



# Trade Union Reform and Employment Rights Act 1993

## 1993 CHAPTER 19

### PART II

#### EMPLOYMENT RIGHTS

##### *Maternity*

**F1**23 .....

**Textual Amendments**

**F1** Ss. 23-26 repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

**F2**24 .....

**Textual Amendments**

**F2** Ss. 23-26 repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

**F3**25 .....

**Textual Amendments**

**F3** Ss. 23-26 repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

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*Changes to legislation: There are currently no known outstanding effects for the Trade Union Reform and Employment Rights Act 1993, Part II. (See end of Document for details)*

*Employment particulars*

F4<sup>26</sup> .....

**Textual Amendments**

F4 Ss. 23-26 repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 3 Pt. I (with ss. 191-195, 202)

F5<sup>27</sup> .....

**Textual Amendments**

F5 S. 27 repealed (6.2.1995) by 1995/31, reg. 6, Sch.

*Employment protection in health and safety cases*

F6<sup>28</sup> .....

**Textual Amendments**

F6 Ss. 28-31 repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 3 Pt. I (with ss. 191-195, 202)

*Unfair dismissal: assertion of statutory right*

F7<sup>29</sup> .....

**Textual Amendments**

F7 Ss. 28-31 repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 3 Pt. I (with ss. 191-195, 202)

*Reinstatement orders: compensation*

F8<sup>30</sup> .....

**Textual Amendments**

F8 Ss. 28-31 repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 3 Pt. I (with ss. 191-195, 202)

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### *Service in armed forces*

**F<sup>9</sup>31** .....

#### **Textual Amendments**

**F<sup>9</sup>** Ss. 28-31 repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 3 Pt. I (with ss. 191-195, 202)

### *Sex discrimination*

## **32 Right to declaration of invalidity of discriminatory terms and rules.**

In section 6 of the <sup>M1</sup>Sex Discrimination Act 1986 (application of section 77 of the <sup>M2</sup>Sex Discrimination Act 1975, which provides for discriminatory terms of contracts to be void, to terms of collective agreements, employers' rules and rules of certain organisations), after subsection (4) there shall be inserted—

“(4A) A person to whom this subsection applies may present a complaint to an [<sup>F10</sup>employment tribunal] that a term or rule is void by virtue of subsection (1) of the said section 77 if he has reason to believe—

- (a) that the term or rule may at some future time have effect in relation to him, and
- (b) where he alleges that it is void by virtue of paragraph (c) of that subsection, that—
  - (i) an act for the doing of which it provides may at some such time be done in relation to him, and
  - (ii) the act would be, or be deemed by virtue of subsection (3) above to be, rendered unlawful by the 1975 Act if done in relation to him in present circumstances.

(4B) In the case of a complaint about—

- (a) a term of a collective agreement made by or on behalf of—
  - (i) an employer,
  - (ii) an organisation of employers of which an employer is a member, or
  - (iii) an association of such organisations of one of which an employer is a member, or
- (b) a rule made by an employer,

subsection (4A) applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

(4C) In the case of a complaint about a rule made by an organisation, authority or body to which subsection (2) above applies, subsection (4A) applies to any person—

- (a) who is, or is genuinely and actively seeking to become, a member of the organisation, authority or body,
- (b) on whom the organisation, authority or body has conferred an authorisation or qualification, or

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- (c) who is genuinely and actively seeking an authorisation or qualification which the organisation, authority or body has power to confer.

(4D) When an [F10 employment tribunal] finds that a complaint presented to it under subsection (4A) above is well-founded the tribunal shall make an order declaring that the term or rule is void.”.

