



# Employment Act 2008

## 2008 CHAPTER 24

### *Dispute resolution*

#### **1 Statutory dispute resolution procedures**

In the Employment Act 2002 (c. 22), sections 29 to 33 and Schedules 2 to 4 (which make provision for statutory dispute resolution procedures) are repealed.

#### **2 Procedural fairness**

In the Employment Rights Act 1996 (c. 18), section 98A (procedural fairness) is repealed.

#### **3 Non-compliance with statutory Codes of Practice**

(1) The Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) is amended as specified in subsections (2) and (3).

(2) After section 207 there is inserted—

##### **“207A Effect of failure to comply with Code: adjustment of awards**

(1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.

(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—

- (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
- (b) the employer has failed to comply with that Code in relation to that matter, and
- (c) that failure was unreasonable,

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the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

(3) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—

- (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
- (b) the employee has failed to comply with that Code in relation to that matter, and
- (c) that failure was unreasonable,

the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 25%.

(4) In subsections (2) and (3), “relevant Code of Practice” means a Code of Practice issued under this Chapter which relates exclusively or primarily to procedure for the resolution of disputes.

(5) Where an award falls to be adjusted under this section and under section 38 of the Employment Act 2002, the adjustment under this section shall be made before the adjustment under that section.

(6) The Secretary of State may by order amend Schedule A2 for the purpose of—

- (a) adding a jurisdiction to the list in that Schedule, or
- (b) removing a jurisdiction from that list.

(7) The power of the Secretary of State to make an order under subsection (6) includes power to make such incidental, supplementary, consequential or transitional provision as the Secretary of State thinks fit.

(8) An order under subsection (6) shall be made by statutory instrument.

(9) No order shall be made under subsection (6) unless a draft of the statutory instrument containing it has been laid before Parliament and approved by a resolution of each House.”

(3) After Schedule A1 there is inserted—

“SCHEDULE A2

Section 207A

TRIBUNAL JURISDICTIONS TO WHICH SECTION 207A APPLIES

Section 2 of the Equal Pay Act 1970 (c. 41) (equality clauses)

Section 63 of the Sex Discrimination Act 1975 (c. 65) (discrimination in the employment field)

Section 54 of the Race Relations Act 1976 (c. 74) (discrimination in the employment field)

Section 145A of this Act (inducements relating to union membership or activities)

Section 145B of this Act (inducements relating to collective bargaining)

Section 146 of this Act (detriment in relation to union membership and activities)

Paragraph 156 of Schedule A1 to this Act (detriment in relation to union recognition rights)

Section 17A of the Disability Discrimination Act 1995 (c. 50) (discrimination in the employment field)

Section 23 of the Employment Rights Act 1996 (c. 18) (unauthorised deductions and payments)

Section 48 of that Act (detriment in employment)

Section 111 of that Act (unfair dismissal)

Section 163 of that Act (redundancy payments)

Section 24 of the National Minimum Wage Act 1998 (c. 39) (detriment in relation to national minimum wage)

The Employment Tribunal Extension of Jurisdiction (England and Wales) Order 1994 (SI 1994/1623) (breach of employment contract and termination)

The Employment Tribunal Extension of Jurisdiction (Scotland) Order 1994 (SI 1994/1624) (corresponding provision for Scotland)

Regulation 30 of the Working Time Regulations 1998 (SI 1998/1833) (breach of regulations)

Regulation 32 of the Transnational Information and Consultation of Employees Regulations 1999 (SI 1999/3323) (detriment relating to European Works Councils)

Regulation 28 of the Employment Equality (Sexual Orientation) Regulations 2003 (SI 2003/1660) (discrimination in the employment field)

Regulation 28 of the Employment Equality (Religion or Belief) Regulations 2003 (SI 2003/1661) (discrimination in the employment field)

Regulation 45 of the European Public Limited-Liability Company Regulations 2004 (SI 2004/2326) (detriment in employment)

Regulation 33 of the Information and Consultation of Employees Regulations 2004 (SI 2004/3426) (detriment in employment)

Paragraph 8 of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (SI 2006/349) (detriment in employment)

Regulation 36 of the Employment Equality (Age) Regulations 2006 (SI 2006/1031) (discrimination in the employment field)

Regulation 34 of the European Cooperative Society (Involvement of Employees) Regulations 2006 (SI 2006/2059) (detriment in relation to involvement in a European Cooperative Society)

Regulation 17 of the Cross-border Railway Services (Working Time) Regulations 2008 (SI 2008/1660) (breach of regulations).”

