

EMPLOYMENT RELATIONS ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Miscellaneous

Section 30: Partnerships at work

281. This section authorises the Secretary of State to make funding available for training and other activities to assist and to develop partnerships at work and to disseminate examples of good practice. The Government's intention to make such funds available was set out in Chapter 2 of *Fairness at Work*.

Section 31 and Schedule 7: Employment agencies

282. **Section 31** gives effect to Schedule 7 which amends the Employment Agencies Act 1973 ("the 1973 Act"). The effect of the amendments is set out below with deletions shown struck through and new text inserted in bold.
- *Employment agency* is defined in section 13(2) of the 1973 Act.
 - *Employment business* is defined in section 13(3) of the 1973 Act.
 - *Employment* is defined in section 13(1) of the Act as including employment by way of professional engagement or otherwise under a contract for services, and au pair arrangements.
283. **Paragraph 2** of the Schedule clarifies and extends the power contained in section 5(1) of the 1973 Act for the Secretary of State to make regulations. It does so by amending and extending the list of matters in respect of which such regulations may in particular make provision, and by repealing the proviso at the end of section 5(1) which prevents the regulation of charges to employers.
284. These amendments make it clear that that the Secretary of State may regulate the provision of services covered by the 1973 Act to employers and those who are seeking work generally rather than specifically the persons presently identified in subsections 5(1)(f) and (g) of the 1973 Act. The amendment also provides that regulations may be made restricting the services provided by operators.
285. Examples of matters on which regulations might be made include:
- restricting the ability of employment agencies and employment businesses to vary unilaterally the terms of their contracts or other arrangements with workers or hirers;
 - restricting the ability of employment agencies and businesses to make payment to a worker for work done by him conditional upon his doing other work;
 - preventing employment agencies from purporting to enter into contracts on behalf of workers unless they are permitted to charge such workers for finding them work,

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(c.26) which received Royal Assent on 27 July 1999*

and have a binding contract with them giving them authority to enter into such contracts; and

- restricting the ability of employment businesses and employment agencies to impose terms on employers which seek to prevent or discourage them from dealing, whether directly or through another employment business or agency, with workers supplied to them; or from referring such workers to other persons who might employ them. Where businesses seek to impose charges in any of these circumstances regulations might limit the size of those charges, time limit their application, or prohibit them altogether.
286. A new section 5(1A) is added to the 1973 Act which makes clear that the services which can be regulated under section 5(1) are not confined to those offered to UK residents seeking employment within the UK.
287. *Paragraph 3* amends section 6(1) of the 1973 Act, which makes it unlawful, except where the Secretary of State prescribes otherwise, for employment agencies or businesses to charge persons seeking work for the service of finding or seeking to find them work. The amendment makes it clear how this prohibition applies to persons carrying on employment businesses. It also makes it clear that the prohibition applies in relation to the provision of information by persons carrying on employment agencies. The amended provisions make clear that the prohibition on employment businesses charging persons seeking work applies to services provided to those who are already under contract with an employment business (section 6(1)(b)) and to those who will be, once they have agreed to undertake an assignment with a hirer (section 6(1)(c)).
288. Exceptions to the prohibition might include fees relating to:
- the provision of employment agency services to entertainers, models and certain other limited groups where it is the norm for an agent to be engaged to represent the worker, except where the agent charges the person who hires the worker;
 - the inclusion of information about persons seeking work in publications made available to employers or potential employers; and
 - the provision of information about work opportunities to persons seeking work where no other services are offered, and where the charge for such information is within prescribed limits.
289. *Paragraph 4* amends the inspection powers contained in section 9 of the 1973 Act. The range of premises that may be entered is extended by means of an amendment to section 9(1)(a) of the Act to “relevant business premises”, as defined by new section 9(1B). In addition to premises that may currently be entered, “relevant business premises” include premises which have been used in connection with the carrying of an employment agency or business; and (if a duly authorised officer has reason to believe records relating to an employment agency or business are kept there) other business premises used by a person who has carried or is carrying on an employment agency or business. New section 9(1)(d) provides that duly authorised officers may take copies of records and documents kept in pursuance of the 1973 Act or regulations made under it.
290. The power of entry contained in the 1973 Act does not permit inspectors to use force to enter; and it is restricted in its exercise to “all reasonable times”. The Act does not affect these limitations.
291. New section 9(1A) provides that, if any records, documents or information which an inspector is entitled to inspect are not kept at the premises being inspected, the inspector may require any person on those premises to inform him where and by whom they are held; and to require their production at those premises at a specified time, if reasonably practicable. New section 9(1C) ensures that the term “document” extends to information held other than on paper, and provides that such information is treated as being kept at premises if it is accessible from them.

