



# Employment Act 1989

## 1989 CHAPTER 38

*Overriding of provisions requiring discrimination as respects employment or training*

### **1 Overriding of statutory requirements which conflict with certain provisions of 1975 Act**

- (1) Any provision of—
- (a) an Act passed before the Sex Discrimination Act 1975, or
  - (b) an instrument approved or made by or under such an Act (including one approved or made after the passing of the 1975 Act),
- shall be of no effect in so far as it imposes a requirement to do an act which would be rendered unlawful by any of the provisions of that Act referred to in subsection (2).
- (2) Those provisions are—
- (a) Part II (discrimination as respects employment);
  - (b) Part III (discrimination as respects education etc.) so far as it applies to vocational training; and
  - (c) Part IV (other unlawful acts) so far as it has effect in relation to the provisions mentioned in paragraphs (a) and (b) above.
- (3) Where in any legal proceedings (of whatever nature) there falls to be determined the question whether subsection (1) operates to negative the effect of any provision in so far as it requires the application by any person of a requirement or condition falling within subsection (1)(b)(i) of section 1 or 3 of the 1975 Act (indirect discrimination on grounds of sex or marital status)—
- (a) it shall be for any party to the proceedings who claims that subsection (1) does not so operate in relation to that provision to show the requirement or condition in question to be justifiable as mentioned in subsection (1)(b)(ii) of that section; and
  - (b) the said subsection (1)(b)(ii) shall accordingly have effect in relation to the requirement or condition as if the reference to the person applying it were a reference to any such party to the proceedings.

- (4) Where an Act passed after the 1975 Act, whether before or after the passing of this Act, re-enacts (with or without modification) a provision of an Act passed before the 1975 Act, that provision as re-enacted shall be treated for the purposes of subsection (1) as if it continued to be contained in an Act passed before the 1975 Act.

## **2 Power of Secretary of State to repeal statutory provisions requiring discrimination as respects employment or training**

- (1) Where it appears to the Secretary of State that a relevant provision, namely any provision of—
- (a) an Act passed before this Act, or
  - (b) an instrument approved or made by or under such an Act (including one approved or made after the passing of this Act),
- requires the doing of an act which would (within the meaning of the 1975 Act) constitute an act of discrimination in circumstances relevant for the purposes of any of the provisions of that Act falling within section 1(2) above, he may by order make such provision (whether by amending, repealing or revoking the relevant provision or otherwise) as he considers appropriate for removing any such requirement.
- (2) Subsection (1) shall have effect in relation to a provision to which section 1(1) above applies as if the reference to a relevant provision requiring the doing of an act were a reference to its so requiring but for the operation of section 1(1).
- (3) Any order under this section which makes any amendment, repeal or revocation of a relevant provision within the meaning of subsection (1) may (without prejudice to the generality of section 28(5) below) amend or repeal any provision of this Act by virtue of which acts done in pursuance of the relevant provision are not to be unlawful for the purposes of provisions of the 1975 Act.
- (4) Where an Act passed after this Act re-enacts (with or without modification) a provision of an Act passed before this Act, that provision as re-enacted shall be treated for the purposes of subsection (1) as if it continued to be contained in an Act passed before this Act.

*Circumstances where discrimination as respects employment or training is permissible*

## **3 Restriction of exemption for discrimination required by or under statute**

- (1) The 1975 Act shall be amended as follows.
- (2) Section 7(2)(f) (exception for jobs held by men because of statutory restrictions on employment of women) shall be omitted.
- (3) The following sections shall be substituted for section 51—

### **“51 Acts done for purposes of protection of women**

- (1) Nothing in the following provisions, namely—
  - (a) Part II,
  - (b) Part III so far as it applies to vocational training, or
  - (c) Part IV so far as it has effect in relation to the provisions mentioned in paragraphs (a) and (b),

shall render unlawful any act done by a person in relation to a woman if—

- (i) it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision concerning the protection of women, or
- (ii) it was necessary for that person to do it in order to comply with a requirement of a relevant statutory provision (within the meaning of Part I of the Health and Safety at Work etc. Act 1974) and it was done by that person for the purpose of the protection of the woman in question (or of any class of women that included that woman).

(2) In subsection (1)—

- (a) the reference in paragraph (i) of that subsection to an existing statutory provision concerning the protection of women is a reference to any such provision having effect for the purpose of protecting women as regards—
  - (i) pregnancy or maternity, or
  - (ii) other circumstances giving rise to risks specifically affecting women,whether the provision relates only to such protection or to the protection of any other class of persons as well; and
- (b) the reference in paragraph (ii) of that subsection to the protection of a particular woman or class of women is a reference to the protection of that woman or those women as regards any circumstances falling within paragraph (a)(i) or (ii) above.

(3) In this section “existing statutory provision” means (subject to subsection (4)) any provision of—

- (a) an Act passed before this Act, or
- (b) an instrument approved or made by or under such an Act (including one approved or made after the passing of this Act).

(4) Where an Act passed after this Act re-enacts (with or without modification) a provision of an Act passed before this Act, that provision as re-enacted shall be treated for the purposes of subsection (3) as if it continued to be contained in an Act passed before this Act.

### **51A Acts done under statutory authority to be exempt from certain provisions of Part III**

(1) Nothing in—

- (a) the relevant provisions of Part III, or
- (b) Part IV so far as it has effect in relation to those provisions, shall render unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision within the meaning of section 51.

(2) In subsection (1) “the relevant provisions of Part III” means the provisions of that Part except so far as they apply to vocational training.”

(4) The following section shall be inserted after section 52—

**“52A Construction of references to vocational training**

In the following provisions, namely—

- (a) sections 51 and 51A, and
- (b) the provisions of any Order in Council modifying the effect of section 52,

“vocational training” includes advanced vocational training and retraining; and any reference to vocational training in those provisions shall be construed as including a reference to vocational guidance.”