- (4) In section 124A of the Employment Rights Act 1996 (c. 18) (adjustments under the Employment Act 2002), in paragraph (a), for the words from “section 31” to “procedures” there is substituted “section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 (effect of failure to comply with Code: adjustment of awards)”.

#### **4 Determination of proceedings without hearing**

In the Employment Tribunals Act 1996 (c. 17), in section 7 (employment tribunal procedure regulations), after subsection (3A) there is inserted—

“(3AA) Employment tribunal procedure regulations under subsection (3A) may only authorise the determination of proceedings without any hearing in circumstances where—

- (a) all the parties to the proceedings consent in writing to the determination without a hearing, or
- (b) the person (or, where more than one, each of the persons) against whom the proceedings are brought—
  - (i) has presented no response in the proceedings, or
  - (ii) does not contest the case.

(3AB) For the purposes of subsection (3AA)(b), a person does not present a response in the proceedings if he presents a response but, in accordance with provision made by the regulations, it is not accepted.”

## 5 Conciliation before bringing of proceedings

(1) In the Employment Tribunals Act 1996, section 18 (conciliation) is amended as follows.

(2) In subsection (3), for the words from “shall act” to the end there is substituted “may endeavour to promote a settlement between the parties without proceedings being instituted”.

(3) For subsection (5) there is substituted—

“(5) Where a conciliation officer acts pursuant to subsection (3) in a case where the person claiming as specified in paragraph (a) of that subsection has ceased to be employed by the employer and the proceedings which he claims could be brought by him are proceedings under section 111 of the Employment Rights Act 1996, the conciliation officer may in particular—

- (a) seek to promote the reinstatement or re-engagement of that person by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the conciliation officer to be equitable, or
- (b) where the person does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to that person.”

## 6 Conciliation after bringing of proceedings

(1) In the Employment Tribunals Act 1996 (c. 17), in section 18 (conciliation), subsection (2A) is repealed.

(2) In that Act, in section 19 (conciliation procedure), subsection (2) is repealed.

## 7 Compensation for financial loss

(1) In the Employment Rights Act 1996 (c. 18), in section 24 (determination of complaints relating to deductions from wages or payments to employer)—

- (a) the existing provision becomes subsection (1), and
- (b) after that provision there is inserted—

“(2) Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.”

(2) In that Act, in section 163 (determination of questions relating to redundancy payments), at the end there is inserted—

“(5) Where a tribunal determines under subsection (1) that an employee has a right to a redundancy payment it may order the employer to pay to the worker such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the non-payment of the redundancy payment.”

*National minimum wage etc*

**8 Arrears payable in cases of non-compliance**

(1) In the National Minimum Wage Act 1998 (c. 39), section 17 (which makes provision for the additional remuneration to which a worker is entitled in cases of non-compliance) is amended as specified in subsections (2) to (5).

(2) In subsection (1), after “shall” there is inserted “at any time (“the time of determination)””.

(3) In that subsection, for “the amount described in subsection (2) below” there is substituted “whichever is the higher of—

- (a) the amount described in subsection (2) below, and
- (b) the amount described in subsection (4) below.”

(4) In subsection (2), for “That amount” there is substituted “The amount referred to in subsection (1)(a) above”.

(5) After subsection (3) there is inserted—

“(4) The amount referred to in subsection (1)(b) above is the amount determined by the formula—

$$\frac{A}{R1} \times R2$$

where—

A is the amount described in subsection (2) above,

R1 is the rate of national minimum wage which was payable in respect of the worker during the pay reference period, and

R2 is the rate of national minimum wage which would have been payable in respect of the worker during that period had the rate payable in respect of him during that period been determined by reference to regulations under section 1 and 3 above in force at the time of determination.

