



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART IX

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Extension of employment protection legislation*

#### **137 Power to extend employment protection legislation**

- (1) Her Majesty may by Order in Council provide that—
- (a) the provisions of this Act; and
  - (b) any legislation (that is to say any enactment of the Parliament of Northern Ireland and any provision made by or under a Measure of the Northern Ireland Assembly for the time being in force in Northern Ireland which makes provision for purposes corresponding to any of the purposes of this Act,
- shall, to such extent and for such purposes as may be specified in the Order, apply (with or without modification) to or in relation to any person in employment to which this section applies.
- (2) This section applies to employment for the purposes of any activities—
- (a) in the territorial waters of the United Kingdom ; or
  - (b) connected with the exploration of the sea bed or subsoil or the exploitation of their natural resources in any area designated by order under section 1(7) of the Continental Shelf Act 1964 ; or
  - (c) connected with the exploration or exploitation, in a foreign sector of the continental shelf, of a cross-boundary petroleum field.
- (3) An Order in Council under subsection (1)—
- (a) may make different provision for different cases ;

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- (b) may provide that all or any of the enactments referred to in subsection (1), as applied by such an Order, shall apply to individuals whether or not they are British subjects and to bodies corporate whether or not they are incorporated under the law of any part of the United Kingdom (notwithstanding that the application may affect their activities outside the United Kingdom);
  - (c) may make provision for conferring jurisdiction on any court or class of court specified in the Order, or on industrial tribunals, in respect of offences, causes of action or other matters arising in connection with employment to which this section applies ;
  - (d) without prejudice to the generality of subsection (1) or of paragraph (a), may provide that the enactments referred to in subsection (1), as applied by the Order, shall apply in relation to any person in employment for the purposes of such activities as are referred to in subsection (2) in any part of the areas specified in paragraphs (a) and (b) of that subsection ;
  - (e) may exclude from the operation of section 3 of the Territorial Waters Jurisdiction Act 1878 (consents required for prosecutions) proceedings for offences under the enactments referred to in subsection (1) in connection with employment to which this section applies ;
  - (f) may provide that such proceedings shall not be brought without such consent as may be required by the Order ;
  - (g) may, without prejudice to the generality of the power under subsection (1) to modify the enactments referred to in that subsection in their application for the purposes of this section, modify or exclude the operation of sections 141 and 144 or paragraph 14 of Schedule 13 or of any corresponding provision in any such Northern Irish legislation as is referred to in subsection (1)(b).
- (4) Any jurisdiction conferred on any court or tribunal under this section shall be without prejudice to jurisdiction exercisable apart from this section by that or any other court or tribunal.
- (5) In subsection (2) above—
- " cross-boundary petroleum field " means a petroleum field that extends across the boundary between a designated area and a foreign sector of the continental shelf;
  - " foreign sector of the continental shelf " means an area which is outside the territorial waters of any State and within which rights are exercisable by a State other than the United Kingdom with respect to the sea bed and subsoil and their natural resources;
  - " petroleum field " means a geological structure identified as an oil or gas field by the Order in Council concerned.

### *Crown employment*

## **138 Application of Act to Crown employment**

- (1) Subject to the following provisions of this section. Parts I (so far as it relates to itemised pay statements), II, III (except section 44), V, VIII and this Part and section 53 shall have effect in relation to Crown employment and to persons in Crown employment as they have effect in relation to other employment and to other employees.