**4 Exemption for discrimination under certain provisions concerned with the protection of women at work**

- (1) Without prejudice to the operation of section 51 of the 1975 Act (as substituted by section 3(3) above), nothing in—

- (a) Part II of that Act,
- (b) Part III of that Act so far as it applies to vocational training, or
- (c) Part IV of that Act so far as it has effect in relation to the provisions mentioned in paragraphs (a) and (b) above,

shall render unlawful any act done by a person in relation to a woman if it was necessary for that person to do that act in order to comply with any requirement of any of the provisions specified in Schedule 1 to this Act (which are concerned with the protection of women at work).

- (2) Each of the last two entries in that Schedule shall be construed as including a reference to any provision or provisions for the time being having effect in place of the provision or provisions specified in that entry.
- (3) In this section “woman” means a female person of any age.

**5 Exemption for discrimination in connection with certain educational appointments**

- (1) Nothing in Parts II to IV of the 1975 Act shall render unlawful any act done by a person in connection with the employment of another person as the head teacher or principal of any educational establishment if it was necessary for that person to do that act in order to comply with any requirement of any instrument relating to the establishment that its head teacher or principal should be a member of a particular religious order.

- (2) Nothing in—

- (a) Part II of the 1975 Act, or
- (b) Part IV of that Act so far as it has effect in relation to Part II,

shall render unlawful any act done by a person in connection with the employment of another person as a professor in any university if the professorship in question is, in accordance with any Act or instrument relating to the university, either a canon professorship or one to which a canonry is annexed.

- (3) Nothing in the provisions of the 1975 Act referred to in subsection (2)(a) or (b) shall render unlawful any act done by a person in connection with the employment of another person as the head, a fellow or any other member of the academic staff of any college, or institution in the nature of a college, in a university if it was necessary for

that person to do that act in order to comply with any requirement of any instrument relating to the college or institution that the holder of the position in question should be a woman.

- (4) Subsection (3) shall not apply in relation to instruments taking effect after the commencement of that subsection; and section 6(b) of the Interpretation Act 1978 (words importing the feminine gender to include the masculine) shall not apply to that subsection.
- (5) The Secretary of State may by order provide that any provision of subsections (1) to (3) shall not have effect in relation to—
  - (a) any educational establishment or university specified in the order; or
  - (b) any class or description of educational establishments so specified.
- (6) In this section “educational establishment” means—
  - (a) any school within the meaning of the Education Act 1944 or the Education (Scotland) Act 1980;
  - (b) any college, or institution in the nature of a college, in a university; or
  - (c) any institution to which section 156 of the Education Reform Act 1988 applies (further and higher education institutions) or any constituent institution of an institution to which that section applies.
- (7) Nothing in this section shall be construed as prejudicing the operation of section 19 of the 1975 Act (exemption for discrimination in relation to employment of ministers of religion).

## **6 Power of Secretary of State to exempt particular acts of discrimination required by or under statute**

- (1) The Secretary of State may by order make such provision as he considers appropriate—
  - (a) for disapplying subsection (1) of section 1 above in the case of any provision to which it appears to him that that subsection would otherwise apply;
  - (b) for rendering lawful under any of the provisions of the 1975 Act falling within section 1(2) above acts done in order to comply with any requirement—
    - (i) of a provision whose effect is preserved by virtue of paragraph (a) above, or
    - (ii) of an instrument approved or made by or under an Act passed after the 1975 Act but before this Act (including one approved or made after the passing of this Act).
- (2) Where an Act passed after this Act re-enacts (with or without modification) a provision of an Act passed as mentioned in sub-paragraph (ii) of subsection (1)(b), that provision as re-enacted shall be treated for the purposes of that sub-paragraph as if it continued to be contained in an Act passed as mentioned in that sub-paragraph.

### *Discrimination as respects training*

## **7 Prohibition of discrimination in connection with provision of training**

- (1) The following section shall be substituted for section 14 of the 1975 Act—

**“14 Persons concerned with provision of vocational training**

- (1) It is unlawful, in the case of a woman seeking or undergoing training which would help fit her for any employment, for any person who provides, or makes arrangements for the provision of, facilities for such training to discriminate against her—
- (a) in the terms on which that person affords her access to any training course or other facilities concerned with such training, or
  - (b) by refusing or deliberately omitting to afford her such access, or
  - (c) by terminating her training, or
  - (d) by subjecting her to any detriment during the course of her training.
- (2) Subsection (1) does not apply to—
- (a) discrimination which is rendered unlawful by section 6(1) or (2) or section 22 or 23, or
  - (b) discrimination which would be rendered unlawful by any of those provisions but for the operation of any other provision of this Act.”
- (2) The following section shall be substituted for section 13 of the Race Relations Act 1976—

**“13 Persons concerned with provision of vocational training**

- (1) It is unlawful, in the case of an individual seeking or undergoing training which would help fit him for any employment, for any person who provides, or makes arrangements for the provision of, facilities for such training to discriminate against him—
- (a) in the terms on which that person affords him access to any training course or other facilities concerned with such training; or
  - (b) by refusing or deliberately omitting to afford him such access; or
  - (c) by terminating his training; or
  - (d) by subjecting him to any detriment during the course of his training.
- (2) Subsection (1) does not apply to—
- (a) discrimination which is rendered unlawful by section 4(1) or (2) or section 17 or 18; or
  - (b) discrimination which would be rendered unlawful by any of those provisions but for the operation of any other provision of this Act.”
- (3) In section 37 of the Race Relations Act 1976 (discriminatory training by certain bodies)—
- (a) in subsection (1), for “a training body” and “it appears to the training body” there shall be substituted “any person” and “it reasonably appears to that person” respectively;
  - (b) in subsection (2), for “it appears to a training body” and “the training body” there shall be substituted “it reasonably appears to any person” and “that person” respectively; and
  - (c) the following subsection shall be substituted for subsection (3)—
- “(3) The preceding provisions of this section shall not apply to any discrimination which is rendered unlawful by section 4(1) or (2).”