#### Textual Amendments

**F10** Words in s. 32 substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

#### Marginal Citations

**M1** 1986 c. 59.

**M2** 1975 c. 65.

### *Transfer and redundancy rights*

#### **33 Amendments of transfer of undertakings regulations.**

- (1) The <sup>M3</sup>Transfer of Undertakings (Protection of Employment) Regulations 1981 shall be amended as follows.
- (2) In Regulation 2(1), in the definition of “undertaking” (which excludes from the Regulations undertakings, and parts of undertakings, not in the nature of a commercial venture), the words from “ but does not ” to the end shall cease to have effect.
- (3) In Regulation 3(4) (transfers to which the Regulations apply), for the words from one to the end there shall be substituted the words “one—
- (a) may be effected by a series of two or more transactions; and
  - (b) may take place whether or not any property is transferred to the transferee by the transferor.”.
- (4) In Regulation 5 (effect of relevant transfer on contracts of employment, etc)—
- (a) in paragraph (1), at the beginning, there shall be inserted the words “ Except where objection is made under paragraph (4A) below, ”;
  - (b) in paragraph (2) after the words paragraph (1) above there shall be inserted the words “ but subject to paragraph (4A) below, ”;
  - (c) after paragraph (4), there shall be inserted—
 

“(4A) Paragraphs (1) and (2) above shall not operate to transfer his contract of employment and the rights, powers, duties and liabilities under or in connection with it if the employee informs the transferor or the transferee that he objects to becoming employed by the transferee.

(4B) Where an employee so objects the transfer of the undertaking or part in which he is employed shall operate so as to terminate his contract of employment with the transferor but he shall not be treated, for any purpose, as having been dismissed by the transferor.”; and
  - (d) in paragraph (5), for the words Paragraph (1) above is there shall be substituted the words “ Paragraphs (1) and (4A) above are ”.

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- (5) Regulation 7 (exclusion of occupational pension schemes) shall be re-numbered as paragraph (1) of that Regulation and after that provision as so re-numbered there shall be inserted—
- “(2) For the purposes of paragraph (1) above any provisions of an occupational pension scheme which do not relate to benefits for old age, invalidity or survivors shall be treated as not being part of the scheme.”.
- (6) At the end of Regulation 10(5) (duty to consult) there shall be added the words “ with a view to seeking their agreement to measures to be taken. ”.
- (7) In Regulation 11 (remedies for failure to inform or consult)—
- (a) paragraph (7) (deduction from compensation of any payments relating to failure to consult on redundancy) shall cease to have effect, and
- (b) in paragraph (11) (compensation subject to maximum of two weeks’ pay for employee in question), for the words two weeks’ pay there shall be substituted the words “ four weeks’ pay ”.

**Marginal Citations**  
M3 S.I. 1981/1794.

**34 Redundancy consultation procedures.**

- (1) Chapter II of Part IV of the 1992 Act (procedure for handling redundancies) shall be amended in accordance with subsections (2) to (5) below.
- (2) In section 188 (duty of employer to consult trade union representatives)—
- (a) in subsection (4) (information to be disclosed to representatives), after paragraph (e) there shall be inserted “and
- (f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by or by virtue of any enactment) to employees who may be dismissed.”,
- <sup>F11</sup>(b) .....
- (c) at the end of subsection (7) (exception from requirements in special circumstances) there shall be inserted—
- “ Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement. ”.
- <sup>F12</sup>(3) .....
- (4) In section 193 (duty of employer to notify Secretary of State of certain redundancies), at the end of subsection (7) (exception from requirements in special circumstances) there shall be inserted—
- “ Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with any of those requirements. ”.

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(5) For section 195 there shall be substituted—

**“195 Construction of references to dismissal as redundant etc.**

- (1) In this Chapter references to dismissal as redundant are references to dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related.
- (2) For the purposes of any proceedings under this Chapter, where an employee is or is proposed to be dismissed it shall be presumed, unless the contrary is proved, that he is or is proposed to be dismissed as redundant.”.

<sup>F13</sup>(6) .....

**Textual Amendments**

**F11** S. 34(2)(b) omitted (26.10.1995) by virtue of S.I. 1995/2587, **reg. 3(11)**

**F12** S. 34(3) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 8**

**F13** S. 34(6) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 8**

**Modifications etc. (not altering text)**

**C1** S. 34 restricted (27.7.1993) by S.I. 1993/1908, **art. 3(12)**.

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**Changes to legislation:**

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