



Trade Union and Labour Relations (Consolidation) Act 1992

1992 CHAPTER 52

PART V

INDUSTRIAL ACTION

Protection of acts in contemplation or furtherance of trade dispute

219 Protection from certain tort liabilities.

- (1) An act done by a person in contemplation or furtherance of a trade dispute is not actionable in tort on the ground only—
 - (a) that it induces another person to break a contract or interferes or induces another person to interfere with its performance, or
 - (b) that it consists in his threatening that a contract (whether one to which he is a party or not) will be broken or its performance interfered with, or that he will induce another person to break a contract or interfere with its performance.
- (2) An agreement or combination by two or more persons to do or procure the doing of an act in contemplation or furtherance of a trade dispute is not actionable in tort if the act is one which if done without any such agreement or combination would not be actionable in tort.
- (3) Nothing in subsections (1) and (2) prevents an act done in the course of picketing from being actionable in tort unless it is done in the course of attendance declared lawful by section 220 (peaceful picketing)
- (4) Subsections (1) and (2) have effect subject to sections 222 to 225 (action excluded from protection) and [F1to sections 226 (requirement of ballot before action by trade union) and 234A (requirement of notice to employer of industrial action); and in those sections “not protected” means excluded from the protection afforded by this section or, where the expression is used with reference to a particular person, excluded from that protection as respects that person.]

Status: Point in time view as at 01/10/2004. 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 V is up to date with all changes known to be in force on or before 07 August 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)

Textual Amendments

- F1** Words in s. 219(4) substituted (30.8.1993) by 1993 c. 19, s. 49(2), [Sch. 8 para.72](#); S.I. 1993/1908, [art. 2\(1\)](#), [Sch.1](#)

Modifications etc. (not altering text)

- C1** S. 219 excluded (E.W.) (2.3.1998) by [S.I. 1998/218](#), [art. 5](#)
S. 219 excluded (1.9.1999) by [S.I. 1999/2256](#), [art. 5](#)
- C2** S. 219 excluded (E.) (1.9.2003) by [The Education \(Modification of Enactments Relating to Employment\) \(England\) Order 2003 \(S.I. 2003/1964\)](#), [reg. 5\(2\)](#)

220 Peaceful picketing.

- (1) It is lawful for a person in contemplation or furtherance of a trade dispute to attend—
- (a) at or near his own place of work, or
 - (b) if he is an official of a trade union, at or near the place of work of a member of the union whom he is accompanying and whom he represents,
- for the purpose only of peacefully obtaining or communicating information, or peacefully persuading any person to work or abstain from working.
- (2) If a person works or normally works—
- (a) otherwise than at any one place, or
 - (b) at a place the location of which is such that attendance there for a purpose mentioned in subsection (1) is impracticable,
- his place of work for the purposes of that subsection shall be any premises of his employer from which he works or from which his work is administered.
- (3) In the case of a worker not in employment where—
- (a) his last employment was terminated in connection with a trade dispute, or
 - (b) the termination of his employment was one of the circumstances giving rise to a trade dispute,
- in relation to that dispute his former place of work shall be treated for the purposes of subsection (1) as being his place of work.
- (4) A person who is an official of a trade union by virtue only of having been elected or appointed to be a representative of some of the members of the union shall be regarded for the purposes of subsection (1) as representing only those members; but otherwise an official of a union shall be regarded for those purposes as representing all its members.

221 Restrictions on grant of injunctions and interdicts.

- (1) Where—
- (a) an application for an injunction or interdict is made to a court in the absence of the party against whom it is sought or any representative of his, and
 - (b) he claims, or in the opinion of the court would be likely to claim, that he acted in contemplation or furtherance of a trade dispute,
- the court shall not grant the injunction or interdict unless satisfied that all steps which in the circumstances were reasonable have been taken with a view to securing

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that notice of the application and an opportunity of being heard with respect to the application have been given to him.

(2) Where—

- (a) an application for an interlocutory injunction is made to a court pending the trial of an action, and
- (b) the party against whom it is sought claims that he acted in contemplation or furtherance of a trade dispute,

the court shall, in exercising its discretion whether or not to grant the injunction, have regard to the likelihood of that party's succeeding at the trial of the action in establishing any matter which would afford a defence to the action under section 219 (protection from certain tort liabilities) or section 220 (peaceful picketing).

This subsection does not extend to Scotland.

Action excluded from protection

222 Action to enforce trade union membership.

(1) An act is not protected if the reason, or one of the reasons, for which it is done is the fact or belief that a particular employer—

- (a) is employing, has employed or might employ a person who is not a member of a trade union, or
- (b) is failing, has failed or might fail to discriminate against such a person.

(2) For the purposes of subsection (1)(b) an employer discriminates against a person if, but only if, he ensures that his conduct in relation to—

- (a) persons, or persons of any description, employed by him, or who apply to be, or are, considered by him for employment, or
- (b) the provision of employment for such persons,

is different, in some or all cases, according to whether or not they are members of a trade union, and is more favourable to those who are.

(3) An act is not protected if it constitutes, or is one of a number of acts which together constitute, an inducement or attempted inducement of a person—

- (a) to incorporate in a contract to which that person is a party, or a proposed contract to which he intends to be a party, a term or condition which is or would be void by virtue of section 144 (union membership requirement in contract for goods or services), or
- (b) to contravene section 145 (refusal to deal with person on grounds relating to union membership).

(4) References in this section to an employer employing a person are to a person acting in the capacity of the person for whom a worker works or normally works.

(5) References in this section to not being a member of a trade union are to not being a member of any trade union, of a particular trade union or of one of a number of particular trade unions.

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

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Modifications etc. (not altering text)

C3 S. 222 applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(b)

223 Action taken because of dismissal for taking unofficial action.

An act is not protected if the reason, or one of the reasons, for doing it is the fact or belief that an employer has dismissed one or more employees in circumstances such that by virtue of section 237 (dismissal in connection with unofficial action) they have no right to complain of unfair dismissal.

Modifications etc. (not altering text)

C4 S. 223 applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(b)

224 Secondary action.

- (1) An act is not protected if one of the facts relied on for the purpose of establishing liability is that there has been secondary action which is not lawful picketing.
- (2) There is secondary action in relation to a trade dispute when, and only when, a person—
 - (a) induces another to break a contract of employment or interferes or induces another to interfere with its performance, or
 - (b) threatens that a contract of employment under which he or another is employed will be broken or its performance interfered with, or that he will induce another to break a contract of employment or to interfere with its performance,
 and the employer under the contract of employment is not the employer party to the dispute.
- (3) Lawful picketing means acts done in the course of such attendance as is declared lawful by section 220 (peaceful picketing)—
 - (a) by a worker employed (or, in the case of a worker not in employment, last employed) by the employer party to the dispute, or
 - (b) by a trade union official whose attendance is lawful by virtue of subsection (1) (b) of that section.
- (4) For the purposes of this section an employer shall not be treated as party to a dispute between another employer and workers of that employer; and where more than one employer is in dispute with his workers, the dispute between each employer and his workers shall be treated as a separate dispute.

In this subsection “worker” has the same meaning as in section 244 (meaning of “trade dispute”).

- (5) An act in contemplation or furtherance of a trade dispute which is primary action in relation to that dispute may not be relied on as secondary action in relation to another trade dispute.

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Primary action means such action as is mentioned in paragraph (a) or (b) of subsection (2) where the employer under the contract of employment is the employer party to the dispute.

- (6) In this section “contract of employment” includes any contract under which one person personally does work or performs services for another, and related expressions shall be construed accordingly.

