Employment Act 1990

1990 CHAPTER 38

An Act to make it unlawful to refuse employment, or any service of an employment agency, on grounds related to trade union membership; to amend the law relating to industrial action and ballots; to make further provision with respect to the Commissioner for the Rights of Trade Union Members; to confer a power to revise or revoke Codes of Practice; to provide for the merger of the Redundancy Fund with the National Insurance Fund; to amend the Education (Work Experience) Act 1973; and for connected purposes. [1st November 1990]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Access to employment

1 Refusal of employment on grounds related to union membership

(1) It is unlawful to refuse a person employment—

(a) because he is, or is not, a member of a trade union, or

(b) because he is unwilling to accept a requirement—

(i) to take steps to become or cease to be, or to remain or not to become, a member of a trade union, or

(ii) to make payments or suffer deductions in the event of his not being a member of a trade union.

(2) A person who is thus unlawfully refused employment has a right of complaint to an industrial tribunal.

(3) Where an advertisement is published which indicates, or might reasonably be understood as indicating—

(a) that employment to which the advertisement relates is open only to a person who is, or is not, a member of a trade union, or

(b) that any such requirement as is mentioned in subsection (1)(b) will be imposed in relation to employment to which the advertisement relates,

a person who does not satisfy that condition or, as the case may be, is unwilling to accept that requirement, and who seeks and is refused employment to which the advertisement relates, shall be conclusively presumed to have been refused employment for that reason.

(4) Where there is an arrangement or practice under which employment is offered only to persons put forward or approved by a trade union, and the trade union puts forward or approves only persons who are members of the union, a person who is not a member of the union and who is refused employment in pursuance of the arrangement or practice shall be taken to have been refused employment because he is not a member of the trade union.

(5) A person shall be taken to be refused employment if he seeks employment of any description with a person and that person—

(a) refuses or deliberately omits to entertain and process his application or enquiry, or

(b) causes him to withdraw or cease to pursue his application or enquiry, or

(c) refuses or deliberately omits to offer him employment of that description, or

(d) makes him an offer of such employment the terms of which are such as no reasonable employer who wished to fill the post would offer and which is not accepted, or

(e) makes him an offer of such employment but withdraws it or causes him not to accept it.

(6) Where a person is offered employment on terms which include a requirement that he is, or is not, a member of a trade union, or any such requirement as is mentioned in subsection (1)(b), and he does not accept the offer because he does not satisfy or, as the case may be, is unwilling to accept that requirement, he shall be treated as having been refused employment for that reason.

(7) The provisions of this section apply in relation to an employment agency acting, or purporting to act, on behalf of an employer as in relation to an employer.

2 Refusal of service of employment agency on grounds related to union membership

(1) It is unlawful for an employment agency to refuse a person any of its services—

(a) because he is, or is not, a member of a trade union, or

(b) because he is unwilling to accept a requirement to take steps to become or cease to be, or to remain or not to become, a member of a trade union.

(2) A person who is thus unlawfully refused any service of an employment agency has a right of complaint to an industrial tribunal.

(3) Where an advertisement is published which indicates, or might reasonably be understood as indicating—

(a) that any service of an employment agency is available only to a person who is, or is not, a member of a trade union, or

(b) that any such requirement as is mentioned in subsection (1)(b) will be imposed in relation to a service to which the advertisement relates,

a person who does not satisfy that condition or, as the case may be, is unwilling to accept that requirement, and who seeks to avail himself of and is refused that service, shall be conclusively presumed to have been refused it for that reason.

(4) A person shall be taken to be refused a service if he seeks to avail himself of it and the agency—

(a) refuses or deliberately omits to make the service available to him, or

(b) causes him not to avail himself of the service or to cease to avail himself of it, or

(c) does not provide the same service, on the same terms, as is provided to others.

(5) Where a person is offered a service on terms which include a requirement that he is, or is not, a member of a trade union, or any such requirement as is mentioned in subsection (1)(b), and he does not accept the offer because he does not satisfy or, as the case may be, is unwilling to accept that requirement, he shall be treated as having been refused the service for that reason.

3 Interpretation and other supplementary provisions

(1) In sections 1 and 2—

"advertisement" includes every form of advertisement or notice, whether to the public or not, and references to publishing an advertisement shall be construed accordingly;

"employment" means employment under a contract of service or apprenticeship, and related expressions shall be construed accordingly;

"employment agency" means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers, but subject to subsection (3) below;

"member of a trade union" shall be construed in accordance with subsection (4) below;

"trade union" has the meaning given by section 28 of the Trade Union and Labour Relations Act 1974.

(2) Where a person may not be considered for appointment or election to an office in a trade union unless he is a member of the union, or of a particular branch or section of the union or of one of a number of particular branches or sections of the union, nothing in section 1 applies to anything done for the purpose of securing compliance with that condition although as holder of the office he would be employed by the union.

For this purpose an "office" means any position—

(a) by virtue of which the holder is an "official" within the meaning of section 30(1) of the Trade Union and Labour Relations Act 1974, or

(b) in relation to which the duty in section 1 of the Trade Union Act 1984 (duty to hold elections) applies.

(3) For the purposes of sections 1 and 2 as they apply to employment agencies—

(a) services other than those mentioned in the definition of "employment agency" above shall be disregarded, and

(b) a trade union shall not be regarded as an employment agency by reason of services provided by it only for, or in relation to, its members.

