



# Trade Union and Labour Relations (Consolidation) Act 1992

## 1992 CHAPTER 52

### PART IV

#### INDUSTRIAL RELATIONS

#### CHAPTER I

#### COLLECTIVE BARGAINING

##### *Introductory*

#### **178 Collective agreements and collective bargaining.**

- (1) In this Act “collective agreement” means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers’ associations and relating to one or more of the matters specified below; and “collective bargaining” means negotiations relating to or connected with one or more of those matters.
- (2) The matters referred to above are—
  - (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
  - (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
  - (c) allocation of work or the duties of employment between workers or groups of workers;
  - (d) matters of discipline;
  - (e) a worker’s membership or non-membership of a trade union;
  - (f) facilities for officials of trade unions; and

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- (g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.
- (3) In this Act “recognition”, in relation to a trade union, means the recognition of the union by an employer, or two or more associated employers, to any extent, for the purpose of collective bargaining; and “recognised” and other related expressions shall be construed accordingly.

### *Enforceability of collective agreements*

#### **179 Whether agreement intended to be a legally enforceable contract.**

- (1) A collective agreement shall be conclusively presumed not to have been intended by the parties to be a legally enforceable contract unless the agreement—
  - (a) is in writing, and
  - (b) contains a provision which (however expressed) states that the parties intend that the agreement shall be a legally enforceable contract.
- (2) A collective agreement which does satisfy those conditions shall be conclusively presumed to have been intended by the parties to be a legally enforceable contract.
- (3) If a collective agreement is in writing and contains a provision which (however expressed) states that the parties intend that one or more parts of the agreement specified in that provision, but not the whole of the agreement, shall be a legally enforceable contract, then—
  - (a) the specified part or parts shall be conclusively presumed to have been intended by the parties to be a legally enforceable contract, and
  - (b) the remainder of the agreement shall be conclusively presumed not to have been intended by the parties to be such a contract.
- (4) A part of a collective agreement which by virtue of subsection (3)(b) is not a legally enforceable contract may be referred to for the purpose of interpreting a party of the agreement which is such a contract.

#### **180 Effect of provisions restricting right to take industrial action.**

- (1) Any terms of a collective agreement which prohibit or restrict the right of workers to engage in a strike or other industrial action, or have the effect of prohibiting or restricting that right, shall not form part of any contract between a worker and the person for whom he works unless the following conditions are met.
- (2) The conditions are that the collective agreement—
  - (a) is in writing,
  - (b) contains a provision expressly stating that those terms shall or may be incorporated in such a contract,
  - (c) is reasonably accessible at his place of work to the worker to whom it applies and is available for him to consult during working hours, and
  - (d) is one where each trade union which is a party to the agreement is an independent trade union;

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and that the contract with the worker expressly or impliedly incorporates those terms in the contract.

- (3) The above provisions have effect notwithstanding anything in section 179 and notwithstanding any provision to the contrary in any agreement (including a collective agreement or a contract with any worker).

### *Disclosure of information for purposes of collective bargaining*

## **181 General duty of employers to disclose information.**

- (1) An employer who recognises an independent trade union shall, for the purposes of all stages of collective bargaining about matters, and in relation to descriptions of workers, in respect of which the union is recognised by him, disclose to representatives of the union, on request, the information required by this section.

In this section and sections 182 to 185 “representative”, in relation to a trade union, means an official or other person authorised by the union to carry on such collective bargaining.

- (2) The information to be disclosed is all information relating to the employer’s undertaking which is in his possession, or that of an associated employer, and is information—
- (a) without which the trade union representatives would be to a material extent impeded in carrying on collective bargaining with him, and
  - (b) which it would be in accordance with good industrial relations practice that he should disclose to them for the purposes of collective bargaining.
- (3) A request by trade union representatives for information under this section shall, if the employer so requests, be in writing or be confirmed in writing.
- (4) In determining what would be in accordance with good industrial relations practice, regard shall be had to the relevant provisions of any Code of Practice issued by ACAS, but not so as to exclude any other evidence of what that practice is.
- (5) Information which an employer is required by virtue of this section to disclose to trade union representatives shall, if they so request, be disclosed or confirmed in writing.

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

- C1** S. 181 modified (E.W.) (2.3.1998) by [S.I. 1998/218, art. 3, Sch.](#)  
S. 181 modified (1.9.1999) by [S.I. 1999/2256, art. 3, Sch.](#)
- C2** Ss. 181-185 modified (E.) (1.9.2003) by [The Education \(Modification of Enactments Relating to Employment\) \(England\) Order 2003 \(S.I. 2003/1964\), art. 3, Sch.](#)
- C3** Ss. 181-185 modified (W.) (12.5.2006) by [The Education \(Modification of Enactments Relating to Employment\) \(Wales\) Order 2006 \(S.I. 2006/1073\), art. 3, Sch.](#)

## **182 Restrictions on general duty.**

- (1) An employer is not required by section 181 to disclose information—
- (a) the disclosure of which would be against the interests of national security, or

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- (b) which he could not disclose without contravening a prohibition imposed by or under an enactment, or
- (c) which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person, or
- (d) which relates specifically to an individual (unless that individual has consented to its being disclosed), or
- (e) the disclosure of which would cause substantial injury to his undertaking for reasons other than its effect on collective bargaining, or
- (f) obtained by him for the purpose of bringing, prosecuting or defending any legal proceedings.

In formulating the provisions of any Code of Practice relating to the disclosure of information, ACAS shall have regard to the provisions of this subsection.

- (2) In the performance of his duty under section 181 an employer is not required—
  - (a) to produce, or allow inspection of, any document (other than a document prepared for the purpose of conveying or confirming the information) or to make a copy of or extracts from any document, or
  - (b) to compile or assemble any information where the compilation or assembly would involve an amount of work or expenditure out of reasonable proportion to the value of the information in the conduct of collective bargaining.

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

- C4** S. 182 modified (E.W.) (2.3.1998) by [S.I. 1998/218, art. 3, Sch.](#)  
S. 182 modified (1.9.1999) by [S.I. 1999/2256, art. 3, Sch.](#)
- C5** Ss. 181-185 modified (E.) (1.9.2003) by [The Education \(Modification of Enactments Relating to Employment\) \(England\) Order 2003 \(S.I. 2003/1964\), art. 3, Sch.](#)
- C6** Ss. 181-185 modified (W.) (12.5.2006) by [The Education \(Modification of Enactments Relating to Employment\) \(Wales\) Order 2006 \(S.I. 2006/1073\), art. 3, Sch.](#)

**183 Complaint of failure to disclose information.**

- (1) A trade union may present a complaint to the Central Arbitration Committee that an employer has failed—
  - (a) to disclose to representatives of the union information which he was required to disclose to them by section 181, or
  - (b) to confirm such information in writing in accordance with that section.

The complaint must be in writing and in such form as the Committee may require.

- (2) If on receipt of a complaint the Committee is of the opinion that it is reasonably likely to be settled by conciliation, it shall refer the complaint to ACAS and shall notify the trade union and employer accordingly, whereupon ACAS shall seek to promote a settlement of the matter.

If a complaint so referred is not settled or withdrawn and ACAS is of the opinion that further attempts at conciliation are unlikely to result in a settlement, it shall inform the Committee of its opinion.

- (3) If the complaint is not referred to ACAS or, if it is so referred, on ACAS informing the Committee of its opinion that further attempts at conciliation are unlikely to result

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in a settlement, the Committee shall proceed to hear and determine the complaint and shall make a declaration stating whether it finds the complaint well-founded, wholly or in part, and stating the reasons for its findings.

