



# Trade Union and Labour Relations (Consolidation) Act 1992

## 1992 CHAPTER 52

### PART III

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

##### *Access to employment*

#### **137 Refusal of employment on grounds related to union membership.**

- (1) It is unlawful to refuse a person employment—
  - (a) because he is, or is not, a member of a trade union, or
  - (b) because he is unwilling to accept a requirement—
    - (i) to take steps to become or cease to be, or to remain or not to become, a member of a trade union, or
    - (ii) to make payments or suffer deductions in the event of his not being a member of a trade union.
- (2) A person who is thus unlawfully refused employment has a right of complaint to an industrial tribunal.
- (3) Where an advertisement is published which indicates, or might reasonably be understood as indicating—
  - (a) that employment to which the advertisement relates is open only to a person who is, or is not, a member of a trade union, or
  - (b) that any such requirement as is mentioned in subsection (1)(b) will be imposed in relation to employment to which the advertisement relates,a person who does not satisfy that condition or, as the case may be, is unwilling to accept that requirement, and who seeks and is refused employment to which the advertisement relates, shall be conclusively presumed to have been refused employment for that reason.

*Status: Point in time view as at 30/08/1993. This version of this part contains provisions that are not valid for this point in time.*

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- (4) Where there is an arrangement or practice under which employment is offered only to persons put forward or approved by a trade union, and the trade union puts forward or approves only persons who are members of the union, a person who is not a member of the union and who is refused employment in pursuance of the arrangement or practice shall be taken to have been refused employment because he is not a member of the trade union.
- (5) A person shall be taken to be refused employment if he seeks employment of any description with a person and that person—
- (a) refuses or deliberately omits to entertain and process his application or enquiry, or
  - (b) causes him to withdraw or cease to pursue his application or enquiry, or
  - (c) refuses or deliberately omits to offer him employment of that description, or
  - (d) makes him an offer of such employment the terms of which are such as no reasonable employer who wished to fill the post would offer and which is not accepted, or
  - (e) makes him an offer of such employment but withdraws it or causes him not to accept it.
- (6) Where a person is offered employment on terms which include a requirement that he is, or is not, a member of a trade union, or any such requirement as is mentioned in subsection (1)(b), and he does not accept the offer because he does not satisfy or, as the case may be, is unwilling to accept that requirement, he shall be treated as having been refused employment for that reason.
- (7) Where a person may not be considered for appointment or election to an office in a trade union unless he is a member of the union, or of a particular branch or section of the union or of one of a number of particular branches or sections of the union, nothing in this section applies to anything done for the purpose of securing compliance with that condition although as holder of the office he would be employed by the union.
- For this purpose an “office” means any position—
- (a) by virtue of which the holder is an official of the union, or
  - (b) to which Chapter IV of Part I applies (duty to hold elections).
- (8) The provisions of this section apply in relation to an employment agency acting, or purporting to act, on behalf of an employer as in relation to an employer.

### **138 Refusal of service of employment agency on grounds related to union membership.**

- (1) It is unlawful for an employment agency to refuse a person any of its services—
- (a) because he is, or is not, a member of a trade union, or
  - (b) because he is unwilling to accept a requirement to take steps to become or cease to be, or to remain or not to become, a member of a trade union.
- (2) A person who is thus unlawfully refused any service of an employment agency has a right of complaint to an industrial tribunal.
- (3) Where an advertisement is published which indicates, or might reasonably be understood as indicating—
- (a) that any service of an employment agency is available only to a person who is, or is not, a member of a trade union, or

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- (b) that any such requirement as is mentioned in subsection (1)(b) will be imposed in relation to a service to which the advertisement relates,
- a person who does not satisfy that condition or, as the case may be, is unwilling to accept that requirement, and who seeks to avail himself of and is refused that service, shall be conclusively presumed to have been refused it for that reason.
- (4) A person shall be taken to be refused a service if he seeks to avail himself of it and the agency—
- (a) refuses or deliberately omits to make the service available to him, or
  - (b) causes him not to avail himself of the service or to cease to avail himself of it, or
  - (c) does not provide the same service, on the same terms, as is provided to others.
- (5) Where a person is offered a service on terms which include a requirement that he is, or is not, a member of a trade union, or any such requirement as is mentioned in subsection (1)(b), and he does not accept the offer because he does not satisfy or, as the case may be, is unwilling to accept that requirement, he shall be treated as having been refused the service for that reason.

### **139 Time limit for proceedings.**

- (1) An industrial tribunal shall not consider a complaint under section 137 or 138 unless it is presented to the tribunal—
- (a) before the end of the period of three months beginning with the date of the conduct to which the complaint relates, 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 the tribunal considers reasonable.
- (2) The date of the conduct to which a complaint under section 137 relates shall be taken to be—
- (a) in the case of an actual refusal, the date of the refusal;
  - (b) in the case of a deliberate omission—
    - (i) to entertain and process the complainant's application or enquiry, or
    - (ii) to offer employment,the end of the period within which it was reasonable to expect the employer to act;
  - (c) in the case of conduct causing the complainant to withdraw or cease to pursue his application or enquiry, the date of that conduct;
  - (d) in a case where an offer was made but withdrawn, the date when it was withdrawn;
  - (e) in any other case where an offer was made but not accepted, the date on which it was made.
- (3) The date of the conduct to which a complaint under section 138 relates shall be taken to be—
- (a) in the case of an actual refusal, the date of the refusal;
  - (b) in the case of a deliberate omission to make a service available, the end of the period within which it was reasonable to expect the employment agency to act;
  - (c) in the case of conduct causing the complainant not to avail himself of a service or to cease to avail himself of it, the date of that conduct;

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- (d) in the case of failure to provide the same service, on the same terms, as is provided to others, the date or last date on which the service in fact provided was provided.