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292. The existing provisions against self incrimination contained in section 9(2) of the 1973 Act are replaced by new provisions (new sections 9(2), 9(2A) and 9(2B)) which take into account the judgement of the European Court of Human Rights in *Saunders v the United Kingdom*. They also provide an additional safeguard, in making it clear that inspectors cannot require production of material subject to legal professional privilege. The range of offences of obstruction and failure without reasonable excuse to comply with a request to furnish information contained in the existing section 9(3) of the Act is extended to include obstruction under the new section 9(1)(d) and failure without reasonable excuse to comply with a requirement under new section 9(1A).
293. Section 9(4)(a)(iv) of the 1973 Act is also amended, in order to allow information obtained using the compulsory powers contained in section 9(1) to be disclosed for the purposes of any criminal proceedings, rather than solely for those in relation to offences under the 1973 Act. Thus, for example, where the Secretary of State's officers discover that a theft may have occurred, it will be possible for them to disclose information obtained using their compulsory powers to other prosecuting authorities for the purposes of criminal proceedings in relation to that offence, or in such proceedings brought by themselves, without committing an offence under section 9(4)(b) of the 1973 Act. This amendment does not, however, permit the Secretary of State's officers to inspect documents other than those required to be kept under the 1973 Act or regulations made under it; or to require production of information other than to ascertain whether the 1973 Act or such regulations have been complied with or to enable the Secretary of State to discharge his functions under the 1973 Act.
294. *Paragraph 5* inserts new sections 11A and 11B into the 1973 Act. New section 11A increases the time in which an information laid before a Magistrates Court or a Sheriff's Court in Scotland is triable for any offence under the 1973 Act (other than that contained in section 9(3)) from six months to either three years from the date the offence was committed or six months from the date on which the Secretary of State comes to know of evidence sufficient to justify the prosecution, whichever is the earlier. New section 11B provides that where a conviction under the Act is obtained, costs not exceeding the costs of the investigation resulting in the conviction may be awarded to the Secretary of State.
295. *Paragraph 6* replaces the existing section 12(5) and makes regulations under sections 5 and 6 of the 1973 Act subject to the affirmative procedure. Regulations and orders made under sections 13(7)(i) and 14(3) remain subject to annulment.
296. *Paragraph 7* amends the definition of "employment agency" contained in section 13(2) of the 1973 Act. The substitution of the word "persons" for the word "workers" ensures that the definition of employment agency activity includes the supply of services to companies as well as individuals, in line with the definition of "employment business" activity in section 13(3).
297. *Paragraph 8* replaces the existing section 13(7)(i) so that exemptions from the provisions of the Act can be made with more flexibility and precision than hitherto. The new provision would, for example, enable particular membership societies to be exempted from the Act insofar as they provide services to their members but to remain subject to the legislation in respect of services provided to non-members.

<i>Current text</i>	<i>Amended text</i>
s.5	s.5
<i>General regulations</i>	<i>General regulations</i>
(1) The Secretary of State may make regulations to secure the proper conduct of employment agencies and employment businesses and to protect the	(1) The Secretary of State may make regulations to secure the proper conduct of employment agencies and employment businesses and to protect the