- (4) On the hearing of a complaint any person who the Committee considers has a proper interest in the complaint is entitled to be heard by the Committee, but a failure to accord a hearing to a person other than the trade union and employer directly concerned does not affect the validity of any decision of the Committee in those proceedings.
- (5) If the Committee finds the complaint wholly or partly well-founded, the declaration shall specify—
  - (a) the information in respect of which the Committee finds that the complaint is well founded,
  - (b) the date (or, if more than one, the earliest date) on which the employer refused or failed to disclose or, as the case may be, to confirm in writing, any of the information in question, and
  - (c) a period (not being less than one week from the date of the declaration) within which the employer ought to disclose that information, or, as the case may be, to confirm it in writing.
- (6) On a hearing of a complaint under this section a certificate signed by or on behalf of a Minister of the Crown and certifying that a particular request for information could not be complied with except by disclosing information the disclosure of which would have been against the interests of national security shall be conclusive evidence of that fact. A document which purports to be such a certificate shall be taken to be such a certificate unless the contrary is proved.

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

- C7** S. 183 modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.**  
S. 183 modified (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**
- C8** Ss. 181-185 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**
- C9** Ss. 181-185 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), art. 3, **Sch.**

**184 Further complaint of failure to comply with declaration.**

- (1) After the expiration of the period specified in a declaration under section 183(5)(c) the trade union may present a further complaint to the Central Arbitration Committee that the employer has failed to disclose or, as the case may be, to confirm in writing to representatives of the union information specified in the declaration.

The complaint must be in writing and in such form as the Committee may require.

- (2) On receipt of a further complaint the Committee shall proceed to hear and determine the complaint and shall make a declaration stating whether they find the complaint well-founded, wholly or in part, and stating the reasons for their finding.
- (3) On the hearing of a further complaint any person who the Committee consider has a proper interest in that complaint shall be entitled to be heard by the Committee, but a failure to accord a hearing to a person other than the trade union and employer

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directly concerned shall not affect the validity of any decision of the Committee in those proceedings.

- (4) If the Committee find the further complaint wholly or partly well-founded the declaration shall specify the information in respect of which the Committee find that that complaint is well-founded.

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

- C10** S. 184 modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.**  
S. 184 modified (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**
- C11** Ss. 181-185 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**
- C12** Ss. 181-185 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), art. 3, **Sch.**

**185 Determination of claim and award.**

- (1) On or after presenting a further complaint under section 184 the trade union may present to the Central Arbitration Committee a claim, in writing, in respect of one or more descriptions of employees (but not workers who are not employees) specified in the claim that their contracts should include the terms and conditions specified in the claim.
- (2) The right to present a claim expires if the employer discloses or, as the case may be, confirms in writing, to representatives of the trade union the information specified in the declaration under section 183(5) or 184(4); and a claim presented shall be treated as withdrawn if the employer does so before the Committee make an award on the claim.
- (3) If the Committee find, or have found, the further complaint wholly or partly well-founded, they may, after hearing the parties, make an award that in respect of any description of employees specified in the claim the employer shall, from a specified date, observe either—
- (a) the terms and conditions specified in the claim; or
  - (b) other terms and conditions which the Committee consider appropriate.

The date specified may be earlier than that on which the award is made but not earlier than the date specified in accordance with section 183(5)(b) in the declaration made by the Committee on the original complaint.

- (4) An award shall be made only in respect of a description of employees, and shall comprise only terms and conditions relating to matters in respect of which the trade union making the claim is recognised by the employer.
- (5) Terms and conditions which by an award under this section an employer is required to observe in respect of an employee have effect as part of the employee's contract of employment as from the date specified in the award, except in so far as they are superseded or varied—
- (a) by a subsequent award under this section,
  - (b) by a collective agreement between the employer and the union for the time being representing that employee, or

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- (c) by express or implied agreement between the employee and the employer so far as that agreement effects an improvement in terms and conditions having effect by virtue of the award.
- (6) Where—
- (a) by virtue of any enactment, other than one contained in this section, providing for minimum remuneration or terms and conditions, a contract of employment is to have effect as modified by an award, order or other instrument under that enactment, and
- (b) by virtue of an award under this section any terms and conditions are to have effect as part of that contract,
- that contract shall have effect in accordance with that award, order or other instrument or in accordance with the award under this section, whichever is the more favourable, in respect of any terms and conditions of that contract, to the employee.
- (7) No award may be made under this section in respect of terms and conditions of employment which are fixed by virtue of any enactment.

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

- C13** S. 185 modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.**  
S. 185 modified (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**
- C14** Ss. 181-185 modified (E.) (1.9.2003) by The Education (Modification of Enactments Relating to Employment) (England) Order 2003 (S.I. 2003/1964), art. 3, **Sch.**
- C15** Ss. 181-185 modified (W.) (12.5.2006) by The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 (S.I. 2006/1073), art. 3, **Sch.**

### *Prohibition of union recognition requirements*

#### **186 Recognition 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 a party to the contract—

- (a) to recognise one or more trade unions (whether or not named in the contract) for the purpose of negotiating on behalf of workers, or any class of worker, employed by him, or
- (b) to negotiate or consult with, or with an official of, one or more trade unions (whether or not so named).

#### **187 Refusal to deal on grounds of union exclusion prohibited.**

- (1) A person shall not refuse to deal with a supplier or prospective supplier of goods or services if the ground or one of the grounds for his action is that the person against whom it is taken does not, or is not likely to—
- (a) recognise one or more trade unions for the purpose of negotiating on behalf of workers, or any class of worker, employed by him, or
- (b) negotiate or consult with, or with an official of, one or more trade unions.
- (2) A person refuses to deal with a person if—



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- (a) 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; or
  - (b) in relation to a proposed contract for the supply of goods or services—
    - (i) he excludes that person from the group of persons from whom tenders for the supply of the goods or services are invited, or
    - (ii) he fails to permit that person to submit such a tender; or
    - [<sup>F1</sup>(iii)] he otherwise determines not to enter into a contract with that person for the supply of the goods or services. [<sup>F2</sup>or
  - (c) he terminates a contract with that person for the supply of goods or services.]
- (3) 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).

#### Textual Amendments

- F1** S. 187(2): by 1993 c. 19, s. 49(1), **Sch. 7 para.23** it is provided (30.8.1993) that para. (c) shall become sub para. (iii) of para. (b); S.I. 1993/1908, art. 2(1), **Sch. 1**
- F2** S. 187(2)(c) and word preceding it inserted (30.8.1993) by 1993 c. 19, s. 49(1), **Sch. 7 para.23**; S.I. 1993/1908, art. 2(1), **Sch. 1**

## CHAPTER II

### PROCEDURE FOR HANDLING REDUNDANCIES

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

- C16** Pt. IV Ch. II (ss. 188-198) modified (3.4.1995) by 1994 c. 19, s. 44(1)(b) (with ss. 54(5)(7), 55(5), Sch. 17 para. 22(1), 23(2)); S.I. 1995/852, art. 7, **Sch. 26**

#### *Duty of employer to consult<sup>F3</sup> . . . representatives*

#### Textual Amendments

- F3** Words in heading omitted (26.10.1995) by S.I. 1995/2587, **reg. 3(10)**

### 188 Duty of employer to consult<sup>F4</sup> . . . representatives.

[<sup>F5</sup>(1) Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be so dismissed.

(1A) The consultation shall begin in good time and in any event—

- (a) where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least 90 days, and



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(b) otherwise, at least 30 days,  
before the first of the dismissals takes effect.