(4) References in sections 1 and 2 to being or not being a member of a trade union are to being or not being a member of any trade union, of a particular trade union or of one of a number of particular trade unions.

Any such reference includes a reference to being or not being a member of a particular branch or section of a trade union or of one of a number of particular branches or sections of a trade union.

(5) Further provisions supplementing sections 1 and 2 are contained in Schedule 1, where—

Part I deals with proceedings, remedies and related matters, and

Part II deals with the scope of application of those sections.

Expressions which are defined above for the purposes of those sections have the same meanings in that Schedule.

Industrial action and ballots

4 Secondary action

(1) Nothing in section 13 of the Trade Union and Labour Relations Act 1974 (acts in contemplation or furtherance of trade disputes) prevents an act from being actionable in tort on a ground specified in subsection (1)(a) or (b) of that section where one of the facts relied on for the purpose of establishing liability is that there has been secondary action which does not satisfy the requirements of this section.

(2) There is secondary action in relation to a trade dispute when, and only when, a person—

(a) induces another to break a contract of employment or interferes or induces another to interfere with its performance, or

(b) threatens that a contract of employment under which he or another is employed will be broken or its performance interfered with, or that he will induce another to break a contract of employment or to interfere with its performance,

and the employer under the contract of employment is not the employer party to the dispute.

(3) Secondary action satisfies the requirements of this section only if it is done in the course of such attendance as is declared lawful by section 15 of the Trade Union and Labour Relations Act 1974 (peaceful picketing)—

(a) by a worker employed (or, in the case of a worker not in employment, last employed) by the employer party to the dispute, or

(b) by a trade union official whose attendance is lawful by virtue of subsection (1)(b) of that section.

(4) For the purposes of this section an employer shall not be treated as party to a dispute between another employer and workers of that employer; and where more than one employer is in dispute with his workers, the dispute between each employer and his workers shall be treated as a separate dispute.

In this subsection "worker" has the same meaning as in section 29 of the Trade Union and Labour Relations Act 1974 (meaning of trade dispute).

(5) An act in contemplation or furtherance of a trade dispute which is primary action in relation to that dispute may not be relied on as secondary action in relation to another trade dispute.

Primary action means such action as is mentioned in paragraph (a) or (b) of subsection (2) where the employer under the contract of employment is the employer party to the dispute.

(6) In this section "contract of employment" includes any contract under which one person personally does work or performs services for another, and related expressions shall be construed accordingly.

(7) Other expressions used in this section and the Trade Union and Labour Relations Act 1974 have the same meanings in this section as in that Act.

5 Minor amendments relating to ballots

(1) In Part II of the Trade Union Act 1984 and section 1 of the Employment Act 1988 (ballots about industrial action) references to a contract of employment include any contract under which one person personally does work or performs services for another; and related expressions shall be construed accordingly.

(2) For the purposes of section 11 of the Trade Union Act 1984 (requirements to be satisfied in relation to ballots) a member of a trade union who throughout the period during which votes may be cast is in Northern Ireland shall not be treated as an overseas member—

(a) where the ballot is one to which subsection (1A) or (1B)(a) of that section applies (workplace ballots) and his place of work is in Great Britain, or

(b) where the ballot is one to which subsection (1B)(b) or (c) of that section applies (general ballots) and relates to a strike or other industrial action involving members both in Great Britain and in Northern Ireland.

(3) In relation to employment to which section 127 of the Employment Protection Act 1975 (offshore workers) applies, the references in subsection (2) above to Northern Ireland include any area where the law of Northern Ireland applies and the references to Great Britain include any area where the law of England and Wales or Scotland applies.

(4) In section 4(1B) of the Trade Union Act 1913 and section 2(5) of the Trade Union Act 1984 (requirements with respect to voting papers in political fund ballot or ballot for union office), in paragraph (a) after "must" insert "state the name of the independent scrutineer and".

(5) In section 15(2) of the Employment Act 1988 (duties of trade union with respect to independent scrutineer in case of political fund ballot or ballot for union office), after paragraph (b) insert—

"(bb) must, before the scrutineer begins to carry out his functions, either—

(i) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or

(ii) take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take

when matters of general interest to all its members need to be brought to their attention;".

6 Responsibility of trade union for acts of officials, &c

(1) Section 15 of the Employment Act 1982 (liability of trade unions in certain actions in tort) is amended as follows.

(2) In subsection (2) (acts for which the union is responsible) for "it was authorised or endorsed by a responsible person" substitute "it is to be taken, in accordance with the following provisions, to have been authorised or endorsed by the union".

(3) For subsection (3) substitute—

"(3) An act shall be taken to have been authorised or endorsed by a trade union if it was done, or was authorised or endorsed—

(a) by any person empowered by the rules to do, authorise or endorse acts of the kind in question, or

(b) by the principal executive committee or the president or general secretary, or

(c) by any other committee of the union or any other official of the union (whether employed by it or not).

(3A) For the purposes of paragraph (c) of subsection (3)—

(a) any group of persons constituted in accordance with the rules of the union is a committee of the union; and

(b) an act shall be taken to have been done, authorised or endorsed by an official if it was done, authorised or endorsed by, or by any member of, any group of persons of which he was at the material time a member, the purposes of which included organising or co-ordinating industrial action.

(3B) The provisions of paragraphs (b) and (c) of subsection (3) apply notwithstanding anything in the rules of the union, or in any contract or rule of law, but subject as follows.".