Modifications etc. (not altering text)

C5 S. 224 applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(b)

225 Pressure to impose union recognition requirement.

- (1) An act is not protected if it constitutes, or is one of a number of acts which together constitute, an inducement or attempted inducement of a person—
- (a) to incorporate in a contract to which that person is a party, or a proposed contract to which he intends to be a party, a term or condition which is or would be void by virtue of section 186 (recognition requirement in contract for goods or services), or
 - (b) to contravene section 187 (refusal to deal with person on grounds of union exclusion).
- (2) An act is not protected if—
- (a) it interferes with the supply (whether or not under a contract) of goods or services, or can reasonably be expected to have that effect, and
 - (b) one of the facts relied upon for the purpose of establishing liability is that a person has—
 - (i) induced another to break a contract of employment or interfered or induced another to interfere with its performance, or
 - (ii) threatened that a contract of employment under which he or another is employed will be broken or its performance interfered with, or that he will induce another to break a contract of employment or to interfere with its performance, and
 - (c) the reason, or one of the reasons, for doing the act is the fact or belief that the supplier (not being the employer under the contract of employment mentioned in paragraph (b)) does not, or might not—
 - (i) recognise one or more trade unions for the purpose of negotiating on behalf of workers, or any class of worker, employed by him, or
 - (ii) negotiate or consult with, or with an official of, one or more trade unions.

Requirement of ballot before action by trade union

226 Requirement of ballot before action by trade union.

- (1) An act done by a trade union to induce a person to take part, or continue to take part, in industrial action ^{F2}
- (a) is not protected unless the industrial action has the support of a ballot, and

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- (b) where section 226A falls to be complied with in relation to the person's employer, is not protected as respects the employer unless the trade union has complied with section 226A in relation to him.]

[^{F3}In this section "the relevant time", in relation to an act by a trade union to induce a person to take part, or continue to take part, in industrial action, means the time at which proceedings are commenced in respect of the act.]

- (2) Industrial action shall be regarded as having the support of a ballot only if—

- [^{F4F5}(a) the union has held a ballot in respect of the action—
- (i) in relation to which the requirements of section 226B so far as applicable before and during the holding of the ballot were satisfied,
 - (ii) in relation to which the requirements of sections 227 to [^{F6}231] were satisfied, and
 - (iii) in which the majority voting in the ballot answered "Yes" to the question applicable in accordance with section 229(2) to industrial action of the kind to which the act of inducement relates;
- (b) such of the requirements of the following sections as have fallen to be satisfied at the relevant time have been satisfied, namely—
- (i) section 226B so far as applicable after the holding of the ballot, and
 - (ii) section 231B; [^{F7} . . .]
- [^{F4}(bb) section 232A does not prevent the industrial action from being regarded as having the support of the ballot; and]
- (c) the requirements of section 233 (calling of industrial action with support of ballot) are satisfied.

Any reference in this subsection to a requirement of a provision which is disapplied or modified by section 232 has effect subject to that section.

- (3) Where separate workplace ballots are held by virtue of [^{F8}section 228(1)—
- (a) industrial action shall be regarded as having the support of a ballot if the conditions specified in subsection (2) are satisfied, and
 - (b) the trade union shall be taken to have complied with the requirements relating to a ballot imposed by section 226A if those requirements are complied with, in relation] to the ballot for the place of work of the person induced to take part, or continue to take part, in the industrial action.

[^{F9}(3A) If the requirements of section 231A fall to be satisfied in relation to an employer, as respects that employer industrial action shall not be regarded as having the support of a ballot unless those requirements are satisfied in relation to that employer.]

- (4) For the purposes of this section an inducement, in relation to a person, includes an inducement which is or would be ineffective, whether because of his unwillingness to be influenced by it or for any other reason.

Textual Amendments

- F2** S. 226(1)(a)(b) substituted (30.8.1993) for words by 1993 c. 19, s. 18(1); S.I. 1993/1908, art. 2(1), Sch. 1
- F3** Words in s. 226(1) inserted (30.8.1993) by 1993 c. 19, s. 49(2), Sch. 8 para. 73(a); S.I. 1993/1908, art. 2(1), Sch. 1
- F4** S. 226(2)(bb) inserted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, 2(1)(2); S.I. 2000/2242, art. 2(2) (with transitional provisions in s. 4)

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- F5** S. 226(2)(a)-(c) and proviso substituted (30.8.1993) for s. 226(2)(a)-(c) by 1993 c. 19, s. 49(2), **Sch. 8 para. 73(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F6** Words in s. 226(2)(a)(ii) substituted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, **2(1)(2)**; S.I. 2000/2242, art. **2(2)** (with transitional provisions in art. 4)
- F7** Words in s. 226(2)(b) omitted (18.9.2000 and repealed *prosp.*) by virtue of 1999 c. 26, ss. 4, 44, 45(1), Sch. 3 paras. 1, 2(1)(2), Sch. 9(1); S.I. 2000/2242, art. **2(2)** (with transitional provisions in art. 4)
- F8** Words in s. 226(3) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 73(c)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F9** S. 226(3A) inserted (18.9.2000) by 1999 c. 26, ss. 4, Sch. 3 paras. 1, **2(1)(3)** (with transitional provisions in art. 4)

Modifications etc. (not altering text)

- C6** S. 226 applied (14.8.2000) by S.I. 2000/1828, art. **2(5)(c)**

[^{F10}226A Notice of ballot and sample voting paper for employers.

- (1) The trade union must take such steps as are reasonably necessary to ensure that—
- (a) not later than the seventh day before the opening day of the ballot, the notice specified in subsection (2), and
 - (b) not later than the third day before the opening day of the ballot, the sample voting paper specified in subsection (3),

is received by every person who it is reasonable for the union to believe (at the latest time when steps could be taken to comply with paragraph (a)) will be the employer of persons who will be entitled to vote in the ballot.

- (2) The notice referred to in paragraph (a) of subsection (1) is a notice in writing—
- (a) stating that the union intends to hold the ballot,
 - (b) specifying the date which the union reasonably believes will be the opening day of the ballot, and
 - (c) [^{F11}containing such information in the union's possession as would help the employer to make plans and bring information to the attention of those of his employees]] who it is reasonable for the union to believe (at the time when the steps to comply with that paragraph are taken) will be entitled to vote in the ballot.

- (3) The sample voting paper referred to in paragraph (b) of subsection (1) is—
- (a) a sample of the form of voting paper which is to be sent to the employees who it is reasonable for the trade union to believe (at the time when the steps to comply with paragraph (a) of that subsection are taken) will be entitled to vote in the ballot, or
 - (b) where they are not all to be sent the same form of voting paper, a sample of each form of voting paper which is to be sent to any of them.

[^{F12}(3A) These rules apply for the purposes of paragraph (c) of subsection (2)—

- (a) if the union possesses information as to the number, category or work-place of the employees concerned, a notice must contain that information (at least);
- (b) if a notice does not name any employees, that fact shall not be a ground for holding that it does not comply with paragraph (c) of subsection (2).

(3B) In subsection (3) references to employees are to employees of the employer concerned.]

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- (4) In this section references to the opening day of the ballot are references to the first day when a voting paper is sent to any person entitled to vote in the ballot.
- (5) This section, in its application to a ballot in which merchant seamen to whom section 230(2A) applies are entitled to vote, shall have effect with the substitution in subsection (3), for references to the voting paper which is to be sent to the employees, of references to the voting paper which is to be sent or otherwise provided to them.

Textual Amendments

F10 S. 226A inserted (30.8.1993) by 1993 c. 19, s. 18(2); S.I. 1993/1908, art. 2(1), Sch. 1

F11 Words in s. 226A(2)(c) substituted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, 3(1)(2); S.I. 2000/2242, art. 2(2)

F12 S. 226A(3A)(3B) inserted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, 3(1)(3); S.I. 2000/2242, art. 2(2)

Modifications etc. (not altering text)

C7 S. 226A applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

[226B ^{F13} Appointment of scrutineer.

