

Trade Union Freedom Bill

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make provision for the law relating to the rights and freedoms of workers and of trade unions, the regulation of relations between employers and workers, protection of employment in lawful industrial action, remedies in trade disputes and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. Protection of those participating in lawful industrial action or a lawful strike

(1) The 1992 Act shall be amended as follows.

For section 238A (Participation in official industrial action) substitute:-

“ **Effect of industrial action on employment contract**

(1) (a) Any termination of a contract of employment shall be unlawful and void unless the employer proves that it formed no part of the reason for the termination that the worker had participated, was participating or proposed to participate in lawful industrial action or a lawful strike.

(b) Where a court finds that an application under this section is well-founded, the court may make a declaration to that effect and may order that the contract of employment continues and may award damages.

(2) An act or failure to act by a worker is not actionable on the ground:

(a) that it amounts to a breach of that worker's contract of employment or to non-performance or partial performance by that worker of one or more terms of that person's contract of employment; or

(b) that it amounts to the breach, non-performance or partial performance of any duty or other obligation owed by the worker to any person; or

(c) that it was causative directly or indirectly of the breach, non-performance or partial performance of any duty or other obligation owed by another person;

where the act or failure to act was a consequence of the worker's participation or proposed participation in lawful industrial action or a lawful strike.

- (3) For the purposes of this section, an employee participates in lawful industrial action or a lawful strike if he commits an act which, or a series of acts which, he is induced to commit by an act which by virtue of section 219 is not actionable in tort.

- (2) After section 238A of the 1992 Act insert:

“238B Unfair dismissal and the right not to suffer detriment

- (1) An employee who is dismissed shall be regarded as unfairly dismissed for the purposes of Part X of the 1996 Act (unfair dismissal) if the reason (or if more than one, the principal reason) for the dismissal is that the employee had participated, was participating or proposed to participate in lawful industrial action or a lawful strike.
- (2) Subject to sub-sections (4) and (5), a worker has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer on the ground that the worker had participated, was participating or proposed to participate in lawful industrial action or a lawful strike.
- (3) Subsection (2) does not apply where the detriment in question amounts to the dismissal of an employee within the meaning of Part X of the 1996 Act.
- (4) For the avoidance of doubt an employer shall be entitled, in relation to a worker who has participated or, is participating in lawful industrial action or a lawful strike, to:
 - (a) withhold in accordance with a provision in the contract of employment remuneration or benefits from the worker so long as the remuneration or benefits withheld represents no more than the remuneration or benefits which
 - (i) the worker would have received had he not participated in industrial action;
 - (ii) the contract so provides; and
 - (iii) the court is of the view that it is reasonable to withhold them;
 - (b) enforce any restriction of trade secrets or other confidence which is
 - (i) imposed by the contract of employment; and
 - (ii) is reasonable.
- (5) For the purposes of this section, a worker participates in lawful industrial action or a lawful strike if he commits an act which, or a series of acts which, he is induced to commit by an act which by virtue of section 219 is not actionable in tort.

(2) After section 238A of the 1992 Act insert:

“238C Complaints to employment tribunals etc

- (1) Subject to section 238B(3) and (4), a worker may present a complaint to an employment tribunal that his employer has infringed a right conferred on him by 238B(2).
- (2) Subject to subsection (3), an employment tribunal shall not consider a complaint under subsection (1) unless it is presented before the end of the period of three months, beginning with the date of the detriment to which the complaint relates.
- (3) A tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers it just and equitable to do so.
- (4) Where a worker presents a complaint under section 238B(1) or (2), it is for the employer to identify the ground for dismissal or detriment as the case may be and the ground specified in sub-sections (1) and (2) that the worker had participated, was participating or proposed to participate in lawful industrial action or a lawful strike shall be deemed to be established unless the employer proves that it formed no part of the reason for dismissal or detriment that the worker had participated, was participating or proposed to participate in lawful industrial action or a lawful strike.
- (5) Where an employment tribunal finds that a complaint presented to it under this section is well founded, it shall take such of the following steps as it considers just and equitable -
 - (a) make a declaration as to the rights of the complainant in relation to the matters to which the complaint relates;
 - (b) order the employer to pay such compensation to the complainant which it considers just and equitable in the circumstances, having regard to the detriment to which the complaint relates, and any loss suffered by the worker in consequence of the non-compliance, and for the avoidance of doubt it is hereby declared that compensation may include compensation for injury to feelings whether or not it includes compensation under any other head.

(3) Section 239(4) of the 1992 Act shall be repealed.

(3) The 1996 Act shall be amended as follows.

- (a) In section 128(1)(b) after “103A” insert “238B(1)”;
- (b) In section 129(1) after “103A” insert “238B(1)”;

(4) The Employment Rights Act 1996 shall be amended as follows.

