64 of the 1978 Act there shall be inserted— Exclusions of rights.

" Extended qualifying period where no more than twenty employees.

64A.—(1) Subject to subsection (2), section 54 does not apply to the dismissal of an employee from any employment if—

- (a) the period (ending with the effective date of termination) during which the employee was

continuously employed did not exceed two years ; and

- (b) at no time during that period did the number of employees employed by the employer for the time being of the dismissed employee, added to the number employed by any associated employer, exceed twenty.

(2) Subsection (1) shall not apply to the dismissal of an employee by reason of any such requirement or recommendation as is referred to in section 19(1), or if it is shown that the reason (or, if more than one, the principal reason) for the dismissal was an inadmissible reason."

(2) In section 142(1) of the 1978 Act (which provides that section 54 does not apply in relation to a contract for a fixed term of two years or more) for the words "two years" there shall be substituted the words "one year".

Basic award.

9.—(1) Section 73 of the 1978 Act (calculation of basic award for unfair dismissal) shall be amended as follows.

(2) In subsection (1) (provisions to which calculation of basic award is subject)—

(a) after paragraph (b) there shall be inserted—

“(ba) subsection (7A) (which provides for the amount of the award to be reduced where the employee has unreasonably refused an offer of reinstatement) ;

(bb) subsection (7B) (which provides for the amount of the award to be reduced because of the employee’s conduct) ;” ; and

(b) paragraph (c) shall cease to have effect.

(3) In subsection (3) (calculation by reference to number of years of employment) for paragraphs (b) and (c) there shall be substituted—

“(b) one week’s pay for each year of employment not falling within paragraph (a) which consists wholly of weeks in which the employee was not below the age of twenty-two ; and

(c) half a week’s pay for each such year of employment not falling within either of paragraphs (a) and (b).”.

(4) After subsection (7) there shall be inserted—

“(7A) Where the tribunal finds that the complainant has unreasonably refused an offer by the employer which if accepted would have the effect of reinstating the complainant

in his employment in all respects as if he had not been dismissed, the tribunal shall reduce or further reduce the amount of the basic award to such extent as it considers just and equitable having regard to that finding.

(7B) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given), other than conduct taken into account by virtue of subsection (7), was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.”.

(5) Subsection (8) (minimum basic award of two weeks' pay) shall cease to have effect.

10. After section 76 of the 1978 Act there shall be inserted—

“Contribution in respect of compensation.

76A.—(1) If in proceedings before an industrial tribunal on a complaint against an employer under section 67 the employer claims—

Contribution in respect of compensation.

(a) that he was induced to dismiss the complainant by pressure which a trade union or other person exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, and

(b) that the pressure was exercised because the complainant was not a member of any trade union or of a particular trade union,

the employer may before the hearing of the complaint require the person who he claims exercised the pressure to be joined, or in Scotland sisted, as a party to the proceedings.

(2) Where any person has been joined, or in Scotland sisted, as a party to proceedings before an industrial tribunal by virtue of subsection (1), and the tribunal—

(a) makes an award of compensation under section 68(2) or 71(2)(a) or (b), but

(b) finds that the claim of the employer (as specified in subsection (1)) is well-founded, the tribunal may make an order requiring that person to pay to the employer a contribution in respect of that compensation.

(3) The amount of any contribution ordered to be paid under this section in respect of any compensation shall be such as the tribunal considers to be just

and equitable in the circumstances, and may constitute a complete indemnity.

Indemnity
in respect of
union
membership
clauses.

76B.—(1) If in proceedings before an industrial tribunal on a complaint against an employer under section 67 the employer claims that—

- (a) he and another person (in this section and in section 76C called “the contractor”) were parties to a contract requiring that work done by employees of his for the purposes of the contract should be done only by employees who were members of trade unions or of a particular trade union,
- (b) the complainant could not, consistently with that requirement, be employed on that work,
- (c) the employer had requested the contractor to consent to the employment of the complainant on that work notwithstanding that requirement,
- (d) the contractor had withheld his consent,
- (e) apart from the work to which that requirement (or any similar requirement under other contracts to which the employer was a party) related, the employer had no work available which was suitable for the complainant to do, and
- (f) the employer would not have dismissed the complainant but for that requirement,

then, subject to subsection (2), the employer may before the hearing of the complaint require the contractor to be joined, or in Scotland sisted, as a party to the proceedings.