## **8 Power to exempt discrimination in favour of lone parents in connection with training**

- (1) The Secretary of State may by order provide with respect to—
- (a) any specified arrangements made under section 2 of the Employment and Training Act 1973 (functions of the Secretary of State as respects employment and training), or
  - (b) any specified class or description of training for employment provided otherwise than in pursuance of that section, or
  - (c) any specified scheme set up under section 1 of the Employment Subsidies Act 1978 (schemes for financing employment),

that this section shall apply to such special treatment afforded to or in respect of lone parents in connection with their participation in those arrangements, or in that training or scheme, as is specified or referred to in the order.

- (2) Where this section applies to any treatment afforded to or in respect of lone parents, neither the treatment so afforded nor any act done in the implementation of any such treatment shall be regarded for the purposes of the 1975 Act as giving rise to any discrimination falling within section 3 of that Act (discrimination against married persons for purposes of Part II of that Act).
- (3) An order under subsection (1) above may specify or refer to special treatment afforded as mentioned in that subsection—
- (a) whether it is afforded by the making of any payment or by the fixing of special conditions for participation in the arrangements, training or scheme in question, or otherwise, and
  - (b) whether it is afforded by the Secretary of State or by some other person;
- and, without prejudice to the generality of paragraph (b) of that subsection, any class or description of training for employment specified in such an order by virtue of that paragraph may be framed by reference to the person, or the class or description of persons, by whom the training is provided.
- (4) In this section—
- (a) “employment” and “training” have the same meaning as in the Employment and Training Act 1973; and
  - (b) “lone parent” has the same meaning as it has for the purposes of any regulations made in pursuance of section 20(1)(a) of the Social Security Act 1986 (income support).

*Removal of restrictions and other requirements relating to employment*

## **9 Repeal or modification of provisions requiring different treatment of different categories of employees**

- (1) In sections 42(1), 43 and 44 of the Mines and Quarries Act 1954 (under which winding and rope haulage apparatus and conveyors are to be operated by or under the supervision of competent male persons who have attained the ages there specified), the word “male” shall be omitted wherever occurring.
- (2) In section 93 of that Act (prohibition on heavy work by any woman or young person), the words “woman or young” shall be omitted in both places where they occur.

- (3) Section 124(1) of that Act (prohibition on employment of woman in job requiring a significant proportion of the employee's time to be spent underground) shall cease to have effect.
- (4) In section 20 of the Factories Act 1961 (prohibition on cleaning of machinery by any woman or young person), the words "woman or" shall be omitted in both places where they occur.
- (5) In section 17 of the Offices, Shops and Railway Premises Act 1963 (fencing of exposed parts of machinery)—
  - (a) subsection (3),
  - (b) in subsection (4), the words from " , except when any" onwards, and
  - (c) subsection (5),shall cease to have effect.
- (6) In Schedule 2 to this Act—
  - (a) the provisions of subordinate legislation listed in Part I (which require different treatment of different categories of employees) shall cease to have effect; and
  - (b) the provisions of such legislation mentioned in Part II shall have effect subject to the amendments there specified (which assimilate the treatment of different categories of employees).

## 10 Removal of restrictions relating to employment of young persons

- (1) The following enactments, namely—
  - (a) the enactments listed in Part I of Schedule 3 (which impose prohibitions or requirements with respect to the hours of employment and holidays of young persons and with respect to related matters), and
  - (b) the enactments listed in Part II of that Schedule (which impose other prohibitions or requirements for, or in connection with, regulating the employment of young persons),shall cease to have effect.
- (2) The enactments mentioned in Part III of Schedule 3 shall have effect subject to the amendments there specified (which include amendments by virtue of which certain occupations, instead of being restricted to persons who are 16 or older, are restricted to persons over school-leaving age).
- (3) If the Secretary of State considers it appropriate to do so, he may by order—
  - (a) repeal or amend any statutory provision in consequence of subsection (1) or (2);
  - (b) repeal any statutory provision relating to the employment of persons, or any class of persons, who have not attained the age of 18 or (as the case may be) some specified lower age of not less than 16;
  - (c) amend any statutory provision falling within paragraph (b) and framed by reference to a specified age expressed as a number of years so that it is instead framed by reference to school-leaving age;
  - (d) repeal any statutory provision appearing to the Secretary of State to be unnecessary in view of any other such provision, being a provision relating to the employment of persons under school-leaving age.



- (4) Nothing in any order under subsection (3) (apart from a repeal effected by virtue of paragraph (d) of that subsection) shall affect any statutory provision relating to the employment of persons under school-leaving age.
- (5) Any reference in subsection (3)(d) or (4) to a statutory provision relating to the employment of persons under school-leaving age shall be construed, in relation to a statutory provision which relates to both—
- (a) the employment of such persons, and
  - (b) the employment of persons over that age,
- as a reference to so much of that provision as relates to the employment of persons under that age.
- (6) In this section—
- “school-leaving age” means—
- (a) in relation to England and Wales, the upper limit of compulsory school age for the purposes of the Education Act 1944;
  - (b) in relation to Scotland, the upper limit of school age for the purposes of the Education (Scotland) Act 1980; and
  - (c) in relation to Northern Ireland, the upper limit of compulsory school age for the purposes of the Education and Libraries (Northern Ireland) Order 1986; and
- “statutory provision” means a provision of an Act or of subordinate legislation (and references to the repeal of a statutory provision shall be construed accordingly).