#### 140 Remedies.

- (1) Where the industrial tribunal finds that a complaint under section 137 or 138 is well-founded, it shall make a declaration to that effect and may make such of the following as it considers just and equitable—
- (a) an order requiring the respondent to pay compensation to the complainant of such amount as the tribunal may determine;
  - (b) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any conduct to which the complaint relates.
- (2) Compensation shall be assessed on the same basis as damages for breach of statutory duty and may include compensation for injury to feelings.
- (3) If the respondent fails without reasonable justification to comply with a recommendation to take action, the tribunal may increase its award of compensation or, if it has not made such an award, make one.
- (4) The total amount of compensation shall not exceed the limit for the time being imposed by section 75 of the <sup>M1</sup>Employment Protection (Consolidation) Act 1978 (limit on compensation for unfair dismissal).

#### Marginal Citations

M1 1978 c. 44.

#### 141 Complaint against employer and employment agency.

- (1) Where a person has a right of complaint against a prospective employer and against an employment agency arising out of the same facts, he may present a complaint against either of them or against them jointly.
- (2) If a complaint is brought against one only, he or the complainant may request the tribunal to join or sist the other as a party to the proceedings.

The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made its decision as to whether the complaint is well-founded.

- (3) Where a complaint is brought against an employer and an employment agency jointly, or where it is brought against one and the other is joined or sisted as a party to the proceedings, and the tribunal—
- (a) finds that the complaint is well-founded as against the employer and the agency, and
  - (b) makes an award of compensation,
- it may order that the compensation shall be paid by the one or the other, or partly by one and partly by the other, as the tribunal may consider just and equitable in the circumstances.

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## **142 Awards against third parties.**

- (1) If in proceedings on a complaint under section 137 or 138 either the complainant or the respondent claims that the respondent was induced to act in the manner complained of 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 complainant or the respondent may request the industrial tribunal to direct that the person who he claims exercised the pressure be joined or sisted as a party to the proceedings.
- (2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made its decision as to whether the complaint is well-founded.
- (3) Where a person has been so joined or sisted as a party to the proceedings and the tribunal—
  - (a) finds that the complaint is well-founded,
  - (b) makes an award of compensation, and
  - (c) also finds that the claim in subsection (1) above is well-founded,it may order that the compensation shall be paid by the person joined instead of by the respondent, or partly by that person and partly by the respondent, as the tribunal may consider just and equitable in the circumstances.
- (4) Where by virtue of section 141 (complaint against employer and employment agency) there is more than one respondent, the above provisions apply to either or both of them.

## **143 Interpretation and other supplementary provisions.**

- (1) In sections 137 to 143—

“advertisement” includes every form of advertisement or notice, whether to the public or not, and references to publishing an advertisement shall be construed accordingly;

“employment” means employment under a contract of employment, and related expressions shall be construed accordingly; and

“employment agency” means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers, but subject to subsection (2) below.
- (2) For the purposes of sections 137 to 143 as they apply to employment agencies—
  - (a) services other than those mentioned in the definition of “employment agency” above shall be disregarded, and
  - (b) a trade union shall not be regarded as an employment agency by reason of services provided by it only for, or in relation to, its members.
- (3) References in sections 137 to 143 to being or not being a member of a trade union are to being or not being a member of any trade union, of a particular trade union or of one of a number of particular trade unions.

Any such reference includes a reference to being or not being a member of a particular branch or section of a trade union or of one of a number of particular branches or sections of a trade union.

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- (4) The remedy of a person for conduct which is unlawful by virtue of section 137 or 138 is by way of a complaint to an industrial tribunal in accordance with this Part, and not otherwise.

No other legal liability arises by reason that conduct is unlawful by virtue of either of those sections.

*Contracts for supply of goods or services*

**144 Union membership requirement in contract for goods or services void.**

A term or condition of a contract for the supply of goods or services is void in so far as it purports to require that the whole, or some part, of the work done for the purposes of the contract is done only by persons who are, or are not, members of trade unions or of a particular trade union.

**145 Refusal to deal on union membership grounds prohibited.**

- (1) A person shall not refuse to deal with a supplier or prospective supplier of goods or services on union membership grounds. “Refuse to deal” and “union membership grounds” shall be construed as follows.
- (2) A person refuses to deal with a person if, where he maintains (in whatever form) a list of approved suppliers of goods or services, or of persons from whom tenders for the supply of goods or services may be invited, he fails to include the name of that person in that list.

He does so on union membership grounds if the ground, or one of the grounds, for failing to include his name is that if that person were to enter into a contract with him for the supply of goods or services, work to be done for the purposes of the contract would, or would be likely to, be done by persons who were, or who were not, members of trade unions or of a particular trade union.

- (3) A person refuses to deal with a person if, in relation to a proposed contract for the supply of goods or services—
- (a) he excludes that person from the group of persons from whom tenders for the supply of the goods or services are invited, or
  - (b) he fails to permit that person to submit such a tender, or
  - (c) he otherwise determines not to enter into a contract with that person for the supply of the goods or services.

He does so on union membership grounds if the ground, or one of the grounds, on which he does so is that if the proposed contract were entered into with that person, work to be done for the purposes of the contract would, or would be likely to, be done by persons who were, or who were not, members of trade unions or of a particular trade union.

- (4) A person refuses to deal with a person if he terminates a contract with him for the supply of goods or services.