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- (2) In this section, subject to subsections (3) to (5), " Crown employment " means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by any enactment.
- (3) This section does not apply to service as a member of the naval, military or air forces of the Crown, or of any women's service administered by the Defence Council, but does apply to employment by any association established for the purposes of the Auxiliary Forces Act 1953.
- (4) For the purposes of this section, Crown employment does not include any employment in respect of which there is in force a certificate issued by or on behalf of a Minister of the Crown certifying that employment of a description specified in the certificate, or the employment of a particular person so specified, is (or, at a time specified in the certificate, was) required to be excepted from this section for the purpose of safeguarding national security; and any document purporting to be a certificate so issued shall be received in evidence and shall, unless the contrary is proved, be deemed to be such a certificate.
- (5) For the purposes of Parts I (so far as it relates to itemised pay statements), II, III (except section 44(3) and (4)), V, VII (except section 126(3) and (4)), VIII and this Part and section 53, none of the bodies referred to in Schedule 5 shall be regarded as performing functions on behalf of the Crown and accordingly employment by any such body shall not be Crown employment within the meaning of this section.
- (6) For the purposes of the application of the provisions of this Act in relation to employment by any such body as is referred to in subsection (5), any reference to redundancy shall be construed as a reference to the existence of such circumstances as, in accordance with any arrangements for the time being in force as mentioned in section 111(3), are treated as equivalent to redundancy in relation to such employment.
- (7) For the purposes of the application of the provisions of this Act in relation to Crown employment in accordance with subsection (1)—
  - (a) any reference to an employee shall be construed as a reference to a person in Crown employment;
  - (b) any reference to a contract of employment shall be construed as a reference to the terms of employment of a person in Crown employment;
  - (c) any reference to dismissal shall be construed as a reference to the termination of Crown employment;
  - (d) any reference to redundancy shall be construed as a reference to the existence of such circumstances as, in accordance with any arrangements for the time being in force as mentioned in section 111(3), are treated as equivalent to redundancy in relation to Crown employment ;
  - (e) the reference in paragraph 1(5)(c) of Schedule 9 to a person's undertaking or any undertaking in which he works shall be construed as a reference to the national interest; and
  - (f) any other reference to an undertaking shall be construed, in relation to a Minister of the Crown, as a reference to his functions or (as the context may require) to the department of which he is in charge and, in relation to a government department, officer or body, shall be construed as a reference to the functions of the department, officer or body or (as the context may require) to the department, officer or body.

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- (8) Where the terms of employment of a person in Crown employment restrict his right to take part in—
- (a) certain political activities; or
  - (b) activities which may conflict with his official functions,
- nothing in section 29 shall require him to be allowed time off work for public duties connected with any such activities.

*House of Commons staff*

**139 Provisions as to House of Commons staff**

- (1) The provisions of Parts I (so far as it relates to itemised pay statements), II, III (except section 44), V and VIII, and this Part and section 53 shall apply to relevant members of House of Commons staff as they apply to persons in Crown employment within the meaning of section 138 and accordingly for the purposes of the application of those provisions in relation to any such members—
- (a) any reference to an employee shall be construed as a reference to any such member;
  - (b) any reference to a contract of employment shall be construed as including a reference to the terms of employment of any such member ;
  - (c) any reference to dismissal shall be construed as including a reference to the termination of any such member's employment;
  - (d) the reference in paragraph 1(5)(c) of Schedule 9 to a person's undertaking or any undertaking in which he works shall be construed as a reference to the national interest or, if the case so requires, the interests of the House of Commons ; and
  - (e) any other reference to an undertaking shall be construed as a reference to the House of Commons.
- (2) Nothing in any rule of law or the law or practice of Parliament shall prevent a relevant member of the House of Commons staff from bringing a civil employment claim before the court or from bringing before an industrial tribunal proceedings of any description which could be brought before such a tribunal by any person who is not such a member.
- (3) In this section—
- " relevant member of the House of Commons staff " means—
- (a) any person appointed by the House of Commons Commission (in this section referred to as the Commission) or employed in the refreshment department; and
  - (b) any member of Mr. Speaker's personal staff;
- " civil employment claim " means a claim arising out of or relating to a contract of employment or any other contract connected with employment, or a claim in tort arising in connection with a person's employment; and
- " the court " means the High Court or the county court.
- (4) It is hereby declared that for the purposes of the enactments applied by subsection (1) and of Part VI (where applicable to relevant members of House of Commons staff) and for the purposes of any civil employment claim—
- (a) the Commission is the employer of staff appointed by the Commission; and