(2) An employer may not by virtue of this section require more than one person to be joined, or in Scotland sisted, in proceedings in respect of any complaint.

(3) Where a person has been joined, or in Scotland sisted, as a party to proceedings before an industrial tribunal by virtue of subsection (1), and the tribunal—

- (a) makes an award of compensation under section 68(2) or 71(2)(a) or (b), but
- (b) finds that the claim of the employer (as specified in subsection (1)) is well-founded,

the tribunal shall order that person to pay to the employer an amount equal to the amount of that compensation.

Contribution in respect of indemnity under s. 76B.

76C.—(1) If in the proceedings referred to in section 76B the contractor claims that he was induced to withhold the consent referred to in subsection (1) of that section by pressure which a trade union or other person exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, the contractor may before the hearing of the complaint require the person who he claims exercised the pressure to be joined, or in Scotland sisted, as a party to the proceedings.

(2) Where any person has been joined, or in Scotland sisted, as a party to proceedings before an industrial tribunal by virtue of subsection (1), and the tribunal—

(a) makes an order under section 76B, but

(b) finds that the claim of the contractor (as specified in subsection (1)) is well-founded,

the tribunal may make an order requiring that person to pay to the contractor a contribution in respect of the contractor's liability to the employer by virtue of the order under section 76B.

(3) The amount of any contribution ordered to be paid under this section in respect of any such liability shall be such as the tribunal considers to be just and equitable in the circumstances, and may constitute a complete indemnity."

Maternity

11.—(1) In subsection (3) of section 33 of the 1978 Act (which specifies conditions to which the rights to maternity pay and to return to work are subject) for paragraph (c) (information to employer) there shall be substituted—

“(c) in the case of the right to maternity pay, she informs her employer, in writing if he so requests, at least twenty-one days before her absence begins or, if that is not reasonably practicable, as soon as reasonably practicable, that she will be (or is) absent from work wholly or partly because of pregnancy or confinement; and

(d) in the case of the right to return, she informs her employer in writing at least twenty-one days before her

absence begins or, if that is not reasonably practicable, as soon as reasonably practicable,—

(i) that she will be (or is) absent from work wholly or partly because of pregnancy or confinement,

(ii) that she intends to return to work with her employer, and

(iii) of the expected week of confinement or, if the confinement has occurred, the date of confinement.”

(2) After that subsection there shall be inserted—

“ (3A) Where not earlier than forty-nine days after the beginning of the expected week of confinement (or the date of confinement) notified under subsection (3)(d) an employee is requested in accordance with subsection (3B) by her employer or a successor of his to give him written confirmation that she intends to return to work, she shall not be entitled to the right to return unless she gives that confirmation within fourteen days of receiving the request or, if that is not reasonably practicable, as soon as reasonably practicable.

(3B) A request under subsection (3A) shall be made in writing and shall be accompanied by a written statement of the effect of that subsection.”

(3) In section 47 of the 1978 Act, in subsection (1) (employee to exercise her right to return to work by notifying the employer at least seven days in advance)—

(a) for the word “ notifying ” there shall be substituted the words “ giving written notice to ”, and

(b) for the word “ seven ” there shall be substituted the word “ twenty-one ” ;

and in subsections (6) and (7) for the word “ fourteen ” there shall be substituted the word “ twenty-eight ”.

12. After section 56 of the 1978 Act there shall be inserted—

“ Exclusion
of s.56 in
certain cases.

56A.—(1) Section 56 shall not apply in relation to an employee if—

(a) immediately before her absence began the number of employees employed by her employer, added to the number employed by any associated employer of his, did not exceed five, and

(b) it is not reasonably practicable for the employer (who may be the same employer or a successor of his) to permit her to return to work in accordance with section

Right to
return.

45(1), or for him or an associated employer to offer her employment under a contract of employment satisfying the conditions specified in subsection (3).

(2) Section 56 shall not apply in relation to an employee if—

- (a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit her to return to work in accordance with section 45(1), and
- (b) he or an associated employer offers her employment under a contract of employment satisfying the conditions specified in subsection (3), and
- (c) she accepts or unreasonably refuses that offer.