(4) For subsection (4) substitute—

"(4) An act shall not be taken to have been authorised or endorsed by the union by virtue only of paragraph (c) of subsection (3) if it was repudiated by the principal executive committee or the president or general secretary as soon as reasonably practicable after coming to the knowledge of any of them.".

(5) For subsection (5) substitute—

"(5) Where an act is repudiated—

(a) written notice of the repudiation must be given to the committee or official in question, without delay, and

(b) the union must do its best to give individual written notice of the fact and date of repudiation, without delay—

(i) to every member of the union who the union has reason to believe is taking part, or might otherwise take part, in industrial action as a result of the act, and

(ii) to the employer of every such member.

(5A) The notice given to members in accordance with paragraph (b)(i) of subsection (5) must contain the following statement—

"Your union has repudiated the call (or calls) for industrial action to which this notice relates and will give no support to unofficial industrial action taken in response to it (or them). If you are dismissed while taking unofficial industrial action, you will have no right to complain of unfair dismissal."

(5B) If subsection (5) or (5A) is not complied with, the repudiation shall be treated as ineffective.".

(6) After subsection (6) (no repudiation if subsequent behaviour inconsistent with purported repudiation) insert—

"(6A) The principal executive committee, president or general secretary shall be treated as so behaving if, on a request made to any of them within three months of the purported repudiation by a person who—

(a) is a party to a commercial contract whose performance has been or may be interfered with as a result of the act in question, and

(b) has not been given written notice by the union of the repudiation,

it is not forthwith confirmed in writing that the act has been repudiated.".

(7) In subsection (7) (interpretation), at the appropriate place insert—

""commercial contract" means any contract other than—

(a) a contract of service or apprenticeship, or

(b) any other contract under which a person agrees personally to do work or perform services for another;";

and omit the definition of "official" and "employed official".

(8) After subsection (8) add—

"(9) In proceedings arising out of an act which is by virtue of this section taken to have been done by a trade union, the power of the court to grant an injunction or interdict includes power to require the union to take such steps as the court considers appropriate for ensuring—

(a) that there is no, or no further, inducement of persons to take part or to continue to take part in industrial action, and

(b) that no person engages in any conduct after the granting of the injunction or interdict by virtue of having been induced before it was granted to take part or to continue to take part in industrial action;

and the provisions of this section apply in relation to proceedings for failure to comply with any such injunction or interdict as they apply in relation to the original proceedings.".

7 Calling of industrial action with support of ballot

(1) In section 11 of the Trade Union Act 1984 (requirements for ballots on industrial action), after subsection (4) insert—

"(4A) The voting paper must specify who, in the event of a vote in favour of industrial action, is authorised for the purposes of section 7 of the Employment

Act 1990 to call upon members to take part or continue to take part in the industrial action.

The person or description of persons so specified need not be authorised under the rules of the union but must be within section 15(3) of the Employment Act 1982.".

(2) Industrial action shall not be regarded for the purposes of section 10 of the Trade Union Act 1984 or section 1 of the Employment Act 1988 as having the support of a ballot unless it is called by a specified person and the following conditions are satisfied.

(3) The conditions are that—

(a) there must have been no call by the trade union to take part or continue to take part in industrial action to which the ballot relates, or any authorisation or endorsement by the union of any such industrial action, before the date of the ballot;

(b) there must be a call for industrial action by a specified person, and industrial action to which it relates must take place, before the ballot ceases to be effective in accordance with section 8 below.

(4) For the purposes of this section a call shall be taken to have been made by a trade union if it was authorised or endorsed by the union; and the provisions of subsections (3) to (7) of section 15 of the Employment Act 1982 apply for the purpose of determining whether a call, or industrial action, is to be taken to have been so authorised or endorsed.

(5) In this section—

"date of the ballot" has the same meaning as in Part II of the Trade Union Act 1984;

"specified person" means a person specified or of a description specified in the voting paper for the ballot in accordance with section 11(4A) of the Trade Union Act 1984; and

"trade union" has the meaning given by section 28 of the Trade Union and Labour Relations Act 1974.

8 Period after which ballot ceases to be effective

(1) Subject to the following provisions, a ballot ceases to be effective for the purposes of section 7(3)(b) at the end of the period of four weeks beginning with the date of the ballot.

(2) Where for the whole or part of that period the calling or organising of industrial action is prohibited—

(a) by virtue of a court order which subsequently lapses or is discharged, recalled or set aside, or

(b) by virtue of an undertaking given to a court by any person from which he is subsequently released or by which he ceases to be bound,

the trade union may apply to the court for an order that the period during which the prohibition had effect shall not count towards the period referred to in subsection (1).

(3) The application must be made forthwith upon the prohibition ceasing to have effect—

(a) to the court by virtue of whose decision it ceases to have effect, or

(b) where an order lapses or an undertaking ceases to bind without any such decision, to the court by which the order was made or to which the undertaking was given;

and no application may be made after the end of the period of eight weeks beginning with the date of the ballot.

(4) The court shall not make an order if it appears to the court—

(a) that the result of the ballot no longer represents the views of the union members concerned, or

(b) that an event is likely to occur as a result of which those members would vote against industrial action if another ballot were to be held.

(5) No appeal lies from the decision of the court to make or refuse an order under this section.