- (1) The trade union shall, before the ballot in respect of the industrial action is held, appoint a qualified person (“the scrutineer”) whose terms of appointment shall require him to carry out in relation to the ballot the functions of—
- (a) taking such steps as appear to him to be appropriate for the purpose of enabling him to make a report to the trade union (see section 231B); and
 - (b) making the report as soon as reasonably practicable after the date of the ballot and, in any event, not later than the end of the period of four weeks beginning with that date.
- (2) A person is a qualified person in relation to a ballot if—
- (a) he satisfies such conditions as may be specified for the purposes of this section by order of the Secretary of State or is himself so specified; and
 - (b) the trade union has no grounds for believing either that he will carry out the functions conferred on him under subsection (1) otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

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

- (3) The trade union shall ensure that the scrutineer duly carries out the functions conferred on him under subsection (1) and that there is no interference with the carrying out of those functions from the union or any of its members, officials or employees.
- (4) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of those functions.]

Textual Amendments

F13 S. 226B inserted (30.8.1993) by 1993 c. 19, s. 20(1); S.I. 1993/1908, art. 2(1), Sch. 1

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C8 S. 226B applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

[^{F14}226C Exclusion for small ballots.

Nothing in section 226B, section 229(1A)(a) or section 231B shall impose a requirement on a trade union unless—

- (a) the number of members entitled to vote in the ballot, or
- (b) where separate workplace ballots are held in accordance with section 228(1), the aggregate of the number of members entitled to vote in each of them, exceeds 50.]

Textual Amendments

F14 S. 226C inserted (30.8.1993) by 1993 c. 19, s. 20(4); S.I. 1993/1908, art. 2(1), Sch. 1

Modifications etc. (not altering text)

C9 S. 226C applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

227 Entitlement to vote in ballot.

- (1) Entitlement to vote in the ballot must be accorded equally to all the members of the trade union who it is reasonable at the time of the ballot for the union to believe will be induced to take part or, as the case may be, to continue to take part in the industrial action in question, and to no others.

[^{F15}(2) The requirement in subsection (1) shall be taken not to have been satisfied if any person who was a member of the trade union at the time when the ballot was held and was denied entitlement to vote in the ballot is induced by the union to take part or, as the case may be, to continue to take part in the industrial action].

Textual Amendments

F15 S. 227(2) omitted (18.9.2000 and repealed *prosp.*) by virtue of 1999 c. 26, ss. 4, 44, 45, Sch. 3 paras. 1, 4, Sch. 9(1); S.I. 2000/2242, art. 2(2) (with transitional provisions in art. 4)

Modifications etc. (not altering text)

C10 S. 227 applied by S.I. 2000/1828, art. 2(5)(b)

[^{F16}228 Separate workplace ballots.

- (1) Subject to subsection (2), this section applies if the members entitled to vote in a ballot by virtue of section 227 do not all have the same workplace.
- (2) This section does not apply if the union reasonably believes that all those members have the same workplace.
- (3) Subject to section 228A, a separate ballot shall be held for each workplace; and entitlement to vote in each ballot shall be accorded equally to, and restricted to, members of the union who—

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- (a) are entitled to vote by virtue of section 227, and
 - (b) have that workplace.
- (4) In this section and section 228A “workplace” in relation to a person who is employed means—
- (a) if the person works at or from a single set of premises, those premises, and
 - (b) in any other case, the premises with which the person’s employment has the closest connection.]

Textual Amendments

F16 Ss. 228, 228A substituted for s. 228 (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, 5; S.I. 2000/2242, art. 2(2) (with transitional provisions in art. 4)

Modifications etc. (not altering text)

C11 S. 228 applied (14.8.2000) by S.I. 2000/1828, art. 2(5)

[^{F17} 228A Separate workplaces: single and aggregate ballots.

- (1) Where section 228(3) would require separate ballots to be held for each workplace, a ballot may be held in place of some or all of the separate ballots if one of subsections (2) to (4) is satisfied in relation to it.
- (2) This subsection is satisfied in relation to a ballot if the workplace of each member entitled to vote in the ballot is the workplace of at least one member of the union who is affected by the dispute.
- (3) This subsection is satisfied in relation to a ballot if entitlement to vote is accorded to, and limited to, all the members of the union who—
 - (a) according to the union’s reasonable belief have an occupation of a particular kind or have any of a number of particular kinds of occupation, and
 - (b) are employed by a particular employer, or by any of a number of particular employers, with whom the union is in dispute.
- (4) This subsection is satisfied in relation to a ballot if entitlement to vote is accorded to, and limited to, all the members of the union who are employed by a particular employer, or by any of a number of particular employers, with whom the union is in dispute.
- (5) For the purposes of subsection (2) the following are members of the union affected by a dispute—
 - (a) if the dispute relates (wholly or partly) to a decision which the union reasonably believes the employer has made or will make concerning a matter specified in subsection (1)(a), (b) or (c) of section 244 (meaning of “trade dispute”), members whom the decision directly affects,
 - (b) if the dispute relates (wholly or partly) to a matter specified in subsection (1) (d) of that section, members whom the matter directly affects,
 - (c) if the dispute relates (wholly or partly) to a matter specified in subsection (1) (e) of that section, persons whose membership or non-membership is in dispute,

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- (d) if the dispute relates (wholly or partly) to a matter specified in subsection (1)(f) of that section, officials of the union who have used or would use the facilities concerned in the dispute.]

Textual Amendments

F17 Ss. 228, 228A substituted for 228 (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, 5; S.I. 2000/2242, art. 2 (with transitional provisions in art. 4)

Modifications etc. (not altering text)

C12 s. 228A applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(C)

229 Voting paper.

- (1) The method of voting in a ballot must be by the marking of a voting paper by the person voting.

[^{F18}(1A) Each voting paper must—

- (a) state the name of the independent scrutineer,
- (b) clearly specify the address to which, and the date by which, it is to be returned,
- (c) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot, and
- (d) be marked with its number.

This subsection, in its application to a ballot in which merchant seamen to whom section 230(2A) applies are entitled to vote, shall have effect with the substitution, for the reference to the address to which the voting paper is to be returned, of a reference to the ship to which the seamen belong.]

- (2) The voting paper must contain at least one of the following questions—

- (a) a question (however framed) which requires the person answering it to say, by answering “Yes” or “No”, whether he is prepared to take part or, as the case may be, to continue to take part in a strike;
- (b) a question (however framed) which requires the person answering it to say, by answering “Yes” or “No”, whether he is prepared to take part or, as the case may be, to continue to take part in industrial action short of a strike.

[^{F19}(2A) For the purposes of subsection (2) an overtime ban and a call-out ban constitute industrial action short of a strike.]

- (3) The voting paper must specify who, in the event of a vote in favour of industrial action, is authorised for the purposes of section 233 to call upon members to take part or continue to take part in the industrial action.

The person or description of persons so specified need not be authorised under the rules of the union but must be within section [^{F20}20(2)] (persons for whose acts the union is taken to be responsible).

- (4) The following statement must (without being qualified or commented upon by anything else on the voting paper) appear on every voting paper—

“If you take part in a strike or other industrial action, you may be in breach of your contract of employment.”

Status: Point in time view as at 01/10/2004. This version of this part contains provisions that are not valid for this point in time.

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[^{F21}However, if you are dismissed for taking part in strike or other industrial action which is called officially and is otherwise lawful, the dismissal will be unfair if it takes place fewer than eight weeks after you started taking part in the action, and depending on the circumstances may be unfair if it takes place later.]