(3) The conditions referred to in subsections (1) and (2) are—

- (a) that the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
- (b) that the provisions of the contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work in accordance with section 45(1).

(4) Where on a complaint of unfair dismissal any question arises as to whether the operation of section 56 is excluded by subsection (1) or (2), it shall be for the employer to show that the provisions of that subsection were satisfied in relation to the complainant.”

13. After section 31 of the 1978 Act there shall be inserted—

“ Time off for ante-natal care.

31A.—(1) An employee who is pregnant and who has, on the advice of a registered medical practitioner, registered midwife or registered health visitor, made an appointment to attend at any place for the purpose of receiving ante-natal care shall, subject to the following provisions of this section, have the right not to

Time off for ante-natal care.

be unreasonably refused time off during her working hours to enable her to keep the appointment.

(2) Subject to subsection (3), an employer shall not be required by virtue of this section to permit an employee to take time off to keep an appointment unless, if he requests her to do so, she produces for his inspection—

- (a) a certificate from a registered medical practitioner, registered midwife or registered health visitor stating that the employee is pregnant, and
- (b) an appointment card or some other document showing that the appointment has been made.

(3) Subsection (2) shall not apply where the employee's appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with subsection (1).

(4) An employee who is permitted to take time off during her working hours in accordance with subsection (1) shall be entitled to be paid remuneration by her employer for the period of absence at the appropriate hourly rate.

(5) The appropriate hourly rate in relation to an employee shall be the amount of one week's pay divided by—

- (a) the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken ; or
- (b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken ; or
- (c) in a case falling within paragraph (b) but where the employee has not been employed for a sufficient period to enable the calculation to be made under that paragraph, a number which fairly represents the number of normal working hours in a week having

regard to such of the following considerations as are appropriate in the circumstances, that is to say,—

(i) the average number of normal working hours in a week which the employee could expect in accordance with the terms of her contract ;

(ii) the average number of such hours of other employees engaged in relevant comparable employment with the same employer.

(6) An employee may present a complaint to an industrial tribunal that her employer has unreasonably refused her time off as required by this section or that he has failed to pay her the whole or part of any amount to which she is entitled under subsection (4).

(7) An industrial tribunal shall not entertain a complaint under subsection (6) unless it is presented within the period of three months beginning with the day of the appointment concerned, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months.

(8) Where on a complaint under subsection (6) the tribunal finds the complaint well-founded it shall make a declaration to that effect ; and—

(a) if the complaint is that the employer has unreasonably refused the employee time off, the tribunal shall order the employer to pay to the employee an amount equal to the remuneration to which she would have been entitled under subsection (4) if the time off had not been refused ; and

(b) if the complaint is that the employer has failed to pay the employee the whole or part of any amount to which she is entitled under subsection (4), the tribunal shall order the employer to pay to the employee the amount which it finds due to her.

(9) Subject to subsection (10), a right to any amount under subsection (4) shall not affect any right of an employee in relation to remuneration under her contract of employment (in this section referred to as “contractual remuneration”).

(10) Any contractual remuneration paid to an employee in respect of a period of time off under this section shall go towards discharging any liability of the employer to pay remuneration under subsection (4) in respect of that period, and conversely any payment of remuneration under subsection (4) in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

1979 c. 36.

(11) Until the coming into operation of section 10 of the Nurses, Midwives and Health Visitors Act 1979, this section shall have effect as if for any reference to a registered midwife or registered health visitor there were substituted a reference to a certified midwife.”

Other rights of employees

Guarantee payments.

14.—(1) In section 15(2) of the 1978 Act (which restricts entitlement to five days in any one of the periods of three months beginning on 1st February, 1st May, 1st August and 1st November) for the words from “any” to the end there shall be substituted the words “any period of three months”.

(2) This section shall not have effect in relation to workless days (within the meaning of section 12 of that Act) falling before the commencement of this section except so far as they are relevant in determining entitlement to guarantee payments in respect of days falling after that time.

Action short of dismissal relating to trade union membership and activities.

15.—(1) In subsection (1)(c) of section 23 of the 1978 Act (right of employee not to have action taken by his employer to compel him to belong to a union which is not independent) the words “which is not independent” shall cease to have effect.

