



Trade Union and Labour Relations (Consolidation) Act 1992

1992 CHAPTER 52

PART III

RIGHTS IN RELATION TO UNION MEMBERSHIP AND ACTIVITIES

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^{F1}, or
 - (c) receipt of information from the employer and consultation by the employer under section 188 (redundancies) or under the ^{F2}Transfer of Undertakings (Protection of Employment) Regulations 2006^{F3}, or
 - (d) negotiations with a view to entering into an agreement under regulation 9 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer, or
 - (e) the performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under that regulation.]
- (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—

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- (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 ^[F4]employment tribunal] that his employer has failed to permit him to take time off as required by this section.

Textual Amendments

- F1** S. 168(1)(c) and preceding word inserted (28.7.1999) by [The Collective Redundancies and Transfer of Undertakings \(Protection of Employment\) \(Amendment\) Regulations 1999 \(S.I. 1999/1925\)](#), **reg. 14**
- F2** Words in s. 168(1)(c) substituted (6.4.2006) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), **reg. 20, Sch. 2 para. 1(e)** (with [reg. 21\(1\)](#))
- F3** S. 168(1)(d)(e) and preceding word inserted (6.4.2006) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), **reg. 9(4)** (with [reg. 21\(1\)](#))
- F4** Words in s. 168(4) substituted (1.8.1998) by [1998 c. 8, s. 1\(2\)\(a\)](#) (with [s. 16\(2\)](#)); [S.I. 1998/1658](#), **art. 2(1), Sch. 1**

Modifications etc. (not altering text)

- C1** S. 168(3)(4) applied (4.9.2000) by [1999 c. 26, s. 10\(7\)](#) (with [s. 15](#)); [S.I. 2000/242](#), **art. 2(1)** (with transitional provisions in [arts. 3, 4](#))
- C2** S. 168(3)(4) applied (1.10.2006) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), **reg. 47, Sch. 6 para. 9(6)** (with [regs. 44-46, Sch. 7](#))
- C3** S. 168(3)(4) applied (6.4.2010) by [The Employee Study and Training \(Procedural Requirements\) Regulations 2010 \(S.I. 2010/155\)](#), **regs. 1, 16(8)**

^[F5]168A Time off for union learning representatives

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

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- (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.
- (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

- F5** 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)

Changes to legislation: Trade Union and Labour Relations (Consolidation) Act 1992, Cross Heading: Time off for trade union duties and activities is up to date with all changes known to be in force on or before 26 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) View outstanding changes

169 Payment for time off under section 168.

- (1) An employer who permits an employee to take time off under section 168 [^{F6}or 168A] 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 [^{F7}employment tribunal] that his employer has failed to pay him in accordance with this section.

Textual Amendments

- F6** Word in s. 169(1) inserted (27.4.2003) by 2002 c. 22, ss. 43(3), 55(2); S.I. 2003/1190, **art. 2(1)** (with **art. 3**)
- F7** Words in s. 169(5) substituted (1.8.1998) by 1998 c. 8, **s. 1(2)(a)** (with s. 16(2)); S.I. 1998/1658, **art. 2(1), Sch. 1**

Modifications etc. (not altering text)

- C4** S. 169 applied (4.9.2000) by 1999 c. 26, **s. 10(7)** (with s. 15); S.I. 2000/2424, **art. 2** (with transitional provisions in **arts. 3, 4**)
- C5** S. 169 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), **reg. 47, Sch. 6 para. 9** (with **regs. 44-46, Sch. 7**)
- C6** S. 169 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), **regs. 1, 16(8)**

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

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- (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.
- [^{F8}(2A) The right conferred by subsection (1) does not extend to time off for the purpose of acting as, or having access to services provided by, a learning representative of a trade union.
- (2B) 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 having access to services provided by a person in his capacity as a learning representative of the trade union.
- (2C) Subsection (2B) only applies if the learning representative would be entitled to time off under subsection (1) of section 168A for the purpose of carrying on in relation to the employee activities of the kind mentioned in subsection (2) of that section.]
- (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 [^{F9}employment tribunal] that his employer has failed to permit him to take time off as required by this section.
- [^{F10}(5) For the purposes of this section—
- (a) a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules, and
 - (b) a person who is a learning representative of a trade union acts as such if he carries on the activities mentioned in section 168A(2) in that capacity.]

Textual Amendments

- F8** S. 170(2A)-(2C) inserted (27.4.2003) by 2002 c. 22, ss. 43(4), 55(2); S.I. 2003/1190, art. 2(1) (with art. 3)
- F9** Words in s. 170(4) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1
- F10** S. 170(5) inserted (27.4.2003) by 2002 c. 22, ss. 43(5), 55(2); S.I. 2003/1190, art. 2(1) (with art. 3)

171 Time limit for proceedings.

- [^{F11}(1)] An [^{F12}employment tribunal] shall not consider a complaint under section 168, [^{F13}168A,] 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.
- [^{F14}(2) Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (1)(a).]