Textual Amendments

- F18** S. 229(1A) inserted (30.8.1993) by 1993 c. 19, s. 20(2); S.I. 1993/1908, art. 2(1), Sch. 1
- F19** S. 229(2A) inserted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, 6(1)(2); S.I. 2000/2242, art. 2(2) (with transitional provisions in art. 4)
- F20** Words in s. 229(3) substituted (30.8.1993) by 1993 c. 19, s. 49(1), Sch. 7 para. 25; S.I. 1993/1908, art. 2(1), Sch. 1
- F21** Words in s. 229(4) inserted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, 6(1)(3); S.I. 2000/2242, art. 2(2) (with transitional provisions in art. 4)

Modifications etc. (not altering text)

- C13** S. 229 applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(a)

230 Conduct of ballot.

- (1) Every person who is entitled to vote in the ballot must—
- (a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and
 - (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.

- [^{F22F23}(2) Except as regards persons falling within subsection (2A), so far as is reasonably practicable, every person who is entitled to vote in the ballot must—
- (a) have a voting paper sent to him by post at his home address or any other address which he has requested the trade union in writing to treat as his postal address; and
 - (b) be given a convenient opportunity to vote by post.

[Subsection (2B) applies to a merchant seaman if the trade union reasonably believes ^{F22}(2A) that—

- (a) he will be employed in a ship either at sea or at a place outside Great Britain at some time in the period during which votes may be cast, and
- (b) it will be convenient for him to receive a voting paper and to vote while on the ship or while at a place where the ship is rather than in accordance with subsection (2).

^{F22}(2B) Where this subsection applies to a merchant seaman he shall, if it is reasonably practicable—

- (a) have a voting paper made available to him while on the ship or while at a place where the ship is, and
- (b) be given an opportunity to vote while on the ship or while at a place where the ship is.]]

(2C) In subsections (2A) and (2B) “merchant seaman” means a person whose employment, or the greater part of it, is carried out on board sea-going ships.

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- (4) A ballot shall be conducted so as to secure that—
- (a) so far as is reasonably practicable, those voting do so in secret, and
 - (b) the votes given in the ballot are fairly and accurately counted.

For the purposes of paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the ballot.

Textual Amendments

F22 S. 230(2A)(2B) substituted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, 7; S.I. 2000/2242, art. 2(2) (with transitional provisions in art. 4)

F23 S. 230(2)(2A)-(2C) substituted (30.8.1993) for s. 230(2)(3) by 1993 c. 19, s. 17; S.I. 1993/1908, art. 2(1), Sch. 1

Modifications etc. (not altering text)

C14 S. 230 applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

231 Information as to result of ballot.

As soon as is reasonably practicable after the holding of the ballot, the trade union shall take such steps as are reasonably necessary to ensure that all persons entitled to vote in the ballot are informed of the number of—

- (a) votes cast in the ballot,
- (b) individuals answering “Yes” to the question, or as the case may be, to each question,
- (c) individuals answering “No” to the question, or, as the case may be, to each question, and
- (d) spoiled voting papers.

Modifications etc. (not altering text)

C15 S. 231 applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

[^{F24}231A Employers to be informed of ballot result.

- (1) As soon as reasonably practicable after the holding of the ballot, the trade union shall take such steps as are reasonably necessary to ensure that every relevant employer is informed of the matters mentioned in section 231.
- (2) In subsection (1) “relevant employer” means a person who it is reasonable for the trade union to believe (at the time when the steps are taken) was at the time of the ballot the employer of any persons entitled to vote.]

Textual Amendments

F24 S. 231A inserted (30.8.1993) by 1993 c. 19, s.19; S.I. 1993/1908, art. 2(1), Sch.1

Modifications etc. (not altering text)

C16 S. 231A applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

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[^{F25}231B Scrutineer's report.

- (1) The scrutineer's report on the ballot shall state whether the scrutineer is satisfied—
- (a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the ballot,
 - (b) that the arrangements made with respect to the production, storage, distribution, return or other handling of the voting papers used in the ballot, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and
 - (c) that he has been able to carry out the functions conferred on him under section 226B(1) without any interference from the trade union or any of its members, officials or employees;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reason for not being satisfied as to that matter.

- (2) If at any time within six months from the date of the ballot—

- (a) any person entitled to vote in the ballot, or
- (b) the employer of any such person,

requests a copy of the scrutineer's report, the trade union must, as soon as practicable, provide him with one either free of charge or on payment of such reasonable fee as may be specified by the trade union.]

Textual Amendments

F25 S. 231B inserted (30.8.1993) by 1993 c. 19, s. 20(3); S.I. 1993/1908, art. 2(1), Sch.1

Modifications etc. (not altering text)

C17 S. 231B applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

232 Balloting of overseas members.

- (1) A trade union which has overseas members may choose whether or not to accord any of those members entitlement to vote in a ballot; and nothing in section [^{F26}226B to 230 and 231B] applies in relation to an overseas member or a vote cast by such a member.

[^{F27}(2) Where overseas members have voted in the ballot—

- (a) the references in sections 231 and 231A to persons entitled to vote in the ballot do not include overseas members, and
- (b) those sections shall be read as requiring the information mentioned in section 231 to distinguish between overseas members and other members.]

- (3) An “overseas member” of a trade union means a member (other than a merchant seaman or offshore worker) who is outside Great Britain throughout the period during which votes may be cast.

For this purpose—

“merchant seaman” means a person whose employment, or the greater part of it, is carried out on board sea-going ships; and

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“offshore worker” means a person in offshore employment, other than one who is in such employment in an area where the law of Northern Ireland applies.

- (4) A member who throughout the period during which votes may be cast is in Northern Ireland shall not be treated as an overseas member—
- (a) where the ballot is one to which section 228(1) or (2) applies (workplace ballots) and his place of work is in Great Britain, or
 - (b) where the ballot is one to which section 228(3) applies (general ballots) and relates to industrial action involving members both in Great Britain and in Northern Ireland.
- (5) In relation to offshore employment the references in subsection (4) to Northern Ireland include any area where the law of Northern Ireland applies and the references to Great Britain include any area where the law of England and Wales or Scotland applies.

Textual Amendments

F26 Words in s. 232(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 74(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F27 S. 232(2) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 74(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C18 S. 232 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

[^{F28} 232A Inducement of member denied entitlement to vote.

Industrial action shall not be regarded as having the support of a ballot if the following conditions apply in the case of any person—

- (a) he was a member of the trade union at the time when the ballot was held,
- (b) it was reasonable at that time for the trade union to believe he would be induced to take part or, as the case may be, to continue to take part in the industrial action,
- (c) he was not accorded entitlement to vote in the ballot, and
- (d) he was induced by the trade union to take part or, as the case may be, to continue to take part in the industrial action.]

Textual Amendments

F28 S. 232A inserted (18.9.2000) by 1999 c. 26, s. 4, **Sch. 3 paras. 1, 8**; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in **art. 4**)

[^{F29} 232B Small accidental failures to be disregarded.

- (1) If—
- (a) in relation to a ballot there is a failure (or there are failures) to comply with a provision mentioned in subsection (2) or with more than one of those provisions, and

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- (b) the failure is accidental and on a scale which is unlikely to affect the result of the ballot or, as the case may be, the failures are accidental and taken together are on a scale which is unlikely to affect the result of the ballot,
the failure (or failures) shall be disregarded.

(2) The provisions are section 227(1), section 230(2) and section 230(2A).]