(2) After subsection (2) of that section there shall be inserted—

“(2A) Where it is the practice, in accordance with a union membership agreement, for the employees of any class of an employer to belong to a specified independent trade union, or to one of a number of specified independent trade unions, then—

(a) subject to subsection (2B), the right conferred on employees of that class by virtue of subsection (1)(b) in relation to a union’s activities shall extend to activities on the employer’s premises only if the union is a specified union; and

(b) employees of that class shall not have the right conferred by virtue of subsection (1)(c) except in respect of action which, if it amounted to dismissal from employment to which section 54

applies, would be regarded as unfair by reason of section 58(3A), (3B) or (3C).

(2B) A union membership agreement which takes effect after the commencement of section 7 of the Employment Act 1980 in relation to the employees of any class of an employer shall be disregarded for the purposes of the application of subsection (2A)(a) to employees of that class of the employer unless the agreement has, for the purposes of section 58(3C), been approved in relation to them in accordance with section 58A."

(3) Subsections (3), (4), (5)(a) and (6) of section 23 and subsection (1)(b) of section 25 of the 1978 Act shall cease to have effect.

(4) After section 26 of the 1978 Act there shall be inserted—

“Con-
tribution
in respect
of com-
pensation
on certain
complaints
under s. 24.

26A.—(1) Where—

(a) a complaint is presented to an industrial tribunal under section 24 on the ground that action has been taken against the complainant by his employer for the purpose of compelling him to be or become a member of a trade union, and

(b) the employer claims in proceedings before the tribunal that he was induced to take the action by pressure which a trade union or other person exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so,

the employer may before the hearing of the complaint require the person who he claims exercised the pressure to be joined, or in Scotland sisted, as a party to the proceedings.

(2) Where any person has been joined, or in Scotland sisted, as a party to proceedings before an industrial tribunal by virtue of subsection (1), and the tribunal—

(a) makes an award of compensation in favour of the complainant, but

(b) finds that the claim of the employer (as specified in subsection (1)) is well-founded, the tribunal may make an order requiring that person to pay to the employer a contribution in respect of that compensation.

(3) The amount of any contribution ordered to be paid under this section in respect of any compensation shall be such as the tribunal considers to be just

and equitable in the circumstances, and may constitute a complete indemnity.”

Restrictions on legal liability

Picketing.

16.—(1) For section 15 of the 1974 Act there shall be substituted—

“ Peaceful picketing.

15.—(1) It shall be lawful for a person in contemplation or furtherance of a trade dispute to attend—

(a) at or near his own place of work, or

(b) if he is an official of a trade union, at or near the place of work of a member of that union whom he is accompanying and whom he represents,

for the purpose only of peacefully obtaining or communicating information, or peacefully persuading any person to work or abstain from working.

(2) If a person works or normally works—

(a) otherwise than at any one place, or

(b) at a place the location of which is such that attendance there for a purpose mentioned in subsection (1) above is impracticable,

his place of work for the purposes of that subsection shall be any premises of his employer from which he works or from which his work is administered.

(3) In the case of a worker who is not in employment and whose last employment was terminated in connection with a trade dispute, subsection (1) above shall in relation to that dispute have effect as if any reference to his place of work were a reference to his former place of work.

(4) A person who is an official of a trade union by virtue only of having been elected or appointed to be a representative of some of the members of the union shall be regarded for the purposes of subsection (1) above as representing only those members; but otherwise an official of a trade union shall be regarded for those purposes as representing all its members.”

(2) Nothing in section 13 of the 1974 Act shall prevent an act done in the course of picketing from being actionable in tort unless it is done in the course of attendance declared lawful by section 15 of that Act.

(3) In subsection (2) above “tort” has as respects Scotland the same meaning as in the 1974 Act.

17.—(1) Nothing in section 13 of the 1974 Act shall prevent **Secondary** an act from being actionable in tort on a ground specified in **action.** subsection (1)(a) or (b) of that section in any case where—

- (a) the contract concerned is not a contract of employment, and
- (b) one of the facts relied upon for the purpose of establishing liability is that there has been secondary action which is not action satisfying the requirements of subsection (3), (4) or (5) below.