<i>Current text</i>	<i>Amended text</i>
<p>interests of persons availing themselves of the services of such agencies and businesses, and such regulations may in particular make provision—</p> <ul style="list-style-type: none"> (a) requiring persons carrying on such agencies and businesses to keep records; (b) prescribing the form of such records and the entries to be made in them; (c) prescribing qualifications appropriate for persons carrying on such agencies and businesses; (d) regulating advertising by persons carrying on such agencies and businesses; (e) safeguarding client's money deposited with or otherwise received by persons carrying on such agencies and businesses; (f) regulating the provision of services by persons carrying on such agencies and businesses in respect of persons who seek employment outside the United Kingdom or of persons normally resident outside the United Kingdom who seek employment in the United Kingdom; (g) regulating the provision of services by persons carrying on such agencies and businesses in respect of persons who are under the age of eighteen years or are undergoing full-time education: <p>Provided that regulations under this section shall not make provision for regulating or restricting the charging of fees to employers by persons carrying on such agencies and businesses. [...]</p>	<p>interests of persons availing themselves of the services of such agencies and businesses, and such regulations may in particular make provision—</p> <ul style="list-style-type: none"> (a) requiring persons carrying on such agencies and businesses to keep records; (b) prescribing the form of such records and the entries to be made in them; (c) prescribing qualifications appropriate for persons carrying on such agencies and businesses; (d) regulating advertising by persons carrying on such agencies and businesses; (e) safeguarding client's money deposited with or otherwise received by persons carrying on such agencies and businesses; (ea) restricting the services which may be provided by persons carrying on such agencies and businesses; (eb) regulating the way in which and the terms on which services may be provided by persons carrying on such agencies and businesses; (ec) restricting or regulating the charging of fees by persons carrying on such agencies and businesses. <p>(1A) A reference in subsection (1) (ea) to (ec) of this section to services includes a reference to services in respect of—</p> <ul style="list-style-type: none"> (a) persons seeking employment outside the United Kingdom; (b) persons normally resident outside the United Kingdom

<i>Current text</i>	<i>Amended text</i>
	<p style="text-align: right;">seeking employment in the United Kingdom.</p> <p style="text-align: center;">[...]</p>
<i>s.6</i>	<i>s.6</i>
<i>Restriction on charging persons seeking employment</i>	<i>Restriction on charging persons seeking employment</i>
<p>(1) Except in such cases or classes of case as the Secretary of State may prescribe, a person carrying on an employment agency or an employment business shall not demand or directly or indirectly receive from any person any fee for finding him employment or for seeking to find him employment.</p>	<p>(1) Except in such cases or classes of case as the Secretary of State may prescribe—</p> <ul style="list-style-type: none"> (a) a person carrying on an employment agency shall not request or directly or indirectly receive any fee from any person for providing services (whether by the provision of information or otherwise) for the purpose of finding him employment or seeking to find him employment; (b) a person carrying on an employment business shall not request or directly or indirectly receive any fee from an employee for providing services (whether by the provision of information or otherwise) for the purpose of finding or seeking to find another person, with a view to the employee acting for and under the control of that other person; (c) a person carrying on an employment business shall not request or directly or indirectly receive any fee from a second person for providing services (whether by the provision of information or otherwise) for the

<i>Current text</i>	<i>Amended text</i>
	<p>purpose of finding or seeking to find a third person, with a view to the second person becoming employed by the first person and acting for and under the control of the third person.</p> <p>[...]</p>
<i>s.9</i>	<i>s.9</i>
<i>Inspection</i>	<i>Inspection</i>
<p>1) Any officer duly authorised in that behalf by the Secretary of State may at all reasonable times on producing, if so required, written evidence of his authority—</p> <ul style="list-style-type: none"> (a) enter any premises used or to be used for or in connection with the carrying on of an employment agency or employment business and any other premises which the officer has reasonable cause to believe are used for or in connection with the carrying on of an employment agency or employment business; and (b) inspect those premises and any records or other documents kept in pursuance of this Act or of any regulations made thereunder; and (c) subject to subsection (2) of this section, require any person on those premises to furnish him with such information as he may reasonably require for the purpose of ascertaining whether the provisions of this Act and of any regulations made thereunder are being complied with or of enabling the Secretary 	<p>9 (1) Any officer duly authorised in that behalf by the Secretary of State may at all reasonable times on producing, if so required, written evidence of his authority—</p> <ul style="list-style-type: none"> (a) enter any relevant business premises; (b) inspect those premises and any records or other documents kept in pursuance of this Act or of any regulations made thereunder; and (c) subject to subsection (2) of this section, require any person on those premises to furnish him with such Information as he may reasonably require for the purpose of ascertaining whether the provisions of this Act and of any regulations made thereunder are being complied with or of enabling the Secretary of State to exercise his functions under this Act; and (d) take copies of records and other documents inspected under paragraph (b). <p>(1A) If an officer seeks to inspect or acquire, in accordance with subsection (1)(b) or (c), a record or other document or information which is not</p>