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- (5) Subsection (1) above ceases to apply to a worker in relation to any pay reference period when he is at any time paid the additional remuneration for that period to which he is at that time entitled under that subsection.
- (6) Where any additional remuneration is paid to the worker under this section in relation to the pay reference period but subsection (1) above has not ceased to apply in relation to him, the amounts described in subsections (2) and (4) above shall be regarded as reduced by the amount of that remuneration.”
- (6) In the Agricultural Wages Act 1948 (c. 47), in section 3A(3A) (application of section 17 of the National Minimum Wage Act 1998 for the purposes of agricultural wages legislation in England and Wales)—
- (a) in paragraph (a), in the substituted subsection (2)—
- (i) for “That amount” there is substituted “The amount referred to in subsection (1)(a) above”;
- (ii) for “under this Act” there is substituted “under the Agricultural Wages Act 1948”;
- (b) after paragraph (b) there is inserted—
- “(c) for subsection (4) there shall be substituted—
- “(4) The amount referred to in subsection (1)(b) above is the amount determined by the formula—

$$\frac{A}{R1} \times R2$$

where—

A is the amount described in subsection (2) above,

R1 is the minimum rate applicable under the Agricultural Wages Act 1948 in respect of the worker during the pay reference period, and

R2 is the minimum rate which would have been applicable under that Act in respect of the worker during the pay reference period had the minimum rate applicable under that Act in respect of the worker during that period been determined by reference to any order under section 3(1)(a) of that Act in force at the time of determination.””

- (7) Nothing in subsections (2) to (5) affects section 17 of the National Minimum Wage Act 1998 (c. 39) as it has effect for the purposes of—
- (a) the Agricultural Wages (Scotland) Act 1949 (c. 30), or
- (b) the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 (SI 1977/2151) (N.I.22).
- (8) The amendments made by this section apply in relation to a pay reference period (within the meaning of the National Minimum Wage Act 1998) ending before, as well as after, this section comes into force.

## **9 Notices of underpayment**

(1) In the National Minimum Wage Act 1998, for sections 19 to 22F there is substituted—

### **“19 Notices of underpayment: arrears**

- (1) Subsection (2) below applies where an officer acting for the purposes of this Act is of the opinion that, on any day (“the relevant day”), a sum was due under section 17 above for any one or more pay reference periods ending before the relevant day to a worker who at any time qualified for the national minimum wage.
- (2) Where this subsection applies, the officer may, subject to this section, serve a notice requiring the employer to pay to the worker, within the 28-day period, the sum due to the worker under section 17 above for any one or more of the pay reference periods referred to in subsection (1) above.
- (3) In this Act, “notice of underpayment” means a notice under this section.
- (4) A notice of underpayment must specify, for each worker to whom it relates—
  - (a) the relevant day in relation to that worker;
  - (b) the pay reference period or periods in respect of which the employer is required to pay a sum to the worker as specified in subsection (2) above;
  - (c) the amount described in section 17(2) above in relation to the worker in respect of each such period;
  - (d) the amount described in section 17(4) above in relation to the worker in respect of each of such period;
  - (e) the sum due under section 17 above to the worker for each such period.
- (5) Where a notice of underpayment relates to more than one worker, the notice may identify the workers by name or by description.
- (6) The reference in subsection (1) above to a pay reference period includes (subject to subsection (7) below) a pay reference period ending before the coming into force of this section.
- (7) A notice of underpayment may not relate to a pay reference period ending more than six years before the date of service of the notice.
- (8) In this section and sections 19A to 19C below “the 28-day period” means the period of 28 days beginning with the date of service of the notice of underpayment.

### **19A Notices of underpayment: financial penalty**

- (1) A notice of underpayment must, subject to this section, require the employer to pay a financial penalty specified in the notice to the Secretary of State within the 28-day period.
- (2) The Secretary of State may by directions specify circumstances in which a notice of underpayment is not to impose a requirement to pay a financial penalty.