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- (b) Mr. Speaker is the employer of his personal staff and of any person employed in the refreshment department and not falling within paragraph (a); but the foregoing provision shall have effect subject to subsection (5).
- (5) The Commission or, as the case may be, Mr. Speaker may designate for all or any of the purposes mentioned in subsection (4)—
- (a) any description of staff other than Mr. Speaker's personal staff; and
- (b) in relation to staff so designated, any person;
- and where a person is so designated he, instead of the Commission or Mr. Speaker, shall be deemed for the purposes to which the designation relates to be the employer of the persons in relation to whom he is so designated.
- (6) Where any proceedings are brought by virtue of this section against the Commission or Mr. Speaker or any person designated under subsection (5), the person against whom the proceedings are brought may apply to the court or the industrial tribunal, as the case may be, to have some other person against whom the proceedings could at the time of the application be properly brought substituted for him as a party to those proceedings.
- (7) For the purposes mentioned in subsection (4) a person's employment in or for the purposes of the House of Commons shall not, provided he continues to be employed in such employment, be treated as terminated by reason only of a change (whether effected before or after the passing of the House of Commons (Administration) Act 1978, and whether effected by virtue of that Act or otherwise) in his employer and (provided he so continues) his first appointment to such employment shall be deemed after the change to have been made by his employer for the time being, and accordingly—
- (a) he shall be treated for the purposes so mentioned as being continuously employed by that employer from the commencement of such employment until its termination; and
- (b) anything done by or in relation to his employer for the time being in respect of such employment before the change shall be so treated as having been done by or in relation to the person who is his employer for the time being after the change.
- (8) In subsection (7) "employer for the time being", in relation to a person who has ceased to be employed in or for the purposes of the House of Commons, means the person who was his employer immediately before he ceased to be so employed, except that where some other person would have been his employer for the time being if he had not ceased to be so employed, it means that other person.
- (9) If the House of Commons resolves at any time that any provision of subsections (3) to (6) should be amended in its application to any member of the staff of that House, Her Majesty may by Order in Council amend that provision accordingly.

*Contracting out of provisions of Act*

**140 Restrictions on contracting out**

- (1) Except as provided by the following provisions of this section, any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—
- (a) to exclude or limit the operation of any provision of this Act; or

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- (b) to preclude any person from presenting a complaint to, or bringing any proceedings under this Act before, an industrial tribunal.
- (2) Subsection (1) shall not apply—
- (a) to any provision in a collective agreement excluding rights under section 12 if an order under section 18 is for the time being in force in respect of it;
  - (b) to any union membership agreement so far as it affects the rights of an employee—
    - (i) under section 23 in accordance with subsection (4) of that section;
    - (ii) under section 58 in accordance with subsection (3) of that section ;
  - (c) to any provision in a dismissal procedures agreement excluding rights under section 54 if that provision is not to have effect unless an order under section 65 is for the time being in force in respect of it;
  - (d) to any agreement to refrain from presenting a complaint under section 67, where in compliance with a request under section 134(3) a conciliation officer has taken action in accordance with that subsection;
  - (e) to any agreement to refrain from proceeding with a complaint presented under section 67 where a conciliation officer has taken action in accordance with section 134(1) and (2);
  - (f) to any provision in an agreement if an order under section 96 is for the time being in force in respect of it;
  - (g) to any agreement to refrain from instituting or continuing any proceedings before an industrial tribunal where a conciliation officer has taken action in accordance with section 133(2) or (3);
  - (h) to any provision of an agreement relating to dismissal from employment such as is mentioned in section 142(1) or (2).

*Excluded classes of employment*

**141 Employment outside Great Britain**

- (1) Sections 1 to 4 and 49 to 51 do not apply in relation to employment during any period when the employee is engaged in work wholly or mainly outside Great Britain unless the employee ordinarily works in Great Britain and the work outside Great Britain is for the same employer.
- (2) Sections 8 and 53 and Parts II, III, V and VII do not apply to employment where under his contract of employment the employee ordinarily works outside Great Britain.
- (3) An employee shall not be entitled to a redundancy payment if on the relevant date he is outside Great Britain, unless under his contract of employment he ordinarily worked in Great Britain.
- (4) An employee who under his contract of employment ordinarily works outside Great Britain shall not be entitled to a redundancy payment unless on the relevant date he is in Great Britain in accordance with instructions given to him by his employer.
- (5) For the purpose of subsection (2), a person employed to work on board a ship registered in the United Kingdom (not being a ship registered at a port outside Great Britain) shall, unless—
  - (a) the employment is wholly outside Great Britain, or
  - (b) he is not ordinarily resident in Great Britain,

be regarded as a person who under his contract ordinarily works in Great Britain.