(1B) For the purposes of this section the appropriate representatives of any employees are—

(a) employee representatives elected by them, or (b) if the employees are of a description in respect of which an independent trade union is recognised by the employer, representatives of the trade union,

or (in the case of employees who both elect employee representatives and are of such a description) either employee representatives elected by them or representatives of the trade union, as the employer chooses.

(2) The consultation shall include consultation about ways of—

- (a) avoiding the dismissals,
- (b) reducing the numbers of employees to be dismissed, and
- (c) mitigating the consequences of the dismissals,

and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives.]

(3) In determining how many employees an employer is proposing to dismiss as redundant no account shall be taken of employees in respect of whose proposed dismissals consultation has already begun.

(4) For the purposes of the consultation the employer shall disclose in writing to the [F6 appropriate] representatives—

- (a) the reasons for his proposals,
- (b) the numbers and descriptions of employees whom it is proposed to dismiss as redundant,
- (c) the total number of employees of any such description employed by the employer at the establishment in question,
- (d) the proposed method of selecting the employees who may be dismissed, F7 . . .
- (e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect. [F8 and
- (f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by or by virtue of any enactment) to employees who may be dismissed.]

(5) That information shall be [F9 given to each of the appropriate representatives by being delivered to them], or sent by post to an address notified by them to the employer, or [F10 (in the case of representatives of a trade union)] sent by post to the union at the address of its head or main office.

[F11 (5A) The employer shall allow the appropriate representatives access to the employees whom it is proposed to dismiss as redundant and shall afford to those representatives such accommodation and other facilities as may be appropriate.]

F12 (6) . . . . .

(7) If in any case there are special circumstances which render it not reasonably practicable for the employer to comply with a requirement of subsection [F13 (1A), (2) or (4)], the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances. [F14 Where the decision leading to the proposed dismissals is that of a person controlling the employer

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(directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement.]

[<sup>F15</sup>(7A) Where—

- (a) the employer has invited any of the employees who may be dismissed to elect employee representatives, and
- (b) the invitation was issued long enough before the time when the consultation is required by subsection (1A)(a) or (b) to begin to allow them to elect representatives by that time,

the employer shall be treated as complying with the requirements of this section in relation to those employees if he complies with those requirements as soon as is reasonably practicable after the election of the representatives.]

- (8) This section does not confer any rights on a trade union [<sup>F16</sup>, a representative] or an employee except as provided by sections 189 to 192 below.

#### Textual Amendments

- F4** Words in sidenote to s. 188 omitted (26.10.1995) by virtue of S.I. 1995/2587, **reg. 3(10)**
- F5** S. 188(1)(1A)(1B)(2) substituted for s. 188(1)(2) (26.10.1995) by S.I. 1995/2587, **reg. 3(2)**
- F6** Word in s. 188(4) substituted (26.10.1995) by S.I. 1995/2587, **reg. 3(3)**
- F7** Word in s. 188(4)(c) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F8** S. 188(4)(f) and word preceding it inserted (30.8.1993) by 1993 c. 19, s. 34(2)(a); S.I. 1993/1908, art. 2(1), **Sch. 1**
- F9** Words in s. 188(5) substituted (26.10.1995) by S.I. 1995/2587, **reg. 3(4)(a)**
- F10** Words in s. 188(5) inserted (26.10.1995) by S.I. 1995/2587, **reg. 3(4)(b)**
- F11** S. 188(5A) inserted (26.10.1995) by S.I. 1995/2587, **reg. 3(5)**
- F12** S. 188(6) omitted (26.10.1995) by virtue of S.I. 1995/2587, **reg. 3(6)**
- F13** Words in s. 188(7) substituted (26.10.1995) by S.I. 1995/2587, **reg. 3(7)**
- F14** Words in s. 188(7) inserted (30.8.1993) by 1993 c. 19, s. 34(2)(c); S.I. 1993/1908, art. 2(1), **Sch. 1**
- F15** S. 188(7A) inserted (26.10.1995) by S.I. 1995/2587, **reg. 3(8)**
- F16** Words in s. 188(8) inserted (26.10.1995) by S.I. 1995/2587, **reg. 3(9)**

VALID FROM 28/07/1999

[<sup>F17</sup>**188A**

(1) The requirements for the election of employee representatives under section 188(1B) (b)(ii) are that—

- (a) the employer shall make such arrangements as are reasonably practical to ensure that the election is fair;
- (b) the employer shall determine the number of representatives to be elected so that there are sufficient representatives to represent the interests of all the affected employees having regard to the number and classes of those employees;
- (c) the employer shall determine whether the affected employees should be represented either by representatives of all the affected employees or by representatives of particular classes of those employees;

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- (d) before the election the employer shall determine the term of office as employee representatives so that it is of sufficient length to enable information to be given and consultations under section 188 to be completed;
  - (e) the candidates for election as employee representatives are affected employees on the date of the election;
  - (f) no affected employee is unreasonably excluded from standing for election;
  - (g) all affected employees on the date of the election are entitled to vote for employee representatives;
  - (h) the employees entitled to vote may vote for as many candidates as there are representatives to be elected to represent them or, if there are to be representatives for particular classes of employees, may vote for as many candidates as there are representatives to be elected to represent their particular class of employee;
  - (i) the election is conducted so as to secure that—
    - (i) so far as is reasonably practicable, those voting do so in secret, and
    - (ii) the votes given at the election are accurately counted.
- (2) Where, after an election of employee representatives satisfying the requirements of subsection (1) has been held, one of those elected ceases to act as an employee representative and any of those employees are no longer represented, they shall elect another representative by an election satisfying the requirements of subsection (1) (a), (e), (f) and (i).]

#### Textual Amendments

- F17** S. 188A inserted (28.7.1999 subject to reg 2(2) of the commencing S.I) by S.I. 1999/1925, regs. 2(2), 4

### 189 Complaint <sup>F18</sup> . . . and protective award.

- [<sup>F19</sup>(1) Where an employer has failed to comply with any requirement of section 188, a complaint may be presented to an industrial tribunal on that ground
- (a) in the case of a failure relating to employee representatives, by any of the employee representatives to whom the failure related,
  - (b) in the case of a failure relating to representatives of a trade union, by the trade union, and
  - (c) in any other case, by any of the employees who have been or may be dismissed as redundant.]
- (2) If the tribunal finds the complaint well-founded it shall make a declaration to that effect and may also make a protective award.
- (3) A protective award is an award in respect of one or more descriptions of employees—
- (a) who have been dismissed as redundant, or whom it is proposed to dismiss as redundant, and
  - (b) in respect of whose dismissal or proposed dismissal the employer has failed to comply with a requirement of section 188,
- ordering the employer to pay remuneration for the protected period.
- (4) The protected period—

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- (a) begins with the date on which the first of the dismissals to which the complaint relates takes effect, or the date of the award, whichever is the earlier, and
  - (b) is of such length as the tribunal determines to be just and equitable in all the circumstances having regard to the seriousness of the employer's default in complying with any requirement of section 188;
- but shall not exceed 90 days in a case falling within <sup>F20</sup>paragraph (a) of subsection (1A) of section 188 or 30 days in a case falling within paragraph (b) of that subsection.]
- (5) An industrial tribunal shall not consider a complaint under this section unless it is presented to the tribunal—
- (a) before the <sup>F21</sup>date on which the last of the dismissals to which the complaint relates] takes effect, or
  - (b) <sup>F22</sup>[during] the period of three months beginning with <sup>F23</sup>[that date], or
  - (c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented <sup>F24</sup>[during the] period of three months, within such further period as it considers reasonable.
- (6) If on a complaint under this section a question arises—
- (a) whether there were special circumstances which rendered it not reasonably practicable for the employer to comply with any requirement of section 188, or
  - (b) whether he took all such steps towards compliance with that requirement as were reasonably practicable in those circumstances,
- it is for the employer to show that there were and that he did.

