



Employment Protection (Consolidation) Act 1978

1978 CHAPTER 44

PART IX

MISCELLANEOUS AND SUPPLEMENTAL

Supplementary provisions

148 **Review of limits**

- (1) The Secretary of State shall in each calendar year review—
 - (a) the limits referred to in section 15 ;
 - (b) the limit referred to in section 122(5); and
 - (c) the limits imposed by paragraph 8(1) of Schedule 14 on the amount of a week's pay for the purposes of those provisions;and shall determine whether any of those limits should be varied.
- (2) In making a review under this section the Secretary of State shall consider—
 - (a) the general level of earnings obtaining in Great Britain at the time of the review ;
 - (b) the national economic situation as a whole ; and
 - (c) such other matters as he thinks relevant.
- (3) If on a review under this section the Secretary of State determines that, having regard to the considerations mentioned in subsection (2), any of those limits should be varied, he shall prepare and lay before each House of Parliament the draft of an order giving effect to his decision.
- (4) Where a draft of an order under this section is approved by resolution of each House of Parliament the Secretary of State shall make an order in the form of the draft.

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- (5) If, following the completion of an annual review under this section, the Secretary of State determines that any of the limits referred to in subsection (1) shall not be varied, he shall lay before each House of Parliament a report containing a statement of his reasons for that determination.
- (6) The Secretary of State may at any time, in addition to the annual review provided for in subsection (1), conduct a further review of the limits mentioned in subsection (1) so as to determine whether any of those limits should be varied, and subsections (2) to (4) shall apply to such a review as if it were a review under subsection (1).

149 General power to amend Act

- (1) Subject to the following provisions of this section, the Secretary of State may by order—
 - (a) provide that any enactment contained in this Act which is specified in the order shall not apply to persons or to employments of such classes as may be prescribed in the order;
 - (b) provide that any such enactment shall apply to persons or employments of such classes as may be prescribed in the order subject, except in relation to section 54 (but without prejudice to paragraph (a)), to such exceptions and modifications as may be so prescribed ;
 - (c) vary, or exclude the operation of, any of the following provisions of this Act, that is to say, sections 64(1), 99, 141(2) and (5), 143(3) and (4), 144(1), (2), (4) and (5), 145(1), (2) and (3) and 146(1) and (4) to (7);
 - (d) add to, vary or delete any of the provisions of Schedule 5.
- (2) Subsection (1) does not apply to the following provisions of this Act, namely, sections 7, 52, 55, 57, 58, 59, 62, 63, 65, 66, 67, 75, 80, 103 to 120, 128, 134, 141(1) and 142(1) and Schedules 3, 9 and 13, and, in addition, paragraph (b) of subsection (1) does not apply to sections 1 to 6 and 49 to 51 and paragraph (c) of subsection (1) does not apply to section 143 as that section applies in relation to section 49.
- (3) The provisions of this section are without prejudice to any other power of the Secretary of State to amend, vary or repeal any provision of this Act or to extend or restrict its operation in relation to any person or employment.
- (4) No order under subsection (1) shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

150 Death of employee or employer

Schedule 12 shall have effect for the purpose of supplementing and modifying the provisions of Part I (so far as it relates to itemised pay statements), section 53 and Parts II, III, and V to VII as respects the death of an employee or employer.

151 Continuous employment

- (1) Subject to sections 104(2) and 106(2), Schedule 13 shall have effect for the purposes of this Act for ascertaining the length of an employee's period of employment and whether that employment has been continuous, and references in this Act to a period of employment shall be construed accordingly.

- (2) For the purposes of any proceedings under this Act, other than proceedings for a breach of section 1, 2, 4 or 49, a person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.

152 Calculation of normal working hours and a week's pay

Schedule 14 shall have effect for the purposes of this Act for calculating the normal working hours and the amount of a week's pay of any employee.

153 Interpretation

- (1) In this Act, except so far as the context otherwise requires—

" act " and " action " each includes omission and references to doing an act or taking action shall be construed accordingly;

" business " includes a trade or profession and includes any activity carried on by a body of persons, whether corporate or unincorporate;

" certified midwife " means a midwife certified under the Midwives Act 1951 or the Midwives (Scotland) Act 1951;

" collective agreement " has the meaning given by section 30(1) of the Trade Union and Labour Relations Act 1974;

" confinement " means the birth of a living child or the birth of a child whether living or dead after twenty-eight weeks of pregnancy;

" contract of employment " means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether it is oral or in writing ;

" dismissal procedures agreement " means an agreement in writing with respect to procedures relating to dismissal made by or on behalf of one or more independent trade unions and one or more employers or employers' associations;

" effective date of termination " has the meaning given by section 55(4) and (5);

" employee " means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment;

" employer ", in relation to an employee, means the person by whom the employee is (or, in a case where the employment has ceased, was) employed ;