(6) The period between the making of an application under this section and its determination does not count towards the period referred to in subsection (1).

But a ballot shall not by virtue of this subsection (together with any order of the court) be regarded as effective for the purposes of section 7(3)(b) after the end of the period of twelve weeks beginning with the date of the ballot.

(7) In this section—

"date of the ballot" has the same meaning as in Part II of the Trade Union Act 1984; and

"trade union" has the meaning given by section 28 of the Trade Union and Labour Relations Act 1974.

9 Dismissal of those taking part in unofficial industrial action

(1) In Part V of the Employment Protection (Consolidation) Act 1978 (unfair dismissal), after section 62 (dismissal in connection with lock-out, strike or other industrial action) insert—

"**62A Dismissal of those taking part in unofficial industrial action**

(1) An employee has no right to complain of unfair dismissal if at the time of dismissal he was taking part in an unofficial strike or other unofficial industrial action.

(2) A strike or other industrial action is unofficial in relation to an employee unless—

(a) he is a member of a trade union and the action is authorised or endorsed by that union, or

(b) he is not a member of a trade union but there are among those taking part in the industrial action members of a trade union by which the action has been authorised or endorsed.

Provided that, a strike or other industrial action shall not be regarded as unofficial if none of those taking part in it are members of a trade union.

(3) The provisions of subsections (3) to (7) of section 15 of the Employment Act 1982 apply for the purpose of determining whether industrial action is to be taken to have been authorised or endorsed by a trade union.

(4) The question whether industrial action is to be so taken in any case shall be determined by reference to the facts as at the time of dismissal.

Provided that, where an act is repudiated as mentioned in subsection (4) of that section, industrial action shall not thereby be treated as unofficial before the end of the next working day after the day on which the repudiation takes place.

(5) In this section the "time of dismissal" means—

(a) where the employee's contract of employment is terminated by notice, when the notice is given,

(b) where the employee's contract of employment is terminated without notice, when the termination takes effect, and

(c) where the employee is employed under a contract for a fixed term which expires without being renewed under the same contract, when that term expires;

and a "working day" means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971.

(6) For the purposes of this section membership of a trade union for purposes unconnected with the employment in question shall be disregarded; but an employee who was a member of a trade union when he began to take part in industrial action shall continue to be treated as a member for the purpose of determining whether that action is unofficial in relation to him or another notwithstanding that he may in fact have ceased to be a member.".

(2) Nothing in section 13 of the Trade Union and Labour Relations Act 1974 prevents an act from being actionable in tort if the reason, or one of the reasons, for doing it is the fact or belief that an employer has dismissed one or more employees in circumstances such that by virtue of section 62A of the Employment Protection (Consolidation) Act 1978 (dismissal in connection with unofficial industrial action) they have no right to complain of unfair dismissal.

(3) Expressions used in subsection (2) above and the Trade Union and Labour Relations Act 1974 have the same meaning in that subsection as in that Act.

The Commissioner for the Rights of Trade Union Members

10 Proceedings in respect of which assistance may be provided

(1) Section 20 of the Employment Act 1988 (provision of assistance by the Commissioner for the Rights of Trade Union Members) applies to proceedings or prospective proceedings in the High Court or the Court of Session (or on an appeal therefrom to the Court of Appeal or the House of Lords) to the extent that the proceedings arise out of an alleged breach or threatened breach of the rules of a trade union relating to any of the following matters.

(2) Those matters are—

(a) the appointment or election of a person to, or the removal of a person from, any office;
(b) disciplinary proceedings by the union (including expulsion);
(c) the authorising or endorsing of industrial action;
(d) the balloting of members;
(e) the application of the union's funds or property;
(f) the imposition, collection or distribution of any levy for the purposes of industrial action;
(g) the constitution or proceedings of any committee, conference or other body.

(3) In subsection (2)(a) "office" includes any position by virtue of which a person is an official in relation to the trade union or is entitled to attend as a representative any meeting concerned with union business.

(4) In this section—
(a) "trade union", and "official" in relation to a trade union, have the same meaning as in the Trade Union and Labour Relations Act 1974; and
(b) references to the rules of a trade union include the rules of any branch or section of the trade union.

(5) The Commissioner shall not grant an application for assistance made by virtue of this section unless it appears to him—
(a) that the breach of rules in question affects, or may affect, members of the union other than the applicant, or
(b) that similar breaches of the rules have been or may be committed in relation to other members of the union.

(6) Nothing in this section affects the power of the Commissioner to provide assistance where he could do so apart from this section.

11 Title of proceedings where assistance provided

(1) Where a person is receiving assistance under section 20 of the Employment Act 1988 in relation to proceedings, there shall, if he so wishes, be added after his name in the title of the proceedings the words "(assisted by the Commissioner for the Rights of Trade Union Members)".

(2) The addition of those words shall not be construed as making the Commissioner a party to the proceedings or as liable to be treated as a party for any purpose; and the omission of those words shall be treated as an irregularity only and shall not nullify the proceedings, any step taken in the proceedings or any document, judgment or order therein.

(3) The above provisions apply to proceedings whether begun before or after the commencement of this section.

Miscellaneous

12 Consequential revision or revocation of Codes of Practice

(1) A Code of Practice to which this section applies may be revised by the appropriate authority in accordance with this section for the purpose of bringing it into conformity

with subsequent statutory provisions by the making of consequential amendments and the omission of obsolete passages.