He does so on union membership grounds if the ground, or one of the grounds, on which he does so is that work done, or to be done, for the purposes of the contract has been, or is likely to be, done by persons who are or are not members of trade unions or of a particular trade union.

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- (5) The obligation to comply with this section is a duty owed to the person with whom there is a refusal to deal and to any other person who may be adversely affected by its contravention; and a breach of the duty is actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty.

VALID FROM 01/10/2004

## *F<sup>1</sup>* Inducements

### Textual Amendments

- F1** Ss. 145A-145F and preceding cross-heading inserted (1.10.2004) by [Employment Relations Act 2004 \(c. 24\)](#), [ss. 29, 59\(2\)-\(4\)](#); S.I. 2004/2566, [art. 3\(a\)](#) (with arts. 4-8)

### **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—
- not to be or seek to become a member of an independent trade union,
  - not to take part, at an appropriate time, in the activities of an independent trade union,
  - not to make use, at an appropriate time, of trade union services, or
  - 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 time outside the worker’s working hours, or
  - 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.
- (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)—
- “trade union services” means services made available to the worker by an independent trade union by virtue of his membership of the union, and
  - 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.

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#### **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.

#### **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—



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- (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.
- (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

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(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.]

#### *Action short of dismissal*

### **146 Action short of dismissal on grounds related to union membership or activities.**

(1) An employee has the right not to have action short of dismissal taken against him as an individual by his employer for the purpose of—

- (a) preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so,
- (b) preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so, or
- (c) compelling him 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)(b) “an appropriate time” means—

- (a) a time outside the employee’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;

and for this purpose “working hours”, in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

(3) An employee also has the right not to have action short of dismissal taken against him for the purpose of enforcing a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his not being a member of any trade union or of a particular trade union or of one of a number of particular trade unions, he must make one or more payments.

(4) For the purposes of subsection (3) any deduction made by an employer from the remuneration payable to an employee in respect of his employment shall, if it is attributable to his not being a member of any trade union or of a particular trade union or of one of a number of particular trade unions, be treated as action short of dismissal taken against him for the purpose of enforcing a requirement of a kind mentioned in that subsection.

(5) An employee may present a complaint to an industrial tribunal on the ground that action has been taken against him by his employer in contravention of this section.

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

C1 S. 146 modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, Sch.

**147 Time limit for proceedings.**

An industrial tribunal shall not consider a complaint under section 146 unless it is presented—

- (a) before the end of the period of three months beginning with the date of the action to which the complaint relates or, where that action is part of a series of similar actions, the last of those actions, 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.

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

C2 S. 147 modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, Sch.

**148 Consideration of complaint.**

- (1) On a complaint under section 146 it shall be for the employer to show the purpose for which action was taken against the complainant.
- (2) In determining any question whether action was taken by the employer or the purpose for which it was taken, 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.
- [<sup>F2</sup>(3) In determining what was the purpose for which action was taken by the employer against the complainant in a case where—
  - (a) there is evidence that the employer’s purpose was to further a change in his relationship with all or any class of his employees, and
  - (b) there is also evidence that his purpose was one falling within section 146,the tribunal shall regard the purpose mentioned in paragraph (a) (and not the purpose mentioned in paragraph (b)) as the purpose for which the employer took the action, unless it considers that the action was such as no reasonable employer would take having regard to the purpose mentioned in paragraph (a).
- (4) Where the action which the tribunal determines to have been the action taken against the complainant was action taken in consequence of previous action by the employer paragraph (a) of subsection (3) is satisfied if the purpose mentioned in that paragraph was the purpose of the previous action.
- (5) In subsection (3) “class”, in relation to an employer and his employees, means those employed at a particular place of work, those employees of a particular grade, category or description or those of a particular grade, category or description employed at a particular place of work.]

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### Textual Amendments

**F2** S. 148(3)-(5) inserted (30.8.1993) by 1993 c. 19, s.13; S.I. 1993/1908, art. 2(1), Sch.1

## 149 Remedies.

- (1) Where the industrial tribunal finds that a complaint under section 146 is well-founded, it shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the complainant in respect of the action complained of.
- (2) The amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to the infringement complained of and to any loss sustained by the complainant which is attributable to the action which infringed his right.
- (3) The loss shall be taken to include—
  - (a) any expenses reasonably incurred by the complainant in consequence of the action complained of, and
  - (b) loss of any benefit which he might reasonably be expected to have had but for that action.
- (4) In ascertaining the loss, the 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 Scotland.
- (5) In determining the amount of compensation to be awarded no account shall be taken of any pressure which was exercised on the employer 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.
- (6) Where the tribunal finds that the action complained of was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

## 150 Awards against third parties.

- (1) If in proceedings on a complaint under section 146—
  - (a) the complaint is made 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 any trade union or of a particular trade union or of one of a number of particular trade unions, and
  - (b) either the complainant or the employer claims in proceedings before the tribunal that the employer was induced to take the action complained of 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 complainant or the employer may request the tribunal to direct that the person who he claims exercised the pressure be joined or sisted as a party to the proceedings.

*Status:* Point in time view as at 30/08/1993. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* Trade Union and Labour Relations (Consolidation) Act 1992, Part III is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made a declaration that the complaint is well-founded.
- (3) Where a person has been so joined or sisted as a party to proceedings and the tribunal—
  - (a) makes an award of compensation, and
  - (b) finds that the claim mentioned in subsection (1)(b) is well-founded,it may order that the compensation shall be paid by the person joined instead of by the employer, or partly by that person and partly by the employer, as the tribunal may consider just and equitable in the circumstances.