" employers' association " has the same meaning as it has for the purposes of the Trade Union and Labour Relations Act 1974;

" employer's payment " means a payment falling within paragraph (a), (b) or (c) of section 104(1);

" employment ", except for the purposes of sections 111 to 115, means employment under a contract of employment ;

" expected week of confinement " means the week, beginning with midnight between Saturday and Sunday, in which it is expected that confinement will take place;

" government department ", except in section 138 and paragraph 19 of Schedule 13, includes a Minister of the Crown;

" guarantee payment " has the meaning given by section 12(1);

" inadmissible reason " has the meaning given by section 58(5);

" independent trade union " means a trade union which—

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- (a) is not under the domination or control of an employer or a group of employers or of one or more employers' associations ; and
- (b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control;

and, in relation to a trade union, " independent" and " independence " shall be construed accordingly ;

" job ", in relation to an employee, means the nature of the work which he is employed to do in accordance with his contract and the capacity and place in which he is so employed;

" maternity pay " has the meaning given by section 33(1); " Maternity Pay Fund" means the fund referred to in section 37;

" maternity pay rebate " has the meaning given by section 39;

" notice of intention to claim " has the meaning given by section 88 ;

" notified day of return " has the meaning given by section 47(1) and (8);

" official ", in relation to a trade union, has the meaning given by section 30(1) of the Trade Union and Labour Relations Act 1974;

" original contract of employment", in relation to an employee who is absent from work wholly or partly because of pregnancy or confinement, means the contract under which she worked immediately before the beginning of her absence or, if she entered into that contract during her pregnancy by virtue of section 60(2) or otherwise by reason of her pregnancy, the contract under which she was employed immediately before she entered into the later contract or, if there was more than one later contract, the first of the later contracts;

" position ", in relation to an employee, means the following matters taken as a whole, that is to say, his status as an employee, the nature of his work and his terms and conditions of employment;

" Redundancy Fund " means the fund referred to in section 103;

" redundancy payment" has the meaning given by section 81(1);

" redundancy rebate" has the meaning given by section 104;

" relevant date ", for the purposes of the provisions of this Act which relate to redundancy payments, has the meaning given by section 90 ;

" renewal " includes extension, and any reference to renewing a contract or a fixed term shall be construed accordingly;

" statutory provision " means a provision, whether of a general or a special nature, contained in, or in any document made or issued under, any Act, whether of a general or special nature ;

" successor " has the meaning given by section 30(3) and (4) of the Trade Union and Labour Relations Act 1974;

" trade dispute " has the meaning given by section 29 of the said Act of 1974 ;

" trade union " has the meaning given by section 28 of the said Act of 1974 ;

" union membership agreement " has the meaning given by section 30(1) of the said Act of 1974 and " employees ", in relation thereto, has the meaning given by section 30(5A) of that Act;

" week " means, in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week

ending with that other day, and in relation to any other employee, a week ending with Saturday.

- (2) References in this Act to dismissal by reason of redundancy, and to cognate expressions, shall be construed in accordance with section 81.
- (3) In sections 33, 47, 56, 61 and 86 and Schedule 2, except where the context otherwise requires, "to return to work" means to return to work in accordance with section 45(1), and cognate expressions shall be construed accordingly.
- (4) For the purposes of this Act, any two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control; and the expression "associated employer" shall be construed accordingly.
- (5) For the purposes of this Act it is immaterial whether the law which (apart from this Act) governs any person's employment is the law of the United Kingdom, or of a part of the United Kingdom, or not.
- (6) In this Act, except where otherwise indicated—
 - (a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered, and
 - (b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered, and
 - (c) a reference in a section, subsection or Schedule to a numbered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered, and
 - (d) a reference to any provision of an Act (including this Act) includes a Schedule incorporated in the Act by that provision.
- (7) Except so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.

154 Orders, rules and regulations

- (1) Any power conferred by any provision of this Act to make an order (other than an Order in Council or an order under section 65 or 66) or to make rules or regulations shall be exercisable by statutory instrument.
- (2) Any statutory instrument made under any power conferred by this Act to make an Order in Council or other order or to make rules or regulations, except—
 - (a) an instrument required to be laid before Parliament in draft; and
 - (b) an order under section 18,shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any power conferred by this Act which is exercisable by statutory instrument shall include power to make such incidental, supplementary or transitional provisions as appear to the authority exercising the power to be necessary or expedient.
- (4) An order made by statutory instrument under any provision of this Act may be revoked or varied by a subsequent order made under that provision.

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This subsection does not apply to an order under section 96 but is without prejudice to subsection (4) of that section.