<i>Current text</i>	<i>Amended text</i>
<p>of State to exercise his functions under this Act.</p>	<p>kept at the premises being inspected, he may require any person on the premises—</p> <ul style="list-style-type: none"> <li data-bbox="979 342 1342 499">(a) to inform him where and by whom the record, other document or information is kept, and <li data-bbox="979 510 1342 853">(b) to make arrangements, if it is reasonably practicable for the person to do so, for the record, other document or information to be inspected by, or furnished to the officer at the premises at a time specified by the officer. <p>(1B) In subsection (1) “relevant business premises” means premises—</p> <ul style="list-style-type: none"> <li data-bbox="979 981 1342 1200">(a) which are used, have been used or are to be used for or in connection with the carrying on of an employment agency or employment business, <li data-bbox="979 1211 1342 1491">(b) which the officer has reasonable cause to believe are used or have been used for or in connection with the carrying on of an employment agency or employment business, or <li data-bbox="979 1503 1342 2031">(c) which the officer has reasonable cause to believe are used for the carrying on of a business by a person who also carries on or has carried on an employment agency or employment business, if the officer also has reasonable cause to believe that records or other documents which relate to the employment agency or employment business are kept there.

<i>Current text</i>	<i>Amended text</i>
	<p>(1C) For the purposes of subsection (1)—</p> <p>(a) “document” includes information recorded in any form, and</p> <p>(b) information is kept at premises if it is accessible from them.</p>
<p>(2) A person shall not be required under paragraph (c) of subsection (1) of this section to answer any question tending to incriminate himself or, in the case of a person who is married, his or her wife or husband.</p>	<p>(2) Nothing in this section shall require a person to produce, provide access to or make arrangements for the production of anything which he could not be compelled to produce in civil proceedings before the High Court or (in Scotland) the Court of Session.</p> <p>(2A) Subject to subsection (2B), a statement made by a person in compliance with a requirement under this section may be used in evidence against him in criminal proceedings.</p> <p>(2B) Except in proceedings for an offence under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath), no evidence relating to the statement may be adduced, and no question relating to it may be asked, by or on behalf of the prosecution unless—</p> <p>(a) evidence relating to it is adduced, or</p> <p>(b) a question relating to it is asked, by or on behalf of the person who made the statement.</p>
<p>(3) Any person who obstructs an officer in the exercise of his powers under paragraph (a) or (b) of subsection (1) of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale and any person who, without reasonable excuse, fails to comply with a requirement under paragraph (c) of that</p>	<p>(3) Any person who obstructs an officer in the exercise of his powers under paragraph (a), (b) or (d) of subsection (1) of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale and any person who, without reasonable excuse, fails to comply with a requirement under paragraph (c)</p>

<i>Current text</i>	<i>Amended text</i>
<p>subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.</p>	<p>of that subsection or under subsection (1A) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.</p>
<p>(4) (a) (4)(a) No information obtained in the course of exercising the powers conferred by subsection (1) of this section shall be disclosed except— [...] (iv) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings pursuant to or arising out of this Act or for the purposes of any proceedings under section 3A, 3C or 3D of this Act. [...]</p>	<p>(4) (a) (4)(a) No information obtained in the course of exercising the powers conferred by subsection (1) of this section shall be disclosed except— [...] (iv) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings or for the purposes of any proceedings under section 3A, 3C or 3D of this Act. [...]</p>
	<p>11A Offences: extension of time limit</p> <p>(1) For the purposes of subsection (2) of this section a relevant offence is an offence under section 3B, 5(2), 6(2), 9(4)(b) or 10(2) of this Act for which proceedings are instituted by the Secretary of State.</p> <p>(2) Notwithstanding section 127(1) of the Magistrates' Courts Act 1980 (information to be laid within 6 months of offence) an information relating to a relevant offence which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time—</p> <p>(a) within 3 years after the date of the commission of the offence, and</p>