## 151 Interpretation and other supplementary provisions.

- (1) References in sections 146 to 150 to being, becoming or ceasing to remain a member of a trade union include references to being, becoming or ceasing to remain a member of a particular branch or section of that union and to being, becoming or ceasing to remain a member of one of a number of particular branches or sections of that union; and references to taking part in the activities of a trade union shall be similarly construed.
- (2) The remedy of an employee for infringement of the right conferred on him by section 146 is by way of a complaint to an industrial tribunal in accordance with this Part, and not otherwise.

### *Dismissal*

## 152 Dismissal on grounds related to union membership or activities.

- (1) For purposes of Part V of the <sup>M2</sup>Employment Protection (Consolidation) Act 1978 (unfair dismissal) the dismissal of an employee shall be regarded as unfair if the reason for it (or, if more than one, the principal reason) was that the employee—
  - (a) was, or proposed to become, a member of an independent trade union, or
  - (b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time, or
  - (c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused, or proposed to refuse, to become or remain a member.
- (2) In subsection (1)(b) “an appropriate time” means—
  - (a) a time outside the employee’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;and for this purpose “working hours”, in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.
- (3) Where the reason, or one of the reasons, for the dismissal was—
  - (a) the employee’s refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his contract of employment or in writing) that, in the event of his not being a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, he must make one or more payments, or

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- (b) his objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his contract of employment or in writing) under which, in the event mentioned in paragraph (a), his employer is entitled to deduct one or more sums from the remuneration payable to him in respect of his employment,

the reason shall be treated as falling within subsection (1)(c).

- (4) References in this section to being, becoming or ceasing to remain a member of a trade union include references to being, becoming or ceasing to remain a member of a particular branch or section of that union or of one of a number of particular branches or sections of that trade union; and references to taking part in the activities of a trade union shall be similarly construed.

#### Marginal Citations

M2 1978 c. 44.

### 153 Selection for redundancy on grounds related to union membership or activities.

Where the reason or principal reason for the dismissal of an employee was that he was redundant, but it is shown—

- (a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and  
 (b) that the reason (or, if more than one, the principal reason) why he was selected for dismissal was one of those specified in section 152(1),

the dismissal shall be regarded as unfair for the purposes of Part V of the <sup>M3</sup>Employment Protection (Consolidation) Act 1978 (unfair dismissal).

#### Marginal Citations

M3 1978 c. 44.

### 154 Exclusion of requirement as to qualifying period, &c.

[<sup>F3</sup>(1)] [<sup>F4</sup>Section] 64 <sup>F5</sup>. . . of the Employment Protection (Consolidation) Act 1978 (qualifying period and upper age limit for unfair dismissal protection) [<sup>F4</sup>does] not apply to the dismissal of an employee if it is shown that the reason or principal reason for the dismissal [<sup>F6</sup>or, in a redundancy case, for selecting the employee for dismissal, was an inadmissible reason.]

[<sup>F3</sup>(2) For the purposes of this section—

“inadmissible”, in relation to a reason, means that it is one of those specified in section 152(1); and

“a redundancy case” means a case where the reason or principal reason for the dismissal was that the employee was redundant but the equal application of the circumstances to non-dismissed employees required by section 153(a) is also shown.]

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#### Textual Amendments

- F3** S. 154 renumbered as s. 154(1) and s. 154(2) inserted (30.8.1993) by virtue of 1993 c. 19, s. 49(1), **Sch. 7 para. 1(b)**; S.I. 1993/1908, art. 2(1), **Sch.1**
- F4** Words in s. 154 substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.67**; S.I. 1993/1908, art. 2(1), **Sch.1**
- F5** Words in s. 154 repealed (30.8.1993) by 1993 c. 19, ss. 49(2), 51, Sch. 8 para. 67, **Sch.10**; S.I. 1993/1908, art. 2(1), **Sch.1**
- F6** Words in s. 154 substituted (30.8.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para. 1(a)**; S.I. 1993/1908, art. 2(1), **Sch.1**

### 155 Matters to be disregarded in assessing contributory fault.

- (1) Where an industrial tribunal makes an award of compensation for unfair dismissal in a case where the dismissal is unfair by virtue of section 152 or 153, the tribunal shall disregard, in considering whether it would be just and equitable to reduce, or further reduce, the amount of any part of the award, any such conduct or action of the complainant as is specified below.
- (2) Conduct or action of the complainant shall be disregarded in so far as it constitutes a breach or proposed breach of a requirement—
- (a) 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,
  - (b) to cease to be, or refrain from becoming, a member of any trade union or of a particular trade union or of one of a number of particular trade unions, or
  - (c) not to take part in the activities of any trade union or of a particular trade union or of one of a number of particular trade unions.
- For the purposes of this subsection a requirement means a requirement imposed on the complainant by or under an arrangement or contract of employment or other agreement.
- (3) Conduct or action of the complainant shall be disregarded in so far as it constitutes a refusal, or proposed refusal, to comply with a requirement of a kind mentioned in section 152(3)(a) (payments in lieu of membership) or an objection, or proposed, objection, (however expressed) to the operation of a provision of a kind mentioned in section 152(3)(b) (deductions in lieu of membership).

### 156 Minimum basic award.

- (1) Where a dismissal is unfair by virtue of section 152(1) or 153, the amount of the basic award of compensation, before any reduction is made under subsection (7A), (7B) or (9) of section 73 of the <sup>M4</sup>Employment Protection (Consolidation) Act 1978, shall be not less than £2,700.
- (2) But where the dismissal is unfair by virtue of section 153, subsection (7B) of that section (reduction for contributory fault) applies in relation to so much of the basic award as is payable because of subsection (1) above.

