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# Trade Union and Labour Relations (Consolidation) Act 1992

## 1992 CHAPTER 52

### PART IV **E+W+S**

#### INDUSTRIAL RELATIONS

### CHAPTER IV **E+W+S**

#### GENERAL

#### *Functions of ACAS*

#### **209 General duty to promote improvement of industrial relations. **E+W+S****

It is the general duty of ACAS to promote the improvement of industrial relations, and in particular to encourage the extension of collective bargaining and the development and, where necessary, reform of collective bargaining machinery.

#### **210 Conciliation. **E+W+S****

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

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

- C1** S. 210 applied (6.4.2005) by [The Information and Consultation of Employees Regulations 2004 \(S.I. 2004/3426\)](#), [reg. 38\(2\)](#) (with [reg. 3](#))
- C2** S. 210 applied (18.8.2006) by [The European Cooperative Society \(Involvement of Employees\) Regulations 2006 \(S.I. 2006/2059\)](#), [reg. 39\(2\)](#)

VALID FROM 06/04/2005

### [<sup>F1</sup>210A Information required by ACAS for purposes of settling recognition disputes **E+W+S**

- (1) This section applies where ACAS is exercising its functions under section 210 with a view to bringing about a settlement of a recognition dispute.
- (2) The parties to the recognition dispute may jointly request ACAS or a person nominated by ACAS to do either or both of the following—
  - (a) hold a ballot of the workers involved in the dispute;
  - (b) ascertain the union membership of the workers involved in the dispute.
- (3) In the following provisions of this section references to ACAS include references to a person nominated by ACAS; and anything done by such a person under this section shall be regarded as done in the exercise of the functions of ACAS mentioned in subsection (1).
- (4) At any time after ACAS has received a request under subsection (2), it may require any party to the recognition dispute—
  - (a) to supply ACAS with specified information concerning the workers involved in the dispute, and
  - (b) to do so within such period as it may specify.
- (5) ACAS may impose a requirement under subsection (4) only if it considers that it is necessary to do so—
  - (a) for the exercise of the functions mentioned in subsection (1); and
  - (b) in order to enable or assist it to comply with the request.
- (6) The recipient of a requirement under this section must, within the specified period, supply ACAS with such of the specified information as is in the recipient's possession.
- (7) A request under subsection (2) may be withdrawn by any party to the recognition dispute at any time and, if it is withdrawn, ACAS shall take no further steps to hold the ballot or to ascertain the union membership of the workers involved in the dispute.
- (8) If a party to a recognition dispute fails to comply with subsection (6), ACAS shall take no further steps to hold the ballot or to ascertain the union membership of the workers involved in the dispute.
- (9) Nothing in this section requires ACAS to comply with a request under subsection (2).
- (10) In this section—

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“party”, in relation to a recognition dispute, means each of the employers, employers' associations and trade unions involved in the dispute;

“a recognition dispute” means a trade dispute between employers and workers which is connected wholly or partly with the recognition by employers or employers' associations of the right of a trade union to represent workers in negotiations, consultations or other procedures relating to any of the matters mentioned in paragraphs (a) to (f) of section 218(1);

“specified” means specified in a requirement under this section; and

“workers” has the meaning given in section 218(5).]

#### Textual Amendments

- F1** S. 210A inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 21, 59(2)-(4)**; [S.I. 2005/872](#), **art. 4**, [Sch.](#) (with [arts. 6-21](#))

#### 211 Conciliation officers. **E+W+S**

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

#### 212 Arbitration. **E+W+S**

- (1) Where a trade dispute exists or is apprehended ACAS may, at the request of one or more of the parties to the dispute and with the consent of all the parties to the dispute, refer all or any of the matters to which the dispute relates for settlement to the arbitration of—
  - (a) one or more persons appointed by ACAS for that purpose (not being officers or employees of ACAS), or
  - (b) the Central Arbitration Committee.
- (2) In exercising its functions under this section ACAS shall consider the likelihood of the dispute being settled by conciliation.
- (3) Where there exist appropriate agreed procedures for negotiation or the settlement of disputes, ACAS shall not refer a matter for settlement to arbitration under this section unless—
  - (a) those procedures have been used and have failed to result in a settlement, or
  - (b) there is, in ACAS's opinion, a special reason which justifies arbitration under this section as an alternative to those procedures.
- (4) Where a matter is referred to arbitration under subsection (1)(a)—
  - (a) if more than one arbitrator or arbiter is appointed, ACAS shall appoint one of them to act as chairman; and
  - (b) the award may be published if ACAS so decides and all the parties consent.
- (5) Part I of the <sup>M1</sup>Arbitration Act 1950 (general provisions as to arbitration) does not apply to an arbitration under this section.

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### Marginal Citations

M1 1950 c.27.

VALID FROM 01/08/1998

### [<sup>F2</sup>212A Arbitration scheme for unfair dismissal cases etc. **E+W+S**

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

to the relevant court on such grounds and in respect of such matters as may be specified in the scheme; and in this subsection “relevant court” means such court, being the Court of Session or the Employment Appeal Tribunal, as may be specified in the scheme, and a different court may be specified as regards different grounds or matters.
- (8) Where a scheme set out in an order under this section includes provision for the making of re-employment orders in arbitrations conducted in accordance with the

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scheme, the order setting out the scheme may require employment tribunals to enforce such orders—

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

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

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

#### Textual Amendments

**F2** S. 212A inserted (1.8.1998) by 1998 c. 8, s. 7; S.I. 1998/1658, art. 2(1), **Sch. 1**

#### Marginal Citations

**M2** 1996 c. 18.  
**M3** 1996 c. 23.  
**M4** 1996 c. 18.  
**M5** 1996 c. 18.

VALID FROM 01/08/1998

#### [<sup>F3</sup>212B Dismissal procedures agreements. **E+W+S**

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

#### Textual Amendments

**F3** S. 212B inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 7**; S.I. 1998/1658, art. 2(1), **Sch. 1**

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### Marginal Citations

M6 1996 c. 18.

## 213 Advice. **E+W+S**

- (1) ACAS may give employers, employers' associations, workers and trade unions such advice as it thinks appropriate on matters concerned with industrial relations or employment policies.

The advice may be given on request or otherwise, and shall be without charge.

- (2) The matters on which advice may be given include the following—
- (a) the organisation of workers or employers for the purpose of collective bargaining;
  - (b) the recognition of trade unions by employers;
  - (c) machinery for the negotiation of terms and conditions of employment, and for joint consultation;
  - (d) procedures for avoiding and settling disputes and workers' grievances;
  - (e) questions relating to communication between employers and workers;
  - (f) facilities for officials of trade unions;
  - (g) procedures relating to the termination of employment;
  - (h) disciplinary matters;
  - (i) manpower planning, labour turnover and absenteeism;
  - (j) recruitment, retention, promotion and vocational training of workers;
  - (k) payment systems, including job evaluation and equal pay.
- (3) ACAS may also publish general advice on matters concerned with industrial relations or employment policies, including any of the matters referred to above.

## 214 Inquiry. **E+W+S**

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

### *Courts of inquiry*

## 215 Inquiry and report by court of inquiry. **E+W+S**

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

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

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

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

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

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

## 216 Constitution and proceedings of court of inquiry. **E+W+S**

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

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

### Supplementary provisions

#### 217 Exclusion of power of arbiter to state case to Court of Session. **E+W+S**

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

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

#### Marginal Citations

M7 1972 c. 59.

#### 218 Meaning of “trade dispute” in Part IV. **E+W+S**

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



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

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