<i>Current text</i>	<i>Amended text</i>
	<p>(b) within 6 months after the date on which evidence sufficient in the opinion of the Secretary of State to justify the proceedings came to his knowledge.</p> <p>(3) Notwithstanding section 136 of the Criminal Procedure (Scotland) Act 1995 (time limit for prosecuting certain statutory offences) in Scotland proceedings in respect of an offence under section 3B, 5(2), 6(2), 9(4)(b) or 10(2) of this Act may be commenced at any time—</p> <p>(a) within 3 years after the date of the commission of the offence, and</p> <p>(b) within 6 months after the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings came to his knowledge.</p> <p>(4) For the purposes of this section a certificate of the Secretary of State or Lord Advocate (as the case may be) as to the date on which evidence came to his knowledge is conclusive evidence.</p> <p>11B The court in which a person is convicted of an offence under this Act may order him to pay to the Secretary of State a sum which appears to the court not to exceed the costs of the investigation which resulted in the conviction.</p>
Regulations and orders	Regulations and orders
<p>12(1) [...]</p> <p>(5) A statutory instrument containing regulations under this Act, or an order under section 14(3) of this Act, shall be subject to annulment in pursuance of a resolution of either House of Parliament.</p>	<p>12(1) [...]</p> <p>(5) Regulations under section 5(1) or 6(1) of this Act shall not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.</p>

<i>Current text</i>	<i>Amended text</i>
	(6) Regulations under section 13(7)(i) of this Act or an order under section 14(3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
<i>s.13</i>	<i>s.13</i>
<i>Interpretation</i>	<i>Interpretation</i>
<p>(2) For the purposes of this Act "employment agency" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them. [...]</p> <p>(7) This Act does not apply to— [...]</p> <p style="padding-left: 40px;">(i) any business carried on, or any services provided by, such persons or classes of persons as may be prescribed:</p>	<p>(2) For the purposes of this Act "employment agency" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding persons employment with employers or of supplying employers with persons for employment by them. [...]</p> <p>(7) This Act does not apply to— [...]</p> <p style="padding-left: 40px;">(i) any prescribed business or service, or prescribed class of business or service or business or service carried on or provided by prescribed persons or classes of person.</p>

Section 32: Employment rights outside Great Britain

298. **Section 32** repeals section 285(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 and section 196 of the Employment Rights Act 1996. These provisions limit the application of certain employment rights, broadly, to those who ordinarily work in Great Britain. The repeal will remove these limitations.
299. The effect of subsection 196(5) of the 1996 Act, which relates to those employed on UK-registered ships, will be retained by means of an amendment to section 199 of that Act. Seafarers will therefore continue to qualify for certain employment rights under the 1996 Act if and only if the ship on which they are employed is registered as belonging to a port in Great Britain, they are ordinarily resident in Great Britain and the work is not wholly outside Great Britain.
300. This section also makes a technical amendment to section 287 of the 1992 Act to provide that where employment rights are extended by Order in Council to those who are employed offshore (primarily on rigs in the North Sea), the Order is subject to Parliamentary control under the negative resolution procedure. Currently, no procedure is specified for making these Orders.

Section 33: Unfair dismissal: special and additional awards

301. When it makes a finding of unfair dismissal an employment tribunal may make a re-employment order. If this is not complied with, the tribunal will award compensation in the normal manner and will also normally make an additional award of 13-26 weeks' pay or, if the dismissal involves discrimination on the grounds of sex, race or disability, 26-52 weeks' pay. In certain types of unfair dismissal a special award is made instead of an additional award and may be awarded even if re-employment is not ordered (provided the employee has asked for an order). The types of unfair dismissal for which a special award may be made are when employees have been dismissed because of their membership or non-membership of a trade union, or because of their trade union activities, or because of certain activities as an employee representative or occupational pension scheme trustee, or because they have taken certain types of action on health and safety grounds. This section simplifies the current arrangements by replacing the special awards with additional awards.
302. *Subsection (1)* repeals the special award provisions contained in sections 117(4)(b), 118(2) and (3) and 125 of the 1996 Act and sections 157 and 158 of the 1992 Act. *Subsection (2)* provides that the additional award will consist of 26-52 weeks' pay.

Section 34: Indexation of amounts, &c.