#### Textual Amendments

- F18** Words in sidenote to s. 189 omitted (26.10.1995) by virtue of S.I. 1995/2587, **reg. 4(5)**
- F19** S. 189(1) substituted (26.10.1995) by S.I. 1995/2587, **reg. 4(2)**
- F20** Words in s. 189(4) substituted (26.10.1995) by S.I. 1995/2587, **reg. 4(3)**
- F21** Words in s. 189(5)(a) substituted (26.10.1995) by S.I. 1995/2587, **reg. 4(4)(a)**
- F22** Word in s. 189(5)(b) substituted (26.10.1995) by S.I. 1995/2587, **reg. 4(4)(b)(i)**
- F23** Words in s. 189(5)(b) substituted (26.10.1995) by S.I. 1995/2587, **reg. 4(4)(b)(ii)**
- F24** Words in s. 189(5)(c) substituted (26.10.1995) by S.I. 1995/2587, **reg. 4(4)(c)**

## 190 Entitlement under protective award.

- (1) Where an industrial tribunal has made a protective award, every employee of a description to which the award relates is entitled, subject to the following provisions and to section 191, to be paid remuneration by his employer for the protected period.
- (2) The rate of remuneration payable is a week's pay for each week of the period; and remuneration in respect of a period less than one week shall be calculated by reducing proportionately the amount of a week's pay.
- <sup>F25</sup>(3) .....
- (4) An employee is not entitled to remuneration under a protective award in respect of a period during which he is employed by the employer unless he would be entitled to be paid by the employer in respect of that period—
- (a) by virtue of his contract of employment, or

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- (b) by virtue of [F26sections 87 to 91 of the Employment Rights Act 1996] (rights of employee in period of notice),  
if that period fell within the period of notice required to be given by [F27section 86(1)] of that Act.
- (5) [F28Chapter II of Part XIV of the Employment Rights Act 1996] applies with respect to the calculation of a week's pay for the purposes of this section.

The calculation date for the purposes of [F29that Chapter] is the date on which the protective award was made or, in the case of an employee who was dismissed before the date on which the protective award was made, the date which by virtue of [F30section 226(5)] is the calculation date for the purpose of computing the amount of a redundancy payment in relation to that dismissal (whether or not the employee concerned is entitled to any such payment).

- (6) If an employee of a description to which a protective award relates dies during the protected period, the award has effect in his case as if the protected period ended on his death.

#### Textual Amendments

- F25** S. 190(3) repealed (30.8.1993) by 1993 c. 19, ss. 34(3), 51, Sch. 10
- F26** Words in s. 190(4) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 56(14)(a)(i) (with ss. 191-195, 202)
- F27** Words in s. 190(4) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 56(14)(a)(ii) (with ss. 191-195, 202)
- F28** Words in s. 190(5) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 56(b)(i) (with ss. 191-195, 202)
- F29** Words in s. 190(5) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 56(b)(ii) (with ss. 191-195, 202)
- F30** Words in s. 190(5) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 56(b)(iii) (with ss. 191-195, 202)

### 191 Termination of employment during protected period.

- (1) Where the employee is employed by the employer during the protected period and—
- he is fairly dismissed by his employer [F31otherwise than as redundant], or
  - he unreasonably terminates the contract of employment,
- then, subject to the following provisions, he is not entitled to remuneration under the protective award in respect of any period during which but for that dismissal or termination he would have been employed.
- (2) If an employer makes an employee an offer (whether in writing or not and whether before or after the ending of his employment under the previous contract) to renew his contract of employment, or to re-engage him under a new contract, so that the renewal or re-engagement would take effect before or during the protected period, and either—
- the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would not differ from the corresponding provisions of the previous contract, or
  - the offer constitutes an offer of suitable employment in relation to the employee,

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the following subsections have effect.

- (3) If the employee unreasonably refuses the offer, he is not entitled to remuneration under the protective award in respect of a period during which but for that refusal he would have been employed.
- (4) If the employee's contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of such an offer as is referred to in subsection (2) (b), there shall be a trial period in relation to the contract as renewed, or the new contract (whether or not there has been a previous trial period under this section).
- (5) The trial period begins with the ending of his employment under the previous contract and ends with the expiration of the period of four weeks beginning with the date on which he starts work under the contract as renewed, or the new contract, or such longer period as may be agreed in accordance with subsection (6) for the purpose of retraining the employee for employment under that contract.
- (6) Any such agreement—
  - (a) shall be made between the employer and the employee or his representative before the employee starts work under the contract as renewed or, as the case may be, the new contract,
  - (b) shall be in writing,
  - (c) shall specify the date of the end of the trial period, and
  - (d) shall specify the terms and conditions of employment which will apply in the employee's case after the end of that period.
- (7) If during the trial period—
  - (a) the employee, for whatever reason, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated, or
  - (b) the employer, for a reason connected with or arising out of the change to the renewed, or new, employment, terminates the contract, or gives notice to terminate it and the contract is thereafter, in consequence, terminated,

the employee remains entitled under the protective award unless, in a case falling within paragraph (a), he acted unreasonably in terminating or giving notice to terminate the contract.

#### Textual Amendments

**F31** Words in s. 191(1)(a) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.70**; S.I. 1993/1908, art. 2(1), **Sch. 1**

## 192 Complaint by employee to industrial tribunal.

- (1) An employee may present a complaint to an industrial tribunal on the ground that he is an employee of a description to which a protective award relates and that his employer has failed, wholly or in part, to pay him remuneration under the award.
- (2) An industrial tribunal shall not entertain a complaint under this section unless it is presented to the tribunal—
  - (a) before the end of the period of three months beginning with the day (or, if the complaint relates to more than one day, the last of the days) in respect of which the complaint is made of failure to pay remuneration, or

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- (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months, within such further period as it may consider reasonable.
- (3) Where the tribunal finds a complaint under this section well-founded it shall order the employer to pay the complainant the amount of remuneration which it finds is due to him.
- (4) The remedy of an employee for infringement of his right to remuneration under a protective award is by way of complaint under this section, and not otherwise.

#### *Duty of employer to notify Secretary of State*

### **193 Duty of employer to notify Secretary of State of certain redundancies.**

- (1) An employer proposing to dismiss as redundant 100 or more employees at one establishment within a period of 90 days or less shall notify the Secretary of State, in writing, of his proposal at least 90 days before the first of those dismissals takes effect.
- (2) An employer proposing to dismiss as redundant [<sup>F32</sup>20] or more employees at one establishment within [<sup>F33</sup>such a period] shall notify the Secretary of State, in writing, of his proposal at least 30 days before the first of those dismissals takes effect.
- (3) In determining how many employees an employer is proposing to dismiss as redundant within the period mentioned in subsection (1) or (2), no account shall be taken of employees in respect of whose proposed dismissal notice has already been given to the Secretary of State.
- (4) A notice under this section shall—
  - (a) be given to the Secretary of State by delivery to him or by sending it by post to him, at such address as the Secretary of State may direct in relation to the establishment where the employees proposed to be dismissed are employed,
  - [<sup>F34</sup>(b) where there are representatives to be consulted under section 188, identify them and state the date when consultation with them under that section began,]
  - (c) be in such form and contain such particulars, in addition to those required by paragraph (b), as the Secretary of State may direct.
- (5) After receiving a notice under this section from an employer the Secretary of State may by written notice require the employer to give him such further information as may be specified in the notice.
- (6) [<sup>F35</sup>Where there are representatives to be consulted under section 188 the employer shall give to each of them a copy of any notice given under subsection (1) or (2).]
 

