
STATUTORY INSTRUMENTS

2005 No. 2419 (C.100)

TERMS AND CONDITIONS OF EMPLOYMENT

The Employment Relations Act 2004 (Commencement
No.4 and Transitional Provisions) Order 2005

Made - - - - 30th August 2005

The Secretary of State, in exercise of the powers conferred upon him by section 59(3) and (4) of the Employment Relations Act 2004⁽¹⁾, hereby makes the following Order:—

Citation and interpretation

1. This Order may be cited as the Employment Relations Act 2004 (Commencement No.4 and Transitional Provisions) Order 2005.
2. In this Order—
 - “the Act” means the Employment Relations Act 2004;
 - “the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992⁽²⁾.

Commencement

3. The following provisions of the Act come into force on 1st October 2005—
 - (a) sections 9, 10, 13, 22 and 25 and section 57 for all remaining purposes;
 - (b) in Schedule 1 to the Act (minor and consequential amendments), paragraphs 23(22) and 23(23) (which contain amendments connected with section 13);
 - (c) in Schedule 2 to the Act (repeals), the entries relating to sections 226A and 234A and to paragraph 119(3) of Schedule A1 to the 1992 Act (which entries contain repeals connected with sections 13, 22 and 25).

Transitional Provisions

4. The coming into force of the provisions mentioned in article 3 is subject to the transitional provisions in articles 5 to 7.
5. The amendments made to Schedule A1 to the 1992 Act by sections 9, 10 and 13 of the Act and by paragraphs 23(22) and 23(23) of Schedule 1 to the Act do not apply where the Central Arbitration

(1) 2004 c. 24.
(2) 1992 c. 52.

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Committee has informed the parties, in accordance with paragraph 25(9) or 117(11) of Schedule A1 to the 1992 Act, before 1st October 2005.

6. The amendments made to section 226A of the 1992 Act by section 22 of the Act do not apply where a trade union takes the steps referred to in the section in relation to the notice mentioned in subsection (1)(a) of section 226A of the 1992 Act before 1st October 2005.

7. The amendments made to section 234A of the 1992 Act by section 25 of the Act do not apply where a trade union takes the steps referred to in the section in relation to the notice mentioned in subsection (1) of section 234A of the 1992 Act before 1st October 2005.

30th August 2005

Barry Gardiner
Minister for Competitiveness
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force on 1st October 2005 sections 9, 10, 13, 22 and 25 of the Employment Relations Act 2004 (“the Act”).

This is the fourth commencement order made under the Act and it brings into force the outstanding provisions which were not commenced by the three previous orders.

The Order brings into force sections 9, 10 and 13 of the Act. These provisions amend Schedule A1 to the Trade Union and Labour Relations (consolidation) Act 1992 (“the 1992 Act”).

Section 9 of the Act places new duties on employers who are notified by the Central Arbitration Committee (“the CAC”) that a ballot on the question of union recognition or derecognition for collective bargaining purposes is to be held. The existing duty on employers to give a union access to workers in a bargaining unit is clarified by provisions setting out circumstances in which an employer will be taken to have failed to comply with that duty. Additionally, two new duties will also apply. The first of these will require the employer to refrain from making an offer to any or all of the workers in the bargaining unit which has the effect, or is likely to have the effect, of inducing any or all of those workers not to attend a meeting with the union (arranged either in accordance with an agreement between the union and employer or with a CAC direction unless that offer is reasonable in the circumstances. Secondly, the employer must not take or threaten to take action against a worker solely or mainly because that worker has attended or taken part in a meeting of the type described above or because he has indicated that he intends to attend or take part in such a meeting.

Section 10 inserts paragraphs 27A to 27F into Schedule A1 to the 1992 Act. These paragraphs provide that parties informed by the CAC that a recognition ballot is to be held must refrain from using any unfair practice, as described in paragraph 27A(2). Unfair practices include offering incentives in the form of money or money’s worth in return for an individual agreeing to vote in a particular way or to abstain from voting or in the event of a specific outcome resulting from the ballot. Unfair practices also include coercion and threats of or actual dismissal or disciplinary action where such practices are carried out with a view to influencing the outcome of the ballot. The provisions inserted by section 10 lay down the procedures to be followed where the CAC receives a complaint that an unfair practice has been used and provides for the consequences of a decision of the CAC that a complaint of unfair practice is well-founded.

Section 13 inserts paragraphs 119A to 119I into Schedule A1 to the 1992 Act. These provisions deal with unfair practices during derecognition ballots. The provisions closely resemble those inserted by section 10 of the Act, applying the same or very similar provisions for defining unfair practices and the consequences for a party which commits them within the context of a derecognition ballot. There are additional provisions to deal with the situation where a worker has made an application to derecognise a union.