Textual Amendments

F29 S. 232B inserted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, 9; S.I. 2000/2242, art. 2(2) (with transitional provisions in art. 4)

233 Calling of industrial action with support of ballot.

- (1) Industrial action shall not be regarded as having the support of a ballot unless it is called by a specified person and the conditions specified below are satisfied.
- (2) A “specified person” means a person specified or of a description specified in the voting paper for the ballot in accordance with section 229(3).
- (3) The conditions are that—
- there must have been no call by the trade union to take part or continue to take part in industrial action to which the ballot relates, or any authorisation or endorsement by the union of any such industrial action, before the date of the ballot;
 - there must be a call for industrial action by a specified person, and industrial action to which it relates must take place, before the ballot ceases to be effective in accordance with section 234.
- (4) For the purposes of this section a call shall be taken to have been made by a trade union if it was authorised or endorsed by the union; and the provisions of section 20(2) to (4) apply for the purpose of determining whether a call, or industrial action, is to be taken to have been so authorised or endorsed.

Modifications etc. (not altering text)

C19 s. 233 applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

234 Period after which ballot ceases to be effective.

- [^{F30}(1) Subject to the following provisions, a ballot ceases to be effective for the purposes of section 233(3)(b) in relation to industrial action by members of a trade union at the end of the period, beginning with the date of the ballot—
- of four weeks, or
 - of such longer duration not exceeding eight weeks as is agreed between the union and the members’ employer.]
- (2) Where for the whole or part of that period the calling or organising of industrial action is prohibited—
- by virtue of a court order which subsequently lapses or is discharged, recalled or set aside, or

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- (b) by virtue of an undertaking given to a court by any person from which he is subsequently released or by which he ceases to be bound,
the trade union may apply to the court for an order that the period during which the prohibition had effect shall not count towards the period referred to in subsection (1).
- (3) The application must be made forthwith upon the prohibition ceasing to have effect—
- (a) to the court by virtue of whose decision it ceases to have effect, or
- (b) where an order lapses or an undertaking ceases to bind without any such decision, to the court by which the order was made or to which the undertaking was given;
- and no application may be made after the end of the period of eight weeks beginning with the date of the ballot.
- (4) The court shall not make an order if it appears to the court—
- (a) that the result of the ballot no longer represents the views of the union members concerned, or
- (b) that an event is likely to occur as a result of which those members would vote against industrial action if another ballot were to be held.
- (5) No appeal lies from the decision of the court to make or refuse an order under this section.
- (6) The period between the making of an application under this section and its determination does not count towards the period referred to in subsection (1).

But a ballot shall not by virtue of this subsection (together with any order of the court) be regarded as effective for the purposes of section 233(3)(b) after the end of the period of twelve weeks beginning with the date of the ballot.

Textual Amendments

F30 S. 234(1) substituted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, 10; S.I. 2000/2242, art. 2(2)
(with transitional provisions in art. 4)

Modifications etc. (not altering text)

C20 S. 234 applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

[^{F31} Requirement on trade union to give notice of industrial action]

Textual Amendments

F31 S. 234A and cross heading inserted (30.8.1993) by 1993 c. 19, s.21; S.I. 1993/1908, art. 2(1), Sch.1

[234A ^{F32} Notice to employers of industrial action.

- (1) An act done by a trade union to induce a person to take part, or continue to take part, in industrial action is not protected as respects his employer unless the union has taken or takes such steps as are reasonably necessary to ensure that the employer receives within the appropriate period a relevant notice covering the act.

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- (2) Subsection (1) imposes a requirement in the case of an employer only if it is reasonable for the union to believe, at the latest time when steps could be taken to ensure that he receives such a notice, that he is the employer of persons who will be or have been induced to take part, or continue to take part, in the industrial action.
- (3) For the purposes of this section a relevant notice is a notice in writing which—
- (a) [^{F33}contains such information in the union’s possession as would help the employer to make plans and bring information to the attention of those of his employees whom]the union intends to induce or has induced to take part, or continue to take part, in the industrial action (“the affected employees”),
 - (b) states whether industrial action is intended to be continuous or discontinuous and specifies—
 - (i) where it is to be continuous, the intended date for any of the affected employees to begin to take part in the action,
 - (ii) where it is to be discontinuous, the intended dates for any of the affected employees to take part in the action, and
 - (c) states that it is given for the purposes of this section.
- (4) For the purposes of subsection (1) the appropriate period is the period—
- (a) beginning with the day when the union satisfies the requirement of section 231A in relation to the ballot in respect of the industrial action, and
 - (b) ending with the seventh day before the day, or before the first of the days, specified in the relevant notice.
- (5) For the purposes of subsection (1) a relevant notice covers an act done by the union if the person induced is one of the affected employees and—
- (a) where he is induced to take part or continue to take part in industrial action which the union intends to be continuous, if—
 - (i) the notice states that the union intends the industrial action to be continuous, and
 - (ii) there is no participation by him in the industrial action before the date specified in the notice in consequence of any inducement by the union not covered by a relevant notice; and
 - (b) where he is induced to take part or continue to take part in industrial action which the union intends to be discontinuous, if there is no participation by him in the industrial action on a day not so specified in consequence of any inducement by the union not covered by a relevant notice.
- [^{F34}(5A) These rules apply for the purposes of paragraph (a) of subsection (3)—
- (a) if the union possesses information as to the number, category or work-place of the employees concerned, a notice must contain that information (at least);
 - (b) if a notice does not name any employees, that fact shall not be a ground for holding that it does not comply with paragraph (a) of subsection (3).]

(6) For the purposes of this section—

 - (a) a union intends industrial action to be discontinuous if it intends it to take place only on some days on which there is an opportunity to take the action, and
 - (b) a union intends industrial action to be continuous if it intends it to be not so restricted.

(7) [^{F35}Subject to subsections (7A) and (7B),]Where—

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- (a) continuous industrial action which has been authorised or endorsed by a union ceases to be so authorised or endorsed [^{F36}otherwise than to enable the union to comply with a court order or an undertaking given to a court], and
- (b) the industrial action has at a later date again been authorised or endorsed by the union (whether as continuous or discontinuous action),

no relevant notice covering acts done to induce persons to take part in the earlier action shall operate to cover acts done to induce persons to take part in the action authorised or endorsed at the later date and this section shall apply in relation to an act to induce a person to take part, or continue to take part, in the industrial action after that date as if the references in subsection (3)(b)(i) to the industrial action were to the industrial action taking place after that date.

[^{F37}(7A) Subsection (7) shall not apply where industrial action ceases to be authorised or endorsed in order to enable the union to comply with a court order or an undertaking given to a court.

^{F37}(7B) Subsection (7) shall not apply where—

- (a) a union agrees with an employer, before industrial action ceases to be authorised or endorsed, that it will cease to be authorised or endorsed with effect from a date specified in the agreement (“the suspension date”) and that it may again be authorised or endorsed with effect from a date not earlier than a date specified in the agreement (“the resumption date”),
- (b) the action ceases to be authorised or endorsed with effect from the suspension date, and
- (c) the action is again authorised or endorsed with effect from a date which is not earlier than the resumption date or such later date as may be agreed between the union and the employer.]

(8) The requirement imposed on a trade union by subsection (1) shall be treated as having been complied with if the steps were taken by other relevant persons or committees whose acts were authorised or endorsed by the union and references to the belief or intention of the union in subsection (2) or, as the case may be, subsections (3), (5) and (6) shall be construed as references to the belief or the intention of the person or committee taking the steps.

(9) The provisions of section 20(2) to (4) apply for the purpose of determining for the purposes of subsection (1) who are relevant persons or committees and whether the trade union is to be taken to have authorised or endorsed the steps the person or committee took and for the purposes of [^{F38}subsections (7) to (7B)] whether the trade union is to be taken to have authorised or endorsed the industrial action.