The copy shall be delivered to them or sent by post to an address notified by them to the employer, or [<sup>F36</sup>(in the case of representatives of a trade union)] sent by post to the union at the address of its head or main office.
- (7) If in any case there are special circumstances rendering it not reasonably practicable for the employer to comply with any of the requirements of subsections (1) to (6), he shall take all such steps towards compliance with that requirement as are reasonably practicable in the circumstances [<sup>F37</sup>Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute



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special circumstances rendering it not reasonably practicable for the employer to comply with any of those requirements.].

#### Textual Amendments

- F32** Word in s. 193(2) substituted (26.10.1995) by S.I. 1995/2587, reg. 5(2)(a)  
**F33** Words in s. 193(2) substituted (26.10.1995) by S.I. 1995/2587, reg. 5(2)(b)  
**F34** S. 193(4)(b) substituted (26.10.1995) by S.I. 1995/2587, reg. 5(3)  
**F35** Words in s. 193(6) substituted (26.10.1995) by S.I. 1995/2587, reg. 5(4)(a)  
**F36** Words in s. 193(6) substituted (26.10.1995) by S.I. 1995/2587, reg. 5(4)(b)  
**F37** Words in s. 193(7) inserted (30.8.1993) by 1993 c. 19, s. 34(4); S.I. 1993/1908, art. 2(1), Sch. 1

#### 194 Offence of failure to notify.

- (1) An employer who fails to give notice to the Secretary of State in accordance with section 193 commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) Proceedings in England or Wales for such an offence shall be instituted only by or with the consent of the Secretary of State or by an officer authorised for that purpose by special or general directions of the Secretary of State.

An officer so authorised may, although not of counsel or a solicitor, prosecute or conduct proceedings for such an offence before a magistrates' court.

- (3) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) Where the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

#### *Supplementary provisions*

#### [<sup>F38</sup>195 Construction of references to dismissal as redundant etc.

- (1) In this Chapter references to dismissal as redundant are references to dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related.
- (2) For the purposes of any proceedings under this Chapter, where an employee is or is proposed to be dismissed it shall be presumed, unless the contrary is proved, that he is or is proposed to be dismissed as redundant.]

#### Textual Amendments

- F38** S. 195 substituted (30.8.1993) by 1993 c. 19, s. 34(5); S.I. 1993/1908, art. 2(1), Sch.1

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### **[<sup>F39</sup>196 Construction of references to representatives.**

- (1) For the purposes of this Chapter persons are employee representatives if—
  - (a) they have been elected by employees for the specific purpose of being consulted by their employer about dismissals proposed by him, or
  - (b) having been elected by employees (whether before or after dismissals have been proposed by their employer) otherwise than for that specific purpose, it is appropriate (having regard to the purposes for which they were elected) for the employer to consult them about dismissals proposed by him,
 and (in either case) they are employed by the employer at the time when they are elected.
- (2) References in this Chapter to representatives of a trade union, in relation to an employer, are to officials or other persons authorised by the trade union to carry on collective bargaining with the employer.]

#### **Textual Amendments**

**F39** S. 196 substituted (26.10.1995) by S.I. 1995/2587, reg. 6

### **197 Power to vary provisions.**

- (1) The Secretary of State may by order made by statutory instrument vary—
  - (a) the provisions of sections 188(2) and 193(1) (requirements as to consultation and notification), and
  - (b) the periods referred to at the end of section 189(4) (maximum protected period);
 but no such order shall be made which has the effect of reducing to less than 30 days the periods referred to in sections 188(2) and 193(1) as the periods which must elapse before the first of the dismissals takes effect.
- (2) No such order shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

### **198 Power to adapt provisions in case of collective agreement.**

- (1) This section applies where there is in force a collective agreement which establishes—
  - (a) arrangements for providing alternative employment for employees to whom the agreement relates if they are dismissed as redundant by an employer to whom it relates, or
  - (b) arrangements for [<sup>F40</sup>handling the dismissal of employees as redundant].
- (2) On the application of all the parties to the agreement the Secretary of State may, if he is satisfied having regard to the provisions of the agreement that the arrangements are on the whole at least as favourable to those employees as the foregoing provisions of this Chapter, by order made by statutory instrument adapt, modify or exclude any of those provisions both in their application to all or any of those employees and in their application to any other employees of any such employer.
- (3) The Secretary of State shall not make such an order unless the agreement—
  - (a) provides for procedures to be followed (whether by arbitration or otherwise) in cases where an employee to whom the agreement relates claims that any

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employer or other person to whom it relates has not complied with the provisions of the agreement, and

- (b) provides that those procedures include a right to arbitration or adjudication by an independent referee or body in cases where (by reason of an equality of votes or otherwise) a decision cannot otherwise be reached,

or indicates that any such employee may present a complaint to an industrial tribunal that any such employer or other person has not complied with those provisions.

- (4) An order under this section may confer on an industrial tribunal to whom a complaint is presented as mentioned in subsection (3) such powers and duties as the Secretary of State considers appropriate.
- (5) An order under this section may be varied or revoked by a subsequent order thereunder either in pursuance of an application made by all or any of the parties to the agreement in question or without any such application.

#### Textual Amendments

**F40** Words in s. 198(1)(b) substituted (30.8.1993) by 1993 c. 19, s. 49(2), Sch. 8 para.71

## CHAPTER III

### CODES OF PRACTICE

#### *Codes of Practice issued by ACAS*

#### **199 Issue of Codes of Practice by ACAS.**

- (1) ACAS may issue Codes of Practice containing such practical guidance as it thinks fit for the purpose of promoting the improvement of industrial relations.
- (2) In particular, ACAS shall in one or more Codes of Practice provide practical guidance on the following matters—
- the time off to be permitted by an employer to a trade union official in accordance with section 168 (time off for carrying out trade union duties);
  - the time off to be permitted by an employer to a trade union member in accordance with section 170 (time off for trade union activities); and
  - the information to be disclosed by employers to trade union representatives in accordance with sections 181 and 182 (disclosure of information for purposes of collective bargaining).
- (3) The guidance mentioned in subsection (2)(a) shall include guidance on the circumstances in which a trade union official is to be permitted to take time off under section 168 in respect of duties connected with industrial action; and the guidance mentioned in subsection (2)(b) shall include guidance on the question whether, and the circumstances in which, a trade union member is to be permitted to take time off under section 170 for trade union activities connected with industrial action.
- (4) ACAS may from time to time revise the whole or any part of a Code of Practice issued by it and issue that revised Code.

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## **200 Procedure for issue of Code by ACAS.**

- (1) Where ACAS proposes to issue a Code of Practice, or a revised Code, it shall prepare and publish a draft of the Code, shall consider any representations made to it about the draft and may modify the draft accordingly.
  - (2) If ACAS determines to proceed with the draft, it shall transmit the draft to the Secretary of State who—
    - (a) if he approves of it, shall lay it before both Houses of Parliament, and
    - (b) if he does not approve of it, shall publish details of his reasons for withholding approval.
  - (3) A Code containing practical guidance on any of the matters referred to in section 199(2) shall not be issued unless the draft has been approved by a resolution of each House of Parliament; and if it is so approved, ACAS shall issue the Code in the form of the draft.
  - (4) In any other case the following procedure applies—
    - (a) if, within the period of 40 days beginning with the day on which the draft is laid before Parliament, (or, if copies are laid before the two Houses on different days, with the later of the two days) either House so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before Parliament of a new draft;
    - (b) if no such resolution is passed, ACAS shall issue the Code in the form of the draft.
- (5) A Code issued in accordance with this section shall come into effect on such day as the Secretary of State may appoint by order made by statutory instrument.