## **11 Exemption of Sikhs from requirements as to wearing of safety helmets on construction sites**

- (1) Any requirement to wear a safety helmet which (apart from this section) would, by virtue of any statutory provision or rule of law, be imposed on a Sikh who is on a construction site shall not apply to him at any time when he is wearing a turban.
- (2) Accordingly, where—
- (a) a Sikh who is on a construction site is for the time being wearing a turban, and
  - (b) (apart from this section) any associated requirement would, by virtue of any statutory provision or rule of law, be imposed—
    - (i) on the Sikh, or
    - (ii) on any other person,
- in connection with the wearing by the Sikh of a safety helmet, that requirement shall not apply to the Sikh or (as the case may be) to that other person.
- (3) In subsection (2) “associated requirement” means any requirement (other than one falling within subsection (1)) which is related to or connected with the wearing, provision or maintenance of safety helmets.
- (4) It is hereby declared that, where a person does not comply with any requirement, being a requirement which for the time being does not apply to him by virtue of subsection (1) or (2)—
- (a) he shall not be liable in tort to any person in respect of any injury, loss or damage caused by his failure to comply with that requirement; and

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- (b) in Scotland no action for reparation shall be brought against him by any person in respect of any such injury, loss or damage.
- (5) If a Sikh who is on a construction site—
- (a) does not comply with any requirement to wear a safety helmet, being a requirement which for the time being does not apply to him by virtue of subsection (1), and
- (b) in consequence of any act or omission of some other person sustains any injury, loss or damage which is to any extent attributable to the fact that he is not wearing a safety helmet in compliance with the requirement,
- that other person shall, if liable to the Sikh in tort (or, in Scotland, in an action for reparation), be so liable only to the extent that injury, loss or damage would have been sustained by the Sikh even if he had been wearing a safety helmet in compliance with the requirement.
- (6) Where—
- (a) the act or omission referred to in subsection (5) causes the death of the Sikh, and
- (b) the Sikh would have sustained some injury (other than loss of life) in consequence of the act or omission even if he had been wearing a safety helmet in compliance with the requirement in question,
- the amount of any damages which, by virtue of that subsection, are recoverable in tort (or, in Scotland, in an action for reparation) in respect of that injury shall not exceed the amount of any damages which would (apart from that subsection) be so recoverable in respect of the Sikh's death.
- (7) In this section—
- “building operations” and “works of engineering construction” have the same meaning as in the Factories Act 1961;
- “construction site” means any place where any building operations or works of engineering construction are being undertaken;
- “injury” includes loss of life, any impairment of a person's physical or mental condition and any disease;
- “safety helmet” means any form of protective headgear; and
- “statutory provision” means a provision of an Act or of subordinate legislation.
- (8) In this section—
- (a) any reference to a Sikh is a reference to a follower of the Sikh religion; and
- (b) any reference to a Sikh being on a construction site is a reference to his being there whether while at work or otherwise.
- (9) This section shall have effect in relation to any relevant construction site within the territorial sea adjacent to Great Britain as it has effect in relation to any construction site within Great Britain.
- (10) In subsection (9) “relevant construction site” means any construction site where there are being undertaken any building operations or works of engineering construction which are activities falling within Article 7(a) of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 1989.

## **12 Protection of Sikhs from racial discrimination in connection with requirements as to wearing of safety helmets**

- (1) Where—
- (a) any person applies to a Sikh any requirement or condition relating to the wearing by him of a safety helmet while he is on a construction site, and
  - (b) at the time when he so applies the requirement or condition that person has no reasonable grounds for believing that the Sikh would not wear a turban at all times when on such a site,
- then, for the purpose of determining whether the application of the requirement or condition to the Sikh constitutes an act of discrimination falling within section 1(1)(b) of the Race Relations Act 1976 (indirect racial discrimination), the requirement or condition shall be taken to be one which cannot be shown to be justifiable as mentioned in sub-paragraph (ii) of that provision.
- (2) Any special treatment afforded to a Sikh in consequence of section 11(1) or (2) above shall not be regarded for the purposes of the Race Relations Act 1976 as giving rise, in relation to any other person, to any discrimination falling within section 1 of that Act.
- (3) Subsections (7) to (10) of section 11 above shall apply for the purposes of this section as they apply for the purposes of that section.

### *Written statements of terms of employment*

## **13 Provision of particulars of disciplinary procedures**

- (1) Part I of the Employment Protection (Consolidation) Act 1978 (particulars of terms of employment) shall be amended as follows.
- (2) In section 2 (supplementary provisions relating to statements under section 1), the following subsection shall be substituted for subsection (4)—
- “(4) No statement need be given under section 1 where—
- (a) the employee’s employment began not more than six months after the end of earlier employment with the same employer,
  - (b) a statement under that section, and any information subsequently required under section 4, was duly given to the employee in respect of his earlier employment, and
  - (c) the terms of his present employment are the same as those of his earlier employment and any other matters falling within section 1(4) of which particulars were to be given by that statement are also unchanged,
- but without prejudice to the operation of subsection (1) of section 4 if there is subsequently a change in his terms of employment or in any of those matters.”
- (3) The following section shall be inserted after section 2—

### **“2A Particulars of disciplinary procedures not required where less than 20 employees**

- (1) The note which, by virtue of subsection (4) of section 1, is required to be included in a statement given to an employee under that section need not comply with the following provisions of that subsection, namely—

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- (a) paragraph (a),
  - (b) in paragraph (b), sub-paragraph (i) and the words following sub-paragraph (ii) so far as relating to sub-paragraph (i), and
  - (c) paragraph (c),
- if on the date when the employee's employment began the relevant number of employees was less than twenty.
- (2) In subsection (1) "the relevant number of employees", in relation to an employee, means the number of employees employed by his employer added to the number of employees employed by any associated employer."
- (4) In section 4 (changes in terms of employment), the following subsection shall be added after subsection (5)—
- "(6) Any reference in subsection (1), (3) or (4) to the terms of employment which were to be, or were, included or referred to in a statement given under section 1 shall be construed as including a reference to any other matters falling within section 1(2)(c) and (4) of which particulars were to be given by that statement."
- (5) The following subsections shall be added at the end of section 5 (exclusion of certain contracts in writing)—
- "(2) If on the date when the employee's employment began the relevant number of employees was less than twenty, any reference in subsection (1)(c) to such a note as is there mentioned shall be construed as including a reference to such a note as is mentioned in section 1(4) as it has effect with the omission of the provisions specified in section 2A(1)(a) to (c).
- (3) In subsection (2) "the relevant number of employees" has the meaning given by section 2A(2).";

and the existing provisions of section 5 shall accordingly constitute subsection (1) of that section.