#### Marginal Citations

- M4** 1978 c. 44.



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### **157 Special award of compensation.**

- (1) Where an industrial tribunal makes an award of compensation for unfair dismissal in a case where the dismissal is unfair by virtue of section 152(1) or 153, then, unless—
  - (a) the complaint does not request the tribunal to make an order for reinstatement or re-engagement, or
  - (b) the case falls within section 73(2) of the Employment Protection (Consolidation) Act 1978 (cases where employer takes requisite steps to renew employment or re-engage employee),
 the award shall include a special award calculated in accordance with section 158.
- (2) Section 71(2)(b) of the Employment Protection (Consolidation) Act 1978 (additional award of compensation in case of failure to comply with an order for reinstatement or re-engagement) does not apply in a case where the dismissal is unfair by virtue of section 152(1) or 153.

### **158 Amount of special award.**

- (1) Subject to the following provisions of this section, the amount of the special award shall be one week's pay multiplied by 104, or £13,400, whichever is the greater, but shall not exceed £26,800.
- (2) Where the award of compensation is made under section 71(2)(a) of the Employment Protection (Consolidation) Act 1978 (compensation where employee not reinstated or re-engaged in accordance with order) then, unless the employer satisfies the tribunal that it was not practicable to comply with the order for reinstatement or re-engagement, the amount of the special award shall be increased to one week's pay multiplied by 156, or £20,100 whichever is the greater [<sup>F7</sup>, but subject to the following provisions of this section.].
- (3) In a case where the amount of the basic award is reduced under section 73(5) of the <sup>M5</sup>Employment Protection (Consolidation) Act 1978 (reduction where complainant aged over 64), the amount of the special award shall be reduced by the same fraction.
- (4) 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) was such that it would be just and equitable to reduce or further reduce the amount of the special award to any extent, the tribunal shall reduce or further reduce that amount accordingly.
- (5) Where the tribunal finds that the complainant has unreasonably—
  - (a) prevented an order for reinstatement or re-engagement from being complied with, or
  - (b) refused an offer by the employer (made otherwise than in compliance with such an order) 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 special award to such extent as it considers just and equitable having regard to that finding.
- (6) Where the employer has engaged a permanent replacement for the complainant, the tribunal shall not take that fact into account in determining for the purposes of subsection (2) whether it was practicable to comply with an order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the complainant's work to be done without engaging a permanent replacement.



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[<sup>F8</sup>(7) Schedule 14 to the <sup>M6</sup>Employment Protection (Consolidation) Act 1978 (calculation of a week's pay) shall apply for the purposes of this section with the substitution, for paragraph 7, of the following:—

For the purposes of this Part in its application to section 158 of the <sup>M7</sup>Trade Union and Labour Relations (Consolidation) Act 1992, the calculation date is—

- (a) where the dismissal was with notice, the date on which the employer's notice was given;
- (b) where paragraph (a) does not apply, the effective date of termination.]

#### Textual Amendments

**F7** Words in s. 158(2) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.68**; S.I. 1993/1098, art. 2(1), **Sch.1**

**F8** S. 158(7) inserted (30.8.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para.21**; S.I. 1993/1908, art. 2(1), **Sch.1**

#### Marginal Citations

**M5** 1978 c. 44.

**M6** 1978 c. 44.

**M7** 1992 c. 52.

### 159 Power to increase sums by order.

- (1) The Secretary of State may by order made by statutory instrument increase—
  - (a) the sum mentioned in section 156(1) (minimum basic award), or
  - (b) any of the sums specified in section 158(1) or (2) (limits on amount of special award).
- (2) The order may contain such incidental, supplementary or transitional provisions as appear to the Secretary of State to be necessary or expedient.
- (3) No order under this section shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

### 160 Awards against third parties.

- (1) If in proceedings before an industrial tribunal on a complaint of unfair dismissal either the employer or the complainant claims—
  - (a) that the employer was induced to dismiss the complainant by pressure which a trade union or other person exercised on the employer 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 or of one of a number of particular trade unions,the employer or the complainant may request the tribunal to direct that the person who he claims exercised the pressure be joined or sisted as a party to the proceedings.
- (2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused after that time; and no such request may be made after the tribunal

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has made an award of compensation for unfair dismissal or an order for reinstatement or re-engagement.

- (3) Where a person has been so joined or sisted as a party to the proceedings and the tribunal—
- (a) makes an award of compensation for unfair dismissal, and
  - (b) finds that the claim mentioned in subsection (1) is well-founded,
- the tribunal may order that the compensation shall be paid by that person instead of the employer, or partly by that person and partly by the employer, as the tribunal may consider just and equitable.

### **161 Application for interim relief.**

- (1) An employee who presents a complaint of unfair dismissal alleging that the dismissal is unfair by virtue of section 152 may apply to the tribunal for interim relief.
- (2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).
- (3) In a case where the employee relies on section 152(1)(a) or (b) the tribunal shall not entertain an application for interim relief unless before the end of that period there is also so presented a certificate in writing signed by an authorised official of the independent trade union of which the employee was or proposed to become a member stating—
  - (a) that on the date of the dismissal the employee was or proposed to become a member of the union, and
  - (b) that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.
- (4) An “authorised official” means an official of the trade union authorised by it to act for the purposes of this section.
- (5) A document purporting to be an authorisation of an official by a trade union to act for the purposes of this section and to be signed on behalf of the union shall be taken to be such an authorisation unless the contrary is proved; and a document purporting to be a certificate signed by such an official shall be taken to be signed by him unless the contrary is proved.
- (6) For the purposes of subsection (3) the date of dismissal shall be taken to be—
  - (a) where the employee’s contract of employment was terminated by notice (whether given by his employer or by him), the date on which the employer’s notice was given, and
  - (b) in any other case, the effective date of termination.