The order may contain such transitional provisions or savings as appear to him to be necessary or expedient.

## **201 Consequential revision of Code issued by ACAS.**

- (1) A Code of Practice issued by ACAS may be revised by it in accordance with this section for the purpose of bringing it into conformity with subsequent statutory provisions by the making of consequential amendments and the omission of obsolete passages.

“Subsequent statutory provisions” means provisions made by or under an Act of Parliament and coming into force after the Code was issued (whether before or after the commencement of this Act).
- (2) Where ACAS proposes to revise a Code under this section, it shall transmit a draft of the revised Code to the Secretary of State who—
  - (a) if he approves of it, shall lay the draft before each House of Parliament, and
  - (b) if he does not approve of it, shall publish details of his reasons for withholding approval.
- (3) If, within the period of 40 days beginning with the day on which the draft is laid before Parliament, (or, if copies are laid before the two Houses on different days, with the

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later of the two days) either House so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before Parliament of a new draft.

In reckoning the period of 40 days no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

- (4) If no such resolution is passed ACAS shall issue the Code in the form of the draft and it shall come into effect on such day as the Secretary of State may appoint by order made by statutory instrument.

The order may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient.

## **202 Revocation of Code issued by ACAS.**

- (1) A Code of Practice issued by ACAS may, at the request of ACAS, be revoked by the Secretary of State by order made by statutory instrument.

The order may contain such transitional provisions and savings as appear to him to be appropriate.

- (2) If ACAS requests the Secretary of State to revoke a Code and he decides not to do so, he shall publish details of his reasons for his decision.

- (3) An order shall not be made under this section unless a draft of it has been laid before and approved by resolution of each House of Parliament.

### *Codes of Practice issued by the Secretary of State*

## **203 Issue of Codes of Practice by the Secretary of State.**

- (1) The Secretary of State may issue Codes of Practice containing such practical guidance as he thinks fit for the purpose—

- (a) of promoting the improvement of industrial relations, or
- (b) of promoting what appear to him to be to be desirable practices in relation to the conduct by trade unions of ballots and elections.

- (2) The Secretary of State may from time to time revise the whole or any part of a Code of Practice issued by him and issue that revised Code.

## **204 Procedure for issue of Code by Secretary of State.**

- (1) When the Secretary of State proposes to issue a Code of Practice, or a revised Code, he shall after consultation with ACAS prepare and publish a draft of the Code, shall consider any representations made to him about the draft and may modify the draft accordingly.

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

- (3) A Code issued under this section shall come into effect on such day as the Secretary of State may by order appoint.

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The order may contain such transitional provisions or savings as appear to him to be necessary or expedient.

- (4) An order under subsection (3) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **205 Consequential revision of Code issued by Secretary of State.**

- (1) A Code of Practice issued by the Secretary of State may be revised by him in accordance with this section for the purpose of bringing it into conformity with subsequent statutory provisions by the making of consequential amendments and the omission of obsolete passages.

“Subsequent statutory provisions” means provisions made by or under an Act of Parliament and coming into force after the Code was issued (whether before or after the commencement of this Act).

- (2) Where the Secretary of State proposes to revise a Code under this section, he shall lay a draft of the revised Code before each House of Parliament.
- (3) If within the period of 40 days beginning with the day on which the draft is laid before Parliament, or, if copies are laid before the two Houses on different days, with the later of the two days, either House so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before Parliament of a new draft.

In reckoning the period of 40 days no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

- (4) If no such resolution is passed the Secretary of State shall issue the Code in the form of the draft and it shall come into effect on such day as he may appoint by order made by statutory instrument.

The order may contain such transitional provisions and savings as appear to him to be appropriate.

## **206 Revocation of Code issued by Secretary of State.**

- (1) A Code of Practice issued by the Secretary of State may be revoked by him by order made by statutory instrument.

The order may contain such transitional provisions and savings as appear to him to be appropriate.

- (2) An order shall not be made under this section unless a draft of it has been laid before and approved by resolution of each House of Parliament.

### *Supplementary provisions*

## **207 Effect of failure to comply with Code.**

- (1) A failure on the part of any person to observe any provision of a Code of Practice issued under this Chapter shall not of itself render him liable to any proceedings.

*Status: Point in time view as at 22/08/1996. 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 IV is up to date with all changes known to be in force on or before 11 July 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) In any proceedings before an industrial tribunal or the Central Arbitration Committee any Code of Practice issued under this Chapter by ACAS shall be admissible in evidence, and any provision of the Code which appears to the tribunal or Committee to be relevant to any question arising in the proceedings shall be taken into account in determining that question.
- (3) In any proceedings before a court or industrial tribunal or the Central Arbitration Committee any Code of Practice issued under this Chapter by the Secretary of State shall be admissible in evidence, and any provision of the Code which appears to the court, tribunal or Committee to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

VALID FROM 06/04/2009

#### **[<sup>F41</sup>207A] Effect of failure to comply with Code: adjustment of awards**

- (1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.
- (2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—
  - (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
  - (b) the employer has failed to comply with that Code in relation to that matter, and
  - (c) that failure was unreasonable,
 the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.
- (3) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—
  - (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
  - (b) the employee has failed to comply with that Code in relation to that matter, and
  - (c) that failure was unreasonable,
 the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 25%.
- (4) In subsections (2) and (3), “relevant Code of Practice” means a Code of Practice issued under this Chapter which relates exclusively or primarily to procedure for the resolution of disputes.
- (5) Where an award falls to be adjusted under this section and under section 38 of the Employment Act 2002, the adjustment under this section shall be made before the adjustment under that section.
- (6) The Secretary of State may by order amend Schedule A2 for the purpose of—
  - (a) adding a jurisdiction to the list in that Schedule, or



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(b) removing a jurisdiction from that list.

- (7) The power of the Secretary of State to make an order under subsection (6) includes power to make such incidental, supplementary, consequential or transitional provision as the Secretary of State thinks fit.
- (8) An order under subsection (6) shall be made by statutory instrument.
- (9) No order shall be made under subsection (6) unless a draft of the statutory instrument containing it has been laid before Parliament and approved by a resolution of each House.]

#### Textual Amendments

**F41** S. 207A inserted (6.4.2009) by Employment Act 2008 (c. 24), ss. 3(2), 22(1)(a); S.I. 2008/3232, art. 2 (with art. 3, Sch. paras. 1-5)

## 208 Provisions of earlier Code superseded by later.

- (1) If ACAS is of the opinion that the provisions of a Code of Practice to be issued by it under this Chapter will supersede the whole or part of a Code previously issued under this Chapter, by it or by the Secretary of State, it shall in the new Code state that on the day on which the new Code comes into effect the old Code or a specified part of it shall cease to have effect.
- (2) If the Secretary of State is of the opinion that the provisions of a Code of Practice to be issued by him under this Chapter will supersede the whole or part of a Code previously issued under this Chapter by him or by ACAS, he shall in the new Code state that on the day on which the new Code comes into effect the old Code or a specified part of it shall cease to have effect.
- (3) The above provisions do not affect any transitional provisions or savings made by the order bringing the new Code into effect.