Section 22 amends section 226A of the 1992 Act which specifies the information required to be contained in a ballot notice (which gives advance notice in writing to an employer of a ballot for industrial action). Section 226A presently requires a union conducting an industrial action ballot to provide certain information in a notice to an employer. The notice provided must contain information in the union’s possession which would help the employer to make plans and bring information to the attention of the employees which the union intends to ballot and has to include information, if the union has it, as to the number of employees involved, their category of work and workplace. Section 22 of the Act makes changes to the information which the union is required to supply and provides for the supply of specific information in the form of lists of categories of employees and

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their workplaces and figures relating to the number of employees in each category and at each workplace. The provisions also allow for unions to meet their obligations under Section 226A by referring in their notice to union members who pay their union subscription through deductions from pay (i.e. the practice known as “check-off”).

Section 25 of the Act amends section 234A of the 1992 Act which specifies the information required to be contained in an industrial action notice. Section 234A currently requires a union to provide employers with certain information relating to proposed industrial action. This includes information in the union’s possession which would help the employer to make plans and bring information to the attention of the employees which the union intends to induce and has to include information, if the union has it, as to the number of employees involved, their category of work and workplace. Section 25 of the Act makes changes to the information which the union is required to supply. The changes are similar to those made by section 22 of the Act in relation to ballot notices. They allow for the provision of information by way of lists and figures and by reference to “check-off” information.

The Order contains transitional provisions.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provision of the Employment Relations Act 2004 have been brought into force by commencement orders made before the date of this Order —

<i>Provisions of Act</i>	<i>Date of Commencement</i>	<i>S.I. No</i>
Sections 1 to 8	06.04.2005	2005/872
Sections 11 and 12	06.04.2005	2005/872
Section 14	06.04.2005	2005/872
Section 15	31.12.2004	2004/3342
Sections 16 and 17	06.04.2005	2005/872
Section 18	31.12.2004	2004/3342
Sections 19 to 21	06.04.2005	2005/872
Sections 23 and 24	06.04.2005	2005/872
Sections 26 to 28	06.04.2005	2005/872
Sections 29 to 32	01.10.2004	2004/2566
Sections 33 and 34	31.12.2004	2004/3342
Section 35	06.04.2005	2005/872
Section 36	31.12.2004	2004/3342
Sections 37 and 38	01.10.2004	2004/2566
Section 39	31.12.2004	2004/3342
Sections 40 and 41	06.04.2005	2005/872
Sections 44 to 53	06.04.2005	2005/872
Section 54	31.12.2004	2004/3342
Section 55	06.04.2005	2005/872

<i>Provisions of Act</i>	<i>Date of Commencement</i>	<i>S.I. No</i>
Section 57 (partially)	06.04.2005	2005/872
Schedule 1 —		
paragraphs 1 to 7	06.04.2005	2005/872
paragraphs 8 to 12	01.10.2004	2004/2566
paragraphs 13 to 15	06.04.2005	2005/872
paragraphs 16 to 18	01.10.2004	2004/2566
paragraph 19	06.04.2005	2005/872
paragraphs 20 and 21	01.10.2004	2004/2566
paragraphs 22 and 23	06.04.2005	2005/872
(with the exception of paragraph 23(22) and (23))		
paragraphs 24 and 25	01.10.2004	2004/2566
paragraphs 26 and 27	31.12.2004	2004/3342
paragraphs 28 to 30	06.04.2005	2005/872
paragraph 31	01.10.2004	2004/2566
paragraphs 32 to 41	06.04.2005	2005/872
paragraph 42(1), (2) and (4)	01.10.2004	2004/2566
paragraph 42(3)	31.12.2004	2004/3342
paragraph 43	01.10.2004	2004/2566
Schedule 2, the entries relating to —		
the Agricultural Wages Act 1948 (c. 47)	06.04.2005	2005/872
sections 146, 148, 151(1), 152 and 155 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)	01.10.2004	2004/2566
sections 67 and 176 of that Act	31.12.2004	2004/3342
sections 9(3), 19(4), 34(5)(c), 46(2), 62, 126(2), 133, 256A(4)(a), 228(1)(b), 292(1)(a), 229 of and paragraphs 101(4) and (5), 109(2)(a),	06.04.2005	2005/872

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<i>Provisions of Act</i>	<i>Date of Commencement</i>	<i>S.I. No</i>
113(2)(a) and 130(2)(a) of Schedule A1 to that Act		
the Employment Tribunals Act 1996 (c. 17)	06.04.2005	2005/872
the Employment Rights Act 1996 (c. 18)	06.04.2005	2005/872
section 17 of the Employment Relations Act 1999 (c. 26)	01.10.2004	2004/2566
section 23(5) of that Act	31.12.2004	2004/3342
the Employment Act 2002 (c. 22)	06.04.2005	2005/872