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- (3) Directions under subsection (2) may be amended or revoked by further such directions.
- (4) The amount of any financial penalty is, subject as follows, to be 50% of the total of the amounts referred to in subsection (5) below.
- (5) Those amounts are the amounts specified under section 19(4)(c) above for all workers to whom the notice relates in respect of pay reference periods specified under section 19(4)(b) above which commence after the coming into force of this section.
- (6) If a financial penalty as calculated under subsection (4) above would be less than £100, the financial penalty specified in the notice shall be that amount.
- (7) If a financial penalty as calculated under subsection (4) above would be more than £5000, the financial penalty specified in the notice shall be that amount.
- (8) The Secretary of State may by regulations—
  - (a) amend subsection (4) above so as to substitute a different percentage for the percentage at any time specified there;
  - (b) amend subsection (6) or (7) above so as to substitute a different amount for the amount at any time specified there.
- (9) A notice of underpayment must, in addition to specifying the amount of any financial penalty, state how that amount was calculated.
- (10) In a case where a notice of underpayment imposes a requirement to pay a financial penalty, if the employer on whom the notice is served, within the period of 14 days beginning with the day on which the notice was served—
  - (a) pays the amount required under section 19(2) above, and
  - (b) pays at least half the financial penalty,he shall be regarded as having paid the financial penalty.
- (11) A financial penalty paid to the Secretary of State pursuant to this section shall be paid by the Secretary of State into the Consolidated Fund.

### **19B Suspension of financial penalty**

- (1) This section applies in any case where it appears to the officer serving a notice of underpayment which imposes a requirement to pay a financial penalty that—
  - (a) relevant proceedings have been instituted; or
  - (b) relevant proceedings may be instituted.
- (2) In this section “relevant proceedings” means proceedings against the employer for an offence under section 31(1) below in relation to a failure to remunerate any worker to whom the notice relates for any pay reference period specified under section 19(4)(b) above in relation to that worker.
- (3) The notice of underpayment may contain provision suspending the requirement to pay the financial penalty payable under the notice until a notice terminating the suspension is served on the employer.



- (4) An officer acting for the purposes of this Act may serve on the employer a notice terminating the suspension (“a penalty activation notice”) if it appears to the officer—
  - (a) in a case referred to in subsection (1)(a) above, that relevant proceedings have concluded without the employer having been convicted of an offence under section 31(1) below, or
  - (b) in a case referred to in subsection (1)(b) above—
    - (i) that relevant proceedings will not be instituted; or
    - (ii) that relevant proceedings have been concluded without the employer having been convicted of an offence under section 31(1) below.
- (5) Where a penalty activation notice is served, the requirement to pay the financial penalty has effect as if the notice of underpayment had been served on the day on which the penalty activation notice was served.
- (6) An officer acting for the purposes of this Act must serve on the employer a notice withdrawing the requirement to pay the financial penalty if it appears to the officer that, pursuant to relevant proceedings, the employer has been convicted of an offence under section 31(1) below.

#### **19C Notices of underpayment: appeals**

- (1) A person on whom a notice of underpayment is served may in accordance with this section appeal against any one or more of the following—
  - (a) the decision to serve the notice;
  - (b) any requirement imposed by the notice to pay a sum to a worker;
  - (c) any requirement imposed by the notice to pay a financial penalty.
- (2) An appeal under this section lies to an employment tribunal.
- (3) An appeal under this section must be made before the end of the 28-day period.
- (4) An appeal under subsection (1)(a) above must be made on the ground that no sum was due under section 17 above to any worker to whom the notice relates on the day specified under section 19(4)(a) above in relation to him in respect of any pay reference period specified under section 19(4)(b) above in relation to him.
- (5) An appeal under subsection (1)(b) above in relation to a worker must be made on either or both of the following grounds—
  - (a) that, on the day specified under section 19(4)(a) above in relation to the worker, no sum was due to the worker under section 17 above in respect of any pay reference period specified under section 19(4)(b) above in relation to him;
  - (b) that the amount specified in the notice as the sum due to the worker is incorrect.
- (6) An appeal under subsection (1)(c) above must be made on either or both of the following grounds—
  - (a) that the notice was served in circumstances specified in a direction under section 19A(2) above, or

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- (b) that the amount of the financial penalty specified in the notice of underpayment has been incorrectly calculated (whether because the notice is incorrect in some of the particulars which affect that calculation or for some other reason).
- (7) Where the employment tribunal allows an appeal under subsection (1)(a) above, it must rescind the notice.
- (8) Where, in a case where subsection (7) above does not apply, the employment tribunal allows an appeal under subsection (1)(b) or (c) above—
  - (a) the employment tribunal must rectify the notice, and
  - (b) the notice of underpayment shall have effect as rectified from the date of the employment tribunal's determination.

