EMPLOYMENT ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Dispute Resolution Etc.

Employment Particulars

Sections 35-38: Changes to written statements of terms and conditions

- 87. Currently, an employer is obliged to provide a new employee with details of their main terms and conditions not later than two months after the employee starts work with the employer. The details, which are set out in sections 1 to 7 of the Employment Rights Act 1996, must cover a number of specified areas such as the name of the employer, the date the employment began and details of disciplinary and grievance procedures applicable to the employee. A further statement must be served if the details change. On the question of disciplinary and grievance procedures, employers with fewer than twenty employees need currently only say to whom the employee can apply for redress of any grievance relating to his employment and the manner in which such an application should be made. Where employees are not issued with a statement of initial employment particulars, or a subsequent change, they can apply to an employment tribunal to determine which particulars ought to have been included or referred to. There is currently no other sanction for failure to provide the required statement.
- 88. The Government explained in the 'Routes to Resolution' consultation document that it considers the written particulars of the terms and conditions of employment ("the written statement") to be a record of the basis of the employment relationship, and the first point of reference when disputes arise. As such, it has a key role to play in better dispute resolution. A number of changes are therefore to be made to the legislation relating to the written statement, with the object of:
 - ensuring that all employers recognise the value of the statement to both themselves and their employees;
 - making the content of the statement consistent across employers of all sizes;
 - ensuring the statement reflects the Act's requirements for minimum statutory internal discipline and grievance procedures;
 - creating a more effective penalty for failing to supply a statement; and
 - providing more flexibility to employers in how they go about providing the required statement.
- 89. To achieve these objectives, sections 35 to 38 make the following changes:
 - Section 35 provides for the part of the written statement dealing with disciplinary
 and grievance matters to cover the procedure which applies when an employee is
 dismissed or disciplined, whereas at present it must only describe what he must do
 if he is dissatisfied with disciplinary action taken against him. This ensures that all

These notes refer to the Employment Act 2002 (c.22) which received Royal Assent on 8 July 2002

stages of the new minimum disciplinary and dismissal procedures must be set out in the written statement.

- Section 36 removes the current exemption, relating to the need for details of disciplinary rules and procedures, for employers with less than 20 employees. This means that all employers of whatever size will have to mention their disciplinary rules and the new minimum procedures in the written statement.
- Section 37 provides flexibility for employers by allowing particulars included in a copy of the contract of employment or letter of engagement given to the employee to form, or to form part of the written statement; this reduces the need for employers to duplicate existing documents. It also enables such documents to be given to the employee before his employment begins.
- Section 38 provides for employment tribunals to award compensation to an employee where the lack, incompleteness or inaccuracy of the written statement becomes evident upon a claim being made under specified tribunal jurisdictions (which cover the main areas such as unfair dismissal, and all types of discrimination see Schedule 5). This is done by requiring the tribunal to increase any award made against the employer in respect of the complaint under the other jurisdiction by 2 or 4 weeks pay, or to award 2 or 4 weeks pay where compensation is not a remedy available for the particular complaint or where it is not the remedy that the tribunal chooses. Whether to award 2 or 4 weeks pay is a matter for the tribunal's discretion. No award need be made or increased if the tribunal considers that to do so would be unjust or inequitable.
- 90. For the most part these changes are brought about by means of amendments to the current provisions relating to written statements.