#### **142 Contracts for a fixed term**

- (1) Section 54 does not apply to dismissal from employment under a contract for a fixed term of two years or more, where the dismissal consists only of the expiry of that term without its being renewed, if before the term so expires the employee has agreed in writing to exclude any claim in respect of rights under that section in relation to that contract.
- (2) An employee employed under a contract of employment for a fixed term of two years or more entered into after 5th December 1965 shall not be entitled to a redundancy payment in respect of the expiry of that term without its being renewed (whether by the employer or by an associated employer of his), if before the term so expires he has agreed in writing to exclude any right to a redundancy payment in that event.
- (3) Such an agreement as is mentioned in subsection (1) or (2) may be contained either in the contract itself or in a separate agreement.
- (4) Where an agreement under subsection (2) is made during the currency of a fixed term, and that term is renewed, the agreement under that subsection shall not be construed as applying to the term as renewed, but without prejudice to the making of a further agreement under that subsection in relation to the term so renewed.

#### **143 Minimum periods of employment**

- (1) An employee shall not be entitled to a guarantee payment in respect of any day unless he has been continuously employed for a period of four weeks ending with the last complete week before that day.
- (2) An employee shall not be entitled to remuneration under section 19 unless he has been continuously employed for a period of four weeks ending with the last complete week before the day on which the suspension begins.
- (3) Subject to subsection (4)—
  - (a) sections 12 and 19 do not apply to employment under a contract for a fixed term of twelve weeks or less; and
  - (b) sections 12, 19 and 49 do not apply to employment under a contract made in contemplation of the performance of a specific task which is not expected to last for more than twelve weeks.
- (4) Subsection (3) does not apply where the employee has been continuously employed for a period of more than twelve weeks.

#### **144 Mariners**

- (1) Sections 1 to 6 and 49 to 51 do not apply to—
  - (a) a person employed as a master of or a seaman on a sea-going British ship having a gross registered tonnage of eighty tons or more, including a person ordinarily employed as a seaman who is employed in or about such a ship in port by the owner or charterer of the ship to do work of a kind ordinarily done by a seaman on such a ship while it is in port, or

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- (b) a person employed as a skipper of or a seaman on a fishing boat for the time being required to be registered under section 373 of the Merchant Shipping Act 1894.
- (2) Sections 8 and 53 and Parts II, III and V to VII do not apply to employment as master or as a member of the crew of a fishing vessel where the employee is remunerated only by a share in the profits or gross earnings of the vessel.
- (3) Section 141(3) and (4) do not apply to an employee, and section 142(2) does not apply to a contract of employment, if the employee is employed as a master or seaman in a British ship and is ordinarily resident in Great Britain.
- (4) Sections 8, 29, 31, 122 and 123 do not apply to employment as a merchant seaman.
- (5) Employment as a merchant seaman does not include employment in the fishing industry or employment on board a ship otherwise than by the owner, manager or charterer of that ship except employment as a radio officer, but, save as aforesaid, it includes employment as master or a member of the crew of any ship and as a trainee undergoing training for the sea service, and employment in or about a ship in port by the owner, manager or charterer of the ship to do work of the kind ordinarily done by a merchant seaman on a ship while it is in port

#### **145 Dock workers**

- (1) Sections 1 to 6 and 49 to 51 do not apply to any registered dock worker except when engaged in work which is not dock work.
- (2) Sections 12, 19, 31, 53, 54, 122 and 123 do not apply to employment as a registered dock worker other than employment by virtue of which the employee is wholly or mainly engaged in work which is not dock work.
- (3) Subject to subsection (4), section 81 does not apply to any person in respect of his employment as a registered dock worker, unless it is employment by virtue of which he is wholly or mainly engaged in work which is not dock work.
- (4) Subsection (3) does not apply where—
  - (a) the person became a registered dock worker in consequence of having been employed »on work which became classified;
  - (b) at the date of the termination of his employment he has been continuously employed since a time before that work was classified ; and
  - (c) as a result of the termination he ceases to be a registered dock worker,
 and, for the purposes of this subsection, Schedule 13 shall have effect subject to the provisions of the new Scheme.
- (5) In this section—
  - " classified " means classified as dock work for the purposes of the new Scheme by an order under section 11 of the Dock Work Regulation Act 1976 ;
  - " dock work ", in relation to a dock worker registered under the 1967 Scheme, means the same as in that Scheme and in relation to one registered under the new Scheme means any work which, by reference to what it is or where it is done, is classified ;
  - " registered " means registered under the 1967 Scheme or under the new Scheme, and in relation to a worker who is registered under the new Scheme,



means registered in a main register thereunder, and not in an extension register;

" the 1967 Scheme " means the Scheme made under the Dock Workers (Regulation of Employment) Act 1946 and set out, as varied, in Schedule 2 to the Dock Workers (Regulation of Employment) (Amendment) Order 1967;

" the new Scheme " means the Scheme made and in force under section 4 of the Dock Work Regulation Act 1976.