303. Various payments and employment tribunal awards which fall due under the 1992 Act and the 1996 Act are subject to minimum and/or maximum limits. Currently some of these limits are required to be reviewed each calendar year (for example, the limit on a week's pay used in calculating statutory redundancy payments and the basic and additional awards which may be made when unfair dismissal is found). Other awards and payments are not required to be reviewed annually but may be increased at the Secretary of State's discretion (for example, the compensatory award in unfair dismissal cases). This section provides that limits on these payments and awards will instead be index linked.
304. *Subsection (1)* sets out the awards and payments to be index linked. *Subsection (2)* provides that the limits on these payments and awards will be linked to changes in the retail prices index, using the September index in each year as the reference point, with changes being made by order as soon as is practicable. *Subsection (3)* provides that limits will be rounded up when they are varied as a result of subsection (2). *Subsection (5)* defines the retail prices index for the purposes of the section and makes provision for what should happen in the event of non-publication. *Subsection (6)* sets out the order-making procedure for orders under subsection (2).
305. *Subsection (4)* substitutes a maximum limit of £50,000 (subject to subsection (2)) on the compensatory award for the current limit of £12,000 (section 124(1) of the 1996 Act as amended by the [Employment Rights \(Increase of Limits\) Order 1998 \(SI 1998/924\)](#)). The great majority of compensatory awards are currently below the £12,000 limit but in a few cases this limit means that individuals cannot be fully compensated for their loss. The raising of the limit will substantially reduce the likelihood of this happening. (In *Fairness at Work*, the Government announced its intention to abolish the limit altogether, but it was subsequently decided not to do this in the light of concerns expressed during the consultation about ill-founded claims, burdens on business and employment prospects.)

Special awards are dealt with in sections 118 and 125 of the 1996 Act and sections 157-158 of the 1992 Act; *additional awards* are dealt with in section 117 of the 1996 Act; and *compensatory awards* are dealt with in sections 118, 123-124 and 126-127 of the 1996 Act.

Section 35: Guarantee payments

306. Guarantee payments are made to employees for days they are laid off provided certain conditions are met. The payments are made for up to five days in any three month period (sections 31(2)-(4) of the 1996 Act). These time periods are currently required to be reviewed each calendar year. This section amends section 31(7) of the 1996 Act to provide that the time periods specified in sections 31(2)-(4) may be varied by order subject to negative resolution procedure and will no longer be subject to annual review.

Guarantee payments are dealt with in sections 28-35 of the 1996 Act.

Section 36: Sections 33-35: consequential

307. This section repeals the existing powers for increasing certain limits and the current annual review requirement in respect of other limits. It also sets out the position with regard to any increase made under these repealed provisions before the index linking provisions in section 34 come into force.

Section 37: Compensatory award etc: removal of limit in certain cases

308. This section provides that no monetary limit will apply to the compensation payable where an employee is unfairly dismissed or selected for redundancy for reasons connected with health and safety matters (see section 100 of the 1996 Act) or public interest disclosure ('whistleblowing' - see section 103A, inserted in the 1996 Act by section 5 of the Public Interest Disclosure Act 1998, which came into force on 2 July 1999). *Subsection (2)* therefore repeals the power in section 127B of the 1996 Act (inserted by section 8 of the Public Interest Disclosure Act 1998) to provide in regulations for the calculation of compensation in the case of whistleblowing. The regulations made under that power (SI 1999/1548) will therefore fall.

Section 38: Transfer of undertakings

309. This section empowers the Secretary of State to make provision by statutory instrument, subject to the negative resolution procedure, for employees to be given the same or similar treatment in specified circumstances falling outside the scope of the EC Acquired Rights Directive as they are given under the UK's implementing legislation in circumstances falling within the scope of that Directive. The Directive safeguards employees' rights when the business or undertaking, or part of one, in which they work is transferred between employers.

Section 39: National Minimum Wage: Information

310. This section will allow Inland Revenue officers to pass information obtained in respect of tax and national insurance contributions to their National Minimum Wage (NMW) colleagues and others where this will help them in their NMW enforcement work. The Inland Revenue have overall responsibility for enforcement of the NMW. The intention of permitting such exchanges of information is to enable the Inland Revenue's NMW compliance staff to operate more efficiently and to target their visits to business in such a way as to reduce enforcement burdens on business. All other existing Inland Revenue safeguards on the confidentiality and disclosure of information will remain in place.