#### **19D Non-compliance with notice of underpayment: recovery of arrears**

- (1) If a requirement to pay a sum to a worker contained in a notice of underpayment is not complied with in whole or in part, an officer acting for the purposes of this Act may, on behalf of any worker to whom the requirement relates—
  - (a) present a complaint under section 23(1)(a) of the Employment Rights Act 1996 (deductions from worker's wages in contravention of section 13 of that Act) to an employment tribunal in respect of any sums due to the worker by virtue of section 17 above; or
  - (b) in relation to Northern Ireland, present a complaint under Article 55(1)(a) of the Employment Rights (Northern Ireland) Order 1996 (deductions from worker's wages in contravention of Article 45 of that Order) to an industrial tribunal in respect of any sums due to the worker by virtue of section 17 above; or
  - (c) commence other civil proceedings for the recovery, on a claim in contract, of any sums due to the worker by virtue of section 17 above.
- (2) The powers conferred by subsection (1) above for the recovery of sums due from an employer to a worker shall not be in derogation of any right which the worker may have to recover such sums by civil proceedings.

#### **19E Non-compliance with notice of underpayment: recovery of penalty**

A financial penalty payable under a notice of underpayment—

- (a) in England and Wales, is recoverable, if a county court so orders, under section 85 of the County Courts Act 1984 or otherwise as if it were payable under an order of that court;
- (b) in Scotland, may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland;
- (c) in Northern Ireland, is recoverable, if the county court so orders, as if it were payable under an order of that court.

#### **19F Withdrawal of notice of underpayment**

- (1) Where a notice of underpayment has been served (and not already withdrawn or rescinded) and it appears to an officer acting for the purposes of this Act

that the notice incorrectly includes or omits any requirement or is incorrect in any particular, the officer may withdraw it by serving notice of the withdrawal on the employer.

- (2) Where a notice of underpayment is withdrawn and no replacement notice of underpayment is served in accordance with section 19G below—
  - (a) any sum paid by or recovered from the employer by way of financial penalty payable under the notice must be repaid to him with interest at the appropriate rate running from the date when the sum was paid or recovered;
  - (b) any appeal against the notice must be dismissed;
  - (c) after the withdrawal no complaint may be presented or other civil proceedings commenced by virtue of section 19D above in reliance on any non-compliance with the notice before it was withdrawn;
  - (d) any complaint or proceedings so commenced before the withdrawal may be proceeded with despite the withdrawal.
- (3) In a case where subsection (2) above applies, the notice of withdrawal must indicate the effect of that subsection (but a failure to do so does not make the withdrawal ineffective).
- (4) In subsection (2)(a) above, “the appropriate rate” means the rate that, on the date the sum was paid or recovered, was specified in section 17 of the Judgments Act 1838.

### **19G Replacement notice of underpayment**

- (1) Where an officer acting for the purposes of this Act serves a notice of withdrawal under section 19F above and is of the opinion referred to in section 19(1) above in relation to any worker specified in the notice which is being withdrawn (“the original notice”), he may at the same time serve another notice under section 19 above (“the replacement notice”).
- (2) The replacement notice may not relate to any worker to whom the original notice did not relate.
- (3) If the replacement notice contravenes subsection (2) above, that fact shall be an additional ground of appeal for the purposes of section 19C above.
- (4) The replacement notice may relate to a pay reference period ending after the date of service of the original notice.
- (5) Section 19(7) above applies in relation to the replacement notice as if the reference to six years before the date of service of the notice were a reference to six years before the date of service of the original notice.
- (6) The replacement notice must—
  - (a) indicate the differences between it and the original notice that it is reasonable for the officer to consider are material; and
  - (b) indicate the effect of section 19H below.
- (7) Failure to comply with subsection (6) above does not make the replacement notice ineffective.

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- (8) Where a replacement notice is withdrawn under section 19F above, no further replacement notice may be served under subsection (1) above pursuant to the withdrawal.
- (9) Nothing in this section affects any power that arises apart from this section to serve a notice of underpayment in relation to any worker.