### **162 Application to be promptly determined.**

- (1) An industrial tribunal shall determine an application for interim relief as soon as practicable after receiving the application and, where appropriate, the requisite certificate.

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- (2) The tribunal shall give to the employer, not later than seven days before the hearing, a copy of the application and of any certificate, together with notice of the date, time and place of the hearing.
- (3) If a request under section 160 (awards against third parties) is made three days or more before the date of the hearing, the tribunal shall also give to the person to whom the request relates, as soon as reasonably practicable, a copy of the application and of any certificate, together with notice of the date, time and place of the hearing.
- (4) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

### **163 Procedure on hearing of application and making of order.**

- (1) If on hearing an application for interim relief it appears to the tribunal that it is likely that on determining the complaint to which the application relates that it will find that, by virtue of section 152, the complainant has been unfairly dismissed, the following provisions apply.
- (2) The tribunal shall announce its findings and explain to both parties (if present) what powers the tribunal may exercise on the application and in what circumstances it will exercise them, and shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—
  - (a) to reinstate the employee, that is to say, to treat him in all respects as if he had not been dismissed, or
  - (b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.
- (3) For this purpose “terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed” means as regards seniority, pension rights and other similar rights that the period prior to the dismissal shall be regarded as continuous with his employment following the dismissal.
- (4) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.
- (5) If the employer states that he is willing to re-engage the employee in another job, and specifies the terms and conditions on which he is willing to do so, the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions; and—
  - (a) if the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect, and
  - (b) if he is not, then, if the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, and otherwise the tribunal shall make no order.
- (6) If on the hearing of an application for interim relief the employer fails to attend before the tribunal, or states that he is unwilling either to reinstate the employee or re-engage him as mentioned in subsection (2), the tribunal shall make an order for the continuation of the employee’s contract of employment.

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## 164 Order for continuation of contract of employment.

- (1) An order under section 163 for the continuation of a contract of employment is an order that the contract of employment continue in force—
  - (a) for the purposes of pay or [<sup>F9</sup>any other benefit] derived from the employment, seniority, pension rights and other similar matters, and
  - (b) for the purpose of determining for any purpose the period for which the employee has been continuously employed,
 

from the date of its termination (whether before or after the making of the order) until the determination or settlement of the complaint.
- (2) Where the tribunal makes such an order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period, or part of any such period, falling between the date of dismissal and the determination or settlement of the complaint.
- (3) Subject as follows, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period, or part, and shall be paid—
  - (a) in the case of payment for any such period falling wholly or partly after the making of the order, on the normal pay day for that period, and
  - (b) in the case of a payment for any past period, within such time as may be specified in the order.
- (4) If an amount is payable in respect only of part of a normal pay period, the amount shall be calculated by reference to the whole period and reduced proportionately.
- (5) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of a normal pay period or part of any such period shall go towards discharging the employer's liability in respect of that period under subsection (2); and conversely any payment under that subsection in respect of a period shall go towards discharging any liability of the employer under, or in respect of the breach of, the contract of employment in respect of that period.
- (6) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.
- (7) For the purposes of this section the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

### Textual Amendments

- F9** Words in s. 164(1)(a) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.69**; S.I. 1993/1908, art. 2(1), **Sch.1**

## 165 Application for variation or revocation of order.

- (1) At any time between the making of an order under section 163 and the determination or settlement of the complaint, the employer or the employee may apply to an industrial tribunal for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order.

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- (2) Sections 161 to 163 apply in relation to such an application as in relation to an original application for interim relief, except that—
- (a) no certificate need be presented to the tribunal under section 161(3), and
  - (b) in the case of an application by the employer, section 162(2) (service of copy of application and notice of hearing) has effect with the substitution of a reference to the employee for the reference to the employer.

## 166 Consequences of failure to comply with order.

- (1) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under section 163(4) or [F10(5)], the tribunal shall—
- (a) make an order for the continuation of the employee’s contract of employment, and
  - (b) order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard—
    - (i) to the infringement of the employee’s right to be reinstated or re-engaged in pursuance of the order, and
    - (ii) to any loss suffered by the employee in consequence of the non-compliance.
- (2) Section 164 applies to an order under subsection (1)(a) as in relation to an order under section 163.
- (3) If on the application of an employee an industrial tribunal is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment, the following provisions apply.
- (4) If the non-compliance consists of a failure to pay an amount by way of pay specified in the order, the tribunal shall determine the amount owed by the employer on the date of the determination.

If on that date the tribunal also determines the employee’s complaint that he has been unfairly dismissed, it shall specify that amount separately from any other sum awarded to the employee.

- (5) In any other case, the tribunal shall order the employer to pay the employee such compensation as the tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.

### Textual Amendments

**F10** Words in s. 166(1) substituted (30.8.1993) by 1993 c. 19, s. 49(1), [Sch. 7 para.22](#); S.I. 1993/1908, [art. 2\(1\)](#), [Sch. 1](#)

## 167 Interpretation and other supplementary provisions.

- (1) Part V of the Employment Protection (Consolidation) Act 1978 (unfair dismissal) has effect subject to the provisions of sections 152 to 166 above.
- (2) Those sections shall be construed as one with that Part; and in those sections—

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“complaint of unfair dismissal” means a complaint under section 67 of the <sup>M8</sup>Employment Protection (Consolidation) Act 1978;

“award of compensation for unfair dismissal” means an award of compensation for unfair dismissal under section 68(2) or 71(2)(a) of that Act; and

“order for reinstatement or re-engagement” means an order for reinstatement or re-engagement under section 69 of that Act.