Textual Amendments

F32 S. 234A and cross heading inserted (30.8.1993) by 1993 c. 19, s. 21; S.I. 1993/1908, art. 2(1), Sch. 1

F33 Words in S. 234A(3a) substituted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, 11(1)(2); S.I. 2000/2242, art. 2 (with transitional provisions in art. 4)

F34 S. 234A(5A) inserted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, 11(1)(3); S.I. 2000/2242, art. 2(2) (with transitional provisions in art. 4)

F35 Words in s. 234A(7) inserted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, 11(1)(4)(a); S.I. 2000/2242, art. 2(2) (with transitional provisions in art. 4)

F36 Words in s. 234A(7)(a) ceased to have effect (18.9.2000) and repealed (*prosp.*) by virtue of 1999 c. 26, ss. 4, 44, 45, Sch. 3 paras. 1, 11(1)(4)(b), Sch. 9(1)

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F37 S.234A(7A)(7B) inserted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, **11(1)(5)**; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)

F38 Words in s. 234A(9) substituted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, **11(1)(6)**; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)

Modifications etc. (not altering text)

C21 S. 234A applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

235 Construction of references to contract of employment.

In sections 226 to [^{F39}234A] (requirement of ballot before action by trade union) references to a contract of employment include any contract under which one person personally does work or performs services for another; [^{F39}and “employer” and other related expressions] shall be construed accordingly.

Textual Amendments

F39 Words in s. 235 substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.75**; S.I. 1993/1908, art. 2(1), **Sch.1**

Modifications etc. (not altering text)

C22 S. 235 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

[^{F40}Industrial action affecting supply of goods or services to an individual]

Textual Amendments

F40 Ss. 235A- 235C and cross heading inserted (30.8.1993) by 1993 c. 19, **s.22**; S.I. 1993/1908, art. 2(1), **Sch.1**

[^{F41}235A Industrial action affecting supply of goods or services to an individual.

- (1) Where an individual claims that—
 - (a) any trade union or other person has done, or is likely to do, an unlawful act to induce any person to take part, or to continue to take part, in industrial action, and
 - (b) an effect, or a likely effect, of the industrial action is or will be to—
 - (i) prevent or delay the supply of goods or services, or
 - (ii) reduce the quality of goods or services supplied,
 to the individual making the claim,
 he may apply to the High Court or the Court of Session for an order under this section.
- (2) For the purposes of this section an act to induce any person to take part, or to continue to take part, in industrial action is unlawful—
 - (a) if it is actionable in tort by any one or more persons, or
 - (b) (where it is or would be the act of a trade union) if it could form the basis of an application by a member under section 62.

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- (3) In determining whether an individual may make an application under this section it is immaterial whether or not the individual is entitled to be supplied with the goods or services in question.
- (4) Where on an application under this section the court is satisfied that the claim is well-founded, it shall make such order as it considers appropriate for requiring the person by whom the act of inducement has been, or is likely to be, done to take steps for ensuring—
 - (a) that no, or no further, act is done by him to induce any persons to take part or to continue to take part in the industrial action, and
 - (b) that no person engages in conduct after the making of the order by virtue of having been induced by him before the making of the order to take part or continue to take part in the industrial action.
- (5) Without prejudice to any other power of the court, the court may on an application under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.
- (6) For the purposes of this section an act of inducement shall be taken to be done by a trade union if it is authorised or endorsed by the union; and the provisions of section 20(2) to (4) apply for the purposes of determining whether such an act is to be taken to be so authorised or endorsed.

Those provisions also apply in relation to proceedings for failure to comply with an order under this section as they apply in relation to the original proceedings.]

Textual Amendments

F41 Ss. 235A- 235C and cross heading inserted (30.8.1993) by 1993 c. 19, s.22; S.I. 1993/1908, art. 2(1), Sch. 1

^{F42}235B.....

Textual Amendments

F42 S. 235B repealed (25.10.1999) by 1999 c. 26, s. 44, Sch. 9(6); S.I. 1999/2830, art. 2(3), Sch. 2 Pt. I (with Sch. 3 para. 4)

^{F43}235C.....

Textual Amendments

F43 S. 235C repealed (25.10.1999) by 1999 c. 26, s. 44, Sch. 9(6); S.I. 1999/2830, art. 2(3), Sch. 2 Pt. I (with Sch. 3 para. 4)

Status: Point in time view as at 01/10/2004. 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 V is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date.

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No compulsion to work

236 No compulsion to work.

No court shall, whether by way of—

- (a) an order for specific performance or specific implement of a contract of employment, or
- (b) an injunction or interdict restraining a breach or threatened breach of such a contract,

compel an employee to do any work or attend at any place for the doing of any work.

Loss of unfair dismissal protection

237 Dismissal of those taking part in unofficial industrial action.

- (1) An employee has no right to complain of unfair dismissal if at the time of dismissal he was taking part in an unofficial strike or other unofficial industrial action.

[^{F44}(1A) Subsection (1) does not apply to the dismissal of the employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal was one of those specified in [^{F45} or under —.

- (a) section 99, 100, 101A(d), 103 or 103A of the Employment Rights Act 1996 (dismissal in family, health and safety, working time, employee representative and protected disclosure cases),
- (b) section 104 of that Act in its application in relation to time off under section 57A of that Act (dependants);]] [^{F46}; and a reference to a specified reason for dismissal includes a reference to specified circumstances of dismissal]

- (2) A strike or other industrial action is unofficial in relation to an employee unless—
- (a) he is a member of a trade union and the action is authorised or endorsed by that union, or
 - (b) he is not a member of a trade union but there are among those taking part in the industrial action members of a trade union by which the action has been authorised or endorsed.

Provided that, a strike or other industrial action shall not be regarded as unofficial if none of those taking part in it are members of a trade union.

- (3) The provisions of section 20(2) apply for the purpose of determining whether industrial action is to be taken to have been authorised or endorsed by a trade union.
- (4) The question whether industrial action is to be so taken in any case shall be determined by reference to the facts as at the time of dismissal.

Provided that, where an act is repudiated as mentioned in section 21, industrial action shall not thereby be treated as unofficial before the end of the next working day after the day on which the repudiation takes place.

- (5) In this section the “time of dismissal” means—
- (a) where the employee’s contract of employment is terminated by notice, when the notice is given,

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- (b) where the employee's contract of employment is terminated without notice, when the termination takes effect, and
- (c) where the employee is employed under a contract for a fixed term which expires without being renewed under the same contract, when that term expires;

and a "working day" means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under the ^{M1}Banking and Financial Dealings Act 1971.

- (6) For the purposes of this section membership of a trade union for purposes unconnected with the employment in question shall be disregarded; but an employee who was a member of a trade union when he began to take part in industrial action shall continue to be treated as a member for the purpose of determining whether that action is unofficial in relation to him or another notwithstanding that he may in fact have ceased to be a member.

Textual Amendments

F44 S. 237(1A) inserted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 76**; S.I. 1994/1365, art. 2, **Sch.** (with art. 3(1))

F45 Words in s. 237(1A) and s. 237(1A)(a)(b) substituted for words in s. 237(1A) (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III paras. 1, 2(a)**; S.I. 1999/2830; art. 2(2), Sch. 1 Pt. II (with Sch. 3 paras. 10, 11)

F46 Words in s. 237(1A) inserted (15.12.1999) by 1999 c. 26, s. 1, 2(b); S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with paras. 10, 11)

Marginal Citations

M1 1971 c. 80.

238 Dismissals in connection with other industrial action.

- (1) This section applies in relation to an employee who has a right to complain of unfair dismissal (the "complainant") and who claims to have been unfairly dismissed, where at the date of the dismissal—
- (a) the employer was conducting or instituting a lock-out, or
 - (b) the complainant was taking part in a strike or other industrial action.
- (2) In such a case an [^{F47}employment tribunal] shall not determine whether the dismissal was fair or unfair unless it is shown—
- (a) that one or more relevant employees of the same employer have not been dismissed, or
 - (b) that a relevant employee has before the expiry of the period of three months beginning with the date of his dismissal been offered re-engagement and that the complainant has not been offered re-engagement.