### **19H Effect of replacement notice of underpayment**

- (1) This section applies where a notice of underpayment is withdrawn under section 19F above and a replacement notice is served in accordance with section 19G above.
  - (2) If an appeal has been made under section 19C above against the original notice and the appeal has not been withdrawn or finally determined before the time when that notice is withdrawn—
    - (a) that appeal (“the earlier appeal”) shall have effect after that time as if it were against the replacement notice; and
    - (b) the employer may exercise his right of appeal under section 19C above against the replacement notice only if he withdraws the earlier appeal.
  - (3) After the withdrawal no complaint may be presented or other civil proceedings commenced by virtue of section 19D above in reliance on any non-compliance with the notice before it was withdrawn; but any complaint or proceedings so commenced before the withdrawal may be proceeded with despite the withdrawal.
  - (4) If a sum was paid by or recovered from the employer by way of financial penalty under the original notice—
    - (a) an amount equal to that sum (or, if more than one, the total of those sums) shall be treated as having been paid in respect of the replacement notice; and
    - (b) any amount by which that sum (or total) exceeds the amount payable under the replacement notice must be repaid to the employer with interest at the appropriate rate running from the date when the sum (or, if more than one, the first of them) was paid or recovered.
  - (5) In subsection (4)(b) above “the appropriate rate” means the rate that, on the date mentioned in that provision, was specified in section 17 of the Judgments Act 1838.”
- (2) In any period after the coming into force of subsection (1) above and before the coming into force of section 62 of the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 19E(a) of the National Minimum Wage Act 1998 (c. 39), as substituted by subsection (1) above, shall have effect as if for “under section 85 of the County Courts Act 1984” there were substituted “by execution issued from the county court”.
  - (3) In the National Minimum Wage Act 1998, in section 51 (regulations and orders), in subsections (6) and (7)(a), the words “21 or” are repealed.
  - (4) In the Employment Tribunals Act 1996 (c. 17), in section 4 (composition of employment tribunal), in subsection (3)(cd), for “section 19 or 22” there is substituted “section 19C”.

- (5) In the Commissioners for Revenue and Customs Act 2005 (c. 11), in section 44 (payment into Consolidated Fund), subsection (2)(f) is repealed.
- (6) In the Agricultural Wages Act 1948 (c. 47), in section 3A(2)(c) (enforcement of agricultural legislation in England and Wales), for “22F” there is substituted “19H”.
- (7) Nothing in this section (or Part 2 of the Schedule) affects any provision of the National Minimum Wage Act 1998 as that provision has effect for the purposes of—
  - (a) the Agricultural Wages (Scotland) Act 1949 (c. 30), or
  - (b) the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 (SI 1977/2151) (N.I.22).

## **10 Powers of officers to take copies of records**

- (1) In the National Minimum Wage Act 1998, section 14 (powers of officers) is amended as specified in subsections (2) and (3).
- (2) In subsection (1)(a), the words “any material part of” are repealed.
- (3) After subsection (3) there is inserted—
  - “(3A) The power of an officer to copy records under subsection (1)(a) includes a power to remove such records from the place where they are produced to him in order to copy them; but such records must be returned as soon as reasonably practicable to the relevant person by whom they are produced.”
- (4) Nothing in this section (or Part 3 of the Schedule) affects section 14 of the National Minimum Wage Act 1998 as it has effect for the purposes of—
  - (a) the Agricultural Wages (Scotland) Act 1949, or
  - (b) the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 (SI 1977/2151) (N.I.22).

## **11 Offences: mode of trial and penalties**

- (1) In the National Minimum Wage Act 1998, in section 31 (offences), in subsection (9), for the words from “on summary conviction” to the end there is substituted—
  - “(a) on conviction on indictment, to a fine, or
  - (b) on summary conviction, to a fine not exceeding the statutory maximum”.
- (2) In that Act, in section 33 (proceedings for offences), subsections (2) to (5) are repealed.
- (3) Nothing in this section (or Part 4 of the Schedule) affects section 31 or 33 of the National Minimum Wage Act 1998 (c. 39) as it has effect for the purposes of—
  - (a) the Agricultural Wages (Scotland) Act 1949 (c. 30), or
  - (b) the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 (SI 1977/2151) (N.I.22).

## **12 Powers to investigate criminal offences**

- (1) In the Finance Act 2007 (c. 11), in section 84 (criminal investigations: powers of Revenue and Customs), in subsection (3), for “13 to” there is substituted “14,”.

- (2) In the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39), in section 23A (investigation of offences by Revenue and Customs), in subsection (2)(b), for “13 to” there is substituted “14.”