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Textual Amendments

- F11** S. 171 renumbered as s. 171(1) (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 2 para. 9(2)**; S.I. 2014/253, art. 3(g)
- F12** Words in s. 171 substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F13** Word in s. 171 inserted (27.4.2003) by 2002 c. 22, ss. 53, 55(2), Sch. 7 para. 19; S.I. 2003/1190, **art. 2(2)**
- F14** S. 171(2) inserted (6.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 2 para. 9(3)**; S.I. 2014/253, art. 3(g)

Modifications etc. (not altering text)

- C7** S. 171 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)
- C8** S. 171 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), **reg. 47, Sch. 6 para. 9** (with regs. 44-46, Sch. 7)
- C9** Ss. 171-173 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), regs. 1, **16(8)**

172 Remedies.

- (1) Where the tribunal finds a complaint under section 168 [^{F15} 168A] 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.

Textual Amendments

- F15** Word in s. 172(1) inserted (27.4.2003) by 2002 c. 22, ss. 53, 55(2), Sch. 7 para. 20; S.I. 2003/1190, **art. 2(2)**

Modifications etc. (not altering text)

- C9** Ss. 171-173 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), regs. 1, **16(8)**
- C10** 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)
- C11** S. 172 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), **reg. 47, Sch. 6 para. 9** (with regs. 44-46, Sch. 7)

[^{F16} 172A] Publication requirements in relation to facility time

- (1) A Minister of the Crown may by regulations made by statutory instrument require relevant public sector employers to publish any information within subsection (3).

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- (2) An employer is a relevant public sector employer if the employer—
- (a) is a public authority specified, or of a description specified, in the regulations, and
 - (b) has at least one employee who is a relevant union official.
- [But regulations under subsection (1) may not specify—
- ^{F17}(2A) (a) a devolved Welsh authority, or
- (b) a description of public authority that applies to a devolved Welsh authority.]
- (3) The information that is within this subsection is information relating to facility time for relevant union officials including, in particular—
- (a) how many of an employer's employees are relevant union officials, or relevant union officials within specified categories;
 - (b) the total amount spent by an employer in a specified period on paying relevant union officials for facility time, or for specified categories of facility time;
 - (c) the percentage of an employer's total pay bill for a specified period spent on paying relevant union officials for facility time, or for specified categories of facility time;
 - (d) the percentage of the aggregate amount of facility time taken by an employer's relevant union officials in a specified period that was attributable to specified categories of duties or activities;
 - (e) information relating to facilities provided by an employer for use by relevant union officials in connection with facility time.
- (4) In subsection (3) “specified” means specified in the regulations.
- (5) The regulations may make provision—
- (a) as to the times or intervals at which the information is to be published;
 - (b) as to the form in which the information is to be published.
- (6) The regulations may make different provision for different employers or different categories of employer.
- (7) In this section a “relevant union official” means—
- (a) a trade union official;
 - (b) a learning representative of a trade union, within the meaning given by section 168A(11);
 - (c) a safety representative appointed under regulations made under section 2(4) of the Health and Safety at Work etc. Act 1974.
- (8) In this section “facility time” means time off taken by a relevant union official that is permitted by the official's employer under—
- (a) section 168, section 168A or section 170(1)(b);
 - (b) section 10(6) of the Employment Relations Act 1999;
 - (c) regulations made under section 2(4) of the Health and Safety at Work etc. Act 1974.
- (9) The regulations may provide, in relation to a body or other person that is not a public authority but has functions of a public nature and is funded wholly or mainly from public funds, that the body or other person is to be treated as a public authority for the purposes of subsection (2).

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- (10) The regulations may make provision specifying the person or other entity that is to be treated for the purposes of this section as the employer of a relevant union official who is employed by the Crown.
- (11) The regulations may—
- (a) deem a category of persons holding an office or employment under the Crown (or two or more such categories taken together) to be an entity for the purposes of provision made under subsection (10);
 - (b) make different provision under subsection (10) for different categories of persons holding an office or employment under the Crown.
- (12) No regulations containing provision made by virtue of subsection (9) shall be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House.
- (13) Regulations under this section to which subsection (12) does not apply shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

- F16** S. 172A inserted (1.3.2017) by [Trade Union Act 2016 \(c. 15\)](#), ss. 13, 25(1); S.I. 2017/139, reg. 2(k)
- F17** S. 172A(2A) inserted (E.W.) (13.9.2017) by [Trade Union \(Wales\) Act 2017 \(anaw 4\)](#), ss. 1(3), 3; S.I. 2017/903, art. 2

[^{F18}172B Reserve powers in relation to facility time

- (1) After the end of the period of three years beginning with the day on which the first regulations under section 172A come into force, a Minister of the Crown may exercise the reserve powers (see subsection (3)) if the Minister considers it appropriate to do so having regard to—
- (a) information published by employers in accordance with publication requirements;
 - (b) the cost to public funds of facility time in relation to each of those employers;
 - (c) the nature of the various undertakings carried on by those employers;
 - (d) any particular features of those undertakings that are relevant to the reasonableness of the amount of facility time;
 - (e) any other matters that the Minister thinks relevant.
- (2) The reserve powers may not be exercised so as to apply to any particular employer unless—
- (a) a Minister of the Crown has given notice in writing to the employer—
 - (i) setting out the Minister's concerns about the amount of facility time in the employer's case, and
 - (ii) informing the employer that the Minister is considering exercising the reserve powers in relation to that employer;
 - (b) the employer has had a reasonable opportunity to respond to the notice under paragraph (a) and to take any action that may be appropriate in view of the concerns set out in it;

and the powers may not be exercised until after the end of the period of 12 months beginning with the day on which the notice under paragraph (a) was given.