## CHAPTER IV

### GENERAL

#### *Functions of ACAS*

## 209 General duty to promote improvement of industrial relations.

It is the general duty of ACAS to promote the improvement of industrial relations <sup>F42</sup> . . . [<sup>F43</sup>, in particular, by exercising its functions in relation to the settlement of trade disputes under sections 210 and 212.]

#### Textual Amendments

**F42** Words in s. 209 repealed (30.8.1993) by 1993 c. 19, s. 51, Sch.10; S.I. 1993/1908, art. 2(1), Sch. 1

**F43** Words in s. 209 substituted (30.8.1993) by 1993 c. 19, s. 43(1); S.I. 1993/1908, art. 2(1), Sch.1

*Status: Point in time view as at 22/08/1996. This version of this part contains provisions that are not valid for this point in time.*

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## 210 Conciliation.

- (1) Where a trade dispute exists or is apprehended ACAS may, at the request of one or more parties to the dispute or otherwise, offer the parties to the dispute its assistance with a view to bringing about a settlement.
- (2) The assistance may be by way of conciliation or by other means, and may include the appointment of a person other than an officer or servant of ACAS to offer assistance to the parties to the dispute with a view to bringing about a settlement.
- (3) In exercising its functions under this section ACAS shall have regard to the desirability of encouraging the parties to a dispute to use any appropriate agreed procedures for negotiation or the settlement of disputes.

### Modifications etc. (not altering text)

- C17** S. 210 applied (6.4.2005) by [The Information and Consultation of Employees Regulations 2004 \(S.I. 2004/3426\)](#), [reg. 38\(2\)](#) (with [reg. 3](#))
- C18** S. 210 applied (18.8.2006) by [The European Cooperative Society \(Involvement of Employees\) Regulations 2006 \(S.I. 2006/2059\)](#), [reg. 39\(2\)](#)

VALID FROM 06/04/2005

### <sup>F44</sup>210A Information required by ACAS for purposes of settling recognition disputes

- (1) This section applies where ACAS is exercising its functions under section 210 with a view to bringing about a settlement of a recognition dispute.
- (2) The parties to the recognition dispute may jointly request ACAS or a person nominated by ACAS to do either or both of the following—
  - (a) hold a ballot of the workers involved in the dispute;
  - (b) ascertain the union membership of the workers involved in the dispute.
- (3) In the following provisions of this section references to ACAS include references to a person nominated by ACAS; and anything done by such a person under this section shall be regarded as done in the exercise of the functions of ACAS mentioned in subsection (1).
- (4) At any time after ACAS has received a request under subsection (2), it may require any party to the recognition dispute—
  - (a) to supply ACAS with specified information concerning the workers involved in the dispute, and
  - (b) to do so within such period as it may specify.
- (5) ACAS may impose a requirement under subsection (4) only if it considers that it is necessary to do so—
  - (a) for the exercise of the functions mentioned in subsection (1); and
  - (b) in order to enable or assist it to comply with the request.
- (6) The recipient of a requirement under this section must, within the specified period, supply ACAS with such of the specified information as is in the recipient's possession.

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- (7) A request under subsection (2) may be withdrawn by any party to the recognition dispute at any time and, if it is withdrawn, ACAS shall take no further steps to hold the ballot or to ascertain the union membership of the workers involved in the dispute.
- (8) If a party to a recognition dispute fails to comply with subsection (6), ACAS shall take no further steps to hold the ballot or to ascertain the union membership of the workers involved in the dispute.
- (9) Nothing in this section requires ACAS to comply with a request under subsection (2).
- (10) In this section—
- “party”, in relation to a recognition dispute, means each of the employers, employers' associations and trade unions involved in the dispute;
- “a recognition dispute” means a trade dispute between employers and workers which is connected wholly or partly with the recognition by employers or employers' associations of the right of a trade union to represent workers in negotiations, consultations or other procedures relating to any of the matters mentioned in paragraphs (a) to (f) of section 218(1);
- “specified” means specified in a requirement under this section; and
- “workers” has the meaning given in section 218(5).]

#### Textual Amendments

**F44** S. 210A inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 21**, 59(2)-(4); [S.I. 2005/872](#), **art. 4**, Sch. (with arts. 6-21)

### 211 Conciliation officers.

- (1) ACAS shall designate some of its officers to perform the functions of conciliation officers under any enactment (whenever passed) relating to matters which are or could be the subject of proceedings before an industrial tribunal.
- (2) References in any such enactment to a conciliation officer are to an officer designated under this section.

### 212 Arbitration.

- (1) Where a trade dispute exists or is apprehended ACAS may, at the request of one or more of the parties to the dispute and with the consent of all the parties to the dispute, refer all or any of the matters to which the dispute relates for settlement to the arbitration of—
- (a) one or more persons appointed by ACAS for that purpose (not being officers or employees of ACAS), or
  - (b) the Central Arbitration Committee.
- (2) In exercising its functions under this section ACAS shall consider the likelihood of the dispute being settled by conciliation.
- (3) Where there exist appropriate agreed procedures for negotiation or the settlement of disputes, ACAS shall not refer a matter for settlement to arbitration under this section unless—

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- (a) those procedures have been used and have failed to result in a settlement, or
  - (b) there is, in ACAS's opinion, a special reason which justifies arbitration under this section as an alternative to those procedures.
- (4) Where a matter is referred to arbitration under subsection (1)(a)—
- (a) if more than one arbitrator or arbiter is appointed, ACAS shall appoint one of them to act as chairman; and
  - (b) the award may be published if ACAS so decides and all the parties consent.
- (5) Part I of the <sup>M1</sup>Arbitration Act 1950 (general provisions as to arbitration) does not apply to an arbitration under this section.

#### Marginal Citations

**M1** 1950 c.27.

VALID FROM 01/08/1998

#### <sup>F45</sup>**212A Arbitration scheme for unfair dismissal cases etc.**

- (1) ACAS may prepare a scheme providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before an employment tribunal arising out of a contravention or alleged contravention of—
  - (a) Part X of the <sup>M2</sup>Employment Rights Act 1996 (unfair dismissal), or
  - (b) any enactment specified in an order made by the Secretary of State.
- (2) When ACAS has prepared such a scheme it shall submit a draft of the scheme to the Secretary of State who, if he approves it, shall make an order—
  - (a) setting out the scheme, and
  - (b) making provision for it to come into effect.
- (3) ACAS may from time to time prepare a revised version of such a scheme and, when it has done so, shall submit a draft of the revised scheme to the Secretary of State who, if he approves it, shall make an order—
  - (a) setting out the revised scheme, and
  - (b) making provision for it to come into effect.
- (4) ACAS may take any steps appropriate for promoting awareness of a scheme prepared under this section.
- (5) Where the parties to any dispute within subsection (1) agree in writing to submit the dispute to arbitration in accordance with a scheme having effect by virtue of an order under this section, ACAS shall refer the dispute to the arbitration of a person appointed by ACAS for the purpose (not being an officer or employee of ACAS).
- (6) Nothing in the <sup>M3</sup>Arbitration Act 1996 shall apply to an arbitration conducted in accordance with a scheme having effect by virtue of an order under this section except to the extent that the order provides for any provision of Part I of that Act so to apply; and the order may provide for any such provision so to apply subject to modifications.
- (7) A scheme set out in an order under this section may, in relation to an arbitration conducted in accordance with the law of Scotland, make provision—

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- (a) that a reference on a preliminary point may be made, or
- (b) conferring a right of appeal which shall lie,

to the relevant court on such grounds and in respect of such matters as may be specified in the scheme; and in this subsection “relevant court” means such court, being the Court of Session or the Employment Appeal Tribunal, as may be specified in the scheme, and a different court may be specified as regards different grounds or matters.