"Statutory provisions" here means provisions made by or under an Act of Parliament, and "subsequent" statutory provisions means provisions coming into force after the Code was issued (whether before or after the commencement of this section).

(2) The Codes of Practice to which this section applies are—

(a) those issued under section 3 of the Employment Act 1980, in relation to which the appropriate authority is the Secretary of State,

(b) those issued under section 6 of the Employment Protection Act 1975, in relation to which the appropriate authority is the Advisory, Conciliation and Arbitration Service, and

(c) that having effect under paragraph 4 of Schedule 17 to that Act, in relation to which the appropriate authority is the Secretary of State.

(3) Where the Secretary of State proposes to revise a Code under this section, he shall lay a draft of the revised Code before each House of Parliament.

(4) Where the Advisory, Conciliation and Arbitration Service proposes to revise a Code under this section, it shall transmit a draft of the revised Code to the Secretary of State who shall—

(a) if he approves of it, lay the draft before each House of Parliament;

(b) if he does not approve of it, publish details of his reasons for withholding approval.

(5) If within the period of 40 days beginning with the day on which a copy of a draft is laid before each House of Parliament under subsection (3) or (4), or, if such copies are laid on different days, with the later of the two days, either House so resolves, no further proceedings shall be taken thereon, but without prejudice to the laying before Parliament of a new draft.

In reckoning the period of 40 days no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(6) If no such resolution is passed the appropriate authority shall issue the Code in the form of the draft and it shall come into effect on such day as the Secretary of State may appoint by order made by statutory instrument.

(7) A Code of Practice to which this section applies may be revoked by the Secretary of State by order made by statutory instrument; but no such order shall be made—

(a) in the case of a Code in relation to which the Advisory, Conciliation and Arbitration Service is the appropriate authority, except at the request of the Service, and

(b) in any case, unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

(8) If the Advisory, Conciliation and Arbitration Service requests the Secretary of State to revoke a Code of Practice in relation to which it is the appropriate authority and he decides not to do so, he shall publish details of his reasons for his decision.

(9) An order under subsection (6) or (7) may contain such transitional provisions and savings as appear to the Secretary of State to be appropriate.

13 Merger of Redundancy Fund with National Insurance Fund, &c

(1) The assets and liabilities of the Redundancy Fund shall become assets and liabilities of the National Insurance Fund and the Redundancy Fund shall cease to exist.

(2) The Secretary of State shall prepare an account (in such form as the Treasury may direct) showing the final state of the Redundancy Fund, and shall send a copy of it to the Comptroller and Auditor General who shall examine, certify and report on the account and lay copies of it and of his report before each House of Parliament.

(3) References to the Redundancy Fund in subordinate legislation (within the meaning of the Interpretation Act 1978) shall be construed as references to the National Insurance Fund.

(4) Section 105 of the Employment Protection (Consolidation) Act 1978 (power to make repayments where contributions paid in respect of certain employees not entitled to redundancy payment) shall cease to have effect.

14 Period during which children may be employed for work experience

In section 1 of the Education (Work Experience) Act 1973 (work experience in the last year of compulsory schooling), in subsection (4) for the words from "a child is in his last year of compulsory schooling" to the end substitute "a child shall be taken to be in his last year of compulsory schooling from the beginning of the term at his school which precedes the beginning of the school year in which by virtue of section 9 of the Education Act 1962 he would be entitled to leave school.".

General

15 Financial provision

There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums so payable under any other Act.

16 Consequential amendments and repeals

(1) The enactments mentioned in Schedule 2 have effect with the amendments specified there, which are consequential on the provisions of this Act.

(2) The enactments mentioned in Schedule 3 are repealed to the extent specified there.

17 Northern Ireland

(1) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which contains a statement that it is only made for purposes corresponding to the purposes of section 13 of this Act (merger of Redundancy Fund with National Insurance Fund, &c.) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament) but shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) Apart from this section, the provisions of this Act do not extend to Northern Ireland.

18 Short title and commencement

(1) This Act may be cited as the Employment Act 1990.

(2) The following provisions of this Act come into force on Royal Assent—

section 11 (title of proceedings where assistance given by Commissioner for Rights of Trade Union Members),

section 12 (revision or revocation of Codes of Practice),

section 14 (period during which children may be employed for work experience), and

sections 15 and 17 and this section (general ancillary provisions).

(3) The other provisions of this Act come into force on such day as the Secretary of State may appoint by order made by statutory instrument and different days may be appointed for different provisions.

(4) An order bringing into force any provision may contain such transitional provisions and savings as appear to the Secretary of State to be appropriate.

SCHEDULES

SCHEDULE 1

Section 3(5).

FURTHER PROVISIONS RELATING TO ACCESS TO EMPLOYMENT

PART I

PROCEEDINGS, REMEDIES AND RELATED MATTERS

Introduction

1 The provisions of this Part of this Schedule apply in relation to a complaint under section 1 or 2 (refusal of employment or refusal of service of employment agency on grounds related to trade union membership).

Restriction of proceedings

2 (1) The remedy of a person for conduct which is unlawful by virtue of either of those sections is by way of a complaint to an industrial tribunal in accordance with those sections and this Schedule, and not otherwise.

(2) No other legal liability arises by reason that conduct is unlawful by virtue of either of those sections.