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- (3) The reserve powers are powers to make regulations—
 - (a) applying to relevant public sector employers on whom the publication requirements were imposed, and
 - (b) containing any provision that the Minister considers appropriate for the purpose of ensuring that, in each period specified by the regulations, the percentage of an employer's total pay bill spent on paying relevant union officials for facility time does not exceed a percentage that is so specified.
- (4) The regulations may, in particular, make provision restricting rights of relevant union officials to facility time by amending or otherwise modifying any of the following—
 - (a) section 168 or 168A;
 - (b) section 10 of the Employment Relations Act 1999;
 - (c) regulations made under section 2(4) of the Health and Safety at Work etc. Act 1974.
- (5) The regulations may make provision as to the calculation of working time, of paid facility time, or of an employer's total pay bill.
- (6) The regulations may impose requirements on employers in relation to whom the reserve powers are exercised to publish any further information that the Minister considers appropriate.
- (7) Where requirements are imposed under subsection (6) the regulations may make provision—
 - (a) as to the times or intervals at which the further information is to be published;
 - (b) as to the form in which the further information is to be published.
- (8) The regulations may provide that some or all of their provisions do not apply—
 - (a) in cases specified by the regulations, or
 - (b) if a person specified in the regulations is satisfied that conditions that are so specified are met.
- (9) The regulations may confer power on a Minister of the Crown, by notice in writing to a particular employer, to suspend the application of the regulations to that employer for such period and to such extent as the Minister may specify in the notice.
- (10) The regulations may—
 - (a) make provision in relation to any or all of the employers in relation to which the reserve powers are exercisable;
 - (b) make different provision for different employers or different categories of employer;
 - (c) make transitional provision in connection with the coming into force of any provision of the regulations;
 - (d) make consequential provision amending or otherwise modifying section 170, contracts of employment or collective agreements.
- (11) In this section—
 - (a) “publication requirements” means requirements imposed under section 172A or subsection (6);
 - (b) “relevant public sector employer” has the same meaning as in section 172A, read with any regulations made under subsection (9) of that section;

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- (c) “relevant union official” and “facility time” have the same meaning as in section 172A.
- (12) Subsections (10) and (11) of section 172A apply for the purposes of this section as they apply for the purposes of that section.
- (13) Regulations under this section shall be made by statutory instrument.
- (14) No regulations under this section shall be made unless a draft of them has been laid before Parliament and approved by a resolution of each House of Parliament.]

Textual Amendments

F18 S. 172B inserted (25.11.2022) by Trade Union Act 2016 (c. 15), ss. 14, 25(1); S.I. 2022/1228, reg. 2

173 Interpretation and other supplementary provisions.

- (1) For the purposes of sections 168 [^{F19}, 168A] 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, [^{F20}168A,] 169 or 170 is by way of complaint to an [^{F21}employment tribunal] in accordance with this Part, and not otherwise.
- [^{F22}(3) The Secretary of State may by order made by statutory instrument amend section 168A for the purpose of changing the purposes for which an employee may take time off under that section.
- ^{F22}(4) No order may be made under subsection (3) unless a draft of the order has been laid before and approved by resolution of each House of Parliament.]

Textual Amendments

- F19** Word in s. 173(1) inserted (27.4.2003) by 2002 c. 22, ss. 53, 55(2), Sch. 7 para. 21(a); S.I. 2003/1190, art. 2(2)
- F20** Word in s. 173(1) inserted (27.4.2003) by 2002 c. 22, ss. 53, 55(2), Sch. 7 para. 21(a); S.I. 2003/1190, art. 2(2)
- F21** Words in s. 173(2) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1
- F22** S. 173(3)(4) inserted (27.4.2003) by 2002 c. 22, ss. 43(6), 55(2); S.I. 2003/1190, art. 2(1) (with art. 3)

Modifications etc. (not altering text)

- C9** Ss. 171-173 applied (6.4.2010) by The Employee Study and Training (Procedural Requirements) Regulations 2010 (S.I. 2010/155), regs. 1, 16(8)
- C12** S. 173 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)
- C13** S. 173 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), reg. 47, Sch. 6 para. 9 (with regs. 44-46, Sch. 7)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 212A(1)(zb) inserted by [2023 c. 46 Sch. para. 1](#)