[^{F48F49}(2A) Subsection (2) does not apply to the dismissal of the employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal or, in a redundancy case, for selecting the employee for dismissal was one of those specified in [^{F50}or under —.

- (a) section 99, 100, 101A(d) or 103 of the Employment Rights Act 1996 (dismissal in family, health and safety, working time and employee representative cases),

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- (b) section 104 of that Act in its application in relation to time off under section 57A of that Act (dependants);]]^{F51}; and a reference to a specified reason for dismissal includes a reference to specified circumstances of dismissal]

^{F48}(2B) Subsection (2) does not apply in relation to an employee who is regarded as unfairly dismissed by virtue of section 238A below.]

(3) For this purpose “relevant employees” means—

- (a) in relation to a lock-out, employees who were directly interested in the dispute in contemplation or furtherance of which the lock-out occurred, and
- (b) in relation to a strike or other industrial action, those employees at the establishment of the employer at or from which the complainant works who at the date of his dismissal were taking part in the action.

Nothing in section 237 (dismissal of those taking part in unofficial industrial action) affects the question who are relevant employees for the purposes of this section.

(4) An offer of re-engagement means an offer (made either by the original employer or by a successor of that employer or an associated employer) to re-engage an employee, either in the job which he held immediately before the date of dismissal or in a different job which would be reasonably suitable in his case.

(5) In this section “date of dismissal” means—

- (a) where the employee’s contract of employment was terminated by notice, the date on which the employer’s notice was given, and
- (b) in any other case, the effective date of termination.

Textual Amendments

F47 Words in s. 238(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**

F48 S. 238(2B) inserted (24.4.2000) by 1999 c. 26, s. 16, **Sch. 5 para. 2**; S.I. 2000/875, **art. 3**

F49 S. 238(2A) inserted (10.6.1994) by 1993 c. 19, s. 49(2), **Sch. 8 para. 77**; S.I. 1994/1365, art. 2, **Sch.** (with art. 3(1))

F50 Words in S. 238(2A) substituted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt III para. 3**; S.I. 1999/2830, art. 2(1)(2), **Sch. 1 Pt. II** (with Sch. 3 para. 10, 11)

F51 Words in s. 238(2A) inserted (15.12.1999) by 1999 c. 26, s. 9, **Sch. 4 Pt. III para. 3**; S.I. 1999/2830, art. 2(2), **Sch. 1 Pt. II** (with Sch. 3 paras. 10, 11)

^{F52}238A Participation in official industrial action.

(1) For the purposes of this section an employee takes protected industrial action if he commits an act which, or a series of acts each of which, he is induced to commit by an act which by virtue of section 219 is not actionable in tort.

(2) An employee who is dismissed shall be regarded for the purposes of Part X of the Employment Rights Act 1996 (unfair dismissal) as unfairly dismissed if—

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee took protected industrial action, and
- (b) subsection (3), (4) or (5) applies to the dismissal.

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- (3) This subsection applies to a dismissal if it takes place within the period of eight weeks beginning with the day on which the employee started to take protected industrial action.
- (4) This subsection applies to a dismissal if—
 - (a) it takes place after the end of that period, and
 - (b) the employee had stopped taking protected industrial action before the end of that period.
- (5) This subsection applies to a dismissal if—
 - (a) it takes place after the end of that period,
 - (b) the employee had not stopped taking protected industrial action before the end of that period, and
 - (c) the employer had not taken such procedural steps as would have been reasonable for the purposes of resolving the dispute to which the protected industrial action relates.
- (6) In determining whether an employer has taken those steps regard shall be had, in particular, to—
 - (a) whether the employer or a union had complied with procedures established by any applicable collective or other agreement;
 - (b) whether the employer or a union offered or agreed to commence or resume negotiations after the start of the protected industrial action;
 - (c) whether the employer or a union unreasonably refused, after the start of the protected industrial action, a request that conciliation services be used;
 - (d) whether the employer or a union unreasonably refused, after the start of the protected industrial action, a request that mediation services be used in relation to procedures to be adopted for the purposes of resolving the dispute.
- (7) In determining whether an employer has taken those steps no regard shall be had to the merits of the dispute.
- (8) For the purposes of this section no account shall be taken of the repudiation of any act by a trade union as mentioned in section 21 in relation to anything which occurs before the end of the next working day (within the meaning of section 237) after the day on which the repudiation takes place.]

Textual Amendments

F52 S. 238A inserted (24.4.2000) by 1999 c. 26, s. 16, **Sch. 5 para. 3**; S.I. 2000/875, **art. 3**

VALID FROM 06/04/2005

^{F53} **238B Conciliation and mediation: supplementary provisions**

- (1) The matters referred to in subsection (6)(e) of section 238A are those specified in subsections (2) to (5); and references in this section to “the service provider” are to any person who provided a service mentioned in subsection (6)(c) or (d) of that section.

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- (2) The first matter is: whether, at meetings arranged by the service provider, the employer or, as the case may be, a union was represented by an appropriate person.
- (3) The second matter is: whether the employer or a union, so far as requested to do so, co-operated in the making of arrangements for meetings to be held with the service provider.
- (4) The third matter is: whether the employer or a union fulfilled any commitment given by it during the provision of the service to take particular action.
- (5) The fourth matter is: whether, at meetings arranged by the service provider between the parties making use of the service, the representatives of the employer or a union answered any reasonable question put to them concerning the matter subject to conciliation or mediation.
- (6) For the purposes of subsection (2) an “appropriate person” is—
 - (a) in relation to the employer—
 - (i) a person with the authority to settle the matter subject to conciliation or mediation on behalf of the employer, or
 - (ii) a person authorised by a person of that type to make recommendations to him with regard to the settlement of that matter, and
 - (b) in relation to a union, a person who is responsible for handling on the union’s behalf the matter subject to conciliation or mediation.
- (7) For the purposes of subsection (4) regard may be had to any timetable which was agreed for the taking of the action in question or, if no timetable was agreed, to how long it was before the action was taken.
- (8) In any proceedings in which regard must be had to the matters referred to in section 238A(6)(e)—
 - (a) notes taken by or on behalf of the service provider shall not be admissible in evidence;
 - (b) the service provider must refuse to give evidence as to anything communicated to him in connection with the performance of his functions as a conciliator or mediator if, in his opinion, to give the evidence would involve his making a damaging disclosure; and
 - (c) the service provider may refuse to give evidence as to whether, for the purposes of subsection (5), a particular question was or was not a reasonable one.
- (9) For the purposes of subsection (8)(b) a “damaging disclosure” is —
 - (a) a disclosure of information which is commercially sensitive, or
 - (b) a disclosure of information that has not previously been disclosed which relates to a position taken by a party using the conciliation or mediation service on the settlement of the matter subject to conciliation or mediation, to which the person who communicated the information to the service provider has not consented.]