- (3) Nothing in those sections shall be construed as conferring a right to complain of unfair dismissal from employment of a description to which that Part does not otherwise apply.

**Marginal Citations**

**M8** 1978 c. 44.

*Time off for trade union duties and activities*

**168 Time off for carrying out trade union duties.**

- (1) An employer shall permit an employee of his who is an official of an independent trade union recognised by the employer to take time off during his working hours for the purpose of carrying out any duties of his, as such an official, concerned with—
- (a) negotiations with the employer related to or connected with matters falling within section 178(2) (collective bargaining) in relation to which the trade union is recognised by the employer, or
  - (b) the performance on behalf of employees of the employer of functions related to or connected with matters falling within that provision which the employer has agreed may be so performed by the trade union.
- (2) He shall also permit such an employee to take time off during his working hours for the purpose of undergoing training in aspects of industrial relations—
- (a) relevant to the carrying out of such duties as are mentioned in subsection (1), and
  - (b) approved by the Trades Union Congress or by the independent trade union of which he is an official.
- (3) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by ACAS.
- (4) An employee may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by this section.

VALID FROM 27/04/2003

**[<sup>F11</sup>168A Time off for union learning representatives**

- (1) An employer shall permit an employee of his who is—

**Status:** Point in time view as at 30/08/1993. This version of this part contains provisions that are not valid for this point in time.

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- (a) a member of an independent trade union recognised by the employer, and
  - (b) a learning representative of the trade union,
- to take time off during his working hours for any of the following purposes.
- (2) The purposes are—
- (a) carrying on any of the following activities in relation to qualifying members of the trade union—
    - (i) analysing learning or training needs,
    - (ii) providing information and advice about learning or training matters,
    - (iii) arranging learning or training, and
    - (iv) promoting the value of learning or training,
  - (b) consulting the employer about carrying on any such activities in relation to such members of the trade union,
  - (c) preparing for any of the things mentioned in paragraphs (a) and (b).
- (3) Subsection (1) only applies if—
- (a) the trade union has given the employer notice in writing that the employee is a learning representative of the trade union, and
  - (b) the training condition is met in relation to him.
- (4) The training condition is met if—
- (a) the employee has undergone sufficient training to enable him to carry on the activities mentioned in subsection (2), and the trade union has given the employer notice in writing of that fact,
  - (b) the trade union has in the last six months given the employer notice in writing that the employee will be undergoing such training, or
  - (c) within six months of the trade union giving the employer notice in writing that the employee will be undergoing such training, the employee has done so, and the trade union has given the employer notice of that fact.
- (5) Only one notice under subsection (4)(b) may be given in respect of any one employee.
- (6) References in subsection (4) to sufficient training to carry out the activities mentioned in subsection (2) are to training that is sufficient for those purposes having regard to any relevant provision of a Code of Practice issued by ACAS or the Secretary of State.
- (7) If an employer is required to permit an employee to take time off under subsection (1), he shall also permit the employee to take time off during his working hours for the following purposes—
- (a) undergoing training which is relevant to his functions as a learning representative, and
  - (b) where the trade union has in the last six months given the employer notice under subsection (4)(b) in relation to the employee, undergoing such training as is mentioned in subsection (4)(a).
- (8) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provision of a Code of Practice issued by ACAS or the Secretary of State.



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- (9) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.
- (10) In subsection (2)(a), the reference to qualifying members of the trade union is to members of the trade union—
- (a) who are employees of the employer of a description in respect of which the union is recognised by the employer, and
  - (b) in relation to whom it is the function of the union learning representative to act as such.
- (11) For the purposes of this section, a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules.]

#### **Textual Amendments**

**F11** S. 168A inserted (27.4.2003) by [Employment Act 2002 \(c. 22\), ss. 43\(2\), 55\(2\); S.I. 2003/1190, art. 2\(1\)](#) (with art. 3)

### **169 Payment for time off under section 168.**

- (1) An employer who permits an employee to take time off under section 168 shall pay him for the time taken off pursuant to the permission.
- (2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he shall be paid as if he had worked at that work for the whole of that time.
- (3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he shall be paid an amount calculated by reference to the average hourly earnings for that work.

The average hourly earnings shall be those of the employee concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

- (4) A right to be paid an amount under this section does not affect any right of an employee in relation to remuneration under his contract of employment, but—
  - (a) any contractual remuneration paid to an employee in respect of a period of time off to which this section applies shall go towards discharging any liability of the employer under this section in respect of that period, and
  - (b) any payment under this section in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.
- (5) An employee may present a complaint to an industrial tribunal that his employer has failed to pay him in accordance with this section.



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## **170 Time off for trade union activities.**

- (1) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of taking part in—
  - (a) any activities of the union, and
  - (b) any activities in relation to which the employee is acting as a representative of the union.
- (2) The right conferred by subsection (1) does not extend to activities which themselves consist of industrial action, whether or not in contemplation or furtherance of a trade dispute.
- (3) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by ACAS.
- (4) An employee may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by this section.

## **171 Time limit for proceedings.**

An industrial tribunal shall not consider a complaint under section 168, 169 or 170 unless it is presented to the tribunal—

- (a) within three months of the date when the failure occurred, or
- (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

## **172 Remedies.**

- (1) Where the tribunal finds a complaint under section 168 or 170 is well-founded, it shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee.
- (2) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to permit time off to be taken by the employee and to any loss sustained by the employee which is attributable to the matters complained of.
- (3) Where on a complaint under section 169 the tribunal finds that the employer has failed to pay the employee in accordance with that section, it shall order him to pay the amount which it finds to be due.