(2) For the purposes of this section there is secondary action in relation to a trade dispute when, and only when, a person—

- (a) induces another to break a contract of employment or interferes or induces another to interfere with its performance, or
- (b) threatens that a contract of employment under which he or another is employed will be broken or its performance interfered with, or that he will induce another to break a contract of employment or to interfere with its performance,

if the employer under the contract of employment is not a party to the trade dispute.

(3) Secondary action satisfies the requirements of this subsection if—

- (a) the purpose or principal purpose of the secondary action was directly to prevent or disrupt the supply during the dispute of goods or services between an employer who is a party to the dispute and the employer under the contract of employment to which the secondary action relates ; and
- (b) the secondary action (together with any corresponding action relating to other contracts of employment with the same employer) was likely to achieve that purpose.

(4) Secondary action satisfies the requirements of this subsection if—

- (a) the purpose or principal purpose of the secondary action was directly to prevent or disrupt the supply during the dispute of goods or services between any person and an associated employer of an employer who is a party to the dispute ; and
- (b) the goods or services are in substitution for goods or services which but for the dispute would have fallen to be supplied to or by the employer who is a party to the dispute ; and

- (c) the employer under the contract of employment to which the secondary action relates is either the said associated employer or the other party to the supply referred to in paragraph (a) above ; and
- (d) the secondary action (together with any corresponding action relating to other contracts of employment with the same employer) was likely to achieve the purpose referred to in paragraph (a) above.

(5) Secondary action satisfies the requirements of this subsection if it is done in the course of attendance declared lawful by section 15 of the 1974 Act—

- (a) by a worker employed (or, in the case of a worker not in employment, last employed) by a party to the dispute, or
 - (b) by a trade union official whose attendance is lawful by virtue of subsection (1)(b) of that section.
- (6) In subsections (3)(a) and (4)(a) above—

- (a) references to the supply of goods or services between two persons are references to the supply of goods or services by one to the other in pursuance of a contract between them subsisting at the time of the secondary action, and
- (b) references to directly preventing or disrupting the supply are references to preventing or disrupting it otherwise than by means of preventing or disrupting the supply of goods or services by or to any other person.

(7) Expressions used in this section and in the 1974 Act have the same meanings in this section as in that Act ; and for the purposes of this section an employer who is a member of an employers' association which is a party to a trade dispute shall by virtue of his membership be regarded as a party to the dispute if he is represented in the dispute by the association, but not otherwise.

(8) Subsection (3) of section 13 of the 1974 Act shall cease to have effect.

Acts to
compel trade
union
membership.

18.—(1) Nothing in section 13 of the 1974 Act shall prevent an act to which this section applies from being actionable in tort on a ground specified in subsection (1)(a) or (b) of section 13 in any case where—

- (a) the contract concerned is a contract of employment, or
- (b) the contract concerned is not a contract of employment but one of the facts relied upon for the purpose of establishing liability is that any person has—
 - (i) induced another to break a contract of employment or interfered or induced another to interfere with its performance, or

(ii) threatened that a contract of employment under which he or another is employed will be broken or its performance interfered with, or that he will induce another to break a contract of employment or to interfere with its performance.

(2) This section applies to an act done for the purpose of compelling workers to become members of a particular trade union or of one of two or more particular trade unions, if none of those workers works for the same employer or at the same place as the employee working under the contract of employment referred to in subsection (1) above.

(3) Expressions used in this section and in the 1974 Act have the same meanings in this section as in that Act.

Miscellaneous and general

19. The following enactments shall cease to have effect, that is to say—

Enactments
ceasing to
have effect.

- (a) section 1A of the 1974 Act (charter on freedom of the press);
- (b) sections 11 to 16 of the 1975 Act (procedure for dealing with issues relating to recognition of trade unions); and
- (c) section 98 of and Schedule 11 to the 1975 Act (extension of terms and conditions of employment) and the Road Haulage Wages Act 1938 (fixing of statutory remuneration).

20.—(1) In this Act—

Interpretation,
minor and
consequential
amendments
and repeals.
1974 c. 52.
1975 c. 71.
1978 c. 44.

- “the 1974 Act” means the Trade Union and Labour Relations Act 1974;
- “the 1975 Act” means the Employment Protection Act 1975;
- “the 1978 Act” means the Employment Protection (Consolidation) Act 1978.