## **146 Miscellaneous classes of employment**

- (1) The following provisions of this Act do not apply to employment where the employer is the husband or wife of the employee, that is to say, sections 1, 4, 8, 53, 122 and 123 and Parts II, III, V and VI.
- (2) Parts II, III, V and VII and sections 8, 9, 53 and 86 do not apply to employment under a contract of employment in police service or to persons engaged in such employment.
- (3) In subsection (2), " police service " means service—
  - (a) as a member of any constabulary maintained by virtue of any enactment, or
  - (b) in any other capacity by virtue of which a person has the powers or privileges of a constable.
- (4) Subject to subsections (5), (6) and (7), the following provisions of this Act (which confer rights which do not depend upon an employee having a qualifying period of continuous employment) do not apply to employment under a contract which normally involves employment for less than sixteen hours weekly, that is to say, sections 8, 27, 28 and 29.
- (5) If the employee's relations with his employer cease to be governed by a contract which normally involves work for sixteen hours or more weekly and become governed by a contract which normally involves employment for eight hours or more, but less than sixteen hours, weekly, the employee shall nevertheless for a period of twenty-six weeks, computed in accordance with subsection (6), be treated for the purposes of subsection (4) as if his contract normally involved employment for sixteen hours or more weekly.
- (6) In computing the said period of twenty-six weeks no account shall be taken of any week—
  - (a) during which the employee is in fact employed for sixteen hours or more;
  - (b) during which the employee takes part in a strike (as defined by paragraph 24 of Schedule 13) or is absent from work because of a lock-out (as so defined) by his employer; or
  - (c) during which there is no contract of employment but which, by virtue of paragraph 9(1) of Schedule 13, counts in computing a period of continuous employment.
- (7) An employee whose relations with his employer are governed by a contract of employment which normally involves employment for eight hours or more, but less than sixteen hours, weekly shall nevertheless, if he has been continuously employed for a period of five years or more be treated for the purposes of subsection (4) as if his contract normally involved employment for sixteen hours or more weekly.

**147 Application of ss. 1 to 4 to excluded employment**

Sections 1 to 4 shall apply to an employee who at any time comes or ceases to come within the exceptions from those sections provided for by or under sections 3(1), 143 to 146 and 149 as if a period of employment terminated or began at that time.

*Supplementary provisions***148 Review of limits**

- (1) The Secretary of State shall in each calendar year review—
  - (a) the limits referred to in section 15 ;
  - (b) the limit referred to in section 122(5); and
  - (c) the limits imposed by paragraph 8(1) of Schedule 14 on the amount of a week's pay for the purposes of those provisions;
 and shall determine whether any of those limits should be varied.
- (2) In making a review under this section the Secretary of State shall consider—
  - (a) the general level of earnings obtaining in Great Britain at the time of the review ;
  - (b) the national economic situation as a whole ; and
  - (c) such other matters as he thinks relevant.
- (3) If on a review under this section the Secretary of State determines that, having regard to the considerations mentioned in subsection (2), any of those limits should be varied, he shall prepare and lay before each House of Parliament the draft of an order giving effect to his decision.
- (4) Where a draft of an order under this section is approved by resolution of each House of Parliament the Secretary of State shall make an order in the form of the draft.
- (5) If, following the completion of an annual review under this section, the Secretary of State determines that any of the limits referred to in subsection (1) shall not be varied, he shall lay before each House of Parliament a report containing a statement of his reasons for that determination.
- (6) The Secretary of State may at any time, in addition to the annual review provided for in subsection (1), conduct a further review of the limits mentioned in subsection (1) so as to determine whether any of those limits should be varied, and subsections (2) to (4) shall apply to such a review as if it were a review under subsection (1).