- (8) Where a scheme set out in an order under this section includes provision for the making of re-employment orders in arbitrations conducted in accordance with the scheme, the order setting out the scheme may require employment tribunals to enforce such orders—

- (a) in accordance with section 117 of the <sup>M4</sup>Employment Rights Act 1996 (enforcement by award of compensation), or
- (b) in accordance with that section as modified by the order.

For this purpose “re-employment orders” means orders requiring that persons found to have been unfairly dismissed be reinstated, re-engaged or otherwise re-employed.

- (9) An order under this section setting out a scheme may provide that, in the case of disputes within subsection (1)(a), such part of an award made in accordance with the scheme as is specified by the order shall be treated as a basic award of compensation for unfair dismissal for the purposes of section 184(1)(d) of the <sup>M5</sup>Employment Rights Act 1996 (which specifies such an award as a debt which the Secretary of State must satisfy if the employer has become insolvent).
- (10) An order under this section shall be made by statutory instrument.
- (11) No order shall be made under subsection (1)(b) unless a draft of the statutory instrument containing it has been laid before Parliament and approved by a resolution of each House.
- (12) A statutory instrument containing an order under this section (other than one of which a draft has been approved by resolution of each House of Parliament) shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

### Textual Amendments

**F45** S. 212A inserted (1.8.1998) by 1998 c. 8, s. 7; S.I. 1998/1658, art. 2(1), Sch. 1

### Marginal Citations

**M2** 1996 c. 18.

**M3** 1996 c. 23.

**M4** 1996 c. 18.

**M5** 1996 c. 18.

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VALID FROM 01/08/1998

[<sup>F46</sup>**212B Dismissal procedures agreements.**

ACAS may, in accordance with any dismissal procedures agreement (within the meaning of the <sup>M6</sup>Employment Rights Act 1996), refer any matter to the arbitration of a person appointed by ACAS for the purpose (not being an officer or employee of ACAS).]

**Textual Amendments**

**F46** S. 212B inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 7**; S.I. 1998/1658, art. 2(1), **Sch. 1**

**Marginal Citations**

**M6** 1996 c. 18.

[<sup>F47</sup>**213 Advice.**

- (1) ACAS may, on request or otherwise, give employers, employers' associations, workers and trade unions such advice as it thinks appropriate on matters concerned with or affecting or likely to affect industrial relations.
- (2) ACAS may also publish general advice on matters concerned with or affecting or likely to affect industrial relations.]

**Textual Amendments**

**F47** S. 213 substituted (30.8.1993) by 1993 c. 19, s. 43(2); S.I. 1993/1908, art. 2(1), **Sch.1**

**214 Inquiry.**

- (1) ACAS may, if it thinks fit, inquire into any question relating to industrial relations generally or to industrial relations in any particular industry or in any particular undertaking or part of an undertaking.
- (2) The findings of an inquiry under this section, together with any advice given by ACAS in connection with those findings, may be published by ACAS if—
  - (a) it appears to ACAS that publication is desirable for the improvement of industrial relations, either generally or in relation to the specific question inquired into, and
  - (b) after sending a draft of the findings to all parties appearing to to be concerned and taking account of their views, it thinks fit.

*Courts of inquiry*

**215 Inquiry and report by court of inquiry.**

- (1) Where a trade dispute exists or is apprehended, the Secretary of State may inquire into the causes and circumstances of the dispute, and, if he thinks fit, appoint a court of

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inquiry and refer to it any matters appearing to him to be connected with or relevant to the dispute.

- (2) The court shall inquire into the matters referred to it and report on them to the Secretary of State; and it may make interim reports if it thinks fit.
- (3) Any report of the court, and any minority report, shall be laid before both Houses of Parliament as soon as possible.
- (4) The Secretary of State may, before or after the report has been laid before Parliament, publish or cause to be published from time to time, in such manner as he thinks fit, any information obtained or conclusions arrived at by the court as the result or in the course of its inquiry.
- (5) No report or publication made or authorised by the court or the Secretary of State shall include any information obtained by the court of inquiry in the course of its inquiry—
  - (a) as to any trade union, or
  - (b) as to any individual business (whether carried on by a person, firm, or company),

which is not available otherwise than through evidence given at the inquiry, except with the consent of the secretary of the trade union or of the person, firm, or company in question.

Nor shall any individual member of the court or any person concerned in the inquiry disclose such information without such consent.

- (6) The Secretary of State shall from time to time present to Parliament a report of his proceedings under this section.

## **216 Constitution and proceedings of court of inquiry.**

- (1) A court of inquiry shall consist of—
  - (a) a chairman and such other persons as the Secretary of State thinks fit to appoint, or
  - (b) one person appointed by the Secretary of State, as the Secretary of State thinks fit.
- (2) A court may act notwithstanding any vacancy in its number.
- (3) A court may conduct its inquiry in public or in private, at its discretion.
- (4) The Secretary of State may make rules regulating the procedure of a court of inquiry, including rules as to summoning of witnesses, quorum, and the appointment of committees and enabling the court to call for such documents as the court may determine to be relevant to the subject-matter of the inquiry.
- (5) A court of inquiry may, if and to such extent as may be authorised by rules under this section, by order require any person who appears to the court to have knowledge of the subject-matter of the inquiry—
  - (a) to supply (in writing or otherwise) such particulars in relation thereto as the court may require, and
  - (b) where necessary, to attend before the court and give evidence on oath;
 and the court may administer or authorise any person to administer an oath for that purpose.



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- (6) Provision shall be made by rules under this section with respect to the cases in which persons may appear by counsel or solicitor in proceedings before a court of inquiry, and except as provided by those rules no person shall be entitled to appear in any such proceedings by counsel or solicitor.

### *Supplementary provisions*

#### **217 Exclusion of power of arbiter to state case to Court of Session.**

Section 3 of the <sup>M7</sup>Administration of Justice (Scotland) Act 1972 (power of arbiter to state case for opinion of Court of Session) does not apply to—

- (a) any form of arbitration relating to a trade dispute, or
- (b) any other arbitration arising from a collective agreement.

#### **Marginal Citations**

M7 1972 c. 59.

#### **218 Meaning of “trade dispute” in Part IV.**

- (1) In this Part “trade dispute” means a dispute between employers and workers, or between workers and workers, which is connected with one or more of the following matters—
- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
  - (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
  - (c) allocation of work or the duties of employment as between workers or groups of workers;
  - (d) matters of discipline;
  - (e) the membership or non-membership of a trade union on the part of a worker;
  - (f) facilities for officials of trade unions; and
  - (g) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers or employers’ associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures.
- (2) A dispute between a Minister of the Crown and any workers shall, notwithstanding that he is not the employer of those workers, be treated for the purposes of this Part as a dispute between an employer and those workers if the dispute relates—
- (a) to matters which have been referred for consideration by a joint body on which, by virtue of any provision made by or under any enactment, that Minister is represented, or
  - (b) to matters which cannot be settled without that Minister exercising a power conferred on him by or under an enactment.
- (3) There is a trade dispute for the purpose of this Part even though it relates to matters occurring outside Great Britain.

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- (4) A dispute to which a trade union or employer’s association is a party shall be treated for the purposes of this Part as a dispute to which workers or, as the case may be, employers are parties.
- (5) In this section—
- “employment” includes any relationship whereby one person personally does work or performs services for another; and
  - “worker”, in relation to a dispute to which an employer is a party, includes any worker even if not employed by that employer.

**Status:**

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**Changes to legislation:**

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