(2) Schedule 1 to this Act (which makes minor and consequential amendments) shall have effect.

(3) The enactments mentioned in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

21.—(1) This Act may be cited as the Employment Act 1980.

Short title
commence-
ment and
extent.

(2) Sections 2, 4 to 19 and 20(2) and (3) of this Act, and Schedules 1 and 2, shall not come into operation until such day as the Secretary of State may appoint by order made by statutory instrument, and different days may be so appointed for different purposes.

(3) An order under this section may contain such transitional and supplementary provisions as appear to the Secretary of State to be necessary or expedient.

(4) Paragraph 7 of Schedule 1 to this Act shall extend to Northern Ireland, but otherwise this Act shall not extend there.

SCHEDULES

SCHEDULE 1

Section 20.

MINOR AND CONSEQUENTIAL AMENDMENTS

The Post Office Act 1969

1. In section 81(1) of the Post Office Act 1969 (exclusion of road haulage workers employed by Post Office from the workers in relation to whom wages councils may operate) the words from the beginning to "the Road Haulage Wages Act 1938 ; and " shall cease to have effect.

The Trade Union and Labour Relations Act 1974

2. In Schedule 1 to the 1974 Act, paragraph 32(2)(a) shall cease to have effect.

3. In Schedule 2 to the 1974 Act, in paragraph 32(1) (periodical re-examination of members' superannuation schemes) at the beginning there shall be inserted the words "Subject to paragraph 33A below" and after paragraph 33 there shall be inserted—

"33A. The Certification Officer, on the application of a trade union or employers' association, may exempt any members' superannuation scheme which it maintains from the requirements of paragraph 32 above if he is satisfied that, by reason of the small number of members to which the scheme is applicable or for any other special reasons, it is unnecessary for the scheme to be examined in accordance with those requirements.

33B. The Certification Officer may at any time revoke any exemption granted under paragraph 33A above if it appears to him that the circumstances by reason of which the exemption was granted have ceased to exist ; and for the purposes of paragraph 32 above the relevant date next following the revocation shall be such date as the Certification Officer may direct."

The Employment Protection Act 1975

4. In section 6 of the 1975 Act, after subsection (10) there shall be inserted—

"(10A) If the Service is of the opinion that the provisions of a Code of Practice to be issued under this section will supersede the whole or part of a Code previously issued by it under this section or by the Secretary of State under section 3 of the Employment Act 1980, it shall in the new Code state that on the day on which the new Code comes into effect in pursuance of an order under subsection (5) or (8) above the old Code or a specified part of it shall cease to have effect (subject to any transitional provisions or savings made by the order)."

5. In section 121(1) of the 1975 Act, for the words "98 to" there shall be substituted the words "99 to".

6. In section 126(1) of the 1975 Act, in the definition of "recognition", for the words from "has" to "above" there shall

SCH. 1 be substituted the words “in relation to a trade union, means the recognition of the union by an employer, or two or more associated employers, to any extent, for the purpose of collective bargaining”.

7. In section 127(1) of the 1975 Act, after paragraph (f) there shall be inserted—

“ (ff) the Employment Act 1980 ; and ”.

The Employment Protection (Consolidation) Act 1978

8. In section 15(5) of the 1978 Act, for the words “relevant periods” there shall be substituted the words “length of the period”.

9. In section 32(1) of the 1978 Act, for “31” there shall be substituted “31A”.

10. In section 55(5) of the 1978 Act, after “64(1)(a)” there shall be inserted “64A”.

11. In section 56 of the 1978 Act, after the word “then” there shall be inserted the words “subject to section 56A”.

12. In section 58(5) of the 1978 Act, for the words “subsection (1) or (3)” there shall be substituted the words “subsection (1), (3A), (3B) or (3C)”.

13. In section 66 of the 1978 Act (revocation of exclusion orders under section 65)—

(a) subsection (1) shall cease to have effect ; and

(b) in subsection (2) for the words from “on” to “satisfied” there shall be substituted the words “at any time when an order under section 65 is in force in respect of a dismissal procedures agreement the Secretary of State is satisfied, whether on an application by any of the parties to the agreement or otherwise,”.

