



# Trade Union and Labour Relations (Consolidation) Act 1992

## 1992 CHAPTER 52

### PART IV

#### INDUSTRIAL RELATIONS

#### 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 [<sup>F1</sup>or for purposes connected with trade union learning representatives.]
- (2) In particular, ACAS shall in one or more Codes of Practice provide practical guidance on the following matters—
  - (a) 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);
  - (b) 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
  - (c) 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

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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.

#### Textual Amendments

**F1** Words in s. 199(1) inserted (27.4.2003) by 2002 c. 22, ss. 43(7), 55(2); S.I. 2003/1190, art. 2(1) (with art. 3)

## 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.
- [<sup>F2</sup>(3) A Code containing practical guidance—
- (a) on the time off to be permitted to a trade union learning representative in accordance with section 168A (time off for training and carrying out functions as a learning representative),
  - (b) on the training that is sufficient to enable a trade union learning representative to carry on the activities mentioned in section 168A(2) (activities for which time off is to be permitted), or
  - (c) 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.
- 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.
- (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.

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

#### Textual Amendments

**F2** S. 200(3) substituted (27.4.2003) by 2002 c. 22, ss. 43(8), 55(2); S.I. 2003/1190, art. 2(1) (with art. 3)

### 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—
- if he approves of it, shall lay the draft before each House of Parliament, and
  - 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 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.

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### *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 [<sup>F3</sup>or for purposes connected with trade union learning representatives].
- (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.

#### **Textual Amendments**

**F3** Words in s. 203(1)(b) inserted (27.4.2003) by 2002 c. 22, ss. 43(7), 55(2); S.I. 2003/1190, art. 2(1) (with art. 3)

#### **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.
 

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.

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- (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.

- (2) In any proceedings before an [<sup>F4</sup>employment 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 [<sup>F4</sup>employment 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.

### **Textual Amendments**

- F4** Words in s. 207(2)(3) 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

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## [<sup>F5</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
  - (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

**F5** 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)

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## **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.

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