**149 General power to amend Act**

- (1) Subject to the following provisions of this section, the Secretary of State may by order—
  - (a) provide that any enactment contained in this Act which is specified in the order shall not apply to persons or to employments of such classes as may be prescribed in the order;
  - (b) provide that any such enactment shall apply to persons or employments of such classes as may be prescribed in the order subject, except in relation to section 54 (but without prejudice to paragraph (a)), to such exceptions and modifications as may be so prescribed ;

- (c) vary, or exclude the operation of, any of the following provisions of this Act, that is to say, sections 64(1), 99, 141(2) and (5), 143(3) and (4), 144(1), (2), (4) and (5), 145(1), (2) and (3) and 146(1) and (4) to (7);
  - (d) add to, vary or delete any of the provisions of Schedule 5.
- (2) Subsection (1) does not apply to the following provisions of this Act, namely, sections 7, 52, 55, 57, 58, 59, 62, 63, 65, 66, 67, 75, 80, 103 to 120, 128, 134, 141(1) and 142(1) and Schedules 3, 9 and 13, and, in addition, paragraph (b) of subsection (1) does not apply to sections 1 to 6 and 49 to 51 and paragraph (c) of subsection (1) does not apply to section 143 as that section applies in relation to section 49.
- (3) The provisions of this section are without prejudice to any other power of the Secretary of State to amend, vary or repeal any provision of this Act or to extend or restrict its operation in relation to any person or employment.
- (4) No order under subsection (1) shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

#### **150 Death of employee or employer**

Schedule 12 shall have effect for the purpose of supplementing and modifying the provisions of Part I (so far as it relates to itemised pay statements), section 53 and Parts II, III, and V to VII as respects the death of an employee or employer.

#### **151 Continuous employment**

- (1) Subject to sections 104(2) and 106(2), Schedule 13 shall have effect for the purposes of this Act for ascertaining the length of an employee's period of employment and whether that employment has been continuous, and references in this Act to a period of employment shall be construed accordingly.
- (2) For the purposes of any proceedings under this Act, other than proceedings for a breach of section 1, 2, 4 or 49, a person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous.

#### **152 Calculation of normal working hours and a week's pay**

Schedule 14 shall have effect for the purposes of this Act for calculating the normal working hours and the amount of a week's pay of any employee.

#### **153 Interpretation**

- (1) In this Act, except so far as the context otherwise requires—
- " act " and " action " each includes omission and references to doing an act or taking action shall be construed accordingly;
  - " business " includes a trade or profession and includes any activity carried on by a body of persons, whether corporate or unincorporate;
  - " certified midwife " means a midwife certified under the Midwives Act 1951 or the Midwives (Scotland) Act 1951;
  - " collective agreement " has the meaning given by section 30(1) of the Trade Union and Labour Relations Act 1974;

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" confinement " means the birth of a living child or the birth of a child whether living or dead after twenty-eight weeks of pregnancy;

" contract of employment " means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether it is oral or in writing ;

" dismissal procedures agreement " means an agreement in writing with respect to procedures relating to dismissal made by or on behalf of one or more independent trade unions and one or more employers or employers' associations;

" effective date of termination " has the meaning given by section 55(4) and (5);

" employee " means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment;

" employer ", in relation to an employee, means the person by whom the employee is (or, in a case where the employment has ceased, was) employed ;

" employers' association " has the same meaning as it has for the purposes of the Trade Union and Labour Relations Act 1974;

" employer's payment " means a payment falling within paragraph (a), (b) or (c) of section 104(1);

" employment ", except for the purposes of sections 111 to 115, means employment under a contract of employment ;

" expected week of confinement " means the week, beginning with midnight between Saturday and Sunday, in which it is expected that confinement will take place;

" government department ", except in section 138 and paragraph 19 of Schedule 13, includes a Minister of the Crown;

" guarantee payment " has the meaning given by section 12(1);

" inadmissible reason " has the meaning given by section 58(5);

" independent trade union " means a trade union which—

- (a) is not under the domination or control of an employer or a group of employers or of one or more employers' associations ; and
- (b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control;

and, in relation to a trade union, " independent" and " independence " shall be construed accordingly ;

" job ", in relation to an employee, means the nature of the work which he is employed to do in accordance with his contract and the capacity and place in which he is so employed;

" maternity pay " has the meaning given by section 33(1); " Maternity Pay Fund" means the fund referred to in section 37;

" maternity pay rebate " has the meaning given by section 39;