*Time off for trade union duties*

**14 Trade union duties for which time off must be allowed by employer**

In section 27(1) of the 1978 Act (duty of employer to permit employee who is an official of an independent trade union recognised by employer to take time off to carry out certain trade union duties)—

- (a) the following paragraph shall be substituted for paragraph (a)—
  - "(a) to carry out—
    - (i) any duties of his, as such an official, which are concerned with negotiations with the employer that are related to or connected with any matters which fall within section 29(1) of the Trade Union and Labour Relations Act 1974 and in relation to which the trade union is recognised by the employer, or
    - (ii) any other duties of his, as such an official, which are concerned with the performance, on behalf of employees of the employer, of any functions that

are related to or connected with any matters falling within that provision and that the employer has agreed may be so performed by the trade union; or”; and

- (b) in paragraph (b)(i), for “those duties” there shall be substituted “any such duties as are mentioned in paragraph (a)”.

#### *Reasons for dismissal*

### **15 Period of employment necessary to qualify for statement of reasons for dismissal**

- (1) In section 53(2) of the 1978 Act (employee not entitled to written statement of reasons for dismissal unless continuously employed for six months), for “six months” there shall be substituted “not less than two years”.
- (2) In section 149(1) of the 1978 Act (general power to amend that Act), in paragraph (c), after “49(4A),” there shall be inserted “53(2),”.

#### *Redundancy*

### **16 Redundancy payments: assimilation of age limits for men and women**

- (1) In section 82 of the 1978 Act (general exclusions from right to redundancy payment), the following subsection shall be substituted for subsection (1)—
- “(1) An employee shall not be entitled to a redundancy payment if he has before the relevant date attained the following age, that is to say—
- (a) in a case where—
- (i) in the business for the purposes of which he was employed there was a normal retiring age of less than sixty-five for an employee holding the position which he held, and
- (ii) the age was the same whether the employee holding that position was a man or a woman, that normal retiring age; and
- (b) in any other case, the age of sixty-five.”
- (2) In paragraph 4(2) of Schedule 4 to that Act (calculation of redundancy payments), for the words from ““the specified anniversary”” to “her birth,” there shall be substituted ““the specified anniversary”, in relation to an employee, means the sixty-fourth anniversary of the day of his birth,”.

### **17 Abolition of redundancy rebates**

The following provisions of the 1978 Act, namely—

- (a) sections 104 and 104A (payment by Secretary of State of redundancy rebates to employers with less than ten employees), and
- (b) Schedule 6 (calculation of amount of redundancy rebates), shall cease to have effect.

*Insolvency***18 Quantification of amounts for purposes of insolvency payments**

(1) Sections 122 and 123 of the 1978 Act (payments by Secretary of State on insolvency of employer) shall be amended as follows.

(2) In section 122 (payment to employee of certain unpaid debts of employer), the following subsection shall be substituted for subsection (11)—

“(11) If the Secretary of State is satisfied that he does not require such a statement in order to determine the amount of the debt that was owed to the employee on the relevant date and remains unpaid, he may make a payment under this section in respect of the debt without having received such a statement.”

(3) In section 123 (payment of unpaid contributions to occupational or personal pension scheme), the following subsection shall be substituted for subsection (9)—

“(9) If the Secretary of State is satisfied—

- (a) that he does not require a statement under subsection (7) in order to determine the amount of relevant contributions that was unpaid on the date on which the employer became insolvent and remains unpaid, or
- (b) that he does not require a certificate under subsection (8) in order to determine the amounts payable, paid or deducted as mentioned in subsections (3)(a) and (c) and (5),

he may make a payment under this section in respect of the contributions in question without having received such a statement or (as the case may be) such a certificate.”

**19 Recovery of insolvency payments made in respect of preferential or preferred debts**

(1) In section 125 of the 1978 Act (transfer of rights and remedies relating to debt in respect of which payment made by Secretary of State on insolvency of employer), the following subsections shall be substituted for subsection (2)—

“(2) Where a debt or any part of a debt in respect of which the Secretary of State has made a payment in pursuance of section 122 constitutes —

- (a) a preferential debt within the meaning of the Insolvency Act 1986 for the purposes of any provision of that Act (including any such provision as applied by any order made under that Act) or any provision of the Companies Act 1985; or
- (b) a preferred debt within the meaning of the Bankruptcy (Scotland) Act 1985 for the purposes of any provision of that Act (including any such provision as applied by section 11A of the Judicial Factors (Scotland) Act 1889),

then, without prejudice to the generality of subsection (1) above, there shall be included among the rights and remedies which become rights and remedies of the Secretary of State in accordance with that subsection any right arising under any such provision by reason of the status of the debt or that part of it as a preferential or preferred debt.

(2A) In computing for the purposes of any provision mentioned in subsection (2) (a) or (b) above the aggregate amount payable in priority to other creditors of the employer in respect of—

(a) any claim of the Secretary of State to be so paid by virtue of subsection (2) above; and

(b) any claim by the employee to be so paid made in his own right, any claim falling within paragraph (a) above shall be treated as if it were a claim of the employee; but the Secretary of State shall be entitled, as against the employee, to be so paid in respect of any such claim of his (up to the full amount of the claim) before any payment is made to the employee in respect of any claim falling within paragraph (b) above.”