Time limit

3 (1) An industrial tribunal shall not consider the complaint unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the date of the conduct to which the complaint relates, or

(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as the tribunal considers reasonable.

(2) The date of the conduct to which a complaint under section 1 relates shall be taken to be—

(a) in the case of an actual refusal, the date of the refusal;

(b) in the case of a deliberate omission—

(i) to entertain and process the complainant's application or enquiry, or

(ii) to offer employment,

the end of the period within which it was reasonable to expect the employer to act;

(c) in the case of conduct causing the complainant to withdraw or cease to pursue his application or enquiry, or not to accept an offer of employment, the date of that conduct;

(d) in a case where an offer was made but withdrawn, the date when it was withdrawn;

(e) in any other case where an offer was made but not accepted, the date on which it was made.

(3) The date of the conduct to which a complaint under section 2 relates shall be taken to be—

(a) in the case of an actual refusal, the date of the refusal;

(b) in the case of a deliberate omission to make a service available, the end of the period within which it was reasonable to expect the employment agency to act;

(c) in the case of conduct causing the complainant not to avail himself of a service or to cease to avail himself of it, the date of that conduct;

(d) in the case of failure to provide the same service, on the same terms, as is provided to others, the date or last date on which the service in fact provided was provided.

Conciliation

4 In section 133(1) of the Employment Protection (Consolidation) Act 1978 (functions of conciliation officers in relation to certain proceedings), after paragraph (f) insert—

"(g) under section 1 or 2 of the Employment Act 1990.".

Remedies

5 (1) Where the industrial tribunal finds that the complaint is well-founded, it shall make a declaration to that effect and may make such of the following as it considers just and equitable—

(a) an order requiring the respondent to pay compensation to the complainant of such amount as the tribunal may determine;

(b) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any conduct to which the complaint relates.

(2) Compensation shall be assessed on the same basis as damages for breach of statutory duty and may include compensation for injury to feelings.

(3) If the respondent fails without reasonable justification to comply with a recommendation to take action, the tribunal may increase its award of compensation or, if it has not made such an award, make one.

(4) The total amount of compensation shall not exceed the limit for the time being imposed by section 75 of the Employment Protection (Consolidation) Act 1978 (limit on compensation for unfair dismissal).

Complaint against employer and employment agency

6 (1) Where a person has a right of complaint against a prospective employer and against an employment agency arising out of the same facts, he may present a complaint against either of them or against them jointly.

(2) If a complaint is brought against one only, he or the complainant may request the tribunal to join or sist the other as a party to the proceedings.

The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made its decision as to whether the complaint is well-founded.

(3) Where a complaint is brought against an employer and an employment agency jointly, or where it is brought against one and the other is joined or sisted as a party to the proceedings, and the tribunal—

(a) finds that the complaint is well-founded as against the employer and the agency, and

(b) makes an award of compensation,

it may order that the compensation shall be paid by the one or the other, or partly by one and partly by the other, as the tribunal may consider just and equitable in the circumstances.

Awards against third parties

7 (1) If in proceedings on a complaint under section 1 or 2 either the complainant or the respondent claims that the respondent was induced to act in the manner complained of by pressure which a trade union or other person exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, the complainant or the respondent may request the industrial tribunal to direct that the person who he claims exercised the pressure be joined or sisted as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made its decision as to whether the complaint is well-founded.

(3) Where a person has been so joined or sisted as a party to the proceedings and the tribunal—

(a) finds that the complaint is well-founded,

(b) makes an award of compensation, and

(c) also finds that the claim in sub-paragraph (1) above is well-founded,

it may order that the compensation shall be paid by the person joined instead of by the respondent, or partly by that person and partly by the respondent, as the tribunal may consider just and equitable in the circumstances.

(4) Where by virtue of paragraph 6 (complaint against employer and employment agency) there is more than one respondent, the above provisions apply to either or both of them.

Appeal from decision of tribunal

8 In section 136 of the Employment Protection (Consolidation) Act 1978 (appeals from industrial tribunals to Employment Appeal Tribunal), in subsection (1) (right of appeal on questions of law arising under certain Acts), after paragraph (f) insert—

"(g) the Employment Act 1990.".

PART II

SCOPE OF APPLICATION OF PROVISIONS

Introduction

9 The provisions of this Part of this Schedule apply with respect to the operation of sections 1 to 3 and this Schedule (referred to below as "the provisions of this Act relating to access to employment").

Restriction on contracting out

10 (1) An agreement is void in so far as it purports—

(a) to exclude or limit the operation of any of the provisions of this Act relating to access to employment, or

(b) to preclude a person from presenting a complaint to, or bringing any proceedings under those provisions before, an industrial tribunal.

(2) Sub-paragraph (1) does not apply to an agreement to refrain from instituting or continuing proceedings before an industrial tribunal where a conciliation officer has taken action in accordance with section 133(2) or (3) of the Employment Protection (Consolidation) Act 1978.

Crown employment and House of Commons and House of Lords staff

11 (1) The provisions of this Act relating to access to employment have effect in relation to Crown employment as in relation to other employment.

(2) Crown employment means employment under or for the purposes of—

(a) a government department, or

(b) any officer or body exercising on behalf of the Crown functions conferred by an enactment;

and, subject to the following provisions, this paragraph applies to all Crown employment.

(3) This paragraph does not apply to service as a member of the naval, military or air forces of the Crown but does apply to employment by an association established for the purposes of Part VI of the Reserve Forces Act 1980 (territorial, auxiliary and reserve forces associations).