" notice of intention to claim " has the meaning given by section 88 ;

" notified day of return " has the meaning given by section 47(1) and (8);

" official ", in relation to a trade union, has the meaning given by section 30(1) of the Trade Union and Labour Relations Act 1974;

" original contract of employment", in relation to an employee who is absent from work wholly or partly because of pregnancy or confinement, means the contract under which she worked immediately before the beginning

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of her absence or, if she entered into that contract during her pregnancy by virtue of section 60(2) or otherwise by reason of her pregnancy, the contract under which she was employed immediately before she entered into the later contract or, if there was more than one later contract, the first of the later contracts;

" position ", in relation to an employee, means the following matters taken as a whole, that is to say, his status as an employee, the nature of his work and his terms and conditions of employment;

" Redundancy Fund " means the fund referred to in section 103;

" redundancy payment " has the meaning given by section 81(1);

" redundancy rebate " has the meaning given by section 104;

" relevant date ", for the purposes of the provisions of this Act which relate to redundancy payments, has the meaning given by section 90 ;

" renewal " includes extension, and any reference to renewing a contract or a fixed term shall be construed accordingly;

" statutory provision " means a provision, whether of a general or a special nature, contained in, or in any document made or issued under, any Act, whether of a general or special nature ;

" successor " has the meaning given by section 30(3) and (4) of the Trade Union and Labour Relations Act 1974;

" trade dispute " has the meaning given by section 29 of the said Act of 1974 ;

" trade union " has the meaning given by section 28 of the said Act of 1974 ;

" union membership agreement " has the meaning given by section 30(1) of the said Act of 1974 and " employees ", in relation thereto, has the meaning given by section 30(5A) of that Act;

" week " means, in relation to an employee whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day, and in relation to any other employee, a week ending with Saturday.

- (2) References in this Act to dismissal by reason of redundancy, and to cognate expressions, shall be construed in accordance with section 81.
- (3) In sections 33, 47, 56, 61 and 86 and Schedule 2, except where the context otherwise requires, "to return to work" means to return to work in accordance with section 45(1), and cognate expressions shall be construed accordingly.
- (4) For the purposes of this Act, any two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control; and the expression " associated employer " shall be construed accordingly.
- (5) For the purposes of this Act it is immaterial whether the law which (apart from this Act) governs any person's employment is the law of the United Kingdom, or of a part of the United Kingdom, or not.
- (6) In this Act, except where otherwise indicated—
  - (a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered, and
  - (b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered, and

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- (c) a reference in a section, subsection or Schedule to a numbered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered, and
  - (d) a reference to any provision of an Act (including this Act) includes a Schedule incorporated in the Act by that provision.
- (7) Except so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.

#### **154 Orders, rules and regulations**

- (1) Any power conferred by any provision of this Act to make an order (other than an Order in Council or an order under section 65 or 66) or to make rules or regulations shall be exercisable by statutory instrument.
- (2) Any statutory instrument made under any power conferred by this Act to make an Order in Council or other order or to make rules or regulations, except—
  - (a) an instrument required to be laid before Parliament in draft; and
  - (b) an order under section 18,
 shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any power conferred by this Act which is exercisable by statutory instrument shall include power to make such incidental, supplementary or transitional provisions as appear to the authority exercising the power to be necessary or expedient.
- (4) An order made by statutory instrument under any provision of this Act may be revoked or varied by a subsequent order made under that provision.

This subsection does not apply to an order under section 96 but is without prejudice to subsection (4) of that section.

#### **155 Offences by bodies corporate**

- (1) Where an offence under section 44 or 126 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

#### **156 Payments into the Consolidated Fund**

- (1) There shall be paid out of the Maternity Pay Fund into the Consolidated Fund sums equal to the amount of any expenses incurred by the Secretary of State in exercising his functions under this Act relating to maternity pay.
- (2) There shall be paid out of the Redundancy Fund into the Consolidated Fund sums equal to the amount of any expenses incurred—

- (a) by the Secretary of State in consequence of Part VI, except expenses incurred in the payment of sums in accordance with any such arrangements as are mentioned in section 111(3);
  - (b) by the Secretary of State (or by persons acting on his behalf) in exercising his functions under sections 122 to 126.
- (3) There shall be paid out of the Redundancy Fund into the Consolidated Fund such sums as the Secretary of State may estimate in accordance with directions given by the Treasury to be the amount of any expenses incurred by any government department other than the Secretary of State in consequence of the provisions of sections 103 to 109.