### 13 Cadet Force Adult Volunteers

In the National Minimum Wage Act 1998, after section 37 there is inserted—

#### “37A Cadet Force Adult Volunteers

- (1) A person (not being a person to whom section 37(1) above applies) who—
- (a) is a member of any of the forces specified in subsection (2) below, and
  - (b) assists the activities of those forces otherwise than in the course of Crown employment,
- does not qualify for the national minimum wage in respect of anything done by him in so assisting those activities.
- (2) The forces referred to in subsection (1) above are—
- (a) the Combined Cadet Force;
  - (b) the Sea Cadet Corps;
  - (c) the Army Cadet Force;
  - (d) the Air Training Corps.”

### 14 Voluntary workers

In the National Minimum Wage Act 1998, in section 44 (voluntary workers), after subsection (1) there is inserted—

- “(1A) For the purposes of subsection (1)(a) above, expenses which—
- (a) are incurred in order to enable the worker to perform his duties,
  - (b) are reasonably so incurred, and
  - (c) are not accommodation expenses,
- are to be regarded as actually incurred in the performance of his duties.”

#### *Employment agencies*

### 15 Offences: mode of trial and penalties

In the Employment Agencies Act 1973 (c. 35), in each of sections 3B, 5(2) and 6(2), for the words from “on summary conviction” to the end there is substituted—

- “(a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.”

### 16 Enforcement powers

- (1) In the Employment Agencies Act 1973, section 9 (inspection) is amended as follows.
- (2) In subsection (1), in paragraph (b)—

- (a) after “premises and” there is inserted “(i)”;
  - (b) after “thereunder” there is inserted—
    - “(ii) any financial records or other financial documents not falling within paragraph (i) which he may reasonably require to inspect 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;”.
- (3) In that subsection, paragraph (d) and the preceding “and” are repealed.
- (4) In subsection (1A), for the words from “he may require” to the end there is substituted “the officer may by notice in writing require the person carrying on the employment agency or employment business to furnish him with the record or other document or information at such time and place as he may specify.”
- (5) After subsection (1A) there is inserted—
  - “(1AA) Where a person carrying on an employment agency or employment business fails to comply with subsection (1A) in relation to any record or other document or information and the officer has reasonable cause to believe that the record or other document or information is kept by—
    - (a) a person concerned with the carrying on of the employment agency or employment business, or
    - (b) a person formerly so concerned,the officer may by notice in writing require that person to furnish him with the record or other document or information at such time and place as he may specify.
  - (1AB) Where a person carrying on an employment agency or employment business fails to comply with subsection (1A) in relation to any financial record or other financial document which is kept by a bank, the officer may by notice in writing require the bank to furnish the record or other document to him at such time and place as he may specify.
  - (1AC) In subsection (1AB), “bank” means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits.”
- (6) After subsection (1AC) (as inserted by subsection (5) above), there is inserted—
  - “(1AD) An officer may take copies of any record or other document inspected by or furnished to him under this section.
  - (1AE) An officer may, for the purposes of subsection (1AD), remove a record or other document from the premises where it is inspected by or furnished to him; but he must return it as soon as reasonably practicable.”
- (7) In subsection (1C), for “subsection (1)” there is substituted “this section”.
- (8) In subsection (3)—
  - (a) for “paragraph (a), (b) or (d) of subsection (1) of this section” there is substituted “subsection (1)(a) or (b), (1AD) or (1AE)”;
    - (b) for “paragraph (c) of that subsection or under subsection (1A)” there is substituted “subsection (1)(c), (1A), (1AA) or (1AB)”.

(9) In subsection (4)(a), the words “subsection (1) of” are repealed.

## 17 Offences by partnerships in Scotland

In the Employment Agencies Act 1973 (c. 35), in section 11 (offences by bodies corporate)—

- (a) the existing provision becomes subsection (1), and
- (b) after that subsection there is inserted—

“(2) Where an offence under this Act committed by a partnership in Scotland is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a partner or a person purporting to act as a partner, he, as well as the partnership, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.”

### *Miscellaneous*

## 18 Employment agencies and national minimum wage legislation: information

(1) In the National Minimum Wage Act 1998 (c. 39), in section 15 (information obtained by officers), after subsection (5) there is inserted—

“(5A) Information to which this section applies—

- (a) may be supplied by, or with the authorisation of, the Secretary of State to an officer acting for the purposes of the Employment Agencies Act 1973 for any purpose relating to that Act; and
- (b) may be used by an officer acting for the purposes of that Act for any purpose relating to that Act.”