- (a) After section 113 (Reinstatement and re-engagement orders) insert –
“113A Automatic reinstatement

Where an employee is unfairly dismissed in circumstances to which section 238B(1) of the 1992 Act applies and the complainant wishes to be reinstated, the Tribunal shall make an order for reinstatement in

accordance with s.114 or re-engagement in accordance with section 115 on such terms as the parties may agree or the Tribunal shall order.”

- (b) In section 115(1) after “on such terms as the tribunal may decide” insert “(or on such terms as the parties may agree or ACAS may advise in cases to which section 113A applies)”.
- (c) In section 117 each reference to “section 113” shall be amended to read “section 113 or 113A”.
- (d) In section 117 after subsection (8) there shall be added subsection (9) as follows:
 - “(9) Any order made under s.113A may be enforced as if it were an order made by the High Court and appropriate provision shall accordingly be made to the Civil Procedure Rules.
- (e) In section 124 after subsection (2) there shall be added subsection (2A) as follows:
 - “(2A) In relation to an order under s.113A, the amount of compensation shall be such as the tribunal thinks just and equitable in all the circumstances having regard, in particular to the infringement of the employee’s right to be reinstated or re-engaged in pursuance of the order, and to any loss suffered by the employee in consequence of the non-compliance, and for the avoidance of doubt it is hereby declared that compensation may include compensation for injury to feelings whether or not it includes compensation under any other head.”

2. Agency labour replacing those taking lawful industrial action

The Conduct of Employment Agencies and Employment Businesses Regulations 2003 (2003 SI 3006) shall be amended as follows:-

- (1) After regulation 7 (Restriction on providing work-seekers in industrial disputes) there shall be added regulation 7A as follows:-
 - 7A Restriction on hirers in industrial disputes**
 - (1) A person shall not hire a work-seeker to perform:
 - (a) duties normally performed by a worker who is taking part or is intending to or about to take part in a lawful strike or other lawful industrial action or in respect of whom notice of a strike or other industrial action has been given by a trade union (“the first worker”) or
 - (b) the duties normally performed by any other worker employed by the hirer and who is assigned by the hirer to perform the duties normally performed by the first worker whether under a contract or not.
- (2) It shall be the duty of any hirer or prospective hirer of a work-seeker through an employment business to inform the employment business if a strike or other industrial action or the prospect of a strike or other industrial action is the reason or part of the reason for seeking to hire a work-seeker.
- (3) In this sub-section and in section 7 “employment business” shall include an “agency” as defined in regulation 2.

- (4) Paragraphs (1) and (2) shall not apply if, in relation to the first worker, the strike action or other industrial action in question is an unofficial strike or other unofficial industrial action for the purposes of section 237 of the 1992 Act.

3. Industrial action remedies

- (1) Section 221(2) of the 1992 Act (as amended) shall be amended as follows:-

- (1) The words after subsection (b) shall be deleted and substituted by the following:-

“the court shall not grant the injunction or interdict in favour of the applicant, whether in the exercise of its discretion or otherwise, unless it is satisfied that in relation to any defence to the action under section 219 (protection from certain tort liabilities) or section 220 (peaceful picketing) or otherwise arising in the course of a trade dispute the applicant is in all the circumstances substantially more likely to succeed than to fail at the trial of the action;”

- (2) After subsection (2) there shall be added subsection (3) as follows:-

(3) “Where in any action a party claims that he acted in contemplation or furtherance of a trade dispute and relies as a defence to the action or any claim on section 219 (protection from certain tort liabilities) or section 220 (peaceful picketing) the court shall not grant any remedy whether interim or final against that party if the party by whom the action or claim is brought cannot show that he

(a) supplied in good time information reasonably requested by the party seeking to rely on section 219 or 220 for the purposes of establishing the names addresses, categories and workplaces of those of that party’s members it wishes or wished to ballot; and

(b) otherwise complied with his duties under section 226D.”.

- (2) Section 20(6) of the 1992 Act shall be amended so that after the word “includes” in the second line there is inserted the phrase “subject to the provisions of s.221”.

4. Employer’s duties in relation to industrial action ballots

- (1) After section 226C of the 1992 Act there shall be added section 226D as follows:

“226D Employer’s duties in relation to industrial action ballots

(1) It shall be the duty of an employer to supply to a trade union in good time information reasonably requested by the trade union for the purposes of establishing the names, addresses, categories and workplaces of those of that party’s members it wishes to ballot pursuant to section 226 or 226A.

(2) Without prejudice to sub-section (1), it shall be the duty of an employer reasonably to co-operate generally, in connection with a ballot conducted or proposed pursuant to section 226, with the union (or unions) and the person appointed to conduct the ballot."

5. Scope of the right to strike and definition of a trade dispute

(1) Section 224 (secondary action) Trade Union and Labour Relations (Consolidation) Act 1992 (as amended) shall be amended as follows:-

(a) By adding in subsection (1) before the words "An act is not protected" the words "Save as provided below,".