155 Offences by bodies corporate

- (1) Where an offence under section 44 or 126 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

156 Payments into the Consolidated Fund

- (1) There shall be paid out of the Maternity Pay Fund into the Consolidated Fund sums equal to the amount of any expenses incurred by the Secretary of State in exercising his functions under this Act relating to maternity pay.
- (2) There shall be paid out of the Redundancy Fund into the Consolidated Fund sums equal to the amount of any expenses incurred—
 - (a) by the Secretary of State in consequence of Part VI, except expenses incurred in the payment of sums in accordance with any such arrangements as are mentioned in section 111(3);
 - (b) by the Secretary of State (or by persons acting on his behalf) in exercising his functions under sections 122 to 126.
- (3) There shall be paid out of the Redundancy Fund into the Consolidated Fund such sums as the Secretary of State may estimate in accordance with directions given by the Treasury to be the amount of any expenses incurred by any government department other than the Secretary of State in consequence of the provisions of sections 103 to 109.

157 Northern Ireland

- (1) If provision is made by Northern Irish legislation (that is to say by or under a Measure of the Northern Ireland Assembly) for purposes corresponding to any of the purposes of this Act, except sections 1 to 7 and 49 to 51, the Secretary of State may, with the consent of the Treasury, make reciprocal arrangements with the appropriate Northern Irish authority for co-ordinating the relevant provisions of this Act with the corresponding provisions of the Northern Irish legislation, so as to secure that they operate, to such extent as may be provided by the arrangements, as a single system.
- (2) For the purpose of giving effect to any such arrangements the Secretary of State shall have power, in conjunction with the appropriate Northern Irish authority—
 - (a) where the arrangements relate to the provisions of this Act relating to maternity pay, to make any necessary financial adjustments between the Maternity Pay Fund and any fund established under Northern Irish legislation; and

- (b) where the arrangements relate to Part VI or to sections 122 to 126, to make any necessary financial adjustments between the Redundancy Fund and the Northern Ireland Redundancy Fund.
- (3) The Secretary of State may make regulations for giving effect in Great Britain to any such arrangements, and any such regulations may make different provision for different cases, and may provide that the relevant provisions of this Act shall have effect in relation to persons affected by the arrangements subject to such modifications and adaptations as may be specified in the regulations, including provision—
- (a) for securing that acts, omissions and events having any effect for the purposes of the Northern Irish legislation shall have a corresponding effect for the purposes of this Act (but not so as to confer a right to double payment in respect of the same act, omission or event); and
 - (b) for determining, in cases where rights accrue both under this Act and under the Northern Irish legislation, which of those rights shall be available to the person concerned.
- (4) In this section " the appropriate Northern Irish authority " means such authority as may be specified in that behalf in the Northern Irish legislation.

158 The Isle of Man

- (1) If an Act of Tynwald is passed for purposes similar to the purposes of Part VI, the Secretary of State may, with the consent of the Treasury, make reciprocal arrangements with the appropriate Isle of Man authority for co-ordinating the provisions of Part VI with the corresponding provisions of the Act of Tynwald so as to secure that they operate, to such extent as may be provided by the arrangements, as a single system.
- (2) For the purpose of giving effect to any such arrangements, the Secretary of State shall have power, in conjunction with the appropriate Isle of Man authority, to make any necessary financial adjustments between the Redundancy Fund and any fund established under the Act of Tynwald.
- (3) The Secretary of State may make regulations for giving effect in Great Britain to any such arrangements, and any such regulations may provide that Part VI shall have effect in relation to persons affected by the arrangements subject to such modifications and adaptations as may be specified in the regulations, including provision—
- (a) for securing that acts, omissions and events having any effect for the purposes of the Act of Tynwald shall have a corresponding effect for the purposes of Part VI (but not so as to confer a right to double payment in respect of the same act, omission or event); and
 - (b) for determining, in cases where rights accrue both under this Act and under the Act of Tynwald, which of those rights shall be available to the person concerned.
- (4) In this section " the appropriate Isle of Man authority " means such authority as may be specified in that behalf in an Act of Tynwald.

159 Transitional provisions, savings, consequential amendments and repeals

- (1) The transitional provisions and savings in Schedule 15 shall have effect but nothing in that Schedule shall be construed as prejudicing section 38 of the Interpretation Act 1889 (effect of repeals).

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- (2) The enactments specified in Schedule 16 shall have effect subject to the amendments specified in that Schedule.
- (3) The enactments specified in the first column of Schedule 17 are hereby repealed to the extent specified in column 3 of that Schedule.

160 Citation, commencement and extent

- (1) This Act may be cited as the Employment Protection (Consolidation) Act 1978.
- (2) This Act, except section 139(2) to (9) and the repeals in section 122 of the Employment Protection Act 1975 provided for in Schedule 17 to this Act, shall come into force on 1st November 1978, and section 139(2) to (9) and those repeals shall come into force on 1st January 1979.
- (3) This Act, except sections 137 and 157 and paragraphs 12 and 28 of Schedule 16, shall not extend to Northern Ireland.