(2) The following subsections shall be inserted after subsection (3) of that section—

“(3A) Where the Secretary of State makes any such payment as is mentioned in subsection (3) above and the sum (or any part of the sum) falling to be paid by the employer on account of the contributions in respect of which the payment is made constitutes—

(a) a preferential debt within the meaning of the Insolvency Act 1986 for the purposes of any provision mentioned in subsection (2)(a) above; or

(b) a preferred debt within the meaning of the Bankruptcy (Scotland) Act 1985 for the purposes of any provision mentioned in subsection (2) (b) above,

then, without prejudice to the generality of subsection (3) above, there shall be included among the rights and remedies which become rights and remedies of the Secretary of State in accordance with that subsection any right arising under any such provision by reason of the status of that sum (or that part of it) as a preferential or preferred debt.

(3B) In computing for the purposes of any provision referred to in subsection (3A) (a) or (b) above the aggregate amount payable in priority to other creditors of the employer in respect of—

(a) any claim of the Secretary of State to be so paid by virtue of subsection (3A) above; and

(b) any claim by the persons competent to act in respect of the scheme, any claim falling within paragraph (a) above shall be treated as if it were a claim of those persons; but the Secretary of State shall be entitled, as against those persons, to be so paid in respect of any such claim of his (up to the full amount of the claim) before any payment is made to them in respect of any claim falling within paragraph (b) above.”

#### *Pre-hearing reviews*

## **20 Pre-hearing review of proceedings before industrial tribunal**

In Schedule 9 to the 1978 Act (procedure etc. of industrial tribunals), the following paragraph shall be inserted after paragraph 1—

“1A (1) The regulations may include provision—

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- (a) for authorising a preliminary consideration of proceedings before an industrial tribunal (“a pre-hearing review”) to be carried out—
    - (i) by such person as may be determined by or in accordance with the regulations, or
    - (ii) if so determined in accordance with the regulations, by the tribunal itself; and
  - (b) for enabling such powers to be exercised in connection with a pre-hearing review as may be prescribed by the regulations.
- (2) The regulations may in particular include provision—
- (a) for authorising any person or tribunal carrying out a pre-hearing review under the regulations to make, in circumstances specified in the regulations, an order requiring a party to the proceedings in question, if he wishes to continue to participate in those proceedings, to pay a deposit of an amount not exceeding £150;
  - (b) for prescribing—
    - (i) the manner in which the amount of any such deposit is to be determined in any particular case,
    - (ii) the consequences of non-payment of any such deposit, and
    - (iii) the circumstances in which any such deposit, or any part of it, may be refunded to the party who paid it, or be paid over to another party to the proceedings.
- (3) The Secretary of State may from time to time by order substitute for the sum specified in sub-paragraph (2)(a) such other sum as is specified in the order.”

*Removal of requirement to register storage of film*

**21 Removal of requirement to notify local authority of storage of celluloid film**

In section 1(1) of the Celluloid and Cinematograph Film Act 1922 (general safety provisions relating to storage of celluloid film), paragraph (a) (requirement to notify local authority of storage of such film) shall cease to have effect.

*Dissolution of Training Commission*

**22 Dissolution of Training Commission**

- (1) The Training Commission shall be dissolved on the date on which this Act is passed.
- (2) Subject to subsection (3), all the property, rights and liabilities to which the Training Commission was entitled or subject immediately before that date shall on that date become property, rights and liabilities of the Secretary of State for Employment.
- (3) Any liability in respect of pensions, superannuation allowances or gratuities which, but for the passing of this Act, would have arisen or existed on or after that date as a liability of the Training Commission to or in respect of the chairman or any former chairman of the Commission shall instead be a liability of the Paymaster General.



- (4) The Industrial Training Act 1982 shall have effect subject to the amendments specified in Schedule 4 to this Act (by virtue of which functions of the Training Commission under that Act are transferred to the Secretary of State).
- (5) Schedule 5 to this Act shall have effect for the purpose of supplementing the provisions of this section.
- (6) References in this Act to property, rights and liabilities of the Training Commission are references to all such property, rights and liabilities, whether or not capable of being transferred or assigned by the Commission.

### *Industrial training boards*

## **23 Consultation in connection with industrial training orders**

In section 1 of the Industrial Training Act 1982 (establishment of industrial training boards), the following subsection shall be substituted for subsections (4) and (5)—

- “(4) Before making an industrial training order the Secretary of State shall consult—
- (a) such organisations or associations of organisations appearing to him to be representative of substantial numbers of employers, and such bodies established for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, as he thinks fit; and
  - (b) such other organisations, associations or bodies (if any) as he thinks fit.”

## **24 Transfer of assets or staff of industrial training boards**

- (1) The following sections shall be inserted after section 3 of the Industrial Training Act 1982—

### **“3A Transfer of assets on revocation or amendment of industrial training order**

- (1) Where an order has been made under section 1 above which—
  - (a) revokes an industrial training order, or
  - (b) amends such an order so as to exclude from the scope of operation of an industrial training board some of the activities in relation to which it exercises functions,the board concerned—
  - (i) may with the consent of the Secretary of State, or
  - (ii) shall if he so directs,transfer all or any of its assets to any person on trust to be used for charitable purposes which are related to or connected with training for employment.
- (2) A transfer under subsection (1) above may be made for a consideration which is less than the market value of the assets transferred or for no consideration; and different assets may be transferred by a board under that subsection to different persons.