14. In section 71(3)(a) of the 1978 Act, for the words “section 58(1) or (3)” there shall be substituted the words “section 58(1), (3A), (3B) or (3C)”.

15. In section 121(2)(c) of the 1978 Act, for the words “or 31(3)” there shall be substituted the words “31(3) or 31A(4)”.

16. In section 128(4) of the 1978 Act, after the word “references” there shall be inserted the word “applications”.

17. In section 133(1) of the 1978 Act, in paragraph (a) after “31” there shall be inserted “31A”, and after paragraph (c) there shall be inserted—

“ or

(d) arising out of a contravention, or alleged contravention, of section 4 of the Employment Act 1980 ”.

18. In section 134 of the 1978 Act, for subsection (3) there shall be substituted—

“ (3) Where—

(a) a person claims that action has been taken in respect of which a complaint could be presented by him under section 67, and

(b) before any complaint relating to that action has been presented, a request is made to a conciliation officer (whether by that person or by the employer) to make his services available to them, SCH. 1

the conciliation officer shall act in accordance with subsections (1) and (2) above as if a complaint had been presented."

19. In section 136(5) of the 1978 Act, after the words "subsection (1)" there shall be inserted the words "or under section 2, 4 or 5 of the Employment Act 1980".

20. In section 140 of the 1978 Act (restrictions on contracting out of 1978 Act) subsection (2)(b) shall cease to have effect.

21. In section 149 of the 1978 Act—

(a) in subsection (1)(c), after "64(1)" there shall be inserted "64A(1)";

(b) in subsection (2), after "58" there shall be inserted "58A".

22. In section 154 of the 1978 Act (orders, rules and regulations)—

(a) in subsection (1) the words "or an order under section 65 or 66" shall cease to have effect; and

(b) in subsection (4) for the words from "section 96" to the end there shall be substituted the words "section 65, 66 or 96".

23. In the subsection set out in paragraph 2(1) of Schedule 2 to the 1978 Act, for the words from "the employer can" to the end there shall be substituted the words "in the circumstances (including the size and administrative resources of the employer's undertaking) the employer would have been acting reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee if she had not been absent from work; and that question shall be determined in accordance with equity and the substantial merits of the case".

24. In paragraphs 2(4) and 6(3) of Schedule 2 to the 1978 Act, for "58(3)" there shall be substituted "58(3) to (3E), 58A".

25. In paragraph 5 of Schedule 3 to the 1978 Act, for the words "or 31" there shall be substituted the words "31 or 31A".

26. In paragraph 1(2)(a) of Schedule 9 to the 1978 Act, after the word "question" there shall be inserted the word "application".

27. In paragraph 7 of Schedule 9 to the 1978 Act, for sub-paragraph (2) there shall be substituted—

"(2) Any order for the payment of any sum made by an industrial tribunal in Scotland (or any copy of such an order certified by the Secretary of the Tribunals) may be enforced in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the Sheriff Court of any Sheriffdom in Scotland."

SCH. 1 28. In paragraph 18 of Schedule 11 to the 1978 Act, after sub-paragraph (a) there shall be inserted—

“(aa) with respect to the manner in which an application to the Appeal Tribunal under section 5 of the Employment Act 1980 may be made ;”

and after sub-paragraph (c) there shall be inserted—

“(d) for the registration and proof of any award made on an application to the Appeal Tribunal under section 5 of the Employment Act 1980.”.

29. After paragraph 21 of Schedule 11 to the 1978 Act there shall be inserted—

“21A.—(1) Any sum payable in England and Wales in pursuance of an award of the Appeal Tribunal under section 5 of the Employment Act 1980 which has been registered in accordance with the rules shall, if a county court so orders, be recoverable by execution issued from the county court or otherwise as if it were payable under an order of that court.

(2) Any order by the Appeal Tribunal for the payment in Scotland of any sum in pursuance of such an award (or any copy of such an order certified by the Secretary of the Tribunals) may be enforced in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the Sheriff Court of any Sheriffdom in Scotland.”

30. In paragraph 23(1) of Schedule 11 to the 1978 Act, for the words from “section 14” to “those provisions” there shall be substituted the words “sections 31 and 32 of the Powers of Criminal Courts Act 1973 (powers of Crown Court in relation to fines and forfeited recognisances) shall have effect as if”.

