Appendix: The main provisions of the Act

The Industrial Relations Act 1971 is a daunting and highly legalistic document, consisting of nine parts, 170 sections and nine schedules (HMG, 1971a). This table provides a brief and non-exhaustive overview of its main provisions and procedures.

Institutions

• The Commission on Industrial Relations was given statutory footing by the Act. It conducted ballots, advised on bargaining units and procedural agreements, and was intended to perform conciliatory functions to promote good industrial relations. It made non-enforceable recommendations in published reports. It was intended to be a vehicle to promote ‘orderly’ voluntary collective bargaining, with legal orders a last resort (Sections 120–123).

• The National Industrial Relations Court had the powers of a ‘normal’ court and the status of the High Court (Schedule 3, Part II). Its jurisdiction covered all cases of ‘unfair industrial practice’ (Section 101). It was first court of appeal in cases before the Industrial Tribunals (Section 114).

• The Industrial Arbitration Board considered disputes between trade unions and employers regarding terms and conditions of employment following a reference from the NIRC (Sections 124–127). The Secretary of State for Employment could make referrals in cases where a registered trade union was concerned (Section 152).

• The Industrial Tribunals, drawing jurisdiction from various pieces of legislation (Section 100), were primarily tasked with upholding individuals’ rights granted by the Act, hearing cases related to the right to belong or not to a trade union (Section 5) and unfair dismissal provisions (Sections 22–26).

• The Registrar of Trade Unions and Employers’ Associations is discussed below.
Collective bargaining
- Collective agreements were considered legally binding unless expressly stated otherwise (Section 34 and 35).
- Procedures were in place to manage disputes over recognition or procedural problems. The NIRC (Section 37) or Secretary of State (Sections 37 and 43) could instigate the CIR to investigate, research and advise on the matter through a publicly available report. Legal imposition of procedure agreements through court orders, while possible, was considered a last resort.
- A *Code of Industrial Relations Practice* (DE, 1972) was applicable to all parties, to be interpreted widely and concerned with procedural matters (Section 2). The *Code* was not legally binding, but was admissible as evidence before the NIRC and held relevant in proceedings (Section 4).

Registration
- The RTUEA was tasked with investigating and monitoring internal trade union rules to ensure they complied with Schedule 4. This included financial accountability, election procedures and disciplinary and grievance procedures, alongside state-regulated ‘rules’ on the obligations of trade union officials, including by whom, when and how, industrial action could be called (Schedule 4).
- The Act created a distinction between ‘registered’ and ‘unregistered’ trade unions, the former gaining certain legal rights and immunities denied to the latter (Section 61).
- Unregistered ‘organisations of workers’ were denied taxation concessions and the benefits of agency shop agreements (Section 11), procedures to apply for a post-entry closed shop (Section 17) or to be recognised as a sole bargaining agent (Section 49).
- In cases of ‘unfair industrial practice’, unregistered organisations could be subject to unlimited fines imposed by the NIRC (Section 116). Registered trade unions were subject to limitations on compensation based on membership numbers (Section 117).

Emergency procedures
- The Act empowered the Secretary of State for Employment to apply to the NIRC for relief (1) in ‘emergency’ circumstances, whereby the proposed industrial action would cause grave injury to the national economy, national security, a serious risk of public disorder or dangers to life or of disease and injury; and (2) in cases where there was evidence that the provisions would help avoid a strike (Section 138).
- The emergency procedures included ‘cooling-off’ restraint periods of up to 60 days (Section 139) or ballot orders to test a trade union membership’s view (Sections 141, 142 and 143).
Individual rights and benefits

- Individual workers had the right to belong or not belong to a registered trade union (Section 5).
- The pre-entry closed shop was outlawed, meaning that membership of a particular union could not be a prerequisite of employment (Section 7).
- Agency shop agreements (Section 11), making union membership a condition of employment, and post-entry ‘approved’ closed shops (Section 17), could be established following a strict process involving the NIRC and CIR (Sections 12 and 13).
- The new concept of ‘unfair dismissal’ was created, providing limited protections for individual employees (Section 22 and 23).

Unfair industrial practice

- The NIRC held jurisdiction over ‘unfair industrial practice’ (Section 131).
- Examples include:
  - an employer or trade union imposing pressure on an individual and ignoring the right to belong, or not, to a trade union (Section 5(2) and Section 33(3)).
  - a trade union attempting to induce an employer into an agency shop agreement (Section 13), an employer hindering an application (Section 16) or an employer continuing to operate an agency shop against the wishes of employees (Section 5(2)).
  - inciting, or threatening to incite, a contravention of a legally enforceable collective agreement (Section 36).
  - certain types of sympathetic industrial action (Sections 97 and 98).
  - unfair dismissal in limited circumstances (Sections 22–32).
  - excluding individuals from membership, or terminating membership, of a trade union because they refuse to take part in industrial action (Section 66).
  - employers withholding rights from registered unions and their members as bargaining agent (Section 5 and 55).
- For unregistered ‘organisations of workers’, the NIRC could apply the principle that fines should be ‘just and equitable in all the circumstances’ which ultimately meant they could be unlimited (Section 116).
- Officials could be personally liable for inducement of strikes (Section 96).