(2) In the Employment Agencies Act 1973, in section 9 (inspection), subsection (4) is amended as follows—

- (a) after “this section” there is inserted “(or pursuant to section 15(5A) of the National Minimum Wage Act 1998)”;
- (b) after paragraph (iv) there is inserted “or
  - (v) to an officer acting for the purposes of the National Minimum Wage Act 1998 for any purpose relating to that Act;”.

## 19 Exclusion or expulsion from trade union for membership of political party

(1) The Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) is amended as follows.

(2) In section 174 (right not to be excluded or expelled from union) after subsection (4B), there is inserted—

“(4C) Conduct which consists in an individual’s being or having been a member of a political party is not conduct falling within subsection (4A) if membership of that political party is contrary to—

- (a) a rule of the trade union, or



- (b) an objective of the trade union.
- (4D) For the purposes of subsection (4C)(b) in the case of conduct consisting in an individual's being a member of a political party, an objective is to be disregarded—
- (a) in relation to an exclusion, if it is not reasonably practicable for the objective to be ascertained by a person working in the same trade, industry or profession as the individual;
  - (b) in relation to an expulsion, if it is not reasonably practicable for the objective to be ascertained by a member of the union.
- (4E) For the purposes of subsection (4C)(b) in the case of conduct consisting in an individual's having been a member of a political party, an objective is to be disregarded—
- (a) in relation to an exclusion, if at the time of the conduct it was not reasonably practicable for the objective to be ascertained by a person working in the same trade, industry or profession as the individual;
  - (b) in relation to an expulsion, if at the time of the conduct it was not reasonably practicable for the objective to be ascertained by a member of the union.
- (4F) Where the exclusion or expulsion of an individual from a trade union is wholly or mainly attributable to conduct which consists of an individual's being or having been a member of a political party but which by virtue of subsection (4C) is not conduct falling within subsection (4A), the exclusion or expulsion is not permitted by virtue of subsection (2)(d) if any one or more of the conditions in subsection (4G) apply.
- (4G) Those conditions are—
- (a) the decision to exclude or expel is taken otherwise than in accordance with the union's rules;
  - (b) the decision to exclude or expel is taken unfairly;
  - (c) the individual would lose his livelihood or suffer other exceptional hardship by reason of not being, or ceasing to be, a member of the union.
- (4H) For the purposes of subsection (4G)(b) a decision to exclude or expel an individual is taken unfairly if (and only if)—
- (a) before the decision is taken the individual is not given—
    - (i) notice of the proposal to exclude or expel him and the reasons for that proposal, and
    - (ii) a fair opportunity to make representations in respect of that proposal, or
  - (b) representations made by the individual in respect of that proposal are not considered fairly.”
- (3) In section 176 (remedies), in subsection (1D)(a), for “a member of the general public” substitute “a person working in the same trade, industry or profession as the complainant”.

## *General*

### **20 Repeals**

The Schedule contains repeals.

### **21 Extent**

An amendment or repeal effected by this Act has the same extent as the enactment (or the relevant part of the enactment) to which it relates.

### **22 Commencement**

- (1) The provisions of this Act come into force as follows—
  - (a) sections 1 to 9 and Parts 1 and 2 of the Schedule come into force on such day as the Secretary of State may by order appoint;
  - (b) section 10 and Part 3 of the Schedule come into force at the end of the period of two months beginning with the day on which this Act is passed;
  - (c) sections 11 and 12 and Part 4 of the Schedule come into force on such day as the Secretary of State may by order appoint;
  - (d) sections 13 and 14 come into force at the end of the period of two months beginning with the day on which this Act is passed;
  - (e) sections 15 to 17 and Part 5 of the Schedule come into force on 6 April 2009;
  - (f) sections 18 and 19 come into force on such day as the Secretary of State may by order appoint;
  - (g) the remaining provisions of this Act come into force on the day on which this Act is passed.
- (2) An order under subsection (1) is to be made by statutory instrument.
- (3) An order under subsection (1) may—
  - (a) appoint different days for different purposes;
  - (b) contain transitional provision, or savings.

### **23 Short title**

This Act may be cited as the Employment Act 2008.