(4) This paragraph does not apply to employment in respect of which there is in force a certificate under section 138(4) of the Employment Protection (Consolidation) Act 1978 (employment excepted from that Act for the purpose of safeguarding national security).

12 (1) The provisions of this Act relating to access to employment apply in relation to employment as a relevant member of the House of Commons or House of Lords staff as in relation to other employment.

(2) Nothing in any rule of law or the law or practice of Parliament prevents a person from bringing before an industrial tribunal proceedings of any description under those provisions which could be brought before such a tribunal in relation to other employment.

(3) In this paragraph "relevant member of the House of Commons staff" has the same meaning as in section 139 of the Employment Protection (Consolidation) Act 1978 (which provides for the application of provisions of that Act to such staff); and subsections (3) to (6) and (9) of that section (person to be treated as employer) apply, with any necessary adaptations, for the purposes of the provisions of this Act relating to access to employment.

(4) In this paragraph "relevant member of the House of Lords staff" means a member of the House of Lords staff appointed by the Clerk of the Parliaments or the Gentleman Usher of the Black Rod.

(5) For the purposes of the provisions of this Act relating to access to employment the holder for the time being of the office of Clerk of the Parliaments or Gentleman Usher of the Black Rod is the employer in relation to employment to which a person is appointed by the holder of that office; and anything done, before or after he took office, in relation to a person seeking such employment shall be treated as done by him.

(6) If the House of Lords resolves at any time that any provision of sub-paragraphs (4) and (5) should be amended in its application to any employment as a member of the staff of that House, Her Majesty may by Order in Council amend that provision accordingly.

Any such Order—

(a) may contain such incidental, supplementary or transitional provisions as appear to Her Majesty to be appropriate, and

(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

13 In the provisions of this Act relating to access to employment references to employment include, in relation to—

(a) Crown employment, and

(b) employment as a relevant member of the House of Commons or House of Lords staff,

employment otherwise than under a contract, on terms corresponding to those of a contract of service or apprenticeship; and related expressions shall be construed accordingly.

Police service

14 The provisions of this Act relating to access to employment do not apply to employment as a member of any constabulary maintained by virtue of an enactment or in any other capacity by virtue of which a person has the powers or privileges of a constable.

Employment outside Great Britain

15 The provisions of this Act relating to access to employment do not apply to employment where under his contract of employment an employee will ordinarily work outside Great Britain.

Mariners

16 (1) For the purposes of paragraph 15 employment on board a ship registered in the United Kingdom shall be treated as employment where under his contract a person will ordinarily work in Great Britain unless—

(a) the ship is registered at a port outside Great Britain, or

(b) the employment is wholly outside Great Britain.

(2) Sub-paragraph (1) does not apply where the person seeking employment or, as the case may be, seeking to avail himself of a service of an employment agency is not ordinarily resident in Great Britain.

(3) The provisions of this Act relating to access to employment do not apply to employment as master or as a member of the crew of a fishing vessel where the remuneration is only by a share in the profits or gross earnings of the vessel.

Offshore employment

17 (1) Section 137 of the Employment Protection (Consolidation) Act 1978 (power to extend employment legislation to offshore employment) applies in relation to the provisions of this Act relating to access to employment.

(2) As it so applies—

(a) the references to a person in employment to which the section applies shall be construed as a reference to a person seeking such employment, and

(b) the references to section 141 and 144 of that Act shall be construed as references to paragraphs 15 and 16 above.

Crown application of provisions relating to employment agencies

18 (1) The provisions of this Act relating to access to employment bind the Crown so far as they relate to the activities of an employment agency in relation to employment to which those provisions apply.

(2) This does not affect the operation of those provisions in relation to Crown employment (see paragraph 11 above).

SCHEDULE 2

Section 16(1).

CONSEQUENTIAL AMENDMENTS

Employment Protection (Consolidation) Act 1978 (c. 44)

1 (1) The Employment Protection (Consolidation) Act 1978 is amended as follows.

(2) In section 62 (dismissal in connection with a lock-out, strike or other industrial action), after subsection (4) add—

"(5) The provisions of this section do not apply to an employee who by virtue of section 62A below has no right to complain of unfair dismissal; but nothing in that section affects the question who are relevant employees in relation to an employee to whom the provisions of this section do apply.".

(3) In section 106 (redundancy: payments by Secretary of State to employee where employer fails to pay), in subsections (2) and (3) for "the fund" substitute "the National Insurance Fund".

(4) In sections 122(1), 123(1) and 125(4) (insolvency of employer: payments by Secretary of State to or in respect of employees), for "the Redundancy Fund" substitute "the National Insurance Fund".

(5) In section 156 (payments into the Consolidated Fund)—

(a) in subsections (2) and (3), for "the Redundancy Fund" substitute "the National Insurance Fund"; and

(b) in subsection (3) for "sections 103 to 109" substitute "sections 106 to 108".

(6) In section 158(2) (reciprocal arrangements with the Isle of Man: financial adjustments) for "the Redundancy Fund" substitute "the National Insurance Fund".

Trade Union Act 1984 (c. 49)

2 (1) Section 10 of the Trade Union Act 1984 (industrial action taken without support of ballot) is amended as follows.

