

# Trade Union Rights and Freedoms Bill

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**B I L L**

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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, and remedies in trade disputes; and for connected purposes.

**B**E 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 Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (in this Act, “the 1992 Act”) is amended as follows.
- (2) For section 238A (participation in official industrial action) substitute—

**“238A Effect of industrial action on employment contract**

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- (1) Any termination of a contract of employment by an employer shall be unlawful and of no effect if the reason or one of the reasons was or is that the worker has participated, is participating or proposes to participate in lawful industrial action or a lawful strike; and in any proceedings, the termination shall be presumed to be by reason of that participation or proposed participation unless the employer proves the contrary.

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- (2) Where in any proceedings a court finds a termination unlawful as a result of subsection (1), it may (in addition to making any other order)—

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- (a) make a declaration as to the continuation of the contract of employment;
- (b) award damages in respect of any loss suffered by the worker by reason of the termination.

- (3) Where a worker’s act or failure to act is a consequence of the worker’s participation, or proposed participation, in lawful industrial action or a lawful strike, that act or failure to act is not actionable on any of the following grounds—

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- (a) that it amounts to a breach of that worker's contract of employment, or to non-performance or partial performance of one or more terms of that worker's contract of employment;
  - (b) that it amounts to the breach, non-performance or partial performance of any duty or obligation owed by the worker to any person, or 5
  - (c) that it is directly or indirectly causative of the breach, non-performance or partial performance of any duty or obligation owed by another person.
- (4) For the purposes of this section, section 238AA and section 238AB, an employee participates in lawful industrial action or a lawful strike if he commits an act, 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. 10
- (5) In this section –
- (a) “court” includes an employment tribunal, and 15
  - (b) “termination” includes a purported termination.

#### **238AA Unfair dismissal and the right not to suffer detriment**

- (1) An employee who is dismissed shall be regarded for the purposes of Part X of the Employment Rights Act 1996 (c. 18) (unfair dismissal) as unfairly dismissed if the reason or one of the reasons for the dismissal is that the employee has participated, is participating or proposes to participate in lawful industrial action or a lawful strike. 20
- (2) A worker has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer, where the reason (or one of the reasons) for the act or failure is that the worker has participated, is participating or proposes to participate in lawful industrial action or a lawful strike. 25
- (3) Subsection (2) does not apply where the worker is an employee and the detriment in question amounts to dismissal.
- (4) Nothing in this section prevents an employer, in relation to a worker who participates in lawful industrial action or a lawful strike, from – 30
- (a) withholding remuneration or benefits from the worker, so long as –
    - (i) the amount withheld does not exceed that to which the worker would have been entitled had he not participated in industrial action or a strike, 35
    - (ii) the withholding of the remuneration or benefits in question is permitted by the worker's contract of employment, and
    - (iii) it is reasonable in all the circumstances to withhold the remuneration or benefits in question; 40
  - (b) enforcing, to such extent as is reasonable in the circumstances, any restriction imposed by the worker's contract of employment concerning trade secrets or other confidential information. 45

**238AB Complaints to employment tribunals etc**

- (1) A worker or former worker may present a complaint to an employment tribunal that he has been subjected to a detriment by his employer in contravention of section 238AA(2).
- (2) An employment tribunal shall not consider a complaint under subsection (1) unless it is presented –
- (a) before the end of the period of three months, beginning with the date of the act or failure to act (or the last in a series of similar acts or failures) to which the complaint relates, or
  - (b) within such further period as the employment tribunal considers just and equitable in all the circumstances.
- (3) In proceedings on a complaint under section 238AA(2), it is for the employer to show the reason for the act or failure to which the complaint relates; and the act or omission shall be presumed to be by reason that the worker had participated, was participating or proposed to participate in lawful industrial action or a lawful strike unless the employer proves the contrary.
- (4) Where an employment tribunal finds that a complaint presented to it under subsection (1) 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 as it considers just and equitable having regard to all the circumstances, including the detriment to which the worker was subjected and any loss suffered by the worker in consequence of the act or omission to which the complaint relates; and for the avoidance of doubt, compensation may be awarded in respect of injury to feelings whether or not awarded under any other head.
- (5) In proceedings on a complaint of unfair dismissal under section 238AA(1), the dismissal shall be presumed to be by reason that the worker had participated, was participating or proposed to participate in lawful industrial action or a lawful strike, unless the employer proves the contrary.”
- (3) In section 239 (supplementary provisions relating to unfair dismissal) subsection (4) ceases to have effect.
- (4) The Employment Rights Act 1996 (in this Act, “the 1996 Act”) is amended as follows.
- (5) After section 113 (reinstatement and re-engagement orders) insert the following section –