### **157 Northern Ireland**

- (1) If provision is made by Northern Irish legislation (that is to say by or under a Measure of the Northern Ireland Assembly) for purposes corresponding to any of the purposes of this Act, except sections 1 to 7 and 49 to 51, the Secretary of State may, with the consent of the Treasury, make reciprocal arrangements with the appropriate Northern Irish authority for co-ordinating the relevant provisions of this Act with the corresponding provisions of the Northern Irish legislation, so as to secure that they operate, to such extent as may be provided by the arrangements, as a single system.
- (2) For the purpose of giving effect to any such arrangements the Secretary of State shall have power, in conjunction with the appropriate Northern Irish authority—
- (a) where the arrangements relate to the provisions of this Act relating to maternity pay, to make any necessary financial adjustments between the Maternity Pay Fund and any fund established under Northern Irish legislation; and
  - (b) where the arrangements relate to Part VI or to sections 122 to 126, to make any necessary financial adjustments between the Redundancy Fund and the Northern Ireland Redundancy Fund.
- (3) The Secretary of State may make regulations for giving effect in Great Britain to any such arrangements, and any such regulations may make different provision for different cases, and may provide that the relevant provisions of this Act shall have effect in relation to persons affected by the arrangements subject to such modifications and adaptations as may be specified in the regulations, including provision—
- (a) for securing that acts, omissions and events having any effect for the purposes of the Northern Irish legislation shall have a corresponding effect for the purposes of this Act (but not so as to confer a right to double payment in respect of the same act, omission or event); and
  - (b) for determining, in cases where rights accrue both under this Act and under the Northern Irish legislation, which of those rights shall be available to the person concerned.
- (4) In this section " the appropriate Northern Irish authority " means such authority as may be specified in that behalf in the Northern Irish legislation.

### **158 The Isle of Man**

- (1) If an Act of Tynwald is passed for purposes similar to the purposes of Part VI, the Secretary of State may, with the consent of the Treasury, make reciprocal arrangements with the appropriate Isle of Man authority for co-ordinating the provisions of Part VI

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with the corresponding provisions of the Act of Tynwald so as to secure that they operate, to such extent as may be provided by the arrangements, as a single system.

- (2) For the purpose of giving effect to any such arrangements, the Secretary of State shall have power, in conjunction with the appropriate Isle of Man authority, to make any necessary financial adjustments between the Redundancy Fund and any fund established under the Act of Tynwald.
- (3) The Secretary of State may make regulations for giving effect in Great Britain to any such arrangements, and any such regulations may provide that Part VI shall have effect in relation to persons affected by the arrangements subject to such modifications and adaptations as may be specified in the regulations, including provision—
  - (a) for securing that acts, omissions and events having any effect for the purposes of the Act of Tynwald shall have a corresponding effect for the purposes of Part VI (but not so as to confer a right to double payment in respect of the same act, omission or event); and
  - (b) for determining, in cases where rights accrue both under this Act and under the Act of Tynwald, which of those rights shall be available to the person concerned.
- (4) In this section " the appropriate Isle of Man authority " means such authority as may be specified in that behalf in an Act of Tynwald.

#### **159 Transitional provisions, savings, consequential amendments and repeals**

- (1) The transitional provisions and savings in Schedule 15 shall have effect but nothing in that Schedule shall be construed as prejudicing section 38 of the Interpretation Act 1889 (effect of repeals).
- (2) The enactments specified in Schedule 16 shall have effect subject to the amendments specified in that Schedule.
- (3) The enactments specified in the first column of Schedule 17 are hereby repealed to the extent specified in column 3 of that Schedule.

#### **160 Citation, commencement and extent**

- (1) This Act may be cited as the Employment Protection (Consolidation) Act 1978.
- (2) This Act, except section 139(2) to (9) and the repeals in section 122 of the Employment Protection Act 1975 provided for in Schedule 17 to this Act, shall come into force on 1st November 1978, and section 139(2) to (9) and those repeals shall come into force on 1st January 1979.
- (3) This Act, except sections 137 and 157 and paragraphs 12 and 28 of Schedule 16, shall not extend to Northern Ireland.