(b) By deleting in subsection (1) the words "which is not lawful picketing" and substituting in their place "which is not otherwise protected under s.220 (lawful picketing) or s.219 (protection from certain tort liabilities)".

(c) By adding subsection (7) as follows:-

"(7) Subject to subsection (9) action taken or proposed to be taken against a third party shall not be treated as secondary action

(a) where the third party has agreed, whether or not under a contract, to perform or to arrange to have performed work or duties which are normally performed by workers taking part in a lawful strike or lawful industrial action; or

(b) where the third party has agreed, whether or not under a contract, to perform or to arrange to have performed work or duties which are normally performed by workers of the employer in dispute who are or will be transferred to other work or duties in order that work or duties normally performed by workers taking part in a lawful strike or lawful industrial action may be done by others.

(d) By adding subsection (8) as follows:-

"(8) Subject to subsection (10) action taken or proposed against a principal supplier or principal customer of an employer which is a party to a trade dispute shall not be or be treated as secondary action where -

(a) the relevant trade dispute or part of it relates to a proposal or decision of the employer which is a party to the dispute which proposal or decision the relevant trade union reasonably considers would prejudice the workers in dispute or some of them

(b) the relevant trade union reasonably believes that an intervention by that supplier or customer caused or substantially contributed to the proposal or decision from the employer, and;

(c) one of the demands of the relevant trade union in the trade dispute is that the employer withdraws or alters the proposal or decision or action taken by the employer"

(e) By adding sub-section (9) as follows:-

"(9) Subsection (7) will not apply unless the relevant trade union has complied with the requirements of sections 226 and 234A in relation to the third party as if it were the employer in dispute.

(f) By adding sub-section (10) as follows:-

“(9) Subsection (8) will not apply unless the relevant trade union has complied with the requirements of sections 226 and 234A in relation to the action taken against the principal supplier or principal customer as if it were the employer in dispute.”

(2) Section 244 (the definition of a trade dispute) Trade Union and Labour Relations (Consolidation) Act 1992 (as amended) shall be amended as follows:-

(a) In subsection (1) after the words “In this Part a ‘trade dispute’ means a dispute between workers and their employer” there shall be added the phrase “(or an associated employer)”.

(b) After subsection (1) there shall be added subsection (1A) as follows:-

“(1A) An ‘associated employer’ for the purpose of s.244(1) includes an employer reasonably believed by the trade union to be an associated employer within the meaning of s.297”.

(c) After subsection (1A) there shall be added subsection (1B) as follows:-

“(1B) In subsection (1)(a)-(g) a “worker” refers to a worker employed, formerly employed, or likely to be employed by any employer or employers and the matters listed in (a) to (g) include matters, acts or omissions whether past, present, or future.”

(d) After subsection (1B) there shall be added subsection (1C) as follows:-

“(1C) There shall be a dispute between workers and their employer if there is a demand made that the employer does something or ceases to do something which relates wholly or mainly to one or more of the matters in section (1)(a) to (g).

(e) After subsection (1C) there shall be added subsection (1D) as follows:-

“For the avoidance of doubt secondary action not protected pursuant to section 224 is not protected by this section.”

(3) Section 127 Criminal Justice and Public Order Act 1994 (.....) is hereby repealed.

6. Industrial action ballots

(1) Section 227 (entitlement to vote in ballot) of the 1992 Act shall be amended by adding in subsection(1) before the words “entitlement to vote in the ballot” “So far as is reasonably practicable,”.

(2) Section 232B (small accidental failures to be disregarded) of the 1992 Act shall be amended as follows:-

(a) In subsection (1)(a), after the workers ‘in relation to a ballot’ shall be inserted ‘or a notice’

(b) In subsection (2) the words after “The provisions are” shall be deleted and substituted with the words “sections 226 to 235”.

(3) Section 233(3)(a) of the 1992 Act is hereby repealed.

7. Industrial action notices

(1) Section 226A Trade Union and Labour Relations (Consolidation) Act 1992 (as amended) is hereby repealed.

(2) In section 234A (Notice to employers of industrial action) Trade Union and Labour Relations (Consolidation) Act 1992 (as amended) subsections (3)-(4) shall be repealed and subsection (3) shall read as follows:

“(3) For the purpose of this section a relevant notice is a notice in writing given so far as is reasonably practicable in the circumstances reasonably believed by the union to exist seven days prior to the day before the day on which the industrial action is intended to commence specifying so far as is reasonably practicable the class or classes of workers who are members of the union to be called on to take industrial action using the union’s usual classifications of its relevant members, whether the industrial action is to be a strike or action short of a strike and whether continuous or discontinuous, and when it is to start or if interrupted when it is to re-start.”

8. Interpretation

Meaning of "the 1992 Act"

In this Act "the 1992 Act" means the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52).

Meaning of "the 1996 Act"

In this Act "the 1996 Act" means the Employment Rights Act 1996 (c.).

9. Short title

This Act may be cited as the Trade Union Freedom Act.

10. Commencement

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