31. In paragraph 10 of Schedule 13 to the 1978 Act, for the words “section 47” there shall be substituted the words “section 45(1) or in pursuance of an offer made in the circumstances described in section 56A(2)”.

32. In paragraph 11 of Schedule 13 to the 1978 Act, after “64(1)(a)” there shall be inserted “64A(1)”.

33. In paragraph 7(1) of Schedule 14 to the 1978 Act, after paragraph (c) there shall be inserted—

“(cc) where the calculation is for the purposes of section 31A, the day of the appointment concerned ;”.

SCHEDULE 2
REPEALS

Section 20.

Chapter	Short title	Extent of repeal
1 & 2 Geo. 6. c. 44.	The Road Haulage Wages Act 1938.	The whole Act.
12, 13 & 14 Geo. 6. c. 7.	The Wages Councils Act 1948.	In section 1(1)(c), the words from " Parts II and III " to the end, and Schedule 1.
1968 c. 73.	The Transport Act 1968.	Section 69(4)(d). So much of Schedules 10 and 11 as amends the Road Haulage Wages Act 1938.
1969 c. 35.	The Transport (London) Act 1969.	In Schedule 3, paragraph 1(2)(a).
1969 c. 48.	The Post Office Act 1969.	In section 81, in subsection (1), the words from the beginning to " the Road Haulage Wages Act 1938; and ", and subsection (2).
1972 c. 68.	The European Communities Act 1972.	In paragraph 9(4) of Schedule 4, the words from the beginning to " 1938 " and the words from " after " to " Part VI; and ".
1974 c. 52.	The Trade Union and Labour Relations Act 1974.	Section 1A. Section 13(3). In Schedule 1, in paragraph 32(1) the words from " Except " to " below ", and paragraph 32(2). In Schedule 3, paragraph 4. In Schedule 2, paragraph 4.
1975 c. 18.	The Social Security (Consequential Provisions) Act 1975.	
1975 c. 60.	The Social Security Pensions Act 1975.	Section 31(9).
1975 c. 71.	The Employment Protection Act 1975.	Sections 11 to 16. In section 17(2), paragraph (b) and the word " or " immediately preceding it. In section 21(5), paragraph (b) and the word " or " immediately preceding it. Section 98. Section 106(1). In section 118(2)(d), the words " 16(7)(b) or (c) or ", the words from " or paragraph " to " this Act ", the words " 16 or " and the words from " or, as " to the end. In section 121(1), the reference to section 16. In section 127(1)(g), the words " in paragraphs (a) to (f) ". Schedule 11. In Part IV of Schedule 16, paragraphs 4 and 17. In Schedule 17, paragraph 13.

SCH. 2

Chapter	Short title	Extent of repeal
1976 c. 3.	The Road Traffic (Drivers' Ages and Hours of Work) Act 1976.	In section 2(3), the words from "the following" to "1938" and the word "and".
1976 c. 7.	The Trade Union and Labour Relations (Amendment) Act 1976.	Section 2.
1976 c. 79.	The Dock Work Regulation Act 1976.	In section 15(1), in the definition of "recognised", the words from "and a union" to the end.
1977 c. 3.	The Aircraft and Shipbuilding Industries Act 1977.	In section 56(1), in the definition of "relevant trade union", the words from "or as" to the end.
1978 c. 36.	The House of Commons (Administration) Act 1978.	In Schedule 1, in paragraph 5(6), the words "Part IV of".
1978 c. 44.	The Employment Protection (Consolidation) Act 1978.	In section 23, in subsection (1)(c), the words "which is not independent", and subsections (3) to (6). In section 25(1), paragraph (b) and the word "and" immediately preceding it. In section 32(1)(a), the words "not only" and the words from "but" to "1975". In section 33(3), the word "and" at the end of paragraph (b). Section 58(4). Section 66(1). Section 73(1)(c) and (8). Section 97. In section 135(1), the words from "for the purpose" to the end. Section 140(2)(b). In section 154(1), the words "or an order under section 65 or 66". In Schedule 6, in paragraph 12(2)(b), sub-paragraph (ii) and the word "or" immediately preceding it.
1979 c. 12.	The Wages Councils Act 1979.	In Schedule 6, paragraph 1.

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