Section 40: Dismissal of school staff

311. This section brings provisions of the School Standards and Framework Act 1998 into line with the recent reduction of the qualifying period for claiming unfair dismissal. On 1 June 1999, the [Unfair Dismissal and Statement of Reasons for Dismissal \(Variation of Qualifying Period\) Order 1999 \(SI 1999/1436\)](#) came into effect, and reduced from two years to one the length of continuous service an employee requires before being eligible to bring a claim of unfair dismissal.

312. Two provisions of the School Standards and Framework Act 1998 (paragraph 27(3) of Schedule 16 and paragraph 24(4) of Schedule 17) make exceptions to the provisions requiring schools to give staff facing dismissal the right to make representations and the right to appeal. These exceptions, based on the situation before 1 June 1999, are for staff who do not have two years' continuous employment. This section amends them to refer to whatever qualifying period is in force under the 1996 Act at the time, so no further changes to the 1998 Act will be needed if the qualifying period is changed again.

Section 41 and Schedule 8: National security

313. Crown servants (including staff of the security and intelligence agencies) may be excluded by Ministers of the Crown from certain rights conferred by employment legislation on grounds of national security. *Section 41* gives effect to Schedule 8, which will remove some of these powers, allowing - in particular - staff of the security and intelligence agencies to present complaints about breaches of employment legislation to employment tribunals in as similar a way as possible to other employees.
314. *Paragraph 1* amends section 193 of the 1996 Act removing the power of Ministers to exclude certain persons in Crown employment from many of the rights under that Act (with the exception of those rights created by the Public Interest Disclosure Act 1998).
315. *Paragraph 2* repeals section 4(7) of 1996 Act which provides that a Minister of the Crown may direct that the proceedings of an employment tribunal must be heard and determined by the Employment Tribunal President alone.
316. *Paragraph 3* substitutes a new section 10 into the Employment Tribunals Act 1996. The new section retains the national security defence to unfair dismissal complaints and complaints under section 146 of the 1992 Act. However, it removes the power of Ministers to conclusively certify that an act was done on grounds of national security. It also puts in place new safeguards to protect the interests of national security. Employment tribunal procedure regulations may enable Ministers of the Crown to direct, in the interests of national security, that Crown employment proceedings are heard by specially constituted tribunals. Ministers may direct that special procedures (as provided in the regulations) should apply, for example, excluding an applicant or his representative from all or part of proceedings, concealing the identity of a witness, or keeping secret all or parts of the reasons for a decision. Employment tribunals will also generally be able to order that these arrangements apply in cases involving national security where a direction has not been made by a Minister. The procedure regulations may make provision, where an applicant and his representative are excluded, for appointing a special advocate to represent the applicant's interests and for the applicant or his representative to make a statement of his case before they are excluded.
317. New section 10A re-enacts the present section 10(2) and (3) of the Employment Tribunals Act 1996, which allow the tribunal to sit in private in certain circumstances.
318. Where a tribunal has been directed to conceal the identity of a witness or to keep secret all or part of the reasons for its decisions, new section 10B makes it an offence to publish anything likely to lead to the identification of the witness or the secret part of the reasons for its decision and sets out the penalty for such an offence.
319. *Paragraph 4* provides that section 28(5) of the Employment Tribunals Act 1996 (which provides that a Minister of the Crown may direct that proceedings be heard and determined by the Employment Appeal Tribunal President alone) shall cease to have effect. *Paragraph 5* provides (in a way similar to the provision made for employment tribunals), that a Minister of the Crown may direct that appeals in national security cases be heard by a specially constituted Appeal Tribunal and that special procedures are to be used, and for the appointment of a special advocate to represent the interests of an excluded person.

*These notes refer to the Employment Relations Act 1999
(c.26) which received Royal Assent on 27 July 1999*

320. *Paragraphs 6 and 7* remove the power of Ministers to issue certificates which are conclusive as to the fact that an act was done on grounds of national security for the purposes of the Race Relations Act 1976 and the Disability Discrimination Act 1995 respectively.