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

- C3** S. 172 applied (4.9.2000) by 1999 c. 26 s. 10(7) (with s. 15); S.I. 2000/2242, art. 2 (with transitional provisions in arts. 3, 4)

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### **173 Interpretation and other supplementary provisions.**

- (1) For the purposes of sections 168 and 170 the working hours of an employee shall be taken to be any time when in accordance with his contract of employment he is required to be at work.
- (2) The remedy of an employee for infringement of the rights conferred on him by section 168, 169 or 170 is by way of complaint to an industrial tribunal in accordance with this Part, and not otherwise.

*Exclusion or expulsion from trade union where  
employment subject to union membership agreement*

### **174 Right not to be unreasonably excluded or expelled from union.**

- (1) A person who is, or is seeking to be, in employment 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, has the right—
  - (a) not to have an application for membership of a specified trade union unreasonably refused, and
  - (b) not to be unreasonably expelled from a specified union.
- (2) A “union membership agreement” means an agreement or arrangement relating to employees of an identifiable class which—
  - (a) is made by or on behalf of, or otherwise exists between one or more independent trade unions and one or more employers or employers’ associations, and
  - (b) has the effect in practice of requiring the employees of the class to which it relates (whether or not there is a condition to that effect in their contract of employment) to be or become members of the union or one of the unions which is or are parties to the agreement or arrangement or of another specified independent trade union.

Employees shall be treated as belonging to the same class if they have been identified as such by the parties to the agreement, and they may be so identified by reference to any characteristics or circumstances whatever.

- (3) A trade union shall be treated as “specified” for the purposes of, or in relation to, a union membership agreement if it is specified in the agreement or is accepted by the parties to the agreement as being the equivalent of a union so specified.
- (4) For the purposes of this section—
  - (a) an application for membership of a trade union which is neither granted nor rejected before the end of the period within which it might reasonably have been expected to be granted if it was to be granted, shall be treated as having been refused on the last day of that period, and
  - (b) a person who under the rules of a trade union ceases to be a member of the union on the happening of an event specified in the rules shall be treated as having been expelled from the union.
- (5) A person who claims that an application by him for membership of a trade union has been unreasonably refused, or that he has been unreasonably expelled from a

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trade union, in contravention of this section, may present a complaint to an industrial tribunal.

- (6) The question whether the trade union acted reasonably or unreasonably shall be determined in accordance with equity and the substantial merits of the case.

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.

### **175 Time limit for proceedings.**

An industrial tribunal shall not entertain a complaint under section 174 unless it is presented to the tribunal—

- (a) before the end of the period of six months beginning with the date of the refusal or expulsion, 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 the tribunal considers reasonable.

### **176 Remedies.**

- (1) Where the industrial tribunal finds a complaint under section 174 is well-founded, it shall make a declaration to that effect.
- (2) A person whose complaint has been declared to be well-founded may make an application for an award of compensation to be paid to him by the union.

The application shall be made to an industrial tribunal if when it is made the applicant has been admitted or re-admitted to membership of the union, and otherwise to the Employment Appeal Tribunal.

- (3) The application shall not be entertained if made—
- (a) before the end of the period of four weeks beginning with the date of the declaration, or
  - (b) after the end of the period of six months beginning with that date.
- (4) The amount of compensation awarded by an industrial tribunal shall be such as it considers appropriate to compensate the applicant for the loss sustained by him in consequence of the refusal or expulsion complained of.

The amount of the compensation 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 <sup>M9</sup>Employment Protection (Consolidation) Act 1978 (maximum amount of a week's pay for basic award in unfair dismissal cases), and
  - (b) an amount equal to the limit for the time being imposed by section 75 of that Act (maximum compensatory award in such cases).
- (5) The amount of compensation awarded by the Employment Appeal Tribunal shall be such as it considers just and equitable in all the circumstances.

The amount of the compensation shall not exceed the aggregate of—

- (a) the aggregate amount mentioned in subsection (4), and

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- (b) an amount equal to fifty-two times the limit for the time being imposed by paragraph 8(1)(a) of Schedule 14 to the Employment Protection (Consolidation) Act 1978 (maximum amount of a week's pay for additional award of compensation in unfair dismissal cases),  
and shall not be less than the amount for the time being specified in section 156(1) (minimum basic award).
- (6) In determining the amount of compensation to be awarded, the industrial tribunal or 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 Scotland.
- (7) Where the industrial tribunal or Employment Appeal Tribunal finds that the refusal or expulsion complained of was to any extent caused or contributed to by action of the applicant, it shall reduce the amount of compensation by such proportion as it considers just and equitable having regard to that finding.
- (8) In determining the amount of compensation to be awarded, any reduction or increase under subsection (4) or (5) shall be made before—
- (a) any reduction by virtue of subsection (6) or (7), or
  - (b) any reduction on account of sums already paid by the union by way of compensation in respect of the subject matter of the application;
- and accordingly, where the case so required the reductions mentioned in paragraphs (a) and (b) shall be made to the maximum or, as the case may be, minimum award under subsection (4) or (5).

#### Marginal Citations

M9 1978 c.44.

### 177 Interpretation and other supplementary provisions.

- (1) References in section 174 to a trade union include a branch or section of a trade union.
- (2) The remedy of a person for infringement of the rights conferred by section 174 is by way of a complaint to an industrial tribunal in accordance with this Part, and not otherwise.
- (3) Those rights are in addition to, and not in substitution for, any right existing apart from that section.

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