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- (3) It is hereby declared that a transfer under subsection (1) above may be made in a case where an industrial training order is revoked even if the assets of the board concerned are (or will be after the transfer) insufficient to meet its liabilities and the expenses of the winding up of the board in pursuance of section 4(1) below.
- (4) Subject to subsection (5) below, the provisions of section 15(5) to (9) below shall apply in relation to any direction given by the Secretary of State under subsection (1) above as they apply in relation to any direction given by him under section 15(1) or (2) below.
- (5) Where any such direction is given in a case where an industrial training order is revoked, those provisions shall so apply with the omission from section 15(6) below of the words from “during such period” onwards.

### **3B Transfer of staff employed by boards**

- (1) If arrangements are made (whether in connection with a transfer of assets under section 3A(1) above or otherwise) for any activities of an industrial training board to be carried on by some other person (“the transferee”) as from a particular date, this section shall have effect in relation to any employee of the board who, immediately before that date, was employed wholly or mainly in connection with those activities.
- (2) The Transfer of Undertakings (Protection of Employment) Regulations 1981 shall apply in relation to any such employee of the board in accordance with subsection (3) below.
- (3) For the purposes of the application of those Regulations in relation to any such employee, the activities referred to in subsection (1) above shall (whether or not they would otherwise be so regarded) be regarded—
  - (a) as constituting an undertaking within the meaning of those Regulations which is transferred from the board to the transferee on the date referred to in that subsection, and
  - (b) as being so transferred by a transfer to which those Regulations apply and which is completed on that date.
- (4) A certificate issued by an industrial training board, in connection with any such arrangements as are referred to in subsection (1) above, to the effect that a person was, immediately before the date referred to in that subsection, employed by the board wholly or mainly in connection with the activities to which the arrangements relate shall be conclusive evidence of the facts stated in the certificate.”
- (2) In section 4(2) of the Industrial Training Act 1982 (winding up of industrial training boards), the following provisions shall be substituted for paragraph (b)—
  - “(b) for any assets of the board which are not required to meet those liabilities and expenses to be transferred to the Secretary of State and for those assets to be applied for purposes specified in the order.

Any reference in this subsection to the assets of the board is a reference to the assets (if any) held by it after the making of any transfer or transfers under section 3A(1) above.”

## 25 Constitution of industrial training boards

(1) In Schedule 1 to the Industrial Training Act 1982 (constitution etc. of industrial training boards), the following paragraph shall be substituted for paragraph 3—

“3 (1) An industrial training board shall consist of—

- (a) a chairman and, if the Secretary of State thinks fit, a deputy chairman, each of whom shall be a person appearing to the Secretary of State to have industrial or commercial experience;
- (b) such number of persons appointed after the appropriate consultation as the Secretary of State thinks fit; and
- (c) such other persons (if any) whom it appears to the Secretary of State to be appropriate to appoint in addition to those appointed by virtue of paragraph (b) above.

(2) A person appointed by virtue of sub-paragraph (1)(b) above shall at the time of his appointment be a person appearing to the Secretary of State to be concerned (whether as a director, manager or sole proprietor or otherwise) in the management of the activities, or any of the activities, of an employer engaging in the industry; and the reference in that provision to the appropriate consultation is a reference to consultation with such organisations, or associations of organisations, representative of employers engaging in the industry as appear to the Secretary of State to be appropriate.

(3) The Secretary of State shall not make any appointment by virtue of sub-paragraph (1)(c) above if to do so would result in the number of persons for the time being appointed by virtue of that provision being equal to, or greater than, the number of persons for the time being appointed by virtue of sub-paragraph (1)(b) above.

(4) References in the following provisions of this Schedule to a chairman include a deputy chairman.”

(2) Subject to subsection (4) below, the Secretary of State may reconstitute the membership of an industrial training board as from any time after the passing of this Act—

- (a) by terminating such of the appointments of its existing members as would otherwise expire after that time, and
- (b) by making fresh appointments to it, as from that time, in accordance with the provisions substituted by subsection (1) above.

(3) The termination of a person’s appointment to an industrial training board in accordance with paragraph (a) of subsection (2) above shall not preclude him from being re-appointed to the board in pursuance of paragraph (b) of that subsection.

(4) The power conferred on the Secretary of State by subsection (2) above shall not be exercisable in relation to an industrial training board if all of its members were appointed to it in accordance with the provisions substituted by subsection (1) above (whether they were so appointed in pursuance of subsection (2)(b) above or otherwise).

*Transfer of staff employed in Skills Training Agency***26 Transfer of staff employed in Skills Training Agency**

- (1) If the Secretary of State makes arrangements—
- (a) for any designated undertaking to be carried on by some other person as from a particular date, and
  - (b) for that person to become the employer of the persons who, immediately before that date, are employed in the civil service of the State in that undertaking,
- this section shall have effect in relation to those employees.
- (2) In this section—
- “designated undertaking” means such activities as the Secretary of State may by order designate for the purposes of this section, being—
- (a) all or any of the activities for the time being carried on at or from any Skillcentre specified in the order, or
  - (b) all or any of the activities so carried on at or from any two or more Skillcentres so specified, or
  - (c) any other activities for the time being carried on by the Skills Training Agency;
- “the new employer” means the person referred to in subsection (1)(a);
- “the relevant employees” means the employees referred to in subsection (1)(b); and
- “the specified date” means the date referred to in subsection (1)(a).
- (3) The Transfer of Undertakings (Protection of Employment) Regulations 1981 shall apply in relation to the relevant employees in accordance with subsections (4) and (5).
- (4) For the purposes of the application of those Regulations in relation to any of those employees, the designated undertaking referred to in subsection (1)(a) shall (whether or not it would otherwise be so regarded) be regarded—
- (a) as an undertaking within the meaning of those Regulations which is transferred from the Secretary of State to the new employer on the specified date, and
  - (b) as being so transferred by a transfer to which those Regulations apply and which is completed on that date.
- (5) Those Regulations shall apply in relation to any of the relevant employees as if, as respects any time before the specified date—
- (a) any reference to a person’s contract of employment included a reference to his employment in the civil service of the State or to the terms of that employment, as the context may require, and
  - (b) any reference to the dismissal of a person included a reference to the termination of his employment in that service.
- (6) Where any person is, in pursuance of any arrangements falling within subsection (1), to cease to be employed in the civil service of the State and to become employed by the new employer, none of the agreed redundancy procedures applicable to persons employed in that service shall apply to him.