**“113A Automatic reinstatement**

Where an employment tribunal finds that an employee has been unfairly dismissed in circumstances to which section 238AA(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 applies, and the complainant wishes to be reinstated, the tribunal shall make –

- (a) an order for reinstatement, or

- (b) an order for re-engagement on such terms as the parties may agree or as the tribunal (having regard to any advice received from ACAS) shall order.”
- (6) In section 117 (enforcement of order and compensation) after subsection (2) insert the following subsection— 5
- “(2A) In relation to an order made pursuant to section 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 nature of 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, compensation may be awarded in respect of injury to feelings whether or not it is awarded under any other head.” 10
- (7) In section 117 after subsection (8) insert the following subsection—
- “(9) Any order for reinstatement or re-engagement made pursuant to section 113A may be enforced as if it were an order made by the High Court.” 15
- (8) In section 124 (limit of compensatory award etc)—
- (a) after “section 117(1) and (2)” insert “or (2A)”;  
 (b) for “section 115(2)(d)” substitute “section 115(2)(d), section 117(2A)”. 20
- (9) In section 128(1)(b) (interim relief pending determination of complaint) after “Trade Union and Labour Relations (Consolidation) Act 1992” insert “or section 238AA(1) of that Act”.
- (10) In section 129(1) (procedure on hearing of application and making of order) after “Trade Union and Labour Relations (Consolidation) Act 1992” insert “or section 238AA(1) of that Act”. 25

## 2 Agency labour replacing those taking lawful industrial action

In the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (S.I. 2003/3319), after regulation 7 (restriction on providing work-seekers in industrial disputes) insert the following regulation— 30

### “Restriction on hirers in industrial disputes

- 7A (1) A person shall not hire a work-seeker to perform—
- (a) the duties normally performed by a worker who is taking part, or intends to or is about to take part, in a lawful strike or other lawful industrial action, and in respect of whom notice of a strike or other industrial action has been given by a trade union (“the first worker”), or 35
- (b) the duties normally performed by any other worker employed by the hirer and who is assigned by the hirer to perform duties normally performed by the first worker (whether or not the employer is contractually entitled to require the other worker to perform those duties). 40
- (2) Where a person seeks to become the hirer of a work-seeker wholly or partly by reason of (or of the prospect of) a strike or other industrial action, that person shall, before being supplied with a work-seeker 45

by an employment business, inform the employment business of that fact.

- (3) 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 Trade Union and Labour Relations (Consolidation) Act 1992. 5
- (4) In this regulation and in regulation 7, “employment business” includes an agency.”

### **3 Industrial action remedies** 10

- (1) The 1992 Act is amended as follows.
- (2) In section 20(6) (liability of trade union in certain proceedings in tort), after “injunction or interdict includes” insert “, subject to the provisions of section 221,”.
- (3) In paragraph (a) of subsection (2) of section 221 (restrictions on grant of injunctions and interdicts), for “interlocutory injunction” substitute “interim injunction or interdict” 15
- (4) For the words of that subsection after paragraph (b) substitute –
- “the court shall not grant the injunction or interdict unless, having regard to any matter which would, if established, afford a defence to the action under section 219 (protection from certain tort liabilities), section 220 (peaceful picketing) or any other enactment protecting a person’s participation in a trade dispute, it is satisfied that the applicant is substantially more likely to succeed than to fail in establishing at trial of the action that there is no defence to the action under any of those enactments.” 20
- (5) After that subsection insert the following subsection –
- “(3) Where in any action a party claims that he acted in contemplation or furtherance of a trade dispute and relies on any matter which would, if established, afford a defence to the action under section 219 (protection from certain tort liabilities) or section 220 (peaceful picketing), the court shall not grant any relief or remedy, or make any order, restraining any conduct of that party to which the action relates unless the party seeking such relief, remedy or order shows that he complied with his duties under section 226D.” 30
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### **4 Employer’s duties in relation to industrial action ballots**

The following section is inserted after section 226C of the 1992 Act –

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

- (1) It is the duty of an employer reasonably to co-operate generally, in connection with a ballot conducted or proposed for the purposes of section 226, with the trade union (or unions) and the person appointed to conduct the ballot. 40