(2) For subsections (1) and (2) substitute—

"(1) An act done by a trade union to induce a person to take part, or continue to take part, in industrial action is not within section 13 of the 1974 Act (protection from certain liabilities in tort) unless the industrial action has the support of a ballot.".

(3) In subsection (3), for the words from "an act" to "done with" substitute "industrial action shall be regarded as having", in paragraph (a) for the words from "strike" to "occurred" substitute "industrial action in question", and for paragraph (c) substitute—

"(c) the requirements of section 7 of the Employment Act 1990 are satisfied;".

(4) In subsection (3A), in paragraph (a), for the words from "by an act" to "performance" substitute "to take part, or continue to take part, in industrial action", in paragraph (b) for the words from "strike" to "interference" substitute "industrial action", and omit the words "of that breach or interference".

(5) In subsection (4) omit the words "strike or other".

(6) In subsection (4A), omit the words "inducing a breach or interference", and for the words from "in the course of which" to the end substitute "to which the act relates".

(7) In subsection (5) omit the definitions of "authorisation or endorsement", "commercial contract", "contract of employment", "relevant act" and "tort" and the words from "and any reference" to the end.

Employment Act 1988 (c. 19)

3 (1) Section 1 of the Employment Act 1988 (right to a ballot before industrial action) is amended as follows.

(2) In subsection (1), for the words from "that the union" to "continue to take part" substitute "that members of the union, including himself, are likely to be or have been induced by the union to take part or to continue to take part in industrial action which does not have the support of a ballot".

(3) In subsection (2), for paragraphs (a) to (c) substitute "that the application is well-founded" and omit the words from "(including" to "endorsement)".

(4) For subsections (3) and (4) substitute—

"(3) For the purposes of this section an act shall be taken to have been done by a trade union if it was authorised or endorsed by the union; and the provisions of subsections (3) to (7) of section 15 of the Employment Act 1982 apply for the purpose of determining whether an act is to be taken to have been so authorised or endorsed.

Those provisions also apply in relation to proceedings for failure to comply with an order under this section as they apply in relation to the original proceedings.".

(5) In subsection (5) omit the words "an authorisation or endorsement by a trade union of any" and for paragraph (e) substitute—

"(e) the requirements of section 7 of the Employment Act 1990 are satisfied.".

SCHEDULE 3

Section 16(2).

REPEALS

Chapter	*Short title*	*Extent of repeal*
1975 c. 14.	Social Security Act 1975.	In section 1(1)(b), the words "and into the Redundancy Fund". In section 122— (a) subsection (3)(b); (b) subsection (4). In section 123, the proviso to subsection (2). In section 134— (a) in subsection (1), paragraph (b) and the word "and" preceding it; (b) in subsection (4), the definition of "appropriate employment protection allocation" and the word "and" preceding it;

Chapter	*Short title*	*Extent of repeal*
		(c) in subsection (5), paragraph (b) and in paragraph (c) the words "and (b)"; (d) subsections (5A) to (5D).
		In section 167(1)(b), the references to section 134(5A), (5B) and (5C).
		In Schedule 20, the definition of "appropriate employment protection allocation".
1975 c. 71.	Employment Protection Act 1975.	In section 40, subsections (1), (5) and (6).
1978 c. 44.	Employment Protection (Consolidation) Act 1978.	Section 103.
		Section 105.
		Section 109.
		In section 153(1), the definition of "Redundancy Fund".
		Section 157(2).
		In Schedule 9, paragraph 3.
1980 c. 42.	Employment Act 1980.	Section 17.
1980 c. 48.	Finance Act 1980.	In Schedule 19, in paragraph 5(4), the words "and 103(3)".
1981 c. 1.	Social Security (Contributions) Act 1981.	Section 4(6).
1981 c. 5.	Redundancy Fund Act 1981.	The whole Act.
1982 c. 2.	Social Security (Contributions) Act 1982.	Section 3(3).
		In Schedule 1— (a) paragraph 1; (b) paragraph 2(1).
1982 c. 46.	Employment Act 1982.	In section 15— (a) in subsection (6), the words ", notwithstanding subsection (5) above,"; (b) in subsection (7), the definition of "official" and "employed official".
1984 c. 49.	Trade Union Act 1984.	In section 10—

Chapter	*Short title*	*Extent of repeal*
		(a) in subsection (3A), the words "of that breach or interference"; (b) in subsection (4), the words "strike or other"; (c) in subsection (4A), the words "inducing a breach or interference"; (d) in subsection (5), the definitions of "authorisa-tion or endorsement", "commercial contract", "contract of employ-ment", "relevant act" and "tort" and the words from "and any reference" to the end.
1985 c. 53.	Social Security Act 1985.	In Schedule 5— (a) paragraph 9(b); (b) in paragraph 11(a), the words "and "the appro-priate employment pro-tection allocation" ".
1986 c. 50.	Social Security Act 1986.	In section 74, subsections (3) and (4). In Schedule 10, paragraph 73.
1988 c. 19.	Employment Act 1988.	In section 1— (a) in subsection (2), the words from "(including" to "endorsement)"; (b) in subsection (5), the words "an authorisation or endorsement by a trade union of any".
1989 c. 24.	Social Security Act 1989.	In section 1— (a) subsection (4); (b) in subsection (8), the words "and (i)" and "and "appropriate employment protection allocation",". In Schedule 8, paragraph 8(1).
1989 c. 38.	Employment Act 1989.	In Schedule 6, paragraph 20.