- (7) Where, in pursuance of any such arrangements, a person ceases to be employed in the civil service of the State and becomes employed by the new employer, he shall not, on ceasing to be employed in that service, be treated for the purposes of any scheme under section 1 of the Superannuation Act 1972 as having been retired on redundancy.
- (8) A certificate issued by the Secretary of State to the effect that a person was, immediately before a particular date, employed in the civil service of the State in a designated undertaking shall be conclusive evidence of the facts stated in the certificate.

### *General*

## **27 Power to make corresponding provision for Northern Ireland**

- (1) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes corresponding to those of any of the following provisions of this Act, namely, sections 1 to 6, 7(1), 8 to 11 and 16 to 19—
  - (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament), but
  - (b) shall be subject to annulment in pursuance of a resolution of either House.
- (2) It is hereby declared that for the purposes of the Northern Ireland Constitution Act 1973 a provision contained in—
  - (a) an Order in Council under paragraph 1(1)(b) of Schedule 1 to the said Act of 1974 which states that it is made only for purposes corresponding to section 1, 2, 6 or 10(3) to (6) of this Act, or
  - (b) any statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 made under such an Order as is mentioned in paragraph (a),is not a provision dealing with an excepted matter.

## **28 Orders**

- (1) Any power to make an order under this Act shall be exercisable by statutory instrument.
- (2) The Secretary of State shall consult the Equal Opportunities Commission before making—
  - (a) an order under section 2 which makes any amendment or repeal of any provision of an Act, or
  - (b) an order under section 6.
- (3) An order of one of the following descriptions, namely—
  - (a) such an order under section 2 as is mentioned in subsection (2)(a), or
  - (b) an order under section 6(1)(a) which preserves the effect of any provision of an Act,shall not be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.
- (4) Any statutory instrument containing an order under this Act other than—
  - (a) an order to which subsection (3) applies,

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- (b) an order under section 26, or
- (c) an order under section 30,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (5) An order under this Act may contain such consequential or transitional provisions or savings as appear to the Secretary of State to be necessary or expedient.

## **29 Interpretation, minor and consequential amendments, repeals, etc**

- (1) In this Act—

“the 1975 Act” means the Sex Discrimination Act 1975;

“the 1978 Act” means the Employment Protection (Consolidation) Act 1978;

“act” includes a deliberate omission;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978;

“vocational training” includes advanced vocational training and retraining.

- (2) Any reference in this Act to vocational training shall be construed as including a reference to vocational guidance.
- (3) The enactments mentioned in Schedule 6 shall have effect subject to the minor and consequential amendments specified in that Schedule.
- (4) The enactments mentioned in Schedule 7 (which include some spent provisions) are hereby repealed to the extent specified in the third column of that Schedule.
- (5) The instruments mentioned in Schedule 8 are hereby revoked to the extent specified in the third column of that Schedule.
- (6) The transitional provisions and savings contained in Schedule 9 shall have effect.

## **30 Short title, commencement and extent**

- (1) This Act may be cited as the Employment Act 1989.
- (2) The following provisions shall come into force on the day on which this Act is passed, namely—
  - (a) section 8;
  - (b) section 10(3) to (6);
  - (c) sections 11 and 12;
  - (d) section 22 and Schedules 4 and 5;
  - (e) sections 23 to 28;
  - (f) section 29(1) and (2);
  - (g) paragraphs 9 to 15, 17 and 27 to 29 of Schedule 6 and section 29(3) so far as relating thereto;
  - (h) Part I of Schedule 7 and section 29(4) so far as relating thereto;
  - (i) section 29(6) and Schedule 9; and
  - (j) this section.

- (3) The following provisions shall come into force at the end of the period of two months beginning with the day on which this Act is passed, namely—
- (a) sections 1 to 6 and Schedule 1;
  - (b) section 7;
  - (c) section 9(1), (2) and (4) to (6) and Schedule 2;
  - (d) section 10(1) and Parts I and II of Schedule 3 except so far as they repeal section 1(3) of, and Part II of the Schedule to, the Employment of Women, Young Persons, and Children Act 1920 and section 119A of the Factories Act 1961;
  - (e) section 10(2) and Part III of Schedule 3;
  - (f) sections 16 to 19;
  - (g) section 21;
  - (h) paragraphs 3 to 5, 7, 8, 16, 20 to 25 and 30 of Schedule 6 and section 29(3) so far as relating thereto;
  - (i) Part II of Schedule 7 and section 29(4) so far as relating thereto; and
  - (j) section 29(5) and Schedule 8.
- (4) The remainder of this Act shall come into force on such day as the Secretary of State may appoint by order, and different days may be appointed for different provisions or for different purposes.
- (5) With the exception of the provisions mentioned in subsection (6), this Act does not extend to Northern Ireland.
- (6) Those provisions are—
- (a) sections 10(1) and (2) and 29(3) and (4) and Schedules 3, 6 and 7 so far as they amend or repeal any enactment which extends to Northern Ireland (other than an enactment contained in the Celluloid and Cinematograph Film Act 1922);
  - (b) section 10(6);
  - (c) paragraph 2 of Schedule 5 and section 22(5) so far as relating thereto;
  - (d) section 27 (which extends only to Northern Ireland); and
  - (e) this section.