- (2) Without prejudice to the generality of subsection (1), it is 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 members whom it wishes to ballot for the purposes of section 226.” 5

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

- (1) Section 224 of the 1992 Act (secondary action) is amended as follows.
- (2) In subsection (1)–
- (a) for “An act” substitute “Save as provided below, an act”;
- (b) for “which is not lawful picketing” substitute “which is not otherwise protected under section 220 (lawful picketing) or 219 (protection from certain tort liabilities)”.
- (3) After subsection (6) insert–
- “(7) Subject to subsection (9), action taken or proposed to be taken against a third party shall not be regarded as secondary action – 15
- (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. 20 25
- (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 regarded as secondary action where – 30
- (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 35
- (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. 40
- (9) Subsection (7) shall not apply if the relevant trade union has failed to comply with the requirements of sections 226 and 234A in relation to the third party as if the third party were the employer in dispute.
- (10) Subsection (8) shall not apply if the relevant trade union has failed to comply with the requirements of sections 226 and 234A in relation to the action taken against the principal supplier or principal customer as if the supplier or customer were the employer in dispute.” 45

- (4) Section 244 of the 1992 Act (meaning of “trade dispute” in Part V) is amended as follows.
- (5) In subsection (1) after “their employer” add “(or an associated employer)”.
- (6) After subsection (1) insert—
- “(1A) For the purposes of subsection (1), an “associated employer” includes an employer reasonably believed by the trade union to be an associated employer within the meaning of section 297. 5
- (1B) In paragraphs (a) to (c), (e) and (g) of subsection (1), references to a “worker” include a worker employed, formerly employed, or likely to be employed by any employer or employers; and the acts and matters mentioned in paragraphs (a) to (g) include acts and matters whether arising in the past, present or future. 10
- (1C) “Dispute” in subsection (1) includes the situation where a demand is made of an employer that the employer does something, or ceases to do something, which relates wholly or mainly to one or more of the matters mentioned in paragraphs (a) to (g) of that subsection. 15
- (1D) For the avoidance of doubt, secondary action not protected pursuant to section 224 is not protected by this section.”
- (7) Section 127 of the Criminal Justice and Public Order Act 1994 (c. 33) (inducements to withhold services or to indiscipline) is repealed. 20

## 6 Industrial action ballots

- (1) In section 227(1) of the 1992 Act (entitlement to vote in ballot), before “entitlement to vote in the ballot” insert “So far as is reasonably practicable,”.
- (2) In section 232B of the 1992 Act (small accidental failures to be disregarded)—
- (a) in subsection (1)(a), after “in relation to a ballot” insert “or a notice”; 25
- (b) in subsection (2), for the words after “The provisions are” substitute “sections 226 to 235”.
- (3) In section 233(1) of the 1992 Act (calling of industrial action with support of ballot) for “conditions specified below are” substitute “condition specified below is”. 30
- (4) For section 233(3) of the 1992 Act (calling of industrial action with support of ballot) substitute—
- “(3) The condition is that there must be a call for industrial action by a specified person, and industrial action to which it relates must begin, before the ballot ceases to be effective in accordance with section 234.” 35

## 7 Requirements as to notice

- (1) Section 226A of the 1992 Act (notice of ballot and sample voting papers for employers) is repealed.
- (2) In section 234A of the 1992 Act (notice to employers of industrial action), for

subsection (3) substitute –

- “(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 as they appear to the union, and specifying so far as is reasonably practicable –
- (a) the class or classes of workers who are members of the union to be called on to take industrial action, by reference to the union’s usual classification of its relevant members; 5
  - (b) whether the industrial action is to be a strike or action short of a strike, and whether continuous or discontinuous; and
  - (c) when it is intended to start (or, if interrupted, to re-start).” 10

## 8 Short title, commencement and extent

- (1) This Act may be cited as the Trade Union Rights and Freedoms Act 2007.
- (2) This Act comes into force at the end of the period of one month beginning with the day on which it is passed.
- (3) This Act does not extend to Northern Ireland. 15

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## B I L L

To 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, and remedies in trade disputes; and for connected purposes.

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*Ordered, by The House of Commons,  
to be Printed, 13th December 2006.*

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LONDON — THE STATIONERY OFFICE LIMITED  
Printed in the United Kingdom by  
The Stationery Office Limited  
£x.xx