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Textual Amendments

F53 S. 238B inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 28(2), 59(2)-(4); S.I. 2005/872, art. 4, Sch. (with arts. 6-21)

239 Supplementary provisions relating to unfair dismissal.

- (1) [^{F54}Sections 237 to 238A](loss of unfair dismissal protection in connection with industrial action) shall be construed as one with [^{F55}Part X of the Employment Rights Act 1996] (unfair dismissal) [^{F56}; but sections 108 and 109 of that Act (qualifying period and age limit) shall not apply in relation to section 238A of this Act.].
- (2) In relation to a complaint to which section 238 [^{F57}or 238A] applies, [^{F58}section 111(2)] of that Act (time limit for complaint) does not apply, but an [^{F59}employment tribunal] shall not consider the complaint unless it is presented to the tribunal—
 - (a) before the end of the period of six months beginning with the date of the complainant's dismissal (as defined by section 238(5)), or
 - (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as the tribunal considers reasonable.
- (3) Where it is shown that the condition referred to in section 238(2)(b) is fulfilled (discriminatory re-engagement), the references in—
 - (a) [^{F60}sections 98 to 106 of the Employment Rights Act 1996], and
 - (b) sections 152 and 153 of this Act,to the reason or principal reason for which the complainant was dismissed shall be read as references to the reason or principal reason he has not been offered re-engagement.
- [^{F61}(4) In relation to a complaint under section 111 of the 1996 Act (unfair dismissal: complaint to employment tribunal) that a dismissal was unfair by virtue of section 238A of this Act—
 - (a) no order shall be made under section 113 of the 1996 Act (reinstatement or re-engagement) until after the conclusion of protected industrial action by any employee in relation to the relevant dispute,
 - (b) regulations under section 7 of the Employment Tribunals Act 1996 may make provision about the adjournment and renewal of applications (including provision requiring adjournment in specified circumstances), and
 - (c) regulations under section 9 of that Act may require a pre-hearing review to be carried out in specified circumstances.]

Textual Amendments

F54 Words in s. 239(1) substituted (24.4.2000) by 1999 c. 26, s. 16, Sch. 5 para. 4(1)(2); S.I. 2000/875, art. 3

F55 Words in s. 239(1) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 56(16)(a) (with ss. 191-195, 202)

F56 Words in s. 239(1) added (24.4.2000) by 1999 c. 26, s. 16, Sch. 5 para. 4(1)(3); S.I. 2000/875, art. 3

F57 Words in s. 239(2) inserted (24.4.2000) by 1999 c. 26, s. 16, Sch. 5 para. 4(1)(4); S.I. 2000/875, art. 3

F58 Words in s. 239(2) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 56(16)(b) (with ss. 191-195, 202)

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- F59** Words in s. 239(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**
- F60** Words in s. 239(3) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(16)(c)** (with ss. 191-195, 202)
- F61** S. 239(4) added (24.4.2000) by 1999 c. 26, s. 16, **Sch. 5 para. 4(1)(5)**; S.I. 2000/875, art. 3

Criminal offences

240 Breach of contract involving injury to persons or property.

- (1) A person commits an offence who wilfully and maliciously breaks a contract of service or hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be—
 - (a) to endanger human life or cause serious bodily injury, or
 - (b) to expose valuable property, whether real or personal, to destruction or serious injury.
- (2) Subsection (1) applies equally whether the offence is committed from malice conceived against the person endangered or injured or, as the case may be, the owner of the property destroyed or injured, or otherwise.
- (3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 2 on the standard scale or both.
- (4) This section does not apply to seamen.

241 Intimidation or annoyance by violence or otherwise.

- (1) A person commits an offence who, with a view to compelling another person to abstain from doing or to do any act which that person has a legal right to do or abstain from doing, wrongfully and without legal authority—
 - (a) uses violence to or intimidates that person or his wife or children, or injures his property,
 - (b) persistently follows that person about from place to place,
 - (c) hides any tools, clothes or other property owned or used by that person, or deprives him of or hinders him in the use thereof,
 - (d) watches or besets the house or other place where that person resides, works, carries on business or happens to be, or the approach to any such house or place, or
 - (e) follows that person with two or more other persons in a disorderly manner in or through any street or road.
- (2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.
- (3) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section.

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242 Restriction of offence of conspiracy: England and Wales.

- (1) Where in pursuance of any such agreement as is mentioned in section 1(1) of the ^{M2}Criminal Law Act 1977 (which provides for the offence of conspiracy) the acts in question in relation to an offence are to be done in contemplation or furtherance of a trade dispute, the offence shall be disregarded for the purposes of that subsection if it is a summary offence which is not punishable with imprisonment.
- (2) This section extends to England and Wales only.

Marginal Citations

M2 1977 c. 45.

243 Restriction of offence of conspiracy: Scotland.

- (1) An agreement or combination by two or more persons to do or procure to be done an act in contemplation or furtherance of a trade dispute is not indictable as a conspiracy if that act committed by one person would not be punishable as a crime.
- (2) A crime for this purpose means an offence punishable on indictment, or an offence punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.
- (3) Where a person is convicted of any such agreement or combination as is mentioned above to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months or such longer time as may be prescribed by the statute for the punishment of the act when committed by one person.
- (4) Nothing in this section—
 - (a) exempts from punishment a person guilty of a conspiracy for which a punishment is awarded by an Act of Parliament, or
 - (b) affects the law relating to riot, unlawful assembly, breach of the peace, or sedition or any offence against the State or the Sovereign.
- (5) This section extends to Scotland only.

Supplementary

244 Meaning of “trade dispute” in Part V.

- (1) In this Part a “trade dispute” means a dispute between workers and their employer which relates wholly or mainly to one or more of the following—
 - (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;

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- (e) a worker’s membership or non-membership of a trade union;
 - (f) facilities for officials of trade unions; and
 - (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.
- (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 as a dispute between those workers and their employer if the dispute relates to matters which—
- (a) have been referred for consideration by a joint body on which, by virtue of provision made by or under any enactment, he is represented, or
 - (b) cannot be settled without him exercising a power conferred on him by or under an enactment.
- (3) There is a trade dispute even though it relates to matters occurring outside the United Kingdom, so long as the person or persons whose actions in the United Kingdom are said to be in contemplation or furtherance of a trade dispute relating to matters occurring outside the United Kingdom are likely to be affected in respect of one or more of the matters specified in subsection (1) by the outcome of the dispute.
- (4) An act, threat or demand done or made by one person or organisation against another which, if resisted, would have led to a trade dispute with that other, shall be treated as being done or made in contemplation of a trade dispute with that other, notwithstanding that because that other submits to the act or threat or accedes to the demand no dispute arises.
- (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 with an employer, means—
 - (a) a worker employed by that employer; or
 - (b) a person who has ceased to be so employed if his employment was terminated in connection with the dispute or if the termination of his employment was one of the circumstances giving rise to the dispute.

245 Crown employees and contracts.

Where a person holds any office or employment under the Crown on terms which do not constitute a contract of employment between that person and the Crown, those terms shall nevertheless be deemed to constitute such a contract for the purposes of—

- (a) the law relating to liability in tort of a person who commits an act which—
 - (i) induces another person to break a contract, interferes with the performance of a contract or induces another person to interfere with its performance, or
 - (ii) consists in a threat that a contract will be broken or its performance interfered with, or that any person will be induced to break a contract or interfere with its performance, and
- (b) the provisions of this or any other Act which refer (whether in relation to contracts generally or only in relation to contracts of employment) to such an act.

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246 Minor definitions.

In this Part—

“date of the ballot” means, in the case of a ballot in which votes may be cast on more than one day, the last of those days;

^{F62} . . .

“strike” means [^{F63}(except for the purposes of section 229(2))] any concerted stoppage of work;

“working hours”, in relation to a person, means any time when under his contract of employment, or other contract personally to do work or perform services, he is required to be at work.

Textual Amendments

F62 Words in s. 246 repealed (30.8.1993) by 1993 c. 19, ss. 49(1), 51, Sch. 7 para. 26, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**

F63 Words in definition of “strike” in s. 246 inserted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 para. 1, **6(4)**; S.I. 2000/2242, art. 2(2) (with transitional provisions in art. 4)

Modifications etc. (not altering text)

C23 S. 246 applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

Status:

Point in time view as at 01/10/2004. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

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